

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

Regulation of trade

LEGAL ACQUISITION FINDINGS

This document has been prepared by the Secretariat at the request of the Standing Committee in relation to agenda item SC78 Doc. 47 on legal acquisition findings, after discussion in the fourth session of plenary (see document SC78 Sum. 4).

DRAFT AMENDMENTS TO RESOLUTION CONF. 18.7 (REV. COP19) ON
LEGAL ACQUISITION FINDINGS

Annex 1

Guidance for making legal acquisition findings

4. Practical tools

- a) For the purpose of establishing the chain of custody, the Parties may make use of information systems and traceability tools.
- b) In verifying legal acquisition, Parties may wish to consult existing international legal databases such as CITES-LEX, ECOLEX, FAOLEX, and the World Legal Information Institute.
- c) Where Parties consider that more certainty is required to establish that a specimen was legally acquired, Parties may have recourse to request verification by the applicant using forensic tools such as DNA testing, stable isotope analysis, and radiocarbon dating.
- d) Management Authorities may use for their convenience the rapid guide for verifying legal acquisition below.

(...)

Annex 3

Rapid guide for making legal acquisition findings

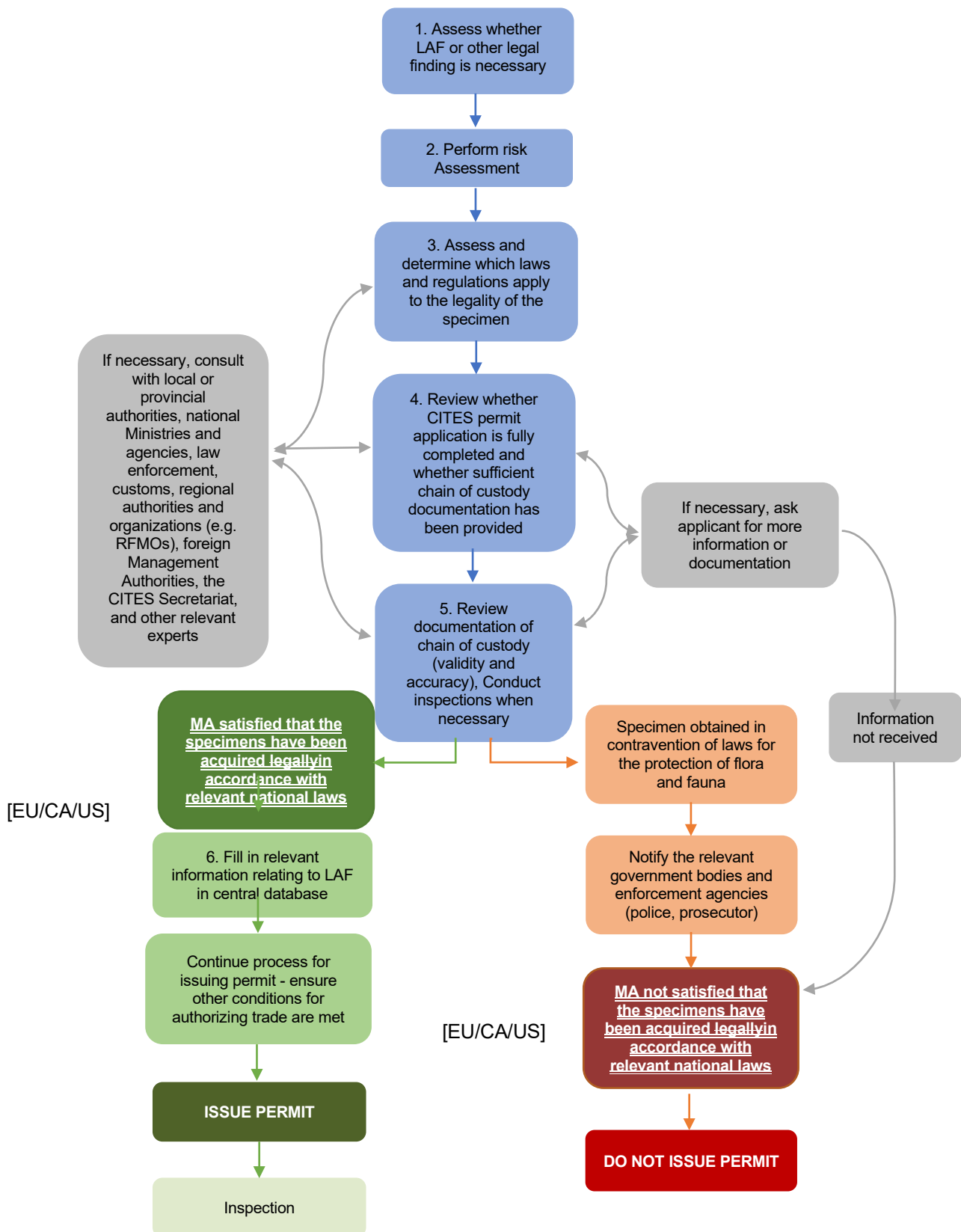
3. What laws and regulations apply to the legality of the specimen?

