

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

Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3 – 15 June, 2007

Interpretation and implementation of the Convention

VERIFICATION OF PERMIT REQUIREMENTS

Introduction

1. Articles III, IV, and V of the Convention establish the permit requirements for trade in specimens of species included in Appendix I, II, and III, respectively. These provisions require that the importing country satisfy itself that trade in Appendix I specimens is not be for primarily commercial purposes, that the purpose of the import will not be detrimental to the survival of the species, and that the importer is suitably equipped to house and care for a living specimen. The exporting country must satisfy itself that specimens of species included in Appendix I and II to be exported were legally acquired, that the export will not be detrimental to the survival of the species, and that living specimens will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment. It is essential to the successful implementation of CITES that these requirements are made. Indeed, the Secretary General has recognized that adequate implementation of non-detriment finding is “obviously essential for achieving the aims of the Convention.”¹
2. As recognized in the preamble to Resolution Conf. 11.3 (Rev. CoP13), however, “several cases of violation of the Convention have occurred because of inadequate or insufficient implementation by Management Authorities in both exporting and importing countries regarding surveillance, issuance of documentation and control of compliance with the provisions regulating trade in live and dead animal and plants, and their parts and derivatives.” Resolution Conf. 11.3 (Rev. CoP13) further provides that it is of “utmost moral, biological, ecological and economic interest for all Parties” that the Convention be fully implemented to ensure the efficient control of trade

¹ Willem Wijnstekers, *The Evolution of CITES: A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (8th ed. 2005).

and the effective protection of species included in the appendices to the Convention.

Scope and Purpose of this Proposal

3. The preamble of Resolution Conf. 10.3 notes that the issuance of permits without appropriate findings “constitutes a lack of compliance with the Convention and seriously undermines species conservation.” In addition, both Resolution Conf. 11.3 (Rev. CoP13) and Resolution Conf. 12.3 (Rev. CoP13) recommend that Parties “not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin.” However, this authority does not extend to the other permit requirements of Articles III, IV, and V. Moreover, these resolutions do not expressly state that Parties have the authority to verify that permit requirements have been met.
4. Consequently, there is confusion as to whether relevant officials have the authority to verify that permit findings have been made even when they know or have reason to believe that those permit findings have not been made.
5. Legal cases in the United States and the United Kingdom highlight this confusion. A court in the United States ruled that the relevant authorities had the discretion to determine whether permit findings had been made, even when, facially, the permit indicated that it had been. In this case, the Brazilian Management Authority acknowledged that it had not, in fact, determined whether or not the mahogany exported to the United States had been “obtained in contravention of the laws of that State for the protection of fauna and flora” as required by Article IV, paragraph 2(a) of the Convention. The Brazilian Management Authority issued the export permits only because a Brazilian court directed it to do so. Because the Brazilian court had directed that the Brazilian officials issue CITES export permits, the mahogany arrived with fully completed CITES export permits. The U.S. court ruled that even though the permit was fully completed, U.S. officials could detain the shipment until officials ascertained whether or not the permit finding had actually been made by the relevant CITES officials in the exporting country. In other words, a permit was not necessarily valid simply because the permit was fully completed. U.S. officials could “look behind” the four corners of the permit to determine whether the permit conditions had been made and whether the permit was “valid.” *Castlewood Products v. Norton*, 365 F.3d 1076 (D.C 2004), affirming 264 F. Supp. 2d. 9 (D.C.D.C. 2003).
6. A court in the United Kingdom came to a different conclusion when asked to determine whether export permits for mahogany from Brazil were valid. As in the U.S. case, officials were aware that the Brazilian Management Authority had not satisfied itself that the shipments were “not obtained in contravention of the laws of that State for the protection of fauna and flora” as required by

Article IV, paragraph 2(a) of the Convention. In contrast to the U.S. court, the U.K. court determined that a permit is valid if the permit is fully completed; officials cannot look behind the four corners of the permit to verify whether the substantive requirements of the permit have been met. As a result, the court determined that an importing country is not required to reject an export permit even if it learns that the Management Authority of the exporting country was not satisfied that the appropriate findings had been adequately made. One judge also stated that the importing country has no discretion to detain shipments even if it knows the management authority of the exporting country failed to make a necessary permit finding, provided that the permit is otherwise completed. *R (on the application of Greenpeace) v. Secretary of State for the Environment, Food and Rural Affairs*, [2002] EWCA Civ. 1036 (July 25, 2003).

