

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

ANNOTATIONS FOR SPECIES LISTED IN THE CITES APPENDICES
REPORT OF THE WORKING GROUP

1. This document has been submitted by United States of America as Chair of the Standing Committee Working Group on Annotations.

Background

2. At the 16th meeting of the Conference of the Parties (CoP16; Bangkok, 2013), the Parties adopted Decisions 16.161-16.163, related to Annotations, as follows:

Directed to the Standing Committee

16.161 *Acknowledging that, at the 16th meeting of the Conference of the Parties, the Parties agreed to include definitions of terms in annotations in the Interpretation section of the Appendices as an interim measure until a final decision is reached, the Standing Committee shall examine the issue of where definitions of terms in annotations should be included permanently and make a recommendation in that regard.*

Directed to the Standing Committee, Animals Committee and Plants Committee

16.162 *The Standing Committee shall form a working group on annotations, in close 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 terms of reference for the working group shall be:*

- 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;*

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.

- b) *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;*
- c) *initially, to focus its efforts 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;*
- d) *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;*
- e) *to review 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;*
- f) *to review outstanding implementation challenges resulting from the listings of Aniba rosaeodora and Bulnesia sarmientoi in the Appendices, and propose appropriate solutions at the 17th meeting of the Conference of the Parties;*
- g) *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;*
- 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;*
- i) *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 the 65th and 66th meetings of the Standing Committee.*

Directed to Parties

16.163 *At its 17th meeting, the Conference of the Parties shall review the outcomes of the work undertaken by the working group called for in Decision 16.162 and evaluate the need for continuing such a working group. If agreed, the Parties shall maintain Decision 16.162 and make changes to the terms of reference, as appropriate.*

3. Additionally, the Parties adopted Decision 16.151 at CoP16, as follows, directing the Standing Committee Working Group on Annotations to review the annotation to the listings of *Panax ginseng* and *P. quinquefolius*:

Directed to the Standing Committee

16.151 *The Working Group on Annotations should review the annotation to the listing of *Panax ginseng* and *P. quinquefolius* with a view to its standardization and amendment, as appropriate.*

4. Decision 16.162 directs the Standing Committee to establish a working group on annotations, provides an extensive list of tasks for the working group, and instructs the working group to report at the 65th (SC65; Geneva, 2014) and 66th meetings (SC66; Geneva, 2016) of the Standing Committee. The working group was not established at SC64, but the United States received the agreement of the Chair of the Standing

Committee to establish an interim working group, with the membership and chairmanship as it was at SC62 (Geneva, 2012), to work until SC65.

5. At SC65, the United States submitted a report of the interim working group (document SC65 Doc. 49.1). The report included a discussion on the history of the use of annotations in CITES, types of CITES annotations, scope of annotations, and existing guidance for crafting CITES annotations, and provided a summary of work done to date on CITES annotations (provided in the Annex to document SC65 Doc. 49.1). The interim working group presented a history of the use of annotations in CITES that they believed represented a collective understanding of how annotations have been used in CITES to date, in both their meaning and function, in fulfillment of the first part of paragraph a) of the terms of reference of the working group in Decision 16.162, and recommended in the report that the Standing Committee note this at SC65. The report also included a discussion of potential options on where definitions of terms in annotations should be permanently included. The interim working group recommended that the Standing Committee consider these options, determine which option is preferred, and include this determination in its instructions to the formal intersessional working group formed at SC65. The Standing Committee noted the report of the interim working group at SC65 but did not discuss the options on where definitions of terms in annotations should be permanently included.
6. The Standing Committee established the Working Group on Annotations at SC65. The Committee also agreed that the working group would be co-chaired by the United Kingdom and the United States and that its members would be: Australia, Canada, China, France, Germany, Indonesia, Kuwait, Mexico, Norway, Switzerland; Ms. Caceres as a representative of the Animals Committee, and Ms. Rivera (Central and South America and the Caribbean), Mr. Sajeva (Europe), Mr. Leach (Oceania), Mr. Luke (Africa) and Ms. Al-Salem (Asia) as representatives of the Plants Committee; and the European Union, the American Herbal Products Association, the Center for International Environmental Law, Humane Society International, International Fragrance Association, IWMC-World Conservation Trust, Lewis and Clark College, and TRAFFIC. [Note: the United Kingdom subsequently withdrew as co-chair of the working group.]
7. The working group submitted document SC66 Doc.25 to SC66. Document SC66 Doc. 25 outlined the discussion related to the issue of where definitions of terms in annotations should be permanently included, and asked the Standing Committee to determine whether they should be permanently included in Resolutions or in the Interpretation section of the Appendices. In the document, the working group also proposed amendments to Resolutions Conf. 5.20 (Rev. CoP16), Conf. 9.24 (Rev. CoP16), Conf. 9.25 (Rev. CoP16), and Conf. 11.21 (Rev. CoP16). Finally, the working group noted that there remained outstanding issues concerning the discussions related to Annotation #3, Annotation #11, Annotation #12, and Annotation #14, and requested that the Standing Committee convene an in-session meeting of the working group at SC66 to discuss these issues. In introducing the document, the working group chair also noted that there was not consensus within the working group concerning the proposed new paragraph f) under the first RECOMMENDS in the operative section of Resolution Conf. 11.21 (Rev. CoP16) on *Use of annotations in Appendices I and II*. Also, as outlined in document SC66 Doc. 52, additional consultation was undertaken following the submission of the document. The working group chair therefore asked the Committee to form an in-session working group to address these issues.
8. During discussions in the plenary session at the meeting, the 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 to document SC66 Doc. 25, and requested the Secretariat to submit a document to the 17th meeting of the Conference of the Parties proposing that the Parties adopt these amendments. The Committee also agreed to reconvene the working group on annotations as an in-session working group with the mandate to address unresolved issues in Annex 4 to document SC66 Doc. 25, with regard to Resolution Conf. 11.21 (Rev. CoP16) on *Use of annotations in Appendices I and II*, and other outstanding issues.
9. As outlined in document SC66 Com. 12, the working group noted that the Committee agreed that definitions of terms in annotations should be permanently included in the Interpretation section of the Appendices. The working group further sought the Committee's agreement that definitions of terms in annotations are not part of substantive annotations and are included in the Interpretation section of the Appendices for reference and ease of location, and that 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), Conf. 9.25 (Rev. CoP16), and Conf. 11.21 (Rev. CoP16).

10. The working group agreed that the proposed new paragraph f) under the first RECOMMENDS in the operative section of Resolution Conf. 11.21 (Rev. CoP16) would require additional consultation and recommended that it be removed from the revisions proposed to Resolution Conf. 11.21 (Rev. CoP16), and that the Committee adopt the other revisions to this Resolution, but including the following revised text for paragraph d) under ENCOURAGES:

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;

11. The working group also recommended that the Committee request that the group continue its discussions concerning the proposed paragraph f) in Resolution Conf. 11.21 (Rev. CoP16) (see above) and the outstanding issues raised in document SC66 Doc. 25 regarding Annotation #3, Annotation #11, Annotation #12, and Annotation #14, and submit a document for consideration at the 17th meeting of the Conference of the Parties. The Committee adopted document SC66 Com. 12 without comment. [See SC66 Sum. 10 (Rev. 1)].

Guidance for crafting and interpreting annotations

12. The working group agreed that the two main principles that should be followed as standard guidance when drafting annotations for plants are that they should include the specimens that first appear in trade from the range States and the specimens that dominate the trade from the wild resource. This guidance was endorsed by the Standing Committee at SC66 and is outlined in document CoP17 Doc. 83.1.

13. In document SC66 Doc. 25, the working group noted that annotations to listings in the CITES Appendices that specify the types of specimens occur in three forms:

1) Inclusionary – generally specifies the specimens to be included under the listing.

Example: #5 Logs, sawn wood and veneer sheets.

2) Exclusionary – generally specifies the specimens to be excluded from the listing.

Example: #2 All parts and derivatives except:

a) seeds and pollen; and

b) finished products packaged and ready for retail trade.

3) A combination of inclusionary and exclusionary – specifies the specimens to be excluded from the listing, but also references a subset of those specimens that are excepted from the exclusion (i.e., specimens that are included in the listing); or specifies the specimens to be included in the listing, but also references a subset of those specimens to be excluded.

Example: #4 All parts and derivatives, except:

a) seeds (including seedpods of Orchidaceae), spores and pollen (including pollinia). The exemption does not apply to seeds from Cactaceae spp. exported from Mexico, and to seeds from *Beccariophoenix madagascariensis* and *Neodypsis decaryi* exported from Madagascar;

b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;

c) cut flowers of artificially propagated plants;

d) fruits, and parts and derivatives thereof, of naturalized or artificially propagated plants of the genus *Vanilla* (Orchidaceae) and of the family Cactaceae;

e) stems, flowers, and parts and derivatives thereof, of naturalized or artificially propagated plants of the genera *Opuntia* subgenus *Opuntia* and *Selenicereus* (Cactaceae); and

f) finished products of *Euphorbia antisiphilitica* packaged and ready for retail trade.

14. Parties have generally interpreted an inclusionary annotation to cover, in addition to whole live and dead specimens, only the types of specimens identified in the annotation and excluding all those not identified. As such, Parties have also generally interpreted finished products packaged and ready for retail trade to be excluded from an inclusionary annotation unless specifically included in the inclusionary annotation. During discussions within the working group, the majority of the members agreed that in cases where the types of specimens identified in the inclusionary annotation are themselves finished products packaged and ready for retail trade, those specimens are covered under the listing. During those discussions, an example was provided of a species included in the Appendices with Annotation #5 (Logs, sawn wood and veneer sheets), whereby if the specimen in trade is veneer sheets packaged and ready for retail trade, those veneer sheets would be covered under the listing and require CITES documents. However, owing to a lack of consensus within the working group and disagreement over how to characterize the concept in Resolution text, the working group determined that this is an issue that would be best resolved in future discussions.

Consideration of issues related to specific plant annotations

Annotation #3 *Whole and sliced roots and parts of roots, excluding manufactured parts or derivatives, such as powders, pills, extracts, tonics, teas and confectionery*

15. Decision 16.151 on *Ginseng* (*Panax ginseng* and *P. quinquefolius*) directs the Standing Committee Working Group on Annotations to review this annotation with a view to its standardization and possible amendment.
16. As described in document SC66 Doc. 25, the United States, one of the two range States of *P. quinquefolius*, consulted with its plant inspection officials to evaluate whether the text in the annotation that provides examples of excluded specimens, beginning “such as...,” should be removed from the annotation. U.S. inspection officials reported that they found the examples helpful for inspectors in determining which types of ginseng specimens are subject to CITES controls. As recommended by the working group, the United States undertook consultations with the other two range States for these species, Canada and the Russian Federation, to determine their views on this matter. Canada responded that, although they did not believe that the examples were necessary, they did not oppose retaining them in the annotation. The Russian Federation did not respond to the consultation. Based on the information received, the working group does not believe that it is necessary at this time to propose an amendment to this annotation.

Annotation #11 *Logs, sawn wood, veneer sheets, plywood, powder and extracts*

and

Annotation #12 *Logs, sawn wood, veneer sheets, plywood and extracts. Finished products containing such extracts as ingredients, including fragrances, are not considered to be covered by this annotation*

17. Paragraph f) of the terms of reference in Decision 16.162 directs the working group to review outstanding implementation challenges resulting from the listings of *Aniba rosaeodora* and *Bulnesia sarmientoi* in the Appendices, and propose appropriate solutions at CoP17.
18. In document SC66 Doc. 25, the working group noted that *Aniba rosaeodora* and *Bulnesia sarmientoi* are often traded in the same form (*i.e.*, extract). Consequently, the working group agreed that the phrase “finished products containing such extracts as ingredients, including fragrances, are not considered to be covered by this annotation” should be added to Annotation #11. This revision would harmonize the two annotations, to the extent practicable. The United States, on behalf of the working group, has submitted a proposal to amend Annotation #11 to add this phrase (see proposal CoP17 Prop. 62).
19. Also as noted in document SC66 Doc. 25, there have been differing views within the Plants Committee on whether, in addition to finished products, mixtures and fragrances containing extracts should also be excluded from the listing and if so, at what stage of processing or concentration that exclusion should apply. In December 2015, the United States, as chair of the working group, sent a request to the working group members that are CITES Parties asking them to: 1) consult with their national personal care products industry to determine whether the industry has a clear understanding of when CITES documents are required for international trade in extracts (including essential oil) of *A. rosaeodora* and *B. sarmientoi* (*i.e.*, what types of “extract” specimens are covered); and 2) consult with enforcement authorities (*i.e.*,

Customs) to determine if they have a clear understanding of these requirements and whether the products containing extracts that require CITES documents are those that first appear as exports from the range States and that dominate the trade and the demand for the wild resource. Additionally, working group members who are also Regional Representatives to the Plants Committee were asked to consult with exporting and importing countries in their regions, especially Argentina, Brazil, and Paraguay.