The Management Authority might identify [EU/CA], review and assess relevant [EU/CA/US] national laws, regulations, policies, and management plans for the protection of flora and fauna to determine the relevant rules governing activities along wildlife supply chains. The Secretariat, in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and building upon FAOLEX, has developed the database "CITES-LEX" to provide a catalogue of instruments and resources aimed at facilitating Parties' access to legislation and related information relevant to CITES implementation, and materials and resources to support the making of legal acquisition findings. ~~is collaborating with FAO to design a tool to assist the CITES Management Authorities and the regulated community in responding to this question.~~ [original]

(...)

7. Framework for making a Legal Acquisition Finding

(see proposed amendments in the next page)



DRAFT NON-BINDING [EU/CA] GUIDANCE ON THE CHAIN OF CUSTODY REQUIRED FOR
DEMONSTRATING THE LEGAL ACQUISITION OF THE PARENTAL/BREEDING STOCK

Background

1. Article VII of the Convention on exemptions and other special provisions relating to trade provides in paragraphs 4 and 5:
 4. *Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.*
 5. *Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V.*

Requirement to demonstrate the legal acquisition of the parental/breeding stock

2. The requirement to demonstrate the legal acquisition of the parental/breeding stock is contained in the resolutions providing the common understanding for operationalizing Article VII, paragraphs 4 and 5:

With regard to animals bred in captivity, the following two resolutions are relevant: [EU/CA]

- a) Resolution Conf. 10.16 (Rev. CoP19) on Specimens of animal species bred in captivity provides in paragraph 2 b) that the term 'bred in captivity' shall be interpreted to refer only to specimens, as defined in Article I, paragraph (b), of the Convention, born or otherwise produced in a controlled environment, and shall apply only if: (...) ii) *the breeding stock, to the satisfaction of the competent government authorities of the exporting country (...) was established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild;*. The Resolution defines the *breeding stock* of an operation as the ensemble of the animals in the operation that were or are used for reproduction.
- b) Resolution Conf. 12.10 (Rev. CoP15) on Registration of operations that breed Appendix-I animal species in captivity for commercial purposes provides in paragraph 2 that the exemption of Article VII, paragraph 4, should be implemented through the registration by the Secretariat of operations that breed specimens of Appendix-I species in captivity for commercial purposes. In paragraph 5 a), the Conference of the Parties resolves that: a) an operation may only be registered according to the procedure in this Resolution if specimens produced by that operation qualify as 'bred in captivity' according to the provisions of Resolution Conf. 10.16 (Rev. CoP19); in [EU/CA] paragraph 5 c), the Conference of the Parties resolves that: c) the Management Authority shall provide the Secretariat with appropriate information to obtain, and to maintain, the registration of each captive-breeding operation as set out in Annex 1; and such appropriate information includes evidence that the parental stock has been obtained in accordance with relevant national measures and the provisions of the Convention (e.g. dated capture permits or receipts, CITES documents, etc.). (Annex 1, paragraph 5).

