

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



Seventy-fourth meeting of the Standing Committee
Lyon (France), 7 - 11 March 2022

Species specific matters

Maintenance of the Appendices

ANNOTATIONS:
REPORT OF THE WORKING GROUP

1. This document has been submitted by Canada as Chair of the working group on annotations.*

Background

2. At its 18th meeting (CoP18, Geneva, 2019), the Conference of the Parties adopted Decision 16.162 (Rev. CoP18) **which** directs the Standing Committee to re-establish the Working Group on Annotations, in close collaboration with the Animals and Plants Committees. At the 72nd meeting, the Standing Committee re-established the working group and adopted terms of reference.

Terms of Reference

3. The Standing Committee re-established the Working Group on Annotations with the following terms of reference:
 - a) *in close collaboration with ongoing efforts in the Plants Committee, to continue reviewing the appropriateness and practical challenges resulting from the implementation of the annotations to the Appendices, including but not limited to those on the tree species, of the agarwood-producing taxa (Aquilaria spp. and Gyrinops spp.), Aniba rosaeodora, Bulnesia sarmientoi and orchids, and to identify options to streamline these annotations taking into account the guidance provided by Resolution Conf. 11.21 (Rev. CoP18) on Use of annotations in Appendices I and II;*
 - b) *to develop or refine definitions of terms used in current annotations as appropriate, including but not limited to the terms “musical instruments” and “transformed wood”, and submit them for adoption by the Conference of the Parties and subsequent inclusion in the Interpretation section of the Appendices;*
 - c) *to conduct any work related to annotations directed to it by the Conference of the Parties, the Standing, Animals or Plants Committee; and*
 - d) *to prepare reports on progress made in addressing the issues tasked to it and submit them for consideration at the 73rd and 74th meetings of the Standing Committee.*

* *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.*

4. The composition of the working group, comprising Parties and Non-Party observers is as follows:

- Chair: Canada.
- SC Member: Chair of the Standing Committee (Ms. Caceres).
- AC Members: Europe (Ms. Zíková), North America (Ms. Lougheed).
- PC Members: China (Ms. Yan Zeng), Europe (Ms. Moser), North America (Ms. Gnam).
- Parties: Austria, Australia, Belgium, Canada (Chair), China, the Democratic Republic of the Congo, the European Union, France, Gabon, Germany, Indonesia, Kenya, Malaysia, the Netherlands, Switzerland, Thailand, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe;
- IGOs and NGOs: The United Nations Environment Programme-World Conservation Monitoring Centre, the International Union for Conservation of Nature; Center for International Environmental Law, Environmental Investigation Agency UK, Forest-Based Solutions, International Association of Violin and Bow Makers, International Fragrance Association, International Wood Products Association, IWMC-World Conservation Trust, Jonathan Barzdo, League of American Orchestras, Lewis and Clark – International Environmental Law Project, Madinter Trade, Pearle, Species Survival Network, Taylor Guitars, TRAFFIC, World Resources Institute and the World Wildlife Fund.

Working Group Discussions and Conclusions

5. Following final confirmation by the Standing Committee of working group members in January 2020, the working group identified a range of challenges pertaining to the implementation and interpretation of current annotations, including annotations for which development of definitions or interpretive text would increase comprehension and annotations for which amendments to existing text should be proposed. Additionally, the working group identified elements of paragraphs 7 and 8 of the Interpretation Section of the Appendices that require amendment or further interpretation to increase clarity of the text therein. The working group also suggests revisions to certain definitions in the Interpretation Section of the Appendices and the consolidation of definitions of terms used in annotations currently located in paragraph c) of Resolution Conf. 10.13 (Rev. CoP18) on *Implementation of the Convention for Tree Species* with those located in paragraph 8 of the Interpretation Section of the Appendices.

Concerning Terms of Reference Part a) *in close collaboration with ongoing efforts in the Plants Committee, to continue reviewing the appropriateness and practical challenges resulting from the implementation of the annotations to the Appendices, including but not limited to those on the tree species, of the agarwood-producing taxa (Aquilaria spp. and Gyrinops spp.), Aniba rosaeodora, Bulnesia sarmientoi and orchids, and to identify options to streamline these annotations taking into account the guidance provided by Resolution Conf. 11.21 (Rev. CoP18) on Use of annotations in Appendices I and II*

Regarding Annotation #4

Annotation #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 Dypsis 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 Aloe ferox and Euphorbia antisyphilitica packaged and ready for retail trade.*

