

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



Sixty-sixth meeting of the Standing Committee
Geneva (Switzerland), 11-15 January 2016

Interpretation and implementation of the Convention

Amendment of the Appendices

ANNOTATIONS: REPORT OF THE WORKING GROUP

1. This document has been submitted by the United States of America as Chair of the Standing Committee Working Group on Annotations.

Background

2. At the 16th meeting of the Conference of the Parties (CoP16; Bangkok, 2013), the Parties adopted Decisions 16.161-16.163, related to Annotations, as follows:

Directed to the Standing Committee

- 16.161 *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.*

Directed to the Standing Committee, Animals Committee and Plants Committee

- 16.162 *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;*

* *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.*

- 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.*

Directed to Parties

16.163 *At its 17th meeting, the Conference of the Parties shall review the outcomes of the work undertaken by the working group called for in Decision 16.162 and evaluate the need for continuing such a working group. If agreed, the Parties shall maintain Decision 16.162 and make changes to the terms of reference, as appropriate.*

3. Additionally, the Parties adopted Decision 16.151 at CoP16, as follows, directing the Standing Committee Working Group on Annotations to review the annotation to the listings of *Panax ginseng* and *P. quinquefolius*:

Directed to the Standing Committee

16.151 *The Working Group on Annotations should review the annotation to the listing of Panax ginseng and P. quinquefolius with a view to its standardization and amendment, as appropriate.*

4. 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, 2016) of the Standing Committee. Failing an official establishment of the working group at SC64, the United States, with the United Kingdom as Vice-Chair, reconvened the pre-SC64 working group to work electronically on an interim basis with the agreement of the Chair of the Standing Committee until SC65.
5. At SC65, the United States submitted a report of the interim working group (Document SC65 Doc. 49.1). The report included a discussion on the history of the use of annotations in CITES, types of CITES annotations, scope of annotations, and existing guidance for crafting CITES annotations, and provided a

summary of work done to date on CITES annotations (provided in the Annex to Document SC65 Doc. 49.1). The interim working group presented a history of the use of annotations in CITES that they believed represented a collective understanding how annotations have been used in CITES to date, in both their meaning and function, in fulfillment of the first part of paragraph a) of the terms of reference of the working group in Decision 16.162, and recommended in the report that the Standing Committee note this at SC65. The report also included a discussion of potential options on where definitions of terms in annotations should be permanently included. The interim working group recommended that the Standing Committee consider these options, determine which option is preferred, and include this determination in its instructions to the formal intersessional working group formed at SC65. The Standing Committee noted the report of the interim working group at SC65 but did not discuss the options on where definitions of terms in annotations should be permanently included.

6. The Standing Committee established the Working Group on Annotations at SC65. The Committee also agreed that the working group would be co-chaired by the United Kingdom and the United States and that its members would be: Australia, Canada, China, France, Germany, Indonesia, Kuwait, Mexico, Norway, Switzerland; Ms. Caceres as a representative of the Animals Committee, and Ms. Rivera (Central and South America and the Caribbean), Mr. Sajeve (Europe), Mr. Leach (Oceania), Mr. Luke (Africa) and Ms. Al-Salem (Asia) as representatives of the Plants Committee; and the European Union, the American Herbal Products Association, the Center for International Environmental Law, Humane Society International, International Fragrance Association, IWMC-World Conservation Trust, Lewis and Clark College, and TRAFFIC. [Note: the United Kingdom subsequently withdrew from the working group.]
7. In May 2015, the Chair of the working group hosted an informal meeting in Washington, D.C., with a small subset of colleagues on the working group who have extensive experience implementing the annotated CITES listings to determine the best way to prioritize the work directed to the Standing Committee and the working group in Decisions 16.161, 16.162, and 16.151, and accomplish as much as possible by the CoP17 document submission deadline of April 27, 2016. After this informal meeting and several more months of consultation with this small subset of colleagues, the Chair provided the full working group with proposed priorities for the work. The working group consulted electronically on these proposed priorities, and on how to accomplish as much work as possible during the current intersessional period. Results of these consultations are presented below, section-by-section.