With regard to artificially propagated plants, the following two resolutions are relevant.

- c) Resolution Conf. 9.19 (Rev. CoP15) on the Registration of nurseries that artificially propagate specimens of Appendix-I plant species for export purposes which states in Annex 2 that the Management Authority communicates to the Secretariat requests to register nurseries artificially propagating and exporting specimens of Appendix-I species and provides – *inter-alia* – v) *evidence of the legal origin of any other specimens of Appendix-I species of wild origin present in the nursery concerned, or adequate assurance that such specimens are controlled under existing national legislation.*

- d) Resolution Conf. 11.11 (Rev. CoP18) on Regulation of trade in plants defines the “cultivated parental stock” of an operation as the ensemble of plants grown under controlled conditions that are used for reproduction, and which must have been, to the satisfaction of the designated CITES authorities of the exporting country: *i) established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; (...).*

3. Two important elements derive from these four resolutions:

- a) The requirement to demonstrate the legal acquisition of the parental/breeding stock in accordance with relevant national laws [EU/CA/US] is similar for both the captive-breeding of animals and the artificial propagation of plants;
- b) The requirement to demonstrate the legal acquisition of the parental/breeding stock in accordance with relevant national laws [EU/CA/US] is essential:
- i) For specimens ‘bred in captivity’ to meet the definition of Resolution Conf. 10.16 (Rev. CoP19);
 - ii) For specimens ‘artificially propagated’ to meet the definition of Resolution Conf. 11.11 (Rev. CoP18);
 - iii) For captive-bred specimens of Appendix-I animal species to be deemed to be specimens of species included in Appendix II and be traded as such under Article VII, paragraph 4, of the Convention and Resolution Conf. 12.10 (Rev. CoP15); and
 - iv) For artificially propagated specimens of Appendix I plant species to be deemed to be specimens of species included in Appendix II and be traded as such under Article VII, paragraph 4, of the Convention and Resolution Conf. 9.19 (Rev. CoP15).

4. On this basis, this draft Guidance is developed to assist with the demonstration of the legal acquisition of the parental/breeding stock in the context of captive-breeding of animals and artificial propagation of plants.

Definitions

5. It should be noted that Resolution Conf. 10.16 (Rev. CoP19) refers to the “*breeding stock*”, Resolution Conf. 12.10 (Rev. CoP15) refers to “*parental stock*” and “*parental breeding stock*”, Resolution Conf. 9.19 (Rev. CoP15) refers to “*parental stock*”, and Resolution Conf. 11.11 (Rev. CoP18) refers to “*cultivated parental stock*”. None of these resolutions uses the terms “founder stock”. ~~They only appear in Resolution Conf. 17.7 (Rev. CoP19) on Review of trade in animal specimens reported as produced in captivity: “The Secretariat shall also commission, if requested by the Animals Committee, a short review of the species concerned, in consultation with relevant countries and specialists, to compile and summarise known information relating to the breeding biology and captive husbandry and any impacts, if relevant, of removal of founder stock from the wild.”~~

6. For the purpose of this draft guidance, the term “parental/breeding stock” is used because it is close to the terms of the four resolutions mentioned above; and covers both the captive-breeding of animals (“breeding”) [EU/CA] and the artificial propagation of plants (“parental”). [EU/CA]

~~[To refer to the first specimens used to start a captive breeding or artificial propagation operation, before the production of the first generation offspring or cultivated plants, the terms “original parental/breeding stock” could be used. [EU/CA]]~~

