

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

Thirteenth meeting of the Conference of Parties
Bangkok (Thailand) 2-14 October 2004-03-01

Interpretation and implementation of the Convention

Issue of retrospective permits

1. This document has submitted by Ireland (on behalf of the Member States of the European Community).

Background

2. Articles III, IV and V of the Convention provide that trade in any specimen of a species included in the appendices requires the prior grant and presentation of the relevant CITES document. With Resolution Conf 6.6, the Conference of the Parties addressed the fact that the obligations of Article VIII of the Convention may be seriously compromised by the retrospective issue of permits, which it was feared might become a substitute for the prior presentation of such documents.

3. The resolution (subsequently combined with others to form section XIII of Resolution 12.3) recommended that Parties should not issue retrospective export permits, or accept the import of specimens on the basis of such documents. No exceptions were allowed to this recommendation in the case of Appendix I specimens but it was accepted that retrospective permits could be issued for Appendix II & III specimens provided the Management Authorities of both the (re) exporting and importing countries were satisfied that:

- the irregularities that have occurred are not attributable to the (re) exporter or importer; and
- the (re) export and import of the specimens concerned are in compliance with the Convention and with the relevant legislation of the countries of (re) export and import.

Consideration

4. It is recognised that the power to issue retrospective permits is open to abuse and needs to be tightly constrained. However, it is felt that that the wording of the current Resolution is too restrictive and makes no allowance for those cases where a special exemption might be justified. A strict application of the Resolution would offend against the principle of proportionality and there is a strong possibility that decisions taken on this basis could be taken to judicial review by domestic Courts.

5. Ignorance is not a defence under the law, and commercial traders should certainly be expected to have familiarised themselves with the regulations that govern the trade in CITES species. However, minor mistakes or lapses of memory are sometimes made, or individuals may be genuinely unaware of the CITES requirements, and in these circumstances confiscation may be considered a disproportionate response, particularly where pet animals or cherished personal possessions are involved.

6. Member States should have a broader discretion to intervene in cases such as this, tempered by a requirement to report all such decisions in their biennial report. A

severe caution backed up by sale restriction should be more than sufficient to deal with minor infractions such as these. However, this discretion should not be afforded to repeat offenders as they will already be aware of the need to obtain a CITES permit, or will have made appropriate arrangements to ensure that such mistakes are not repeated.

Recommendation

7. Ireland, on behalf of the Member States of the European Community, therefore recommends that the Parties agree to:

a) amend subparagraph i) of paragraph c) of section XIII of Resolution Conf 12.3 to read:

“that the irregularities that have occurred are not attributable to the (re) exporter or the importer or, in the case of specimens imported or (re) exported for primarily non commercial purposes, the management authority, in consultation with the relevant enforcement authority, is satisfied that there is evidence that a genuine error had been made, or that there were exceptionally extenuating circumstances, and that there was no attempt to deceive;”

b) amend subparagraph ii) of paragraph d) of section XIII of Resolution Conf 12.3 to read:

“the reasons for the relaxation, which should come within the purview of paragraphs c) subparagraphs i) and ii) above, are specified in the conditions on the permit or certificate and a copy sent to the Secretariat and also list these in the biennial report to the secretariat.”

and

c) include a further clause as follows:

“f) Parties are further urged to make provision for penalties and restrictions on subsequent sales to be imposed where appropriate to ensure that the power to grant exemptions to the general prohibition on the issue of retrospective permits is not abused.”