Priorities proposed by the working group

8. The interim working group that reported to SC65 had determined that two of the first priorities in this work on annotations should be to determine where definitions of terms in annotations should be permanently located, and to provide guidance for crafting and interpreting annotations. The working group agrees that accomplishing these two directives should be the first priorities of the working group leading up to CoP17 and has addressed them below in this draft document.
9. The other directives in the Decisions that the working group believes should be considered priorities leading up to CoP17 are to: review the appropriateness and practical implementation of the agarwood annotation; review outstanding implementation challenges resulting from the annotations for *Aniba rosaeodora* and *Bulnesia sarmientoi*; and review the annotation for *Panax ginseng* and *P. quinquefolius* with a view to its standardization and amendment, if appropriate. In addition, the working group believes that, time permitting, it should determine whether any terms included in these annotations need to be defined because they are either not easily understood or create difficulty in implementing the listing as a result of confusion about what types of specimens are covered, and draft definitions of these terms if appropriate. In deciding that the above-listed existing plant annotations should be priorities, the working group took into account not only the fact that it is specifically directed to focus on them in Decisions 16.162 and 16.151, but also that paragraph c) of the terms of reference of the working group in Decision 16.162 directs the working group to focus its efforts on evaluating the existing annotations for plant taxa.
10. We recognize that there are other existing plant annotations that should also be reviewed by the working group. For example: Annotation #1, currently applied to five plant taxa listed in Appendix III by Nepal, should be reviewed to determine if it can be amended to harmonize it with Annotation #4; Annotation #9, applied to the Appendix-II listing of *Hoodia* spp., should be reviewed to determine whether it can be amended to remove the language exempting parts and derivatives bearing a certain label (which refers to an agreement that does not at this time exist); and Annotation #13, currently applied to *Lodoicea maldivica*, listed in Appendix III by Seychelles, should be reviewed because several of the terms used in the annotation are unclear. There are several other issues related to the existing plant annotations that should also be reviewed.

11. However, the working group believes that, during the intersessional period leading up to CoP17, it should focus its efforts on the issues cited in the first two paragraphs of this section, and defer the review of other existing plant annotations and any other annotation issues in general until the intersessional period between CoP17 and CoP18. The Standing Committee Working Group on Annotations will almost certainly be reconvened after CoP17.

Where definitions of terms in annotations should be permanently located

12. 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 *Interpretation* section of the Appendices, on an interim basis. Decision 16.161 directs the Standing Committee to examine the issue of where definitions of terms in annotations should be included permanently and make a recommendation in that regard. Likewise, paragraph h) of the terms of reference of the working group in Decision 16.162 directs the working group to consider the effectiveness of including definitions of terms in annotations in the Interpretation section of the Appendices and draft a proposal to include all such definitions in a single location.
13. The report of the interim working group submitted at SC65 included a discussion of options on where definitions of terms in annotations should be permanently located. One option discussed in the report was to include them in the Interpretation section of the Appendices or elsewhere in the Appendices, another option was to include them in existing Resolutions, and a final option was to include them in a single new Resolution.
14. Based on the Chair's internal review of these options and a discussion with the small subset of colleagues on the working group who have extensive experience implementing the annotated CITES listings, the Chair presented to the working group its belief that it makes the most sense to permanently locate definitions of terms in annotations in the existing Resolutions. The Chair's rationale is that there are already a number of existing Resolutions that include definitions of terms in annotations [e.g., Resolution Conf. 10.13 (Rev. CoP15) includes definitions of terms used in several of the annotations to the listings of several timber species]. Therefore, if the Parties were to agree that definitions of terms in annotations should be located in existing Resolutions, the Resolutions already including such definitions would not have to be revised to move the definitions elsewhere (i.e., to the Interpretation section of the Appendices or to a new, stand-alone Resolution).
15. However, when the Chair presented this proposal to the working group, the 10 working group members who responded were divided between those that agreed with the Chair's proposal and those who believed that definitions of terms in annotations should be permanently located in the Interpretation section of the Appendices. Six members (all six were Parties) agreed that definitions of terms in annotations should be permanently located in Resolutions and four members (one Party and three NGOs) proposed that these definitions be located in the Interpretation section of the Appendices.
16. As outlined above, at CoP16 the definitions of several terms in annotations were included in the Interpretation section of the Appendices on an interim basis. Some working group members, including the Chair, argue that the Interpretation section is part of the Appendices. Therefore, an argument against including definitions of terms in annotations in the Appendices permanently is that each one could potentially be subject to a Party entering a reservation to the definition when it is adopted or amended. Under CITES Article XV, paragraph 3, a Party can take a reservation with respect to any amendment to Appendices I and II. Likewise, under Article XVI, paragraph 2, a Party can take a reservation with respect to any amendment to Appendix III. There is concern that, if a Party were to take a reservation to an amendment of a definition of a term in an annotation, including those that apply to multiple species (e.g., annotation #5), the effects of such a reservation might possibly be interpreted to apply not only to the definition but also to the annotation itself or, more significantly, the actual listing(s) in the Appendices. However, one working group member commented that, as described in CITES Article XXIII, reservations may only be taken in accordance with the provisions of Article XXIII, Article XV, or Article XVI, limiting them to amendments to the Appendices, and not including definitions of terms in annotations to listings in the Appendices. There is not agreement within the working group on this point.
17. Several working group members suggested that one possible reason in favor of locating definitions of terms in annotations in the Interpretation section of the Appendices is that such definitions should be and