6. The working group considered in detail possible amendments to Annotation #4, including those proposed by the Management Authority of Switzerland and Liechtenstein, as presented to the 25th meeting of the Plants Committee (PC25 Doc. 38 *Annotations for Appendix II Orchids*). After discussion, the working group proposes amendment to paragraph b) of Annotation #4 as follows:

- b) *seedling or tissue cultures obtained in vitro, ~~in solid or liquid media~~, transported in sterile containers;*

The amendment proposed is intended to reflect changes that have occurred since the adoption of Annotation #4 to techniques for seedling or tissue cultures obtained *in vitro*. Adoption of the amendment will require similar revision to paragraph 5 of the Interpretation Section of the Appendices, to the parenthetical annotation to Appendix I Orchidaceae, and to Annotation #1 and Annotation #14, to harmonize all occurrences of the text.

- 7. With regard to exceptions for seedling or tissue cultures obtained *in vitro* transported in sterile containers, the working group notes that seedlings or tissue cultures taken out of sterile containers no longer qualify for the exception included in the annotation, regardless of whether the seedlings or tissue cultures are used for artificial propagation, or for another purpose, including the production of extracts. According to Resolution Conf. 11.11 (Rev. CoP18), paragraph 11, the country in which the specimens are removed from sterile containers is then the country of origin.
- 8. With regard to the proposed addition of a new paragraph g) to Annotation #4 by the Management Authority of Switzerland and Liechtenstein, the working group suggests that the language of the proposed paragraph be as follows:

- g) ~~finished cosmetic products packaged and ready for retail trade~~ finished products packaged and ready for retail trade of cosmetics containing parts and derivatives of artificially propagated specimens of *Bletilla striata*, *Cycnoches cooperi*, *Gastrodia elata*, *Phalaenopsis amabilis* ~~and or~~ *Phalaenopsis lobbi*.

The first alteration to paragraph g) proposed by the working group addresses a request by the Plants Committee in Document PC25 Doc.38, inviting the working group to consider the amendment to Annotation #4 and develop a definition for the term 'finished cosmetic products packaged and ready for retail trade'. As revised here, paragraph g) includes only terms for which definitions have already been adopted by the Conference of the Parties. The working group suggests that the definition of "cosmetics" already adopted by the Conference of the Parties and included in the *Guidelines for the preparation and submission of CITES annual reports* also be included in the Interpretation Section of the Appendices. The second proposed alteration to paragraph g) (replacement of "and" with "or") reflects the working group's understanding that the proposed paragraph is intended to exclude any of the species indicated, individually or in combination. Acknowledging that the issue of using "and" or "or" under similar circumstances may apply to other annotations, the working group suggests that this may be an additional issue for consideration during the intersessional period between CoP19 and CoP20.

- 9. During discussions, members of the working group expressed concern regarding potential challenges in implementing and enforcing the requirement proposed in paragraph g) that would extend the exemption only to parts and derivatives of artificially propagated specimens of the species indicated. One approach suggested was to require a declaration of "artificially propagated" and the full scientific names of the species on packaging of finished products and on accompanying shipping documents. However, as the specimens in question would be exempted from CITES provisions, labeling of packaging can be recommended, but not required, unless made a part of the operative text of the annotation. The working group understands that Switzerland will take the working group's suggestions into account as it considers an amendment proposal to be submitted to CoP19.

Annotation #11

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

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.

10. The working group focused discussion on developing clarification and guidance as to the point at which an extract becomes an ingredient in a finished product, no longer regulated by Annotation #11 or Annotation #12. Vocabulary utilized in communications of the fragrance industry and suggested by the International Fragrance Association (IFRA), allowed the working group to consider a definition for such a chemical product, which would be called a “fragrance or flavour mixture”. The proposed definition was as follows:

Fragrance or flavour mixture: A combination of ingredients formulated to impart an odour or a flavour, or to mask an odour or a taste. Such mixtures define the point at which an extract becomes an ingredient in a finished product.

The above definition for “fragrance or flavour mixture” could be used in an amendment to Annotation #11 as follows:

#11 Logs, sawn wood, veneer sheets, plywood, powder and extracts. Finished products containing such extracts as ingredients, including fragrances fragrance and flavor mixtures, are not ~~considered to be~~ covered by this annotation.

and to Annotation #12 as follows:

Logs, sawn wood, veneer sheets, plywood and extracts. Finished products containing such extracts as ingredients, including fragrances fragrance and flavor mixtures, are not ~~considered to be~~ covered by this annotation.

