

## **Compliance and Enforcement Indicators in CITES**

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Environmental Compliance and Enforcement Indicators  
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The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between States. Its aim is to ensure that international trade in listed species of wild animals and plants does not threaten their survival.

CITES has been in operation for 28 years and is now used by 164 States Parties to regulate and monitor international trade in wild resources.

The Convention's longstanding emphasis on and measures to ensure compliance and enforcement have evolved over a number of years and continue to evolve. They have proven to be effective in improving compliance with and enforcement of the Convention and have probably contributed to the absence of disputes between and among CITES Parties.

The objectives of CITES compliance and enforcement measures are to: aid conservation, regulate legal trade, detect and deter illegal trade and gather revenue. The ultimate goal is to improve the implementation, and thereby the effectiveness, of the Convention – and the national wildlife management policies and programmes that underlie it.

### Current compliance and enforcement indicators

CITES compliance and enforcement 'indicators' are focused on 5 key programmes: the National Legislation Project; permit confirmation; annual and biennial reports; the review of significant trade; and reports on enforcement matters. A programme to ensure the timely and full payment of CITES contributions also plays an important role. These programmes have their basis in the text of the Convention, interpretive Resolutions and Decisions by the Conference of the Parties, decisions of the permanent committees and historical practice.

#### 1. National Legislation Project (NLP)

The NLP is unique to CITES and has been operational since 1992. It is concerned with both legislative analysis and assistance.

Under the NLP, Parties provide their CITES-related legislation to the Secretariat. This legislation is then analysed pursuant to Resolution Conf. 8.4 to determine whether a Party's domestic measures provide them with the authority to (a) designate CITES authorities, (b) prohibit of trade in specimens in violation of the Convention, (c) penalize illegal trade and (d) confiscate specimens illegally traded or possessed.

After consultation with the affected Party, the legislative analysis is finalized and the legislation is placed in one of three categories. Legislation that generally

meets all four requirements is placed in Category 1. Legislation that generally does not meet all four requirements is placed in Category 2 and legislation that generally does not meet any of the four requirements is placed in Category 3.

The Secretariat provides legislative assistance (i.e. in the form of guidance materials, examples, review/comments, missions, workshops) aimed at ensuring that all Parties have Category 1 legislation. The Standing Committee and the Conference of the Parties monitor Parties' progress in the enactment of adequate legislation for implementation of the Convention. Failure to make good progress in the adoption of adequate legislation might result in a recommendation by one of these bodies to suspend trade in specimens of CITES-listed species with a particular Party.

## 2. Permit confirmation

CITES regulates the export, re-export, import and introduction from the sea of 'specimens' (i.e. live and dead animals and plants and their parts or derivatives) of listed species. This regulation is based on a system of permits and certificates that may only be issued if certain conditions are met and which must be presented when leaving or entering a country. CITES documents are standardized for format, language and terminology, information, duration of validity and issuance/clearance procedures.

Fraud that occurs with CITES documents (though sometimes difficult to detect) can include using: false documents, falsified documents, invalid documents, non-CITES documents, the re-export of specimens different from those imported or the laundering of illegal specimens. The use of security paper and security stamps (available through the Secretariat) is encouraged. Fraud also occurs when trading internationally without any CITES documents (smuggling).

Two of the basic elements of CITES compliance and enforcement are the verification of the validity of CITES documents and the inspection of consignments. Verification can involve bilateral consultations between the importing and exporting countries as well as requests for advice or assistance from the Secretariat. Sample documents and sample signatures for each country, as well as copies of issued or used documents, are used to confirm the validity of documents that are suspected to be fraudulent. Using the CITES trade database, reported imports can be compared with reported exports in order to detect possible illegal trade.

A Party which experiences serious problems with and seems unable to control permit fraud may become the subject of a recommendation to suspend trade in CITES-listed species.

## 3. CITES reports

Parties to CITES are required to submit an annual report on trade in CITES-listed species and a biennial report on legal, regulatory and administrative measures taken to enforce the Convention.

Tables of report submissions, maintained by the Secretariat, show that compliance with annual reports has improved but timeliness still a problem.

Guidelines for the preparation and submission of annual reports and assistance with the compilation of reports by the UNEP-World Conservation Monitoring Centre (which maintains the CITES trade database and provides related support under contract to the Secretariat) have contributed to better compliance. A number of Parties do not submit regular biennial reports, in part because no standard guidelines or format have yet been adopted for use.

Decision 11.89 directs the Standing Committee to determine which Parties have failed, without having provided adequate justification, to submit annual reports for three consecutive years. Decision 11.37 directs the Parties not to authorize any trade in specimens of CITES-listed species with any Party subject to such a determination. These decisions were adopted by the Conference of the Parties to provide serious measures in case of persistent late or non-submission of annual reports. The threat of a recommendation to suspend trade (and reminders from the Secretariat) has helped to obtain more annual reports.

#### 4. Significant Trade Review Process

Article IV of the Convention allows commercial international trade in Appendix-II species, but only if the Management Authority of the exporting State issues an export permit. No such permits should be issued unless the Scientific Authority of the exporting State advises that the export which is to take place will not be detrimental to the survival of the species.

Since 1979, Parties have been expressing concern that export permits are often granted for Appendix-II species to enter trade without the benefit of effective "non-detriment" findings. As a result, a process has evolved to ensure that Parties can have confidence that the provisions of Article IV are being met and that any trade in Appendix-II listed species is sustainable. This is the Significant Trade Review Process, outlined in Resolution Conf. 12.8.

Both the Animals and Plants Committees of CITES have a specific mandate to identify Appendix-II species that are subject to significant levels of trade and to evaluate whether this trade could be detrimental. The process provides for remedial action in the form of recommendations directed to specified range States for species of urgent or possible concern. These recommendations require that certain actions be completed within certain time periods. Failure to implement such recommendations may lead to a Standing Committee recommendation to suspend trade in the affected species with the State concerned.

The STR process is a multilateral process involving a high degree of consultation and cooperation. It can result in punitive measures, but species remain in Appendix II and the range State remains in control of trade. The process removes the need for importing States to apply stricter domestic measures. It also provides assistance to exporting countries - field studies, capacity building, etc.

#### 5. Reports on enforcement matters

The Convention requires Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation of

the Convention. The basic measures for enforcing the Convention are: to penalize trade in, or possession of, such specimens, or both; and to provide for the confiscation or return to the State of export of such specimens.

The effective enforcement of CITES requires, among other things, the national control of the legal international trade in CITES-listed species, and the application of all measures to stop any illegal international trade in these species. CITES enforcement can involve agencies that can assist with international cooperation such as the World Customs Organization and Interpol. Violations of the Convention and related national legislation have serious implications for the conservation of biological diversity.

The Secretariat regularly reports on enforcement matters to the Standing Committee and the Conference of the Parties. Such reports explain enforcement trends and developments, highlight successes and identify problems that require attention. Parties may agree on appropriate measures, including a recommendation to suspend trade, if they find that the provisions of the Convention are not being effectively implemented by a particular Party.

#### 6. Other compliance/enforcement measures

Additional compliance/enforcement measures emphasized under the Convention include: the setting of export quotas; recordkeeping, monitoring, inspection and controls (traders, breeders, nurseries); internal trade control; intelligence and targeting; investigations; legal actions; specialized units, personnel and funds; assessment and verification missions (by the Secretariat and designated government officials or expert consultants); implementation of agreed compliance plans; meeting of deadlines under the Convention; positive responses to offers of assistance; communication, meetings and training; integration of CITES in standard curricula for Customs, police, etc.; participation in cooperative mechanisms (e.g. the Interpol working group on wildlife crime); economic and social incentives; and strategic use of the media.

Parties have recognized the importance of resolving the problem of late and inadequate contributions to the CITES Trust Fund. This has been addressed through reminders sent to affected Parties, the use of compliance action plans under which Parties agree to pay their arrears within a certain time period and reports on contributions to the Standing Committee and the Conference of the Parties.

To strengthen the Secretariat's capacity to address compliance and enforcement issues within the Convention and provide relevant advice or assistance, a Legislation and Compliance Unit was created in 2000. It comprises a Chief, Senior Enforcement Officer, Legal and Trade Policy Officer and Unit Secretary. Such a unit is unique among multilateral environmental agreements.

#### 7. Recommendations to suspend trade

As CITES uses trade measures for its implementation, one recommendation for improving the effectiveness of the Convention is a temporary suspension of trade. In practical terms, this provides a period of time during which the relevant Party can move from non-compliance to compliance by *inter alia* enacting adequate

legislation, combating and reducing illegal trade or responding to specific recommendations of the Standing Committee concerning the implementation of Article IV of the Convention in the context of the Review of Significant Trade. Having identified a problem of serious non-compliance, it would be inappropriate for Parties not to respond. Recommendations for a suspension of trade may be regarded as a precautionary measure to prevent a continuing violation of the Convention that is detrimental to the survival of one or more CITES-listed species.

Recommendations to suspend trade are ordinarily used as a last resort and CITES puts significant emphasis on inducing Parties into compliance through consultations and advice or assistance. Furthermore, such measures generally are used in cases involving significant levels of trade and where no domestic measures exist to enforce the Convention. Finally, CITES trade measures are withdrawn immediately upon a Party's return to compliance.

#### On-going programmes to improve compliance/enforcement indicators

Draft compliance guidelines for compliance with the Convention were developed for consideration at the 49<sup>th</sup> meeting of the Standing Committee (Geneva, April 2003). All Parties were given an opportunity to comment on the draft and a revised draft (as well as summary of comments received) is to be submitted to the 50<sup>th</sup> meeting of the Standing Committee (Geneva, March 2004).

Parties with inadequate legislation to implement the Convention have been required by the Standing Committee and the Conference of the Parties to submit a CITES Legislation Plan outlining the steps and timeframe for enacting adequate legislation by the applicable deadline. The NLP is also looking more closely at the implementation and effectiveness of enacted legislation.

The Standing Committee has established a working group to review the reporting requirements under the Convention with a view to identifying and analyzing the causes of non-compliance with those requirements and proposing ways to turn reporting requirements into useful management tools for Parties. Two of the priority tasks of the working group are to develop a draft format for biennial reports and to propose a simple software programme for permit issuance/clearance and related reporting.

A meeting of experts will be convened in early 2004 to identify measures to improve the flow of enforcement-related data to and from relevant international, regional and national law enforcement organizations, CITES Management Authorities and the CITES Secretariat. The meeting also will identify measures to assist the coordination of investigations regarding violations of the Convention and to help maintain appropriate levels of confidentiality regarding law enforcement information.

Work has begun on the development of a CITES reference kit for the judiciary which includes abstracts of relevant court cases. Such case law can be used as both a compliance/enforcement tool and indicator.

A technical workshop on wildlife trade policies and economic incentives applicable to the management of and trade in CITES-listed species is being organized in Geneva during 1-3 December 2003. The aims are to develop a

methodology to review such policies and to make targeted recommendations on the use of such incentives.

Building on the results of an earlier working group, Parties have been asked to provide to the Secretariat information on best-practice methods for the financing of the conservation of species of wild fauna and flora.

#### How indicators are used in decision-making

As mentioned above, CITES compliance and enforcement indicators are used by the Animals Committee, Plants Committee, Standing Committee and Conference of the Parties to take decisions on appropriate measures for ensuring that the Convention is effectively implemented.

#### Stakeholders

CITES compliance and enforcement measures can involve, among others: Management Authorities; Scientific Authorities; Customs; police; wildlife law enforcement officers; the judiciary; traders; non-governmental organizations and the public.

#### Challenges

Overall, illegal trade in wildlife resources has the potential for high profits while carrying with it a low risk of detection and low level of punishment. Effective deterrence therefore requires increases in the risk of detection and level of punishment.

Awareness of CITES needs to be improved among both regulating officials and the regulated community (e.g. CITES authorities, Customs, police, traders and the public) in order to obtain better compliance with and enforcement of the Convention.

Expertise, equipment and facilities (e.g. for the identification, storage and care of specimens) must be further identified or developed to support compliance and enforcement efforts.

More emphasis needs to be placed on intelligence and targeted compliance/enforcement efforts so as to deal with the large and growing volumes of air traffic, sea traffic, express carriers and mail which make it impossible to monitor every trans-boundary movement.

Additional attention should be paid to the use of awareness-raising, education and social and economic incentives to complement traditional command and control approaches to compliance and enforcement. Such measures can help to prevent non-compliance in the first instance, to facilitate compliance and to restore compliance as soon as possible. If well-designed, they can also reduce the administrative burden and costs arising from a purely regulatory approach.

The involvement of organized crime poses a special set of problems for compliance and enforcement officials as it involves the use of sophisticated and

determined techniques. These require a sophisticated and determined response that is often is not present and needs to be developed.

Compliance and enforcement efforts frequently stop with seizure. Countries are being urged to consider seizure as only the beginning of a more serious process which should include a thorough investigation and appropriate administrative or judicial proceedings as well as subsequent reporting and incorporation into intelligence for and targeting of other potential violations.

### Conclusion

CITES has extensive experience in developing and using compliance and enforcement measures that work. Nevertheless, it remains interested in identifying innovative and effective practices which might have useful implications for further improving application of the Convention and related national legislation.

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