

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



Sixty-ninth meeting of the Standing Committee
Geneva (Switzerland), 24 November - 1 December 2017

Interpretation and implementation matters

General compliance and enforcement

Compliance matters

COMPLIANCE REPORT

1. This document has been prepared by the Secretariat pursuant to Decision 17.69. To facilitate its consideration by the Standing Committee, the document is divided in three parts:
 - Part 1 on communications pursuant to Article XIII, paragraph 1 of the Convention;
 - Part 2 on possible establishment of a Compliance Assistance Programme (CAP); and
 - Part 3 on guidance for verifying the legal acquisition of specimens of CITES-listed species.

Mandate

2. Article XIII of the Convention stipulates that:
 1. *When the Secretariat, in the light of information received, is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.*
 2. *When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.*
 3. *The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.*

Decision 17.69 reads as follows:

17.69 Directed to the Secretariat

The Secretariat shall report on the implementation of Article XIII and Resolution Conf. 14.3 on CITES compliance procedures to the Standing Committee and the 18th meeting of the Conference of the Parties.

Background

3. At its 17th meeting (CoP17, Johannesburg, 2016), the Conference of the Parties adopted Decisions 17.65 to 17.68 on *Compliance matters* as follows:

17.65 Directed to Parties

Parties are encouraged to provide to the Secretariat with: any examples and relevant information regarding methodologies, practical tools, legislative information, forensic expertise and other resources used to monitor compliance with the Convention and to verify the legal acquisition of specimens of CITES-listed species to be exported in accordance with Article III, paragraph 2(b), Article IV, paragraph 2(b), and Article V, paragraph 2(a) of the Convention (referred to as a 'legal acquisition finding').

17.66 Directed to the Standing Committee

The Standing Committee shall, with the assistance of the Secretariat:

- a) *consider whether a Compliance Assistance Programme (CAP) should be established to assist countries with difficulties in achieving compliance, including how such a CAP would be funded;*
- b) *consider further guidance for verifying the legal acquisition of specimens of CITES-listed species to be exported;*
- c) *provide guidance on verifying the legal acquisition of founder stock of captive-bred CITES listed species to be exported; and*
- d) *make appropriate recommendations for consideration at the 18th meeting of the Conference of the Parties.*

17.67 Directed to the Secretariat

Subject to the availability of external funding, the Secretariat, in collaboration with other relevant institutions, cooperation agencies and potential donors, shall:

- a) *organize an international workshop on guiding principles, methodologies, practical tools, information, forensic expertise, compliance risk assessments and other legal resources needed by Management Authorities to verify the legal acquisition of specimens of CITES-listed species to be exported; and*
- b) *prepare and submit for consideration by the Standing Committee, a proposal for further guidance for verifying the legal acquisition of specimens of CITES-listed species to be exported.*

17.68 Directed to the Secretariat

The Secretariat shall assist the Standing Committee in the preparation of its findings and recommendations with regard to the implementation of Decision 17.66.

4. Decisions 17.65 to 17.69 were adopted at CoP17 following discussions of document [CoP17 Doc. 23](#) on CITES Compliance matters.

PART I – Communications pursuant to Article XIII, paragraph 1

5. In accordance with Article XIII, paragraph 1 and pursuant to previous instructions received from the Standing Committee, the Secretariat is communicating with the Management Authorities of the Democratic Republic of the Congo (DRC), Guinea and the Lao People's Democratic Republic (Lao PDR). Separate reports have been prepared on progress made concerning the effective implementation of the Convention in these three countries.
6. Resolution Conf. 14.3 contains, in its Annex, a Guide to CITES compliance procedures to assist CITES bodies in dealing with compliance matters. The purpose of the Guide is to “inform Parties and others of the CITES procedures on promoting, facilitating and achieving compliance with the obligations under the Convention, and, in particular, assisting Parties in meeting their obligations regarding such compliance.” The Guide “describes existing procedures in order to facilitate consistent and effective handling of compliance

matters.” The approach taken towards compliance matters is “supportive and non-adversarial” with the aim of ensuring long-term compliance.

