

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



Seventeenth meeting of the Conference of the Parties  
Johannesburg (South Africa), 24 September - 5 October 2016

Interpretation and implementation matters

General compliance and enforcement

CITES COMPLIANCE MATTERS

1. This document has been prepared by the Secretariat.

Purpose

2. The twofold purpose of this document is to map all existing CITES compliance procedures and to identify areas where a more systematic approach in addressing compliance matters could be considered. Article XIII of the Convention, on *International measures*, together with Resolutions Conf. 11.3 (Rev. CoP16) on *Compliance and enforcement* and Conf. 14.3 on *CITES compliance procedures*, provide the general framework under which all CITES compliance matters are handled.

Issues

3. Various compliance processes and procedures have evolved over time in different Resolutions and Decisions adopted by the Conference of the Parties, and several of the main CITES compliance procedures were developed prior to adoption of the *Guide to CITES compliance procedures* (hereinafter referred to as the "Guide"), in the Annex to Resolution Conf. 14.3. This Guide compiles and codifies the existing processes and procedures, which should be construed consistently with the generic compliance procedures set out in the Guide.
4. Under the current practice of handling compliance matters under CITES, a Party may be subject to several different compliance measures at the same time regarding different CITES provisions and obligations. In some cases, several recommendations to suspend trade may be put in place, e.g. for all trade or all commercial trade or trade in specific CITES-listed species. Such recommendations are made at different times, independently of each other, and each one remains in effect until the criteria for its withdrawal have been met. Following the adoption of compliance measures by the Standing Committee, Parties have consulted the Secretariat about their scope, date of entry into effect, process for their withdrawal, effects on existing permits and other practical problems related to their implementation.

Background

5. For the purpose of this document, 'compliance' means acting in accordance with and in fulfilment of CITES requirements and obligations. Compliance is a prerequisite for achieving the objectives of CITES.
6. Compliance matters occur with regard to a number of obligations under the Convention, particularly the designation of authorities (Article IX), permitting procedures and trade conditions (Articles III, IV, V, VI, VII and XV), domestic measures to enforce the Convention (Article VIII, paragraph 1), maintaining and submitting records of trade (Article VIII, paragraphs 7-8), and more broadly under Article XIII. In addition, Resolutions and Decisions of the Conference of the Parties may include specific recommendations for all or certain Parties that may be associated with compliance measures as further elaborated below.

## Mapping existing CITES compliance processes

7. This overview of existing procedures is aimed at ensuring a more systematic and consistent approach to compliance matters, using the Guide as the reference in all compliance-related matters handled by the CITES bodies. As noted above, while the generic CITES compliance procedures are set out in Resolution Conf. 14.3, the more specific compliance processes that have evolved over time to address recurrent compliance matters, identified through established monitoring processes, are set out in various Resolutions. These are briefly summarized below.

### *Review of Significant Trade (biological sustainability)*

8. Resolution Conf. 12.8 (Rev. CoP13) *on Review of Significant Trade in specimens of Appendix-II species* lays out a science-driven process intended to monitor the implementation of Article IV, paragraphs 2 (a), 3 and 6 (a) and compliance with the Convention's obligations to make 'non-detriment findings' (NDFs) as a prerequisite for authorizing the export (or introduction from the sea) of specimens of species included in Appendix II. The Review involves the analyses by the Animals and Plants Committees of levels of trade recorded in the CITES trade database and other information, and the identification and correction of instances where range States appear to allow the export of certain species at levels that could be detrimental to the survival of the species concerned. The Review is aimed at ensuring that levels of trade in Appendix-II listed species are sustainable, and is a mechanism for providing advice to range States to assist with the implementation of the NDF requirement. It can result in species- and country-specific recommendations for improved trade management, and compliance measures in instances where exporting range States ignore this advice. Resolution Conf. 12.8 (Rev. CoP13) does not relate to species included in Appendix I.
9. Under Resolution Conf. 12.8 (Rev. CoP13), the Animals or Plants Committee may formulate species-specific recommendations to the range States concerned to address issues related to the implementation of Article IV, paragraphs 2 (a), 3 or 6 (a), identified through the monitoring process. Where the Secretariat, in consultation with the Chair of the Animals or Plants Committee, determines that such recommendations have not been implemented by the country concerned, it should recommend appropriate actions to be taken by the Standing Committee. Such actions may include, as a last resort, a recommendation to all Parties to suspend trade in the affected species with the range State concerned. In practice, recommendations by the Standing Committee take effect immediately, i.e. on the date of the endorsement of the Executive Summary of the meeting of the Standing Committee where the decision was taken, in accordance with Rule 27 of the Rules of Procedure of the Standing Committee (as amended at the 65th meeting, Geneva, July 2014).
10. The Secretariat subsequently notifies all Parties of any recommendations or actions taken by the Standing Committee. The recommendations remain in place until the country concerned has demonstrated compliance with the above-mentioned provisions of the Convention to the satisfaction of the Standing Committee. Hence, such a recommendation is normally withdrawn only on the basis of a specific decision taken by the Standing Committee at one of its regular meetings.
11. At each of its meetings, the Standing Committee should review trade suspensions that have been in place for more than two years, consider whether a recommendation to suspend trade should be maintained, and decide on appropriate measures to address a continuing implementation problem.
12. The process of conducting the Review of Significant Trade has been reviewed by the Animals and Plants Committee. Based on this detailed review, a thorough revision of the process will be discussed at the present meeting under agenda item 33 *on Evaluation of the Review of Significant Trade* (see document CoP17 Doc. 33).