would be “binding,” presumably meaning that they would be “hard law” (such as the Appendices and the text of the Convention), as opposed to “soft law” that does not have legally binding force (like recommendations in Resolutions). However, two members who prefer locating definitions of terms in annotations in the Interpretation Section suggested that the definitions should also be considered “reference annotations,” which are for information purposes only and are not legally binding (See Resolution Conf. 11.21, paragraph a)). Also, it should be noted that the definitions of terms in annotations that are currently included in the Interpretation section of the Appendices on an interim basis were adopted through a decision of the Parties, not through the Article XV or XVI process. Therefore, similar to locating them in Resolutions, agreement by the Parties to use of these definitions appears to be “soft law.”

18. Another argument presented by several working group members in favor of locating definitions of terms in annotations in the Interpretation section of the Appendices is that, for CITES inspection officers at ports of import and export, where time is of the essence, it is important that they not have to consult more than a single document to know which types of specimens of a listed species with an annotation are subject to CITES controls. They should also immediately know when a term in an annotation is subject to a specific definition and be able to read that definition without having to consult the Resolutions.
19. With respect to this argument, the Chair proposes that, whether the ultimate decision is to locate the definitions of terms in annotations in the Interpretation section of the Appendices or in Resolutions, the Secretariat include for each annotation in the Appendices for which the Parties have adopted one or more definitions of terms a hyperlink on each defined term so that, when the hyperlink is clicked, a pop-up box will appear showing the definition of the term and where that definition is located (Resolution number if it is located in a Resolution or Interpretation section if it is located there). With such hyperlinks, CITES inspection officers would need to access only the Appendices to review any particular annotation and all definitions of terms in that annotation.
20. One issue related to the location of definitions of terms in annotations for which there is agreement in working group is that all definitions of terms in annotations adopted by the Parties, whether they are ultimately located in the Interpretation section of the Appendices or in Resolutions, also be duplicated in the CITES Glossary, where for each such definition the Glossary would indicate where the definition is officially located. The Glossary is an easy-to-find one-stop reference to find various CITES definitions. However, it should be noted that, in addition to definitions adopted by the Parties, the Glossary includes unofficial definitions not adopted by the Parties.
21. The issue of where to permanently locate definitions of terms in annotations has been extensively discussed now, within the Standing Committee working group on annotations during the intersessional period leading up to CoP16, within the interim working group leading up to SC65, and within this working group, and it is clear that we cannot achieve consensus on the issue. Therefore, we believe that, at this point, that the Standing Committee, in consultation with the Secretariat, and taking into consideration the issues raised by the working group in this document on this matter, decide whether these definitions should be permanently located in Resolutions or in the Interpretation section of the Appendices. We have included this as a recommendation in the last section of this document.
22. On a related issue, at CoP16, the Parties adopted an amendment to Resolution Conf. 11.21 (Rev. CoP15) that directs the Standing Committee, in consultation with the Plants Committee, to develop interim definitions between meetings of the Conference of the Parties where significant differences in the interpretation of terms in annotations exist among trading countries and are causing implementation difficulties. The working group believes that this procedure should also include an instruction to consult with the Animals Committee, as appropriate, and has proposed an amendment to Resolution Conf. 11.21 (Rev. CoP16) to reflect that (see Annex 4 to the present document).

Guidance for crafting and interpreting annotations

23. Paragraphs a) and b) of the terms of reference in Decision 16.162 direct the Annotations Working Group to explore the shared understanding among Parties of annotations and the adoption of procedures for crafting plant annotations, and to address issues related to the drafting, interpretation, and implementation of annotations. Document SC65 Doc. 49.1 explored the history of how annotations have been used in CITES.
24. In considering issues related to drafting, interpretation, and implementation of annotations, and procedures for crafting plant annotations, the working group considered a variety of factors. Resolution Conf. 11.21 (Rev. CoP16) on *Use of annotations in Appendices I and II* currently recommends that the following two main principles be followed as standard guidance when drafting annotations for medicinal plants:

determination of the specimens that first appear in trade from the range States; and the specimens that dominate the trade from the wild resource. The working group agrees with these two main principles and believes that they should be applied not only to medicinal plants but more broadly to all plant annotations. With respect to the principle of applying CITES provisions to the specimens that first appear in international trade as exports from the range States, the working group believes that it is appropriate from a conservation impact perspective for CITES to regulate plant species in the form that they are exported from the range States, thus negating the need to regulate them in various forms in international trade thereafter as re-exports. Regarding the principle of ensuring that the specimens that dominate the trade from the wild resource are covered under CITES, the working group also believes that this principle makes sense from a conservation perspective for all plants included in the Appendices. The working group believes that it is important to consider these two principles together in determining the most appropriate way to annotate a plant listing. We are proposing amendments to Resolution Conf. 11.21 (Rev. CoP16) to make it applicable to annotations in any Appendix (and to rename the Resolution *Use of annotations in the Appendices*). We are also proposing amendments to the operative text of Resolution Conf. 11.21 (Rev. CoP16) under RECOMMENDS to make the two main principles apply to all plant annotations (see Annex 4 to the present document).

