

Evolution of the Convention

HOW TO IMPROVE THE EFFECTIVENESS OF THE CONVENTION

COMMENTS FROM THE PARTIES AND ORGANIZATIONS ON THE STUDY

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| <ol style="list-style-type: none"> <li>1. In accordance with Decision No. 1 of the Conference of the Parties directed to the Standing Committee, a study on "How to improve the effectiveness of the Convention" was conducted in 1996 by a consultant, Environmental Resources Management (ERM). The final report of ERM was submitted, in English, in September 1996.</li> <li>2. At its 37th meeting (Rome, 2 to 6 December 1996), the Standing Committee considered the report and agreed that it should be translated into French and Spanish and sent to the Parties and to each of the international non-governmental organizations that had responded to the questionnaire distributed by ERM.</li> <li>3. The Secretariat sent the translated report to the Parties and relevant organizations on 29 January 1997. In the accompanying Notification (i.e. Notification to the Parties No. 951), the Parties were requested to send their comments on the report to the Secretariat in writing within 45 days of its circulation, i.e. by 15 March 1997.</li> <li>4. Attached to the present document are the responses received by the Secretariat in the language in which</li> </ol> | <p>they were received. The following Parties and international non-governmental organizations submitted comments:</p> <ol style="list-style-type: none"> <li>5. – <b>Parties</b> (Annex 1):<br/>Botswana, Malawi, Namibia and Zimbabwe (joint submission); Denmark; Germany; Namibia (additional comments); New Zealand; Spain; United States of America; and Zaire.</li> <li>6. – <b>International non-governmental organizations</b> (Annex 2):<br/>International Foundation for the Conservation of Wildlife; IUCN; and WWF International.</li> <li>7. The Secretariat hereby presents these comments on ERM's report for consideration at the 10th meeting of the Conference of the Parties.</li> <li>8. Comments were also received from some national organizations but, as these are not the organizations referred to in paragraph 2. above, their submissions are not included here, although they are available from the Secretariat.</li> </ol> |
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**Note from the Secretariat:**

The annexes, amounting to 147 pages, were distributed at the meeting and are not published here.

## Evolution of the Convention

## HOW TO IMPROVE THE EFFECTIVENESS OF CITES

## CONSIDERATION OF THE RECOMMENDATIONS ARISING FROM THE STUDY

1. This document has been prepared by the Secretariat.

Background

2. At its ninth meeting (Fort Lauderdale, 1994) the Conference of the Parties assigned to the Standing Committee the responsibility to conduct a study on how to improve the effectiveness of the Convention, the results of which were to be reported at the 10th meeting of the Conference of the Parties.

3. *The principal objective of the study was "to assess the effectiveness and efficiency of the current provisions of CITES and the way it is implemented".*

4. The Conference decided that an independent consultant should be selected to lead a team to undertake the study. In Phase 1 of the study (intended as "an initial survey phase") the consultant was expected to gather the views of the Parties and of interested international organizations, with the objective of making recommendations to address problems in implementation of the Convention as well as identifying findings requiring further study in subsequent phases. Under the requirements for Phase 1, the following specific information was to be gathered:

"a) *the stated and implied objectives of the Convention and their continued relevance to the conservation of wild fauna and flora;*

b) *the extent to which the conservation status of a representative selection of species listed in each of the three appendices of CITES has been affected since listing, and the extent to which this can be attributed to the application of CITES, in both party and non-party States;*

c) *the relationship of CITES to other global and relevant regional conservation instruments, especially those purporting to affect the conservation status of wild fauna and flora, and the extent to which the objectives of CITES are helped or hindered by the existence and implementation of the other instruments;*

d) *the ease and effectiveness of implementation, including enforcement of CITES under the various legal and administrative regimes in party States; and*

e) *the expected and actual roles of the various categories of participants in the implementation of CITES, including but not necessarily limited to:*

i) *party States;*

ii) *non-party States;*

iii) *international conservation organizations;*

iv) *national conservation organizations;*

v) *intergovernmental conservation, development and trade organizations; and*

vi) *national and international trade organizations."*

The Consultancy

5. The Standing Committee launched a competitive tender in early 1995 to select the consultant and, as a result, Environmental Resources Management (ERM), was selected and commissioned to carry out the work.

ERM, in association with Price Waterhouse Pan African Consultants Ltd., conducted the study between April and September 1996.

6. The final report of ERM was submitted, in English, in September 1996.

Recommendations from the Study

7. The study resulted in the elaboration of 25 'Recommendations for Action', which ERM summarized in Table A of its report. Table A is attached as an Annex to the present document.

8. ERM also highlighted the following areas for further examination, possibly in Phase 2 of the study:

– *the proposed extension and expansion of the species review (see Recommendation 4C);*

– *the proposed study of the interaction of CITES and the GATT/WTO (see Recommendation 7D); and*

– *an investigation of current non-party States and their impact on the effectiveness of CITES.*

Decisions of the Standing Committee

9. At its 37th meeting (Rome, 2 to 6 December 1996), the Standing Committee decided that the report of ERM should be translated into French and Spanish and sent to the Parties and to each of the international non-governmental organizations that responded to the questionnaire distributed by ERM. The Secretariat sent the translated report to the Parties and relevant organizations on 29 January 1997 (with Notification to the Parties No. 951). Document Doc. 10.20 presents the comments received on ERM's report.

10. The Standing Committee considered the report and, in relation to the recommendations, determined:

11. – that all recommendations should be referred to the 10th meeting of the Conference of the Parties, for discussion;

12. – that recommendation 3B was a result of the study and not appropriate as a recommendation of the report;

13. – that its actions at its 37th meeting under Agenda Item 8 (on the relationship between CITES and UNEP) represented progress under way to implement recommendation 6G; and

14. – that recommendation 7A had been implemented.