### *National laws (legality)*

13. The CITES National Legislation Project (NLP) was established in 1992 by Resolution Conf. 8.4 on *National laws for implementation of the Convention*. Under the NLP, the Secretariat provides legislative analyses and assistance to Parties. Based on the analysis, and in agreement with the Party concerned, the legislation of each Party is placed in Category 1 ("fully meeting the minimum requirements"), Category 2 ("partially meeting the minimum requirements") or Category 3 ("generally not meeting the minimum requirements").

14. At each meeting, the Conference of the Parties (CoP) reviews the progress made by Parties with legislation in Category 2 or 3 with respect to their domestic measures for implementing the Convention, based on a report by the Secretariat. The CoP decides on the specific procedures to be followed by the Standing Committee in reviewing progress and in the adoption of appropriate measures. The CoP Decisions on national laws have generally referred compliance matters to the Standing Committee in line with Resolutions Conf. 8.4 and Conf. 14.3, sometimes directly stating that a recommendation to suspend trade should be adopted if Parties in certain categories failed to adopt appropriate measures.
15. In addressing compliance matters in relation to national law, the Standing Committee has been using a blend of “carrots and sticks” aiming at encouraging the Parties concerned to take the appropriate measures. The threat of a recommended trade suspension has become an extraordinarily effective tool to build political will at the level necessary for the adoption of legislation. At the same time, the Standing Committee has requested the Secretariat and Parties with legislation in Category 1 to provide assistance to the Parties, upon their request. Compliance measures used with regard to national laws include: individual caution letters to Parties concerned that they are in non-compliance; public notice of a compliance matter; requirements to submit legislative plans; and recommendations to suspend trade. These decisions by the Standing Committee on compliance measures have generally been accompanied by information on existing sources of assistance available to the Parties upon their request.

#### *National Reports (monitoring)*

16. The obligation of Parties to provide regular reporting is established by Article VIII of the Convention and is further elaborated in Resolution Conf. 11.17 (Rev. CoP16) *on National reports*. In the Resolution, the Conference of the Parties recommends that all Parties suspend trade with any Party that has failed - as determined by the Standing Committee - for three consecutive years and without having provided adequate justification, to provide the annual reports required under Article VIII, paragraph 7 (a), of the Convention within the established deadlines. It should be noted that there is no compliance process for the non-submission of biennial reports.
17. At each of its regular meetings, the Standing Committee reviews the status of submissions of national reports, on the basis of information provided by the Secretariat. For Parties that have failed to meet their obligation to submit an annual report for three consecutive years and have not provided adequate justification, the Committee recommends that all Parties not authorize any trade in specimen of CITES-listed species to or from the Party concerned. The recommendation concerns all trade, not only commercial trade. Generally, such recommendations by the Standing Committee only take effect 60 days after the end of the Committee meeting, allowing the Party additional time to compile the reports before the recommendation to suspend trade takes effect.

#### *Article XIII (International measures)*

18. Article XIII, paragraph 1, stipulates that:

*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.*

Article XIII requires any Party that receives such a communication to respond as soon as possible and, where appropriate, propose remedial action. Regarding application of Article XIII, in Resolution Conf. 11.3 (Rev. CoP16) the CoP has established that Parties should reply within one month or, if this is impossible, acknowledge within the month and indicate a date, even an approximate one, by which they consider it will be possible to provide the information requested. An inquiry into the matter may also be carried out by persons authorized by the Party. If it appears that a solution cannot be readily achieved, the Secretariat should bring the matter to the attention of the Standing Committee, which may pursue the matter in direct contact with the Party concerned with a view to helping to find a solution. The Standing Committee and the Conference of the Parties shall review the information provided by the Party or resulting from the inquiry, and make appropriate recommendations.

19. The evolution of the approach to compliance matters under CITES has led to a separate and targeted use of Article XIII as a specific compliance procedure.

20. Triggering Article XIII is considered to be a serious indication of apparent systemic or structural problems with the implementation and enforcement of the Convention. An Article XIII process will often include an inquiry being carried out by the Secretariat in the country concerned, upon invitation from the Party, leading to detailed recommendations being made by the Secretariat on actions to be taken by the Party. Such recommendations will cover all issues relevant for the effective implementation of the Convention. The Secretariat recommends that Article XIII be used more frequently in the future where Parties are the subject of several concurrent compliance procedures, sometimes coupled with concerns over possible irregularities with the actions of authorities in the countries concerned.

#### *Species- and Party-specific Action Plans*

##### i) National Ivory Action Plans (NIAPs)

21. National Ivory Action Plans (NIAPs) are an innovative tool being used by CITES to strengthen controls of the trade in ivory and of ivory markets, and respond to the current high levels of elephant poaching and illicit ivory trafficking. Each plan outlines the urgent measures that a CITES Party commits to deliver – including legislative, enforcement and public-awareness actions as required – along with specified time frames and milestones for implementation.
22. The CITES Standing Committee has identified 22 Parties that are most heavily concerned by the illegal trade in ivory. These are categorized as Parties of ‘primary concern’ (eight Parties), ‘secondary concern’ (eight Parties) and ‘importance to watch’ (six Parties). Nineteen of these 22 Parties were requested by the CITES Standing Committee to develop and implement NIAPs.
23. The basis for requesting Parties to establish NIAPs is provided by Resolution Conf. 10.10 (Rev. CoP16) on *Trade in elephant specimens*, which includes a specific reference to Resolution Conf. 14.3 on *CITES compliance procedures* and includes the possibility for the Standing Committee to consider appropriate measures based on the findings and recommendations submitted for its consideration.
24. The request for NIAPs was introduced by the Standing Committee at its 63rd and 64th meetings (Bangkok, March 2013).<sup>1</sup> At its 66th meeting (SC66, Geneva January 2016), the Standing Committee recommended that Parties suspend commercial trade in specimens of CITES-listed species with a number of Parties until they had submitted progress reports on implementation of their NIAPs confirming that some progress had been made towards implementation of the commitments. Document CoP17 Doc. 24 sets out the recommended approach to ensure that the NIAPs and their related compliance matters are construed more consistently with the compliance procedures specified in Resolution Conf. 14.3.

##### ii) Plans for timber-producing species and other genus-specific action plans

25. The action plan for Malagasy ebonies (*Diospyros* spp.) and Malagasy palissanders and rosewoods (*Dalbergia* spp.), adopted at CoP16 through Decision 16.152, is a genus-specific action plan agreed by the Conference of the Parties containing a set of specific recommendations directed to Madagascar, the Plants Committee, importing countries and the Secretariat. The Party concerned could potentially be subject to CITES compliance procedures if it does not demonstrate effective implementation of the action plan. Unless specific processes are agreed to, such compliance matters would have to be addressed following the general guidance set out in Resolution Conf. 14.3. To ensure due process and consistency in the associated compliance processes and procedures, the Secretariat draws the attention of the Parties to the fact that any proposal to adopt similar approaches for other species in the future that could imply the adoption of compliance measures, should make reference to the procedures established in Resolution Conf. 14.3.

#### *Other compliance matters*

26. Various special reporting requirements, surveys and questionnaires concerning captive-breeding operations and other matters are regularly adopted by the Conference of the Parties and the Standing Committee to handle compliance matters through an *ad hoc* and case-by-case approach. At SC66, compliance measures were discussed in relation to captive-breeding operations. The Standing Committee endorsed the proposal to prepare a draft resolution on implementation of the Convention relating to captive-bred and ranched specimens, including compliance elements that would be addressed following the general guidance set out in Resolution Conf. 14.3.

