


CITES guidelines for developing legislation



Developing legislation

- It is law that empowers government officials to act, places limits on human actions and articulates policy in relation to international wildlife trade
- International agreements like CITES are generally not self-executing, so legislation is needed to give effect to them at the national level



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

PERMIT/CERTIFICATE No.		Original	
<input type="checkbox"/> EXPORT <input type="checkbox"/> RE-EXPORT <input type="checkbox"/> IMPORT <input type="checkbox"/> OTHER:		2. Valid until	
A. Export/Import (name, address and country)			
_____ Signature of the applicant			
B. Name, address, national seal/stamp and country of Management Authority			
10. Purpose of the transaction (see annex)		11. Scientific name (genus and species) and common name of animal or plant	
12. Country of origin		13. Country of destination	
14. Date		15. Date	
16. Permit no.		17. Certificate no.	
18. No. of the operation		19. No. of the operation	



Developing legislation

- Creating and adopting effective and enforceable legislation is not an easy task
- Effective legislation is not just a piece of paper but the practical solution to a problem
- Enforceable legislation is that which is realistic in terms of what can be achieved within a country's particular context and its human or financial resources



Developing legislation

- The Parties have some guidance on what to include in their legislation
 - **Articles III to VII** of the Convention set forth the conditions under which trade should take place
 - **Article IX** requires that Parties designate a Management Authority and a Scientific Authority
 - **Article VIII** requires that Parties prohibit trade in specimens in violation of the Convention, and penalize such trade and allow for confiscation of specimens illegally traded or possessed



Developing legislation

- The **legislative provisions** for implementing CITES in each Party are similar, though Parties may have different legal structures, national policies, culture, species in trade, or types of trade
- All Parties, however, should have a solid legal foundation for regulating international wildlife trade
- It is only through legislation that is adequate, up to date and efficiently enforced that CITES can really work



Developing legislation

- It is the prerogative of each Party to decide how it incorporates CITES obligations into national legislation, taking into account its needs and legal practice
- However, to assist with this process, the Secretariat has prepared a [Model Law](#) to use as an example



MODEL LAW
on
International Trade in
Wild Fauna and Flora

Developing legislation

- There are generally **three** main options when developing legislation:
 - amend existing provisions in various legislative texts related to wildlife, natural resources, Customs, import/export and environment
 - include a CITES chapter or CITES provisions in comprehensive wildlife, biodiversity or environment legislation, or
 - enact CITES-specific legislation
- All of these options involve one or more legally-binding and enforceable instruments through which governments comply with the requirements of the Convention



Developing legislation

- The four minimum requirements for adequate CITES-implementing legislation are stated in a general way in Resolution Conf. 8.4 (Rev. CoP15), but the practical implementation of each requirement actually involves considering and addressing several components
- These components clarify what is meant by each requirement and serve as a set of criteria for determining whether the requirement is met by particular legislation



Developing legislation

- Designation of national CITES authorities
 - Is there a legal instrument (law, regulation, decree) that authorizes designation of both CITES authorities or expressly designates those authorities?
 - Does legislation clearly and precisely give CITES authorities the necessary powers to carry out their responsibilities (power to grant permits and certificates, power to establish export quotas, etc.), separate the functions of each authority and provide mechanisms for coordination and communication between these bodies as well as with other government agencies with relevant competence (e.g. Customs, police, ministry responsible for foreign trade, etc.)?



Developing legislation

- Prohibition of trade in violation of the Convention
 - Does legislation cover all specimens of all species included in the three Appendices of the Convention, and does legislation provide for any annexes or schedules to be amended as necessary?
 - Are all types of transactions covered? (*e.g. export, import, re-export, introduction from the sea*)
 - Are there conditions relating to the granting of permits and certificates for all types of transactions in all CITES-listed species; the standardized form and validity of permits and certificates; and exemptions or special procedures allowed by the Convention?
 - Is there a general clause prohibiting any transactions without a valid permit?



Developing legislation

- Penalization of illegal trade
 - Does legislation clearly list the activities that are prohibited and specify that the breach of any prohibition constitutes an offence?
 - Does legislation consider the nature and level of penalties which may be imposed and the procedures that must be followed?
 - Are the departments and agents responsible for enforcing the Convention clearly designated and are enforcement agents given the necessary powers to carry out their tasks?
 - Given that illegal trade in CITES specimens may be sanctioned by different laws, does the legislation specify which specific legal provisions apply to CITES-related offences and penalties?



