

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

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

Interpretation and implementation of the Convention

Trade control and marking issues

RETROSPECTIVE ISSUANCE OF PERMITS

1. This document has been 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 on Retrospective issuance of permits and certificates, the Conference of the Parties addressed the fact that the provisions 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. Resolution Conf. 6.6 (subsequently combined with others to form section XIII of Resolution Conf. 12.3) recommended that Parties 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 and -III specimens provided the Management Authorities of both the (re-)exporting and importing countries were satisfied:
 - i) *that the irregularities (which have occurred) are not attributable to the (re-)exporter and/or the importer; and*
 - ii) *that the (re-)export/import of the specimens concerned is otherwise in compliance with the Convention and the relevant legislation of (re-)exporting and importing countries;*

Consideration

4. It is recognized 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 go 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 familiarized 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. Parties should have a broader discretion to intervene in cases such as these, 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 the revision of Resolution Conf. 12.3 outlined in the Annex.

COMMENTS FROM THE SECRETARIAT

- A. Although the current recommendations with regard to the retrospective issuance of permits and certificates have been in place since 1987 and seem to have worked satisfactorily, the Secretariat has no objection to the proposed amendments in principle.
- B. It should be pointed out however, that the “pet animals or cherished personal possessions” referred to in paragraph 5 above, fall under the exemption for personal or household effects provided by Article VII, paragraph 3, of the Convention.
- C. Where the proposed amendments are concerned, the Secretariat suggests the following changes (deleted text in ~~strike through~~ and new text underlined):

1. Regarding section XIII, paragraph c), subparagraph i):

- i) 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 in non-commercial quantities 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 has been made, or that there were exceptional extenuating circumstances, and that there was no attempt to deceive;

2. Regarding section XIII, paragraph d), subparagraph ii):

- ii) Parties specify 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~~ send a copy to the Secretariat and ~~also~~ list these exceptions in their biennial reports ~~to the Secretariat~~.

3. Regarding the additional clause:

- e) 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.

Finally, in paragraph 6 above, there is a statement that “this discretion should not be afforded to repeat offenders”, but this is not reflected in the proposed amendments. The Secretariat therefore suggests adding the following paragraph:

- f) the above discretion to issue permits and certificates retrospectively not be afforded to repeat offenders.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Revision of Resolution Conf. 12.3

1. Amend section XIII, paragraph c), subparagraph i), to read:

- i) 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 has been made, or that there were exceptionally extenuating circumstances, and that there was no attempt to deceive;

2. Amend section XIII, paragraph d), subparagraph ii), to read:

- ii) 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.

3. Include a further clause as follows:

- e) 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.