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<sup>1</sup> See SC64, page 6.

Procedures to facilitate consistent and effective handling of compliance matters

27. As stated above, 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.
28. 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.
29. The Guide also identifies the tasks of the Conference of Parties, the Standing Committee and the Animals and Plants Committees with respect to compliance matters. The CoP determines the overall policy and the Standing Committee handles specific cases of potential compliance matters. The Animals and Plants Committees play an advisory role.

Taxonomy of CITES compliance measures

30. The existing CITES compliance procedures have only to a limited extent brought into play the variety of compliance measures provided in the Guide but not all of them have been systematically applied. Leaving aside the Review of Significant Trade and the National Legislation Project described above, compliance measures have often consisted of recommendations to suspend trade. However, the Guide includes a non-exhaustive list of possible compliance measures, including the making of specific requests to the Party concerned, the issuance of a warning, and issuing a public alert of non-compliance. Trade suspensions are included as a measure of last resort.

Table 1: Compliance measures listed in the *Guide to CITES Compliance Procedures* in Resolution Conf. 14.3, Annex 1, paragraphs 29-30 (letters in brackets refer to existing subparagraphs)

<p><u>Specific requests directed at the Party (in the early stages):</u></p> <ul style="list-style-type: none"> <li>- Request special reporting from the Party concerned (b)</li> <li>- Recommend specific capacity-building actions to be undertaken by the Party concerned (d)</li> </ul>	
<p><b><u>"Onion Compliance Model" (Graduated layers of CITES compliance measures)</u></b></p> <ol style="list-style-type: none"> <li>1. <u>Written caution</u> Issue a written caution requesting a response and offering assistance (c)</li> <li>2. <u>Warning Letter</u> Issue a warning to the Party concerned that it is in non-compliance, e.g. in relation to national reporting or the National Legislation Project (g)</li> <li>3. <u>Public notification</u> Send a public notification of compliance matters through the Secretariat to all Parties advising that compliance matters have been</li> </ol>	<p><b><u>Assistance, support and monitoring</u></b></p> <ul style="list-style-type: none"> <li>- Provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned (a)</li> <li>- Provide in-country assistance, technical assessment and verification mission, upon the invitation of the Party concerned (e)</li> </ul>

<p>brought to the attention of a Party and that there has been no satisfactory response or action (f)</p> <p>4. <u>Compliance action plan</u> Request a compliance action plan to be submitted to the Standing Committee by the Party concerned, identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion (h)</p> <p>5. <u>Recommendation to suspend trade and complementary measures (Trade measures)</u> Recommend the suspension of commercial or all trade in specimens of one or more CITES-listed species.</p> <p>Trade suspensions may apply to all trade, all commercial trade or trade in certain species. Recommendations may also include export quotas and confirmation of export permits from the Party concerned.</p>	
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31. The list of compliance measures could be organized in a graduated manner that reflects the level of seriousness of the matter, the risks for a particular species and the related level of concern by the Standing Committee. The table above is an attempt to organize the compliance measures in an "onion model" with different layers of compliance measures. It should be noted however that several measures can be taken at the same time, where relevant and appropriate.
32. When the Standing Committee decides which compliance measures are the most appropriate in a specific case, it is guided by criteria relating to the capacity of the country as well as factors such as the cause, type, degree and frequency of the compliance matter, and the intention of the Party to resolve the issue(s). The Committee must ensure that compliance measures are commensurate with the gravity of the matter and pay attention to any possible impact on conservation and sustainable use, with a view to avoiding negative impacts.<sup>2</sup> As implementation of compliance measures may have short-term negative impacts on rural communities, mitigation strategies should be adopted as appropriate in accordance with Resolution 16.6 on *CITES and Livelihoods*.
33. In order to determine which compliance measure(s) will be effective in achieving long-term compliance, consideration of the cause of the non-compliance may be highly relevant. The Standing Committee is entitled to use any reliable source of information in establishing the cause of the problem and may also seek an invitation from the Party concerned to the Secretariat to undertake a fact-finding mission on-site. These considerations of the cause of the non-compliance should be taken into account by the Standing Committee but are not always "explicitly set out in Standing Committee's recommendations" as suggested by the compliance procedures. The Executive Summary of the Standing Committee decisions and recommendations is by definition succinct and merely stating the facts.