~~[To refer to the first specimens used to start a captive breeding or artificial propagation operation, before the production of the first generation offspring or cultivated plants, the terms “original parental/breeding stock” could be used. In accordance with Resolution Conf. 17.7 (Rev. CoP19), the term “founder stock” should be used to refer to those animals taken from the wild and later used for captive breeding or artificial propagation. [Oceania]]~~

Principles

7. As indicated in Resolutions Conf. 9.19 (Rev. CoP15), Conf. 10.16 (Rev. CoP19), Conf. 11.11 (Rev. CoP18), and Conf. 12.10 (Rev. CoP15), demonstrating the legal acquisition of a parental/breeding stock can be

likened to the making of legal acquisition findings in accordance with Articles III, IV and V of the Convention and Resolution Conf. 18.7 (Rev. CoP19).

8. The two processes are different in that legal acquisition findings (LAFs) – in accordance with the Convention – are made to ensure that specimens to be exported or re-exported have not been obtained in contravention of the laws of the exporting or re-exporting State for the protection of fauna and flora, while demonstrating the legal acquisition of a parental/breeding stock aims at ensuring that specimens produced in captivity or artificially propagated meet the criteria of Resolutions Conf. 9.19 (Rev. CoP15), 10.16 (Rev. CoP19), 11.11 (Rev. CoP18), and 12.10 (Rev. CoP15), and therefore can be traded in accordance with the provisions of the Convention and the procedures established by these resolutions.
9. However, the aim ~~in all cases~~ [EU/CA] is to establish the origin traceability [EU/CA] of the specimens in question, in order to ensure that those specimens were acquired in accordance with relevant national laws they have not been removed from the wild in violation of applicable laws. [EU/CA]
10. This is confirmed by Resolution Conf. 18.7 (Rev. CoP19), which supports Management Authorities in verifying legal acquisition of specimens prior to issuing CITES documents authorizing their export in accordance with Article III, paragraphs 2 (b) and 4 (a), Article IV, paragraphs 2 (b) and 5 (a), or Article V, paragraph 2 (a), of the Convention by establishing guidance on the making of legal acquisition findings, but indicates in its paragraph 1 c) that *depending on the context, the term defined above* [legal acquisition finding] *should also be used when considering exemptions and other special provisions mentioned in Annex II, on a case-by-case basis;*
11. Annex 2 to Resolution Conf. 18.7 (Rev. CoP19) focuses on *Additional circumstances requiring the verification of legal acquisition or other legal findings* and includes a section on *Breeding/parental stock of specimens bred in captivity or artificially propagated* providing the following: *Pursuant to Resolution Conf. 10.16 (Rev. CoP19) on Specimens of animal species bred in captivity, paragraph 2 b ii), and Resolution Conf. 11.11 (Rev. CoP18) on Regulation of trade in plants, paragraph 1 b i), a Management Authority of the State of export should verify legal acquisition of the breeding/parental stock of specimens bred in captivity or artificially propagated to be exported under Article VII, paragraphs 4 and 5 of the Convention.*
12. Thus, Article III, paragraphs 2 (b) and 4 (a), Article IV, paragraphs 2 (b) and 5 (a), and Article V, paragraph 2 (a), of the Convention require that the Management Authority of the state of export or reexport be *satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.* In the same way:
 - a) For artificially propagated plants, Resolution Conf. 9.19 (Rev. CoP15) refers to the Management Authority communicating evidence of the legal origin of specimens of Appendix-I species of wild origin present in the nursery concerned, and Resolution Conf. 11.11 (Rev. CoP18) refers to the designated CITES authorities of the exporting country being satisfied that the cultivated parental stock of the operation [EU/CA] was established in accordance with the provisions of CITES and relevant national laws;
 - b) For captive bred animals, Resolution Conf. 10.16 (Rev. CoP19) refers to the competent government authorities of the exporting country being satisfied that breeding stock was established in accordance with the provisions of CITES and relevant national laws, and Resolution Conf. 12.10 (Rev. CoP15) to the Management Authority communicating evidence that the breeding parental [EU/CA] stock of the operation has been obtained in accordance with relevant national measures and the provisions of the Convention.
13. Consequently, demonstrating the legal acquisition of the parental/breeding stock supposes demonstrating that the specimens constituting the parental/breeding stock have been obtained in accordance with the relevant national legislation for [EU/CA/US] the protection of fauna and flora and the provisions of the Convention.
14. Additionally, although the individual or entity in possession of the specimens is responsible for providing sufficient information for the Management Authority to determine that the specimens were legally acquired, it is the competent Management Authority that carries the responsibility of making that final determination and be satisfied that said specimens have not been obtained in violation of relevant national laws or the provisions of the Convention. [EU/CA/US]

