

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

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Thirteenth meeting of the Conference of the Parties  
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

Trade control and marking issues

COMMERCIAL TRADE IN APPENDIX-I SPECIES

1. This document has been submitted by Israel.
2. This proposal is to clarify paragraph 4 of Resolution Conf. 5.10, since the current language of this paragraph apparently allows for commercial trade in specimens of Appendix-I species to occur, that could be interpreted as non-commercial. This apparent loophole has been used by a number of Parties, and a clarification by the Conference of the Parties is therefore called for.
3. Resolution Conf. 5.10 clarifies that under Article III of the Convention, permits for the trade in specimens of Appendix-I species may be issued only if certain conditions are met, including that the Management Authority of the State of import is satisfied that the specimen will not be used for commercial purposes.
4. Resolution Conf. 5.10 and its Annex clearly indicate the intention of the Conference of the Parties on how to interpret Article II, paragraph 1, and Article III of the Convention, so that trade in specimens of Appendix-I species must only be for non-commercial purposes, and that this term should be interpreted as broadly as possible.
5. If a narrow interpretation of paragraph 4 of Resolution Conf. 5.10 is made, then it can be interpreted to mean that only the nature of the final use of the specimen needs to be taken into account by the importing Party when determining if the trade is 'non-commercial', and not the nature of the transaction itself. This is contrary to the rest of the Resolution and its Annex, which explain that Parties should not allow trade in specimens of Appendix-I species when the international transaction itself is of a commercial nature.
6. Clarification of paragraph 4 of Resolution Conf. 5.10 is needed to close this apparent loophole.
7. The current language of Resolution Conf. 5.10, paragraph 4, is as follows:
  4. *Article III, paragraphs 3 (c) and 5 (c), of the Convention concern the intended use of the specimen of an Appendix-I species in the country of importation, not the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import. It can be assumed that a commercial transaction underlies many of the transfers of specimens of Appendix-I species from the country of export to the country of import. This does not automatically mean, however, that the specimen is to be used for 'primarily commercial purposes.'*

## COMMENTS FROM THE SECRETARIAT

- A. The Convention states in Article III that an import permit for any specimen of a species included in Appendix I shall only be granted when, *inter alia*, a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes. The clear focus is the intended use of the specimen after import. Resolution Conf. 5.10 (Definition of 'primarily commercial purposes') repeats the view that Article III, paragraphs 3 (c) and 5 (c) of the Convention concern the intended use of the specimen of an Appendix-I species in the country of importation. It also clarifies that the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import may be commercial in nature.
- B. Although it is not referred to in the introductory part of the present document, the proposed amendment to Resolution Conf. 5.10 includes a provision whereby commercial exports of Appendix-I specimens could be authorized only if they originate from registered operations as defined in Resolution Conf. 12.10. The Secretariat notes that Resolution Conf. 12.10 applies only to animal species and not plant species, and that the proposed text would exclude imports for primarily non-commercial purposes of any animal specimens sold by non-registered captive-breeding operations. This would have significant consequences on legitimate trade in Appendix-I animal specimens for primarily non-commercial purposes allowed by the Convention. The proposal contains no provision for specimens of plant species.
- C. The Secretariat does not believe the proposed amendment to Resolution Conf. 5.10 is in accordance with the text of the Convention. It therefore does not support the proposed change.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Draft for new paragraph 4 of Resolution Conf. 5.10

4. Article III, paragraphs 3 (c) and 5 (c), of the Convention concern the intended use of the specimen of an Appendix-I species in the country of import. The nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import must also be taken into account as part of the determination of the intended use of the specimen, to ensure that a commercial transaction does not underlie the transfer of specimens of Appendix-I species from the country of export to the country of import. Only Appendix-I specimens originating from registered operations, as defined in Resolution Conf. 12.10, may be traded for commercial purposes.