

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



Sixty-fifth meeting of the Standing Committee
Geneva (Switzerland), 7-11 July 2014

Interpretation and implementation of the Convention

CITES Appendices

Annotations

REPORT OF THE INTERIM WORKING GROUP

1. This document has been submitted by the United States as chair of the interim Standing Committee working group on annotations.¹

Background

2. At the 16th meeting of the Conference of the Parties (CoP16; Bangkok, 2013), the Parties adopted several Decisions related to Annotations. Decision 16.162 directs the Standing Committee to establish a working group on annotations, provides an extensive list of tasks for the working group, and instructs the working group to report at the 65th (SC65; Geneva, 2014) and 66th meetings (SC66; Geneva, 2015) of the Standing Committee. However, the Standing Committee at its 64th meeting (Bangkok, 2013) did not establish the working group. Given the extensive list of tasks directed to the working group, and the instructions in Decision 16.162 to report to SC65, the United States as Chair of the prior Standing Committee working group on annotations asked the Chair of the Standing Committee for his support in reconvening the working group on an interim basis, with the membership and chairmanship as it was at SC62 (Geneva, 2012). The United States proposed that the interim working group address some of the more overarching and straightforward issues contained in the relevant CoP16 Decisions. The Chair of the Standing Committee agreed to the proposal, and the United States, with the United Kingdom as Vice-Chair, reconvened the working group to work electronically until SC65. At SC65, the Standing Committee will formally convene the Working Group on Annotations as well as determine the membership and chairmanship.
3. The members of the interim annotations working group are as follows: Australia, Canada, China, Costa Rica, the Democratic Republic of the Congo, France, Germany, Indonesia, Japan, Switzerland, Thailand, the United Kingdom, the United States, the European Commission, the CITES Secretariat, IUCN, Human Society International, International Fragrance Association (IFRA), Lewis & Clark College/International Environmental Law Project, IWMC – World Conservation Trust, TRAFFIC, and the Interim Chairs of the Animals and Plants Committees.
4. The purpose of this document is to begin addressing some of the fundamental elements of the several Decisions related to annotations, which were adopted at CoP16. Specifically, this document addresses the first part of paragraph a) of Decision 16.162, on the shared understanding among Parties of annotations, and Decision 16.161, on where definitions of terms in annotations should be included under CITES. We note that the second part of paragraph a) of Decision 16.162 on “the adoption of appropriate and reasonable procedures for crafting plant annotations” is not addressed in this document and will have to be

¹ *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

included in the work of the working group following its formal establishment at SC65. The document includes several recommendations for the Standing Committee to consider at SC65.

5. At CoP16, the Parties adopted Decision 16.162 on *Annotations Directed to the Standing Committee, Animals Committee and Plants Committee* as follows:

The Standing Committee shall form a working group on annotations, in close collaboration with the Animals and Plants Committees, recognizing that the Animals and Plants Committees are an important source of expertise and advice to Parties on such scientific and technical issues. The group shall be chaired by a member of the Standing Committee and shall include, but not be limited to, members from the Standing Committee, Animals Committee, Plants Committee, observer Parties, CITES Management and Scientific Authorities, enforcement authorities, including Customs, and industry representatives. The terms of reference for the working group shall be:

- a) *to explore the shared understanding among Parties of annotations, both their meaning and function, and the adoption of appropriate and reasonable procedures for crafting plant annotations;*
- b) *to evaluate and address issues related to the drafting, interpretation and implementation of annotations, and assist Parties in drafting future annotations, drawing on appropriate expertise from within and outside its membership;*
- c) *initially, to focus its efforts on evaluating the existing annotations for plant taxa listed in Appendices II and III, with an emphasis on ensuring that such annotations are clear as to the types of specimens to be covered by a listing, can be readily implemented, and focus on those parts and derivatives primarily exported from the range States and those commodities that dominate the trade in and demand for the wild resource;*
- d) *based on the results of the timber trade study directed to the Secretariat in Decision 15.35 (Rev. CoP16), to review the existing annotations for tree species and, if appropriate, draft amendments to those annotations and prepare clear definitions for the terms used in the annotations in order to facilitate their use and understanding by CITES authorities, enforcement officers, exporters and importers;*
- e) *to review the appropriateness and practical implementation of the annotation(s) of the agarwood-producing taxa (Aquilaria spp. and Gyrinops spp.), taking into consideration the previous work done by the range and consumer States of these species;*
- f) *to review outstanding implementation challenges resulting from the listings of Aniba rosaeodora and Bulnesia sarmientoi in the Appendices, and propose appropriate solutions at the 17th meeting of the Conference of the Parties;*
- g) *to draft definitions of terms included in annotations, in cases where the terms are not easily understood or where there has been difficulty in implementing the listing as a result of confusion about what commodities are covered, and submit them to the Standing Committee for adoption by the Conference of the Parties and subsequent inclusion in the Interpretation section of the Appendices;*
- h) *to consider the effectiveness of including definitions of terms in annotations in the Interpretation section of the Appendices instead of elsewhere (e.g. in Resolutions) and, based on the determination, draft a proposal to include all definitions in a single location;*
- i) *to conduct any work related to annotations directed to it by the Conference of the Parties, the Standing, Animals or Plants Committee; and*
- j) *to prepare reports on progress made in addressing the issues tasked to it and submit them for the 65th and 66th meetings of the Standing Committee.*

History of annotations in CITES

6. 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”.

