

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

Sixth Meeting of the Conference of the Parties

Ottawa (Canada), 12 to 24 July 1987

Interpretation and Implementation of the Convention

IMPLEMENTATION OF THE CONVENTION WITH REGARD TO
PERSONAL AND HOUSEHOLD EFFECTS

This document has been prepared by Belgium.

1. Article VII, paragraph 3, provides that the provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects.

However, it limits the scope of that exemption by providing that it shall not apply where:

- a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his state of usual residence, and are being imported into that state; or
- b) in the case of specimens of species included in Appendix II:
 - i) they were acquired by the owner outside his state of usual residence and in a state where removal from the wild occurred;
 - ii) they are being imported into the owner's state of usual residence; and
 - iii) the state where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the Convention applied to such specimens.

2. The legislative technique used for the formulation of Article VII, paragraph 3, is somewhat awkward. It starts off with a general exemption, then excepts certain cases from the exemption and ends with an exception to the exceptions!

From a practical point of view the wording concerned is confusing to say the least.

3. The circumstances applying to the movement of specimens that are personal effects and household goods differ in a number of ways from commercial transactions involving CITES specimens. The most important differences are those related to the character of the two, such as the one-off event of a person accidentally acquiring a specimen in a foreign country's market or (tax-free) shop, versus the routine activities of commercial exporters and importers of goods covered by CITES. The former are not necessarily aware, or made aware, of the existence of the Convention and the implementing legislation of the country they are leaving or returning to. The latter are, or clearly should be, aware of the regulations concerned by virtue of their profession.
4. The discussion at the fourth meeting of the Conference of the Parties on the control of tourist souvenir specimens showed that the implementation of Article VII, paragraph 3, is difficult and can hardly be made more effective. In addition, the issue appeared to be highly controversial. The resulting Resolution Conf. 4.12, contains a number of useful recommendations but has clearly proven not to provide an effective and practical solution to the basic problems. Also, see point 8 below.
5. It is high time something was done about the continuing confusion surrounding the issue. The unsatisfactory situation with regard to the control of personal effects and household goods urgently requires a common and pragmatic approach by the Parties. Such an approach should spring from the aims of the Convention and be within both legal possibilities provided for in Article VII, paragraph 3, and the bounds of possibility of enforcement.
6. As far as the legal possibilities for a practicable solution within the framework of Article VII, paragraph 3, are concerned, the point of departure is as follows:

6.00 Appendix I

- 6.01 Subparagraph (a) of Article VII, paragraph 3, implies that Article III applies to Appendix I personal and household effects, acquired by somebody in any foreign country for import into his country of usual residence.
- 6.02 An export permit or re-export certificate as well as an import permit are therefore required,
- 6.03 unless the pre-Convention exemption applies to the specimens, in which case a pre-Convention certificate (Article VII 2.), issued by the (re-)exporting country, is sufficient.
- 6.04 Captive bred and artificially propagated specimens are treated as Appendix II specimens (Article VII 4.) (see 6.11 and 6.12).
- 6.05 Countries through which the owner travels from the country where he acquired the specimen to his country of usual residence are not to carry out controls.
- 6.06 Article III does not apply to specimens that are personal or household effects which the owner has acquired in his country of usual residence and with which he travels to or through other countries.

6.10 Appendix II

6.11 Subparagraph (b) of Article VII, paragraph 3, implies that Article IV applies to Appendix II personal and household effects acquired by somebody in the country of origin of a species (country where the specimens were taken from the wild) for import into his country of usual residence.

6.12 This means that an export permit should be granted and presented at the time of export and import,

6.13 unless any of the other exemptions (Article VII 2. and 5.) applies, in which case a corresponding certificate should be issued.

6.14 However, the provision under (iii) of subparagraph (b) implies that in case the country of origin does not require the prior grant of export permits before the export of specimens that are personal or household effects, Article IV does not apply!

NB It is this provision that provides the key to the proposed solution.

6.15 Countries through which the owner travels from the country of origin to his country of usual residence are not to carry out controls.

6.16 Article IV does not apply to specimens that are personal and household effects which the owner has acquired in his country of usual residence, in a foreign country which is not the country where removal from the wild occurred, or in a foreign country where removal from the wild occurred but which does not require the prior grant of an export permit for specimens that are personal or household effects.