20. In response to this consultation, the Plants Committee representative from Europe noted that one country in his region responded that there was uncertainty within the CITES Management Authority and among Customs officers concerning at what stage of processing extracts no longer require CITES documents. No other responses were received. In light of the lack of resolution on this issue and the need for continued discussion, the working group believes that there remain outstanding issues with regard to the annotations for these two species and recommends that this element be retained in the terms of reference of any working group on annotations convened as the result of a decision at CoP17.

Annotation #14 *All parts and derivatives except:*

- a) *seeds and pollen;*
- b) *seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;*
- c) *fruits;*
- d) *leaves;*
- e) *exhausted agarwood powder, including compressed powder in all shapes; and*
- f) *finished products packaged and ready for retail trade, this exemption does not apply to beads, prayer beads and carvings.*

21. Paragraph e) of the terms of reference in Decision 16.162 directs the working group to review 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.
22. As outlined in document SC66 Doc. 25, the working group noted that the word “exhausted” is an industry term used to differentiate between powder that has had oil extracted and powder that has not had oil extracted, and agreed that for conservation purposes, it is important to retain the term “exhausted” in the annotation. Therefore, the working group believes that confusion over the term will be alleviated by defining the term “exhausted powder,” and through the examples provided in the agarwood glossary and the development of identification materials for agarwood of exhausted powder and powder derived from other methods. The working group believes that these issues should be addressed by an agarwood working group or other appropriate body during the next intersessional period.
23. As directed by the working group, in December 2015 the United States undertook consultations to determine if Parties encounter agarwood woodchips traded as finished products packaged and ready for retail trade. The United States sent the request to the working group members that are also Regional Representatives to the Plants Committee, asking them to consult within their Regions on this issue. The Alternate Representative from Asia noted that one can find agarwood woodchips in the Middle East as finished products packaged and ready for retail trade but that trade in such specimens requires CITES documents (Note: this is understood to be a stricter domestic measure within the region). She noted that, consequently, there did not appear to be a need to revise the annotation. The Regional Representative from Oceania reported that exports from that Region are predominantly in large commercial quantities, noting however that the Oceania Region supplies a small percentage of the global agarwood trade. He also raised the concern that it would be relatively simple to package woodchips in plastic bags of one to several kilograms and call it “finished products packaged and ready for retail trade,” in an effort to avoid the need for CITES documents. The United Kingdom reported that the U.K. Border Force confirmed that most of the illegal trade and enforcement issues with agarwood over the history of the listing of the agarwood-producing taxa in the CITES Appendices concerned packaged woodchips, many of which were subsequently exempted from CITES controls once Annotation #14 was amended. The United Kingdom further noted that much of the material it seized did not indicate the country of origin and only a small proportion of its woodchip seizures would not be considered “packaged and ready for retail trade.” The majority of such seizures were made because of the lack of accompanying CITES documents. U.S.

enforcement personnel indicated that they encounter agarwood woodchips traded in a form that would be considered “finished products packaged and ready for retail trade.”

24. Based on the discussions within the working group and the responses to the consultations, it appears that agarwood woodchips, including as finished products packaged and ready for retail trade, constitute a significant portion of the international trade in agarwood-producing taxa. Consequently, the working group agrees that agarwood wood chips should not be exempt from CITES controls when they are traded as finished products packaged and ready for retail trade except when they qualify for the exemption outlined in Resolution Conf. 13.7 (Rev. CoP16) on *Control of trade in personal and household effects*. The United States, on behalf of the working group, has submitted a proposal to amend Annotation #14 to add woodchips to the list in paragraph f) of specimens to which the exemption for finished products packaged and ready for retail trade does not apply (see proposal CoP17 Prop. 60).

Recommendations

25. The working group recommends that the Parties adopt the proposed revisions to Annotation #11 (see proposal CoP17 Prop. 62) and Annotation #14 (see proposal CoP17 Prop. 60).
26. The working group recommends that the Parties adopt a Decision (or Decisions) directing the Standing Committee to continue the work of the Annotations Working Group to address outstanding issues and any other issues directed to it by the Conference of the Parties or the Standing Committee.

COMMENTS FROM THE SECRETARIAT

For comments, please see document CoP17 Doc. 83.1 on Report of the Standing Committee, comments on document CoP17 Doc. 83.3 on Annotations for Appendix II orchids and amendment proposals 60 and 62.