

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

Thirteenth meeting of the Conference of the Parties
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

General compliance issues

GUIDELINES ON COMPLIANCE WITH THE CONVENTION

1. This document has been submitted by Ireland (on behalf of the Member States of the European Community).
2. At its 50th meeting (Geneva, March 2004), the Standing Committee recommended that if there were discussions on compliance at the 13th Conference of the Parties (CoP13), and if the agenda remained the same as that adopted at SC50, then those discussions should take into consideration document SC50 Doc. 27, with the understanding that that document was not agreed at SC50 and that deliberations were still going on. It further agreed to establish an intersessional Working Group to start off as a 'nucleus', composed of members of the SC50 Working Group, to continue exchanging information on the revision of the draft guidelines on compliance. In addition, any Party, Observer, non-governmental organization or non-Party could participate and work should be as transparent as possible.
3. Ireland (on behalf of the Member States of the European Community) hereby tables the attached document SC50 Doc. 27 for discussion at CoP13. These discussions should take into account the recommendations made at SC50 as well as the outcome of the deliberations of the intersessional Working Group on Compliance available by CoP13.
4. In view of the above, it is requested that the Conference of the Parties provides for an opportunity to have a substantive, open discussion and negotiation, ideally with a view to the adoption of the guidelines. Thus, a Compliance Working Group could work under the auspices of the Conference of the Parties at the present meeting and, if necessary, continue its work beyond CoP13.

COMMENTS FROM THE SECRETARIAT

- A. In document SC50 Doc. 27, the Secretariat recommended adoption of the *Revised draft guidelines on compliance with the Convention*. It therefore supports the European Community's request that the Conference of the Parties provides an opportunity for this document to be discussed.
- B. As for the establishment of a Compliance Working Group at CoP13, the Standing Committee at its 50th meeting (Geneva, March 2004) already established an open-ended intersessional Working Group on Compliance and a process for its work. The Secretariat therefore sees no need for a new and separate working group to be established and believes that the process agreed by the Standing Committee, which includes presentation of a report at the 53rd meeting of the Standing Committee, should be followed.

SC50 Doc. 27

Interpretation and implementation of the Convention

GUIDELINES ON COMPLIANCE WITH THE CONVENTION

1. This document has been prepared by the Secretariat.
2. At its 49th meeting (SC49, Geneva, April 2003), the Standing Committee:

instructed the Secretariat to compile and prepare a summary of the comments received from Parties on the Annex to document SC49 Doc. 16, and to prepare for its 50th meeting revised draft guidelines on compliance with the Convention. It further instructed the Secretariat to issue a Notification to the Parties attaching document SC49 Doc. 16, summarizing the relevant discussions at SC49 and inviting the Parties to provide their comments on the document.
3. On 6 May 2003, a summary of the discussions at SC49 and the *Draft guidelines on compliance with the Convention* were circulated to all Parties for comment with Notification to the Parties No. 2003/031.
4. Comments were received from 13 Parties (Australia, Canada, Chile, Czech Republic, Cuba, Ecuador, Germany on behalf of the European Union, Japan, Mexico, Poland, Saint Lucia, Switzerland and the United States of America) and three non-governmental organizations (The David Shepherd Wildlife Foundation, IFAW and Environmental Investigation Agency).
5. Annex 1 to this document contains a summary of the comments received in response to Notification to the Parties No. 2003/031. Annex 2 contains a version of the *Revised draft guidelines on compliance with the Convention* showing the changes that have been made as a result of the comments received. Annex 3 contains a clean version of the *Revised draft guidelines on compliance with the Convention* for consideration by the Standing Committee.
6. Comments for improving the draft guidelines were constructive and clear. The Secretariat has attempted to incorporate as many of them as possible. Comments which seemed to require substantial changes in the structure or content of the draft guidelines or to differ greatly from the majority view were not incorporated.
7. There was a suggestion that deadlines might be incorporated into the guidelines which would effectively complement the deadlines that already exist in relation to Article XIII of the Convention, the review of significant trade process, the National Legislation Project and the submission of annual reports (e.g. Resolution Conf. 11.3, Resolution Conf. 12.8, Decision 11.37, Decision 11.89, Decision 12.80 and Decision 12.83). This has proven to be difficult and, upon reflection, may not be desirable. Compliance matters ordinarily arise under one of several well-established Convention programmes which usually have clear deadlines that are already set as well as deadlines which are set on a case-by-case basis. It would therefore seem sufficient for those applicable deadlines to be more clearly identified and brought to Parties' attention as specific compliance issues are handled.
8. An effort has been made to clarify the roles of the various bodies involved in compliance matters as well as the procedural steps for addressing compliance issues.
9. Parties' attention is drawn to document SC50 Doc. 12.1 on Development of containment strategies, which speaks about possible compliance measures to ensure timely and full payment of contributions to the CITES Trust Fund.

Recommendation

10. The Secretariat recommends that the Standing Committee adopt the *Revised draft guidelines on compliance with the Convention*.

