

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



Seventieth meeting of the Standing Committee
Rosa Khutor, Sochi (Russian Federation), 1-5 October 2018

Interpretation and implementation matters

General compliance and enforcement

Compliance matters

POSSIBLE ESTABLISHMENT OF A COMPLIANCE ASSISTANCE PROGRAMME:
REPORT OF THE SECRETARIAT

1. This document has been prepared by the Secretariat and should be read in conjunction with documents SC70 Doc. 22.1 on *Capacity-building needs of developing countries and countries with economies in transition*, SC70 Doc. 29.2 on *Review of recommendations to suspend trade made more than two years ago* and SC70 29.3 on *Country-wide Significant Trade Reviews*.

Background

- 2.. At its 17th meeting (CoP17, Johannesburg, 2016), the Conference of the Parties adopted Decision 17.66. paragraphs a) and d) as follows:

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;*

...

- d) *make appropriate recommendations for consideration at the 18th meeting of the Conference of the Parties.*

3. At its 69th meeting (SC69, Geneva, November 2017), the Standing Committee considered the possible establishment of a Compliance Assistance Programme (CAP), in accordance with Decision 17.66, paragraphs a) and d), building upon the information provided at the 17th meeting of the Conference of the Parties in document [CoP17 Doc. 23](#).
4. As an outcome of its deliberations, the Standing Committee requested the Secretariat to submit to its 70th meeting a proposal on the establishment of a Compliance Assistance Programme (CAP), including associated costs. In preparing the proposal, the Standing Committee requested that the Secretariat issue a notification seeking inputs from Parties, intergovernmental organizations and non-governmental organizations on their experience and relevant advice to support a CAP.

Progress made in the implementation of SC69 recommendations

5. Regarding the SC69 recommendation mentioned above, given the limited resources available, the Secretariat decided to seek targeted inputs directly from Parties, intergovernmental organizations and non-

governmental organizations that are providing assistance to Parties currently subject to compliance measures recommended by the Standing Committee, instead of publishing a general Notification to the Parties.

6. The consultations built upon the experience and lessons learnt from the ongoing compliance processes related to the National Legislation Project (NLP), the Review of Significant Trade (RST), Article XIII process and National Ivory Action Plan (NIAP) process and focused around two general questions:
 - a) how to provide effective support to CITES authorities of Parties subject to compliance measures to ensure optimal outcomes, e.g. full and timely implementation of Standing Committee's recommendations; and
 - b) how to respond to persistent or recurrent non-compliance.
7. The different CITES compliance mechanisms put in place by the Conference of the Parties through several Resolutions are revealing the increasing need for the adoption of an integrated approach that serves as a facilitator to assist the Parties in achieving their objectives, as shown in documents SC70 Doc. 22.1 on *Capacity-building needs of developing countries and countries with economies in transition*, SC70 Doc. 29.2 on *Review of recommendations to suspend trade made more than two years ago* and SC70 29.3 on *Country-wide Significant Trade Reviews*.
8. The merit of establishing an integrated Compliance Assistance Programme (CAP) would be to ensure a better alignment of CITES interventions, promote a common vision and strategy and create the conditions for joint funding, joint planning and joint delivery.
9. The CAP can be defined as an accelerator of compliance. A coherent set of simplified and flexible methods and models for funding, administration, organization and assistance designed to create connectivity, alignment and collaboration within and between the different mechanisms and actors involved. The goal of CAP is to accelerate compliance while enhancing the quality of the assistance provided to concerned Parties by cutting across multiple services, initiatives, donors, providers and settings to facilitate compliance and maximize conservation results.
10. Five essential features were identified during the informal consultations as prerequisite to the success of a CAP:
 - a) the strategic importance of using the Standing Committee's recommendations as the principal source of guidance for providing assistance to Parties, clearly focused on shared outcomes and deliverables;
 - b) the need to put the concerned Party at the centre of the assistance programme, to ensure ownership and political buy-in;
 - c) the identification of an in-country assistance coordination mechanism or other type of framework for effective aid management at the national level to align donor assistance, foster coordination and facilitate the channelling of sustained financial support (beyond one-off workshops or trainings);
 - d) the provision of technical assistance and guidance to strengthen institutional capacity, including the possibility of deploying short-term 'placements' or 'secondments' to the concerned Parties and peer-capacity building activities (e.g. bilateral cooperation and mentoring by fellow authorities of another Party); and
 - e) the development of tools to monitor compliance with the Standing Committee's recommendations.

