

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



Fifteenth meeting of the Conference of the Parties
Doha (Qatar), 13-25 March 2010

Interpretation and Implementation of the Convention

Amendment of the Appendices

INCONSISTENT IMPLEMENTATION OF APPENDIX-III TIMBER LISTINGS ANNOTATED TO INCLUDE ONLY
THE NATIONAL POPULATIONS OF THE LISTING COUNTRIES

1. This document has been prepared by the United States of America.*

Background

Over the past few years, there have been several instances in which a CITES Party has listed a timber species in Appendix III, but has annotated that listing to include only its own national population. Experience has suggested and continues to suggest that the intent of such listings and the manner in which they are to be implemented are not clearly understood by the Parties.

Currently, there are 135 Appendix-III listings in the CITES Appendices: 125 for animal taxa, two for non-timber plant taxa, and eight for timber plant taxa. Of these 135 listings, three are annotated to include only the national populations of the listing countries. All three are for timber species: *Cedrela odorata*, annotated to include only the national populations of Colombia, Guatemala, and Peru; *Dalbergia retusa*, annotated to include only the national population of Guatemala; and *Dalbergia stevensonii*, also annotated to include only the national population of Guatemala.

At the 17th meeting of the Plants Committee (PC17) in April 2008, the Committee discussed the U.S. document PC17 Doc. 16.4, entitled *Problems regarding population-specific Appendix-III timber listings*. The document outlined inconsistencies and resultant problems the United States had observed in the implementation of Appendix-III timber listings annotated to include only the national populations of the listing countries. After discussion of this document, the Plants Committee agreed to request that the Secretariat prepare a Notification to the Parties asking whether other Parties had encountered issues similar to those observed by the United States.

In response to the Plants Committee's request, the Secretariat posted Notification to the Parties No. 2008/048 on July 24, 2008, inviting Parties to inform the U.S. Management Authority by October 31, 2008, of any problems they had encountered in relation to the implementation of such Appendix-III timber listings.

The U.S. Management Authority received only two responses to Notification No. 2008/048, one from China and one from the European Commission (EU). China considered the key problem of such Appendix-III timber listings to be how to efficiently control illegal trade. The EU reported that an analysis of data on imports into the EU of *Cedrela odorata* indicated that reporting of trade in this species was possibly occurring in an inconsistent manner. The EU noted that several range countries of *Cedrela odorata*, other than the three countries that listed it (Colombia, Guatemala, and Peru), reported CITES exports of the species to the EU, even though the EU indicated that the national populations of non-listing range countries are generally interpreted within the EU as not being covered by the listing. Similarly, several importing countries in the EU reported CITES imports of the species from range countries other than the listing countries. The EU recommended that a uniform approach be applied for the control

* The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.

and reporting of *Cedrela odorata*, and concluded that Appendix-III species listings that are annotated to include only the national populations of the listing countries lead to confusion for exporters and importers, as well as importing and exporting countries, regarding which populations are actually covered by CITES and should be reported.

The U.S. Management Authority subsequently contacted the Management Authorities of a number of key Parties to obtain additional information about implementation of Appendix-III listings of timber species annotated to cover only the national populations of the listing countries. The Parties we contacted included the listing countries, several other range countries, and several major importing countries. We received responses to these direct communications from Argentina, Bolivia, Brazil, Colombia, Japan, and Mexico. All responses to Notification No. 2008/048 and to our subsequent communication to key Parties related mainly to *Cedrela odorata*.

Argentina informed us that it imports *Cedrela odorata* sawn wood from Bolivia and Brazil, neither of which is a listing country for the species. Nevertheless, Argentina requires that such imports be accompanied by CITES certificates of origin issued by those countries. Bolivia, a range country for *Cedrela odorata* that has not listed that species in Appendix III, reported that it requires CITES certificates of origin to accompany exports of logs, sawn wood, and veneer sheets of the species from Bolivia, and that it reports such exports in its CITES annual report. Brazil, another range country that has not listed *Cedrela odorata*, informed us that it requires issuance of CITES certificates of origin for exports of logs, sawn wood, and veneer sheets of *Cedrela odorata*, but does not record such exports in its CITES annual reports. Colombia, which listed its national population of *Cedrela odorata* in Appendix III in 2001, reported that it prohibits the export of the species in the first degree of transformation, but nevertheless expects that exports of logs, sawn wood, and veneer sheets of the species from range countries that did not list the species be accompanied by CITES certificates of origin in accordance with Article V, paragraph 3, of the Convention. Japan reported that, for imports of logs, sawn wood, and veneer sheets of *Cedrela odorata* from a listing country (Peru, Colombia, or Guatemala), a CITES export permit from the listing country must accompany each such shipment, but for imports of logs, sawn wood, and veneer sheets of the species from other range countries, no CITES document is required. Instead, in such cases, Japan requires that the accompanying documents or invoices indicate the country of origin. Mexico informed us that, for imports of logs, sawn wood, and veneer sheets of *Cedrela odorata* from a listing country, a CITES export permit from the listing country must accompany each shipment, and for imports of logs, sawn wood, and veneer sheets of the species from other range countries, a CITES certificate of origin must accompany each shipment.

