

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



Fifty-fourth meeting of the Standing Committee
Geneva (Switzerland), 2-6 October 2006

Interpretation and implementation of the Convention

General compliance issues

STRICTER DOMESTIC MEASURES

1. This document has been prepared by the Secretariat.
2. Under Article XIV, paragraph 1(a), of the Convention, Parties have the right to adopt "stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof". Under Article XIV, paragraph 1(b), they have essentially the same right with regard to non-listed species.
3. In Resolution Conf. 4.22 (Proof of foreign law), it is recommended that Parties inform the Secretariat of the existence, adoption or amendment of stricter domestic measures. To date, however, provision of such information has been sporadic. Information received by the Secretariat has ordinarily been disseminated through a Notification to the Parties or made available on the CITES website under 'Resources / Reference lists'.
4. In Resolution Conf. 6.7 (Interpretation of Article XIV, paragraph 1, of the Convention), it is recommended that:

each Party intending to take stricter domestic measures ... regarding trade in specimens of non-indigenous species included in the Appendices make every reasonable effort to notify the range States of the species concerned at as early a stage as possible prior to the adoption of such measures, and consult with those range States that express a wish to confer on the matter.

Different kinds of stricter domestic measures

5. Stricter domestic measures are generally established by legislation, and both consumer and producer countries have adopted such measures to achieve conservation and animal welfare objectives. Common examples of stricter domestic measures fall into two main categories: those measures adopted in relation to export; and those measures adopted in relation to import.
6. Regional or sub-regional legal instruments that cover CITES species and impose requirements that go beyond the Convention, also constitute stricter domestic measures.
7. Attitudes of Parties towards stricter domestic measures vary considerably. Some exporting countries believe that importing countries should not establish stricter domestic measures if they contradict or exceed the provisions of the Convention or decisions taken at meetings of the Conference of the Parties. By contrast, several importing countries believe that their own stricter domestic measures are essential in cases where a country of export is or seems unable to make non-detriment findings.
8. Examples of stricter domestic measures are relatively well known. For instance, the European Union Member States, Japan and the United States of America are Parties that require import permits for

trade in some or all of Appendix-II 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, India and Kenya have banned the export of wild animals for commercial purposes.

General considerations for the adoption of stricter domestic measures

9. The use of stricter domestic measures may provide a means of protecting certain species from over-exploitation for international trade or addressing animal welfare, veterinary or human health concerns, but such measures have often caused confusion among traders and government officials as to which law is applicable. This is especially true where the stricter domestic measures differ substantially from globally-agreed rules which are found in the Convention and Resolutions and Decisions of the Conference of the Parties. Although the right to adopt such measures is recognized in the Convention, the way in which this right is exercised has led to concerns about transparency, necessity, equity, coherence and proportionality, and has raised questions about the compatibility of stricter domestic measures with the rules of the World Trade Organization (WTO).
10. Stricter domestic measures may be overly broad, and the adopting country may have failed to appreciate that a particular measure may not be needed or applicable in all situations.
11. In the context of the CITES National Legislation Project, the Secretariat has worked with Parties to identify stricter domestic measures contained in draft legislation and to determine whether they were supported by a considered policy decision. Within the national wildlife trade policy reviews to be conducted under Decision 13.74, the use of stricter domestic measures adopted by the reviewing country and the impacts of stricter domestic measures taken by other countries will form part of the review. Such legislative and policy work is designed to give a Party the opportunity to assess whether a particular stricter domestic measure which it adopted was necessary and effective and, if so, whether the measure was also relevant and proportionate to the objective that it was expected to achieve. With regard to stricter domestic measures taken by other countries, the Party would be able to identify and assess how they may have affected the development and implementation of its wildlife trade policy.

Considerations for the adoption of import-related stricter domestic measures

12. Principle 12 of the Rio Declaration on Environment and Development states that:

Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.

13. A stricter domestic measure taken by an importing country affects the economy of an exporting country, risks to be contrary to WTO rules, and may restrict the ability of an exporting country to carry out trade in accordance with the provisions of the Convention and thus to exploit and manage its natural resources in accordance with its own policy. A number of stricter domestic measures are based on unilateral rather than multilateral criteria and decision-making.
14. Some WTO members, the Secretariat and various commentators have noted that stricter domestic measures based on unilateral criteria constitute an area of potential tension between WTO and CITES. A balance is needed between application of the precautionary approach and WTO rules. Stricter domestic measures, if they are considered to be unilateral, discriminatory, non-transparent or insufficiently based on science, could form the basis of a WTO dispute.
15. Special interest groups often pressure Parties to adopt stricter domestic measures. For example, a number of groups have been lobbying the European Union to prohibit permanently the import of all wild birds although the majority of this trade is authorized under the Convention. Its cessation would harm the sustainable trade efforts of many developing countries. The closure of the European Union market to exporting countries may simultaneously lead to greater market opportunities for domestic operations that breed the same or similar birds in captivity. This kind of impact could come into conflict with the WTO rule prohibiting discriminatory treatment of goods that are produced outside

and within a country. The closure of markets can also negatively impact on use that benefits conservation. The Secretariat has urged the European Union to work through CITES rather than to impose stricter domestic measures permanently.

16. Stricter domestic measures taken by importing countries should not be confused with the trade-related compliance measures agreed multilaterally within various processes and bodies of the Convention (e.g. a suspension of trade pursuant to a recommendation of the Standing Committee or the Conference of the Parties).
17. In view of the benefits to be gained from encouraging multilateral decision-making as well as a balanced and thoughtful approach to stricter domestic measures as a component of wildlife trade policy, it could be useful to revise Resolution Conf. 6.7 to provide more guidance on the implementation of Article XIV, paragraph 1, of the Convention. Such guidance could generally urge Parties to avoid, where possible, the adoption of stricter domestic measures based on unilateral criteria and favour multilateral collaboration in the adoption of incentive measures at the international level.

Recommendation

18. The Secretariat seeks the agreement of the Standing Committee that the Secretariat should:
 - a) submit a discussion document on stricter domestic measures for consideration at the 14th meeting of the Conference of the Parties; and
 - b) review existing resolutions which mention the use of stricter domestic measures and propose revisions, if necessary, to ensure coherent treatment of this issue.