

Interpretation and Implementation of the Convention

REVISION OF THE DEFINITION OF 'PRIMARILY COMMERCIAL PURPOSES'

1. This document has been submitted by Namibia.

COMMENTS OF THE SECRETARIAT

2. The proposal in the Annex is simply to amend an existing Resolution (Conf. 5.10). It therefore does not require a preamble unless this is also to be included in the existing Resolution.
3. Inasmuch as the aim is to interpret the Convention in a way such as to allow trade in specimens of Appendix-I species if it is beneficial to their conservation, the Secretariat has sympathy for the ideas embodied in the proposed amendment to Resolution Conf. 5.10.
4. The approach used is to specify circumstances under which trade shall not be considered as "for primarily commercial purposes" in accordance with Article III, paragraph 3(c), of the Convention. However, Article III.3(c) refers specifically to the purpose of the import. In the proposed general principles, the only thing said about the purpose of the import is that specimens will be used in a cultural and traditional manner and will not be re-exported.
5. The Secretariat is concerned that, if accepted, this might permit import to take place for clearly commercial purposes (adopting the normal use of this term) contrary to the normal understanding of the provisions of the Convention at the time it was signed.

Doc. 10.38 (Rev.) Annex

Revision of the Definition 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;

RECALLING the recognition by the Conference of the Parties at its eighth meeting (Kyoto, 1992), in Resolution Conf. 8.3, that trade can be beneficial for even the most endangered species as a means of obtaining funds for their conservation and providing incentives to maintain their habitats, if the trade is carried out at levels that are not detrimental to the survival of the species in question;

CONCERNED that species in Appendix I may not readily recover in conservation status and thus meet the criteria for transfer to Appendix II unless additional sustained investment in their conservation and management can be secured;

CONCERNED further that such species may not be able to benefit from even the most restricted forms of trade, designed purely to generate revenue for conservation purposes under the definition of 'primarily commercial purposes' adopted in Resolution Conf. 5.10; and

CONCLUDING that a restrictive interpretation of the term 'primarily commercial purposes' in Article III may not serve the goals of the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

DECIDES to amend Resolution Conf. 5.10 in the following manner:

- paragraph 2 of the General Principles is amended by adding, after the words 'purpose is', the word 'primarily';
- the text of paragraph 3 of the General Principles is revoked and replaced by the following: "The term 'commercial purposes' should be defined by the country of import, in the case of any transaction that is not wholly 'non-commercial', in the light of its benefit to conservation. Such benefit shall be determined after consultation with the exporting country."

The following new paragraph 5 is added to the General Principles;

"5. In the case of specimens of an Appendix-I species resulting from implementation of routine conservation and management programmes, including the recovery of specimens as a result of natural mortality, where the specimens are owned and controlled by a Government of a Party to the Convention, trade from the owning Party to another Party shall not be interpreted as being for 'primarily commercial purposes' in spite of commercial aspects if it is completed under the following conditions:

- a) that the transaction is completed under direct and full control of the governments of both the exporting and importing countries and is open to inspection by the CITES Secretariat or by any body agreed to by both governments and the CITES Secretariat;
- b) that the government of the exporting country, once the expenditures directly related to the transaction have been deducted, allocate the totality of the income resulting from the transaction to conservation and management programmes for the species concerned within its territory and within the full range of the said species: to conservation and protection of the

habitats of the species concerned; to education and awareness programmes related to conservation of wildlife; and to the development of communities directly involved in management and conservation programmes;

- c) that the country of importation certifies that the specimens so imported will be used for cultural purposes and in a traditional manner and will not be re-exported;
- d) that the government of the exporting country certifies that the transaction will not be prejudicial to the species but will enhance the status of the said species; and
- e) that the transaction receives prior approval from the Standing Committee."

The following example is added to the Examples in the Annex to the Resolution:

"g) Exportation/importation of stocks:

Stocks of specimens of species listed in Appendix I of the Convention have been accumulated over the years, by governments, as a result of their anti-poaching or other management operations. One question of importance is: is it possible to use these stocks for conservation purposes? As an exception to the rule, trade in such specimens should be allowed, if it is established that the transaction will be beneficial to conservation and if the transaction is completed under very strict guidelines and control mechanisms."