SC50 Doc. 27 Annex 1

Draft guidelines on compliance with the Convention

Summary of comments

Overall

1. Comments were received from only a small number of Parties representing five of the six CITES regions. For the most part, comments received from non-governmental organizations were reflected in the comments of Parties.
2. Most Parties found the draft guidelines to be a good basis on which to proceed, and they made both general and specific comments on how to improve them. Some of these were substantive in nature while others were more editorial and aimed at clarifying as well as shortening the text. Poland did not submit any specific comments. Ecuador commented only on paragraphs 24-34 of the draft guidelines.
3. Australia proposed substantial changes to the text in order to remove what it considered to be an overly complex, detailed judicial procedure. Mexico rejected the draft guidelines as a basis on which to proceed, finding that they went beyond the text of the Convention and related Resolutions and established more of a non-compliance procedure than a compliance procedure. It recommended that the Secretariat instead prepare new guidelines which would take into account available capacity-building mechanisms in order to facilitate compliance and clarify and strengthen existing compliance and enforcement procedures.
4. Switzerland suggested that the guidelines could be preceded by a separate note that would include references to the work of other international bodies, including the *UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements*.
5. Mexico pointed out that it is not clear from Decision 12.84 whether final guidelines would be adopted by the Standing Committee or go before the Conference of the Parties for approval but suggested that the latter course of action should be followed. It thought that the guidelines should have a consultative, voluntary character. Switzerland suggested that the Conference of the Parties should find some means to adopt binding rules of procedure, rather than guidelines, which would have to be followed by the bodies of the Convention. This would provide for more legal certainty and would facilitate the handling of compliance matters in a consistent fashion.

Objective

6. Cuba suggested that it was not the aim of the guidelines to review national wildlife management policies and programmes. Japan considered that the guidelines would be instrumental in ensuring the consistent application of the effective and powerful mechanisms to promote compliance that already exist in the text of the Convention and related Resolutions.

Scope

7. Germany (on behalf of the Member States of the European Union) suggested that the two paragraphs under 'Scope' were unnecessary and could be deleted. Cuba suggested that the definition of 'non-compliance' was unnecessary and could be deleted. The Czech Republic and Germany (on behalf of the Member States of the European Union) proposed that the guidelines should take into account Parties' obligations with regard to States not party to the Convention.

General principles

8. Australia, Germany (on behalf of the Member States of the European Union) and the United States of America proposed that the heading 'Legal basis' be deleted and the paragraph under that heading, which they found acceptable, moved to another section. Canada proposed deleting the references in that paragraph to 'decisions and recommendations of CITES subsidiary bodies' and 'historical practice'. Chile proposed deleting the reference to 'historical practice'.
9. Japan urged the removal of any provisions or terms that were inconsistent with existing provisions of the Convention and Resolutions or that implied the establishment a new mechanism for which there was no mandate. Canada requested that a sentence be inserted stating that the Convention would prevail in the event there was any inconsistency with the guidelines.
10. Germany (on behalf of the Member States of the European Community) suggested that capacity building and compliance are two separate but parallel processes and that the guidelines should focus on compliance issues only. Switzerland supported the creation of a system that allows better assessment of and support to Parties' compliance. The United States of America found it appropriate that the draft guidelines were generally oriented to facilitation and support as the Convention does not contemplate or authorize a compliance system as such. Mexico rejected the draft guidelines *inter alia* because they did not sufficiently provide for capacity building.

Institutions

11. Chile proposed that the guidelines be directed to the Parties and subsidiary bodies of the Convention rather than the Standing Committee. Switzerland suggested that the Conference of the Parties should delegate to the Standing Committee the competence to act as the compliance body for the Convention.
12. Germany (on behalf of the Member States of the European Community) proposed the creation of a separate and independent compliance committee, similar to those found in other multilateral environmental agreements (e.g. Montreal Protocol, Kyoto Protocol, Basel Convention, Aarhus Convention). As in the Animals and Plants Committees, the members could represent the various CITES regions, could be elected on the basis of personal expertise and could serve in their personal capacity. Rules of procedure would need to be developed and could provide for majority decisions as well as observer participation.
13. Despite general opposition by the Member States of the European Community to the proliferation of committees in CITES, it was thought that the case for establishment of a compliance committee is strong. Budgetary considerations would not be a valid basis for failing to establish such a committee and its establishment would not require the merging of the Animals and Plants Committees. Meetings of such a committee, whose main costs would be for the travel of its members, could be held in conjunction with those of the Standing Committee and could reduce the meeting time and document costs of the Standing Committee.
14. It was suggested that such a committee would be better suited than the Standing Committee for addressing compliance issues within the deadlines set by the Conference of the Parties and for ensuring that its members were not involved in decisions on matters that directly concerned them. For transparency and to avoid duplication, a fully independent body would be preferred but the Standing Committee might retain the power to impose trade measures based on recommendations of the compliance committee, except where the latter was mandated by the Conference of the Parties.
15. German (on behalf of the Member States of the European Union) emphasized that compliance matters should continue to be dealt with through the existing organisational structure and not postponed until such time as a compliance committee might be agreed by the Conference of the Parties.
16. Australia, Germany (on behalf of the Member States of the European Community), Japan, and Switzerland suggested ways in which the roles of the Conference of the Parties, the Standing Committee and the Secretariat in relation to compliance issues might be clarified.

17. Australia noted that the provision of advice and assistance is not a task only to be done by the Secretariat and that Parties should be more involved in helping other Parties.

Obligations

18. Most Parties agreed on the list of obligations which should be the focus of the guidelines. Switzerland, however, thought that the guidelines should be applicable to all obligations under the Convention and suggested that the list should either be deleted or amended to clarify that it is non-exhaustive. The United States of America, on the other hand, said that it assumed the list was exhaustive. Germany (on behalf of the Member States of the European Community) suggested that a Party's obligations concerning States that are not party to the Convention should be specifically included.