25. The working group notes that other key factors to consider when crafting annotations include: conservation impact of excluding certain specimens from CITES provisions; enforceability of the annotations; and whether the annotations are clear and unambiguous.
26. Article I of the Convention defines a “specimen” to include any animal or plant, whether alive or dead. This means that, with respect to an annotated listing, the whole live or dead animal or plant is covered by the listing in addition to any parts or derivatives specified in the annotation. We have recommended an amendment to the preamble of Resolution Conf. 11.21 (Rev. CoP16) to reflect this understanding.
27. In Document SC65 Doc. 49.1, the interim working group outlined the three kinds of annotations in the Appendices as follows: 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).
28. Generally, annotations to listings in the CITES Appendices that specify the types of specimens occur in three forms:
 - a) Inclusionary – generally specifies the specimens to be included under the listing.
Example: #5 Logs, sawn wood and veneer sheets.
 - b) Exclusionary – generally specifies the specimens to be excluded from the listing.
Example: #2 All parts and derivatives except:
 - a) seeds and pollen; and
 - b) finished products packaged and ready for retail trade.
 - c) A combination of inclusionary and exclusionary – specifies the specimens to be excluded from the listing, but also references a subset of those specimens that are excepted from the exclusion (i.e., specimens that are included in the listing); or specifies the specimens to be included in the listing, but also references a subset of those specimens to be excluded.
Example: #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.
29. In reviewing the existing annotations, the working group has determined that each of these three forms of annotations has been used under different circumstances. Inclusionary annotations are used in cases

where the risk to the wild populations from trade is associated with only a few types of specimens. Exclusionary annotations are used in cases where there is a risk to wild populations from many types of trade but where there is little or no risk associated with trade for a few types of specimens. Finally, annotations that are a combination of inclusionary and exclusionary are generally used to clarify very specific instances in which neither an inclusionary or exclusionary annotation would apply due to conservation considerations. No annotation is used in circumstances where there is or could be a risk to wild populations from many types of specimens in trade, thus resulting in all types of specimens in trade being regulated under CITES. The working group noted that these observations of past usage as relates to conservation concerns are consistent with the guidance and principles already included in and proposed for Resolution Conf. 11.21 (Rev. CoP16). Thus, when crafting an annotation, the guidance and principles can be used in the decision on the form of the annotation to best protect the species. We have proposed amendments to Resolution Conf. 11.21 (Rev. CoP16) to provide additional guidance for deciding on the form of annotations from a conservation perspective.

30. Parties have generally interpreted an inclusionary annotation to cover, in addition to whole live and dead specimens, only the types of specimens identified in the annotation and excluding all those not identified. Unless specifically included in the annotation, finished products packaged and ready for retail trade have been interpreted as also being excluded from the listing. However, in cases where the types of specimens identified in the inclusionary annotation are themselves finished products packaged and ready for retail trade, we believe that those specimens are covered under the listing. For example, with respect to a species listed with Annotation #5 (Logs, sawn wood and veneer sheets), if the specimen in trade is veneer sheets packaged and ready for retail trade, we believe that these veneer sheets would be covered under the listing and require CITES documents. We have recommended an amendment to Resolution Conf. 11.21 (Rev. CoP16) to reflect this understanding.
31. The working group reviewed the outcomes related to Document CoP16 Doc. 75 (Rev. 1) on Development and application of annotations, and noted that one of the amendments proposed (“...primarily exported from the range States...”) to 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*, and Resolution Conf. 9.25 (Rev. CoP16) on *Inclusion of species in Appendix III* was not adopted. On further reflection, this may have been due to confusion over the intent of the language in the amendment. The language was intended to encourage Parties to craft annotations in such a way that they would focus on the specimens that first appear in international trade as exports from the range States, to help ensure that annotations to future listings are appropriate. It should be noted that this language was not intended to exclude the possibility that an annotation with limited exclusions (or no annotation at all) might be most appropriate. In this draft document, we have revised the language from Document CoP16 Doc. 75 (Rev. 1) regarding this proposed amendment to make it clearer and recommended it for inclusion in the three Resolutions. The proposed amendment is taken from language that was already agreed by the Parties and currently appears in Resolution Conf. 11.21 (Rev. CoP16). It now reads: “...first appear in international trade as exports from range States...” (see Annexes 1-3 to the present document).
32. Finally, the working group notes that Resolution Conf. 9.25 (CoP16) currently recommends that Parties considering an annotated Appendix-III listing consult with the Secretariat and the Standing Committee. The working group believes that consultation with regard to proposed annotations should be with the scientific committees as well as the Standing Committee and Secretariat, and we have proposed an amendment to this Resolution to reflect this (see Annex 3 to the present document). Similarly, we have included a proposed amendment in Resolution Conf. 11.21 (Rev. CoP16) recommending that Parties developing proposals to amend the Appendices that include substantive annotations consult with the Standing Committee and, as appropriate, the scientific committees (see Annex 4 to the present document).