7. The Guide identifies four steps for handling specific compliance matters in a diligent manner:
 - a) identification of potential compliance matters;
 - b) consideration of compliance matters;
 - c) measures to achieve compliance; and
 - d) monitoring and implementation of such measures and reporting.
8. The Secretariat has corresponded with several countries on the identification of potential compliance matters for consideration by the Standing Committee. This includes communications with the Management Authorities of Japan regarding the introduction from the sea of specimens from the North Pacific population of the sei whale (*Balaenoptera borealis*), and Nigeria and China regarding trade in *Pterocarpus erinaceus*. The Secretariat has also communicated with Serbia, Slovenia and South Africa regarding issuance of CITES documents to authorize trade with Kosovo.

Japan – introduction from the sea of specimens from the North Pacific population of the sei whale (Balaenoptera borealis)

9. As indicated in the summary record of the 67th meeting of the Standing Committee (SC67, Johannesburg, September 2016), the Secretariat advised the Standing Committee that it would keep it informed of preliminary consultations on Article XIII, noting that it was corresponding with Japan on whaling issues.
10. On 12 September 2016, the Secretariat requested information on the implementation of Article III, notably requirements in paragraphs 5 a) and c) regarding the introduction from the sea of 90 sei whales from the North Pacific. It also noted that it intended to communicate orally on this matter to the 67th meeting of the Standing Committee under agenda item 12 (Application of Article XIII).
11. The Government of Japan responded by email on 22 September 2016, informing that Japan had conducted the second phase of the Japanese Whale Research Programme under Special Permit in the Western North Pacific (JARPN II) for purposes of scientific research in accordance with Article VIII, paragraph 1, of the International Convention for the Regulation of Whaling (ICRW). It also confirmed that Japan caught 90 sei whales under this programme in 2016.
12. Concerning the introduction from the sea of sei whale specimens, the Government of Japan stated that the Fisheries Agency, the Management Authority of Japan in charge of management of whale species, has granted certificates of introduction from the sea to the Institute of Cetacean Research which conducts JARPN II.
13. Regarding the scientific non-detriment finding (NDF) required for the issuance of the certificates of introduction of the specimens from the North Pacific stock of sei whales, Japan informed that it caught 90 sei whales during 2016 research program out of a population of 68,000 sei whales in the research area estimated and reported by Japan to the Scientific Committee of the International Whaling Commission (IWC) in 2003 (no updated population estimates were available). According to the standard set out under the NDF guidelines developed by the Fisheries Agency, as the Scientific Authority of Japan, following Resolution Conf. 16.7 (Rev. CoP17) on *Non-detriment findings*, the adverse effect of this catch quota on the stocks of sei whales in the research area would be at a negligible level (i.e. less than 0.7% of the estimated total population). Therefore, the Scientific Authority of Japan advised that the introduction would not be detrimental to the survival of the species as required by Article III, paragraph 5 (a), of CITES.
14. Japan further informed that there was no introduction of living specimens of sei whales from the sea to Japan, thus Article III, paragraph 5 (b), of CITES would not be applicable. It also stated that the country has conducted JARPN II for purposes of scientific research in accordance with Article VIII, paragraph 1, of the ICRW. Therefore, in the view of the Management Authority of Japan, the catch of sei whales under JARPN II was for purposes of scientific research and those specimens were “not to be used for primarily commercial purposes” [Article III, paragraph 5 (c), of CITES].

