

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



Seventeenth meeting of the Conference of the Parties
Johannesburg (South Africa), 24 September - 5 October 2016

Species-specific matters

Maintenance of the Appendices

Annotations

REPORT OF THE STANDING COMMITTEE

1. This document has been prepared by the Secretariat, at the request of the Standing Committee.

Background

2. At the 16th meeting of the Conference of the Parties (CoP16, Bangkok, 2013), the Parties adopted Decisions 16.161 to 16.163 on *Annotations*. These Decisions direct the Standing Committee to establish a working group on annotations, and set out the terms of reference for the working group, including reporting requirements.
3. The working group was established at the 65th meeting of the Standing Committee (SC65, Geneva, July 2014). In the meantime, at the 64th meeting (SC64, Bangkok, March 2013), the United States of America received the agreement of the Chair of the Standing Committee to establish an interim working group, with the membership and chairmanship as at the 62nd meeting (SC62, Geneva, July 2012), to work until SC65. The United States submitted an interim report at SC65, which included discussion and a summary of work done to date in CITES on the review of annotations. Additional information on the working group and its activities is summarized in Document CoP17 Doc. 83.2.
4. At the 66th meeting of the Standing Committee (SC66, Geneva, January 2016), the United States, as Chair of the Working Group on Annotations, submitted Document SC66 Doc. 25, which explained the working group's activities to date and included a number of recommendations for the Standing Committee's consideration. These recommendations can be found in Document SC66 Doc. 25.
5. The summary record of SC66 reflects the Standing Committee decisions in relation to document SC66 Doc. 25, as follows:

At SC66, the Standing Committee endorsed the proposed amendments to Resolutions Conf. 5.20 (Rev. CoP16) on Guidelines for the Secretariat when making recommendations in accordance with Article XV, Conf. 9.24 (Rev. CoP16) on Criteria for amendment of Appendices I and II and Conf. 9.25 (Rev. CoP16) on Inclusion of species in Appendix III located in Annexes 1 through 3 and requested the Secretariat to submit a document at the 17th meeting of the Conference of the Parties proposing that the Parties adopt the amendments.

The Standing Committee agreed to reconvene the Working group on Annotations as an in-session working group with the mandate to address unresolved issues in Annex 4 and other outstanding issues.

6. The Standing Committee subsequently endorsed document SC66 Com. 12 as reflected in the summary record of the meeting:

The Standing Committee agreed that definitions of terms in annotations should be permanently located in the Interpretation section of the Appendices. Definitions of terms in annotations are not part of a substantive annotation and are included in the Interpretation section of the Appendices for reference and ease of location. The development and amendment of such definitions follows the processes previously agreed by the Parties and laid out in Resolutions Conf. 9.24 (Rev. CoP16), 9.25 (Rev. CoP16), and 11.21 (Rev. CoP16).

The Standing Committee requested the Secretariat to submit a document proposing amendments to Resolution Conf. 11.21 (Rev. CoP16) on Use of annotations in Appendices I and II for consideration by the Conference of the Parties at its 17th meeting.

The Standing Committee requested the working group to continue its discussions concerning paragraph f) under RECOMMENDS in the operative text [of Resolution Conf. 11.21 (Rev. CoP 16)]¹ and the outstanding issues raised in document SC66 Doc. 25 regarding Annotation #3, Annotation #14, Annotation #11, and Annotation #12, and submit a document for consideration at the 17th meeting of the Conference of the Parties.

Recommendations

7. Pursuant to the decisions adopted at its 66th meeting, the Standing Committee recommends that the Conference of the Parties adopt the proposed amendments to Resolutions contained in Annexes 1 to 4 to the present document, and the proposed amendments to Decisions contained in Annex 5.
8. The annexes to the present document containing the recommendations submitted for the consideration of the Conference of the Parties are as follows:
- a) Annex 1: Proposed amendment to Resolution Conf. 5.20 (Rev. CoP16) on *Guidelines for the Secretariat when making recommendations in accordance with Article XV*;
 - b) Annex 2: Proposed amendments to Resolution Conf. 9.24 (Rev. CoP16) on *Criteria for amendment of Appendices I and II*;
 - c) Annex 3: Proposed amendments to Resolution Conf. 9.25 (Rev. CoP16) on *Inclusion of species in Appendix III*;
 - d) Annex 4: Proposed amendments to Resolution Conf. 11.21 (Rev. CoP16) on *Use of annotations in Appendices I and II*; and
 - e) Annex 5: Proposed amendments to Decision 16.162 and 16.163. The purpose of changes to Decision 16.162 is to call for the Working Group on Annotations to be continued during the intersessional period between the 17th and 18th meetings of the Conference of the Parties (CoP17 and CoP18, respectively) and to update its terms of reference taking into consideration the work completed to date.