Consideration of issues related to specific plant annotations

Annotation #3 *Whole and sliced roots and parts of roots, excluding manufactured parts or derivatives, such as powders, pills, extracts, tonics, teas and confectionery*

33. Decision 16.151 on Ginseng (*Panax ginseng* and *P. quinquefolius*) directs the Standing Committee Working Group on Annotations to review this annotation with a view to its standardization and possible amendment.
34. This annotation is both inclusionary and exclusionary. It is inclusionary because there are only a few types of specimens that dominate the trade and the demand for the wild resource. These are the specimens that must be regulated to avoid negative conservation impact to the species. The exclusionary language is

needed in this case to clarify that manufactured products (i.e., further processed but not necessarily packaged and ready for retail trade) of the whole and sliced roots and parts of roots are not regulated by CITES. As one of the two range States of *P. quinquefolius*, the United States has consulted with its plant inspection officials to evaluate whether the text in the annotation that provides examples of excluded specimens, beginning “such as...,” needs to be included in the annotation. U.S. inspection officials have responded that the examples are necessary for inspectors in determining which types of ginseng specimens are subject to CITES controls and they have reported that the appearance of the examples in the annotation has not caused any confusion at the U.S. ports of export or import. Another working group member also commented in support of retaining the list of examples as they may be useful to enforcement officers. However, the working group believes additional work needs to be done on this issue, including consultation with the other range States of the two species involved to determine whether this annotation can be revised in any way to make it more in line with other annotations, but without changing the scope of it.

Annotation #14 *All parts and derivatives except:*

- a) *seeds and pollen;*
- b) *seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;*
- c) *fruits;*
- d) *leaves;*
- e) *exhausted agarwood powder, including compressed powder in all shapes; and*
- f) *finished products packaged and ready for retail trade, this exemption does not apply to beads, prayer beads and carvings.*

35. Paragraph e) of the terms of reference in Decision 16.162 directs the working group 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.
36. This annotation is both exclusionary and inclusionary. There are two areas of concern – the enforceability of part e) and the wording of the inclusionary and exclusionary language in part f), which may be confusing. With regard to part e), the working group believes that the term “exhausted agarwood powder” may be confusing to enforcement personnel as a result of being unable to differentiate between agarwood powder that has been “exhausted” and agarwood powder that has been derived from other methods. However, several working groups members commented that the word “exhausted” is an industry term to differentiate between powder which has had oil extracted or not, and as such, it is important for conservation reasons to retain the term “exhausted” in the annotation. Therefore, the working group has decided that the term “exhausted” should be retained in the annotation. We believe that confusion over this term would be alleviated by defining the term “exhausted powder,” and via the examples provided in the agarwood glossary and other identification materials for agarwood of exhausted powder and powder derived from other methods.
37. With regard to the wording in part f) of the annotation, based on consultations with U.S. wildlife enforcement personnel and several colleagues on the working group, it appears that wood chips are traded in a form that would be considered “finished products packaged and ready for retail trade.” The annotation does not exempt wood chips from CITES controls because international trade in wood chips is thought to be a conservation concern. Therefore, it is our understanding that wood chips in all of their forms are intended to be covered under the agarwood listing. The working group still needs further consultation with other Parties (based on regional consultation by Plants Committee members and individual Party consultation with inspection authorities) to determine whether they have observed agarwood wood chips traded as finished products packaged and ready for retail trade. If the working group determines that wood chips are traded in this form, we will need to consider whether additional specificity is needed to clarify that wood chips packaged and ready for retail trade are covered under CITES.
38. As an additional consideration related to the implementation of the agarwood listings, Decision 16.155 on Agarwood-producing taxa (*Aquilaria* spp. and *Gyrinops* spp.) directs exporting and importing countries of agarwood-producing taxa to produce an identification manual for agarwood products. We believe that the information provided in this manual will have significant implications on the ability of Parties to implement the agarwood listings. We note that a draft version of this manual was submitted for consideration at the 22nd meeting of the Plants Committee, held in October 2015.