15. Finally, Japan pointed out that Article VIII, paragraph 2, of ICRW provided that “any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted.” Japan has appropriately implemented this provision. Furthermore, Japan reiterated that, as explained above, JARPN II was a programme for the purposes of scientific research under Article VIII, paragraph 1, of ICRW, thus it would be groundless to claim that JARPN II was for commercial purposes.
16. On 22 September 2017, the Secretariat sent a formal letter to Japan regarding Japan’s special permit to allow the catch of 134 sei whales in 2017 introduced from the Northwest Pacific.
17. Pursuant to Article XIII of the Convention, the Secretariat requested the CITES Management Authority of Japan to advise if the information provided in the above paragraphs also applies to this year’s catch. Further, the Secretariat requested Japan to provide an example of the certificates of introduction from the sea that the Management Authority has issued to authorize such introductions and a detailed report of the number of such documents issued, the volumes (quantities) authorized and the units and source code used in the certificates for the years 2016 and 2017.
18. In this regard, the Secretariat drew the attention of the Management Authority of Japan to Article VI of the Convention and Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates* and, in particular, to the section regarding the standardization of CITES permits and certificates.
19. The Secretariat also invited the Management Authority of Japan to provide more detailed information on the intended use of the processed parts and derivatives of the caught whales and the proceeds generated by that use. Considering that the requirement in paragraph 5 (c) of Article III should be read in conjunction with Resolution 5.10 (Rev. CoP15) on *Definition of ‘primarily commercial purposes’*, the Secretariat sought to learn more about the specific objective of the scientific research, the method of research, including a justification of the need for lethal survey for biopsy sampling, the vessels used and the description of the area of research.
20. The Government of Japan is expected to provide a response to this preliminary consultation no later than one month after the date of the letter (i.e. by 22 October 2017).

China and Nigeria regarding trade in specimens of Pterocarpus erinaceus

21. On 24 August 2017, the Secretariat sent letters to the Management Authorities of Nigeria and China requesting information regarding trade in *Pterocarpus erinaceus* between the two countries in 2016-2017. Information received from different sources by the CITES Secretariat indicates that containers of logs of *Pterocarpus erinaceus* were allegedly exported from Nigeria to China from May to December 2016, but withheld by the Chinese authorities as they were not accompanied by valid CITES documents.
22. In the first quarter of 2017, the CITES Management Authority of Nigeria reportedly issued an important number of CITES export permits and sent these documents to the Chinese Management Authority. According to the information received by the Secretariat, on the basis of these retrospective permits, the competent Authorities in China allegedly released the shipments from Nigeria and the timber has entered the domestic market
23. Pursuant to Article XIII of the Convention, the Secretariat requested the CITES Management Authority of Nigeria to advise if the above information was accurate and inform it of relevant facts with regard to the exports to China of *Pterocarpus erinaceus* from 9 May 2016 to date, including explanations on the type and number of CITES documents issued, and copies of the relevant Nigerian regulations.
24. The Secretariat further requested the Management Authorities of Nigeria and China to inform the Secretariat of any action taken or planned regarding the implementation of this new listing.
25. *Pterocarpus erinaceus* was first listed by Senegal in CITES Appendix III and regulated by Article V of the Convention from 9 May 2016 to 2 January 2017. During this period the issuance of a certificate of origin by Nigeria and other range States was required. Following a proposal submitted by Nigeria and other range States, this species was transferred to CITES Appendix II, without annotation, by the Conference of the Parties at its 17th meeting, with a date of entry into force of 2 January 2017.
26. As a result, from 2 January 2017, international trade in specimens of *Pterocarpus erinaceus* is regulated by Article IV of the Convention and requires the prior granting and presentation of an export permit. An export

permit can only be issued if the specimens were not obtained in contravention of relevant national laws (a legal acquisition finding) and the Scientific Authority has made a non-detriment finding and all trade must be reported annually.

27. The Secretariat understands that specific restrictions with regard to the harvesting and export of specimens of the concerned species were adopted by Nigeria before the listing of the species in Appendix II. The Secretariat has requested an explanation on the specific legal provisions that were in force at the time the alleged exports occurred, as it is directly relevant to the making of a legal acquisition finding.
28. The Secretariat also informed the Management Authority of China that it was receiving an increasing number of reports alleging high volumes of illegal trade in CITES listed tree species from Africa.
29. No response has been received by the Secretariat in relation to these communications at the time of writing. The Secretariat will report orally on the status of these requests at the present meeting.