Procedures

19. All Parties but Australia agreed that paragraphs 24-34 should remain within the guidelines, though various modifications of the text were proposed.
20. Canada and the United States of America suggested that any reference to the 'determination' of non-compliance should be replaced with a reference to 'possible' or 'issues of' non-compliance because such a determination is legal in nature.
21. The Czech Republic and Germany (on behalf of the European Union) suggested that the use of trade measures should be more flexible (i.e. available for emergency situations) and not limited to use only as a last resort.
22. Parties generally agreed that an affected Party has the right to participate in discussions of the Standing Committee that address its compliance with the Convention. Saint Lucia suggested that it should be possible to request financial assistance to support this participation. The Czech Republic and Germany (on behalf of the European Union) agreed, however, that an affected Party cannot participate in the taking of any decisions concerning its compliance. They suggested that the Rules of Procedure for the Standing Committee should also reflect this point.
23. Parties generally agreed that confidentiality in the handling of compliance issues is needed on occasion, and Germany (on behalf of the Member States of the European Community) suggested criteria for determining when matters should be treated as confidential.
24. Germany (on behalf of the Member States of the European Community) thought that oral submissions should not be admissible but that anonymous submissions should be allowed to protect the safety of individuals. Australia and Canada questioned whether the Secretariat should be able to initiate a non-compliance procedure while other Parties found it acceptable for the Secretariat to make non-compliance submissions. Japan found that direct submissions to the Standing Committee by Parties and others represented a significant change.
25. The Czech Republic and Germany (on behalf of the Member States of the European Community) proposed that deadlines should be established for determining issues of non-compliance and follow-up action. Chile proposed a new section requiring the Secretariat to comply with deadlines.

Periodic review

26. Australia and Canada suggested that paragraphs 9 and 43 could be merged to provide for periodic review of the guidelines.

Revised dDraft guidelines on compliance with the Convention

Note: Suggested deletions are marked with a line through the text (strikethrough)
Suggested additions are highlighted in bold italics

Objective

1. The objective of these guidelines is to assist the Standing Committee in:
 - a) reviewing Parties' overall compliance with the Convention, ~~identifying ways to improve the implementation, and thereby the effectiveness, of the Convention and the national wildlife management policies and programmes that underlie it, and making appropriate recommendations to the Conference of the Parties;~~
 - b) promoting and facilitating Parties' compliance with the Convention with an emphasis on preventing non-compliance in the first instance; ~~and~~
 - c) ***ensuring the consistent and effective application of compliance-related procedures within the framework of the Convention's provisions and relevant Resolutions;***
 - d) ~~determining and addressing~~ ***examining*** a Party's non-compliance with the Convention with an emphasis on identifying the cause(s) of non-compliance ~~and bringing a Party back into compliance as quickly as possible.~~ ***facilitating a Party's return to compliance within the shortest possible time-frame; and***
 - e) ***identifying ways to improve the implementation, and thereby the effectiveness, of the Convention and making appropriate recommendations to the Conference of the Parties.***

Scope

- ~~2. 'Compliance' is the fulfilment by the Parties of their obligations under the Convention and any amendments to the Convention. 'Non-compliance' is the failure to fulfil those obligations.~~
- ~~3. Compliance issues can be either general, concerning all Parties, or specific, concerning a single Party or specified Parties.~~

Legal basis***General principles***

- 4.2. These guidelines have their basis in ***Decision 12.84*** and should be applied in a manner consistent with the legally-binding text of the Convention, applicable rules ***and principles*** of international law, ***relevant*** ~~interpretative~~ Resolutions and Decisions of the Conference of the Parties, decisions and recommendations of CITES subsidiary bodies and historical practice.
3. ***In the event of any conflict between these guidelines and the Convention, the Convention prevails.***
4. ***These guidelines are without prejudice to any dispute settlement procedure under the Convention.***
5. A positive and supportive, ~~rather than a negative and adversarial,~~ approach should be taken towards instances ***issues*** of non-compliance, ***with the aim of ensuring long-term compliance.***
6. Non-compliance should be addressed in a consultative, ***transparent*** and pragmatic manner with procedural safeguards for affected Parties (~~e.g. fair notice, opportunity to respond, opportunity to participate in relevant meetings of subsidiary bodies, etc.~~). Although non-compliance should generally be handled in a transparent manner, certain information may be treated as confidential or discussions held in a closed meeting. Reports on non-compliance should not contain any information that the affected Party has requested be kept confidential.

7. *Discussions should not be confidential except for the following reasons:*

- a) *to avoid threats to the safety of individuals;*
- b) *to protect legitimate commercial secrecy; or*
- c) *to avoid the disclosure of information that could jeopardize the survival of populations of species included in the Appendices of the Convention.*

The decision to keep discussions confidential is the responsibility of the Standing Committee or the Conference of the Parties.

~~7.8.~~ The *application of these guidelines in addressing instances of non-compliance must be consistent and fair* ~~re-should be consistent application of the guidelines.~~ There should be equal treatment of Parties in similar situations and where applicable precedents are involved, but sufficient flexibility to address compliance matters on a case-by-case basis, *taking into account* ~~in a way that is both proportionate and fair~~ *factors such as national economic circumstances, social stability and existing constraints.*

~~8.9.~~ Where compliance measures are *being* developed, their possible conservation impact *must* ~~should~~ be taken into account *and all efforts taken to avoid developing and establishing measures that are likely to bring about negative conservation results, even if these would apply to limited number of Parties or species.*

~~9.~~ The guidelines should be reviewed and revised to incorporate lessons learned through their interpretation and application and to include innovative and effective practices identified in the compliance schemes of other international conventions and bodies.