15. The Standing Committee referred the following recommendations to the Secretariat for immediate implementation: Recommendations 3D, 3E, 6A, 6C, 6D, 6F and 7C.

16. With respect to these recommendations the Secretariat was asked to carry out the following tasks:

**Recommendation 3D**

Continuation of the consolidation of Resolutions and Decisions;

**Recommendation 3E**

Simplification and explanation of the Resolutions of the Conference of the Parties;

**Recommendation 6A**

Preparation of a revised Strategic Plan by the Secretary General (for consideration at CoP10);

**Recommendation 6C**

Simplification and numbering of conference documents (for CoP10);

**Recommendation 6D**

Preparation of a Financial Plan (for consideration at CoP10);

**Recommendation 6F**

Provision of information to the Parties on responsibilities and activities of Secretariat staff; and

**Recommendation 7C**

Inclusion of the issue of co-operation/synergy with other conservation conventions and agencies on the agenda of the 10th meeting of the Conference of the Parties.

17. Finally, the Standing Committee concluded that the ERM report had the potential to make an important contribution to the effectiveness of the Convention at all levels. In order to achieve this potential, it would be necessary for the Conference to agree to an action plan at its 10th meeting. Hence, the issue needed to be given priority attention at this meeting.

**Actions by the Secretariat**Recommendations referred to the Secretariat by the Standing Committee

18. The following paragraphs summarize the actions that have been taken by the Secretariat in relation to the recommendations referred to it by the Standing Committee.

**Recommendation 3D**

*The process of consolidation of existing interpretative Resolutions should continue and should be expanded to cover all Conference decisions.*

19. In accordance with the procedure agreed by the Conference of the Parties, the Secretariat has continued to prepare draft resolutions to consolidate existing Resolutions. At the ninth meeting of the Conference of the Parties (document Doc. 9.19), it presented nine draft consolidated resolutions, which were adopted and which replaced 51 resolutions or parts thereof. In addition, it presented a proposal to repeal the texts of Resolutions that were out of date. This resulted in an agreement that 44 Resolutions or parts thereof no longer remained applicable (see document Com. 9.20).
20. At the 10th meeting of the Conference of the Parties, the Secretariat is presenting a further two drafts of consolidated resolutions, to replace seven existing Resolutions and parts of two others (see document Doc. 10.24). The Standing Committee has agreed that the Secretariat should continue to produce draft consolidated resolutions on a further four subjects. This should complete the initial stages of consolidation.
21. The list of Decisions of the Conference of the Parties came into being only at the ninth meeting, following a recommendation of the Secretariat. It was agreed that the list of Decisions shall be updated by the Secretariat after each meeting of the Conference of the Parties. The first update will therefore be made after the 10th meeting. However, some Decisions relate to policy matters or to long-term procedures and these would be better incorporated into Resolutions. Some others might be deleted even if they have not been implemented.

22. The Secretariat will review the list of Decisions with a view to making a proposal for consideration at the 11th meeting of the Conference of the Parties regarding ways in which the list of Decisions should be revised.

**Recommendation 3E**

*All new interpretative Resolutions should be as simple as possible and/or incorporate an explanatory memorandum.*

23. The process of simplification of the Resolutions has started in the process of consolidation of the Resolutions. However, as simplification was not the primary purpose of the exercise, it was done only incidentally. It is clear from past experience that there is a reluctance among a number of Parties to endorse a process in which texts agreed after long discussion by the Conference of the Parties are amended.
24. The Secretariat believes that it has shown, through the process of consolidation of Resolutions, that agreed texts can be significantly improved and clarified. It suggests that the Conference of the Parties should instruct the Secretariat to initiate the process of simplification of the Resolutions, under the guidance of the Standing Committee, and that the Secretariat should prepare a number of draft simplified resolutions for consideration at the 11th meeting of the Conference of the Parties.
25. With respect to the need for explanations of the Resolutions, it should be noted that the Secretariat has included in its work programme the preparation of a CITES implementation manual, which will contain not only the texts of all Resolutions in effect but also an explanatory text or commentary. Although it may take several years to prepare the manual fully, and it will need to be updated regularly, the work is scheduled to start in the second half of 1997.

**Recommendation 6A**

*The Conference of the Parties should instruct the Secretary General, in consultation with the Standing Committee, to prepare a Strategic Plan for CITES.*

26. This item is discussed fully in document Doc. 10.9.

**Recommendation 6C**

*The Secretary General should be requested to simplify the language and numbering of documents at meetings of the Conference of the Parties.*

27. For the 10th meeting of the Conference of the Parties, the Secretariat has introduced a new system of numbering of documents containing proposals to amend the appendices (from Prop. 10.1 to Prop. 10.75) to make them easier to refer to. In addition, the Secretariat has prepared an information document for participants, to explain the numbering system that is used. At the 10th meeting of the Conference of the Parties, the Secretariat will relate the numbers that are given to the working documents that form the basis for discussions to the numbers that are given to documents that result from those discussions (e.g. in working groups).
28. Regarding the simplification of language, the working documents submitted by the Parties are edited by the Secretariat to ensure clarity as far as possible and to standardize the terms adopted in the text of the Convention and by the Conference of the Parties. The Secretariat also endeavours to ensure that its own documents are clear and unambiguous. If the Conference does wish the language to be changed, the aim and the method to achieve this would need to be clearly expressed.

