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## IMPLEMENTATION IN THE EU OF THE AMENDMENTS MADE TO THE CITES APPENDICES AT CoP18

At the 18<sup>th</sup> meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP18, 17-28 August 2019), CITES Parties decided to include additional animal and plant species in the Appendices to the Convention (further referred to as “the Appendices”), as well as to transfer some species from one Appendix to another, or to remove certain products from the Appendices. The full list of amendments to the Appendices agreed at CoP18 is annexed to CITES Notification No. 2019/055 of 17 October 2019, available [here](#).

The present document provides some initial clarifications about the impact of the amendments on trade in these species, and items derived from them, into, from and within the European Union<sup>1</sup>.

Additional background information on the EU's legislation on wildlife trade can be found on the website of the European Commission on wildlife trade:

[http://ec.europa.eu/environment/cites/legislation\\_en.htm](http://ec.europa.eu/environment/cites/legislation_en.htm).

For information on the issuance of permits or certificates for specific import, export or re-export transactions, it is recommended to contact the management authority of the relevant EU Member State:

<https://cites.org/eng/cms/index.php/component/cp>.

### **1. A number of new animal and plant species were included in the Appendices at the 18<sup>th</sup> meeting of the CITES Conference of the Parties. When will the inclusion of these species enter into force? When will these changes become part of EU law? What will happen in the interim period?**

The **changes to the Appendices** will enter into force at the international level on **26 November 2019** (90 days after the CoP meeting, pursuant to Article XV(1)(c) of the Convention). For teatfish of the species *Holothuria fuscogilva*, *Holothuria nobilis* and *Holothuria whitmaei*, and for *Cedrela* spp. trees, a one-year delay in implementation of the

<sup>1</sup> The document has been developed by Commission services in consultation with Member States' CITES authorities. As such, it reflects current expert views on the issues at hand but cannot be considered as a formal position of the Commission or of Member States, nor as an authoritative interpretation of legal rules. Neither the Commission nor the Member States' CITES authorities can be held responsible for the use that third parties may make of the information contained in this document.

listing has been agreed by the CITES CoP, and the new rules become applicable only as of 28 August 2020. The current listing remains however valid until 27 August 2020 for the three species of the genus *Cedrela* which are already listed in Appendix III (*Cedrela fissilis*, *C. lilloi*, and *C. odorata*), and at the EU level for the four species currently listed in Annex D to Council Regulation (EC) No 338/97 (*C. montana*, *C. oaxacensis*, *C. salvadorensis* and *C. tonduzii*).

Besides listing of new species, and transfer of species between Appendices, some products have been brought under CITES controls through the **amendment of annotations**<sup>2</sup>. In particular the annotation applicable to *Pericopsis elata* has been amended by CoP18. As of 26 November 2019, plywood as well as transformed wood, as defined in Notification 2019/055, falls under the scope of CITES.

These changes to the Appendices (including annotations) will be transposed into EU law as corresponding changes to the Annexes to Council Regulation (EC) No 338/97 (referred to as “**the Annexes**” in this document). Once adopted, the amended Annexes will enter into force three days after their publication in the *Official Journal of the European Union*, in the course of December 2019.

During the **interim period** between 26 November 2019 and the entry into force of the amended Annexes, the situation is as follows:

- a. EU Member States can issue **export permits** for the export (or **re-export certificates** for the re-export) of all specimens of species and products which were newly included in the Appendices or moved from Appendix II to Appendix I at CoP18, as well as **import permits** for the introduction in the EU of specimens of species newly included in **Appendix I**, directly on the basis of the relevant provisions of the Convention;
  - b. There is no obligation for EU Member States to issue **import permits** for the introduction into the EU of specimens of species and products newly included in **Appendix II**;
  - c. The current regime for **intra-EU trade** in the species and products included in the Annexes will also not change until the entry into force of the amended Annexes.
- 2. Were any animal and plant species excluded from the Appendices at the 18<sup>th</sup> meeting of the CITES Conference of the Parties? When will these changes enter into force? When will these changes become part of EU law? What will happen in the interim period?**

None of the CITES-listed **species** was removed entirely from the Appendices at CoP18.

However, certain **products** from some species were excluded from CITES controls through amendment of annotations accompanying the listing.

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<sup>2</sup> CITES and the corresponding EU Regulations cover, by default, all specimens, whether alive or dead, including parts and derivatives, from animal and plant species listed in the Appendices/EU Annexes. However, through an annotation to the listing, some parts and derivatives may be exempted from certain provisions.

In particular, CoP18 agreed an amendment to **Annotation #15** accompanying the listing of the genus *Dalbergia* and of three *Guibourtia* species in Appendix II, which now indicates that the listing covers all parts and derivatives, except (amended text underlined):

- a) *leaves, flowers, pollen, fruits, and seeds;*
- b) *finished products to a maximum weight of wood of the listed species of up to 10 kg per shipment;*
- c) *finished musical instruments, finished musical instrument parts and finished musical instrument accessories;*
- d) *parts and derivatives of Dalbergia cochinchinensis which are covered by Annotation #4;*
- e) *parts and derivatives of Dalbergia spp. originating and exported from Mexico which are covered by Annotation #6.*

CoP18 further agreed, through amendment to **Annotation #4**, that finished products packaged and ready for retail trade of *Aloe ferox* are also exempted from CITES controls.

As a consequence, the specimens described above will be exempted from CITES controls at borders **outside** the EU as of 26 November 2019. This change will become applicable **in the EU** only once the amended Annexes have been adopted.

**Definitions** of terms used in the amended annotations, such as definitions of “shipment”, “10kg per shipment”, “musical instrument”, etc., are provided in the amended interpretation section of the Appendices, and will be included in the amended Annexes.

During the **interim period** between 26 November 2019 and the entry into force of the amended Annexes, the situation with regard to the newly excluded products is as follows:

- a. Until the entry into force of the amended Annexes, the introduction into and export or re-export from the EU will continue to require presentation of the relevant EU **permit or certificate**.
- b. As of 26 November 2019, the import permit **application** to an EU Member State no longer needs to be accompanied by an export permit, and the “CITES Appendix” field in the application form should be left blank.
- c. With regard to **Annotation #15**, the EU will continue to apply the interpretation of “non-commercial”, “10 kg per shipment” and of the “consolidated shipment” of an orchestra contained in CITES Notification No. 2017/078<sup>3</sup> during the interim period.

CoP18 further agreed to transfer a certain population of vicuña (*Vicugna vicugna*) from Argentina from Appendix I to Appendix II.<sup>4</sup> Similar to the above case of products removed from the Appendices, in the case of species moved **from Appendix I to Appendix II** the new trade regime will also only apply as of the date of entry into force of the amended Annexes.

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<sup>3</sup> This notification will be repealed by the CITES Secretariat on 26 November when the amendments to the Appendices enter into force.

<sup>4</sup> A number of other species were also moved from Appendix I to Appendix II by CoP18 but, for various reasons, no commercial trade is anticipated in those species.

### 3. What will change, after the entry into force of the amended Annexes to Regulation 338/97, for trade in specimens (live plants or animals and derived products) of the species newly listed under CITES at CoP18?

Once the amended Annexes to Regulation 338/97 enter into force, specimens of the species newly listed at CoP18 will be covered by the relevant rules for (i) the (re-)export from the EU to a third country, (ii) the introduction into the EU from a third country and (iii) intra-EU trade. The applicable rules will be different depending on whether the items concerned have been acquired before or after 26 November 2019.

#### a. Trade in specimens acquired before 26 November 2019

Traders, retailers and other persons who are in **possession of specimens of newly listed species** (not previously included in any of the CITES Appendices) that were acquired before 26 November 2019<sup>5</sup>, and who have the intention to trade them, are encouraged to keep any documentary evidence proving acquisition before 26 November 2019, or to contact the competent CITES management authority of their country to inform them that they are in possession of such specimens, to help the authorities determine that the specimens in question have indeed been acquired before 26 November 2019.

The **export or re-export from the EU** of specimens acquired before 26 November 2019, from species newly listed at CITES CoP18, is conditional upon the presentation of an export permit (or re-export certificate), to be issued by the management authority of the Member State of export. There exists a special derogation from certain conditions for dead specimens and their parts and derivatives, where the applicant provides documentary evidence that the specimens were legally acquired before 26 November 2019 (Article 5(6)(ii) of Regulation 338/97).

The **introduction into the EU** of specimens acquired before 26 November 2019, from species newly listed at CoP18, is conditional upon the presentation of an export permit issued by the management authority of the exporting country and of an import permit by the management authority of the EU Member State of destination.

**Trade within the EU** for commercial purposes of specimens acquired before 26 November 2019, from species newly included in Appendix I and subsequently in **Annex A** to Regulation 338/97<sup>6</sup>, is authorised upon the presentation of an intra-EU certificate. This certificate can be delivered by the management authority of the Member State concerned if the applicant demonstrates that the specimen in question was acquired before 26 November 2019 (Article 8(3)(a) of Regulation 338/97). Concerning commercial trade in specimens of species that were previously listed in Annex B<sup>7</sup> and were transferred to Annex A, the applicant will also be requested to present a proof of legal acquisition when applying for the intra-EU certificate.

No certificate is needed to authorise commercial trade within the EU of pre-Convention specimens of species newly included in Appendix II and **Annex B** to the Regulation.

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<sup>5</sup> These are sometimes also referred to as „pre-Convention“ specimens.

<sup>6</sup> Such as the Mindoro peacock swallowtail butterfly (*Achillides chikae hermeli*) or the Grenadines clawed gecko (*Gonatodes daudini*).

<sup>7</sup> Such as the star tortoise (*Geochelone elegans*).

However, traders should be able to demonstrate that the specimens were indeed acquired before 26 November 2019 and in accordance with the legislation in force for the conservation of wild fauna and flora (Article 8(5) of Regulation 338/97). The buyers are advised to request such proof of legal origin from traders and to keep this document, as a proof that the specimen was legally obtained, in particular if they foresee potential future commercial activity within the EU, or (re-)exports of such specimens from the EU.

b. Trade in specimens acquired on or after 26 November 2019

The **export or re-export from the EU** for primarily commercial purposes of specimens acquired on or after 26 November 2019, from species included in Appendix I at CoP18 and subsequently in **Annex A** to Regulation 338/97, is not authorized, except under specific circumstances (for example for captive born and bred specimens) and upon presentation of an export permit or re-export certificate issued by the competent management authority in accordance with Article 5 of the Regulation.

The **export or re-export from the EU** of specimens acquired on or after 26 November 2019, from species included in Appendix II at CoP18 and in **Annex B** to Regulation 338/97, is authorized upon the presentation of an export permit or re-export certificate issued by the competent management authority in accordance with Article 5 of the Regulation.

The **introduction into the EU** for primarily commercial purposes of specimens acquired on or after 26 November 2019, from species included in Appendix I at CoP18 and in **Annex A** to Regulation 338/97, is not authorized except under specific circumstances (for example for captive born and bred animals) and upon presentation of an export permit issued by the exporting country and of an import permit issued by the management authority of the EU Member State where the specimens are to be imported. Article 4(1) of the Regulation sets out the conditions governing the issuing of import permits for such specimens.

The **introduction into the EU** of specimens acquired on or after 26 November 2019, from species included in Appendix II at CoP18 and in **Annex B** to Regulation 338/97, is authorized upon presentation of an export permit issued by the exporting country and of an import permit issued by the management authority of the EU Member State where the products are to be introduced in the EU. Article 4(2) of the Regulation sets out the conditions governing the issuing of import permits for such specimens.

**Trade within the EU** for commercial purposes of specimens acquired on or after 26 November 2019, from species included in Appendix I at CoP18 and in **Annex A** to Regulation 338/97, is in principle not authorised, except under specific circumstances (for example for captive born and bred specimens) and upon presentation of an intra-EU certificate issued by the competent management authority, in accordance with Article 8 of Council Regulation 338/97.

No certificate is needed to authorise commercial trade within the EU for specimens of species included in Appendix II at CoP18 and in **Annex B** of Regulation 338/97, but the traders must be able to demonstrate that the specimens were acquired in accordance with the legislation in force for the conservation of wild fauna and flora. The buyers are advised to request proof of legal origin from traders and keep this documentary evidence, to show that the specimen was

legally obtained, in particular if they foresee potential future commercial activity within the EU, or (re-)exports of such specimens from the EU<sup>8</sup>.

**4. Are there any products from or transactions involving listed species which are not covered by CITES and the EU wildlife trade regime?**

At CITES CoP18, it was agreed that the inclusion of some species would be accompanied by an annotation. The annotation clarifies which parts or products are included or excluded from CITES controls after the entry into force of the amended Annexes. Such an annotation (#6) has been agreed, in particular, for *Pterocarpus tinctorius* (mukula) and the cedar (*Cedrela* spp.). As a consequence, only some parts or products are covered by CITES controls, and the import, export or re-export, of other shipments can proceed without a CITES permit or certificate.

**5. Are there any other decision adopted by CoP18, which are important for importers in the EU?**

At CoP18, a new source code for plants was agreed on. That decision will also enter into force internationally on 26 November 2019. The new source code "Y" stands for "assisted production" and refers to production systems which are neither wild (source code "W"), nor fulfilling the strict criteria for artificial propagation ("A"). While "Y" describes a separate production system, the permitting requirements for trade in "Y specimens" are generally the same as for wild-sourced specimens with source code "W". CITES Resolution Conf. 11.11 on *Regulation of trade in plants*, as amended at CoP 18, provides the description of the new source code. It will be integrated into EU legislation in the course of 2020, through amendments to relevant Commission Regulations.

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<sup>8</sup> See also the Commission guidance document on "Proof of legal acquisition for live animals of Annex B species and necessary documentary evidence", available [here](#).