Authority of the Conference of the Parties

10. As the supreme policy-making body of the Convention, the Conference of the Parties should direct and oversee the handling of compliance matters particularly through the identification of key obligations and procedures. *It should consider and decide upon recommendations made to it by the Standing Committee for improving compliance with the Convention.* At the request of a Party, the Conference of the Parties should review specific instances *issues* of non-compliance and related decisions of the Standing Committee. ~~It should consider and decide upon recommendations made to it by the Standing Committee for improving compliance with the Convention.~~

Role of the Standing Committee

11. The Standing Committee should examine general and specific compliance matters in accordance with instructions from and authority delegated by the Conference of the Parties. It should advise and assist Parties in complying with the Convention, *verify information*, ~~establish the facts and~~ make determinations regarding *issues of* non-compliance with the Convention, recommend measures to restore compliance and monitor and assess overall compliance.

Role of the Animals and Plants Committees

~~12.~~ The Chairmen of the Animals and Plants Committees should consult with the Secretariat and the Standing Committee concerning the implementation of the Committees' recommendations for remedial measures for those species subject to recommendations under the Review of Significant Trade. They should also be consulted on the preparation of subsequent reports for the Standing Committee and the review of related recommendations to suspend trade that have been in place for longer than two years. *The Animals and Plants Committees should advise and assist the Standing Committee and the Conference of the Parties with regard to compliance matters by inter alia undertaking necessary reviews, consultations, assessments and reporting.*

Role of the Secretariat

13. The Secretariat should assist and support the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters. It should receive, study, verify and communicate to the Parties information on compliance matters. It should advise and assist Parties in complying with the Convention, draw their attention to apparent *issues* instances of non-compliance, ***follow the instructions and comply with the deadlines given by the Standing Committee and the Conference of the Parties***, ~~make recommendations for restoring compliance~~ and track the implementation of compliance-related decisions of the Standing Committee and the Conference of the Parties. ***The Secretariat should report on a regular basis to the Standing Committee and the Conference of the Parties on its activities undertaken under these guidelines.***

Obligations or commitments

14. The application of these guidelines ~~should focus on~~ ***relates, in particular***, to compliance with the following Convention obligations:
- a) Designation of a Management Authority and a Scientific Authority (Article IX);
 - b) Ensuring that trade only takes place after the prior grant of certain permits or certificates ***or comparable documents issued by non-party States*** showing that, *inter alia*, specimens have been legally-acquired and their trade is not detrimental to the survival of the species (Articles III, IV, V, ~~and VI, and VII~~ ***and X***);
 - c) Taking of appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation thereof (Article VIII, paragraph 1);
 - d) Maintenance of records of trade and preparation of periodic reports on implementation of the Convention (Article VIII, paragraphs 7 and 8); and
 - e) Responding to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII).

General Promotion and facilitation of compliance (and prevention of non-compliance)

15. The Secretariat should keep Parties informed as fully as possible, through ***confidential communications, where necessary, and otherwise through*** Notifications to the Parties and its reports, of areas of effective compliance with the Convention, the identification of compliance problems, the actions taken to solve those problems and the successful restoration of compliance.
- 16. The Secretariat should, by the most effective means, advise Parties at least 60 days in advance of deadlines applicable to reporting or other obligations under the Convention and offer relevant assistance.***
- ~~167.~~ Advice, assistance and other capacity-building activities ***provided by the Secretariat or other bodies*** should focus on enabling Parties to meet the compliance obligations listed above.
- ~~178.~~ Annual and biennial reports, legislative texts as well as other special reports and responses to information requests (e.g. related to species management or enforcement issues) should provide the primary means by which compliance with the Convention is monitored.
- ~~18.~~ ~~The Secretariat should advise Parties of deadlines applicable to reporting or other obligations under the Convention and offer relevant assistance.~~
19. Information and reports provided by Parties should be reviewed by the Secretariat and the results of these reviews should be provided to the Parties. ***The Secretariat may receive compliance-related information at any time and from any source.***

20. The Secretariat should maintain open, ~~mutual~~ and regular communication with Parties concerning compliance matters. ~~The Secretariat should provide Parties with information it receives that indicates potential compliance problems and should use informal and formal consultations with Parties to determine whether compliance problems exist. Parties should provide to the Secretariat early warning of any compliance problems, including the inability to provide information by a certain deadline, and the reasons for these problems.~~

Party-specific facilitation of compliance (and prevention of non-compliance)

21. ***The Secretariat should provide individual Parties that may not be in compliance with information it receives that indicates compliance problems and should use oral and written communications with these individual Parties to determine whether compliance problems exist.***

22. ***Parties should provide to the Secretariat early warning of any compliance problems, including the inability to provide information by a certain deadline and, where appropriate, the reasons for these problems.***

243. ~~Where~~ ***If potential compliance problems are detected, by the Secretariat, compliance should be facilitated by the Secretariat or other appropriate body through the should provision of advice or assistance to solve them.***

224. A Party that has been identified by the Secretariat as having potential compliance problems should be given the opportunity to correct ***those problems*** ~~the causes of potential non-compliance~~. It may be asked by the Standing Committee to undertake additional reporting or targeted monitoring (e.g. submission of further information or provision of permit copies to the Secretariat for verification for a certain period of time) ***an investigation*** or other recommended policies or actions.