**Recommendation 6D**

*A Financial Plan for the Convention should be prepared by the Secretary General under the guidance of the Standing Committee.*

29. This is considered in document Doc. 10.10.

**Recommendation 6F**

*The Conference of the Parties should instruct the Secretary General to provide regular information on the activities of the Secretariat and a clear delineation of the responsibilities of staff members.*

30. This is discussed in document Doc. 10.10.

**Recommendation 7C**

*Synergy between the Conventions should feature on the Agenda of the Conference of the Parties and joint activities (where appropriate) should be outlined in the CITES Strategic Plan.*

31. This item is discussed fully in document Doc. 10.22.

**Other recommendations from the report of ERM**

32. The information below is provided by the Secretariat on actions taken that relate to the following recommendations from the report of ERM.

**Recommendation 5A**

*International organizations should make available, on request, assistance to Parties in the preparation of new and more effective national legislative and regulatory instruments.*

33. The Secretariat has continued its programme to evaluate and assist in the improvement of national legislation used by the Parties to implement the Convention. A report on these activities is provided in document Doc. 10.31.

**Recommendation 5B**

*International organizations and developed countries should provide appropriate financial and institutional support to help developing countries and countries with economies in transition to train their personnel and equip them with appropriate facilities.*

34. The Secretariat recently restructured its training and project management programmes into a new functional work group (see details under Capacity Building Unit in document Doc. 10.10). Reports on the Secretariat's on-going programme of training and project support are provided in documents Doc. 10.14 and Doc. 10.32.

**Recommendation 5E**

*The Secretariat should commission a feasibility study, as part of the Convention's Strategic Plan, to identify specific requirements for improving electronic communications between Parties.*

35. This recommendation has been acted on and is discussed fully in document Doc. 10.82.

**Recommendation 5F**

*The Secretariat should take steps to enhance and expand the Convention's relationship with Interpol and the World Customs Organization.*

36. This recommendation has been acted on and is the subject of an on-going programme of work within the Secretariat.

37. In Resolution Conf. 9.8, the Secretariat was requested by the Parties to increase its co-operation with ICPO-Interpol and WCO. Since the adoption of that Resolution, the Secretariat has signed Memoranda of Understanding with these two organizations (with ICPO-Interpol on 2 January 1996; with WCO on 4 July 1996). These memoranda established the basis for co-operation with CITES, mainly on:

38. – the exchange of information;
39. – co-operation in training of Police and Customs officers; and
40. – the exchange of intelligence regarding wildlife crime.
41. An annual programme of common activities has been established, but its implementation depends on the funds available. For 1997, the programme agreed is:
42. – preparation of WCO/CITES guidelines for co-operation between Management Authorities and Customs;
43. – publication of an ICPO-Interpol/CITES brochure on the co-operation between Management Authorities and Police;
44. – publication of a WCO/ICPO-Interpol/CITES enforcement directory;
45. – the establishment of a common intelligence database shared by WCO and the CITES Secretariat (there is a possibility that ICPO-Interpol might also use it);
46. – a WCO-CITES brochure (Customs and wildlife); and
47. – a special issue of ICPO International Criminal Police Review.

**Recommendation 6E**

*The Secretariat should be financially and technically strengthened.*

48. The Secretariat addresses this issue in its document containing the proposed budget (document Doc. 10.13). This budget document differs from those presented previously in that it identifies items of work that are considered essential for the proper implementation of the Convention but for which there are insufficient resources available to carry out the function. The Parties are being asked to consider these items carefully and, if they agree that they are a high priority, to provide the financial resources needed to carry them out. If the required financial resources for any item of work can not be provided, it will not be undertaken.

**Recommendation 7A**

*The Secretary General should pursue the conclusion of a comprehensive agreement on co-operation with the Convention Biological Diversity.*

49. This recommendation has been implemented. Information on this item is presented in document Doc. 10.22.

**Recommendation 7B**

*The Conference of Parties should request UNEP to continue to convene a joint working group on a regular basis between the administrative organs of certain key international convention treaties.*

50. Information on this item is presented in document Doc. 10.22.

**Recommendation 7C**

*Synergy between the Conventions should feature on the Agenda of the Conference of the Parties and joint activities (where appropriate) should be outlined in the CITES Strategic Plan.*

51. Co-operation/Synergy with other conservation conventions and agencies has been included as an item on the agenda for the 10th meeting of the Conference of the Parties and information on this item is presented in document Doc. 10.22.

**Recommendation 7D**

*The Standing Committee should enhance co-operation and information exchange between CITES and the GATT prior to the conclusion of on-going WTO discussions on trade and environment issues.*

52. To facilitate this recommendation, the CITES Secretariat has written to the WTO Secretariat to seek closer collaboration. Invitations have been extended to the WTO Secretariat to attend future meetings of the Standing Committee of CITES and to have a more formal role in meetings of the Conference of Parties.

Actions to be Taken

53. The Secretariat refers the 25 'Recommendations for Action' from the ERM report (see Annex) to the Conference of the Parties for consideration.
54. The Conference of the Parties should agree on an action plan to implement the recommendations that it supports.
55. The Conference of the Parties should also consider whether it wishes a second phase of the study of the effectiveness of the Convention to be undertaken and if so, establish terms of reference for that phase.