15. On that basis, it appears that the principles applicable to the making of LAFs could therefore be applied, to a certain extent, to the demonstration of the legal acquisition of a parental/breeding stock and provide relevant guidance to Parties in doing so, while taking into account the specificities of this process compared to legal acquisition findings:
 - a) Procedures to conduct the verification of legal acquisition of a parental/breeding stock should be sufficiently flexible to allow for a risk assessment approach, risk assessment meaning “the evaluation of the likelihood that a specimen of a CITES-listed species was not ~~legally~~ acquired in accordance with relevant laws of that State”; [EU/CA]
 - b) To the extent possible, procedures used by a Management Authority for verifying the legal acquisition of the parental/breeding stock should be publicly available to facilitate the collection of required information and provide clarity to operations practicing captive-breeding and/or artificial propagation;
 - c) The individual or entity in possession of the specimens should be responsible for providing sufficient information for the Management Authority to determine that the specimens constituting the parental/breeding stock were ~~legally~~ acquired in accordance with relevant laws of that State, [EU/CA] such as statements or affidavits made under oath and carrying a penalty of perjury, relevant licenses or permits, invoices and receipts, forestry concession numbers, hunting permits or tags, or other documentary evidence;
 - d) The information that the Management Authority requires for verifying the legality of acquisition of the parental/breeding stock should be proportionate with the likelihood that ~~[the parental/breeding stock was not legally acquired the specimens comprising the parental/breeding were not acquired in accordance with relevant national laws; [EU/CA]] [the parental/breeding stock was not legally acquired the parental/breeding were not acquired in accordance with applicable national laws; [US]]~~ and
 - e) Management Authorities are encouraged to maintain records of information provided concerning the legality of acquisition of the parental/breeding stocks of operations registered in their countries.

Establishment of the chain of custody required for demonstrating the legal acquisition of the parental/breeding stock

16. Resolution Conf. 18.7 (Rev. CoP19) indicates in paragraph 1 b) that, to the extent possible, the determination of whether a specimen was not obtained in contravention with the laws and regulations of that State for the protection of fauna and flora “*should take into account the whole series of actions through which the specimen is brought from its source into the possession of an exporter*”. This is commonly referred as the “chain of custody” of a specimen.
17. Paragraph 2 b) defines “chain of custody” as the chronological documentation, to the extent practicable and in accordance with applicable laws and records, of the transactions pertaining to the removal from the wild of a specimen and the subsequent ownership of that specimen. However, note that removing a specimen from the wild is not the only option to obtain it, as the specimen could be a captive-bred animal or an artificially propagated plant. [EU/CA/US]
18. Annex 1, Point 4, of Resolution Conf. 18.7 (Rev. CoP19) indicates that “*for the purpose of establishing the chain of custody, the Parties may make use of information systems and traceability tools*”; and in Annex 3, the Rapid guide for the making of legal acquisition findings defines traceability as “*the ability to follow the trail of specimens along the supply chain by monitoring and tracking the chain of custody.*” The Rapid Guide adds that “*assessing compliance with the legal requirements pertinent to each stage in production (e.g. harvesting, breeding, or cultivating), possession, transport, trade, and export of specimens of CITES-listed species assures that the chain of custody is traceable and legal*”. The Rapid Guide uses the following example: “*For example, by using the chain of custody system, authorities can trace raw material or parental stock to the site where they were obtained in the country of origin.*”
19. Annex 1, Point 5, of Resolution Conf. 12.10 (Rev. CoP15) provides additional details, giving examples of evidence proving that a parental stock has been obtained in accordance with relevant national measures and the provisions of the Convention: “(e.g. *dated capture permits or receipts, CITES documents, etc.*).”
20. It results from the above that demonstrating the legal acquisition of a parental/breeding stock would require, to the extent practicable and in accordance with applicable laws and records, establishing the chain of custody of the specimens constituting this stock, by tracing them from their removal from the wild (if

