

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



Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3-15 June 2007

Interpretation and implementation of the Convention

Compliance and enforcement issues

DISPOSAL OF ILLEGALLY TRADED AND CONFISCATED SPECIMENS
OF APPENDIX-II AND -III SPECIES

1. This document has been submitted by Indonesia.
2. CITES Resolution Conf. 9.10 (Rev. CoP13) (Disposal of illegally traded, confiscated and accumulated specimens) stipulates and provides guidance on the disposal of confiscated specimens of species included in Appendices I, II and III.

This Resolution provides *inter alia* the following:

- a) Parties should dispose of the confiscated specimens in the best manner possible to benefit enforcement and administration of the Convention, and steps should be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal;
 - b) Parties should develop legislative provision to require the guilty importer and/or the carrier to meet the costs of confiscation, custody and disposal, including returning specimens to the country of origin or re-export (as appropriate), where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and where the country of origin or re-export so wishes;
 - c) where such legislation does not exist and the country of origin or re-export wishes the live specimens to be returned, financial assistance be sought to facilitate the return; and
 - d) Parties have the right to allow, or should they choose to do so, not to allow the sale of confiscated dead specimens, including parts and derivatives, of Appendix-II and -III species.
3. CITES through this resolution provides guidance to Parties on the best practice on the disposal of confiscated specimens as the results of the enforcement efforts undertaken by the authorities of the country of import (destination).
 4. It is recognized that the enforcement efforts undertaken by the country of destination must be appreciated. However, it is also believed that by allowing sale of confiscated dead specimens (as provided in the last paragraph of the Resolution: "CONFIRMS that Parties have the right to allow, or should they choose to do so, not to allow the sale of confiscated dead specimens, including parts and derivatives, of Appendix-II and -III species"), this Resolution also provides loopholes for irresponsible traders to undertake 'legalized laundering' which at certain degree will be able to cause bad impacts on the populations of the species as well as financial loss to the country of source.

5. The population damages and financial loss which may be experienced by the country of source may be explained as follows:
 - a) The Non-Detriment Findings (NDF) which have been developed and established by the country of source are badly upset by illegal harvests and subsequent exports (assuming that no illegal export from legally harvested specimens occurs), and in the long run this will threaten the sustainability of the legal trade. In this case the country of origin or country of source has to make adjustments to the current NDF, taking into account the portion of specimens that have been illegally exported (e.g. by adjusting annual harvest and export quota). The impact to the country of source will become worse if the confiscation and subsequent sale by the country of destination are not reported to the country of origin or country of source [Resolution Conf. 9.10 (Rev. CoP13) does not specifically ask the importing country to report to the country of export/re-export];
 - b) The sustainability of the industry is also threatened because the price of illegal products is usually much lower than the legal one, leading to detrimental competition, which places a burden on the industry;
 - c) Economically the country of origin or country of source has lost financial revenues in terms of the tax and levy imposed to the products which should have been able to be re-invested into the conservation and management of the species; and
 - d) It is our understanding that Resolution Conf. 9.10 (Rev. CoP13) implies that confiscated specimens become the property of the confiscating government and that it has the right to sale or auction the specimens for its own benefit. This particular provision is believed to be incorrect as the confiscated specimens should have been regarded as the property of the country of origin or source, and therefore the country of origin or source should benefit from the sale or auction.
6. It has been recorded that there have been numerous confiscations of illegally shipped specimens of Appendix-II and -III species from range States, undertaken by authorities of the importing countries. While appreciating the efforts on law enforcement undertaken by such government authorities, it has been very rare that such actions have led to the punishment of the guilty importers and exporters. In many cases, the importers and exporters were unknown, making it difficult to further investigate the cases. Furthermore, there are importing countries which do not have provisions in their national legislation that require the guilty importer or carrier to meet the costs of confiscation, custody, storage and return to the country of origin.
7. Based on the above background, Indonesia would like to propose that the Standing Committee review Resolution Conf. 9.10 (Rev. CoP13) with the purpose of proposing amendments to it at the 15th meeting of the Conference of the Parties. The draft decision in the Annex to this document is submitted for consideration by the Conference of the Parties.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat welcomes Indonesia's proposal to initiate discussions on this matter and notes that at least one country has already used the proceeds from several auctions of confiscated specimens to fund conservation activities in the countries where those specimens originated [see the 16th issue of *CITES World* (December 2005)].
- B. The Secretariat supports the draft decision, but it believes that the decision should not pre-empt the purpose or scope of the proposed review. In this connection, the word 'include' might be replaced with 'consider' and the word 'issues' might be replaced with 'suggestions'. It would be worth reviewing not only Resolution Conf. 9.10 (Rev. CoP13) but also Resolution Conf. 10.7 and determining whether they should be consolidated, simplified and otherwise revised. This could provide Parties with better guidance on how to take rapid, considered and consultative decisions on the disposal of confiscated specimens. The text of the draft decision could benefit from some editing.
- C. Implementation of the draft decision may require the Standing Committee to establish a working group, which could work electronically.

DRAFT DECISION OF THE CONFERENCE OF THE PARTIES

Disposal of illegally traded and confiscated specimens of Appendix-II and -III species

Directed to the Standing Committee

- 14.XX The Standing Committee shall, for consideration at the 15th meeting of the Conference of the Parties, review and propose amendments to Resolution Conf. 9.10 (Rev. CoP13) with regard to illegally traded or shipped and confiscated specimens of Appendix-II and -III species, taking into account the problems outlined in document CoP14 Doc. 27, and it shall include *inter alia* the following issues in the proposed amendments:
- a) the Management Authority or confiscating authority of the importing country shall, as soon as possible, advise the Management Authority of the country of origin of the confiscation of illegally shipped specimens, include information on the suspects (importer and exporter) for further investigation and ask whether the Management Authority of the country of origin requires the specimens to be repatriated;
 - b) when the Management Authority of the country of origin does not require the specimens to be repatriated or no reply is received within a given period of time, the confiscating authority, if it is so decided, shall immediately auction such specimens to minimize the cost of custody or storage, or destroy the specimens if the specimens have no value for sale or if no one is interested in purchasing the confiscated specimens; and
 - c) with regard to the sale of the specimens, and believing that those specimens should still be regarded as the property of the country of origin or source, the country of origin or source should benefit from the sale or auction. Taking into account the costs of the confiscation, custody and storage, the following issues should be taken into consideration:
 - i) the sale or auction should be undertaken in accordance with the national legislation of the confiscating country;
 - ii) proceeds from the sale of the confiscated specimens should be returned to the authority of the country of origin or source; and
 - iii) the confiscating authority, if so required, has the right to obtain from the sale compensation to meet the costs of confiscation, custody and storage.