6.20 Appendix III

6.21 Article V does not apply to Appendix III personal and household effects.

6.30 Live Specimens

With Resolution Conf. 4.12, the Conference of the Parties established that the term "tourist souvenir specimen" should not be applied to live specimens; by analogy it may be taken that live specimens should not be regarded as personal or household effects. It is worth noting that Resolution Conf. 4.12 defines a term which does not figure in the text of the Convention and omits to define the terms that do appear in Article VII, paragraph 3. This is redressed in the proposed new draft resolution on the subject.

7. Proposals

7.1 In the case of Appendix I species, the tourist souvenir trade may in certain cases pose a real threat to the conservation status of populations and therefore Parties should - as requested in point a) of Resolution Conf. 4.12 - fully comply with the requirements of Article III with regard to tourist souvenir specimens and other personal and household effects.

Therefore, countries of origin should ban the sale and export of Appendix I tourist souvenir items under Article III, paragraph 2(a), and importing countries should generally prohibit the import of such items under Article III, paragraph 3(a), with the exception of hunting trophies and leopard skins where their export/import are in accordance with the existing Resolutions of the Conference of the Parties on these specimens (Conf. 2.11 and Conf. 4.13 and 5.13).

These measures would, of course, automatically bring an end to re-exports.

7.2 Appendix II contains species which are not currently threatened with extinction and so-called 'look-alike' species. It is the aim of the Convention to monitor trade in such species and that Parties limit that trade, where necessary, in order to maintain the species throughout their range at a level consistent with their role in the ecosystems in which they occur and well above the level at which they might become eligible for inclusion in Appendix I.

The effectiveness of the monitoring activities concerned depends on what percentage of trade is covered by CITES documents.

In the case of personal effects and household goods in general and for tourist souvenirs in particular there is hardly a basis for properly fulfilling monitoring requirements. It is quite impossible for countries of origin to issue export permits for every single item and - as already indicated in point 3 - for travellers to know for what and where and when documents are required and how to obtain them. As a result reporting takes place on only a fraction of this kind of trade which does not serve any useful purpose.

It is therefore unrealistic to maintain that Appendix II personal and household effects must be subject to CITES controls based on permits and certificates.

The aims of the Convention concerning Appendix II species can be achieved with at least the same and probably a much higher degree of exactitude with far less effort and frustration.

Countries of origin should generally apply the possibility provided by Article VII, paragraph 3(b)(iii) - see point 6.14 above - not to require export permits for dead specimens and parts and derivatives of Appendix II species that are personal or household effects as defined in the attached proposal for a resolution. Instead, they should identify the species subject to this kind of trade and provide the Secretariat with an estimate of the volume thereof as part of their annual reports. Importing Parties should, as a result, not control imports of Appendix II personal and household effects.

8. Resolution Conf. 4.12 (see Annex 2)

8.1 With the above Resolution the Conference of the Parties urged all Parties to:

- a) fully comply with the requirements of Article III with respect to tourist souvenir specimens, and in particular, vigorously control the export and import of Appendix I specimens (including parts and derivatives) whether or not exported or imported as personal effects.

NB It is a clear omission not to refer to the re-export of Appendix I tourist souvenir specimens which is not exempted from Article III either.

8.2 All Parties are further urged to:

b) make their best efforts to comply fully with the purposes of the Convention with respect to Appendix II tourist souvenir specimens and in particular control export and import of specimens of those species which are likely to be adversely affected by heavy trade.

NB For all the well-known reasons this is a request to the Parties that cannot be met with any reasonable degree of success.

8.3 Point c) urges Parties which regulate the export or import of Appendix II tourist souvenir specimens to communicate to the Parties through the Secretariat which species are so regulated.

NB This system proved not to work. Most Parties did not communicate their regulations in question to the Secretariat so that other Parties are still unaware of the overall situation. It would have been better to request the Parties which do not regulate the export or import of Appendix II tourist souvenir specimens to inform the other Parties thereof so that in the absence of such information other Parties can take it that this kind of trade is regulated.

8.4 In point d), importing countries experiencing problems with imports of tourist souvenir specimens are urged to notify the relevant exporting countries and the CITES Secretariat accordingly.

