

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



Sixteenth meeting of the Conference of the Parties
Bangkok (Thailand), 3-14 March 2013

Strategic matters

COOPERATION BETWEEN PARTIES AND PROMOTION OF MULTILATERAL MEASURES

1. This document has been prepared by the Chair of the Standing Committee Working Group on Multilateral Measures, in consultation with the Secretariat, and approved by the Chair of the Standing Committee for submission to the present meeting .

Background

2. Members of the Working Group on Multilateral Measures include Australia, Brazil, Costa Rica, Germany, Guatemala, Kuwait, South Africa (Chair) and the United States of America. Representatives of two non-governmental organizations, representing different perspectives, will be invited to join the Working Group in the future.
3. At its 15th meeting (CoP15, Doha, 2010), the Conference of the Parties adopted Decision 14.28 (Rev. CoP15), Decision 14.29 (Rev. CoP15) and Decision 14.30 (Rev. CoP15), which read:

Directed to Parties

14.28 *Parties with stricter domestic measures and reservations should review them, as and (Rev. when appropriate, in order to determine whether they are effective and necessary in CoP15) order to achieve the objectives of the Convention to ensure that trade in wild fauna and flora species is not detrimental to their survival.*

Directed to the Standing Committee

14.29 *The Standing Committee shall continue the Working Group on Multilateral Measures, (Rev. established at its 57th meeting, which, operating by electronic means, should: CoP15)*

- a) *review and, if necessary, revise any consultancy report produced under Decision 14.30 (Rev. CoP15);*
- b) *organize, with the help of the Secretariat, a meeting with representation from all CITES regions to discuss the above report; and*
- c) *based on the report of the meeting mentioned above, consider the need to draft for consideration at the 16th meeting of the Conference of the Parties any*

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

revised or new resolutions.

Directed to the Secretariat

14.30 *The Secretariat shall, if external funds are made available for the purpose:*

(Rev.
CoP15)

a) *hire a consultant to prepare a report on ways to assess whether:*

i) *the Resolutions of the Conference of the Parties are implemented by all Parties as consistently as possible and whether there is a need to clarify, revise or repeal them; and*

ii) *the scope for multilateral CITES processes that reduce the need by Parties for recourse to stricter domestic measures and reservations should be further developed; and*

b) *assist the Standing Committee in organizing the meeting mentioned in Decision 14.29 (Rev. CoP15).*

4. The Secretariat, together with the potential Chair of the Working Group on Multilateral Measures, reported to the 61st meeting of the Standing Committee (SC61, Geneva, August 2011) on the implementation of the Decisions mentioned in paragraph 2 above (see document SC61 Doc. 17). After related discussions, the Standing Committee agreed “to continue the Working Group on Multilateral Measures and appointed South Africa as Chair of the Working Group. The Committee requested the Working Group, if consistent with its mandate under Decision 14.29 (Rev. CoP15), to compile an inventory of Parties' stricter domestic measures”.
5. Between SC61 and the 62nd meeting of the Standing Committee (SC62, Geneva, July 2012), the Working Group worked through electronic means. It reported to SC62 on the results of its work in document SC62 Doc. 15. In addition, some members of the Working Group were able to meet face-to-face in the margins of SC62 and the results of those discussions were reflected into the oral report of the Chair of the Working Group.
6. During consideration of agenda item 15 (on cooperation between Parties and promotion of multilateral measures) at SC62, it was recognized that Parties have a well-articulated right under Article XIV of the Convention to adopt stricter domestic measures. It was noted that a better overview of stricter domestic measures was needed. It was also suggested that stricter domestic measures should not be arbitrary or unjustifiably discriminatory.
7. The Chair of the Working Group explained that external funds were available for the consultancy envisaged under Decision 14.30 (Rev. CoP15) and that the Group had developed comprehensive terms of reference to guide the selected consultant. The Standing Committee accepted the terms of reference proposed by the Working Group, with certain amendments to paragraph 5 a) of document SC62 Doc. 15. The amended terms of reference, as accepted at SC62 for the consultancy have been included in Annex 2 to this document.
8. With regard to the proposed inventory of current stricter domestic measures addressed in paragraph 5 b) of document SC62 Doc. 15, the Working Group identified two possible options for the Standing Committee to consider: (a) the establishment of an on-line inventory on the CITES website to which Parties could contribute; and (b) the publication of web-links to the websites of Parties' Management Authorities where their stricter measures could be detailed. As a supplement to these options, the Secretariat advised that it was continuing to work on the means to provide interactive national profiles on the CITES website (e.g. containing information on stricter domestic measures and other aspects of CITES implementation) which could be maintained by the respective countries. Noting that the provision of information on stricter domestic measures was useful but that it should not place a burden on Parties or the Secretariat, and should be voluntary in nature, the Standing Committee agreed that it

would be useful for the Secretariat to initiate in the future a portal or Web-based system for Parties to provide information on their stricter domestic measures on a voluntary basis.

9. Many Standing Committee members expressed support at SC62 for the activities and recommendations of the Working Group and the Committee recommended that the Working Group be continued until the 17th meeting of the Conference of the Parties.

Recommendations

10. It is recommended that the Conference of Parties adopt the proposed amendments to Decision 14.28 (Rev. CoP15), Decision 14.29 (Rev. CoP 15) and Decision 14.30 (Rev. CoP15) contained in Annex 1 to this document.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat recommends that the Conference of the Parties adopt the draft decisions contained in Annex 1 to the present document.
- B. As explained in paragraph 8 of the present document, the terms of reference contained in Annex 2 [i.e. for the consultancy envisaged in Decision 14.30 (Rev. CoP15)] will not require an inventory of current stricter domestic measures adopted by Parties.
- C. As external funds for the above-mentioned consultancy have already been identified and need to be committed quickly, the consultancy envisaged under Decision 14.30 (Rev. CoP15) will have been initiated before the present meeting.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

Proposed amendments to Decision 14.28 (Rev. CoP15),
Decision 14.29 (Rev. CoP15) and Decision 14.30 (Rev. CoP15)

NB: Text to be deleted is ~~crossed-out~~. Proposed new text is underlined.