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 NOTES IN SUPPORT OF AMENDING RESOLUTION CONF. 5.10
 DEFINITION OF 'PRIMARILY COMMERCIAL PURPOSES'

Background

1. Article III, paragraph (c), requires that the Management Authority of the country of import may only issue an import permit for an Appendix-I specimen when 'satisfied' that the specimen will not be used for 'primarily commercial purposes' – after the Scientific and Management Authorities of the producer country have already certified that the export of the specimen will not be detrimental to the survival of the species and the specimen has been obtained according to the laws of the range State.
2. Trade may not take place even if the range State has certified that the export will be beneficial to the survival of the species. This is one of the equity issues that concern Parties and which has been pointed out in the recent review of the effectiveness of the Convention. It is difficult to accept that, notwithstanding competent rulings by the Authorities in the producer State, the final decision lies with the importing country.
3. The present narrow interpretation of the term 'primarily commercial purposes', is inconsistent with the intent of Resolution Conf. 8.3. Having accepted that trade can be beneficial to conservation, the retention of the phrase 'primarily commercial purposes' indicates that there still remains a prejudice against trade and a stigma attached to trade. If the purpose of import contains the slightest element of commercial intent, Resolution Conf. 5.10 interprets this as being for 'primarily commercial purposes' and trade is prohibited. Thus Resolution Conf. 8.3 cannot be implemented. In its present form, Resolution Conf. 5.10 is unable to accommodate the concept that Parties may wish to conduct trade for primarily conservation purposes and interprets this as detrimental! Such interpretation prevents conservation agencies from using trade as a conservation tool, and works against conservation.
4. To some extent, however, the Parties have already provided a precedent for the principle recommended in this draft resolution. At the ninth meeting of the Conference of the Parties (Fort Lauderdale, 1994), it was agreed that Peru might trade in stocks of vicuna wool that were being held by the Management Authority. The Parties accepted the argument that Peru would use the returns from trade for vicuna conservation.

Consequences of Appendix-I Listing for Status Recovery

5. Once a species is listed in Appendix I, usually by international consensus but sometimes against the wishes of a range State, the range State alone becomes responsible for ensuring the recovery of the species within its borders. CITES does not provide financial support for recovery programmes and the listing of the species in Appendix I forecloses options to the range States for providing incentives for increased investment in species recovery.
6. Most developing countries are not able to invest sufficiently in the conservation, protection and recovery of species and populations that have been listed in Appendix I, having higher priorities for development – a reality recognized by the Convention on Biological Diversity (preambular paragraphs 16-19). Experience has shown that, after listing in Appendix I, species

populations seldom show significant recoveries unless substantial incentives for their conservation are established. Even when incentives exist, resources from conventional sources are often inadequate or have to be redirected from elsewhere. Conservation agencies are not able, however, to use trade as an incentive or the revenues from trade for recovery programmes, even though the conservation benefits of trade are well recognized (see Resolution Conf. 8.3). Trade under appropriate circumstances could be the only significant source of new investment in conservation.

7. Given the development needs and socio-economic priorities of developing countries, the only significant resources available to species recovery programmes are from external donors. While the efforts and support of the international community are greatly appreciated in this context, range States of Appendix-I species should be assisted to become less dependent on external support through the mobilization of their own resources. It is also apparent that the amount of funding from international sources is seldom sufficient, is subject to geopolitical considerations as much as conservation needs and is not available for all but a few prominent species. Even where substantial amounts are provided for conservation of charismatic megafauna, such funds seldom lead to real capacity building and empowerment of range-State agencies. Where external aid clearly cannot solve conservation problems, range States should not be further limited in their options on the basis of outdated perceptions that trade can only be detrimental.

Recommendations

8. Many CITES Management Authorities and other government conservation agencies own and are responsible for the safe keeping of substantial stocks of Appendix-I species, in some cases at considerable cost. Such stocks represent capital that is urgently needed for conservation. The proposed revision to Resolution Conf. 5.10 seeks to establish a means in exceptional cases to allow Appendix-I stocks to be traded internationally for primarily conservation purposes. A precedent was established at the ninth meeting of the Conference of the Parties for vicuna wool and the draft resolution in document Doc. 10.38 Annex seeks only to formalize a procedure that has already been employed.
9. The option should be available to conservation agencies to convert stocks of Appendix-I specimens to conservation capital, provided that mechanisms are established to reinvest trade revenues into conservation programmes under international supervision. Some Parties to CITES wish to implement this option and expect CITES to be interpreted and managed by the Conference of the Parties in a manner that accommodates their conservation needs and does not aggravate their conservation problems.

10. The Conference of the Parties to CITES is requested to agree in principle to the use of accumulated stocks for conservation purposes and to develop specific trade controls for this purpose. This would be achieved if the Conference of the Parties at its tenth meeting

agreed to the proposed amendment to Resolution Conf. 5.10 and requested the Standing Committee, with the Secretariat, to develop the safeguards required for the implementation of the amended Resolution.