Annotation #11 Logs, sawn wood, veneer sheets, plywood, powder and extracts

and

Annotation #12 Logs, sawn wood, veneer sheets, plywood and extracts. Finished products containing such extracts as ingredients, including fragrances, are not considered to be covered by this annotation

39. Paragraph f) of the terms of reference in Decision 16.162 directs the working group to review outstanding implementation challenges resulting from the listings of *Aniba rosaeodora* and *Bulnesia sarmientoi* in the Appendices, and propose appropriate solutions at CoP17.
40. Annotation #11, which applies to *B. sarmientoi*, is inclusionary, implying that the specimens in trade that need to be regulated to avoid a conservation impact are known. Annotation #12, which applies to *A. rosaeodora*, is inclusionary and exclusionary, containing an additional sentence excluding finished products containing extract from the listing.
41. Because these two taxa are often traded in the same form (i.e., extract), the working group agrees that the phrase “finished products containing such extracts as ingredients, including fragrances, are not considered to be covered by this annotation” should be added to Annotation #11. This revision would harmonize the two annotations, to the extent practicable. The working group also agrees that it continues to be appropriate to have two separate annotations for these taxa, since *B. sarmientoi* is traded in powder form and *A. rosaeodora* is not. **Note:** The term “packaged and ready for retail trade” was specifically excluded from Annotation #12 based on consultation with the personal care products industry, which indicated that, with respect to products containing extract, many commodities along the production chain that are not yet packaged and ready for retail trade have little to no conservation impact and therefore, should not require CITES documents. We believe that the same situation applies to *B. sarmientoi* and therefore, this language should also not be included in Annotation #11.
42. With respect to extract, there has been disagreement in the Plants Committee discussions on whether, in addition to finished products, mixtures and fragrances containing extracts should also be excluded from the listing. Extensive discussions have occurred in the Plants Committee on this issue, including consideration of “pure extract,” 100% extract, lesser percentages, mixtures, etc. Therefore, the working group believes its members should: 1) consult with their industry to determine whether they have a clear understanding of when CITES documents are required (i.e., what specimens are covered) for international trade in extracts (including essential oil) of *A. rosaeodora* and *B. sarmientoi*; and 2) consult with enforcement authorities (i.e., Customs) to determine if they have a clear understanding of these requirements and whether the products containing extract that require CITES documents are those that first appear as exports from the range States and that dominate the trade and the demand from the wild resource. The working group also believes that working group members who are members of the Plants Committee should consult with exporting and importing countries in their regions, esp., Argentina, Brazil, and Paraguay. A decision of the Parties on this issue could necessitate a change to both Annotation #11 and Annotation #12.
43. The Chair of the working group would like to thank the working group members for their vital contributions to the discussion of all of the issues raised above and to the completion of this document.

Recommendations

44. As it was unable to achieve consensus on where definitions of terms in annotations should be permanently located, the working group recommends that the Standing Committee, in consultation with the Secretariat, and taking into consideration the issues raised by the working group in this document on this matter, decide whether these definitions should be permanently located in Resolutions or in the Interpretation section of the Appendices.
45. The working group recommends that the Standing Committee endorse the proposed amendments to Resolutions Conf. 5.20 (Rev. CoP16), Conf. 9.24 (Rev. CoP16), Conf. 9.25 (Rev. CoP16), and Conf. 11.21 (Rev. CoP16) located in Annexes 1 through 4 to the present document, and ask the Secretariat to submit a document for CoP17 proposing that the Parties adopt the amendments.
46. The working group requests that the Standing Committee convene a meeting of the working group at SC66 to work on resolving as many of the outstanding issues raised in this document regarding Annotation #3, Annotation #14, Annotation #11, and Annotation #12 as possible.

47. Finally, since not all of the work directed to the Standing Committee and the working group in Decisions 16.161, 16.162, 16.163, and 16.151 will be completed by CoP17, the working group requests that the Standing Committee ask the Secretariat to revise these Decisions, deleting those directives which will be accomplished by CoP17, and submit the revised versions for CoP17 proposing that the Parties adopt them.

Resolution Conf. 5.20 (Rev. CoP16) on
Guidelines for the Secretariat when making recommendations in accordance with Article XV

Revise sub-paragraph d) under “ESTABLISHES” in the operative section of the Resolution as follows:

- d) if the proposal includes an annotation, the recommendations should specifically cover:
 - i) the appropriateness of the proposed annotation with regard to those specimens that first appear in international trade as exports from range States and that dominate the trade and the demand for the wild resource;
 - ii) any potential problems in implementing the proposed annotation; and
 - iii) whether the proposed annotation is harmonized with existing annotations.