These five elements are briefly explained in the following paragraphs.

Standing Committee's recommendations as the basis for national roadmaps

11. As explained in paragraphs 12 to 20 of document SC70 Doc. 22.1, there is an explicit interest of Parties to streamline and consolidate the assistance provided to Parties subject to compliance measures under different CITES compliance mechanisms, including the National Legislation Project, the Review of Significant Trade, annual reporting, Article XIII process (international measures) and other compliance tools, such as NIAPs, species-specific plans, and captive-breeding operations (production systems).



12. It appears to be a serious challenge for Parties subject to some or all of the compliance mechanisms mentioned in the precedent paragraph to:
- a) understand and prioritize the different recommendations made under the existing mechanisms, sometimes in a simultaneous and parallel manner;
 - b) make sure that time, energy, political capital and financial resources are not all exhausted in the planning and reporting processes before moving into the implementation of the recommendations. Critical action defined in a plan and communicated to the Standing Committee sometimes sit on the shelf forever due to the lack of support for its implementation, resulting in poor or no tangible outcomes;
 - c) manage the assistance offered by cooperation agencies and international non-governmental organizations, which may be duplicative, push for different solutions or be not directly linked to the recommendations made by the Standing Committee; and leverage resources to the actions that are of priority for the Party concerned in achieving compliance. The lack of coordination among different actors can be confusing to the concerned Parties, notably the CITES authorities; and
 - d) respond to different communications, deadlines, reporting obligations created under the different processes in a timely and substantive manner. In the CITES context, there appears to exist a need to prioritize and being strategic in the provision of the assistance, using the Standing Committee's recommendations as the basis for a national roadmap.
13. An integrated CAP is expected to accelerate implementation in cases of persistent non-compliance. This would be more effective than the existing fragmented and episodic assistance provided following compliance measures adopted under the specific mechanisms described in paragraph 11 above. This would also result in a better alignment with the provisions of Resolution Conf. 14.3 on *CITES compliance procedures* while promoting a shared understanding of the various dimensions to be aligned around the Standing Committee's recommendations. By using the Standing Committee's recommendations as the foundation of the national roadmaps and putting the concerned Parties at its centre, the CAP is expected to enable Parties to prioritize and sequence interventions, leverage resources, ensure coherence and maximize efforts while avoiding siloed, uncoordinated or duplicative assistance. CAP is designed to encompass the targeted capacity building activities described in document SC70 Doc. 22.1.
14. Building upon lessons learnt in the use of action plans for compliance (e.g. NLP, NIAPs, timber species, Article XIII, etc.), the CAP would help Parties integrate the recommendations made under different processes in a single roadmap, especially in cases of multidimensional and persistent non-compliance, and in particular where the cause of the non-compliance relates to capacity constraints and not the lack of political will or engagement. If a roadmap is developed following the Standing Committee's recommendations, this may be an effective tool to assist Parties in ensuring long-term compliance.

15. CAP would assist Parties concerned in developing roadmaps based on Standing Committee's recommendations. The roadmaps would need to:
 - a) identify the Standing Committee's recommendations that will be implemented within the timeframe envisaged and as prioritized;
 - b) group recommendations by area of concern (species, science, legislation, enforcement, outreach, etc.);
 - c) designate clearly 'compliance case managers' in the Secretariat and the Party concerned to coordinate the implementation of the roadmap;
 - d) include internal and external communication and reporting features;
 - e) include clear and measurable targets and indicators;
 - f) involve all relevant actors (depending on the specific matter); and
 - g) indicate costs and sources of funding, as appropriate.

Concerned Party at the centre of the assistance programme

16. Integrated compliance assistance should be Party-driven, with the close strategic support provided by the Secretariat and centred on the strengths and needs of the concerned Party. Several years of experience in the implementation of the difference compliance mechanisms provide considerable evidence that the use of such a perspective ought to lie at the heart of any discussion about integrated compliance assistance in order to help CITES authorities engage other sectors of the government and reduce the risk of potentially competing components. For instance, enforcement without adequate laws does not work and adequate laws on the books are not sufficient without proper science.
17. Engaging with CITES national authorities and institutions is a core function of the CITES Secretariat and is critical for the proper implementation of the recommendations of the Standing Committee. Addressing the lack of engagement of Parties subject to long-term trade suspensions is often complicated by the coexistence of multiple factors and by the presence of political, social, geographical and economic impediments. One of the common reasons to recommend trade suspensions under CITES compliance mechanisms is the lack of responses to the requests sent by the Secretariat pursuant to decisions adopted by the CITES governing bodies or to bilateral requests sent by Parties. This is frequently the case under the Review of Significant Trade or the lack of submission of reports under other processes.
18. The establishment of CAP would have the merit of fostering integration of available compliance assistance provided multilaterally or bilaterally by cooperation agencies, intergovernmental organizations, non-governmental organizations and other relevant entities. This will also bridge the gap generated by the fact that the Secretariat does not have a presence in the regions nor national offices with the expertise, local knowledge and language skills to respond to the needs faced by each of the Parties in the implementation of key CITES requirements, such as non-detriment findings and the verification of legal acquisition, with the exception of a couple of specific initiatives, i.e. Minimising the Illegal Killing of Elephants and other Endangered Species (MIKES) and the CITES tree species programme that are yet to be aligned with the recommendations made by the Standing Committee related to trees, elephants and other species listed in Appendix I.
19. The method developed by the Secretariat in providing compliance assistance to countries such as the Lao People's Democratic Republic and the Democratic Republic of the Congo started by engaging with the CITES authorities in a proactive and transparent manner, keeping informed their Permanent Missions to the United Nations in Geneva. After this first 'engagement step', the Secretariat quickly moved to assess the strengths of the Parties and the international assistance available to address the compliance shortcomings. All Parties have strengths and weaknesses without exception. The implementation capacity of the Parties was more easily unblocked when the Secretariat focused first on assessing the Parties' strengths and building trust.
20. The first major achievement of any compliance assistance programme occurs when Parties open up to the offer for support and become aware of their capacity needs. This stage was obtained after conducting one or more technical missions to the countries, as provided in Resolution Conf. 14.3. Technical missions well prepared in advance make an important difference compared to long distance communications. Hence, the

paramount importance of including technical missions in the Standing Committee's recommendations. It was observed that successful technical missions help Parties generate the political momentum to gradually get out of the vicious circle of persistent non-compliance. It takes times and sustained engagement and assistance from all relevant actors. It also places the Parties in the driving seat, allowing them to determine the pace and direction of the process in consultation with the Secretariat.

21. The integrated Compliance Assistance Programme (CAP) is intended to foster the collaborative process by encompassing fluid communication and facilitating compliance assistance along a continuum through agile resource coordination. CAP would rely on the assignment of case managers in the CITES Secretariat that help ensure coordination of all the relevant assistance provided to a concerned Party through the different compliance mechanisms. Document SC70 Doc. 22.1 on capacity building contains a detailed explanation on how the Secretariat intends to foster the provision of targeted assistance to concerned Parties.

In-country assistance coordination mechanisms

22. The implementation of the roadmaps developed by the Parties based on the Standing Committee's recommendations requires a rapid alignment of the financial needs and of existing donor funding mechanisms, schemes and programmes that are available to the concerned Party. There are several possible ways to take stock of current Party concerned and donor programming and identification of ongoing technical assistance activities deployed in recipient Parties. Parties should decide which among the number of different types of in-country assistance coordination mechanisms is more suitable to strengthen national ownership and alignment, improve accountability, as well as increase efficiency in the use of administrative capacities for assistance coordination. This may include donor roundtables, informal in-country donor coordination, collaboration at project level, substantive sectoral coordination, etc. The important element is that in-country coordination assistance can only be achieved through the efforts of motivated individuals, usually just a small group, who are prepared to make the time and apply the sustained effort required. The extent and depth of coordination is adaptable and can change over time. In-country assistance coordination would be the third main element of the CAP.
23. Bearing in mind that resources are scarce and that there is a need to be more strategic in prioritizing, in-country assistance coordination should explore the potential for scaled-up financial resources to ensure the timely implementation of the roadmap by strengthening existing funding arrangements and/or developing new arrangements. It should also aim at fostering coordination and facilitating the channelling of sustained assistance (not just one-off workshops or trainings). This would imply strengthening alignment of donor funding to accelerate implementation, reduce duplications and maximise the impact and efficiency of investments, by identifying coordination and funding leverage opportunities among different donors.
24. For the preparation of in-country assistance coordination, national compliance case managers may interact, with the consent of the concerned Party, with representatives of cooperation and implementing agencies, international organizations, diplomatic missions and other potential donors/investors present in the territory of the concerned Party. Some Parties may wish to promote informal development partner groups, e.g. Informal group of friends of the process, "wildlife working groups", etc., involving a mixed group of representatives of States that maintain close relations with the concerned Party and international organizations active in the country to share the information mentioned in paragraph 22 above. They may provide important technical assistance to CITES authorities and support the Secretariat before and during the technical missions conducted to the concerned Parties.