**Doc. 10.21 Annex**

Recommendations for Action

Recommendations of ERM following its Study of How to Improve the Effectiveness of the Convention (recommendations in **emboldened text** are considered to be priorities for action)

Recommendations	1 Readily implementable	2 Requiring further study	3 Requiring Co-operation	4 Dependent upon 1-3
<b>Fundamental Policy Issues</b>				
3A. Regular assessments of the effectiveness of CITES should be carried out.				✓
3B. The Parties should decide not to pursue amendments of the Convention for the present, unless a change in Secretariat arrangements is agreed to be necessary.	✓			
<b>3C. The issue of sustainable use and its relation to CITES should be addressed in an interpretative resolution by the Conference of the Parties as a matter of priority.</b>		✓		
3D. The process of consolidation of existing interpretation Resolutions should continue and should be expanded to cover all Conference decisions.	✓			
3E. All new interpretative Resolutions should be as simple as possible and/or incorporate an explanatory memorandum.	✓			
<b>Scientific Issues</b>				
<b>4A. Consideration should be given to initiating an accelerated process of review of the scope and coverage of the appendices.</b>		✓		
4B. The presentation of the appendices should be reviewed with the aim of simplification.		✓		
4C. The Standing Committee should give consideration to continuing and extending the species review.				✓
<b>Administrative and Implementation Issues</b>				
5A. International organizations should make available, on request, assistance to parties in the preparation of new and more effective national legislative and regulatory instruments.			✓	✓
5B. International organizations and developed countries should provide appropriate financial and institutional support to help developing countries and countries with economies in transition to train their personnel and equip them with appropriate facilities.			✓	✓

<b>Recommendations</b>	<b>1 Readily implementable</b>	<b>2 Requiring further study</b>	<b>3 Requiring Co-operation</b>	<b>4 Dependent upon 1-3</b>
5C. The Conference of the Parties should consider adoption of an additional interpretative resolution on stricter domestic measures.		✓		
5D. The Conference of the Parties should give a mandate (and assign resources) to the Secretariat to develop a CITES newsletter and improved information materials.				✓
5E. The Secretariat should commission a feasibility study, as part of the Convention's strategic Plan, to identify specific requirements for improving electronic communications between Parties.		✓		
5F. The Secretariat should take steps to enhance and expand the Convention's relationship with INTERPOL and the World Customs Organization.		✓		
<b><i>Institutional Issues</i></b>				
<b>6A. The Conference of the Parties should instruct the Secretary General, in consultation with the Standing Committee, to prepare a Strategic Plan for CITES.</b>	✓			
6B. The Standing Committee should again review regional representation on CITES Committees and should provide guidance or preparatory consultations prior to meetings of the CoP and the Standing Committee.		✓		
6C. The Secretary General should be requested to simplify the language and numbering of documents at meetings of the Conference of the Parties.		✓		
<b>6D. A Financial Plan for the Convention should be prepared by the Secretary General under the guidance of the Standing Committee.</b>	✓			
6E. The Secretariat should be financially and technically strengthened.				✓
6F. The Conference of the Parties should instruct the Secretary General to provide regular information on the activities of the Secretariat and a clear delineation of the responsibilities of staff members.	✓			
<b>6G. The role of UNEP in providing the Secretariat should be clearly defined, and set out in a Memorandum of Understanding endorsed by the Conference of the Parties.</b>	✓			
<b><i>Relations with other Organizations</i></b>				
<b>7A. The Secretary General should pursue the conclusion of a comprehensive agreement on co-operation with the Convention Biological Diversity.</b>	✓			
7B. The Conference of the Parties should request UNEP to continue to convene a joint working group on a regular basis between the administrative organs of certain key international conservation treaties.			✓	

Recommendations	1 Readily implementable	2 Requiring further study	3 Requiring Co-operation	4 Dependent upon 1-3
7C. Synergy between the Conventions should feature on the Agenda of the Conference of the Parties and joint activities (where appropriate) should be outlined in the CITES Strategic Plan.	✓			
<b>7D. The Standing Committee should enhance co-operation and information exchange between CITES and the GATT prior to the conclusion of on-going WTO discussions on trade and environment issues.</b>		✓	✓	

## Evolution of the Convention

## HOW TO IMPROVE THE EFFECTIVENESS OF THE CONVENTION

## CO-OPERATION/SYNERGY WITH OTHER CONSERVATION CONVENTIONS AND AGENCIES

1. This document has been prepared by the Secretariat.

Background**A**

2. The CITES Secretariat has a long tradition of close contacts with the executive bodies of many environmental conventions, especially those that are conservation-related such as the Ramsar Convention, the World Heritage Convention, CMS, the Bern Convention and after 1993 the Convention on Biological Diversity. These contacts were institutionalized within the Ecosystem Conservation Group in which UNEP, WWF, IUCN and others, plus the Secretariats, met regularly to discuss problems of mutual interest.
3. In 1993, the CITES Secretariat organized at its premises, a large meeting of the Secretariats of the above-mentioned conventions and the Interim Secretariat of the Convention of Biological Diversity together with the Secretariat of the Global Environment Facility (GEF) and the World Bank, UNDP and UNEP. The modalities for possible preparation of projects to be financed by the GEF were discussed thoroughly.
4. In 1993 the Ecosystem Conservation Group (ECG) ceased to exist. Instead ELI/PAC and later the Management of UNEP started organizing regular co-ordination meetings of the secretariats of the main environmental conventions and the units responsible for environmental matters in FAO, UNESCO, ILO, ECE, UNCTAD, etc. At the last meeting in January 1997, the CITES Secretariat submitted a proposal to UNEP to re-establish the ECG. This was adopted unanimously.
5. During the second meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD) (Jakarta, November 1995) at the initiative of the CITES Secretariat and several Latin American countries, notably Argentina, Cuba and Peru, a draft decision was presented on future co-operation between CBD and CITES. After some negotiations, the decision was amended to refer also to all the other conventions and the Cartagena Convention Protocol Concerning Specially Protected Areas and Wildlife (SPAW). The final draft was adopted unanimously.
6. At the same meeting another decision was adopted about the need to convene an open-ended inter-governmental workshop on co-operation between the CBD and other international conventions on related issues. Also, a very successful workshop took place in Jakarta on CITES and co-operation with CBD and other relevant international agreements, both global and regional.
7. In accordance with the Strategic plan of the CITES Secretariat approved by the Conference of the Parties in Fort Lauderdale and the decisions of the Conference of the Parties to CBD, the secretariats of the two conventions have signed a Memorandum of Co-operation (see further about this in the paragraphs relevant to recommendation 7A of ERM).
8. Following the relevant decisions of the Governing Council of UNEP, the Executive Director of UNEP also approved the following in the Work Programme of UNEP for 1996-1997:

9. – In Component 1.2.4 of the Work Programme, USD 868,000 was allocated for "Institutional servicing to biological diversity-related conventions" (CBD, CITES, CMS).
10. – In Component 4.3.2 of the same document, USD 133,000 was allocated for "Co-ordination of international and regional conventions in the field of environment" (see Annex 4).
11. – The Secretariat urged the members of the Standing Committee as well as all Parties to CITES to make every effort through their focal points for UNEP to ensure that an appropriate amount from these allocations which exceed a million USD was used to support CITES projects and initiatives.

**B**

12. The report of the review conducted by Environmental Resources Management (ERM), of How to Improve the Effectiveness of the Convention, was distributed to the Parties and relevant Organizations on 29 January 1997 (with Notification to the Parties No. 951). Document Doc. 10.20 presents the comments received on ERM's report. Document Doc. 10.21 presents the recommendations arising from the study.
13. Section 7 of ERM's report (pages 73 to 79) addressed the topic of "Relations with Other Organizations". It contained the following Recommendations:
14. **Recommendation 7A**  
*"The Secretary General should pursue the conclusion of a comprehensive agreement on co-operation with the Convention Biological Diversity.*
15. Such an agreement should be framed to allow regular consultation between the two Convention Secretariats and cover mechanisms for co-operation over information exchange, programme development and planning."
16. **Recommendation 7B**  
*"The Conference of Parties should request UNEP to continue to convene a joint Working Group on a regular basis between the administrative organs of certain key international convention treaties.*
17. These would include CITES, the Convention on Biological Diversity, Convention on Desertification and Drought, Convention on the Law of the Sea and regional agreements as might be appropriate."
18. **Recommendation 7C**  
*"Synergy between the Conventions should feature on the Agenda of the Conference of the Parties and joint activities (where appropriate) should be outlined in the CITES Strategic Plan.*
19. In order to maintain linkages, representatives of those Conventions mentioned in 7B should continue to be invited to attend and participate in meetings of the Conference of the Parties."
20. **Recommendation 7D**  
*"The Standing Committee should enhance co-operation and information exchange between CITES and the GATT prior to the conclusion of on-going WTO discussions on trade and environment issues.*

21. It is important that the Standing Committee make contact with WTO over this issue prior to WTO's Trade and Environment Committee's conclusion to current discussions.
22. In addition, we recommend that a study is commissioned by the Secretariat to clarify the compatibility between CITES and global trade regulations as evidenced in GATT/WTO. The necessary analysis could be carried out by a partner organization, working in co-operation with UNEP and the WTO Trade and Environment Process."

#### Actions Taken

23. The following paragraphs summarize the actions that have been taken by the Secretariat, relating to these recommendations.

#### 24. **Recommendation 7A**

*The Secretary General should pursue the conclusion of a comprehensive agreement on co-operation with the Convention Biological Diversity.*

25. This issue has been concluded. Following review and acceptance by the Standing Committee at its 36th Meeting (Geneva, 30 January to 2 February 1996), a Memorandum of Co-operation between the Secretariats of CITES and the CBD was signed on 23 March 1996 (see Annex 1).
26. Under this Memorandum, the secretariats of the two conventions agree to co-operate, to exchange information and experience, to co-ordinate their programmes of work and to engage in joint conservation action. The Secretariats also agree to seek further guidance from their governing bodies on new areas of co-operation.

#### 27. **Recommendation 7B**

*The Conference of Parties should request UNEP to continue to convene a joint Working Group on a regular basis between the administrative organs of certain key international convention treaties.*

28. UNEP has convened six co-ordination meetings of secretariats of environmental conventions, and the CITES Secretariat has continued to participate actively in these meetings:

First Meeting:	Geneva, 28-30 March 1994
Second Meeting:	Nairobi, 14-16 May 1995
Third Meeting:	Geneva, 3-5 July 1995
Fourth Meeting:	Geneva, 10-11 January 1996
Fifth Meeting:	Geneva, 4-5 June 1996
Sixth Meeting:	Nairobi, 25-26 January 1997

29. The report of the sixth meeting is attached as Annex 2.

#### 30. **Recommendation 7C**

*Synergy between the Conventions should feature on the Agenda of the Conference of the Parties and joint activities (where appropriate) should be outlined in the CITES Strategic Plan.*

31. Co-operation/Synergy with other Conservation Conventions and Agencies has been included as an agenda topic at the 10th meeting of the Conference of the Parties and information on this item is presented in this document.

#### 32. **Recommendation 7D**

*The Standing Committee should enhance co-operation and information exchange between CITES and the GATT prior to the conclusion of on-going WTO discussions on trade and environment issues.*

33. To facilitate this recommendation, the Secretariat has written to WTO seeking closer collaboration with their Secretariat. The Secretariat has applied formally for observer status in WTO.
34. Invitations have been extended to the WTO Secretariat to attend future meetings of the Conference of the Parties to CITES. Also, the Secretariat has continued its practice of participating in Trade and Environment Commission meetings.
35. ERM recommended that "a study be commissioned by the Secretariat to clarify the compatibility between CITES and global trade regulations as evidenced in GATT/WTO". The Secretariat has collaborated with the Organization for Economic Co-operation and Development (OECD) and the Joint Session of Trade and Environment Experts in their study on the use of trade measures in CITES. In their recently completed report, OECD considers the relationship between the trade provisions of CITES and the relevant provisions of the GATT/WTO. The conclusions relevant to this aspect of the OECD study will be distributed once they are cleared by OECD.
36. The Secretariat has actively co-operated with the authors from more than five agencies and institutions (example: Harvard University, which among others, are preparing monographs or reports on the issues of compatibility between the Multilateral Environmental Agreements and Multilateral Trade Agreements, as well as of synergy between the MEAs).