235. If a ***Party's*** potential compliance problem is not resolved in spite of any assistance provided and in spite of time allowed for correction, ~~the Secretariat or the Standing Committee~~ should issue an informal warning to the affected Party stating that it is out of compliance, explaining the basis for that conclusion, ***and advising it that the non-compliance procedure may be initiated.*** ~~urging the Party to investigate the matter and asking that the results of the investigation be provided to the Secretariat or the CITES subsidiary body.~~

Determination ~~Identifying~~ and addressing of non-compliance (and restoring of compliance)

Initiation of non-compliance procedure

246. The non-compliance procedure may be initiated by ***the submission of issues of non-compliance*** to the Standing Committee ~~or~~ the Conference of the Parties by:

- a) A Party that concludes that despite its best endeavours it may be unable ***on its own*** to comply with certain obligations under the Convention;
- b) One or more Parties ***that, in the course of their trade monitoring and enforcement, that have concerns*** ~~reservations~~ about another Party's compliance with its obligations under the Convention ***or have concerns about trade involving States not party to the Convention; or;***
- ec) The Secretariat, ***on its own initiative or in response to information it has received from elsewhere;***

or it may be initiated directly by:

- d) The Conference of the Parties ~~on its own initiative;~~ or
- ee) The Standing Committee ~~on its own initiative;~~

257. ***Non-compliance*** ~~Submissions to the Standing Committee or the Conference of the Parties, which can be made orally or~~ ***should be*** in writing, ***and*** should include details as to which specific

obligations are concerned and an assessment of the reasons why the affected Party may be unable to meet those obligations. ~~Where possible,~~ Corroborating information, or advice where such corroborating information may be found, should be provided. The **non-compliance** submission may include proposals for remedial action.

~~268. A submission should not be considered by the Standing Committee or the Conference of the Parties if it is anonymous, manifestly unreasonable, or incompatible with the provisions of these guidelines or the Convention. **The Standing Committee or the Conference of the Parties shall reject non-compliance submissions which it considers are:**~~

~~a) trivial; or~~

~~b) manifestly ill-founded.~~

~~279. The Secretariat may receive compliance-related information at any time and from any source. Before making a **non-compliance** submission to the Standing Committee or the Conference of the Parties, **the Secretariat** it should screen such **the underlying** information to determine its reliability and relevance, **compile corroborating information** and consult with the affected Party.~~

~~2830. The Standing Committee and **the Conference of the Parties** the Secretariat should ensure the expedited handling of a non-compliance submission.~~

Information gathering and fact-finding

~~2931. The Standing Committee **and the Conference of the Parties** should consider **non-compliance** submissions, information and observations on non-compliance with a view to **establishing relevant facts and** securing an amicable solution of the matter.~~

~~302. A Party that is the subject of a **non-compliance** submission or that makes a **non-compliance** submission **with respect to itself** should be entitled **has the right** to participate in the discussions of the Standing Committee **or the Conference of the Parties** with respect to that **non-compliance** submission and to be consulted ~~informally or~~ formally on the **non-compliance** submission. **Formal consultations should be followed, where appropriate, by information consultations.** The **affected** Party **may** ~~should~~ not take part, ~~however,~~ in the preparation and adoption of any **decisions** findings, any measures or any recommendations of the Standing Committee **or the Conference of the Parties**. **Where an affected Party cannot access the financial resources needed to participate in such discussions, it may request assistance from the Secretariat in identifying such resources.**~~

~~313. Where necessary and provided funds are available the Standing Committee **or Conference of the Parties** should request, through the Secretariat, further information on a **non-compliance** submission and should undertake, through the Secretariat and upon the invitation of the Party concerned, the gathering and verification of information in the territory of that Party **or wherever such information may be found.**~~

~~32. Based on the information available to it, the Standing Committee should establish the relevant facts concerning a non-compliance submission.~~

Determination of non-compliance and its cause

~~334. The Standing Committee **or the Conference of the Parties** should determine whether **or not** a state of non-compliance exists and, if so, identify to the degree possible the likely cause of non-compliance. This determination should be based on a technical assessment of a Party's actions in relation to the relevant obligation and applicable compliance criteria. Such criteria should be clear, reasonable, fairly applied and consistent with the relevant legal obligation. **Where it has determined that such is the case, it should establish the facts and possible causes of the matter of concern and the requirements for its resolution.**~~

~~345. The Standing Committee **or the Conference of the Parties** should also consider the nature, cause, degree and frequency of non-compliance and whether the affected Party has taken or planned~~

any steps to restore compliance before making a formal determination **that issues** of non-compliance **exist**. Failure to fulfil a single Convention obligation should be sufficient to result in a determination of non-compliance. **Non-compliance with a single Convention obligation may be sufficient to result in a determination.**

Recommendation of measures to restore compliance

356. The Standing Committee **or the Conference of the Parties may** should, after consideration of the information available to it, decide upon one or more of the following **sequential, graduated** measures to address **non-compliance issues that are determined to exist** a Party's non-compliance and bring about its full compliance with the Convention:

- a) advice, information, appropriate assistance and other capacity-building support to the affected Party **through** ~~by~~ the Secretariat **or another body**;
- b) direct contact with the affected Party by a representative of the Standing Committee with a view to helping it find a solution;
- c) special reporting by the affected Party and data verification by the Secretariat;
- d) issuance of a formal caution directly to an affected Party warning that it is in non-compliance, requesting a response or action and indicating that, if there is none, further measures might be taken;
- e) recommended specific actions to be undertaken by the affected Party;
- f) in-country technical assessment and verification mission, upon the invitation of the Party concerned, by the Secretariat **or, depending on the assessment needs, by an independent review team**;
- g) public notification of non-compliance sent **through** ~~by~~ the Secretariat **by** ~~to~~ the Standing Committee **or the Conference of the Parties** ~~or~~ to all Parties advising that **issues of** non-compliance ~~has~~ been brought to the attention of a Party and that, **up to that time**, there has been no satisfactory response or action;
- h) **agreement between the affected Party and the Secretariat on a** compliance action plan ~~with~~ ~~agreed~~ **with** steps needed for a Party to comply, a timetable for when those steps should be completed and means to assess satisfactory completion. During this period, no additional measures would be applied provided that progress in returning to compliance continued to be made; ~~and~~
- i) recommended temporary suspension of commercial or all trade in specimens of one or more CITES-listed species-, **consistent with Article XIII of the Convention. A recommendation to suspend trade should be made in cases where a Party's non-compliance is persistent and where it is determined that such persistence is wilful or is the result of manifest negligence and is likely to be detrimental to the survival of one or more CITES-listed species. Such a determination should be made, for example, when a Party does not:**

- i) follow recommendations;*
- ii) take advantage of offers of assistance;*
- iii) agree to a compliance action plan; or*
- iv) comply with an agreed plan.*

It should also be made where no domestic measures exist to enforce the Convention. A recommendation to suspend trade should be withdrawn as soon as a Party has been restored to full compliance; and

j) other appropriate measures.

367. The affected Party should be given adequate time to implement the measure(s) recommended.

~~37. The possible measures above are presented in a sequential, graduated manner. A recommended suspension of trade should be warranted as a last resort where a Party's non-compliance is wilful and persistent, including cases in which a Party does not: follow recommendations; take advantage of offers of assistance; agree to a compliance action plan; or comply with an agreed plan. It should also be warranted where no domestic measures exist to enforce the Convention. Such a recommendation should be withdrawn as soon as a Party has been restored to full compliance. It should be regarded as a precautionary measure to prevent a continuing violation of the Convention that is detrimental to the survival of CITES listed species.~~

~~Monitoring of implementation of compliance measures~~

38. The Standing Committee *or the Conference of the Parties* should monitor the actions taken by the Party concerned to restore compliance through, among other things, its submission of progress reports or the submission of reports by the Secretariat.

39. Specific actions as well as the date when the Party concerned is expected to return to compliance should be noted in such reports. Deadlines established by the Standing Committee *or the Conference of the Parties* should be adjusted to allow an affected Party that is making good progress to complete the steps needed to restore compliance.

40. *The Party concerned should keep the Standing Committee or Conference of the Parties informed of its progress by submitting summary reports on a regular basis.*

~~401.~~ In the event of a failure to return to compliance in a timely manner, the Standing Committee *or the Conference of the Parties* should consider other measures consistent with the list of measures provided above.

412. Existing recommendations to suspend trade should be reviewed at each Standing Committee meeting.

~~Declare Return to compliance~~

423. The Standing Committee *or Conference of the Parties* should instruct the Secretariat to notify Parties when it is satisfied that an affected Party has returned to compliance.

Review of overall compliance

~~434.~~ *To ensure the continued effectiveness of these guidelines,* ~~the Standing Committee should from time to time review the implementation of these guidelines~~ *them every two years and revise them where appropriate to incorporate experience gained in implementing them or other relevant compliance policy documents.*

SC50 Doc. 27 Annex 3

Revised draft guidelines on compliance with the Convention

Objective

1. The objective of these guidelines is to assist the Standing Committee in:
 - a) reviewing Parties' overall compliance with the Convention;
 - b) promoting and facilitating Parties' compliance with the Convention with an emphasis on preventing non-compliance in the first instance;

- c) ensuring the consistent and effective application of compliance-related procedures within the framework of the Convention's provisions and relevant Resolutions;
- d) examining a Party's non-compliance with the Convention with an emphasis on identifying the cause(s) of non-compliance facilitating a Party's return to compliance within the shortest possible time-frame; and
- e) identifying ways to improve the implementation, and thereby the effectiveness, of the Convention and making appropriate recommendations to the Conference of the Parties.

General principles

- 2. These guidelines have their basis in Decision 12.84 and should be applied in a manner consistent with the legally-binding text of the Convention, applicable rules and principles of international law, relevant Resolutions and Decisions of the Conference of the Parties, decisions and recommendations of CITES subsidiary bodies and historical practice.
- 3. In the event of any conflict between these guidelines and the Convention, the Convention prevails.
- 4. These guidelines are without prejudice to any dispute settlement procedure under the Convention.
- 5. A positive and supportive approach should be taken towards issues of non-compliance, with the aim of ensuring long-term compliance.
- 6. Non-compliance should be addressed in a consultative, transparent and pragmatic manner with procedural safeguards for affected Parties .
- 7. Discussions should not be confidential except for the following reasons:
 - a) to avoid threats to the safety of individuals;
 - b) to protect legitimate commercial secrecy; or
 - c) to avoid the disclosure of information that could jeopardize the survival of populations of species included in the Appendices of the Convention.

The decision to keep discussions confidential is the responsibility of the Standing Committee or the Conference of the Parties.