8.5 Point e) contains a useful recommendation. It urges that Parties in collaboration with national and international tourist agencies, carriers and other relevant bodies take all possible steps to ensure that tourists travelling abroad are made aware of the import and export controls that are or may be in force.

8.6 In point f) the Technical Committee is given the task to consider ways of assisting any Party which informs the Committee of difficulties in the application of the Resolution.

8.7 Point a) - on page 2 of Resolution Conf. 4.12 - recommends that a person in possession of Appendix II tourist souvenir specimens covered by an export permit be afforded the exemption for personal effects given by Article VII when entering states other than the state of usual residence or when leaving states other than the state of export.

NB This restriction to tourist souvenir specimens covered by an export permit is clearly inappropriate. As indicated in point 6.16, in many cases an export permit is not required and, as indicated in point 6.15, countries of "transit" are not to control personal and household effects at all.

8.8 The recommendation under b) is discussed in point 6.30 above.

8.9 On the basis of the above, it is clear that Resolution Conf. 4.12 cannot be maintained in its present form. The most practical way of solving this, is to incorporate its useful recommendations, where necessary in an amended form, in a new and comprehensive resolution on the control of personal and household effects and to revoke Resolution Conf. 4.12. The same procedure was followed with regard to Resolution Conf. 4.11 with the adoption of Resolution Conf. 5.11 concerning pre-Convention specimens.

9. Final remarks

This document and the attached proposal for a resolution (Annex 1) are based on a rather similar proposal which was submitted to the June 1984 meeting of the Technical Committee in Brussels. On that occasion, because of a lack of time, the proposal could not be discussed in detail and the issue was dropped.

In view of the obvious lack of progress made in the control of personal and household effects and the continuing confusion surrounding the issue, a common, realistic and pragmatic approach by the Parties is now urgently required.

The adoption of the proposal for a resolution contained in Annex 1 would establish such an approach within the legal possibilities provided by the Convention.

It would allow a better allocation of enforcement manpower in both (re-)exporting and importing countries by concentrating control efforts on Appendix I personal and household effects and live Appendix I and II specimens accompanying travellers, and by substituting such efforts with regard to Appendix II personal and household effects by a simpler and yet more effective method to achieve the aims of the Convention.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Implementation of the Convention with Regard to
Personal and Household Effects

CONSIDERING that Article VII, paragraph 3, of the Convention lays down the conditions under which specimens that are personal or household effects are exempt from the provisions of Articles III, IV and V;

CONSIDERING that the Convention does not define the term "personal or household effects";

RECOGNIZING that the sale of specimens of Appendix I species as tourist souvenirs may represent a serious threat to the survival of populations of such species;

RECOGNIZING further that the implementation of the exemption of Article VII, paragraph 3, has, particularly with regard to Appendix II specimens, given rise to serious enforcement difficulties; that the current enforcement of the Convention with regard to personal and household effects is far from effective; and that, therefore, a common, realistic and pragmatic approach by the Parties is urgently required;

NOTING that Resolution Conf. 4.12, adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983), only addressed part of the problems related to the implementation and enforcement of Article VII, paragraph 3, that its recommendations did not lead to an improvement of the situation and that it should, therefore, be replaced by a more comprehensive and practical set of recommendations;

AWARE of the need to ensure that the public is better informed of CITES controls and domestic legislation relating to trade in endangered species;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

DECIDES to revoke Resolution Conf. 4.12, adopted at its fourth meeting; and

RECOMMENDS

a) that for the purposes of Article VII, paragraph 3, of the Convention, the term "personal or household effects" include the term "tourist souvenir specimens" and be applied to dead specimens and parts and derivatives (i.e. not to live specimens) of Appendix I and II species as well as to all specimens of Appendix III species, which:

i) are accompanying travellers or are contained in their personal luggage;

ii) are part of the removal of effects of individuals settling in another country; or

iii) are small consignments of an occasional nature for personal or family use by the consignees and which have been sent to them without payment, consideration or reward of any kind being required of them;

provided that in all cases from the quantity, kind, quality or any other circumstances there is no indication that the specimens are being used for any commercial purposes;

