

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

Seventh Meeting of the Conference of the Parties

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Interpretation and Implementation of the Convention

TREATMENT OF GENUINE RE-EXPORT CERTIFICATES FOR ILLEGAL SPECIMENS

This document has been prepared and is submitted by the Secretariat.

INTRODUCTION

Document Doc. 7.20 "Review of Alleged Infractions", Case I2, explains in detail a problem with which the Secretariat was confronted. This is just one example of a more general problem which must be considered by the Conference of the Parties, to provide guidance to the Secretariat, since neither the text of the Convention or any of the Resolutions of the Conference of the Parties deals with it.

Without such guidance, the Secretariat is placed in a very difficult position, having to choose between its eagerness to prevent trade in illegal specimens and the desire not to penalize Parties which have not violated the Convention although they have unknowingly accepted specimens illegally acquired at an earlier stage.

PROBLEM

- a) An export permit from Country A is submitted to a Country B for the import of a commercial shipment of Appendix II specimens.
- b) Country B requests from the CITES Secretariat confirmation of the validity of the permit issued by Country A.
- c) The CITES Secretariat recommends that Country B reject the permit issued by Country A either because it is clearly a forged document or because Country A, when consulted, has declared that the document was not valid. The Secretariat is not informed of the decision by Country B.
- d) At a later date, Country D requests confirmation from the Secretariat of the validity of a re-export certificate, issued by Country C, which indicates Country A as the country of origin of the specimens concerned and the number of the export permit issued by Country A as mentioned under a) above.
- e) When questioned by the Secretariat Country C indicates that it issued its re-export certificate based on a re-export certificate issued by Country B that shows the number of the original export permit from Country A.

What should be the answer of the Secretariat to the request of Country D?

Before presenting the options, it must be pointed out that:

- a) Country B has not followed the Secretariat's recommendation, has authorized the import and has issued a re-export certificate for specimens illegally exported from Country A.
- b) Country C has accepted the re-export certificate from Country B as it was apparently perfectly valid. It did not request confirmation from Country A or the Secretariat.
- c) Country C has acted in accordance with the Convention, having trusted Country B and accepted an apparently genuine document. It cannot be criticized for not having requested confirmation of the validity of the documents or of the export from Country A as the Convention does not provide for such checking and as it cannot be recommended that all CITES documents be confirmed by the Secretariat before acceptance, even if this is more and more a current practice.

OPTIONS FOR ANSWER TO COUNTRY D

- a) As the specimens were exported illegally from Country A, the answer could be to refuse the re-export certificate from Country C and the import of the specimens.

In such a case, Country C, and consequently the owner of the specimens, would be penalized and may lose a considerable sum of money, without having committed any infraction of CITES. The specimens were imported legally into Country C and the issuance of a re-export certificate was legitimate.

In addition, the owner of the specimens may sue Country C if it does not issue a re-export certificate to him for specimens he has imported with the full agreement of that country.

- b) In order not to penalize Country C for an infraction committed by Country B, the answer could be to accept the re-export certificate and the shipment.

In such a case, illegally acquired specimens would become legal and they would have been "laundered".

GUIDANCE REQUIRED

Should the CITES Secretariat answer Country D with option a) or option b) above?

The Secretariat does not feel that a resolution is necessary, but a clear answer is essential for it and all Parties involved in import/export transactions.