¹ The text of paragraph f) was: "Unless specified otherwise in the annotation, when an annotation specifies the types of specimens included in the Appendices, CITES controls also apply to these types of specimens when they appear in trade as finished products packaged and ready for retail trade";

COMMENTS BY THE SECRETARIAT

- A. The Secretariat notes that this document and the report of the Working Group submitted by the United States of America as Chair of the Working Group on Annotations, contained in document CoP17 Doc. 83.2, concern the same issues, and suggests that they be considered together.
- B. The Secretariat further notes that Decisions 14.148 (Rev. CoP16) and 16.151 should have been addressed in the report of the Standing Committee. Decision 14.148 (Rev. CoP16) requested the Working Group to review the annotations for tree species listed in Appendices II and III, and draft amendments as appropriate. The Secretariat considers that this decision is reflected in the revised version of Decision 16.162 contained in Annex 5 of the present document. The Secretariat therefore recommends that this decision be deleted.
- C. Decision 16.151 requested the Working Group to review the annotation for *Panax* with a view to its standardization and possible amendment. The Working Group carried out the review and determined no change was necessary to the annotation for *Panax* at this time (See paragraphs 33-34 of document SC66 Doc. 25 and paragraphs 15-16 of document CoP17 Doc. 83.2). On this basis, the Secretariat recommends the deletion of Decision 16.151.
- D. With regard to the proposed amendments, contained in Annexes 1-4 in the present document, the Secretariat considers that Parties may need more time to carefully consider the proposed amendments and the practical implications for trade. The Secretariat proposes that the Working Group be requested to continue work on this part of the mandate and in particular to clarify the implications of the proposed amendments, even if the Conference of the Parties decides to adopt the proposed amendments.
- E. More specifically, with regard to the proposed amendments to Resolution Conf. 11.21 (Rev. CoP16) on *Use of Annotations in Appendices I and II*, contained in Annex 4 of the present document, the Secretariat has some drafting suggestions to ensure consistency with the text of the Convention as well as some more substantive comments. ~~Double strike-out~~ and double underlining are suggestions by the Secretariat.
- a. With regard to the fifth preambular paragraph, the Secretariat suggests an editorial amendment as follows:
- RECALLING that an annotated listing of an animal or plant species in any of the three Appendices always includes the whole live or dead animal or plant, as well as—and any specimen included by specified in an the annotation;*
- b. With regard to the subsequent new paragraph, starting “*ENCOURAGES Parties, when considering proposing the inclusion of a species in the Appendices with a substantive annotation, to take into account the following:*” the Secretariat is of the view that the proposed guidance on inclusionary and exclusionary annotations as it is currently drafted may not provide the guidance required to ensure that future annotations be crafted in a more consistent manner, given that it leaves open all options for crafting such annotations as also reflected in subparagraph c) of the proposed paragraph. In view of the Secretariat, it would be desirable from a legal and practical perspective if annotations could be crafted in a more consistent and streamlined manner. The Secretariat therefore recommends that the work on this part of the mandate be continued as proposed, even if the Conference of the Parties decides to adopt the guidance set out in this proposed new paragraph.
- c. In the same paragraph, the Secretariat is not convinced that the last subparagraph d) is necessary or helpful in its current wording. The purpose of the paragraph is to give guidance to Parties that are proposing an annotation as to how such annotations should be crafted: as inclusionary, exclusionary or a combination of the two. This last subparagraph d) describes situations where annotations should not be used. This seems to be covered by the next paragraph, subparagraph e), recommending that “annotations that specify the types of specimens included in the Appendices should be used sparingly, as their implementation is particularly challenging, especially where there are identification problems or where the

purpose of trade has been specified.” Based on these considerations, the Secretariat considers that the proposed new subparagraph d) could be deleted from the proposed revised Resolution, noting that if the Conference of the Parties adopts the draft decisions set out in Annex 5 of the present document, the Working Group may be able to develop and propose a revised wording for that subparagraph.

- d. In the subsequent paragraph, “RECOMMENDS the following guidance and principles for annotations, it could be considered to advise Parties that proposed annotations should be clear and unambiguous not only in the language in which they are proposed but in the three working languages of the Convention. Therefore the Secretariat suggests that subparagraph a), i) should be amended to read:

i) ensure that the text is clear and unambiguous in the three working languages of the Convention

- e. Finally, the Secretariat is not convinced of the added value of the proposed last new paragraph: “RECOMMENDS that the definitions of terms and expressions used in annotations in the Appendices be applied by the Parties.” This is already recommended by the Conference of the Parties, and the recommendation seems to be redundant.

- F. Concerning the draft revised decisions contained in Annex 5 of the present document, the Secretariat agrees with the recommendation to re-establish the Working Group on Annotations as more work in this area remains to be done. The Secretariat suggests to add a request to the Standing Committee to report at the 18th meeting of the Conference of the Parties on the implementation of Decision 16.162 (Rev. CoP17), to propose amendments to Resolutions and Decisions as necessary, and to request the Depositary Government to make any proposals to amend the Appendices as appropriate. The Secretariat proposes the following text to be included in draft decision 16.162 (Rev. CoP17) as a new paragraph 2:

“2. The Standing Committee shall report to the 18th meeting of the Conference of the Parties on the implementation of this Decision, propose amendments to Resolutions and Decisions as necessary, and request the Depositary Government to make any proposals to amend the Appendices as appropriate.”

- G. The Secretariat also recommends the following changes to the revised draft decision directed to the Parties:

“Directed to the Parties

16.163 (Rev. CoP17) *At its 17⁸th meeting, the Conference of the Parties shall review the report submitted by the Standing Committee on the outcomes of the work undertaken by the its working group on annotations called for in Decision 16.162 (Rev. CoP17) and evaluate the need for continuing such a working group. If agreed, the Parties shall maintain Decision 16.162 (Rev. CoP17) and make changes to the terms of reference, as appropriate.*

Proposed amendment to Resolution Conf. 5.20 (Rev. CoP16) on *Guidelines for the Secretariat when making recommendations in accordance with Article XV*

Proposed additional text is underlined

Amend subparagraph d) under “ESTABLISHES” in the operative section of the Resolution as follows:

- d) if the proposal includes an annotation, the recommendations should specifically cover:
 - i) the appropriateness of the proposed annotation with regard to those specimens that first appear in international trade as exports from range States and that dominate the trade and the demand for the world resource;
 - ii) any potential problems in implementing the proposed annotation; and
 - iii) whether the proposed annotation is harmonized with existing annotations.

Proposed amendments to Resolution Conf. 9.24 (Rev. CoP16)
on *Criteria for amendment of Appendices I and II*

Proposed additional text is underlined. Proposed deletions are marked with ~~strike through~~.

1. Amend the fourth “RESOLVES” in the operative section of the Resolution as follows:

RESOLVES that annotations to proposals to amend Appendix I or Appendix II should be made in accordance with the applicable Resolutions of the Conference of the Parties, be specific and accurate as to which parts and derivatives are covered by the Convention, include those ~~parts and derivatives~~ specimens that first appear in international trade as exports from range States and that dominate the trade and the demand from the wild resource, and should, to the extent possible, be harmonized with existing annotations;

2. Amend Annex 6 on *Format for proposals to amend the Appendices, section A, paragraph under “Annotations”* as follows:

If a specific annotation to the listing in the Appendices is proposed, the proponent should:

- ensure that the proposed annotation is in compliance with the applicable Resolutions;
- indicate the practical intent of the annotation;
- be specific and accurate as to the parts and derivatives to be covered by the annotation;
- provide clear and simple definitions of any terms in the annotation that may not be easily understood by enforcement personnel and user groups (noting that definitions should be specific to CITES and scientifically and technically precise to the extent practicable for purposes of the annotation);
- ensure that the annotation ~~covers~~ includes those ~~parts and derivatives~~ specimens that first appear in international trade as exports from range States and that dominate the trade and the demand from the wild resource;
- harmonize, to the extent practicable, new annotations with existing annotations; and
- where applicable, provide identification sheets to be included in the CITES Identification Manual that illustrate the parts and derivatives covered under the annotation.