- 8. The application of these guidelines in addressing instances of non-compliance must be consistent and fair. There should be equal treatment of Parties in similar situations and where applicable precedents are involved, but sufficient flexibility to address compliance matters on a case-by-case basis, taking into account factors such as national economic circumstances, social stability and existing constraints.
- 9. Where compliance measures are being developed, their possible conservation impact must be taken into account and all efforts taken to avoid developing and establishing measures that are likely to bring about negative conservation results, even if these would apply to limited number of Parties or species.

Authority of the Conference of the Parties

- 10. As the supreme policy-making body of the Convention, the Conference of the Parties should direct and oversee the handling of compliance matters particularly through the identification of key obligations and procedures. It should consider and decide upon recommendations made to it by the Standing Committee for improving compliance with the Convention. At the request of a Party, the Conference of the Parties should review specific issues of non-compliance and related decisions of the Standing Committee.

Role of the Standing Committee

11. The Standing Committee should examine general and specific compliance matters in accordance with instructions from and authority delegated by the Conference of the Parties. It should advise and assist Parties in complying with the Convention, verify information, make determinations regarding issues of non-compliance with the Convention, recommend measures to restore compliance and monitor and assess overall compliance.

Role of the Animals and Plants Committees

12. The Animals and Plants Committees should advise and assist the Standing Committee and the Conference of the Parties with regard to compliance matters by *inter alia* undertaking necessary reviews, consultations, assessments and reporting.

Role of the Secretariat

13. The Secretariat should assist and support the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters. It should receive, study, verify and communicate to the Parties information on compliance matters. It should advise and assist Parties in complying with the Convention, draw their attention to apparent issues of non-compliance, follow the instructions and comply with the deadlines given by the Standing Committee and the Conference of the Parties, and track the implementation of compliance-related decisions of the Standing Committee and the Conference of the Parties. The Secretariat should report on a regular basis to the Standing Committee and the Conference of the Parties on its activities undertaken under these guidelines.

Obligations

14. The application of these guidelines relates, in particular, to compliance with the following Convention obligations:
 - a) Designation of a Management Authority and a Scientific Authority (Article IX);
 - b) Ensuring that trade only takes place after the prior grant of certain permits or certificates or comparable documents issued by non-party States showing that, *inter alia*, specimens have been legally-acquired and their trade is not detrimental to the survival of the species (Articles III, IV, V, VI, VII and X);
 - c) Taking of appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation thereof (Article VIII, paragraph 1);
 - d) Maintenance of records of trade and preparation of periodic reports on implementation of the Convention (Article VIII, paragraphs 7 and 8); and
 - e) Responding to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII).

General promotion and facilitation of compliance (and prevention of non-compliance)

15. The Secretariat should keep Parties informed as fully as possible, through confidential communications, where necessary, and otherwise through Notifications to the Parties and its reports, of areas of effective compliance with the Convention, the identification of compliance problems, the actions taken to solve those problems and the successful restoration of compliance.
16. The Secretariat should, by the most effective means, advise Parties at least 60 days in advance of deadlines applicable to reporting or other obligations under the Convention and offer relevant assistance.

17. Advice, assistance and other capacity-building activities provided by the Secretariat or other bodies should focus on enabling Parties to meet the compliance obligations listed above.
18. Annual and biennial reports, legislative texts as well as other special reports and responses to information requests (e.g. related to species management or enforcement issues) should provide the primary means by which compliance with the Convention is monitored.
19. Information and reports provided by Parties should be reviewed by the Secretariat and the results of these reviews should be provided to the Parties. The Secretariat may receive compliance-related information at any time and from any source.
20. The Secretariat should maintain open and regular communication with Parties concerning compliance matters.

Party-specific facilitation of compliance (and prevention of non-compliance)

21. The Secretariat should provide individual Parties that may not be in compliance with information it receives that indicates compliance problems and should use oral and written communications with these individual Parties to determine whether compliance problems exist.
22. Parties should provide to the Secretariat early warning of any compliance problems, including the inability to provide information by a certain deadline and, where appropriate, the reasons for these problems.
23. Where compliance problems are detected, the Secretariat or other appropriate body should provide advice or assistance to solve them.
24. A Party that has been identified by the Secretariat as having compliance problems should be given the opportunity to correct those problems. It may be asked by the Standing Committee to undertake additional reporting or targeted monitoring (e.g. submission of further information or provision of permit copies to the Secretariat for verification for a certain period of time) an investigation or other recommended policies or actions.
25. If a Party's compliance problem is not resolved in spite of any assistance provided and in spite of time allowed for correction, the Standing Committee should issue an informal warning to the affected Party stating that it is out of compliance, explaining the basis for that conclusion, and advising it that the non-compliance procedure may be initiated.

Identifying and addressing of non-compliance (and restoring compliance)

Initiation of non-compliance procedure

26. The non-compliance procedure may be initiated by the submission of issues of non-compliance to the Standing Committee or the Conference of the Parties by:
 - a) A Party that concludes that despite its best endeavours it may be unable on its own to comply with certain obligations under the Convention;
 - b) One or more Parties that, in the course of their trade monitoring and enforcement, have concerns about another Party's compliance with its obligations under the Convention or have concerns about trade involving States not party to the Convention; or
 - c) The Secretariat, on its own initiative or in response to information it has received from elsewhere;or it may be initiated directly by:
 - d) The Conference of the Parties; or
 - e) The Standing Committee.