Technical assistance and guidance, including peer-capacity building and mentoring

25. The fourth and larger component of the CAP is the provision of technical assistance and guidance to strengthen the institutional capacity required for the implementation of the roadmap. This include the classic capacity-building tools, e.g. face-to-face workshops, virtual learning, toolkits and materials prepared by the Secretariat and its partners.
26. Most of the time, Parties have some capacity that is either not sufficient or not at the right place or disconnected from the implementation of CITES requirements. In those cases, more than capacity building Parties seem to require a capacity linking strategy that brings together the existing capacity of the country to a central coordinated place in order to deliver on the execution of the roadmap. Bringing relevant actors together, that sometimes have never met before, is one of the initial outcomes of the visits of the Secretariat to the concerned countries.

27. Countries with special needs (legal, scientific, enforcement) represent an important subgroup and are those exposed to an increased risk of persistent non-compliance, e.g. chronic illegal trade in wildlife, late reporting, and require sustained international assistance to cope with their obligations. The two approaches used by the Secretariat when it provides *in situ* compliance assistance to those countries are 'learning by doing' and 'problem-solving'. CITES authorities are coached and mentored to implement on real time the Standing Committee's recommendations and deal with concrete issues. In certain cases, the Secretariat observes that Parties may need sustained assistance for a longer period of time, e.g. three to six months, in order to build all the necessary capacity to produce long-lasting change. One of the merits of establishing the CAP would be to create the possibility of deploying short-term personnel placements to assist Parties during three to six months, when relevant and appropriate.
28. Ideally, these personnel could be seconded by governments in a scheme of peer-capacity building from government to government. Peer support and cross-fertilization among CITES authorities is one of the most cost-effective ways to build capacity. Some countries have already established this type of initiatives and are implementing programmes with success in different regions of the world. In order to keep this document short, these experiences are not going to be detailed here but Parties are invited to share information bilaterally or via information documents. There may be some cases where the personnel cannot be seconded by governments for different reasons, including security, political or economic constraints. In those cases, it might desirable to create a small compliance budget line within the core budget of the Secretariat to conduct compliance assistance missions and deploy short-term personnel that provide targeted compliance assistance to the concerned Parties.
29. Academia and voluntary organizations may be also a good source of assistance, if well-coordinated and aligned with the needs of the Parties, notably in the area of science (e.g. population surveys, forestry management, rescue centres for live confiscated animals, etc.).