applicable) or from the acquisition from another source, [EU/CA] the subsequent ownership of these specimens, if applicable, to their arrival in the facility where they are used as part of a parental/breeding stock, or vice versa. Again, note that removing it from the wild is not the only option to obtain a specimen, as it could be a captive-bred animal or an artificially propagated plant. [EU/CA/US]

21. Regardless of the method used to establish the traceability and chain of custody, the ultimate objective is to demonstrate that no specimen of the parental/breeding stock of the operation [EU/CA] has been obtained in violation of relevant national legislation [EU/CA/US] on the protection of fauna and flora and the provisions of the Convention as, in such case, the illegality of these specimens or of the whole parental/breeding stock would pass on to any offspring produced, resulting in the offspring not being able to be traded in compliance with the Convention.
22. In accordance with Resolutions Conf. 18.7 (Rev. CoP19) and Conf. 12.10 (Rev. CoP15), establishing the chain of custody could be done using various sources or documents: CITES documents, relevant licenses or permits, invoices and receipts, forestry concession numbers, hunting permits or tags, statements or affidavits made under oath and carrying a penalty of perjury, or other documentary evidence. For instance, stud books or documents such as bills of lading or ownership certificates could also be taken into account, the Management Authority carrying the responsibility – as indicated above – to determine whether it is satisfied that the specimens have been acquired legally.
23. As provided by the guiding principles referred to above, the process of demonstrating the legal acquisition of a parental/breeding stock should also be sufficiently flexible to allow for a risk assessment approach. In this context, the use of the Rapid Guide for the making of legal acquisition findings could, to a certain extent, assist Parties when demonstrating the ~~[legal acquisition of a parental/breeding stock]~~ acquisition of a parental/breeding stock in accordance with the relevant national laws. [EU/CA/US] Since risk assessment means “the evaluation of the likelihood that a specimen of a CITES-listed species was not legally acquired”, greater scrutiny would be warranted for the legal acquisition of a parental/breeding stock of a species that has been included in Appendix I for a long period of time. The Secretariat recalls that “trade in specimens of these [Appendix-I] species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.” (Article II, paragraph 1)
24. However, in addition to the examples of questions provided in the Rapid Guide, various questions would be relevant when applying a risk assessment approach to the demonstration of the legal acquisition of a parental/breeding stock. Such questions could include:
 - a) Whether the ~~species is~~ specimen(s) is of [EU/CA] an Appendix-I or Appendix-II species, or a look-alike species;
 - b) Whether the ~~species is~~ specimen(s) is of [EU/CA] an endemic or non-endemic species;
 - c) Whether the ~~species is native to the country practicing the captive-breeding or the artificial propagation~~ is a range State, [EU/CA] or whether it the specimen(s) is of [EU/CA] was imported in the country (which would suppose the existence of a CITES documentation at the time of the export/import, if the provisions of the Convention were applicable at the time of export/import); [EU/CA]
 - d) Whether the specimens composing the parental/breeding stock are all coming from the same geographical origin or from multiple origins;
 - e) Whether the specimens composing the parental/breeding stock are all coming from the same source or from multiple sources (typically if the parental/breeding stock comes from wild specimens only or from both wild and captive bred or artificially propagated specimens for instance);
 - f) In cases where the specimens composing the parental/breeding stock are themselves captive-bred or artificially propagated, whether the operations that bred or propagated them maintains a traceability system of their parental/breeding stock;
 - g) In the case of Appendix-I species, whether the operation that possesses the parental/breeding stock in question is registered as per Resolution Conf. 12.10 (Rev. CoP15) and Resolution Conf. 9.19 (Rev. CoP15), and – in cases where the parental/breeding stock is itself issued from captive-breeding or artificial propagation, whether the operations that provided the specimens are registered as per Resolution Conf. 12.10 (Rev. CoP15) and Resolution Conf. 9.19 (Rev. CoP15); or

