

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



Fifteenth meeting of the Plants Committee
Geneva (Switzerland), 17-21 May 2005

Technical proposals for the 14th meeting of the Conference of the Parties

ANNOTATIONS OF PLANTS LISTED IN APPENDICES II AND III

1. This document has been prepared by the United States of America.

Background

2. The United States continues to note significant variation and inconsistencies in interpretations of the provisions of the Convention pertaining to the annotations of Appendix-II and -III plants. We believe these differences in interpretation merit discussion in the Plants Committee to determine whether any formal proposals should be developed and submitted at the 14th meeting of the Conference of the Parties to ensure that the Convention is interpreted and implemented uniformly by the Parties.

Annotations of Appendix-II and -III plant species

3. Article I, paragraph (b), of the Convention provides a definition for the term 'specimen'. Subparagraph I. (b) (i) defines a specimen as "any animal or plant, whether alive or dead".

This is interpreted to refer to whole specimens of a species. For plant species included in Appendices II and III, subparagraph I. (b) (iii) further states that 'specimen' means "any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species".

4. Although it seems clear from the Convention itself that the inclusion of a plant species in Appendix II or III must be annotated to include specimens other than live or dead whole specimens, the interpretation of listings lacking an annotation has not been consistent. There has also been confusion among the Parties during consideration of proposals to include plants in Appendix II when the proposal did not include an annotation. This confusion has been exacerbated when the Conference of the Parties has considered amendments of proposals at its meetings and whether the addition of an annotation would expand the scope of a proposal and thus be disallowed.
5. Some recent examples illustrate the confusion that exists with regard to annotations of listings and proposals to include plants in Appendix II.
 - a) At the 12th meeting of the Conference of the Parties (CoP12, Santiago, 2002), China submitted a proposal (CoP12 Prop. 52) to delete the annotation from the listing of *Cistanche deserticola* in Appendix II because it did not accurately reflect the parts of the plant in trade. However, China did not propose an alternative annotation to be added to the listing. In their provisional assessment of the proposal before CoP12, the Secretariat stated:

China has not proposed to replace the incorrect annotation with an alternative provision, which means that all parts and derivatives of this species would become subject to the provisions of the Convention if the proposal were adopted.

- b) Also at CoP12, Madagascar submitted a proposal (CoP12 Prop. 60), which was adopted by consensus, to include seven species of palm in Appendix II. The summary record for Committee I states:

*Proposal Prop. 12.60 to include *Ravenea rivularis*, *R. louvelii*, *Satranala decussilvae*, *Lemurophoenix halleuxii*, *Marojejya darianii*, *Beccariophoenix madagascariensis* and *Voanioala gerardii* in Appendix II. The Chairman clarified that the proposal did not call for the standard annotation for Appendix-II plants and, therefore, control of seeds would be covered.* [emphasis added]

In the proposal itself, the proponent country provided the following comment:

Given the very low numbers in the wild populations of these species, their restricted range and the threats facing them, these species meet the conditions for listing in Appendix I; if they were to be placed in Appendix II, their seeds would not be subject to CITES regulation. [emphasis added]

Furthermore, when the United States queried the Secretariat on the interpretation of this listing, we received the following response:

Regarding the Malagasy palms, I can confirm that there is no annotation to indicate that any parts or derivatives are excluded. [emphasis added]

- c) At the 13th meeting of the Conference of the parties (CoP13, Bangkok, 2004), Indonesia submitted a proposal (CoP13 Prop. 49) to include *Aquilaria* spp. and *Gyrinops* spp. in Appendix II. At the CoP, Indonesia noted that, although the proposal had not included any annotation, annotation #1 should have been included. The delegation of the Netherlands, on behalf of the Member States of the European Community, did not consider the absence of a stated annotation in the original proposal to be problematic, noting that the appropriate annotation for an Appendix-II plant listing was often agreed during meetings of the Conference of the Parties at which such proposals were discussed. The delegation of the United States, supported by the delegation of the United Arab Emirates, believed that this would violate the Rules of Procedure as it would expand the scope of the proposal and suggested that including the species in Appendix III might provide an interim solution. The position of the United States and United Arab Emirates was consistent with comments by the Secretariat in their provisional assessment of the proposal (Notification to the Parties No. 2004/048), in which they stated:

There is no reference to parts and derivatives in the proposal. As a consequence, only whole plants whether dead or alive would be covered if this proposal were adopted [cf. Article I, paragraph (b) (iii)], and so the trade in agarwood products would remain largely unregulated. Under the current Rules of Procedure of the Conference of the Parties, the proposal may not be amended to cover these products, because that would mean an extension of the scope of the current proposal, which is not permitted.

However, in its revised assessment contained in document CoP13 Doc. 60, the Secretariat stated that:

As a result of Resolution Conf. 9.6 (Rev.) on Trade in readily recognizable parts and derivatives, in particular the first paragraph under AGREES, the Secretariat considers that

*the consequence of this proposal will be that all parts and derivatives will be included in the Appendices unless such specimens are specifically exempt.*¹

At CoP13, the Secretariat made yet another assertion: that annotation #1 was considered to apply by default unless it was specifically excluded. In the end, the proposal was adopted with annotation #1, which is contrary to the complete omission of an annotation from *Cistanche deserticola* at CoP12 without any consideration given to the possibility that an annotation, even the 'default' annotation #1, could be simply added at the CoP.

6. Regarding the Secretariat's use of Resolution Conf. 9.6 (Rev.) to explain the inclusion of parts and derivatives in an unannotated listing, the purpose of this Resolution was to define 'readily recognizable parts and derivatives', not to serve as a basis for interpretation of annotations or the lack thereof.
7. In summary, both the Parties and the Secretariat have been inconsistent in their interpretation of what is included in an unannotated listing. There has also been inconsistency in deciding whether proposals lacking an annotation could be annotated after submission, with some proposals having an annotation added when they are discussed at the CoP. A strict reading of the Convention leads to a finding that:
 - a) The listing of a plant in Appendix II or III without an annotation **excludes** any parts or derivatives;
 - b) An annotation to the listing of a plant in Appendix II or III should indicate which types of specimens are **included** in the listing in addition to whole live or dead specimens; and
 - c) The addition of an annotation to an unannotated proposal after the submission deadline for the CoP at which it is to be considered is an expansion of scope of the proposal, since it would purport to extend the application of the Convention to additional types of specimens other than whole live or dead specimens.
8. If the Parties wish to agree, as suggested by the Secretariat at CoP13, that annotation #1 should be the 'default' annotation for any unannotated proposal, then this should be clearly stated in a resolution. However, the Parties should also consider the unintended consequences of such an approach, such as the inclusion of specimens not intended to be subject to trade controls. Therefore, the Parties should consider other processes for ensuring that proposals for the inclusion of plants in Appendices II and III are appropriately annotated in a manner consistent with the Convention.
9. The United States is seeking the advice of the Plants Committee on this matter in consideration of submitting a document at CoP14 toward establishing clearer guidance to the Parties on the listing of plants.

¹ The paragraph from Resolution Conf. 9.6 (Rev.) cited by the Secretariat states, "the Conference of the Parties AGREES that the term 'readily recognizable part or derivative', as used in the Convention, shall be interpreted to include any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention".