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QUESTIONS AND ANSWERS ON THE IMPLEMENTATION IN THE EU OF THE LISTING OF ROSEWOOD AND PALISANDER SPECIES¹ INTO CITES APPENDIX II AT CITES CoP17

At the 17th Conference of the Parties of the Convention on International Trade in Endangered Species (24 September – 4 October 2016, CITES CoP17), CITES Parties decided to include in CITES Appendix II:

- all rosewood and palisander species of the genus *Dalbergia*;
- kosso (*Pterocarpus erinaceus*);
- bubinga (*Guibourtia demeusei*; *Guibourtia pellegriniana*; *Guibourtia tessmannii*).

These decisions were adopted on the basis of the high volumes of international trade and the detrimental impact of illegal and unsustainable logging on the conservation of these species. It should be noted that this decision does not affect the listing of the Brazilian rosewood (*Dalbergia nigra*), which was included in CITES Appendix I in 1992 and will remain listed in CITES Appendix I and in Annex A of Council Regulation (EC) No 338/97². A number of other *Dalbergia* species had already been listed in CITES Appendix II since 2013³. These *Dalbergia* species therefore remain listed in CITES Appendix II and in Annex B of Council Regulation (EC) No 338/97, though a wider range of products are covered by the provisions of these regulations.

The decision to list these species in CITES Appendix II entered into force at the international level on 2 January 2017. This change was implemented at EU level through amendments to the Annexes to Council Regulation (EC) No 338/97 which entered into force on 4 February 2017.

This document provides clarifications in relation to questions asked by CITES authorities and stakeholders about the handling of a number of practical cases in relation to the implementation of Council Regulation (EC) No 338/97 in the case of products containing wood of these species. This document complements the general Questions and Answers document released by DG Environment on 22 December 2016⁴.

¹ This document deals with rosewood and palisander species of the genus *Dalbergia*, kosso (*Pterocarpus erinaceus*) and bubinga (*Guibourtia demeusei*; *Guibourtia pellegriniana*; *Guibourtia tessmannii*).

² http://ec.europa.eu/environment/cites/legislation_en.htm

³ *Dalbergia cochinchinensis*, *Dalbergia stevensonii*, *Dalbergia granadillo* and *Dalbergia retusa*, as well as all *Dalbergia* species of Madagascar

⁴ http://ec.europa.eu/environment/cites/pdf/cop17/implementation_CITES_CoP17_listings.pdf

It should also be complemented, as necessary, with exchanges on a case-by-case basis with the authorities of third countries issuing CITES documents for imports from or (re)exports to the EU.

To obtain information for the issuance of permits for specific transactions, it is recommended to contact the management authority of the relevant EU Member State: http://ec.europa.eu/environment/cites/pdf/list_authorities.pdf

Questions and Answers

1. What does this inclusion in CITES Appendix II and Annex B of Council Regulation (EC) No 338/97 mean in practice?

The consequence of this inclusion is that the provisions of CITES and Council Regulation (EC) No 338/97 apply to international trade in items containing wood of:

- rosewood and palisander species of the genus *Dalbergia*; or
- kosso (*Pterocarpus erinaceus*); or
- bubinga (*Guibourtia demeusei*; *Guibourtia pellegriniana*; *Guibourtia tessmannii*).

This means in practice that exports from and introductions ("imports") into the EU of such products are now regulated and subject to documentary requirements, unless otherwise exempted from such requirements.

Intra-EU trade is not subject to such documentary requirements, even though individuals and organizations trading such products may be requested by control authorities to provide evidence that these products are of legal origin.

2. What are the types of products and transactions covered by CITES controls in the case of products containing wood of these species? Do the CITES provisions only apply to exports from the EU, or also to imports and re-exports?

The listing of kosso (*Pterocarpus erinaceus*) in Annex B to Council Regulation (EC) No 338/97 is not accompanied by any annotation, meaning that all parts and derivatives of this species are covered by the provisions of this regulation.