11. An alternative approach suggested was to apply relevant information on the distinction between extracts and ingredients in finished products found in current Harmonized Commodity Description and Coding System (HS) codes, to propose definitions, as has been done for timber and wood products. For example, the 4-digit heading to HS Code 3302 is as follows:

Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages.

HS 3302.90.20.10 is as follows:

Perfume oil mixtures and blends, consisting of products ready for use as finished perfume bases.

Many working group members believed that HS codes, having been developed for a different purpose, would not provide the clarity of language required to assist in unambiguous application of CITES Annotations. In contrast, the IFRA-proposed definitions are well understood by the industry and potentially more suitable for enforcement than are the two HS codes. However, some working group members noted that the IFRA definition does not resolve the lack of clarity concerning the point at which an extract becomes a specimen not subject to the annotation.

12. Other working group members argued that neither of the options or proposed amendments to Annotation #11 and #12 would resolve the implementation and enforcement challenges created by these annotations, in particular, by clearly defining the specimens that would be included or excluded by the annotations in such a way that enforcement personnel, CITES authorities, and industry can readily determine if a specimen is covered by the annotation. Some working group members noted that the annotations might be more easily implemented if the exemption applied to finished products packaged and ready for retail trade. Should these finished products create an exemption loophole for commodities that first appear in international trade as

exports from range States, either because extract is the primary ingredient or the extract is present in too high percentage relative to other ingredients, then a remedy could be clearly built into the text. For example:

Finished products packaged and ready for retail trade containing such extracts as ingredients are not subject to the provisions of the Convention [unless the extract is the primary or the highest-percentage ingredient in the product (or alternately) unless the percentage of extract in the product exceeds X%].

13. At this time, the working group is not able to reach consensus on which approach, or combination thereof, would best clarify and provide guidance to Parties with respect to Annotation #11 and Annotation #12. Taking into account the progress it has made, the working group believes continued review of the appropriateness and practical challenges resulting from the implementation of Annotation #11 and Annotation #12 should be included in any new Decisions directed to the Standing Committee for further work during the intersessional period between CoP19 and CoP20.

Regarding Annotation #14 for (*Aquilaria* spp. and *Gyrinops* spp.)

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.*
14. The working group has no specific recommendations to make regarding this element of its mandate. The working group believes further review of the appropriateness and practical challenges resulting from the implementation of Annotation #14 should be included in any new Decisions directed to the Standing Committee for further work during the intersessional period between CoP19 and CoP20. The working group endorses the conclusions of a previous Standing Committee Working Group on Annotations in its report to SC66 (document SC66 Doc. 25), at paragraph 36, which noted that the term “exhausted agarwood powder” contained in Annotation #14 paragraph e), may be confusing to enforcement personnel as a result of difficulty in differentiating between agarwood powder that has been “exhausted” and agarwood powder derived from other methods. The present working group is informed of discussions of the Plants Committee *Aquilaria* Working Group and experts at Kew Gardens that suggest gas chromatography mass spectrometry (GC/MS) analysis is an effective testing tool for identifying and quantifying materials present in a wood sample, and that this technology could be used to determine the percentage of oil within agarwood powder, possibly providing a foundation for differentiating exhausted and non-exhausted powders. The working group believes that this approach could prove effective in addressing challenges associated with paragraph e) of Annotation #14, and encourages Parties to consider similar analysis using GC/MS technology, although the working group notes that such diagnostic techniques may not be immediately practical for use by front line enforcement personnel.
15. The working group notes inconsistency across the English, Spanish and French translations of Annotation #14, paragraph f) which, though minor, has resulted in instances where interpretation of the paragraph differed between languages. The text of the paragraph in the three working languages is as follows:
- f) *finished products packaged and ready for retail trade, this exemption does not apply to wood chips, beads, prayer beads and carvings.*
 - f) *les produits finis conditionnés et prêts pour la vente au détail; cette dérogation ne s’applique pas aux copeaux en bois, perles, aux grains de chapelets et aux gravures.*

- f) *productos acabados envasados y preparados para el comercio al por menor; esta excepción no se aplica a las astillas de madera, las cuentas de collar, cuentas de oración o tallas.*

Because the English text employs a comma after the clause “*finished products packaged and ready for retail trade,*” whereas the Spanish and French texts employ a semicolon, ambiguity exists as to what sections of the annotation are referred to in paragraph f). Working group members consider the use of a semicolon, which links the two independent clauses having no connecting words, to be appropriate, indicating the exemption applies to finished products in paragraph f) only, whereas the parts and derivatives referenced in paragraphs a), b), c), d) and e) of Annotation #14 are not finished products. In addition, Francophone members of the working group suggest that the existing French text for paragraph f) is not appropriate for two reasons. First, the word ‘*copeaux*’ refers to chips or fragments of wood, in the present case, or metal, and therefore the text should read ‘*copeaux de bois*’ or simply ‘*copeaux*’. Second, as the word ‘*aux*’ precedes the words ‘*copeaux*’, ‘*grains de chapelets*’ and ‘*gravures*’ it should also precede the word ‘*perles*’. The working group therefore suggests that any future revision or correction to Annotation #14 take the inconsistencies noted into account.

