

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



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Geneva (Switzerland), 27 November – 1 December 2017

CITES COP17 DALBERGIA APPENDIX II LISTING AND ANNOTATION 15
COMMENTS AND RECOMMENDATIONS

This information document has been submitted by the United States of America and prepared by Taylor Guitars and Madinter in relation to agenda item 56 on *Rosewood timber species* [Leguminosae (Fabaceae)]: *Implementation of Decision 17.234 - Follow up on PC23 outcomes* and 69.3 on *Interpretation of annotation #15*.*

This document does not reflect the official position of the United States. However, the document presents the views of certain representatives of the private sector that may help inform the discussion.

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CITES CoP17
***Dalbergia* Appendix II**
Listing and Annotation 15

COMMENTS AND RECOMMENDATIONS

ENGLISH TRANSLATION



RE: CITES CoP17 *Dalbergia* Appendix II listing and Annotation 15

For many, the listing of the *Dalbergia* genus in Appendix II, with newly created Annotation 15, at CoP17 was a dramatic step. Indeed, it is our view that with the possible exception of Indian *Dalbergia latifolia* and a scant few other species, the *Dalbergia* genus is under considerable worldwide threat and bold action is required. While we applaud CITES' leadership on this critical issue, we have some concerns regarding the approach taken with the listing and annotation of *Dalbergia*.

As responsible users of *Dalbergia*, we generally support the Appendix II listing but we are concerned that the accompanying newly drafted Annotation 15 lacks clear and simple definitions and that it is not easily understood by enforcement or user groups. We also believe that the Annotation goes far beyond addressing impacts on species that first appear in international trade as exports from range states and on those that dominate trade and demand for the wild resource. It is our understanding that these two guiding principles¹ of annotation development have been utilized under the Convention time and time again. The Annotation, as accepted, leads to the significant allocation of CITES resources for activities with no direct impact on the sustainable use and management of the genus. Accordingly, we suggest two possible annotation amendment options that we believe will maintain and enhance the integrity and intent of the listing. In addition, for those who have been unnecessarily overwhelmed by the existing annotation, we believe either of the options we propose will remove unnecessary burdens for CITES authorities, enforcement personnel, and user groups without threatening the principles of the Convention.

The proposed options utilize existing CITES language and do not absolve *Dalbergia* producers, traders, or manufacturers from current responsibilities under the Convention. Furthermore, we believe that either alternative could prove to be a valuable point of reference in considering annotation options for future timber species listings.

The heart of our concern with Annotation 15 is that it requires owners and all subsequent owners of finished products, such as musical instruments (our area of expertise) made in whole or in part with *Dalbergia* to acquire and maintain CITES documentation or pre-convention certification essentially in perpetuity (Annex 1). This is well beyond what should be the key focus of CITES in this instance. And it is most certainly beyond the reach of the management of the genus at the range state or territory level. This, as a result, creates a cascade of unnecessary paperwork for national CITES authorities, enforcement personnel, and users. While we accept the need for CITES certificates for export or re-export of any raw material or parts that meet the first appearance in international trade principle, we question the assumptions and arguments justifying the need for the sale of any truly finished *Dalbergia* product to require CITES certificates. Indeed, CITES has set precedent in excluding finished goods specifically from a number of species for what we assume may be some of these exact

¹ SC66 Doc.25, CoP17 Doc. 83.1, CoP17 Doc. 83.2, SC65 Doc. 49.1 Annex, 16.162 (Rev. CoP17), PC19 Doc. 11.5, CoP15 Doc. 66, PC18 WG 12 Doc. 1, PC18 WG4 Doc. 1, Notification No. 2008/046, PC17 Doc. 13.1, PC17 Doc. 13.3, PC15 Inf. 8, CoP13 Doc. 58, Conf. 11.21 (Rev. CoP17), Conf. 9.24 (Rev. CoP17)

same reasons. This said, we note that the *Global Status of Dalbergia and Pterocarpus Rosewood Producing Species in Trade* report prepared for CoP17 specifically cited the Chinese Hongmu Standards as an issue that in part helped drive the listing; and we note that none of the proposed amendments below would further stress that context.

CITES defines Finished Products Packaged and Ready for Retail Trade as “Products, shipped singly or in bulk, requiring no further processing, packaged, labeled for final use or the retail trade in a state fit for being sold to or used by the general public.”² If this definition was applied to the *Dalbergia* Annotation, as we argue below, the intent of the listing would be upheld and it would be no easier for anyone to cheat the system than is currently possible. As articulated above, we do not see how either of the proposed options suggested would further perpetuate such issues.