#### Other Initiatives

37. Strengthened co-operation between the CBD and CITES has been encouraged in resolutions adopted at the last two meetings of the Conference of Parties to CBD, including joint approaches to improve access to multilateral financing mechanisms such as the Global Environmental Facility.
38. CITES has an important role to contribute to the work of the CBD based on its relatively lengthy existence and lessons learnt from the monitoring of trade as well as the technical work conducted in the Plants and Animals Committees and with associated organizations (IUCN/SSC; WCMC; TRAFFIC).
39. The CITES Secretariat is a co-convenor of the seventh Session of the Global Biodiversity Forum (GBF) to be held immediately prior to the 10th meeting of the Conference of the Parties, in Harare.
40. The title of the forum "Exploring Synergies between CITES and CBD" is particularly relevant to the issues under discussion in this document. GBF7-CITES will focus on the following four themes: identifying and monitoring the causes of species loss; non-detrimental export and sustainable use; access to floral resources; and community-based resource management.
41. As suggested by the forum's title, we expect that the meeting will result in closer synergy between CITES and the CBD and that the workshops will develop practical recommendations for consideration by the Conference of the Parties to CITES.

## MEMORANDUM OF CO-OPERATION

between

The Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, D. C., 1973)

and

The Secretariat of the Convention on Biological Diversity (Nairobi, 1992)

*Recalling* that the ninth meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (held at Fort Lauderdale, United States of America, in November 1994) approved the Strategic plan of the Secretariat of the Convention, which contains as one of the important tasks of the Secretariat the development of "further intensified co-operation with the CITES partners in the international arena" and which states that "Special attention will be given to ... the Secretariats of other environmental conventions: Biological Diversity, Ramsar...;"

*Noting* that the second meeting of the Conference of the Parties to the Convention on Biological Diversity (held in Jakarta, Indonesia, in November 1995) adopted Decision 11/13 on "Co-operation with other Biodiversity-related Conventions", under which the Convention's Executive Secretary is requested to co-ordinate with the Secretariats of other conventions with a view to facilitating the exchange of information and experience, to explore harmonizing of reporting requirements and for co-ordinating work programmes, and to consult on how other conventions can contribute to the implementation of the Convention on Biological Diversity;

*Aware* that both Secretariats are prepared to co-operate with each other in order to promote co-operation and co-ordination with other relevant convention secretariats;

The Secretariat of the Convention on Biological Diversity and the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as "the secretariats", decide as follows:

**Article 1. Institutional co-operation**

- a) The secretariat of each Convention will facilitate the participation, at meetings of that Convention, of the Secretariat of the other.
- b) The secretariats will inform their respective focal points in each Contracting Party of their co-operative activities, and will seek to promote consultation and co-operation between focal points in those Contracting Parties where the focal points for the two conventions are different.

**Article 2. Exchange of information and experience**

- a) The secretariats will institute procedures for regular exchange of information in their respective fields of action.
- b) The secretariats will establish methods for exchanging data on biodiversity contained in their databases and in the Clearing-house Mechanism under the Convention on Biological Diversity.

- c) The secretariats will co-operate, where relevant, in preparing the documents required for each Convention.

**Article 3. Co-ordination of programmes of work**

- a) The secretariats will to the extent possible co-ordinate the preparation of the relevant parts in their respective work plans.
- b) The secretariats will explore the possibility of facilitating the reporting process of the Contracting Parties under both Conventions.

**Article 4. Joint conservation action**

- a) The secretariats will consult their Contracting Parties with a view to encouraging integration and consistency between national strategies, plans or programmes under the Convention on Biological Diversity and plans or programmes under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- b) The secretariats will consult their Contracting Parties with a view to encouraging:
  - effective conservation and promoting the sustainability of any use of wildlife as a part of the biological diversity of our planet; and
  - the development of working relations with the executive bodies of multilateral international agreements on trade and intellectual property rights as appropriate in order to facilitate the integration into the working plans of these bodies of measures aimed at ensuring the sustainability of use of biodiversity in general and of wildlife in particular.
- c) The secretariats will endeavour to co-ordinate their activities in research, training and public awareness activities.

**Article 5. Consultation, reporting and further guidance**

The Secretariats will institute measures to ensure consultation on the implementation of this memorandum of co-operation and will report on such measures to their respective governing bodies and seek further guidance on new areas of co-operation.

**Article 6. Review, Amendment and Termination**

This agreement may be reviewed and amended at the request of either party and will be terminated by either party giving a one-year written notice.