Resolution Conf. 9.24 (Rev. CoP16) on *Criteria for amendment of Appendices I and II*

Revise the fourth “RESOLVES” in the operative section of the Resolution as follows:

RESOLVES that annotations to proposals to amend Appendix I or Appendix II should be made in accordance with the applicable Resolutions of the Conference of the Parties, be specific and accurate as to which parts and derivatives are covered by the Convention, include those ~~parts and derivatives~~ specimens that first appear in international trade as exports from range States and that dominate the trade and the demand from the wild resource, and should, to the extent possible, be harmonized with existing annotations;

Revise the paragraph on “Annotations” in Annex 6 on *Format for proposals to amend the Appendices*

If a specific annotation to the 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~~ includes those ~~parts and derivatives~~ specimens that first appear in international trade as exports from range States and 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.

Resolution Conf. 9.25 (Rev. CoP16) on *Inclusion of species in Appendix III*

Revise the second “RECOMMENDS” in the operative section of the Resolution as follows:

- d) after due consultation, and having satisfied itself that the biological status and trade status of the species justify the action, submit to the Secretariat the name of the species it wishes to include in Appendix III;
- e) ensure that its request to include a species in Appendix III specifies which readily recognizable parts and derivatives are to be included unless it intends to include all readily recognizable parts and derivatives;
- f) ensure that any proposed annotation that is part of a request to include a species in Appendix III covers includes those parts and derivatives specimens that first appear in international trade as exports from its territory and that dominate the trade and the demand for the wild resource and is, to the extent practicable, harmonized with relevant existing annotations; and
- g) consult with the Secretariat, ~~and~~ the Standing Committee, and, as appropriate, the Animals Committee or Plants Committee, to ensure that any proposed annotation that is part of a request to include a species in Appendix III (and any definitions developed that define terms in the annotation, as appropriate) is clear and unambiguous, and likely to be understood by enforcement personnel and user groups;

Resolution Conf. 11.21 (Rev. CoP16) on Use of annotations in Appendices I and II

Revise the Resolution, including title, as follows:

Resolution Conf. 11.21 (Rev. CoP16) on *Use of annotations in the Appendices I and II*

RECOGNIZING that annotations are increasingly used in the Appendices for a number of purposes;

AWARE that certain types of annotations are for reference only, whereas others are substantive and are intended to define the scope of the inclusion of a species;

CONSIDERING that the Parties have developed specific procedures for transfer, reporting and review for certain special cases of amendment of the Appendices, such as those relating to ranching, quotas, certain parts and derivatives, and trade regimes;

AWARE also that certain types of annotations are an integral part of a species listing, and that any proposal to introduce, amend or delete such an annotation must follow the provisions of Resolution Conf. 9.24 (Rev. CoP16), adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 12th, 13th, 14th, 15th and 16th meetings (Santiago, 2002; Bangkok, 2004; The Hague, 2007; Doha, 2010; Bangkok, 2013);

RECALLING that an annotated listing of an animal or plant species in any of the three Appendices always includes the whole live or dead animal or plant, and any specimen included by an annotation;

RECALLING further that the Conference of the Parties had agreed at its second and fourth meetings that a listings of a plant species in Appendix II or Appendix III, and an animal species in Appendix III, without an annotation should be interpreted as including the whole live or dead animal or plant and all readily recognizable parts and derivatives, and that this view has not been changed by any subsequent decision of the Conference of the Parties;

CONSCIOUS that criteria for the submission of proposals to amend the Appendices that include annotations, and procedures for reviewing the implementation of such annotations, need to be clearly defined to avoid implementation and enforcement problems;

RECOGNIZING that the Parties have adopted a number of definitions of terms and expressions in annotations, and that those definitions are included in several resolutions;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that:

- a) the following are reference annotations and are for information purposes only:
 - i) annotations to indicate that one or more geographically separate populations, subspecies or species of the annotated taxon are in another Appendix;
 - ii) the annotations 'possibly extinct'; and
 - iii) annotations relating to nomenclature;
- b) the following are substantive annotations, and are integral parts of species listings:
 - i) annotations that specify the inclusion or exclusion of designated geographically separate populations, subspecies, species, groups of species, or higher taxa, which may include export quotas; and
 - ii) annotations that specify the types of specimens or export quotas;
- c) reference annotations may be introduced, amended or deleted by the Conference of the Parties, or by the Secretariat, as required, to facilitate the understanding of the Appendices;

