

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

Eighth Meeting of the Conference of the Parties

Kyoto (Japan), 2 to 13 March 1992

Interpretation and Implementation of the Convention

RECONSIDERATION OF "PRIMARILY COMMERCIAL PURPOSES"

This document is submitted by Botswana, Malawi, Namibia and Zimbabwe.

Background

1. Fundamental to CITES are the three words "primarily commercial purposes". They appear in Article III, paragraphs 3.(c) and 5.(c), of the Convention and affect the entire foundation of the treaty.
2. A specimen of an Appendix-I species, live or dead, may not be imported into Party States unless "the specimen is not to be used for primarily commercial purposes".
3. Resolution Conf. 5.10 has attempted to define the term "primarily commercial purposes". Wijnstekers¹ notes that the Resolution itself acknowledges that such a definition can not be given. He further remarks that "The term *not to be used for primarily commercial purposes* can not be applied in general and can, in addition, hardly be defined. One might therefore say that it should not have been used."
4. Wijnstekers¹ acknowledges that the nature of the transaction between importer and exporter may well be commercial but maintains this is not relevant in terms of Article III, paragraph 3.(c): it is the future of the product from the time of import onwards that should be for primarily non-commercial purposes. Whilst Wijnstekers' interpretation is undoubtedly correct, such fine points serve no useful purpose under the Convention.
5. Superficially, the principle appears above reproach. When a species is on the brink of extinction, commerce should not be allowed to precipitate its demise.
6. The issue, however, is not so simple. Instead of focusing on "commercial trade", it is necessary to begin by considering sustainable use. The principles of sustainable use are enshrined in numerous current documents (see references 2,3,4) and form an accepted basis for development which is compatible with environmental conservation.
7. In many cases, sustainable use may not imply direct exploitation of a species; it may arise from the products of natural mortality, management to maintain habitats, and many other sources. However, there should be no stigma attached to direct exploitation itself if it is sustainable and carried out within society's accepted norms of animal welfare.
8. Sustainable use leads inevitably to commercial trade - if not internationally, certainly in domestic markets. **It would be pointless to talk about sustainable use if it were not for purposes of commercial trade.** The draft resolution in document Doc. 8.48 (Rev.) states that commercial trade should be viewed as beneficial to wild flora and fauna wherever the returns so derived are reinvested to maintain or increase wild populations.
9. This raises the question whether there are any conditions of endangerment of species under which all commercial trade should be prohibited. As long as it is sustainable or causing an increase in the species, it would appear beneficial. Only where it is non-sustainable and causing declines in species populations should it be restricted.
10. The proponents of this draft resolution perceive several fundamental problems with CITES caused by the focus of the Convention on commercial trade rather than on sustainable use:

- a) Firstly, under CITES, species are viewed primarily in two simple categories: those which are threatened with extinction (in which commercial trade should be banned) and those which are not yet threatened with extinction (in which commercial trade can be permitted).

This gives rise to a "binary" system where all species are either in the first category or the second category - instead of in the continuum in which they exist in the real environment, where all are threatened to a lesser or greater extent.

- b) Secondly, because of a failure to define the term "threatened with extinction" objectively, Appendix I lists a multiplicity of species, ranging from those which are not endangered to those which are already extinct.

Because every species listed in Appendix I is effectively removed from commercial trade, this gives rise to frequent situations where CITES militates against legitimate sustainable use of species.

- c) Thirdly, there is a tendency to assume that "commercial" trade must always be trade on a large scale and therefore incompatible with endangered species. The Convention tends to prejudice those successful examples of conservation based on small-scale commercial trade arising from sustainable use. Whilst the commerce may appear insignificant on an international scale, it may be very important in the livelihood of rural communities and it may be the determining factor in species survival.

11. There are compelling arguments for international co-operation in controlling trade. The greater the endangerment of species the greater should be the effort to make trade sustainable. But there are few logical arguments justifying the attempted removal of the inherent economic value of natural resources.

12. This draft resolution seeks to identify the fundamental flaw in the use of the term "primarily commercial purposes". Recognizing that amendments to the Articles of the Convention are not easily achieved, the draft resolution seeks to mitigate the prejudicial nature of the clause by suggesting that it should only be applied when the "commercial purposes" can be clearly demonstrated to be non-beneficial to the species concerned.

References

Wijnstekers, Willem (1990). *The Evolution of CITES*. Note 33 ad(c), page 20. CITES Secretariat, Lausanne, Switzerland. 284 pp.

Allen, Robert (1980). *How to Save the World; Strategy for World Conservation*. Kogan Page, London. 150 p.

World Commission on Environment and Development (1987). *Our Common Future*. Oxford University Press. 400 p.

IUCN (1990). Conservation of wildlife through wise use as a renewable natural resource. Resolution of the 18th Session of the IUCN General Assembly, Perth, Australia, 28 Nov-5 Dec 1990.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Reconsideration of "Primarily Commercial Purposes"

NOTING that Article II, paragraph 1, of the Convention states that trade in specimens of Appendix-I species must be subject to particularly strict regulation, but does not preclude such trade;

NOTING, however, that paragraphs 3(c) and 5(c) of Article III state that the importation of such specimens should not be for "primarily commercial purposes";

AWARE that the interpretation of "primarily commercial purposes" is fundamental to the Convention;

OBSERVING that Resolution Conf. 5.10 adopted at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985) attempts to define the term, but interprets it in a most restrictive sense which is not necessarily in the interests of Appendix-I species;

CONVINCED that trade based upon sustainable use of species can be beneficial for even the most endangered species;

AWARE that trade and conservation must be directly linked in the future in order to justify trade against a growing criticism of wildlife use for commercial purposes;

CONCLUDING that the restrictive use of the term "primarily commercial purposes" in Article III may not serve the goals of the Convention positively;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that a Management Authority of the State of import interpret the term "not to be used for primarily commercial purposes" as being applicable only to those cases of commercial trade which are clearly non-beneficial to the species concerned.