27. Non-compliance submissions should be in writing and should include details as to which specific obligations are concerned and an assessment of the reasons why the affected Party may be unable to meet those obligations. Corroborating information, or advice where such corroborating information may be found, should be provided. The non-compliance submission may include proposals for remedial action.
28. The Standing Committee or the Conference of the Parties shall reject non-compliance submissions which it considers are:
 - a) trivial; or
 - b) manifestly ill-founded.
29. Before making a non-compliance submission to the Standing Committee or the Conference of the Parties, the Secretariat should screen the underlying information to determine its reliability and relevance, compile corroborating information and consult with the affected Party.
30. The Standing Committee and the Conference of the Parties should ensure the expedited handling of a non-compliance submission.

Information gathering and fact-finding

31. The Standing Committee and the Conference of the Parties should consider non-compliance submissions, information and observations on non-compliance with a view to establishing relevant facts and securing an amicable solution of the matter.
32. A Party that is the subject of a non-compliance submission or that makes a non-compliance submission with respect to itself has the right to participate in the discussions of the Standing Committee or the Conference of the Parties with respect to that non-compliance submission and to be consulted formally on the non-compliance submission. Formal consultations should be followed, where appropriate, by information consultations. The affected Party may not take part in the preparation and adoption of any decisions, any measures or any recommendations of the Standing Committee or the Conference of the Parties. Where an affected Party cannot access the financial resources needed to participate in such discussions, it may request assistance from the Secretariat in identifying such resources.
33. Where necessary and provided funds are available the Standing Committee or Conference of the Parties should request, through the Secretariat, further information on a non-compliance submission and should undertake, through the Secretariat and upon the invitation of the Party concerned, the gathering and verification of information in the territory of that Party or wherever such information may be found.

Determination of non-compliance and its cause

34. The Standing Committee or the Conference of the Parties should determine whether or not a state of non-compliance exists. Where it has determined that such is the case, it should establish the facts and possible causes of the matter of concern and the requirements for its resolution.
35. The Standing Committee or the Conference of the Parties should also consider the nature, cause, degree and frequency of non-compliance and whether the affected Party has taken or planned any steps to restore compliance before making a determination that issues of non-compliance exist. Non-compliance with a single Convention obligation may be sufficient to result in a determination.

Recommendation of measures to restore compliance

36. The Standing Committee or the Conference of the Parties may, after consideration of the information available to it, decide upon one or more of the following sequential, graduated measures to address non-compliance issues that are determined to exist and bring about full compliance with the Convention:

- a) advice, information, appropriate assistance and other capacity-building support to the affected Party through the Secretariat or another body;
- b) direct contact with the affected Party by a representative of the Standing Committee with a view to helping it find a solution;
- c) special reporting by the affected Party and data verification by the Secretariat;
- d) issuance of a formal caution directly to an affected Party warning that it is in non-compliance, requesting a response or action and indicating that, if there is none, further measures might be taken;
- e) recommended specific actions to be undertaken by the affected Party;
- f) in-country technical assessment and verification mission, upon the invitation of the Party concerned, by the Secretariat or, depending on the assessment needs, by an independent review team;
- g) public notification of non-compliance sent through the Secretariat by the Standing Committee or the Conference of the Parties to all Parties advising that issues of non-compliance have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
- h) agreement between the affected Party and the Secretariat on a compliance action plan with steps needed for a Party to comply, a timetable for when those steps should be completed and means to assess satisfactory completion. During this period, no additional measures would be applied provided that progress in returning to compliance continued to be made;
- i) recommended temporary suspension of commercial or all trade in specimens of one or more CITES-listed species, consistent with Article XIII of the Convention. A recommendation to suspend trade should be made in cases where a Party's non-compliance is persistent and where it is determined that such persistence is wilful or is the result of manifest negligence and is likely to be detrimental to the survival of one or more CITES-listed species. Such a determination should be made, for example, when a Party does not:
 - i) follow recommendations;
 - ii) take advantage of offers of assistance;
 - iii) agree to a compliance action plan; or
 - iv) comply with an agreed plan.

It should also be made where no domestic measures exist to enforce the Convention. A recommendation to suspend trade should be withdrawn as soon as a Party has been restored to full compliance; and

- j) other appropriate measures.

37. The affected Party should be given adequate time to implement the measure(s) recommended.

Monitoring of implementation

38. The Standing Committee or the Conference of the Parties should monitor the actions taken by the Party concerned to restore compliance through, among other things, its submission of progress reports or the submission of reports by the Secretariat.
39. Specific actions as well as the date when the Party concerned is expected to return to compliance should be noted in such reports. Deadlines established by the Standing Committee or the Conference of the Parties should be adjusted to allow an affected Party that is making good progress to complete the steps needed to restore compliance.
40. The Party concerned should keep the Standing Committee or Conference of the Parties informed of its progress by submitting summary reports on a regular basis.
41. In the event of a failure to return to compliance in a timely manner, the Standing Committee or the Conference of the Parties should consider other measures consistent with the list of measures provided above.
42. Existing recommendations to suspend trade should be reviewed at each Standing Committee meeting.

Return to compliance

43. The Standing Committee or Conference of the Parties should instruct the Secretariat to notify Parties when it is satisfied that an affected Party has returned to compliance.

Review of overall compliance

44. To ensure the continued effectiveness of these guidelines, the Standing Committee should review them every two years and revise them where appropriate to incorporate experience gained in implementing them or other relevant compliance policy documents.