

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



Fourteenth meeting of the Plants Committee  
Windhoek (Namibia), 16-20 February 2004

FLASKED SEEDLINGS TRADED UNDER THE STANDARD EXEMPTION FROM CITES

1. This document has been prepared by the Management Authority of Germany.

Background

2. In vitro specimens of Appendix I Orchid specimen are exempted from CITES as case of a standard exemption as long as they are still contained in sterile containers, see Resolution Conf. 11.11.
3. This standard exemption is based on the fact that flaked seedlings are produced in a manner intensively manipulated by human intervention. Seedlings which are growing in containers cannot be taken from the wild. They are artificial products beyond any doubt.
4. In the case where specimens are taken from the sterile containers for further cultivation the qualification for the exemption from CITES no longer exists. To allow a re-exportation of such specimen the Management Authority has to prove to its satisfaction that the specimen were imported in accordance with the provisions of the Convention (Article IV, para. 5 of CITES).
5. How to find out whether an import which falls under the exemption was in accordance with the Convention? At least it must be considered that every import which took place as a case of standard exemption was in accordance with CITES. Therefore the re-exporter must only provide proof that the respective specimen have been previously imported and that at the time of importation they qualified for the exemption.
6. The following practical example shall draw the attention to a problem arisen from this standard exemption:
7. In March 2003 a orchid nursery applied at the German CITES Management Authority for a re-export certificate for artificially propagated plants of *Paphiopedilum vietnamense*. As proof of legality of the respective plants the applicant had attached to his application a phytosanitary certificate of Vietnam. Additionally he declared that he had imported the plants in 2002 as seedlings contained in sterile containers. With the same shipment he had also imported seedlings in sterile containers of the species *Paphiopedilum tranlienianum*, *P. hangianum*, *P. emersonii*, *P. coccineum* and *P. helenae*.
8. After consultation with Germany's Scientific Authority and because *Paphiopedilum vietnamense*, *P. hangianum* and *P. coccineum* are newly described and endemic species of Vietnam the CITES Management Authority of Vietnam was requested to provide information whether the seedlings were in fact artificially propagated in Vietnam. The two responses received from Vietnam stated
  - a) that all *Paphiopedilum* species are protected by domestic law of Viet Nam;
  - b) that "it is not allowed to exploit such specimen from the wild";
  - c) that there is no operation registered with the Vietnamese authority which propagates the requested species artificially; and

- d) that in conclusion the export violated the Vietnamese law.
9. According to the statements of the Vietnamese CITES Management Authority the specimen in question could not be accepted as being artificially propagated plants in accordance with the provisions of CITES Resolution Conf. 11.11, 1st operative paragraph b) since the parental stock / material had been acquired not in line with the domestic Vietnamese law. The specimen imported under the exemption from CITES became after their replacement from the sterile containers illegal, because they hadn't been artificially propagated.
10. Furthermore the same problem concerning in-vitro seedlings of the same species imported from Indonesia was detected. Also these flasks seedlings were accompanied by a phytosanitary certificate.

#### Further action

11. This case was brought to the attention of the CITES Secretariat. The legal opinion with which the German MA confronted the Secretariat with was the following:

*Resolution Conf. 11.11 "recommends that flasks seedlings of orchid species listed in Appendix I be interpreted as being exempt from CITES control, taking into account the provisions of Article VII, paragraph 4 and Article I paragraph (b) (iii) ... for this exemption". It is our understanding that this exemption is valid only when the specimen in question was artificially propagated according to CITES Resolution Conf. 11.11. To meet the conditions of this Resolution "the parental stock must be established in accordance to with the provisions of CITES and the relevant national laws".*

12. As the parental stock / material of the respective plants had been illegally taken from the wild the shipment of the seedlings in sterile containers couldn't be accepted as a legal one. This means that the flasks seedlings and later on the plants produced from these seedlings should be recognized as plants not fulfilling the conditions for artificial propagation with the result that the respective flasks seedlings were not qualified for the above mentioned standard exemption.
13. The Secretariat confirmed Germany's legal interpretation which resulted in the rejection of both applications for re-export certificates.

#### Proposal to resolve the problem

14. It is proposed that the wording in Resolution Conf. 11.11 "Regarding flasks seedlings" should be amended as follows (new text underlined):

*'RECOMMENDS that flasks seedlings of orchid species listed in Appendix I which were produced from parental material acquired in accordance with the provisions of CITES and relevant national laws be interpreted as being exempt from CITES control, taking into account the provisions of Article VII, paragraph 4, and Article I, paragraph (b) (iii), and agreeing to a derogation from Resolution Conf. 9.6 (Rev.) for this exemption'.*

15. After having discussed and agreed this at its 14th meeting the Plants Committee shall submit in accordance with Resolution Conf. 11.1 (Rev.), Annex 2, paragraph j) a proposal to the 13th meeting of the Conference of the Parties to amend CITES Resolution Conf. 11.11 as formulated above.

#### Possible additional measures to be discussed by the PC

- a) Countries of origin should strengthen their enforcement efforts on the national level;
- b) Countries of origin should inform Parties about their stricter domestic measures, i.e. export bans and document necessities; and
- c) In particular countries of origin which artificially propagate endemic species should implement nationally the provisions provided by Resolution Conf. 9.19 to register and notify Appendix I plant nurseries to the Parties.