Concerning Terms of Reference Part b) *to develop or refine definitions of terms used in current annotations as appropriate, including but not limited to the terms “musical instruments” and “transformed wood”, and submit them for adoption by the Conference of the Parties and subsequent inclusion in the Interpretation section of the Appendices*

Amendment of Paragraph 7 of the Interpretation Section of the Appendices

16. The working group notes that the language contained in the Interpretation Section of the CITES Appendices at paragraph 7 requires further amendment to emphasize and clarify the concepts there presented, particularly that when a species is included in Appendices I, II or III, the whole, live or dead, animal or plant is always included. In addition, all parts and derivatives are also included unless specified otherwise in an annotation for plant species listed in Appendix II or III and animal species listed in Appendix III. The working group proposes a revision to paragraph 7 of the Interpretation Section of the Appendices as follows:

When a species is included in Appendices I, II or III, the whole, live or dead, animal or plant is always included. In addition, all parts and derivatives thereof are also included unless, for animal species listed in Appendix III and plant species listed in Appendix II or III, all parts and derivatives of the species are also included in the same Appendix unless the species is annotated with the symbol # followed by a number to indicate that only specific parts and derivatives are included. The symbol # followed by a number placed against the name of a species or higher taxon included in Appendix II or III refers to a footnote that indicates the parts or derivatives of animals or plants that are designated as ‘specimens’ subject to the provisions of the Convention in accordance with Article I, paragraph (b), subparagraph (ii) or (iii).

Amendment of the Definition of Ten (10) kg per shipment in Paragraph 8 of the Interpretation Section of the Appendices

17. The working group concludes that the definition in paragraph 8 of the of the Interpretation Section of the Appendices for the term contained in Annotation #15 paragraph b) ‘Ten (10) kg shipment’ is difficult to interpret, particularly regarding calculation of the weight of wood present exempted by the annotation, and the concept that individual species of the genera *Dalbergia* and of *Guibourtia* are never to be combined. The working group proposes revision to paragraph 8 of the of the Interpretation Section of the Appendices as follows:

For the term “10 kg per shipment”, the 10 kg limit should be interpreted as referring to the weight of wood of the individual portions of each item in the shipment made of wood of the species concerned each individual annotated species of Dalbergia or Guibourtia present in the items in the shipment. In other words, the 10 kg limit is to be assessed only against the individual weights of the individual portions of wood of Dalbergia/Guibourtia each individual annotated species contained in each item of the shipment, and not against rather than against the total weight of the shipment. The total weights present of each individual annotated species are considered individually to determine whether a CITES permit or certificate is required for each individual annotated species, and weights of different individual annotated species are not added together for this purpose.

Correction of the Definition of Transformed Wood in Paragraph 8 of the Interpretation Section of the of Appendices

18. The working group notes that the English text for the definition 'Transformed wood' in Paragraph 8 of the Interpretation Section of the Appendices is not consistent with the text of the French and Spanish versions. The English text also varies from the source text, Harmonized System code 44.09. The working group proposes revision to paragraph 8 of the Interpretation Section of the Appendices as follows:

Transformed wood

Defined by Harmonized System code 44.09: Wood (including strips, friezes for parquet flooring, not assembled), continuously shaped (tongued, grooved, rebated, champhered, ∓V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed.¹

Inclusion of the Definitions in Resolution Conf. 10.13 (Rev. CoP18) Implementation of the Convention for Tree Species in the Interpretation Section of the Appendices.

19. To facilitate interpretation of # series annotations that apply to tree species, the working group proposes that the definitions of wood and wood products currently located in paragraph c) of Resolution Conf.10.13 (Rev. CoP18) on *Implementation of the Convention for Tree Species*, for Logs, Sawn wood, Veneer Sheets, and Plywood, also be included in paragraph 8 of the Interpretation Section of the Appendices.