The term “any animal or plant” has been interpreted by Parties to mean the whole animal or plant. For animal species included in Appendix III, subparagraph I(b)(ii) states that ‘specimen’ means “any readily recognizable part or derivative thereof specified in Appendix III in relation to the species”. For plant species included in Appendices II and III, subparagraph I(b)(iii) states that ‘specimen’ means “any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species”.

7. The Parties have agreed that an annotation must be used to designate “any readily recognizable part or derivative thereof specified”. However, the interpretation of a listing lacking an annotation has been inconsistent, with Parties at various times agreeing that an unannotated listing includes all parts and derivatives in addition to live and dead whole specimens, while at other times interpreting the listing to include only live and dead whole specimens.
8. Beginning early in the implementation of CITES, the Conference of the Parties had agreed in Resolutions (now repealed) to interpret listings of animals and plants in Appendix III without an annotation as including all readily recognizable parts and derivatives. However, the record of that agreement was lost in subsequent revisions of those Resolutions. This led to confusion, and a range of interpretations regarding the implementation of Appendix-III listings without annotations.
9. In the case of Appendix-II plant listings, no significant implementation issues arose until CoP12 (Santiago, 2002), when the Parties adopted the proposal to list a number of Madagascar palm species in Appendix II without annotations. Madagascar had intended to cover whole plants as well as all parts and derivatives in its listing proposal, but because the listings were unannotated, many Parties interpreted the listings to cover only whole plants.
10. To resolve these issues, and ensure clarity and mutual understanding among the Parties in the application of Appendix-II plant listings and Appendix-III plant and animal listings, the scientific committees discussed the issue and subsequently submitted a document (Document CoP14 Doc. 67) for consideration at CoP14 (The Hague, 2007). The document proposed revisions to Resolution Conf. 11.21 (Rev. CoP13) on *Use of annotations in Appendices I and II* and Resolution Conf. 9.25 (Rev. CoP16) on *Inclusion of species in Appendix III*. The proposed revisions, which were adopted by the Parties, confirmed that Appendix-II and -III plant listings without annotations and Appendix-III animal listings without annotations should be interpreted as including all readily recognizable parts and derivatives. This agreement is reiterated in the Interpretation section of the CITES Appendices.

Types of annotations

11. The CITES Appendices include three types of annotations: The # annotations define the parts and derivatives that are subject to the provisions of the Convention, and the footnote annotations (plain numbered annotations) and the annotations included as text in parenthesis in the body of the Appendices define the population(s) covered by the listing and/or any special conditions relating to the listing (such as the types of trade or quantities of trade that are allowed, subject to the annotation). Examples of all three types of annotations can be found in the listing of Cactaceae, as seen below.

APPENDICES		
I	II	III
CACTACEAE Cacti		
	CACTACEAE spp. ^{10 #4} (Except the species included in Appendix I and except <i>Pereskia</i> spp., <i>Pereskopsis</i> spp. and <i>Quiabentia</i> spp.)	

- 10 Artificially propagated specimens of the following hybrids and/or cultivars are not subject to the provisions of the Convention:
- *Hatiora x graeseri*
 - *Schlumbergera x buckleyi*
 - *Schlumbergera russelliana x Schlumbergera truncata*
 - *Schlumbergera orssichiana x Schlumbergera truncata*
 - *Schlumbergera opuntoides x Schlumbergera truncata*
 - *Schlumbergera truncata* (cultivars)
 - Cactaceae spp. colour mutants, grafted on the following grafting stocks: *Harrisia 'Jusbertii'*, *Hylocereus trigonus* or *Hylocereus undatus*
 - *Opuntia microdasys* (cultivars).