In our implementation of the Appendix-III listing of *Cedrela odorata*, the United States requires that an import of logs, sawn wood, or veneer sheets of the species from a listing country (Peru, Colombia, or Guatemala) must be accompanied by a CITES export permit from that country. We also report such imports in our CITES annual reports. However, for an import of logs, sawn wood, or veneer sheets of *Cedrela odorata* from a non-listing range country, the United States does not require that a certificate of origin or any other CITES document accompany such an import, nor do we record such imports in our CITES annual reports.

The responses we received to Notification No. 2008/048 and to our direct communications with other Management Authorities demonstrate that the implementation of Appendix-III listings annotated to include only the national populations of the listing countries, such as the listing for *Cedrela odorata*, has been and continues to be inconsistent, and that the same can be said about the reporting of trade in such species in CITES annual reports.

Appendix-III timber listings annotated to include only the populations of the listing countries began to appear following the adoption of Recommendation a) iv) in Resolution Conf. 9.25 (Rev. CoP14), on inclusion of species in Appendix III, which states that “*for species that are traded for their timber, consideration is given to including only that geographically separate population of the species for which the inclusion would best achieve the aims of the Convention and its effective implementation, particularly with regard to the conservation of the species in the country requesting its inclusion in Appendix III.*” This recommendation was adopted at the 10th meeting of the Conference of the Parties (CoP10 - Harare, June 1997) for the purpose of addressing circumstances similar to Costa Rica’s initial listing of bigleaf mahogany (*Swietenia macrophylla*) in Appendix III in 1995. In that case, Costa Rica limited the listing to the populations in the Americas, and thus excluded plantation-grown specimens originating elsewhere. However, Costa Rica’s bigleaf mahogany listing included the entire natural range of the species and only excluded specimens originating from outside the natural range, thus allowing for the cooperation of all other Parties within the range of the species by requiring them to issue CITES certificates of origin.

The United States agrees with the EU’s recommendation that a uniform approach be applied for the control and reporting of Appendix-III species listings that are annotated to include only the national populations of the listing countries. It is our interpretation that, under the terms of the Convention, an Appendix-III listing annotated to include only the national population of the listing country requires that the listing country issue CITES export permits prior to exporting specimens of the listed species and that the listing country make legal acquisition findings prior to issuing those exports permits. However, such a listing does not require other range countries to issue CITES certificates of origin prior to exporting specimens of the listed species that originate from those countries. This is because the listed

entity in a population-based listing includes only those specimens from the geographic area specified. This is consistent with the text of the Convention, which provides in Article I that the term “species” can be defined as a geographically separate population. Therefore, for an Appendix-III species where the “species” subject to the Convention’s requirements is limited to specimens from the listing range country, that listing range country is the only country where the Convention imposes requirements. With an Appendix-III listing that is not annotated to include only the national population of the listing country, other range countries are required by the Convention to issue CITES certificates of origin prior to exporting specimens of the listed species and, by doing so, cooperate with the listing country in controlling and monitoring international trade in the species. Annotating an Appendix-III listing to include only the national population of the listing country undermines this important requirement because the populations of other range countries are not covered under the listing.

The United States believes that Recommendation a) iv) in Resolution Conf. 9.25 (Rev. CoP14) may be encouraging Parties that are considering listing a timber species in Appendix III to limit that listing through an annotation to just their national population. It is certainly a Party’s prerogative to annotate an Appendix-III listing to include only its own national population, but we believe it is not necessary to encourage such listings for timber species in a CITES Resolution. In fact, because experience has shown that such listings do not result in effective control of trade in the listed species, and also limit the ability of the CITES Parties and the World Conservation Monitoring Centre (WCMC) to collect information about the trade in these species outside of the listing countries, it may be advisable to encourage range countries considering such a listing to carefully consider what they hope to achieve by the listing. For these same reasons, range countries that have already listed species in Appendix III with annotations to include only the populations within their borders may wish to reconsider whether such listings provide the protection to the species and cooperation with other CITES Parties that was intended.

