

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

Sixth Meeting of the Conference of the Parties

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Interpretation and Implementation of the Convention

RETROSPECTIVE ISSUANCE OF CITES DOCUMENTATION

This document has been prepared by the Netherlands.

THE PROBLEM

Every year a number of shipments of CITES specimens is known to be traded without proper CITES documents.

In several cases importing countries too easily accept the import of shipments with documents that are not fully in conformity with the provisions of the Convention, in other cases exporting countries too easily issue export documents, re-export documents and certificates, both without proper inspection of the shipments.

Of particular concern is the fact that exporting countries issue export documents for shipments after the shipment has actually been exported: the retrospective issuance of CITES documents and also statements given retrospectively about shipments that were exported without being inspected on export.

This retrospective issuance is promoted by some traders and seems to become an accepted practice in some exporting as well as importing countries.

Several examples of illegal shipments illustrate that too lenient an attitude of Parties in this respect may set precedents with a serious negative effect on enforcement procedures by Party states and thus open loopholes for illegal trade that impede the aims of the Convention.

EXAMPLES

1. Several shipments of cacti from South American countries to Europe were seized because they contained wild plants, whereas the export document stated that the plants were artificially propagated.

In one case the Management Authority of the exporting country initially stated that the plants were indeed artificially propagated, although they did not inspect the shipment on export. Such statements given by the exporting country seriously disturb legal procedures in the importing country and might result in release of the seized shipment. The consequence of this is a weakening of control activities by the importing

countries because the result of the legal procedure is not decided by the actual contents of the shipment but by the documents and/or statements of the exporting country. Future seizures will then become impossible. The importing country can consequently of course not refuse to issue re-export documents for these plants as being artificially propagated. In this way, it seems of no use to keep cacti in the appendices of the Convention any longer. Only after considerable efforts of the Secretariat and the authorities of the importing country, in consultation with the authorities of the exporting country, was this case brought to a good end.

2. Several shipments of reptile skins were seized because the required export/re-export documents were not available. A re-export certificate was retrospectively presented and even confirmed by the claimed country of origin. Although the shipments contained evidence that they did not originate from the claimed country of origin, the court compelled the release of the seized shipments. Consequently, enforcement officers in the importing country become much more prudent in taking action against illegal shipments, particularly those with a high commercial value, because one can expect a formally "valid" export document to turn up afterwards.
3. A shipment of crocodylian skins was brought into transit in a freeport and traders applied for an export permit in at least one South American country where the species does not occur in exploitable numbers. In this case, it is known that the export permit was refused. It is not known where the shipment went, but it is clear that some traders attempt to get export documents retrospectively for obvious illegal shipments and that some of them succeed in this.
4. Several shipments of parrot species were seized because they were exported by countries where the species does not occur in exploitable numbers. Parrots were seized which were claimed to be captive-bred, which were exported by countries with an export ban, with forged documents and without documents.

The regular occurrence of such attempts demonstrates that there is a need for Parties to be more careful in the issuance of export and re-export documents and to be more strict in the acceptance of such documents.

5. Traders attempt to evade inspection of shipments on exportation and try to evade the relinquishment of the document on importation, so that they can use the document for several shipments.
6. Traders apply for the replacement of a "lost" pre-Convention certificate and use the old document for another animal.
7. Traders claim to be a Scientific Institute to get an export permit for species from countries that restrict the export to that purpose.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Retrospective Issuance of Permits and Certificates

RECALLING that Articles III, IV and V of the Convention provide that trade in any specimen of a species included in its appendices requires the prior grant and presentation of the relevant document;

AWARE of the fact that many consignments involving specimens of the species listed in the Convention appendices are in international trade without this clear condition being met;

RECALLING that Parties are obliged, under Article VIII, paragraph 1(b), of the Convention, to provide for the confiscation or return to the state of export of specimens traded in violation of the Convention;

NOTING that the efforts of importing countries to fulfil their obligations under Article VIII, paragraph 1(b), of the Convention may be seriously obstructed by the retrospective issuance of export or re-export documents for consignments having left the exporting or re-exporting country without such documents, and that declarations about the validity of documents which do not meet the requirements of the Convention are likely to have a similar effect;

CONCERNED about the danger that the retrospective issuance and validation of CITES documents becomes a substitute for their prior issuance and presentation;

CONSIDERING that this practice has an increasingly negative impact on the possibilities for properly enforcing the Convention and leads to the creation of loopholes for illegal trade;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

URGES all Parties to strictly implement the provisions of Articles III, IV and V of the Convention with regard to the issuance and presentation of valid documents prior to the export, import, re-export and introduction from the sea of specimens of the species included in the Convention's appendices; and

RECOMMENDS

- a) that, as a general rule, a Management Authority of an exporting or re-exporting country shall:
 - i) not issue CITES documents retrospectively;
 - ii) not provide (re-)exporters and/or consignees in importing countries with declarations about the legality of exports or re-exports of consignments having left its country without the required CITES documents; and
 - iii) not provide (re-)exporters and/or consignees in importing countries with declarations about the legality of export or re-export documents which at the time of (re-)export/import did not meet the requirements of the Convention;

- b) that, as a general rule, a Management Authority of an importing country, or of a country of transit or trans-shipment, not accept export or re-export documents which were issued retrospectively; and
- c) that exceptions from the recommendations under a) and b) above be made only in cases where the Management Authorities of both the (re-)exporting and the importing countries are, after a thorough investigation at both ends and in close consultation with each other, satisfied:
 - i) that the irregularities (which have occurred) are not to be blamed on the (re-)exporter and/or the importer; and
 - ii) that the (re-)export/import of the consignment concerned is otherwise in compliance with the Convention and the relevant legislation of the (re-)exporting and importing countries.