#4 All parts and derivatives, except:

- a) seeds (including seedpods of Orchidaceae), spores and pollen (including pollinia). The exemption does not apply to seeds from Cactaceae spp. exported from Mexico, and to seeds from *Beccariophoenix madagascariensis* and *Neodypsis decaryi* exported from Madagascar;
- b) seedling or tissue cultures obtained *in vitro*, in solid or liquid media, transported in sterile containers;
- c) cut flowers of artificially propagated plants;
- d) fruits, and parts and derivatives thereof, of naturalized or artificially propagated plants of the genus *Vanilla* (Orchidaceae) and of the family Cactaceae;
- e) stems, flowers, and parts and derivatives thereof, of naturalized or artificially propagated plants of the genera *Opuntia* subgenus *Opuntia* and *Selenicereus* (Cactaceae); and
- f) finished products of *Euphorbia antisyphilitica* packaged and ready for retail trade.

An example of a parenthetical annotation is shown below for the listing of the water buffalo, which illustrates a special condition related to this listing, namely that the domesticated form is excluded from the Appendix-III listing.

I	APPENDICES	III
Bovidae Antelopes, cattle, duikers, gazelles, goats, sheep, etc.		
		<i>Bubalus arnee</i> (Nepal) (Excludes the domesticated form, which is referenced as <i>Bubalus bubalis</i>)

Scope of annotations – what should they cover?

12. A number of Resolutions, including Resolution Conf. 5.20 (Rev. CoP16) on *Guidelines for the Secretariat when making recommendations in accordance with Article XV*, Resolution Conf. 9.24 (Rev. CoP16) on *Criteria for amendment of Appendices I and II*, Resolution Conf. 9.25 (Rev. CoP16) on *Inclusion of species in Appendix III*, and Resolution Conf. 11.21 (Rev. CoP16) on *Use of annotations in Appendices I and II* (Rev. CoP16), include guidance recommending that annotations should be crafted in such a way that they cover those parts and derivatives that dominate the trade and the demand for the wild resource. A second guiding principle in drafting annotations – that controls should concentrate on those commodities that first appear in international trade as exports from range States – is included in Resolution Conf. 11.21 (Rev. CoP16) for medicinal plants.
13. The possibility of expanding the application of this second principle to plants more broadly was discussed in the intersessional working group on annotations, which was formed at SC61 (Geneva, 2011). Based on these and other deliberations, the working group prepared document CoP16 Doc. 75, which included

proposed revisions to several resolutions to apply this principle to all plant and animal taxa. Committee II at CoP16 formed a working group to consider this document. However, consensus could not be reached on applying this principle to all plant and animal taxa, and the text was not included in the revised resolutions.

14. Decision 14.148 (Rev. CoP16) on *Annotations for tree species included in Appendices II and III* recognizes the importance of focusing trade controls for listed tree species on those commodities that first appear in international trade as exports from range States, but directs the work of reviewing and revising annotations for such species to occur only after completion of the timber trade study called for in Decision 15.35 is completed.

Summary of work done to date on annotations

15. See the Annex to the present document.

Current guidance for crafting annotations

16. Resolution Conf. 9.24 (Rev. CoP16) on *Criteria for amendment of Appendices I and II* includes guidance recommending that if a specific annotation to a listing in the Appendices is proposed, the proponent should:

- ensure that the proposed annotation is in compliance with the applicable Resolutions;
- indicate the practical intent of the annotation;
- be specific and accurate as to the parts and derivatives to be covered by the annotation;
- provide clear and simple definitions of any terms in the annotation that may not be easily understood by enforcement personnel and user groups (noting that definitions should be specific to CITES and scientifically and technically precise to the extent practicable for purposes of the annotation);
- ensure that the annotation covers those parts and derivatives that dominate the trade and the demand from the wild resource;
- harmonize, to the extent practicable, new annotations with existing annotations; and
- where applicable, provide identification sheets to be included in the CITES Identification Manual that illustrate the parts and derivatives covered under the annotation.

Where should definitions of terms in annotations be included?

17. Currently, the definitions of terms in annotations are included in several different locations. Some definitions are included in Resolutions (e.g., terms related to listed timber species included in Resolution Conf. 10.13 (Rev. CoP15) on *Implementation of the Convention for timber species*). Others are contained in the CITES Glossary, which includes terms that have been defined in the text of the Convention and in Resolutions, as well as terms for which the Secretariat has developed definitions. Finally, and by agreement of the Parties at CoP16, definitions of the several terms that were adopted at CoP16 were included in the Interpretations section of the Appendices, on an interim basis. The Parties also adopted Decision 16.161 on *Annotations*, directed to the Standing Committee, as follows:

Acknowledging that, at the 16th meeting of the Conference of the Parties, the Parties agreed to include definitions of terms in annotations in the Interpretation section of the Appendices as an interim measure until a final decision is reached, the Standing Committee shall examine the issue of where definitions of terms in annotations should be included permanently and make a recommendation in that regard.

18. This Decision was adopted following discussions at several recent meetings of the Plants Committee, where Parties debated the “legal character” of definitions of terms in annotations, the process by which they should be adopted, and where they should be included. Parties generally agreed that definitions should be adopted by the Conference of the Parties, but seemed undecided on whether they should be formally adopted in the same way as proposals to amend the Appendices and subsequently included in the Appendices, or included in discussion documents and, when adopted, included in an appropriate Resolution. Furthermore, Parties generally seemed supportive of also including such definitions in the

CITES Glossary as long as it was understood that they could only be adopted or amended by a decision of the CoP and would be included in a formally designated location as well (i.e., Interpretation section, Resolution).

19. Therefore, it is apparent that the definitions of terms in annotations must ultimately be included on a permanent basis in either: 1) the Interpretation section or another section of the Appendices; 2) appropriate existing Resolutions; or 3) a single, new Resolution specifically adopted for their inclusion. The interim intersessional working group agrees that, whichever of the above options is adopted, the definitions should also be provided in the CITES Glossary, as it is an easy to find one-stop reference for definitions and explanations of numerous CITES terms. Below is a discussion of some of the advantages and disadvantages of each of the three options:

Option 1: Including definitions of terms in annotations in the Appendices

Some major advantages of including definitions of terms in annotations in the Appendices are: a) the definitions would have a higher legal status than if they were included in the Resolutions; and b) this option would provide a single location for the definitions, which would not be the case if they were included in appropriate existing Resolutions. Disadvantages include: a) proposals for new definitions of terms would have to be formally submitted to a CoP via a proposal to amend the Appendices; and 2) because amendment proposals are discussed in Committee I at the CoP, whereas the annotation discussions have generally occurred in Committee II, it is possible that Party representatives with expertise in annotations would be involved in Committee II issues at the same time that an amendment proposal to define a term in an annotation was discussed in Committee I.

Option 2: Including definitions of terms in annotations in existing Resolutions

Some major advantages of including definitions of terms in annotations in appropriate existing Resolutions are: a) proposals for new definitions of terms could be submitted to a CoP via a discussion document, a less formal method than a proposal to amend the Appendices, as would be required in Option 1 above; b) because such discussion documents would likely be discussed in Committee II of the CoP instead of in Committee I, as would be the case under Option 1 above, the Party representatives with expertise in annotations would most likely be present in Committee II for those discussions; and c) the definitions of a number of terms adopted at past CoPs are already included in the existing Resolutions and would not have to be moved. Disadvantages include: a) recognizing that Resolutions are not legally binding, the definitions would have a lower legal status than if they were included in the Appendices; and b) this option would not provide a single location for the definitions.

Option 3: Including definitions of terms in annotations in a single, new Resolution

Some major advantages of including definitions of terms in annotations in single, new Resolution are: a) proposals for new definitions of terms could be submitted to a CoP via a discussion document, a less formal method than a proposal to amend the Appendices, as would be required in Option 1 above; b) because such discussion documents would likely be discussed in Committee II of the CoP instead of in Committee I, as would be the case under Option 1 above, the Party representatives with expertise in annotations would most likely be present in Committee II for those discussions; and c) this option would provide a single location for the definitions. The main disadvantage is that the definitions would have a lower legal status than if they were included in the Appendices.

Recommendations and next steps

20. The interim intersessional working group recommends that the Standing Committee note that the history of the use of annotations in CITES presented in this document represents a collective understanding of how annotations have been used in CITES to date in both their meaning and function.
21. The interim intersessional working group also recommends that the Standing Committee, at its 65th meeting, review the discussion in this document regarding where to include definitions of terms in annotations, determine which option in paragraph 19 is preferred, and include this decision in its instructions to the intersessional working group that will be formed at the present meeting, for additional action as appropriate.
22. Finally, the interim intersessional working group recommends that the Standing Committee, at its 65th meeting, convene the Standing Committee Working Group on Annotations and use this document and

relevant discussions related to it, including from discussions at the 27th meeting of the Animals Committee and the 21st meeting of the Plants Committee, as the basis for developing a program of work for the Working Group to complete the remaining work called for in Decisions 16.161 to 16.163, as well as relevant work on annotations that is included in other Decisions, and report to the 17th meeting of the Conference of the Parties. Given the impact of these discussions on the work of the Animals and Plants Committees, the interim working group reiterates the importance of including appropriate representation from those Committees on the Working Group that will be convened at SC65.

23. Decision 16.162 largely directs work to be undertaken with regard to plant annotations because most, if not all, of the implementation challenges identified to date with regard to annotations have dealt with plant listings. However, acknowledging that Appendix-III animal listings can be annotated to include only specified parts and derivatives in the listings, and animal listings in any Appendix can be prescribed with regard to populations covered by the listing and certain other parameters of the listings (e.g., exclusion of domesticated forms), any general guidance developed for annotations should consider their applicability to animals, and the Animals Committee is invited to raise any specific problems to the working group.