Discussions of this issue at PC18

The United States submitted a document (PC18 Doc. 13.4) for the 18th meeting of the Plants Committee (PC18) in March 2009, inviting discussion by the Plants Committee on methods for facilitating a uniform approach among the Parties for the control and reporting of Appendix-III timber species listings annotated to include only the national populations of the listing countries. The U.S. document suggested that it might be useful for the Plants Committee to ask the Secretariat to issue a Notification to the Parties providing the Secretariat’s interpretation of how such Appendix-III listings should be implemented, with regard to both CITES document requirements and annual reporting. The document also asked the Plants Committee to comment on the value of submitting a proposal at the 15th meeting of the Conference of the Parties (CoP15) to delete Recommendation a) iv) from Resolution Conf. 9.25 (Rev. CoP14).

The Plants Committee supported the U.S. document, but advised that, because this is a CITES implementation issue involving an interpretation of the Convention, the Standing Committee was the more appropriate forum in which to discuss it. The Plants Committee recommended that the United States submit a document on the issue for consideration of the Standing Committee at its 58th meeting (SC58).

Discussions of the issue at SC58

As recommended by the Plants Committee, the United States submitted a document (SC58 Doc. 29) for SC58 to raise this issue before the Standing Committee. In the document, we provided two recommendations for the Standing Committee to consider to help ensure that Appendix-III listings of tree species used for timber achieve the objectives of the listing countries and are consistently and effectively implemented by all Parties. These recommendations were that the Standing Committee should: a) ask the Secretariat to issue a Notification to the Parties following SC58 providing the Secretariat’s views on how the current Appendix-III timber listings annotated to include only the national populations of the listing countries should be implemented, with regard to both CITES documentation and annual reporting; and b) endorse the submission of a document to CoP15 proposing to revise Resolution Conf. 9.25 (Rev. CoP14) by deleting recommendation a) iv) and adding a new recommendation that, if a Party proposes a population-level Appendix-III listing, the Secretariat consult with that Party to ensure that the listing will achieve the level of control and cooperation with other range States intended by the listing Party. The purpose of the new recommendation about consultation with the Secretariat is not to discourage a Party from proposing a population-level Appendix-III listing if it wishes to do so, but simply as a means of making sure, at the point when such a listing is proposed, that this kind of listing is truly the intention of the proposing Party. The Standing Committee adopted both recommendations.

The Secretariat advised at SC58 that they agreed with the interpretation of the United States that the listing of a species in Appendix III that includes only the national population of the listing country does not require the issuance of certificates of origin by other range countries. As of the date of submission of this document, the Secretariat had not yet issued a Notification to the Parties providing the Secretariat’s views on how the current Appendix-III timber listings annotated to include only the national populations of the listing countries should be implemented.

Proposed revisions to Resolution Conf. 9.25 (Rev. CoP14)

The United States proposes, in response to recommendation b) in SC58 Doc. 29, adopted by the Standing Committee, that Resolution Conf. 9.25 (Rev. CoP14) be revised by (1) deleting recommendation a) iv) and (2) adding a new recommendation that, if a Party proposes a population-level Appendix-III listing, the Secretariat consult with that Party to ensure that the listing will achieve the level of control and cooperation with other range states intended by the listing Party.

The revisions to Resolution Conf. 9.25 (Rev. CoP14) proposed by the United States are provided in the Annex to this document. Proposed deleted text is struck out and proposed new text is underlined.

COMMENT FROM THE SECRETARIAT

The Secretariat agrees with the summary and interpretation of the United States of America and supports the proposed amendments to Resolution Conf. 9.25 (Rev. CoP14).

DRAFT REVISION OF RESOLUTION CONF. 9.25 (REV. CoP14)**:

INCLUSION OF SPECIES IN APPENDIX III

NB: Proposed deleted text is struck out and proposed new text is underlined.

RECOGNIZING that Article XVI, paragraph 1, provides Parties with the right to list species in Appendix III;

RECALLING that Article II, paragraph 3, provides for the inclusion of species in Appendix III by a Party only if it needs the cooperation of other Parties in the control of trade;

RECOGNIZING that, for a species with a natural distribution that goes beyond the territory of the Party requesting its inclusion in Appendix III and its immediate neighbours, such inclusion may not necessarily need to cover all range States;

NOTING that Resolution Conf. 1.5, adopted by the Conference of the Parties at its first meeting (Bern, 1976), recommends that all readily recognizable parts and derivatives of species included in Appendix III be covered;

NOTING that Resolution Conf. 5.22, adopted by the Conference of the Parties at its fifth meeting (Buenos Aires, 1985), recommends criteria for the inclusion of species in Appendix III;

NOTING that Resolution Conf. 7.15, adopted by the Conference of the Parties at its seventh meeting (Lausanne, 1989), encourages Parties to declare inclusion of species in Appendix III or withdrawals therefrom at meetings of the Conference of the Parties;