EXISTING ANNOTATION 15

A. Lacking Clear and Simple Definitions

In all official translations, Annotation 15 is simply incorrectly worded and should be changed if for no other reason than in consideration of the precedent it sets for future listings. The Annotation states that “all parts and derivatives are included, except parts and derivatives of *Dalbergia* spp. originating and exported from Mexico, which are covered by Annotation # 6.” This literally means that all parts are included except logs, sawn wood, veneer sheets and plywood from Mexico (emphasis added).

This wording contributed to the initial confusion that resulted in months of interrupted, otherwise legal commerce that ensued after the January 2, 2017 implementation date. By one estimate, this confusion cost manufacturers and distributors of guitars and ukuleles alone \$28.7 million dollars over the first three months of the implementation period, while retailers lost \$42 million in sales.³ It is further noted that, as per CITES preference, including exceptions in an exemption should be avoided when possible.

² CITES “Interpretation” valid from 12 June 2013, finished products packaged and ready for retail trade

³ Guitar Imports to USA 1 q 2017 vs 2016*

Product Type	1q 2017 \$	Change in %	1q 2016 \$
Electric Guitars	\$29,781,486	-27.57%	\$41,118,924
Ukuleles	\$5,361,196	-33.18%	\$8,023,300
Acoustics Over \$299	\$12,490,717	-22.09%	\$16,031,764
Acoustics Under \$299	\$5,719,788	-34.54%	\$8,737,621
Total Import Value	\$53,353,187	-27.81%	\$73,911,609
Distributor Value (estimated 30% Gross profit)	\$76,212,000	(\$28,788,000)	\$105,000,000
Retail Value (estimated 30% Gross profit)	\$108,000,000	(\$42,000,000)	\$150,000,000

*Source US Department Commerce

It is clear, even six months after its effective date, that different parties to the Convention are interpreting the Annotation differently. For example, according to a document published March 6, 2017, the European Union interprets the Annotation to mean that any finished product made of *Dalbergia* from Mexico is exempt, no matter where it is manufactured. Others, such as the United States (and Spain originally, before the EU official interpretation) understand this to mean that a finished product made with *Dalbergia* originating from Mexico, and made in Mexico, is exempt. Hence a finished product made with *Dalbergia* originating from Mexico, but made outside of Mexico, is subject to a re-export certificate requirement.

B. Burdening the System and Damaging the Convention's Reputation

By requiring finished *Dalbergia* products that are packaged and ready for retail trade, such as new and used musical instruments, to maintain or acquire CITES certificates in perpetuity (Annex 1), Annotation 15 creates an excessive amount of paperwork that will grow exponentially over time. As a result, an already strained permitting system will be further and unnecessarily burdened while providing zero impact on the sustainable use and management of the genus.

The Working Group on Annotations has agreed 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. The current Annotation reflects the exact opposite, and instead of negating the need to regulate re-exports, it now puts an additional burden of managing and regulating re-exports, in perpetuity.

Furthermore, the Annotation unnecessarily criminalizes, often unknowingly, owners of finished products particularly musical instrument owners, and thus creates a growing number of detractors to a Convention that should be intuitively sympathetic. Due to the very small volumes of *Dalbergia* contained within each instrument, a large number of finished goods requiring CITES documentation can be produced, therefore the Annotation will generate a level of paperwork for new and used musical instruments that will far outweigh those required from other sectors, thus decreasing the likelihood of proper enforcement. While finished products, such as furniture, may not be re-sold and traded time and time again, musical instruments commonly last hundreds of years and will have multiple owners across international borders. Capacity constraints and corruption are issues that have long plagued effective enforcement of the Convention. It is unfortunately unlikely that many national CITES authorities will experience noteworthy growth in staffing or capacity in years to come. Yet the sheer number of requests for CITES certificates for finished new and used musical instruments created by Annotation 15 will exponentially grow, taxing an already stressed system and frustrating an ever-growing number of citizens.

An often-cited rationale behind the exclusion of finished products is that some nefarious players may cheat the system by calling a piece of lumber a finished product, such as, for

example, a railroad tie. However, once a species is listed on CITES Appendix II, all management authorities scrutinize shipments using the Harmonized Tariff System and will disapprove bogus claims of the HTS Code that an importer or exporter claim. This combined with the official CITES definition of a finished product is a two-step process that ensures a closer look. And if the management authorities are not overburdened with permits of legitimate finished products, they will have the time to inspect such dubious claims.