Proposed amendments to Resolution Conf 9.25 (Rev. CoP16)
on Inclusion of species in Appendix III

Proposed additional text is underlined. Proposed deletions are marked with ~~striethrough~~.

Amend the second “RECOMMENDS” in the operative section of the Resolution as follows:

- 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;
- 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;
- f) ensure that any proposed annotation that is part of a request to include a species in Appendix III ~~covers~~ includes those parts and derivatives specimens that first appear in international trade as exports from its territory and that dominate the trade and the demand for the wild resource and is, to the extent practicable, harmonized with relevant existing annotations; and
- g) consult with the Secretariat, ~~and the Standing Committee and, as appropriate, the Animals Committee or Plants Committee,~~ to ensure that any proposed annotation that is part of a request to include a species in Appendix III (and any definitions developed that define terms in the annotation, as appropriate) is clear and unambiguous, and likely to be understood by enforcement personnel and user groups;

Proposed Amendments to Resolution Conf. 11.21 (Rev. CoP16)
on Use of Annotations in Appendices I and II

Proposed additional text is underlined. Proposed deletions are marked with ~~strike through~~.

USE OF ANNOTATIONS IN THE APPENDICES ~~I AND II~~

RECOGNIZING that annotations are increasingly used in the Appendices for a number of purposes;

AWARE that certain types of annotations are for reference only, whereas others are substantive and are intended to define the scope of the inclusion of a species;

CONSIDERING that the Parties have developed specific procedures for transfer, reporting and review for certain special cases of amendment of the Appendices, such as those relating to ranching, quotas, certain parts and derivatives, and trade regimes;

AWARE also that certain types of annotations are an integral part of a species listing, and that any proposal to introduce, amend or delete such an annotation must follow the provisions of Resolution Conf. 9.24 (Rev. CoP16), adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 12th, 13th, 14th, 15th and 16th meetings (Santiago, 2002; Bangkok, 2004; The Hague, 2007; Doha, 2010; Bangkok, 2013);

RECALLING that an annotated listing of an animal or plant species in any of the three Appendices always includes the whole live or dead animal or plant, and any specimen included by an annotation;

RECALLING further that the Conference of the Parties had agreed at its second and fourth meetings that a listings of a plant species in Appendix II or Appendix III, and an animal species in Appendix III, without an annotation should be interpreted as including the whole live or dead animal or plant and all readily recognizable parts and derivatives, and that this view has not been changed by any subsequent decision of the Conference of the Parties;

CONSCIOUS that criteria for the submission of proposals to amend the Appendices that include annotations, and procedures for reviewing the implementation of such annotations, need to be clearly defined to avoid implementation and enforcement problems;

RECOGNIZING that the Parties have adopted a number of definitions of terms and expressions in annotations, and that those definitions are included in several Resolutions;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that:

- a) the following are reference annotations and are for information purposes only:
 - i) annotations to indicate that one or more geographically separate populations, subspecies or species of the annotated taxon are in another Appendix;
 - ii) the annotations 'possibly extinct'; and
 - iii) annotations relating to nomenclature;
- b) the following are substantive annotations, and are integral parts of species listings:
 - i) annotations that specify the inclusion or exclusion of designated geographically separate populations, subspecies, species, groups of species, or higher taxa, which may include export quotas; and
 - ii) annotations that specify the types of specimens or export quotas;
- c) reference annotations may be introduced, amended or deleted by the Conference of the Parties, or by the Secretariat, as required, to facilitate the understanding of the Appendices;