NOTING that Resolution Conf. 8.23, adopted by the Conference of the Parties at its eighth meeting (Kyoto, 1992), recommends *inter alia* that, before submitting a species for inclusion in Appendix III, Parties request the advice of the Animals Committee or the Plants Committee regarding the trade status and biological status of that species;

AWARE that, at the moment, Appendix III contains species that occur rarely or not at all in international trade and for which the Convention is therefore not effective;

OBSERVING that many Parties are unwilling to take on the administrative burden of implementing the provisions of the Convention with regard to Appendix III;

BELIEVING that this unsatisfactory implementation arises because the Parties are not fully convinced of the effectiveness of Appendix III;

RECOGNIZING that Resolution Conf. 1.5, paragraph 5, is deficient in not addressing the need for adequate implementation of domestic legislation;

RECALLING the wish of the Conference of the Parties, expressed at its eighth meeting (Kyoto, 1992), to reduce the number of its Resolutions;

CONSIDERING that for the effective implementation of the Convention with regard to Appendix III it is desirable to give clear guidelines for including species in Appendix III that reflect the aims of the Convention expressed in its Preamble;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that, if a Party has made a reservation with regard to any species included in Appendix I or II, it not request that this species be included in Appendix III;

RECOMMENDS that, when considering the inclusion of a species in Appendix III, a Party:

** Amended at the 10th and 14th meetings of the Conference of the Parties.

- a) ensure that:
- i) the species is native to its country;
 - ii) its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation; and
 - iii) its national enforcement measures are adequate to implement these regulations; ~~and~~ .
 - ~~iv) for species that are traded for their timber, consideration is given to including only that geographically separate population of the species for which the inclusion would best achieve the aims of the Convention and its effective implementation, particularly with regard to the conservation of the species in the country requesting its inclusion in Appendix III;~~
- b) determine that, notwithstanding these regulations and measures, there are indications that the cooperation of the Parties is needed to control illegal trade;
- c) inform the Management Authorities of other range States, the known major importing countries, the Secretariat and the Animals Committee or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion;
- d) after due consultation, and having satisfied itself that the biological status and trade status of the species justify the action, submit to the Secretariat the name of the species it wishes to include in Appendix III; and
- e) ensure that its request to include a species in Appendix III specifies which readily recognizable parts and derivatives are to be included unless it intends to include all readily recognizable parts and derivatives;

RECOMMENDS further that, unless there is an urgent need for inclusion, a Party intending to include a species in or delete a species from Appendix III inform the Secretariat of its intention at least three months before a meeting of the Conference of the Parties, in order that the Parties are informed of the amendment in time to ensure that it enters into force on the same date as amendments to Appendices I and II adopted at the meeting;

DIRECTS the Secretariat:

- a) to publish the changed Appendices I, II and III together after each meeting of the Conference of the Parties, or at other times when warranted; ~~and~~
- b) before communicating to Parties the inclusion of a species in Appendix III, to ensure that copies of all relevant national laws and regulations have been received from the Party concerned in accordance with paragraph 4 of Article XVI; and
- c) if a Party requests the inclusion of a species in Appendix III and requests that the listing be limited to a particular population, to consult with that Party to ensure that the listing will achieve the level of control and cooperation with other range states intended by the Party.

AGREES that the inclusion of a species in Appendix III without an annotation shall indicate that all readily recognizable parts and derivatives are included in the Appendix;

REQUESTS the Animals Committee and the Plants Committee to assist Parties if necessary in reviewing the status of species in Appendix III, subject to available funding;

URGES Parties having included species in Appendix III to periodically review the status of these species and, taking into account these guidelines and any recommendations of the Animals and Plants Committees, to consider the necessity to maintain them in that Appendix;

RESOLVES that when any species already included in Appendix III is subsequently included in Appendix I or II, it shall be deleted from Appendix III; and

REPEALS the Resolutions, or parts thereof, listed hereunder:

- a) Resolution Conf. 1.3 (Bern, 1976) – Deletion of species from Appendix II or III in certain circumstances – paragraph b);
- b) Resolution Conf. 1.5 (Bern, 1976) – Recommendations Concerning the Interpretation and Implementation of Certain Provisions of the Convention – paragraphs 3, 4 and 5;
- c) Resolution Conf. 1.5 (Rev. CoP12) (Bern, 1976, as amended at Fort Lauderdale, 1994, and Santiago, 2002) – Interpretation and implementation of certain provisions of the Convention;
- d) Resolution Conf. 5.22 (Buenos Aires, 1985) – Criteria for the Inclusion of Species in Appendix III – paragraphs a) and b) under RECOMMENDS and the paragraph under REQUESTS;
- e) Resolution Conf. 7.15 (Lausanne, 1989) – Amendments to Appendix III; and
- f) Resolution Conf. 8.23 (Kyoto, 1992) – Review of Appendix III.