It is difficult to imagine that any of these unnecessary burdens associated with requiring CITES certifications (or pre-convention documentation) for Finished Products Packaged and Ready for Retail Trade will result in any greater protection of *Dalbergia*; nor enhanced integrity for the Convention overall.

THE WAY FORWARD

We offer two simple amendment options; the acceptance of either would alleviate the issues described above, would be in alignment with the guiding principles of annotations, and would not compromise the integrity of the listing's intent. In both cases, the relevant language pertains to the already established CITES definition of Finished Products Packaged and Ready for Retail Trade.

Option One: Add new clause "e" to existing Annotation 15

Maintain existing Annotation 15 and add clause "e", introducing the established CITES term and definition for finished products packaged and ready for retail trade.

Annotation #15

All parts and derivatives are included, except:

- a) Leaves, flowers, pollen, fruits, and seeds;
- b) Non-commercial exports of a maximum total weight of 10 kg. per shipment;
- c) Parts and derivatives of *Dalbergia cochinchinensis*, which are covered by Annotation #4;
- d) Parts and derivatives of *Dalbergia* spp. originating and exported from Mexico, which are covered by Annotation # 6.
- e) [finished products packaged and ready for retail trade]

If this option were adopted, clause "d" could be eliminated, as the new clause "e" would cover those finished products.

Option Two: Replace Annotation 15 with Annotation 14 for *Dalbergia* spp.

An alternative option would be to delete Annotation 15 and replace it with existing Annotation 14, which includes finished products packaged and ready for retail trade in clause "f". This option complies with CITES regulations to harmonize new annotations with existing; however,

the lack of the exception for flowers covered in Annotation 15 and for the exceptions covered for *Dalbergia cochinchinensis*, also in Annotation 15, would need to be considered.

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 wood chips, beads, prayer beads and carvings.

IN CONCLUSION

As outlined above, we believe an amendment to Annotation 15 for *Dalbergia* spp. is necessary and consistent with CITES principles. We further believe that either of our suggested annotation changes would benefit all Parties, law enforcement personnel, management and users alike, affected by the listing of *Dalbergia*. The current draft has already led to confusion and has consumed countless hours of precious time from Management Authorities that should be spent elsewhere, all while serving little in the arena of conservation.

We feel the proposed Annotation amendments we have suggested are clear, unambiguous, take the impacts of conservation and enforcement into account, and most importantly accurately reflect the two main principles of annotations. An amendment to Annotation 15 will show that CITES is not about blanketing species with over-regulation, but about careful thought on the best methods for conservation while still allowing legal, well-managed trade.

ANNEX 1

Example: CITES lifecycle of a single guitar made with *Dalbergia latifolia* over several decades⁴

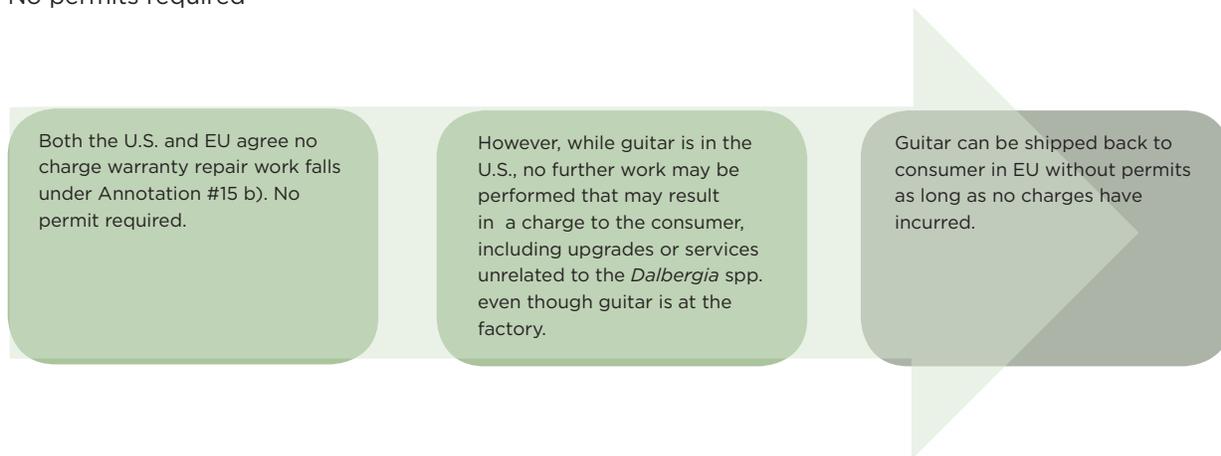


⁴ While we realize that the text of the Convention for Appendix II species only requires export and re-export permitting, Taylor Guitars as part of our due diligence contacted 47 CITES Management Authorities where we ship guitars and found that 37 require import permits as a result of stricter domestic measures above and beyond CITES.