- d) substantive annotations relating to species in Appendix I or II may be introduced, amended or deleted only by the Conference of the Parties in accordance with Article XV of the Convention;
- e) substantive annotations relating to species in Appendix III may be introduced, amended or deleted only by the Party or Parties that submitted the species for inclusion in Appendix III;
- ef) substantive annotations relating to geographically separate populations in Appendix I or II should be in compliance with the split-listing provisions contained in Resolution Conf. 9.24 (Rev. CoP16) Annex 3; and
- fg) substantive annotations used in the context of transferring a species from Appendix I to Appendix II should be in compliance with the precautionary measures contained in Resolution Conf. 9.24 (Rev. CoP16) Annex 4;

AGREES that no proposal for transfer of a species from Appendix I to Appendix II subject to an annotation relating to specified types of specimens shall be considered from a Party that has entered a reservation for the species in question, unless that Party has agreed to remove the reservation within 90 days of the adoption of the amendment;

AGREES that a proposal to include a plant species in Appendix II, or to transfer a plant species from Appendix I to Appendix II, shall be interpreted to include all readily recognizable parts and derivatives if the proposal does not include an annotation specifying the types of specimens to be included;

AGREES further that, for a plant species included in Appendix II or Appendix III, and an animal species included in Appendix III, the absence of an annotation relating to that species shall indicate that all readily recognizable parts and derivatives are included;

ENCOURAGES Parties, when considering proposing the inclusion of a species in the Appendices with a substantive annotation, to take into account the following:

- a) an inclusionary annotation, which specifies the types of specimens to be included under the listing, should be used in cases where only a few types of specimens need to be included under the listing;
- b) an exclusionary annotation, which specifies the types of specimens to be excluded from the listing, should be used where only a few types of specimens need to be excluded from the listing;
- c) an annotation that is a combination of inclusionary and exclusionary language, which specifies the types of specimens to be excluded from the listing, but also references a subset of those types of specimens that are excepted from the exclusion; or which specifies the types of specimens to be included in the listing, but also references a subset of those types of specimens to be excluded; should be used as circumstances dictate; and
- d) no annotation at all should be used in cases where there is a risk to wild populations of the species from many types of specimens in trade;

RECOMMENDS ~~that~~ the following guidance and principles for annotations:

- a) Parties submitting proposals that contain substantive annotations:
 - i) ensure that the text is clear and unambiguous;
 - ii) consider the conservation impact of excluding certain specimens from CITES provisions; and
 - iii) consider the enforceability of the annotations;
- b) two main principles be followed as standard guidance when drafting ~~future~~ annotations for ~~medicinal~~ plants:
 - i) controls should concentrate on those commodities that first appear in international trade as exports from range States; these may range from crude to processed material; and
 - ii) controls should include only those commodities that dominate the trade and the demand for the wild resource;

- c) if a proposed annotation relates to specified types of specimens, the applicable provisions of the Convention for import, export and re-export of each type of specimen should be specified;
- d) as a general rule, Parties avoid making proposals to adopt annotations that include live animals or trophies; ~~and~~
- e) annotations that specify the types of specimens included in the Appendices should be used sparingly, as their implementation is particularly challenging, especially where there are identification problems or where the purpose of trade has been specified; and
- f) Unless specified otherwise in the annotation, when an annotation specifies the types of specimens included in the Appendices, CITES controls also apply to these types of specimens when they appear in trade as finished products packaged and ready for retail trade;

URGES that Parties submitting proposals that contain substantive annotations consult with the Secretariat, the Standing Committee, and, as appropriate, the Animals Committee or Plants Committee, to ensure that the annotation is appropriate and can be readily implemented.

DIRECTS:

- a) the Standing Committee, in consultation with the Animals Committee or the Plants Committee, to agree on interim definitions between meetings of the Conference of the Parties in cases where significant differences in the interpretation of terms in annotations exist among trading countries and are causing implementation difficulties, and then include these definitions in its report to the Conference of the Parties for adoption;
- b) the Secretariat to issue a Notification to the Parties on any the interim definitions of terms in annotations agreed by the Standing Committee;
- c) the Secretariat to report to the Standing Committee, for at least four years following the adoption of a proposal to transfer species from Appendix I to Appendix II subject to a substantive annotation, any credible information it receives indicating a significant increase in the illegal trade in or poaching of such species; and
- d) the Standing Committee to investigate any such reports of illegal trade and to take appropriate action to remedy the situation, which may include calling on the Parties to suspend commercial trade in the affected species, or inviting the Depositary Government to submit a proposal to amend the annotation or to retransfer the species to Appendix I; ~~and~~

AGREES that, for species transferred from Appendix I to II with an annotation specifying that only certain types of specimens are subject to the provisions relating to species in Appendix II, specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly; and

RECOMMENDS that the definitions of terms and expressions used in annotations in the Appendices be applied by the Parties.