- d) substantive annotations relating to species in Appendix I or II may be introduced, amended or deleted only by the Conference of the Parties in accordance with Article XV of the Convention;
- e) substantive annotations relating to species in Appendix III may be introduced, amended or deleted only by the Party or Parties that submitted the species for inclusion in Appendix III;
- ef) substantive annotations relating to geographically separate populations in Appendix I or II should be in compliance with the split-listing provisions contained in Resolution Conf. 9.24 (Rev. CoP16) Annex 3; and
- fg) substantive annotations used in the context of transferring a species from Appendix I to Appendix II should be in compliance with the precautionary measures contained in Resolution Conf. 9.24 (Rev. CoP16) Annex 4;

AGREES that no proposal for transfer of a species from Appendix I to Appendix II subject to an annotation relating to specified types of specimens shall be considered from a Party that has entered a reservation for the species in question, unless that Party has agreed to remove the reservation within 90 days of the adoption of the amendment;

AGREES that a proposal to include a plant species in Appendix II, or to transfer a plant species from Appendix I to Appendix II, shall be interpreted to include all readily recognizable parts and derivatives if the proposal does not include an annotation specifying the types of specimens to be included;

AGREES further that, for a plant species included in Appendix II or Appendix III, and an animal species included in Appendix III, the absence of an annotation relating to that species shall indicate that all readily recognizable parts and derivatives are included;

ENCOURAGES Parties, when considering proposing the inclusion of a species in the Appendices with a substantive annotation, to take into account the following:

- a) an inclusionary annotation, which specifies the types of specimens to be included under the listing, should be used in cases where only a few types of specimens need to be included under the listing;
- b) an exclusionary annotation, which specifies the types of specimens to be excluded from the listing, should be used where only a few types of specimens need to be excluded from the listing;
- c) an annotation that is a combination of inclusionary and exclusionary language, which specifies the types of specimens to be excluded from the listing, but also references a subset of those types of specimens that are excepted from the exclusion, or which specifies the types of specimens to be included in the listing, but also references a subset of those types of specimens to be excluded, should be used as circumstances dictate; and
- d) an annotation may not be necessary in cases where there is a risk to wild populations of the species from many types of specimens in trade or where the types of specimens in trade are easily transformed, likely to change frequently, or likely to change over time;

RECOMMENDS ~~that~~ the following guidance and principles for annotations:

- a) Parties submitting proposals that contain substantive annotations:
 - i) ensure that the text is clear and unambiguous;
 - ii) consider the conservation impact of excluding certain specimens from CITES provisions; and
 - iii) consider the enforceability of the annotations;

- b) two main principles be followed as standard guidance when drafting future annotations for medicinal plants:
 - i) controls should concentrate on those commodities that first appear in international trade as exports from range States; these may range from crude to processed material; and
 - ii) controls should include only those commodities that dominate the trade and the demand for the wild resource;
- c) if a proposed annotation relates to specified types of specimens, the applicable provisions of the Convention for import, export and re-export of each type of specimen should be specified;
- d) as a general rule, Parties avoid making proposals to adopt annotations that include live animals or trophies; and
- e) annotations that specify the types of specimens included in the Appendices should be used sparingly, as their implementation is particularly challenging, especially where there are identification problems or where the purpose of trade has been specified.

URGES Parties submitting proposals that contain substantive annotations to consult with the Secretariat, the Standing Committee and, as appropriate, the Animals Committee or Plants Committee, to ensure that the annotation is appropriate and can be readily implemented;

DIRECTS:

- a) the Standing Committee, in consultation with the Animals Committee or the Plants Committee, to agree on interim definitions between meetings of the Conference of the Parties in cases where significant differences in the interpretation of terms in annotations exist among trading countries and are causing implementation difficulties, and then include these definitions in its report to the Conference of the Parties for adoption;
- b) the Secretariat to issue a Notification to the Parties on any the interim definitions of terms in annotations agreed by the Standing Committee;
- c) the Secretariat to report to the Standing Committee, for at least four years following the adoption of a proposal to transfer species from Appendix I to Appendix II subject to a substantive annotation, any credible information it receives indicating a significant increase in the illegal trade in or poaching of such species; and
- d) the Standing Committee to investigate any such reports of illegal trade and to take appropriate action to remedy the situation, which may include calling on the Parties to suspend commercial trade in the affected species, or inviting the Depository Government to submit a proposal to amend the annotation or to retransfer the species to Appendix I; ~~and~~

AGREES that, for species transferred from Appendix I to II with an annotation specifying that only certain types of specimens are subject to the provisions relating to species in Appendix II, specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly; and

RECOMMENDS that the definitions of terms and expressions used in annotations in the Appendices be applied by the Parties.