Regarding the use of trade measures in compliance matters

34. Pursuant to the Guide, in cases where a compliance matter is unresolved and persistent and the Party is showing no intention to achieve compliance, the Standing Committee may, as a last resort, recommend trade suspensions. Such measures are to be used when there seems to be no other way to encourage the Party concerned to take action to come into compliance or to prevent any further damage to species, subspecies, or a geographically separate population thereof.

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<sup>2</sup> Resolution Conf. 14.3, Annex 1, paragraph 32

35. The nature of the compliance related trade measures used must be temporary and they cannot be applied in an arbitrary, unjustifiable or discriminatory manner, nor used as a disguised restriction on international trade in CITES-listed species that is otherwise allowed by the Convention<sup>3</sup>.
36. Such measures may concern all trade or only commercial trade (country-specific), or they may target certain species only (species-specific). They should provide for exemptions in the case of confiscated live animals that need to be relocated outside the country in order to for them to be properly cared for. Trade measures may also include an export quota recommending that a specific country authorize the export of only a certain limited number of specimens of a specific species.
37. Recommendations to suspend trade relate to exports, imports, re-exports and introductions from the sea. Currently a majority of the Parties subjected to recommendations to suspend trade are range States or source developing countries<sup>4</sup>. By recommending that other Parties suspend imports/trade with the non-compliant Party until further notice, the Standing Committee recommends measures on source, transit and destination countries. Building upon the lessons learnt from the NIAPs experience, the Conference of the Parties could instruct the Standing Committee to explore the possibility of developing more innovative approaches to compliance that explicitly involves concerned source, transit and destination countries in a more integrated manner. This could also assist in helping to ensure that compliance measures do not result in the creation of problems in other countries or unnecessarily or disproportionately impact legitimate *in situ* sustainable use efforts that may be penalized by the adoption of compliance-related trade suspensions. Another important measure that the Conference of the Parties could introduce is a compliance facilitation mechanism to promote respect by all Parties of compliance- related trade measures recommended by the Standing Committee.
38. According to Resolution Conf. 14.3, recommendations to suspend trade are to be specifically and explicitly based on the Convention and on any applicable Resolution of the Conference of the Parties, including:
- Resolution Conf. 8.4 (Rev. CoP15) on *National laws for implementation of the Convention*;
  - Resolution Conf. 12.8 (Rev. CoP13) on *Review of Significant Trade in specimens of Appendix-II species*;
  - Resolution Conf. 11.17 (Rev. CoP16) on *National reports*;
  - Article XIII and Resolution Conf. 11.3 (Rev. CoP16) on *Compliance and enforcement*; and
  - Resolution Conf 11.1(Rev. CoP16) on *Establishment of committees*.
39. The Secretariat notes that the list of applicable Resolutions contained in the footnote of the Guide was corrected after CoP15 and the references to Resolutions (i.e. Rev. CoP16) should be updated by the Secretariat again, in accordance with Conf. 4.6 (Rev. CoP16). The Conference of the Parties may wish to consider adopting a mechanism to ensure that the list is updated with new references that should be included in the Guide; this could be done with a mandate to the Standing Committee.

*Communication and formal notification to the Parties announcing the adoption or withdrawal of compliance measures*

40. A trade measure recommended by the Standing Committee needs to be implemented by all Parties in order to achieve its objective. All Parties are therefore made aware of such measures. Currently, this happens through Notifications to the Parties, issued by the Secretariat on behalf of the Standing Committee or the Conference of the Parties. Such notifications generally include the following elements:
- a) the name of the Party, Parties or non-Parties concerned by the trade measure;
  - b) the background and the legal basis for the compliance matter, referring to the relevant provisions of the Convention, relevant Resolutions or Decisions, as appropriate;
  - c) the scope of the recommended trade measure and any exemptions or conditions that apply as decided by the Standing Committee;
  - d) the date of the entry into effect of the trade measure; and
  - e) the duration of the trade measure (in most cases, this will be until the Secretariat or the Standing Committee is satisfied that the compliance matter has been fully addressed and that the trade measure is no longer needed).