The listing of *Dalbergia* spp., as well as of *Guibourtia demeusei*, *Guibourtia pellegriniana* and *Guibourtia tessmannii*, in Annex B to Council Regulation (EC) No 338/97 is accompanied with annotation #15, which reads as follows:

All parts and derivatives are included, except:

- a) Leaves, flowers, pollen, fruits, and seeds;
- b) Non-commercial trade of a maximum total weight of 10 kg per shipment;
- c) Parts and derivatives of *Dalbergia cochinchinensis*, which are covered by Annotation #4⁵;
- d) Parts and derivatives of *Dalbergia* spp. originating and exported from Mexico, which are covered by Annotation #6.

This annotation means that, with the exception of the species *Dalbergia cochinchinensis* (Siamese rosewood) and *Dalbergia* species originating and exported from Mexico⁶, the

⁵ See the definition of annotations #4 and #6 under the following link: <https://cites.org/eng/app/appendices.php>

⁶ *Dalbergia calderonii*, *Dalbergia calycina*, *Dalbergia congestiflora*, *Dalbergia cubilquitzensis*, *Dalbergia glomerata*, *Dalbergia longepedunculata*, *Dalbergia luteola*, *Dalbergia melanocardium*, *Dalbergia modesta*, *Dalbergia palo-escrito*, *Dalbergia rhachiflexa*, *Dalbergia ruddae*, *Dalbergia tucurensis*

provisions of CITES and Council Regulation (EC) No 338/97 apply to all products containing *Dalbergia* wood, or wood of the species *Guibourtia demeusei*, *Guibourtia pellegriniana* or *Guibourtia tessmannii*, except to non-commercial trade of a maximum total weight of 10 kg per shipment. For these purposes, the term "trade" should be interpreted as exports from a producer country and any subsequent re-exports of a product containing *Dalbergia* wood, or wood of the species *Guibourtia demeusei*, *Guibourtia pellegriniana* or *Guibourtia tessmannii*, as well as imports into the EU. Paragraph (d) of Annotation #15 ("Parts and derivatives of *Dalbergia* spp. originating and exported from Mexico, which are covered by Annotation #6") should be interpreted in the sense that Annotation #6 applies to *Dalbergia* wood originating and exported from Mexico, including imports in the EU and any further re-exports of the product from the EU⁷.

CITES controls apply therefore to commercial imports into, as well as commercial re-exports from the EU, of a wide range of specimens of these species, including logs, sawn wood, veneer sheets and finished products such as musical instruments and other small items.

CITES controls do not apply to non-commercial trade in such specimens of a total weight of CITES-listed rosewood of less than 10 kg per shipment.

3. Personal and household effect exemption

It should also be noted that the EU Wildlife Trade Regulations contain less strict provisions for trade in specimens that are considered as personal and household effects. The carrying of an item, such as a musical instrument, in personal luggage can in this regard be subject to less strict provisions if it meets the definition of a personal and household effect⁸.

4. The annotation to the listing of *Dalbergia* spp., as well as *Guibourtia demeusei*, *Guibourtia pellegriniana* or *Guibourtia tessmannii*, exempts from CITES controls non-commercial trade of a maximum total weight of 10 kg per shipment.

a. Does this weight limit of 10 kg apply to the entire shipment, or to the portion of the shipment made of wood of the species concerned?

It is recommended that this 10 kg weight limit is interpreted as referring to the weight of the portion of the shipment made of wood of the species concerned. This means in practice that any shipment weighing more than 10 kg, but which contains an overall weight of wood of the species concerned of less than 10 kg, is exempted from the documentary requirements foreseen under Council Regulation (EC) No 338/97 if it is traded for non-commercial purposes. In other words, the 10 kg limit is to be assessed against the weight of *Dalbergia*/*Guibourtia* parts contained in the shipment, rather than against the total weight of the shipment.

⁷ This means in practice that in the case of e.g. sawn wood originating and exported from Mexico, any finished product that is further processed in the EU, and re-exported from the EU, falls outside the scope of Annotation #6. This finished product is therefore not subject to a re-export certificate requirement.

⁸ Cf. Article 7(3) of Council Regulation (EC) No 338/97, Articles 57 and 58 of Commission Regulation (EC) No 865/2006.

b. What should be considered as "non-commercial trade" under this annotation?

Trade for commercial purposes is taken to include use for commercial gain, acquisition for commercial purposes, purchase, sale, display for commercial purposes, keeping for sale, offering for sale or transport for sale.

The interpretation of what constitutes commercial or non-commercial trade should be considered on a case-by-case basis. However, some general guidance can be provided for the following situations:

- i. The cross-border movement of musical instruments for purposes including, but not limited to, personal use, paid or unpaid performance, display (e.g. on a temporary exhibition) or competition should be considered as non-commercial⁹;
- ii. It is furthermore recommended that the international transport or sending¹⁰ of an item (to or from a non-EU country), such as a musical instrument, for the purpose of being repaired, is considered as a non-commercial transaction, in view of the fact that the item will remain under the ownership of the same person and that such transport will not lead to the sale of the item. The return to the seller or manufacturer of a product under warranty or after sale service should also be considered as a non-commercial transaction;
- iii. The loan of specimens for exhibition purposes in museums should also be considered as a non-commercial transaction;
- iv. The loan of musical instruments for exhibition or competition purposes should also be considered as a non-commercial transaction.

The sending of a shipment containing multiple items sent for one of the above purposes (e.g. a shipment of musical instruments being jointly sent for the purpose of being repaired) should be considered as non-commercial, within the terms of annotation 15b) to the relevant wood species, and therefore falling outside the scope of provisions applying to Annex B-listed specimens under Council Regulation (EC) No 338/97, provided that the individual portion of these wood species present in each instrument would, if traveling separately, weight less than 10 kg and therefore qualify for the exemption.

The international sending of items (e.g. pieces of musical instrument) for the purpose of being assembled in a third country and then re-exported to the country of initial sending should be considered as a commercial transaction, considering that the assembling of pieces is done in view of the making of an item which will be sold later on, i.e. for commercial purposes.

⁹ In line with CITES Resolution Conf. 16.8 (Rev. CoP17) on the frequent cross-border non-commercial movements of musical instruments

¹⁰ This concerns both the transport from the owner to the repairer, and the transport back from the repairer to the owner.

c. How does this exemption apply to orchestras, music ensembles and similar groups which travel with all instruments of each individual musician in one shipment as "consolidated shipment"?

In the case of traveling orchestras, music ensembles and similar groups, the sending of musical instruments in a container, together with or prior to the travelling of the orchestra, is considered as a "consolidated shipment". In such cases, the total weight of wood of CITES species in the instruments constituting the "consolidated shipment" is likely to exceed 10 kg. Such "consolidated shipment" should nonetheless not require a CITES document¹¹, considering that the individual portion of wood of CITES species present in each instrument would, if traveling separately, weight less than 10 kg and therefore qualify for the exemption. However, if the weight of wood of CITES species subject to Annotation #15 present in any individual instrument exceeds 10 kg, this instrument would require a CITES document.

5. What has changed, after 4 February 2017, for trade in products containing wood of species listed in CITES at CoP17?

Since the entry into force of the Annexes of Council Regulation (EC) No 338/97 on 4 February 2017, products containing wood of new species listed at CITES CoP17, to which the provisions of Council Regulation (EC) No 338/97 apply, are subject to new rules for (i) the re-export from the EU to a third country, (ii) the import into the EU from a 3rd country and (iii) intra-EU trade.

The **export or re-export from the EU** of products containing wood of the species concerned is authorized upon the presentation of an export permit or re-export certificate issued by the competent management authority¹².

The **import into the EU** of products containing wood of the species concerned 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 imported¹³.

No CITES certificate or permit is needed to authorise **trade within the EU** of products containing wood of the species concerned, but in case of regulatory control (enforcement), traders should be able to provide documentary evidence that the specimens were acquired in accordance with the legislation in force for the conservation of wild fauna and flora.

Products containing wood of the species concerned which were acquired¹⁴ before 2 January 2017 (date of entry into force of the new listings at international level pursuant to

¹¹ Musical Instrument Certificate or Traveling Exhibition Certificate

¹² Article 5 of Council Regulation (EC) No 338/97

¹³ See Article 4 of Council Regulation (EC) No 338/97 for more information on the conditions governing the issuing of import permits for such specimens

¹⁴ The word acquired should be understood on the basis of Article 1 of Commission Regulation (EC) No 865/2006, which states that "*pre-Convention specimen*" means a specimen acquired before the species concerned was first included in the Appendices to the Convention", and that "*date of acquisition*" means the date on which a specimen was taken from the wild, born in captivity or artificially propagated, or, if such date is unknown, the earliest provable date on which it was possessed by any person".

the CITES Convention) are considered ‘pre-Convention specimens’¹⁵. No CITES certificate or permit is needed to authorise trade within the EU of such products, but in case of control, traders should be able to provide documentary evidence that the specimens were acquired before 2 January 2017. When applying for a re-export certificate or export permit, the applicant should be able to provide documentary evidence that the products were acquired before 2 January 2017.

6. Is it mandatory to declare stockpiles of wood of the species concerned to national CITES authorities? Is an export document necessary in the case of commercial export of a product containing wood of the species concerned imported into the EU before the CITES listing?

There is no obligation in place for a registration of stockpiles of CITES-listed wood under EU law. In practice, EU Member States' authorities may encourage owners of stocks of wood and products of the species concerned to declare their stocks as "pre-Convention" wood, in particular in cases where these owners intend to re-export their products, or to sell products made of such "pre-Convention" wood, outside the EU.

7. Is a document necessary in the case of commercial export of a product containing wood of the species concerned imported into the EU before the CITES listing?

Companies willing to re-export, after 4 February 2017, products containing wood of the species concerned, imported into the EU before this date, will need to request a re-export certificate from CITES management authorities. Such a re-export certificate can be issued provided that the applicant provides documentary evidence that the timber was imported into the EU before the entry into force of the new provisions (e.g. by presenting a bill, a receipt, an invoice, a registration document, etc.).

8. Are there any marking requirements for international trade in products of the species concerned?

There are no marking requirements applying to international trade in products of these species. It should be noted that many musical instruments are identified through a unique serial number. However, the oldest and most valuable musical instruments often have no serial number and adding one could damage the instrument. This number, or other marks of identification, may be indicated on the corresponding CITES permit or certificate with a view to facilitating identification of the instrument linked to the permit or certificate.

9. Do specimens need to be identified at species level on CITES permits and certificates?

Specimens should, as far as possible, be identified at species level (e.g. *Dalbergia melanoxylon*) on CITES permits and certificates. As a result, national CITES authorities will request to applicants information regarding the identification of the relevant products at species level. However, in the absence of such information, the product may be identified on CITES permits and certificates at genus level (*Dalbergia* spp.), in particular

¹⁵ Article 1.10 of Regulation (EC) No 865/2006.

in the case of worked products such as musical instruments. It should nonetheless be indicated on such documents that the product concerned does not contain wood of the species *Dalbergia nigra*¹⁶.

10. Will imports into the EU of wood of these species be subject to EU import prohibitions?

There is currently no EU import prohibition in place concerning these timber species, with the exception of the CITES Standing Committee's recommendation to suspend all international trade in *Dalbergia* species from Madagascar¹⁷.

Article 4(6) of Regulation (EC) No 338/97 provides nonetheless a process for the Commission to prohibit imports into the EU with regard to certain species and countries. Prohibitions of imports into the EU of certain species from certain countries of origin are usually decided after the Scientific Review Group (SRG) has formed a "Negative Opinion" and has consulted with the relevant range State(s) on the matter. A Negative Opinion is formed if the import is deemed to have a harmful effect on the conservation status of the species¹⁸. Once a Negative Opinion is issued, Member States' Management authorities would not issue import permits for the species from the particular range State. Negative Opinions are of a temporary nature and may be lifted rapidly when new information on the trade or conservation status of the species in the country of concern is provided and appropriately addresses concerns raised. However, if such imports continue to be of concern and the range State in question has not provided information proving otherwise, then, in accordance with Article 4(6), the European Commission can prohibit imports on a long-term basis by including the species/country combination in the so-called "Suspensions Regulation" which is published in the Official Journal of the European Union.

The SRG will in the coming months undertake an assessment of the conservation status of the main species in trade concerned by the new listing and exported to the EU with a view to determining whether imports into the EU can be considered non-detrimental to the population of the species. In order to help developing countries meeting their obligations under CITES to perform "non-detriment" findings and ensure that products from CITES-listed tree species are of legal origin and traceable, the EU is supporting a dedicated capacity-building programme carried out by CITES and the International Tropical Timber Organization¹⁹.

11. How will imports into the EU of *Dalbergia* products be treated when they are exported by countries having issued a reservation to the listing?

According to CITES Notification No. 2017/010, India and Indonesia have both issued a reservation in relation to the inclusion of *Dalbergia* spp. into CITES Appendix II. Trade in products containing *Dalbergia* wood exported by these countries are subject to a specific regime under CITES rules.

¹⁶ This may for example be indicated on box 8 (description of specimens) of the CITES document or on box 21, e.g. through the following wording: *Dalbergia* spp. except *Dalbergia nigra*.

¹⁷ Cf. CITES Notification No. 2016/019

¹⁸ Cf. Article 4.2 of Council Regulation (EC) No 338/97

¹⁹ more details are available under the following link: http://www.itto.int/cites_programme/

Article XXIII of the CITES Convention indicates in particular that "*Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.*"

Article X of the CITES Convention sets out furthermore that "*Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party*". CITES Resolution 9.5 on Trade with States not Party to the Convention recommends in particular that permits and certificates issued by States not Party to the Convention should not be accepted by Parties unless they contain a number of elements providing sufficient clarity as to the legal and sustainable origin of the products concerned.

Imports into the EU of *Dalbergia* products exported by countries having issued a reservation to the listing will therefore be treated in accordance with the above provisions and only accepted if the exporting countries provide all information required so that it can be considered as documentation "comparable" to CITES documentation.

12. Are there streamlined procedures for the non-commercial cross-border movement of musical instruments containing CITES products?

Under the conditions prescribed in EU law²⁰, musical instrument certificates can be used for the non-commercial cross-border movement of musical instruments containing CITES products for purposes including, but not limited to, personal use, performance, production (recordings), broadcast, teaching, display or competition.

A musical instrument certificate makes travelling with instruments containing wood of CITES-listed species easier, because it can be used more than once at border crossing, providing that all the required conditions are met. Therefore, it precludes the need for application for CITES permits each time an international border is crossed.

It should nonetheless be noted that such musical instrument certificates are not needed in the case of specimens that are not subject to the provisions of Council Regulation (EC) No 338/97. This means that the cross-border movement of an instrument for non-commercial purposes in which the amount of wood of *Dalbergia*²¹, or wood of the species *Guibourtia demeusei*, *Guibourtia pellegriniana* or *Guibourtia tessmannii*, is below 10 kg does not require any musical instrument certificate nor CITES permits.

Further details about the practical implementation of Council Regulation (EC) No 338/97 can be found in the following Reference Guide: http://ec.europa.eu/environment/cites/pdf/referenceguide_en.pdf

²⁰ Cf. Articles 44h to 44p of Regulation (EC) No 865/2006

²¹ Except the species *Dalbergia nigra* and *Dalbergia cochinchinensis*