Developing legislation

- Authorization to confiscate specimens illegally traded or possessed
 - Does legislation provide for the confiscation or return of specimens illegally traded or possessed?
 - Other aspects taken into consideration are: which authorities may confiscate, the extent of their confiscation powers, the procedures that must be followed, and the final disposal of confiscated specimens
 - These matters are closely connected with constitutional or general criminal law requirements, which vary from one country to another
 - Again, it is important to specify which specific legal provisions apply to the confiscation of specimens of CITES-listed species



Developing legislation

- The drafting of CITES-implementing legislation calls for special skills to convert the basic obligations under the Convention into practicable, effective and clear legal provisions that use appropriate CITES concepts and terminology, and follow the prevailing drafting standards as to legislative structure, form and style
- Without early and regular input from legal drafters, efforts to develop adequate legislation may result in drafts that are incompatible with the provisions of the Convention or other legislation, use inappropriate language, and draw heavily upon legislative precedents from other countries, with little consideration for their suitability under local conditions



Developing legislation

- The Secretariat encourages Parties to involve legal drafters throughout the legislative development process and to consult with the Secretariat before the enactment of CITES-implementing legislation
- Parties also are encouraged to adopt plain-language legislative texts that are easily understandable to the regulated community and the public



Linking wildlife trade policy development and legislation

- CITES-implementing legislation should not be seen as a burdensome and stand-alone obligation but rather as **the necessary framework** for defining and implementing national wildlife trade policies for the conservation of and non-detrimental trade in all CITES-listed species



Linking wildlife trade policy development and legislation

- Wildlife policy development is an essential precursor to drafting adequate legislation
- A clear policy basis facilitates the introduction of procedures and practices to ensure:
 - coherence and predictability of the legislation
 - transparency of legal rights and obligations
 - consistency, fairness and due process in legislative application, and
 - efficiency of management and ease of implementation



Linking wildlife trade policy development and legislation

- The choice of a wildlife policy, of course, is the prerogative of each Party
 - What is important is for this policy choice to be made thoughtfully, in consultation with stakeholders, and to be reflected fully and accurately in legislation
 - Policies that discourage trade in all wild-taken specimens of animals and plants or that encourage trade in captive-bred animals or artificially propagated plants may not necessarily benefit the conservation of biodiversity
 - The CITES Secretariat is gathering information on different wildlife trade policies with a view to providing assistance in the development and implementation of policies that support conservation efforts effectively



Developing legislation

- Parties' experience in the development of strengthened CITES implementing legislation has shown the importance of
 - simultaneous preparation of enabling and implementing legislation
 - complementary legislation governing the legal acquisition of and domestic trade in CITES specimens
 - policy coherence in relation to national wildlife trade policy, other biodiversity-related conventions, natural resource management, and development policy
 - timely updating of amendments to the CITES Appendices



Developing legislation

- National legislation provides CITES authorities with the authority they need to ensure adequate implementation of the Convention within their jurisdiction
- Accordingly, CITES authorities should be fully familiar with its provisions, assess its effectiveness on a regular basis, and assist in identifying and correcting any gaps or weaknesses



CITES COMPLIANCE



National Legislation Project

- Unique to CITES
- In operation since 1992
- Concerned with ANALYSIS and ASSISTANCE
- Inadequate legislation can result in Standing Committee recommendations that Parties suspend trade



Legislative Analysis (1)

- Under Resolution Conf. 8.4 (Rev. CoP15), the Secretariat is directed to identify those Parties whose domestic measures do not provide them with the authority to
 1. Designate at least one Management Authority and one Scientific Authority
 2. Prohibit trade in specimens in violation of the Convention
 3. Penalize such trade; or
 4. Confiscate specimens illegally traded or possessed



Legislative Analysis (2)

- Based on analysis, legislation is placed in one of three categories:
- **Category 1:** legislation that is believed generally to meet the requirements for implementation of CITES
- **Category 2:** legislation that is believed generally not to meet all requirements for the implementation of CITES
- **Category 3:** legislation that is believed generally not to meet the requirements for implementation of CITES
- CONCERN = Category 3 + significant trade levels



Legislative Assistance

- Model Law on International Trade in Wild Fauna and Flora; Checklist for Reviewing CITES Legislation; drafters' questionnaire; format for reviewing legislation
- Examples of legislation from other countries
- Evolution of CITES (www.cites.org)
- Review and comments on draft legislation
- Country missions by Secretariat or others
- Bilateral or multilateral legislation projects
- Regional/national workshops



CITES Secretariat Geneva