<sup>3</sup> For further information on the use of trade measures in international law, see *CITES and the WTO: Enhancing Cooperation for sustainable development* available at [https://www.wto.org/english/res\\_e/booksp\\_e/citesandwto15\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/citesandwto15_e.pdf)

<sup>4</sup> See *table of countries currently subject to a recommendation to suspend trade* at: <https://cites.org/eng/resources/ref/suspend.php>

41. To keep the Parties and the regulated community informed about countries subject to a recommendation to suspend trade, the Secretariat has created a dedicated and regularly updated page on its website at: <https://cites.org/eng/resources/ref/suspend.php>.
42. In addition, the Secretariat informs each Party concerned of the trade measure taken against it and, more importantly, provides any additional details on the action(s) required in order for the recommendation to be withdrawn. It clarifies how the decision to withdraw the trade suspension is made and whether the Secretariat or the Standing Committee is responsible for making this determination. In the case of a developing country, the Secretariat also draws attention to any existing sources of assistance, which the Party is invited to approach. Where possible, the Secretariat also informs the Permanent Mission to the United Nations in Geneva of the Party (or non-Party) concerned by the trade measure.

*Effect of trade suspensions on CITES permits or certificates already issued*

43. When a recommendation to suspend trade takes effect, Parties are recommended not to accept permits or certificates issued by the Party (or non-Party) affected by the trade measure, even if these documents were issued prior to the decision to suspend trade (unless otherwise stated in the decision to recommend the suspension of trade). It is the responsibility of each Management Authority to ensure that its national Customs and other relevant enforcement authorities, as well as the regulated community and the general public are informed of such trade measures.

Proposals towards a more consistent and effective handling of compliance matters

44. CITES compliance procedures are a critical element of the Convention and they have enabled the Parties to take positive measures to help ensure compliance. They have however also evolved in a rather fragmented and *ad hoc* manner over a long period of time in response to particular issues of concerns. As a result, information about the use and the effectiveness of compliance measures is not currently systematically collected, compared and analysed. The Conference of the Parties may wish to consider the following suggestions for a more consistent and effective way of handling compliance matters.

*Regular reporting on compliance matters*

45. Currently, no integrated comprehensive report on compliance matters and compliance measures is compiled and produced on a regular basis for consideration by the CITES bodies. Compliance-related information is fragmented and can be found in Decisions, Resolutions and recommendations emanating from the various CITES bodies and their working groups. The Conference of the Parties could consider requesting the Secretariat to provide a regular report on compliance matters, pursuant to subparagraphs 3 (d) and (e) of Article XI of the Convention, and to make recommendations for improving the effectiveness of compliance measures.

*Consideration of compliance matters and measures by the Standing Committee*

46. The Standing Committee has a very large number of complex and significant matters on the agenda of each of its regular meetings and it has limited time available in the plenary sessions.
47. The Conference of the Parties may wish to instruct the Standing Committee to explore ways to further improve the consistent, effective and expeditious handling of compliance matters. One possibility would be to establish a 'compliance subcommittee' to assist it with its compliance-related tasks, in particular to assess the factors and criteria to be taken into account when deciding on the compliance measures in line with the compliance procedures in the Guide. If considered appropriate, the Committee should make relevant proposals for consideration at the 18th meeting of the Conference of the Parties. The Secretariat recalls that at its 50th meeting (Geneva, March 2004), the Standing Committee established a clearing house to refer technical implementation issues to the appropriate CITES body<sup>5</sup> but this mechanism has not been actively used and nor is it currently in use. The Standing Committee may wish to revisit the decisions on the clearing house in this context.

*Managing and monitoring compliance measures and collecting compliance information and intelligence*

48. The implementation by all Parties of the recommendations to suspend trade are not monitored in a systematic manner, although the recommendations should generally be reviewed at each meeting of the

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<sup>5</sup> <https://cites.org/eng/com/sc/clearing.shtml>

Standing Committee and monitored intersessionally by the Secretariat. If the Parties or the Secretariat become aware of trade taking place contrary to a compliance measure adopted by the Standing Committee, the Parties or the Secretariat should draw the attention of the Standing Committee within the mandate provided by Article XII (e) and (h) and article XIII.