Done at Brisbane, on 23 March 1996

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## VII. CITES and the multilateral trading system

A. Introduction

1. In accordance with the terms of the study<sup>1</sup> this Section attempts to describe briefly some key aspects of the relationship between the trade provisions of CITES and the main potentially relevant provisions of the GATT/WTO. This section is structured as follows: first, there is a brief description of the range of measures under CITES that may be deemed to be relevant. Second, there is a review of certain key provisions under GATT 1994, focusing on Articles XI, I and XIII, and XX. Third, a section addresses other relevant considerations. Finally there is a brief conclusion.
2. It should be noted at the outset that, in the 21 years since CITES entered into force, no challenge to any of its provisions, nor to the domestic measures taken pursuant to it, has ever been raised directly<sup>2</sup> in GATT/WTO dispute settlement proceedings. Given the large – and still growing – membership of CITES (currently 138 Parties), there is not reason at present to anticipate change in that situation.
3. This Section then endeavours to focus on WTO obligations that may be considered to be most pertinent when it comes to measures taken under CITES<sup>3</sup>. Of course, discussing the relationship between trade-relevant provisions of CITES and WTO obligations implies no *a priori* presumption as to whether one treaty is inherently superior to the other. It is simply a matter of drawing attention to areas where potential for friction could exist. This serves the purpose of meeting a key challenge in much trade-environment discussion: how to ensure that policies and approaches in differing policy domains can be crafted or adapted to be more sensitive to the overarching objectives of each other. Analysis is the necessary first step in that process
4. That this is an analytical rather than prescriptive matter is underlined by the fact that as far as Parties to the Convention are concerned, CITES itself provides for its own form of dispute resolution. Article XVIII of CITES relating to Resolution of Disputes provides that
  - "Any dispute ... 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.
  - If the dispute cannot be resolved ... 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."
5. In this context, it can be noted that, among its conclusions and recommendations, the WTO Committee on Trade and Environment recently suggested "While WTO members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute

arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms available under the MEA."<sup>4</sup>

B. Relevant CITES measures

6. CITES provisions provide for regulation or restrictions (including prohibitions) of trade for Appendix I, II and III species. The key articles of CITES in this case are Articles III, IV, V and VI providing for import and export permits and re-export certificates to regulate the trade in such specimens. The way in which the system operates, and the types of trade measures used are explained above in Section II, including Box 1.
  7. The actual domestic application of the measures concerned is a matter for the individual parties. Accordingly, they are required under Article VIII.1 to take "appropriate measures to enforce the provisions of the present Convention". The terms of that requirement seem to go beyond measures limited strictly to domestic implementation to include additional measures to deal with cases where there is a violation of the obligations of the agreement. In such a case, the Article provides that parties are "to prohibit trade in specimens in violation [of the Convention]".
  8. Article XIV also provides that nothing in the Convention prevents Parties from adopting "stricter domestic measures", (see Section II.C. above).
- C. Key provisions under GATT 1994
- a) *Obligations relating to quantitative restrictions*
  9. It would appear that, in the case of import and export permits and re-export certificates to regulate trade in Appendix I-III species, including the prohibition or restriction of trade for "primarily commercial purposes" in Appendix I species, as required by relevant CITES Articles, these are measures for which the obligations of GATT Article XI.1 concerning quantitative restrictions may be relevant. The same would appear to be the case for measures considered to be enforcement measures taken pursuant to Article VIII.1 or "stricter domestic measures" referred to in Article XIV, irrespective of whether the measures were applied to Parties or non-Parties.
  - b) *Non-discrimination obligations*
  10. Articles I and XIII of the GATT could be relevant also to measures taken to implement CITES. Pursuant to these Articles, there are obligations to treat "like" products in the same way, no matter what their country of origin. For instance, Article XIII permits application of (otherwise legitimate) quantitative import restrictions to the product of one Party only if the restriction is applied also to the "like products" of other parties.

<sup>1</sup> COM/ENV/TD/M(96)103 pp 5 and 10.

<sup>2</sup> In *Tuna-Dolphin II (1994)*, an unadopted GATT panel report, it was argued that dolphins were protected by CITES, but the panel did not address this issue in its findings.

<sup>3</sup> Thus this Section does not comment on what, if any, relationship may exist between certain other WTO-covered agreements (such as the *Agreements on Import Licensing Procedures, Technical Barriers to Trade and On the Application of Sanitary and Phytosanitary Measures*) and CITES.

<sup>4</sup> WT/CTE/1, para. 178, p 40.

11. The question of whether fauna or flora taken from the wild are "like" their captive bred, ranched or propagated counterparts could be of potential relevance in any situation where a country applied trade restrictions on imports of wild specimens where it permitted imports of propagated or ranched specimens from other suppliers<sup>1</sup> This may also be an issue that is relevant in the case of split listings (See Section II B. above). In these situations, there can be different Appendix listings, and different trade treatment of geographically separate populations of the same species.
12. However, this is not a matter that can be settled in the abstract. The criteria for determining when products are "like" products have been subject to extensive deliberation and adjudication in past GATT/WTO dispute settlement cases, but in very specific circumstances. The "like product" concept appears in a number of WTO provisions which have been scrutinised under Dispute Settlement proceedings (perhaps most controversially in the context of the national treatment obligation under Article III)<sup>2</sup> and it is not feasible to attempt to summarise here the relevant jurisprudence.
  - c) *General Exceptions*
13. The preceding provisions may also be considered in conjunction with Article XX. Under this "General Exceptions" Article, trade measures that would otherwise be inconsistent with the GATT may be applied in defined circumstances. This is subject also to the general requirement that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.
14. A threshold question however would arise. Given that CITES reflects the views of the international community, it is not clear how far a WTO Panel would enquire into the specific requirements of Article XX in the case of a trade measure taken under the Convention. On the one hand, it is possible that a (rebuttable) presumption would be made that an international consensus exists on the validity and necessity of the instruments it has chosen to meet its objectives. It could for example decide to solicit the view of the Convention or associated experts on the specific matters raised by Article XX. On the other hand, a WTO Panel may consider its mandate limited to examining WTO provisions, and not the provisions of other international agreements.
15. It would appear that at least XX(b) (regarding measures necessary to protect human, animal or plant life or health), and XX(g) (covering measures relating to the conservation of exhaustible natural resources) would be potentially relevant.
16. With respect to Article XX(b), it is a matter of whether the measures would be considered to be "necessary" to protect human, animal or plant life or health. Past cases under the GATT/WTO have addressed this standard although none, to this point, has directly

addressed measures taken pursuant to a multilateral environmental agreement. Of some relevance might also be the difference between implementation through national measures and trade measures specifically mandated in CITES.