Proposed amendments to Decisions 16.162 and 16.163 regarding Annotations

Proposed additional text is underlined. Proposed deletions are marked with ~~strike through~~.

Directed to the Standing Committee, in cooperation with the Animals Committee and the Plants Committee

16.162 1. The Standing Committee shall ~~form a~~ re-establish the working group on annotations, in close ~~(Rev.CoP17)~~ collaboration with the Animals and Plants Committees, recognizing that the Animals and Plants Committees are an important source of expertise and advice to Parties on such scientific and technical issues. The group ~~shall be chaired by a member of the Standing Committee and shall~~ include, but not be limited to, members from the Standing Committee, Animals Committee, Plants Committee, observer Parties, CITES Management and Scientific Authorities, enforcement authorities, including Customs, and industry representatives. The Standing Committee shall particularly endeavour to ensure balanced representation of importing and exporting Parties. The terms of reference for the working group shall be:

- ~~a)~~ a) ~~to explore the shared understanding among Parties of annotations, both their meaning and function, and the adoption of appropriate and reasonable procedures for crafting plant annotations;~~
- ~~b)~~ ba) to evaluate and address issues related to the drafting, interpretation and implementation of annotations, and assist Parties in drafting future annotations, drawing on appropriate expertise from within and outside its membership;
- ~~b)~~ eb) ~~initially, to focus its efforts~~ to conduct any relevant additional work on evaluating the existing annotations for plant taxa listed in Appendices II and III, with an emphasis on ensuring that such annotations are clear as to the types of specimens to be covered by a listing, can be readily implemented, and focus on those parts and derivatives primarily exported from the range States and those commodities that dominate the trade in and demand for the wild resource;
- ~~c)~~ dc) based on the results of the timber trade study directed to the Secretariat in Decision 15.35 (Rev. CoP16), to review the existing annotations for tree species and, if appropriate, draft amendments to those annotations and prepare clear definitions for the terms used in the annotations in order to facilitate their use and understanding by CITES authorities, enforcement officers, exporters and importers;
- ~~d)~~ ed) ~~in close collaboration with ongoing efforts in the Plants Committee, to continue reviewing the appropriateness and practical implementation of the annotation(s) of the agarwood-producing taxa (*Aquilaria* spp. and *Gyrinops* spp.), taking into consideration the previous work done by the range and consumer States of these species;~~
- ~~e)~~ fe) to review outstanding implementation challenges resulting from the listings of *Aniba rosaeodora* and *Bulnesia sarmientoi* in the Appendices, particularly concerning trade in extracts, and propose appropriate solutions ~~at the 17th meeting of the Conference of the Parties;~~
- ~~f)~~ gf) to draft definitions of terms included in annotations, in cases where the terms are not easily understood or where there has been difficulty in implementing the listing as a result of confusion about what commodities are covered, and submit them to the Standing Committee for adoption by the Conference of the Parties and subsequent inclusion in the Interpretation section of the Appendices;
- ~~g)~~ h) ~~to consider the effectiveness of including definitions of terms in annotations in the Interpretation section of the Appendices instead of elsewhere (e.g. in Resolutions) and, based on the determination, draft a proposal to include all definitions in a single location;~~
- ~~h)~~ ig) to conduct any work related to annotations directed to it by the Conference of the Parties, the Standing, Animals or Plants Committee; and

- j) to prepare reports on progress made in addressing the issues tasked to it and submit them for consideration at the 659th and 6670th meetings of the Standing Committee.

Directed to Parties

16.163 At its 178th meeting, the Conference of the Parties shall review the outcomes of the work (Rev. CoP17) undertaken by the working group called for in Decision 16.162 (Rev. CoP17) and evaluate the need for continuing such a working group. If agreed, the Parties shall maintain Decision 16.162 (Rev. CoP17) and make changes to the terms of reference, as appropriate.