- b) that Parties fully implement Article III of the Convention with regard to Appendix I personal and household effects and that in that context:
 - i) countries of origin prohibit the sale and, under paragraph 2 (a) of that Article, the export of tourist souvenirs derived from specimens of Appendix I species taken or collected from the wild; and
 - ii) importing countries prohibit the import of such tourist souvenirs under paragraph (a) of that Article;
- c) that the recommendations under b) i) and ii) not apply to hunting trophies, leopard skins and other specimens of Appendix I species where their export and import are in accordance with existing or future Resolutions of the Conference of the Parties on such specimens (currently Resolutions Conf. 2.11, Conf. 4.13 and Conf. 5.13);
- d) that countries of origin generally apply the possibility provided by Article VII, paragraph 3(b)(iii), and not require permits for the export of Appendix II personal or household effects but instead identify the dead specimens and parts and derivatives subject to this kind of trade and provide the Secretariat with an estimate of the volume thereof as part of their annual reports;
- e) that, as a consequence of recommendation d) and in accordance with Article VII, paragraph 3, Parties do not control imports of Appendix II personal and household effects;
- f) that, in addition, Parties generally apply the exemption of Article VII, paragraph 3, i.e. where:
 - i) the owner travels through their countries from the foreign country where he acquired Appendix I or II personal or household effects to his country of usual residence;
 - ii) the owner has acquired Appendix I or II personal or household effects in his country of usual residence and travels with them to or through their countries;
 - iii) the owner has acquired Appendix II personal or household effects in a country which is not the country of origin; or
 - iv) the personal or household effects derive from specimens of Appendix III species;
- g) that Parties, in collaboration with national and international tourist agencies, carriers and other relevant bodies, take all possible steps to ensure that tourists travelling abroad are made aware of the import and export controls that are or may be in force with respect to items derived from endangered species and to live animals and plants; and
- h) that Parties which, contrary to the above recommendations, wish to continue to regulate the export and import of Appendix II personal and household effects inform the Parties thereof through the Secretariat before 31 October 1987, or as soon as they decide to (re)introduce such regulations.

Control of Tourist Souvenir Specimens

CONSIDERING that Article VII, paragraph 3, of the Convention exemption does not apply to Appendix I specimens that are souvenirs being imported by a person returning to his state of usual residence;

CONSIDERING further that Article VII, paragraph 3, of the Convention exemption does not apply to Appendix II specimens that are souvenirs being imported by a person returning to his state of usual residence where the specimens were taken from the wild in a state requiring the prior grant of export permits before the export of such specimens;

NOTING that for Parties other than the exporting and importing Parties such Appendix II specimens are, under Article VII, exempt from CITES regulation;

RECOGNIZING that parts, products and derivatives of species listed on Appendices I and II continue to be widely sold as tourist souvenir specimens;

RECOGNIZING also that export permits are frequently not required by exporting countries;

ACKNOWLEDGING that sale of tourist souvenir specimens can in many cases form a substantial part of a trade which could threaten a species and the trade;

ACKNOWLEDGING further that there is widespread public ignorance of CITES controls and domestic legislation relating to trade in endangered species;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

URGES

- a) that all Parties comply fully with the requirements of Article III of the Convention with respect to tourist souvenir specimens, and in particular, vigorously control the export and import of Appendix I specimens (including parts and derivatives) whether or not exported or imported as personal effects;
- b) that all Parties make their best efforts to comply fully with the purposes of the Convention with respect to Appendix II tourist souvenir specimens and in particular control export and import of specimens of those species which are likely to be adversely affected by heavy trade;
- c) that Parties which regulate the export or import of Appendix II tourist souvenir specimens communicate to the Parties through the Secretariat which species are so regulated;
- d) that importing countries experiencing problems with imports of tourist souvenir specimens notify the relevant exporting countries and the CITES Secretariat accordingly;

- e) that Parties in collaboration with national and international tourist agencies, carriers and other relevant bodies take all possible steps to ensure that tourists travelling abroad are made aware of the import and export controls that are or may be in force; and
- f) that the Technical Committee consider ways of assisting any Party which informs the Committee of difficulties in the application of this Resolution; and

RECOMMENDS

- a) that a person in possession of Appendix II tourist souvenir specimens covered by an export permit be afforded the exemption for personal effects given by Article VII when entering states other than the state of usual residence or when leaving states other than the state of export; and
- b) that the term "tourist souvenir specimen" apply only to personal and household effects acquired outside the owner's state of usual residence and be not applied to live specimens.