- h) In addition to CITES national legislation, whether there is additional relevant legislation or measures [EU/CA.US] addressing captive-breeding of animals or artificial propagation of plants, including stricter domestic measures.

This list is non exhaustive and, as provided under Resolution Conf. 18.7 (Rev. CoP19), the analysis should be proportionate with the likelihood that the parental/breeding stock was not legally acquired in accordance with the relevant national laws. [EU/CA/US]

Specific situations where a parental/**breeding** founding [EU/CA] stock was acquired before the species was listed on CITES or before the Party concerned joined the Convention

25. Situations where a parental/breeding founding [EU/CA] stock was acquired before the species was listed on CITES or before the Party concerned joined the Convention create an additional challenge, as they raise the question of the applicability of the Convention.
26. Compared to the demonstration of the legal acquisition of a parental/breeding stock as discussed above, these situations are characterised by two additional elements: a chronological element and a legal element:
- a) Chronologically, whether it is a situation where a parental/breeding founding [EU/CA] stock was acquired before the species was listed on CITES or before the Party concerned joined the Convention, it is necessary to demonstrate – through traceability and the establishment of the chain of custody – that the specimens composing the parental/**breeding** stock in question were indeed acquired prior to the listing of the species in the Appendices or prior to the Party joining the Convention.

Similar to the language of Article VII, paragraph 2, of the Convention, the Management Authority would need to be satisfied “*that a specimen was acquired before the provisions of the Convention applied to it*” and, in accordance with Annex 2, Point 2, of Resolution Conf. 18.7 (Rev. CoP19), the Management Authority “*should therefore establish the date of acquisition or the earliest provable date on which it was first possessed by any person.*”

The principles to follow and the means to establish the traceability and chain of custody do not need to be different from the ones discussed in the precedent section. The difference here is that, if the traceability and chain of custody do not allow to establish the chronology and it cannot be demonstrated that the specimens were acquired prior to the listing of the species in the Appendices or prior to the Party joining the Convention, then it does not seem possible to retain any pre-Convention qualification.

- b) Legally, if the chronology can be established, it is then necessary to distinguish situations where a parental/breeding founding [EU/CA] stock was acquired before the species was listed on CITES from situations where the parental/breeding founding [EU/CA] stock was acquired before the Party concerned joined the Convention:
- i) If the parental/breeding founding [EU/CA] stock was acquired before the species was listed on CITES, it means that the species was not covered by the Convention. ~~The demonstration of the legal acquisition would therefore be limited to the relevant legislation on the protection of fauna and flora, trade and/or captive breeding or artificial propagation existing at the national level in the country(ies) concerned; [EU/CA]~~
- ii) However, if the parental/breeding founding [EU/CA] stock was acquired before the Party concerned joined the Convention, then that Party was not bound by the Convention at the time, but if the specimens were imported, the State of export might have been a Party and – in such case – was bound by the rules of the Convention concerning trade with non-Parties. In such case, the demonstration of the legal acquisition would rely on both the relevant national legislation and the provisions of the Convention concerning trade with non-Parties.