49. The reliability of monitoring the levels of compliance with trade measures recommended by the Standing Committee largely depends on the reliability of the data collected by Parties. At least two kinds of monitoring may be conducted under the existing mechanisms: one in real-time during the period that the compliance measure is in effect and another one that is retroactive and based mainly on the annual reports. If the data collected via the permit verification system (See Notification to the Parties No. 2014/017, for example), or other sources, are inaccurate, . i.e. it does not reflect the actual trade that took place, the proper ISO two-letter country code, the source or purpose codes or all the permits cancelled and replaced, then the verification of permits becomes a difficult exercise. Regarding the retrospective analyses, if trade in violation of the compliance measures is not reported in its annual report by one of the Parties involved in the transaction, and there is no effective control system to corroborate information provided in real time, then the information contained in annual reports may in some cases be misleading. The two kinds of monitoring are mixed and blended in different compliance procedures.
50. The Conference of the Parties could consider requesting the Standing Committee to 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. This could include an automated analysis of the data contained in the trade database to generate reports for the Secretariat of trade transactions that seem to have taken place in violation of the Convention, Resolutions, Decisions or recommendations by CITES bodies, including recommendations to suspend trade. The Secretariat suggests that steps be taken to study the benefits of a wide-spread adaptation of electronic CITES permits and modern risk management methods which take advantage of electronic records for improved compliance. The Secretariat notes that these measures are considered international best practice and experiences in customs organizations around the world have demonstrated their effectiveness.

#### *Responding to persistent non-compliance: Compliance Action Plans*

51. A structured approach to respond to persistent non-compliance will enable CITES compliance procedures to identify, analyse and monitor non-compliance and help concerned Parties to prioritize and plan compliance activities to respond to persistent non-compliance. Building upon lessons learnt in the use of action plans for compliance (e.g. NLP, NIAPs, timber species, Article XIII, etc.), an approach that requires the preparation and submission of action plans in appropriate cases could be useful, especially in cases of complex 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 compliance plan is developed by the authorities of the Party concerned, and implemented accordingly, this may be an effective tool to ensure long-term compliance.
52. Compliance Action Plans would need to:
  - a) contain measurable, realistic activities that can be implemented within the timeframe envisaged and with minimal external support;
  - b) designate clearly who is expected to lead or implement the action;
  - c) group actions by area of concern;
  - d) include internal and external communication and reporting features;
  - e) include clear and measurable sources of information and indicators;
  - f) be approved at the level of the responsible cabinet or equivalent;
  - g) involve all relevant actors in the country (depending on the specific matter); and
  - h) indicate costs and sources of funding, as appropriate.

#### *Application of XIII*

53. At SC66, the Standing Committee agreed on some proposed amendments to Resolution Conf. 11.3 (Rev. CoP16) on *Compliance and enforcement*, in the section “*Regarding the application of Article XIII*” to be

submitted for consideration at the present meeting. These are included with other proposed amendments to the same Resolution, in Annex 2 to document CoP17 Doc. 25 on *Enforcement matters*.

### Compliance gaps

54. A number of obligations under the Convention, particularly those indicated in paragraph 2.b) of the Guide, i.e. “permitting trade in CITES-listed specimens only to the extent consistent with the procedures laid down in the Convention (Articles III, IV, V, VI, VII and XV)”, are partially covered by existing compliance procedures. The Secretariat has identified other obligations under the Convention that are not clearly defined nor covered by the existing compliance processes and that may affect the effectiveness of CITES. A few suggestions are submitted for the consideration of the Conference of the Parties to address these gaps below.

#### *First gap: Legal Acquisition Finding*

55. 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 determine whether specimens to be exported were acquired in accordance with national law and the Convention. For Appendix III this relates only to the State that included the species in that Appendix. These provisions states 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 may be referred to as a ‘legal acquisition finding’.

56. The Convention does not provide guidance on how to make such a legal acquisition finding. 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. The determinations that CITES Management Authorities are required to make go to the core of the Convention and it is imperative that such determinations are made and that they are reliable.
57. The issuance of an export permit is a certification that the specimens to which it refers have been legally acquired. These certifications are relied upon by the governmental authorities of other countries as well as by businesses and consumers. The decisions of such authorities to authorize imports and issue re-export certificates are based upon these certifications.
58. The Convention places considerable responsibility upon the CITES Management Authorities of the States of export to ensure that specimens of listed species entering into international trade are of legal origin and exported at sustainable levels. Unfortunately, when a recommendation is made to suspend trade in a specific species from one country, there may be increased legal and illegal exports of the species from neighbouring or third countries. In the case of illegal trade, this increase could be an indication of well organised transnational smuggling combined with a failure to properly determine legal acquisition. If such failures become systematic, they provide unscrupulous traders with the opportunity to ‘launder’ illegally-obtained specimens (plants and animals) into the international market under the cover of genuine CITES permits through neighbouring countries.
59. In countries facing persistent non-compliance problems, their current verification systems, based mainly on paper documents that can be falsified or re-used along the value chain, has been shown to be susceptible to misuse by ill-informed or unscrupulous persons.