Serbia, South Africa and Slovenia – CITES permits issued with the exporting or importing country listed as "Republic of Kosovo"

30. By letter of 30 December 2014, the CITES Management Authority of Serbia had brought to the attention of the Secretariat that Slovenia and South Africa had issued CITES permits with country of import or export on the CITES permit listed as "Republic of Kosovo".
31. On 19 May 2017, the Secretariat sent formal communications to Slovenia and South Africa reminding those two Parties that they should not issue CITES documentation with refers to Kosovo as the country of import, export or re-export. The Secretariat also corrected the CITES trade Database accordingly.
32. In relation to this matter, the Office of Legal Affairs of the United Nations has advised that Kosovo unilaterally declared independence in 2008 but remains a UN-administered territory in accordance with Security Council Resolution 1244. Based on this advice, it is the understanding of the CITES Secretariat that Kosovo is not regarded as a State in relation to the Convention, including Article X on trade with States not Party to the Convention.
33. It is therefore not possible to issue CITES documentation which refers to Kosovo as the country of import, export or re-export. Furthermore, in the annual reports on authorized trade, it is not possible to use the ISO-code for Kosovo (KV) as exporting or importing country according to the *Guidelines for the preparation and submission of CITES annual reports*.

PART II – Possible establishment of a Compliance Assistance Programme (CAP)

34. Pursuant to Decision 17.66, paragraph a) and building upon the information provided at the 17th meeting of the Conference of the Parties in document CoP17 Doc. 23, the Secretariat submits to the consideration of the Standing Committee the considerations below.
35. The Standing Committee has a very large number of complex and significant matters on its agenda at each of its regular meetings and has limited time available in the plenary sessions. In order to better assist the Standing Committee in dealing with compliance matters and implementing Decision 17.66, paragraph a), the Secretariat proposes the establishment of an intersessional working group on compliance matters to explore ways to establish a Compliance Assistance Programme (CAP) and further improve the consistent, effective and expeditious handling of compliance matters.
36. If agreed, the intersessional working group may also explore ways to respond to persistent non-compliance, building upon lessons learnt in the use of action plans for compliance (e.g. National Legislation Project, National Ivory Action Plans, timber species, Article XIII, etc.).
37. The intersessional working group may also explore ways to monitor levels of compliance with recommendations to suspend trade and make suggestions for improving the effectiveness of such measures in achieving the objectives of the Convention.
38. The Government of the United States of America has recently approved a grant to the World Conservation Monitoring Centre of the United Nations Environment Programme (UNEP-WCMC) to work on means to better organize permit-related information and trade data submitted in annual reports for the use of the Secretariat for compliance purposes. This project could eventually support and complement the

establishment and maintenance within the CITES Secretariat of a system to organize permit-related information and intelligence related compliance matters information on authorized international trade, permits, security stamps, registered signatures of CITES authorities, quotas, labels, tags, registered facilities, evolution of markets, etc.

39. The intersessional working group may also explore the possibility of establishing a programme for training or coaching newly designated CITES authorities and seconding personnel from countries with good compliance records to train and assist those new designated authorities in countries that have been subject to recommendations to suspend trade for long periods of time or are experiencing persistent non-compliance problems.

PART III – Guidance for verifying the legal acquisition of CITES specimens (*legal acquisition finding*)

40. Pursuant to Decision 17.66, paragraph b) and Decision 17.67, and building upon the information provided at the 17th meeting of the Conference of the Parties in paragraphs 55 to 59 of document CoP17 Doc. 23, it is recalled that under the Convention, Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a), it is the obligation of the Management Authority of the State of export to satisfy itself that the specimens to be exported were not obtained in contravention of national laws for the protection of fauna and flora. For Appendix III, this only applies when the State of export has included the species in that Appendix. These provisions state that:

A Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.