17. With respect to Article XX(g), it is a matter of whether these are measures "relating to conservation of exhaustible natural resources [and] made effective in conjunction with restrictions on domestic production or consumption". This provision has, similarly, been the subject of dispute settlement under GATT/WTO. The word "necessary" does not appear in the case of XX(g). Rather, the reference is to measures "relating to" the conservation of exhaustible natural resources.
18. There would seem to be little purpose in speculating further on how these provisions would apply in relation to hypothetical situations. This is all the more so given that, as a practical matter, CITES has been ratified by most WTO members.

D. Other relevant considerations

19. It may also be noted that there are two categories, as it were, of WTO members when it comes to dealing with the subject of CITES and WTO obligations. There are (many) WTO members that are also parties to CITES, and there are (a few) WTO members that are *not* parties to CITES.
20. There are additional considerations which could be borne in mind in the case of WTO members which are also parties to CITES. In this case the view could be taken that CITES provisions would in any case prevail according to the principles of customary international law. According to this view, when two agreements signed by the same parties relating to the same subject matter are in conflict, the agreement later in time (*lex posterior*) is presumed to prevail<sup>3</sup>
21. Thus, CITES provisions could have been held to have prevailed over any conflicting GATT provisions for as long as CITES post-dated the original 1947 GATT Agreement. Has the situation changed in the case of GATT 1994, which now formally post-dates CITES? In this regard it should be noted that Article II.4 of the WTO Agreement makes it clear that it is a legally distinct Agreement:
 

"The General Agreement on Tariffs and Trade 1994 is legally distinct from the General Agreement on Tariffs and Trade dated 30 October 1947..."
22. It would, therefore, appear clear that GATT 1994 now post-dates CITES. Does this mean that a *lex posterior* approach is no longer possible? Whatever view is taken on that, it has been argued that there is no problem in any case. The argument is that CITES provisions could still be considered to be decisive because they are more specific than any relevant provisions of the GATT/WTO. Hudec, e.g., has taken the view that *lex specialis* would still be applicable despite CITES preceding GATT 1994:

<sup>1</sup> The question of "likeness" could, of course, also be relevant under other provisions of the General Agreement.

<sup>2</sup> It should be noted that during the discussions at the London session of the Preparatory Committee (for the ITO – later the GATT), it was stated that, in considering the terms "like product": "the expression had different meanings in different contexts of the Draft Charter" (quoted in *Analytical Index* Vol. 1 p35).

<sup>3</sup> *Vienna Convention on the Law of Treaties, Articles 30(3) and 30(4)*.

"... environmental agreements are clearly more specific than GATT in terms of their subject matter. Under the principle of *lex specialis*, it is normally presumed that the more specific of two agreements is meant to control, even when the more general agreement happens to be later in time."<sup>1</sup>

23. Irrespective of the legalities of this matter, this has, of course, a strong appeal to common sense and practical political reality summed up e.g. in Hudec's judgement:

"In general, these principles would suggest that GATT should step aside whenever a GATT member government has signed an international environmental agreement authorising other signatories to impose trade restrictions against it. The general concept is that GATT members who sign such an agreement can quite properly be deemed to have waived their GATT legal rights against such trade restrictions."<sup>2</sup>

24. In a less absolute manner, a similar practical orientation has been reflected recently in the Report of the WTO Committee on Trade and Environment:

"In practice, in cases where there is a consensus among Parties to an MEA to apply among themselves specifically mandated trade measures, disputes between them over the use of such measures are unlikely to occur in the WTO"<sup>3</sup>.

25. It is difficult to see how considerations regarding *lex posterior* and *lex specialis* would be applicable in the

case of measures (whether these be specific measures laid down in the Convention or pursuant to enforcement measures taken under Article VIII or as recommended by a body of CITES or as "stricter domestic measures") applied by a WTO member Party to CITES to a WTO member non-Party to CITES.

#### E. Conclusions

26. The purpose of this section has been to underline that there are specific areas where respective rights and obligations under GATT/WTO and CITES may bear particularly close scrutiny. It appears that there have been no practical problems which have arisen to date. At the same time, this section has indicated that, albeit as a purely technical matter, there are certain areas where there may be at least potential for questions of interpretation to arise. The nature and extent of those potential issues differs in accordance with whether one is dealing with a case of (a) measures taken by parties that are strictly based on the text of the Convention or on consensus of the CITES parties; (b) measures applied by one CITES party to another which are not manifestly based on the Convention itself or an agreed interpretation; and (c) measures applied by CITES Parties to WTO Members not CITES parties.

27. Of course, such *potential* for issues of interpretation may never give rise to *actual* problems, and, if it does, it may well be that these can be resolved in a satisfactory manner that ensures the continued co-existence between WTO and CITES.

<sup>1</sup> R. Hudec, "GATT Legal Restraints in the Use of Trade Measures against Foreign Environmental Practices" in Bhagwati and Hudec, *Fair Trade and Harmonization: prerequisites for Free Trade?* Vol. 2, p.121, Cambridge, Mass., MIT Press, 1996 (emphasis added).

<sup>2</sup> *Ibid.*

<sup>3</sup> WT/CTE/1, 12 November 1996.