#### *Second gap: Compliance related information storage*

60. Based on the different compliance procedures adopted by the Conference of the Parties, the Secretariat collects compliance information and intelligence from a variety of sources, including permit-related queries, annual and biennial reports, the CITES trade database and registers, information on seizures, reports from other intergovernmental organizations, communications from non-governmental organizations, members of the public and open sources (e.g. internet sites, media, etc.). Currently, data and information are stored in multiple IT systems, and on electronic and paper files. The Conference of the Parties may wish to consider the need to allocate the necessary resources for the development of an appropriate system by

the Secretariat to better organize compliance-related information in a less fragmented and more consistent manner.

*Bridging the gaps*

61. In order to allow the Secretariat to better assist CITES bodies and national authorities in addressing these compliance gaps, the Secretariat proposes the consideration of the development of a 'Compliance Assistance Programme' (CAP), including the following five integrated and complementary sets of activities:
- a) compliance audits to assess needs and identify gaps;
  - b) Enhanced e-courses to provide training on the basic concepts related to CITES compliance, which will include updated, improved and expanded versions of relevant online courses available in the CITES Virtual College;
  - c) organization of an international workshop focused 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 authorized for international trade;
  - d) pilot country-specific or species-specific activities; and
  - e) establishment and maintenance of a system to organize permit-related information and intelligence related to compliance matters, e.g. information on authorized international trade, permits, security stamps, registered signatures of CITES authorities, quotas, labels, tags, registered facilities, evolution of markets, etc.
62. The Secretariat notes that there is no core budget allocated to the monitoring of all the compliance procedures in a systematic way, nor for the implementation of Article XIII or the undertaking of related remedial actions. The Secretariat has no capacity or mandate to systematically review or investigate information contained in individual permits and certificates to confirm (or contradict) their validity, e.g. that non-detriment findings and legal acquisition findings required under Article IV were properly made prior to the issuance of an export permit or certificate that has been submitted for permit confirmation from importing Parties that are trading with Parties subjected to compliance measures or in species that are under special compliance regimes. There is considerable scope to improve the collection and the storage of compliance-related information but such activities would largely depend on the availability of external resources.

Recommendations

63. The Secretariat recommends that the Conference of the Parties adopt the draft decisions contained in Annex 1 to the present document.
64. The Secretariat has estimated the external financial resources that are required for the implementation of the draft decisions. A tentative budget is provided in Annex 2 to the present document.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

**Legal acquisition findings and other Compliance Matters**

***Directed to the Parties***

17.A Parties are encouraged to provide to the Secretariat with:

- a) 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').

***Directed to the Standing Committee***

17.B The Standing Committee shall, with the assistance of the Secretariat:

- a) explore ways to further improve the consistent, effective and expeditious handling of compliance matters;
- b) assess the factors and criteria to be taken into account when deciding on compliance measures in accordance with the compliance procedures specified in the Annex to Resolution Conf. 14.3;
- c) 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) consider further guidance for verifying the legal acquisition of specimens of CITES-listed species to be exported; and
- e) make appropriate recommendations for consideration at the 18th meeting of the Conference of the Parties.

***Directed to the Secretariat***

17.C 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.D The Secretariat shall assist the Standing Committee in the preparation of its findings and recommendations with regard to the implementation of Decision 17.B.

17.E The Secretariat shall report on the implementation of Article XIII and Resolution Conf. 14.3 to the Standing Committee and at the 18th meeting of the Conference of the Parties.

TENTATIVE BUDGET AND SOURCE OF FUNDING  
FOR THE IMPLEMENTATION OF DRAFT RESOLUTIONS OR DECISIONS

In Resolution Conf. 4.6 (Rev. CoP16) on *Submission of draft resolutions, draft decisions and other documents for meetings of the Conference of the Parties*, the Conference of the Parties decides that any draft resolutions or decisions submitted for consideration at a meeting of the Conference of the Parties that have budgetary and workload implications for the Secretariat or permanent committees must contain or be accompanied by a budget for the work involved and an indication of the source of funding.

The Secretariat estimates that the implementation of the draft decisions contained in Annex 1 for the most part can be covered by its core budget, except for draft decision 17.C. The Secretariat estimates that the need for external funding for the implementation of this decision would be approximately USD 100,000 over the entire inter-sessional period.