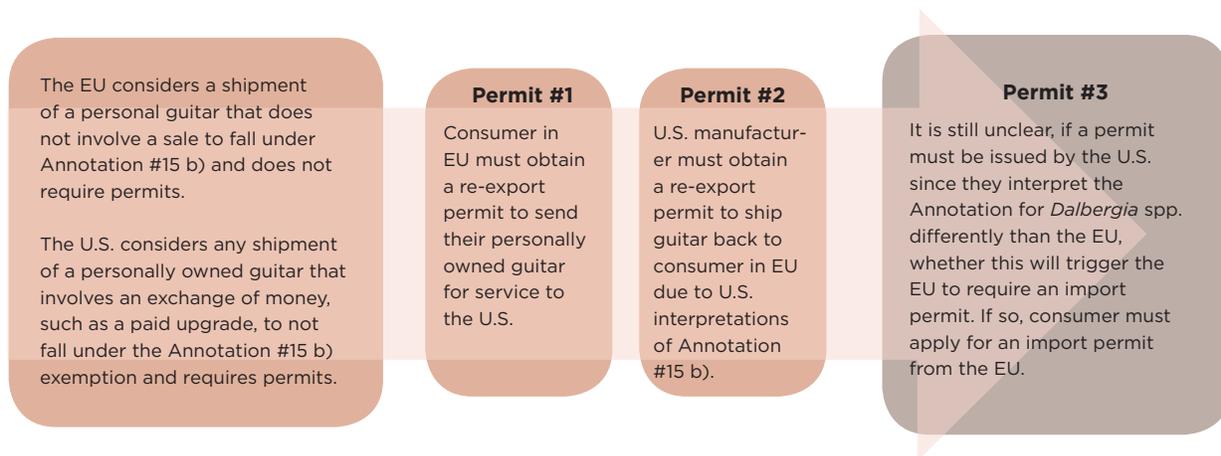
ANNEX 2

Consumer in Europe Sending Guitar with *Dalbergia* spp.
for Repairs and/or Upgrades to U.S.

Scenario #1: Customer-owned guitar with *Dalbergia* sent for no-charge warranty work only -
No permits required



Scenario #2: Customer-owned guitar sent for no-charge warranty work and paid upgrade -
2 to 3 permits required for same customer-owned guitar as Scenario #1





June 6, 2017

Dear Mr. Bob Taylor
President, Taylor Guitars

It was a great opportunity for me to visit your headquarters and factories at El Cajon and Tecate at the end of May. I learned so much about Taylor Guitars and really enjoyed conversation with you and your colleagues.

In our discussion of sustainable development regarding wood resources, I explained to you how our musical instruments donation project was adversely affected by the new CITES regulation. Please find below the summary of what happened.

As part of our Corporate Social Responsibility (CSR) activities, we started “Musical Instrument Recycling Project – Let’s Make the World Smile with Music” in 2013. Every October, our musical instruments retail store across Japan accept donation of musical instruments from our customers.

After repairing and cleaning the provided musical instrument, we donated them to children without parents, those who have been abused, those who have been placed in a hospital, or those without access to musical instruments both domestic and overseas. We wanted to create opportunities for underprivileged children to enjoy playing musical instruments.

In four years, we have collected several hundred musical instruments and a quarter of them are guitars (mainly acoustic guitars). A majority of them have been donated to orphanages in Japan while many were donated to developing countries, such as Belize, El Salvador, Fiji, Jamaica and Sri Lanka through Japan International Cooperation Agency (JICA). JICA is a Japanese governmental overseas development assistance organization.

We are concerned with continuity of the donation to overseas because the Convention on International Trade in Endangered Species (CITES) imposed new restrictions on the import and export of all rosewood products effective January 2, 2017.



JICA informed us in January that, unfortunately, they had to return some guitars we had donated last November due to the new CITES restriction. And they would no longer accept not only guitars, but also violins and clarinets because they might contain rosewood and necessitate documentation burden both to export from Japan and import by accepting countries.

We hope to see future changes to the CITES regulation on rosewood so that we would be able to resume donation of guitars to underprivileged children overseas.

Sincerely,

A handwritten signature in black ink, appearing to read "Hirose", with a large, sweeping flourish extending to the right.

Toshiaki Hirose
President
Shimamura Music