7. The proposed amendment to Resolution Conf. 11.3 clarifies that both importing and exporting Parties may seek verification of any permit requirement of Articles III, IV, and V, even if the permit is fully completed. To ensure that the relevant authorities have a reasonable amount of time to seek verification of a permit requirement, the proposed amendment to Resolution Conf. 11.3 (Rev. CoP13) also allows Parties the discretion to detain shipments of specimens if they know or have reason to believe that the specimens are being traded without the relevant permit findings being made or without adequate support for the findings, regardless of whether the permit specifies that all relevant findings have been made.
8. Because both cases turned on what constitutes a “valid” permit, the language of the proposed amendment focuses on whether the importing country has reason to believe that relevant permit findings of Articles III, IV, or V of the Convention have been made adequately.
9. Finally, the proposed amendment to Resolution Conf. 11.3 (Rev. CoP13) includes, as an operative provision, that “the issuance of permits without appropriate findings constitutes a lack of compliance with the Convention and seriously undermines species conservation.”

Proposed Revisions to Resolution Conf. 11.3 (Rev. CoP13)

10. The two proposed revisions to Resolution Conf. 11.3 (Rev. CoP13) are as follows:

Add as the first operative paragraph under ***Regarding compliance, control and cooperation:***

AGREES that the issuance of permits without appropriate findings constitutes a lack of compliance with the Convention and seriously undermines species conservation.

Amend paragraph c under the first RECOMMENDS:

c) if an ~~importing~~ country knows or has reason to believe that specimens of an ~~Appendix II or III~~ species included in Appendix I, II, or III are traded ~~in contravention of the laws of any country involved in the transaction~~ without the relevant permit findings being made or without adequate support for the finding, regardless of whether the permit specifies that the finding has been made, it

i) immediately inform the country whose permit findings are thought not to have been made adequately ~~laws were thought to have been violated~~ and, to the extent possible, provide that country with copies of all documentation relating to the transaction; ~~and~~

ii) immediately detain such shipments of specimens until information is received confirming that all relevant permit findings were made adequately;

iii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention;

11. The full text of Resolution Conf. 11.3 (Rev. CoP13) with the proposed changes is included in Annex I of this document.

Draft Revisions to Resolution Conf. 11.3 (Rev. CoP13)

Additions are underlined; deletions are marked with a strike-through.

Compliance and enforcement

RECALLING Resolutions Conf. 6.3 and Conf. 7.5, adopted by the Conference of the Parties at its sixth and seventh meetings (Ottawa, 1987; Lausanne, 1989), Resolution Conf. 2.6 (Rev.), adopted at its second meeting (San José, 1979) and amended at its ninth meeting (Fort Lauderdale, 1994), Resolution Conf. 3.9 (Rev.), adopted at its third meeting (New Delhi, 1981) and amended at its ninth meeting, Resolution Conf. 6.4 (Rev.), adopted at its sixth meeting and amended at its ninth meeting, and Resolution Conf. 9.8 (Rev.), adopted at its ninth meeting and amended at its 10th meeting (Harare, 1997);

RECOGNIZING the concerns expressed by various Parties that trade in plants and animals listed in Appendices II and III of the Convention may be detrimental to the survival of some species;

AWARE that, in the past, several cases of violation of the Convention have occurred because of inadequate or insufficient implementation by Management Authorities in both exporting and importing countries regarding surveillance, issuance of documentation and control of compliance with the provisions regulating trade in live and dead animal and plants, and their parts and derivatives;

CONSIDERING that it is of utmost moral, biological, ecological and economic interest for all Parties to the Convention that such violations not re-occur and that the mechanisms established for the Convention to this end are fully implemented, so as to ensure their normal and efficient functioning to control trade in, and afford effective protection to, endangered animal and plant species;

AWARE that there is considerable variability among Parties in their capacity to implement and enforce the provisions of the Convention;

RECOGNIZING that the developing countries, because of their special socio-economic, political, cultural and geographic circumstances have major difficulties in meeting appropriate control requirements, even though this does not exempt them from observing the highest possible degree of effectiveness;

RECOGNIZING the extreme difficulties that all producer countries are facing in implementing their own CITES controls, and that such difficulties exacerbate enforcement problems in other Parties, while there are still consumer countries

that continue allowing illegal imports as a result of a lack of adequate CITES control;

RECOGNIZING that illegal exports from producing countries of specimens of species included in the Appendices cause serious damage to the valuable resources of wildlife, and reduce the effectiveness of their management programmes;

ATTENTIVE to the fact that the reservations made by importing countries allow loopholes through which specimens illegally acquired in the countries of origin can find legal markets without any control whatsoever;

OBSERVING that some importing countries that maintain reservations refuse to take into consideration the recommendations of the Conference of the Parties in Resolution Conf. 4.25, adopted at its fourth meeting (Gaborone, 1983), weakening in that way the conservation policies of producing countries that wish to protect their wildlife resources;

RECOGNIZING that illegal trafficking in wild fauna and flora continues to be a major concern;

CONSIDERING that the countries that import these illegally obtained resources are directly responsible for encouraging illegal trade world-wide, and in this way the natural heritage of producing countries is damaged;

CONSIDERING that it is essential for the success of the Convention that all Parties implement and comply effectively with all the regulations established by the Convention;

CONVINCED that enforcement of the Convention must be a constant concern of the Parties at the highest level if they are to succeed in fulfilling the objectives of the Convention;

CONVINCED of the need to strengthen enforcement of the Convention to address serious problems caused by the illegal trafficking of wild fauna and flora, and that the available resources for enforcement are negligible when compared to the profits gained from such trafficking;

RECALLING that Article VIII, paragraph 1, of the Convention provides that the Parties shall take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, and that these shall include measures to provide for the confiscation or return to the States of export of specimens illegally traded;

RECOGNIZING that the Preamble of the Convention states that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

AFFIRMING the obligation of Parties to collaborate closely in the application of the Convention, through expeditious exchange of information on cases and situations related to wildlife trade suspected to be fraudulent, so as to enable other Parties concerned to apply legal sanctions;

WELCOMING the adoption of a resolution on law enforcement cooperation at the Asian regional meeting in Israel in March 1994;

WELCOMING the Beijing Statement on the Control of Wildlife Trade in the Asian Region, made at a workshop on the subject in Beijing in October 1995, which stated that efforts would be made to create a mechanism for cooperation in law enforcement in the Asian region;

RECOGNIZING the contribution to enhancing enforcement of CITES made by the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora;

AWARE of the need for improved cooperation and coordination among CITES authorities and wildlife-law enforcement agencies at the national, regional and international levels;

NOTING the conclusions and recommendations of the CITES Enforcement Expert Group at its meeting in Shepherdstown (United States of America) in February 2004;

CONSIDERING that Article XIII does not specify a time-limit for a Party to respond to a request for information from the Secretariat, and that such a deadline is necessary in order that the absence of response not be interpreted as a refusal to respond;

CONSIDERING that the use of certain terms to designate the parts and derivatives of wildlife may give rise to certain offences;

RECOGNIZING the important role the Secretariat can play in the enforcement process, and the means provided by Article XIII of the Convention;

CONSCIOUS of the Secretariat's role in promoting enforcement of the Convention, as provided by Article XIII, and of the measures that the Secretariat has taken with the International Criminal Police Organization (ICPO-Interpol) and the World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes;

AWARE that, with the limited funding available, Parties and the Secretariat should make the maximum use of existing inter-governmental enforcement mechanisms and resources;

AGREEING on the need for additional measures to reduce further the illegal trade in species covered by the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

Regarding compliance, control and cooperation

AGREES that the issuance of permits without appropriate findings constitutes a lack of compliance with the Convention and seriously undermines species conservation.

URGES all Parties to strengthen, as soon as possible, the controls on trade in wildlife in the territories under their jurisdiction, and in particular controls on shipments from producing countries, including neighbouring countries, and to strictly verify the documents originating from such countries with the respective Management Authorities; and

RECOMMENDS that:

a) all Parties:

- i) recognize the seriousness of illegal trade in wild fauna and flora and identify it as a matter of high priority for their national law enforcement agencies;
- ii) consider formulating national action plans, incorporating timetables, targets and provisions for funding, designed to enhance enforcement of CITES, achieve compliance with its provisions, and support wildlife-law enforcement agencies;
- iii) provide officials who have wildlife-law enforcement responsibilities with equivalent training, status and authority to those of their counterparts in Customs and police;
- iv) ensure strict compliance and control in respect of all mechanisms and provisions of the Convention relating to the regulation of trade in animal and plant species listed in Appendix II, and of all provisions ensuring protection against illegal traffic for the species included in the Appendices;
- v) in case of violation of the above-mentioned provisions, immediately take appropriate measures pursuant to Article VIII,

paragraph 1, of the Convention in order to penalize such violation and to take appropriate remedial action; and

vi) inform each other of all circumstances and facts likely to be relevant to illegal traffic and also of control measures, with the aim of eradicating such traffic;

b) importing Parties in particular not accept under any circumstances or pretext, export or re-export documents issued by any authority, irrespective of its hierarchical level, other than the Management Authority officially designated as competent by the exporting or re-exporting Party and duly notified to the Secretariat; and

c) if an ~~importing~~ country knows or has reason to believe that specimens of an Appendix II or III species included in Appendix I, II, or III are traded in contravention of the laws of any country involved in the transaction without the relevant permit findings being made or without adequate support for the finding, regardless of whether the permit specifies that the finding has been made, it

i) immediately inform the country whose permit findings are thought not to have been made adequately ~~laws were thought to have been violated~~ and, to the extent possible, provide that country with copies of all documentation relating to the transaction; ~~and~~

ii) immediately detain such shipments of specimens until information is received confirming that all relevant permit findings were made adequately;

iii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention;

Regarding names used for parts and derivatives on permits and certificates

RECOMMENDS that:

a) when issuing permits and certificates, Parties use a standardized nomenclature for the names of parts and derivatives, established by the Secretariat; and

b) the Secretariat establish a draft nomenclature and submit it to the Parties, who will have 60 days in which to present their observations; that the Secretariat then establish the definitive nomenclature; and that the same procedure be applied to modify the nomenclature;

Regarding application of Article XIII

RECOMMENDS that:

- a) when, in application of Article XIII, the Secretariat requests information on an alleged infraction, Parties reply within a time-limit of one month or, if this is impossible, acknowledge within the month and indicate a date, even an approximate one, by which they consider it will be possible to provide the information requested;
- b) when, within a one year time-limit, the information requested has not been provided, Parties provide the Secretariat with justification of the reasons for which they have not been able to respond;
- c) if major problems with implementation of the Convention by particular Parties are brought to the attention of the Secretariat, the Secretariat work together with the Party concerned to try to solve the problem and offer advice or technical assistance as required;
- d) if it does not appear a solution can be readily achieved, the Secretariat bring the matter to the attention of the Standing Committee, which may pursue the matter in direct contact with the Party concerned with a view to helping to find a solution; and
- e) the Secretariat keep the Parties informed as fully as possible, through Notifications, of such implementation problems and of actions taken to solve them, and include such problems in its report of alleged infractions;

Regarding enforcement activities of the Secretariat

URGES the Parties, intergovernmental and non-governmental organizations to provide additional financial support for the enforcement of the Convention, by providing funds for the enforcement assistance work of the Secretariat;

DIRECTS the Secretariat to utilize such funds towards the following priorities:

- a) the appointment of additional officers to the Secretariat to work on enforcement-related matters;
- b) assistance in the development and implementation of regional law-enforcement agreements; and
- c) training and technical assistance to the Parties;

URGES the Parties to offer secondment of enforcement officers to assist the Secretariat in addressing law-enforcement issues; and

DIRECTS the Secretariat to pursue closer international liaison between the Convention's institutions, national enforcement agencies, and existing intergovernmental bodies, particularly the World Customs Organization and ICPO-Interpol;

Regarding communication of information and coordination

RECOMMENDS that:

- a) Management Authorities coordinate with governmental agencies responsible for enforcement of CITES, including Customs and Police, by arranging training activities and joint meetings, and facilitating the exchange of information through, for example, the establishment of inter-agency committees at national level;
- b) Parties, as a matter of urgency, inform the Secretariat of contact details of their relevant national law-enforcement agencies responsible for investigating illegal trafficking in wild fauna and flora;
- c) Parties, when informed by the Secretariat of the fraudulent use of documents issued by them, carry out an inquiry to identify the instigators of the crime, calling on ICPO-Interpol where necessary;
- d) when presented with a false document, Parties do everything in their power to determine where the specimens are and where the false document originated and inform the Secretariat and other Parties involved where appropriate;
- e) Parties work together within their regions to develop appropriate mechanisms for cooperation and coordination between wildlife-law enforcement agencies at the regional level;
- f) the Secretariat, in consultation with the Standing Committee, establish *ad hoc* CITES enforcement task forces as needed focusing initially on species included in Appendix I;
- g) Parties that have not already done so consider nominating officials from relevant national enforcement and prosecuting agencies to participate in the Interpol Wildlife Crime Working Group;
- h) Parties provide to the Secretariat detailed information on significant cases of illegal trade; and
- i) Parties inform the Secretariat, when possible, about convicted illegal traders and persistent offenders; and

DIRECTS the Secretariat to communicate such information quickly to the Parties;
and

Regarding additional actions to promote enforcement

RECOMMENDS further that the Parties:

- a) take the necessary measures to develop a comprehensive strategy for border controls, audits and investigations, by:
 - i) taking into account the different procedures for Customs clearance of goods and Customs procedures such as transit, temporary admission, warehouse storage, etc.;
 - ii) ensuring that officers in charge of control are aware of and trained in CITES matters regarding, for example, CITES requirements, identification of specimens and the handling of live animals;
 - iii) implementing document control in order to ensure the authenticity and validity of CITES permits and certificates, especially, if necessary, by requesting the Secretariat to confirm their validity;
 - iv) conducting physical examinations of goods, based on a policy of risk assessment and targeting; v) increasing the quality of controls at the time of export and re-export; and
- vi) providing the necessary resources in order to achieve these objectives;
- b) promote incentives to secure the support and cooperation of local and rural communities in managing wildlife resources and thereby combating illegal trade;
- c) where appropriate, evaluate and utilize for enforcement purposes, information from non-governmental sources while maintaining standards of confidentiality; and
- d) consider the formation, at national level, of specialized wildlife-law enforcement units or teams;

URGES the Parties, intergovernmental and non-governmental organizations to provide, as a matter of urgency, funds and expertise to enable enforcement-related training or the provision of training materials, focusing on developing countries and countries with economies in transition, preferably on a regional or sub-regional basis, and provide funds to ensure that wildlife-law enforcement personnel in such countries are adequately trained and equipped;

ENCOURAGES States to offer rewards for information on illegal hunting and trafficking of specimens of Appendix-I species leading to the arrest and conviction of the offenders;

URGES ICPO-Interpol to:

- a) appoint a dedicated officer specializing in wildlife crime within the ICPO-Interpol General Secretariat in Lyon, France; and
- b) support the attendance of a representative from the Interpol Wildlife Crime Working Group at meetings of the Conference of the Parties to CITES;

INSTRUCTS the Secretariat to:

- a) cooperate with the World Customs Organization, ICPO-Interpol and competent national authorities to:
 - i) prepare and distribute appropriate training material; and
 - ii) facilitate the exchange of technical information between the authorities in charge of border controls; and
- b) submit a report on enforcement matters at each Standing Committee meeting and each regular meeting of the Conference of the Parties; and

REPEALS the Resolutions or parts thereof listed hereunder:

- a) Resolution Conf. 2.6 (Rev.) (San José, 1979, as amended at Fort Lauderdale, 1994) – Trade in Appendix-II and -III species – paragraph b) and paragraph under 'REQUESTS';
- b) Resolution Conf. 3.9 (Rev.) (New Delhi, 1981, as amended at Fort Lauderdale, 1994) – International compliance control;
- c) Resolution Conf. 6.3 (Ottawa, 1987) – Implementation of CITES;
- d) Resolution Conf. 6.4 (Rev.) (Ottawa, 1987, as amended at Fort Lauderdale, 1994) – Controls on illegal trade;
- e) Resolution Conf. 7.5 (Lausanne, 1989) – Enforcement; and
- f) Resolution Conf. 9.8 (Rev.) (Fort Lauderdale, 1994, as amended at Harare, 1997) – Enforcement.