Tools to monitor compliance with the Standing Committee's recommendations

30. The fifth component of the CAP would be the tools to monitor compliance with the Standing Committee's recommendations. These tools would be aimed at monitoring the levels of compliance with recommendations, including those that suspend trade and make suggestions for improving the effectiveness of such measures in achieving the objectives of the Convention. The main indicators will be provided by the CITES compliance mechanisms mentioned in paragraph 11 above.
31. In addition, other electronic tools can be developed to monitor compliance. As mentioned in paragraph 38 of the compliance report to SC69 [document [SC69 Doc. 29.1 \(Rev.2\)](#)], the United States of America approved a grant to the United Nations Environment Programme – World Conservation Monitoring Centre (UNEP-WCMC) to work on means to extract trade data submitted in annual reports for the use of the Secretariat for compliance purposes.
32. UNEP-WCMC is developing in close consultation with the Secretariat, a tool to facilitate the Secretariat's role in monitoring compliance with the provisions of the Convention. In the following paragraphs, this document will present the most relevant elements of the tool designed by UNEP-WCMC.
33. The tool aims to create an automated mechanism for monitoring international trade in CITES-listed species by providing the Secretariat with a way to check the trade data submitted in annual reports for potential compliance issues. The tool is being developed to automatically detect the following cases:
 - trade subject to **CITES suspensions**;
 - trade in wild-sourced **Appendix I** taxa for **commercial** purposes (purpose T); and
 - total annual trade in taxa exceeding **mandatory quotas** (including CoP-approved quotas and zero quotas that were agreed as part of the listing proposal).
34. The development of this tool and the resulting analytics are expected to provide an improved mechanism for the CITES Secretariat, and ultimately the Standing Committee, to be able to monitor trade that may be in contravention of important decisions agreed by CITES governing bodies.
35. The tool will only be available for use by the CITES Secretariat. As many of the trade transactions flagged are only potential issues as further explained below, this tool will only provide the starting point for a dialogue with Parties.

36. In total, just over 2,000 potential issues were identified during the period (2012-2016) according to exporter-reported data, i.e. an average of 400 issues per year. The number of cases according to importer-reported data were approximately double that during the same five-year period (4,087 issues for 2012-2016). To put this in context, this is less than 1% of the reported trade transactions that were potentially involved in a compliance issue (0.06% as reported by exporters; 0.19% as reported by importers) (see Table 1 below).

Table 1. Number of cases detected in potential breach of CITES suspensions, Appendix-I commercial trade restrictions or quota limits according to reporter-type, and as a percentage of the total number of shipments reported, 2012-2016.

Category	Exporter-reported	Importer-reported
Suspensions	1,564	3,811
Appendix I commercial trade	463	264
Mandatory quotas	4	12
Total	2,031	4,087
Total number of trade transactions reported by Parties, 2012-2016	3,665,944	2,197,852
Number of potential compliance issues as a % of total transactions	0.06%	0.19%

37. It is important to note that these are the preliminary results of potential issues, and that there are a number of reasons why these may be an overestimate of the total issues. In particular:

- a) Parties often report on “**permits issued**” and do not always report on “**actual trade**”. This means that there may be cases where the permit was issued, but the trade may not actually have taken place.
- b) Suspensions can come into force and be removed partway through a year. **For suspensions that were only in force for part of a year, trade during that year may have been in compliance.** Of the combined exporter-reported and importer-reported total (5,375) approximately 4,844 of the shipments (~90%) were reported in the same year as a suspension started or ended, so trade may have occurred outside of the period of time covered by the suspension. As annual reports do not include the date of permit issuance, but rather only the year, it was not possible to cross-check these records to determine if the trade happened during or outside the suspension period. Based on the high proportion of issues that were during years when the suspension was only in place for part of the year, it is likely that this is an overestimate of the trade that occurred during suspensions being in place.

38. On this basis, it is important to consider the results from the tool as potential issues and ones that the Secretariat can explore further, as needed.

Associated cost of establishing a Compliance Assistance Programme

39. An integrated Compliance Assistance Programme would mainly imply a reorganization and more efficient use of existing resources at national and international levels, including within the Secretariat. It is expected to save money, rather than creating an additional financial burden to Parties. It would build mainly upon the external funds available under ongoing bilateral and multilateral cooperation assistance that are identified by in-country coordination mechanisms and small seed funds provided by Parties in the core budget of the Secretariat.

40. The programme would require the allocation of seed funds for an amount of USD 150,000 per annum for the technical missions and the deployment of short-term personnel to the priority countries identified by the programme. These seed funds, that are expected to leverage and mobilize available resources, appear to be a very modest cost compared to the benefits that such a programme could generate for Parties and the Convention. Once a new Secretary-General is in post, consideration may need to be given to some reorganization of the CITES Secretariat to ensure better alignment and prioritization, with more staff dedicated to monitoring compliance and providing compliance assistance.

Recommendation

41. The Secretariat invites the Standing Committee to take note of the present document, consider the merits of establishing a Compliance Assistance Programme (CAP) based on the observations made by the Secretariat in the present document, and instruct the Secretariat to submit, in consultation with the Chair, a more detailed proposal for consideration at the 18th meeting of the Conference of the Parties.