This obligation to determine that the specimens were not obtained in contravention of the laws (in other words, legally acquired) may be referred to as a 'legal acquisition finding'.

41. The Convention does not provide much guidance on how to make such a legal acquisition finding. In practice, it is the obligation of an applicant for an export permit to provide information that will satisfy the Management Authority that the relevant specimens were legally acquired. The Management Authority of the State of export must assess the information provided and determine whether the specimens were acquired in accordance with national laws.
42. Pursuant to Decision 17.67, the Secretariat has identified funds and a tentative venue for the organization of an international workshop on legal acquisition findings. The Secretariat is very grateful for the financial, technical and logistic support provided by the European Union. The international workshop will tentatively be held in Brussels from 13 to 15 June 2018. The Secretariat is envisaging inviting between 50 to 80 participants, including representatives of Parties from all the regions and international experts. Participants from developing countries would be sponsored. The objective of the workshop is to discuss guiding principles, methodologies, practical tools, information, forensic expertise, compliance risk assessments and other legal resources needed by Management Authorities to verify the legal acquisition of specimens of CITES-listed species to be exported. The expected outcome of the workshop is to prepare and submit for consideration by the Standing Committee, at its 70th meeting (SC70), a proposal for further guidance for verifying the legal acquisition of specimens of CITES-listed species to be exported, including a draft resolution on legal acquisition findings for consideration at the 18th meeting of the Conference of the Parties. The Secretariat will publish a Notification to the Parties providing all relevant details, including the agenda, the venue, modalities for sponsoring eligible participants from developing countries, etc.
43. In accordance with Decision 17.65, Parties are encouraged to provide to the Secretariat with any examples and relevant information regarding methodologies, practical tools, legislative information, forensic expertise and other resources used to monitor compliance with the Convention and to verify the legal acquisition of specimens of CITES-listed species to be exported in accordance with Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention.
44. The Secretariat spoke at two side events on legal acquisition findings that were organized in the margins of the 29th meeting of the Animals Committee and 23rd meeting of the Plants Committee. It is also planning to attend a regional meeting organized on this topic and other related topics to be held in Lima, Peru in early November. This meeting is organized by the Management Authority of Peru with the support of the Secretariat of the Amazon Cooperation Treaty Organization (ACTO) and the Amazon Regional Programme. It is expected that a similar side-event will be held in the side-lines of the present meeting.

Decision 17.66 paragraph c) – guidance on verifying the legal acquisition of founder stock of captive-bred CITES listed species to be exported

45. Regarding the implementation of paragraph c) of Decision 17.66 on *providing guidance on verifying the legal acquisition of founder stock of captive-bred CITES listed species to be exported*, the Secretariat intends to include this issue as an agenda item of the international workshop mentioned above.
46. On 28 September 2017, the Secretariat has received a letter related to this matter from the Management Authority of Bolivia (Plurinational State of). In its letter, Bolivia requests the Standing Committee to determine, at its 69th meeting the illegality of the founder stock and offspring of first and second generation of specimens of hyacinth macaw (*Anodorhynchus hyacinthinus*) in possession of Hyacinth Macaw Aviary, Inc. (see a copy of the letter together with the response from the United States of America in the Annex to the present document).
47. In the response provided by the United States of America, it is stated that “*the Standing Committee did not determine that the breeding stock or offspring of this facility were unlawfully obtained or possessed. Rather, the Standing Committee decided that the facility should be deleted from the CITES register of operations that breed Appendix-I animal species for commercial purposes. There is no basis for the U.S. Fish and Wildlife Service to seize or return birds currently held at the facility.*”
48. The Secretariat recalls that the Conference of the Parties has requested the Standing Committee to provide guidance on how to verify the legal acquisition of founder stock of captive-bred listed species to be exported (Decision 17.66 paragraph c). The lessons learnt from the case of Hyacinth Macaw Aviary, Inc and other similar cases might be discussed in the context of the international workshop on legal acquisition findings referred to in paragraph 42 above.
49. In the absence of existing guidance on this matter and considering that determining the legality of the acquisition of founder stock does not appear in the mandate entrusted by the Conference of the Parties to this Committee in the Annex I to the Resolution Conf. 11.1 (Rev CoP17) on *Establishment of committees*, the Secretariat is bringing to the attention of the Parties concerned Article XVIII of the Convention on Resolution of Disputes, which states:
 1. *Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.*
 2. *If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.*

Recommendations

50. In light of the above, the Secretariat recommends that the Standing Committee agree the following:
 - i. *With regard to Japan – introduction from the sea of specimens from the North Pacific population of the sei whale (Balaenoptera borealis)*
 - a) The Secretariat should assess the response provided by Japan and, in consultation and cooperation with the Party concerned and the Chair of the Standing Committee, determine whether there is additional information to be considered and a technical mission to the country pursuant to Article XIII of the Convention should be conducted to assess the scientific, administrative and legislative arrangements for authorizing the introduction from the sea of specimens from the North Pacific population of the sei whale and report its findings and recommendations to SC70.
 - ii. *With regard to China and Nigeria regarding trade in specimens of Pterocarpus erinaceus:*
 - a) Parties should not accept any CITES permit or certificate for *Pterocarpus erinaceus* issued by Nigeria unless its authenticity has been confirmed by the Secretariat.
 - b) The Secretariat should assess the responses provided by China and Nigeria and further report to SC70.

- iii. *Regarding Serbia, South Africa and Slovenia – CITES permits issued with the exporting or importing country listed as "Republic of Kosovo"*
 - a) Parties should not issue CITES documentation which refers to Kosovo as the country of import, export or re-export.
 - iv. *Regarding possible establishment of a Compliance Assistance Programme (CAP)*
 - a) The Standing Committee establishes an intersessional working group on compliance matters to explore ways to establish a Compliance Assistance Programme (CAP) and further improve the consistent, effective and expeditious handling of compliance matters, considering, among other things, these two elements:
 - i) responses to persistent non-compliance building upon lessons learnt in the use of action plans for compliance (e.g. National Legislation Project, National Ivory Action Plans, timber species, Article XIII, etc.); and
 - ii) monitoring levels of compliance with recommendations to suspend trade and make suggestions for improving the effectiveness of such measures in achieving the objectives of the Convention. This could include the establishment and maintenance of a system to organize permit-related information and intelligence related to compliance matters.
 - b) The intersessional working group shall report on its findings, conclusions and recommendations, if any, to the 70th meeting of the Standing Committee
 - v. *Regarding Guidance for verifying the legal acquisition of CITES Specimens (Legal Acquisition Finding)*
 - a) The members of the Standing Committee as well as Parties and interested observers are invited to provide relevant information on this matter to the Secretariat, including any examples and relevant information regarding methodologies, practical tools, legislative information, forensic expertise and other resources used to monitor compliance with the Convention and to verify the legal acquisition of specimens of CITES-listed species to be exported in accordance with Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention 90 days in advance of the international workshop to be tentatively held in Brussels from 13 to 15 June 2018.
 - vi. *Regarding Guidance for verifying the legal acquisition of founder stock of captive-bred CITES listed species to be exported*
 - a) The Secretariat should include this matter in the agenda of the international workshop to be tentatively held in Brussels from 13 to 15 June 2018.
 - b) Parties concerned by potential disputes with respect to the interpretation or application of the provisions of the present Convention regulating captive-breeding operations should explore bilaterally all possible solutions and encourage them to exhaust all possible avenues of negotiation.
51. The Standing Committee may wish to recommend that Parties concerned report on progress to the Secretariat on the implementation of the above recommendations by 1 July 2018, in order for the Secretariat to convey those reports and its comments at the 70th meeting of the Standing Committee.