Concerning Terms of Reference Part c) *to conduct any work related to annotations directed to it by the Conference of the Parties, the Standing, Animals or Plants Committee*

20. The work related to annotations directed to the working group by the Plants Committee contained in Documents PC25 Doc.38 and PC25 Sum. 3 is addressed in paragraph 8 of the present document. No further work related to annotations was received from the Conference of the Parties, the Standing, Animals or Plants Committees.

Recommendations

21. The working group recommends that the Standing Committee endorse the amendments proposed by the working group to Annotation #1, Annotation #4, and Annotation #14 described in paragraph 6 of the present document, and the proposed amendment to Annotation # 14 described in paragraph 15.
22. The working group also recommends that the Standing Committee note the advice provided by the working group in paragraphs 7 through 9 and in paragraph 20 of the present document.
23. The working group recommends that the Standing Committee endorse the proposed amendments to: paragraph 5 of the Interpretation Section of the CITES Appendices, and to the parenthetical annotation to Orchidaceae in Appendix I (Annex 1 to the present document); to paragraph 7 of the Interpretation Section of the Appendices (Annex 2 to the present document); to the definition of Ten (10) kg per shipment (Annex 3 to the present document), and the proposed correction to the definition of transformed wood in paragraph 8 of the Interpretation Section of the Appendices (Annex 4 to the present document), and ask the Secretariat to submit a document to CoP19 proposing that the Parties adopt the amendments.
24. Understanding that the working group has not achieved consensus on all of the work directed to it in Decision 16.162 (Rev. CoP18), the working group requests that the Standing Committee ask the Secretariat to revise Decision 16.162 (Rev. CoP18) deleting those directives that have been accomplished, and to submit a revised Decision to CoP19, proposing its adoption by the Conference of the Parties.

¹ <https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2018/html/00/ch44-eng.html>

Amendment to paragraph 5 of the Interpretation Section of the Appendices,
and to Appendix I, the parenthetical annotation to Orchidaceae

5. As none of the species or higher taxa of FLORA included in Appendix I is annotated to the effect that its hybrids shall be treated in accordance with the provisions of Article III of the Convention, this means that artificially propagated hybrids produced from one or more of these species or taxa may be traded with a certificate of artificial propagation, and that seeds and pollen (including pollinia), cut flowers, seedling or tissue cultures obtained *in vitro*, ~~in solid or liquid media~~, transported in sterile containers of these hybrids are not subject to the provisions of the Convention.

ORCIDACEAE

Orchids

For all of the following Appendix-I species, seedling or tissue cultures obtained *in vitro*, ~~in solid or liquid media~~, and transported in sterile containers are not subject to the provisions of the Convention only if the specimens meet the definition of 'artificially propagated' agreed by the Conference of the Parties.

Amendment to Paragraph 7 of the Interpretation Section of the Appendices

7. When a species is included in Appendices I, II or III, the whole, live or dead, animal or plant is **always** included. In addition, **all parts and derivatives thereof are also included unless**, for animal species listed in Appendix III and plant species listed in Appendix II or III, ~~all parts and derivatives of the species are also included in the same Appendix unless~~ the species is annotated **with the symbol # followed by a number** to indicate that only specific parts and derivatives are included. The symbol # followed by a number placed against the name of a species or higher taxon included in Appendix II or III refers to a footnote that indicates the parts or derivatives of animals or plants that are designated as 'specimens' subject to the provisions of the Convention in accordance with Article I, paragraph (b), subparagraph (ii) or (iii).

Amendment to Paragraph 8 of the Interpretation Section of the Appendices.
Definition of 10 (ten) Kg Per Shipment

Ten (10) kg per shipment

*For the term "10 kg per shipment", the 10 kg limit should be interpreted as referring to the weight **of wood** of the ~~individual portions of each item in the shipment made of wood of the species concerned~~ **each individual annotated species of genus Dalbergia or Guibourtia present in the items in the shipment**. In other words, ~~t~~ **The 10 kg limit is to be assessed only against the individual weights of the individual portions of wood of Dalbergia/Guibourtia each individual annotated species contained in each item of the shipment, and not against rather than against the total weight of the shipment. The total weights present of each individual annotated species are considered individually to determine whether a CITES permit or certificate is required for each individual annotated species, and weights of different individual annotated species are not added together for this purpose.***

Amendment to Paragraph 8 of the Interpretation Section of the Appendices. Definition of Transformed Wood

Transformed wood

Defined by Harmonized System code 44.09: Wood (including strips, friezes for parquet flooring, not assembled), continuously shaped (tongued, grooved, rebated, champhered, ∗V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed.