

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

Forty-first meeting of the Standing Committee
Geneva (Switzerland), 8-12 February 1999

Implementation of the Convention in individual countries

STRICTER DOMESTIC MEASURES (DECISION 10.13)

Background

1. At its 10th meeting (Zimbabwe, 1997), the Conference of the Parties adopted Decision 10.103 directed to the Secretariat, which states, "A survey of stricter domestic measures already adopted by the Parties shall be carried out and a report shall be submitted to the Standing Committee, which shall consider a second stage of review." This Decision was adopted as a result of discussion of issues raised in the report prepared by Environmental Resources Management (ERM) in the study "How to Improve the Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)."
2. The Secretariat has studied the implications of Decision 10.103 and makes the following observations.
3. An analysis of national laws for implementation of the Convention is being conducted pursuant to Resolution Conf. 8.4, which directs the Secretariat to carry out this work within available resources. Parts of the analysis have been contracted by the Secretariat to TRAFFIC and IUCN and consultants have been contracted to perform other parts of this work within the Secretariat. Analysis has concentrated on the four specific elements identified in Resolution Conf. 8.4 as essential to enabling a Party to implement CITES. A specific budget has been allocated to the Secretariat to finance this work, commonly referred to as the National Legislation Project. Analysis has not covered stricter domestic measures in national law. No budget is available for the study of stricter domestic measures.
4. The recognition of the acceptability of taking stricter domestic measures is in Article XIV of the Convention. This article confirms the right of Parties to go beyond the requirements of the Convention in adopting stricter domestic measures. These measures may concern the conditions for trade, taking possession or transport of specimens of species included or not in Appendices I, II or III, or the complete prohibition thereof.
5. Common examples of stricter domestic measures fall into two main categories. One category involves the complete or partial prohibition of the export, import, hunting or transport of specimens of specific species regardless of whether they are listed in the CITES appendices whilst the other category involves the adoption of new requirements in national legislation for trade, possession or transport of specimens of species listed in the CITES appendices.
6. The first category addresses regulation of one or several specific species; for example, the ban by a Party of the export of live specimens and all derivatives of *Boa constrictor constrictor*. The second category might cover all species and impose stricter trade conditions than those provided in the text of the Convention; for example, a requirement that import permits be issued for specimens of species listed in Appendices II and III whereas the Convention requires that import permits be issued only for trade in specimens of Appendix I-listed species.

7. The Secretariat suggests that the effective analysis of stricter domestic measures requires looking at differences between exporting and importing countries. Attitudes of Parties vary considerably. Some exporting countries believe that importing countries should not establish stricter domestic measures if they serve to contradict or exceed the provisions of the Convention and understandings reached at meetings of the Conference of the Parties. By contrast, several importing countries believe that stricter domestic measures are essential if a country of export is, apparently or allegedly, unable to make non-detriment findings.
8. In-depth analysis to identify stricter domestic measures within national law is unlikely to be cost-effective or useful as it is the principles and effect of such measures that truly impact upon implementation of the Convention.
9. Examples of stricter domestic measures are relatively well known. For instance, the European Union Member States, Japan, Namibia, and the United States are Parties that require import permits for trade in some or all of Appendix II-listed species. Australia requires evidence of a management plan in exporting countries before it permits imports and this has led, for example, to its refusal to allow the import of caviar. Among exporting countries, Brazil and Nigeria have banned the export of wildlife for commercial purposes.
10. Whilst the use of stricter domestic measures may provide a means of protecting certain species from over-exploitation for international trade, it can also cause confusion and resentment if the provisions of the Convention, Resolutions of the Conference of the Parties or Decisions of the CITES Committees are overridden. Although domestic measures can be important to the conservation of species and this principle is well recognized in international law, the application of this principle has led to concern about equity and has raised questions about the compatibility of stricter domestic measures with the requirements of the World Trade Organization.
11. The Regulations of the European Union that require import permits for specimens of species listed in Appendices II and III constitute a stricter domestic measure. In practice, this means that without the approval of the importing country in the European Union a specimen from, for example, an African range State cannot be exported to that European country. A unilateral measure can affect the economy of an exporting country, is arguably contrary to the principles of the World Trade Organization, and restricts the ability of an exporting country to profit from its natural resources.

Recommendation

12. For the reasons given above, should a full analysis be demanded, the Secretariat suggests that it is important to clarify the scope of such a study.
13. However, having carefully considered this subject and having consulted legal experts, the Secretariat suggests that full analysis of national legislation of Parties will not, in itself, facilitate further debate and study of this issue. Neither would such work be cost-effective. The principles of stricter domestic measures are already understood. The Secretariat believes that the Conference of the Parties should proceed to the next stage called for in the ERM report. In particular, it suggests that the recommendation to establish a working group of exporting and importing Parties to examine the impact of stricter domestic measures should be discussed and such a group could effectively address this issue without a Party-wide, in-depth analysis of national law.