Directed to Parties

14.28 (Rev. ~~CoP15~~ CoP16)

Parties with stricter domestic measures and reservations should review them, as and when appropriate, in order to determine whether they are effective and necessary in order to achieve the objectives of the Convention to ensure that trade in wild fauna and flora species is not detrimental to their survival.

Directed to the Standing Committee

14.29 (Rev. ~~CoP15~~ CoP16)

The Standing Committee shall continue ~~the its~~ its Working Group on Multilateral Measures, ~~established at its 57th meeting, which, until the 17th meeting of the Conference of the Parties. Operating by electronic means, the Working Group should:~~

- a) review and, if necessary, revise any consultancy report produced under Decision 14.30 (Rev. ~~CoP15~~ CoP16);
- b) organize, with the help of the Secretariat, a meeting with representation from all CITES regions to discuss the above report; and
 - c) based on the report of the meeting mentioned above, consider the need to draft for consideration at the ~~46th~~ 17th meeting of the Conference of the Parties any revised or new resolutions.

Directed to the Secretariat

14.30 (Rev. CoP15 CoP16)

The Secretariat shall, if external funds are made available for the purpose:

- a) ~~hire a consultant to prepare a report, in accordance with the Terms of Reference attached to this Decision, on ways to assess whether:~~
 - (i) ~~the Resolutions of the Conference of the Parties are implemented by all Parties as consistently as possible and whether there is a need to clarify, revise or repeal them; and~~
 - (ii) ~~the scope for multilateral CITES processes that reduce the need by Parties for recourse to stricter domestic measures and reservations should be further developed; and~~
- b) assist the Standing Committee in organizing the meeting mentioned in Decision 14.29 (Rev. ~~CoP15~~ CoP16).

Terms of Reference for the consultancy envisaged in Decision 14.30 (Rev. CoP16)

1. Assessment as to whether the Resolutions of the Conference of the Parties are implemented by all Parties as consistently as possible and whether there is a need to clarify, revise or repeal them.

a) identification of the Resolutions that are implemented inconsistently and the reasons for deviations from the provisions of the Resolutions.

Recommended approach: The consultant to be appointed by the CITES Secretariat will analyse biennial reports submitted to the Secretariat and identify Resolutions that are implemented inconsistently or provide challenges in terms of implementation. The following key issue must be identified by the consultant:

i) Reasons for deviation from the provisions of the Resolutions,

ii) Challenges experienced in terms of implementation, and

iii) Reasons for implementing stricter domestic measures

Where required, further consultation with CITES Parties relating to the above will be undertaken.

Existing documents to be reviewed by the consultant include document CoP14 Doc. 17. Based on information contained in document CoP14 Doc. 17, the following Resolutions have been identified by the members of the Working Group and should form part of the assessment to be conducted by the Consultant:

<u>Resolutions</u>
<u>Resolution Conf. 4.22 (Proof of foreign law)</u>
<u>Resolution Conf. 6.7 (Interpretation of Article XIV, paragraph 1 of the Convention)</u>
<u>Resolution Conf. 10.16 (Rev.) (Specimens of animal species bred in captivity)</u>
<u>Resolution Conf. 10.19 (Rev. CoP14) (Traditional medicines)</u>
<u>Resolution Conf. 10.20 (Frequent cross-border movements of personally owned live animals)</u>
<u>Resolution Conf. 11.3 (Rev. CoP15) (Compliance and Enforcement)</u>
<u>Resolution Conf. 11.11 (Rev. CoP15) (Regulation of trade in plants)</u>
<u>Resolution Conf. 11.18 (Trade in Appendix-II and -III species)</u>
<u>Resolution Conf 12.3 (Rev. CoP15) (Permit and certificates)</u>
<u>Resolution Conf. 12.10 (Rev. CoP15) (Registration of operations that breed Appendix-I species in captivity for commercial purposes)</u>
<u>Resolution Conf. 13.6 (Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens)</u>
<u>Resolution Conf. 13.7 (Rev. CoP14) (Control of trade in personal and household effects)</u>
<u>Resolution Conf. 13.10 (Rev. CoP14) (Trade in alien invasive species)</u>

In instances where Working Groups have been established to discuss specific matters, for example the Working Group on personal and household effects, the consultant should obtain all relevant information from the Chairperson of the Working Group.

- b) Identification of the Resolutions that require clarification, revision or repeal and make recommendations relating to the appropriate action to be taken. Substantiation of the recommendations made relating to clarification, revision or repeal.

Based on the assessment referred to in subparagraph a) above and the key challenges identified by the Working Group, Resolutions that require clarification, revision or repeal will be identified by the consultant and recommendations made relating to the appropriate action to be taken.

The Working Group identified the following challenges relating to the uniform application or implementation of Resolutions:

- i) Lack of knowledge about existing Resolutions and the provisions contained in Resolutions;
- ii) Complex issues and concepts are difficult to understand and interpret, especially in the absence of definitions or interpretation guidelines;
- iii) Difficulties experienced by Parties to implement provisions contained in Resolutions due to limited resources available;
- iv) Different interpretation of provisions or requirements by Parties. Some Parties may interpret a provision in a strict manner, while another may interpret it with greater leniency, resulting in differences in implementation; and
- v) Conflicting provisions in different Resolutions; or non-alignment between separate Resolutions that address similar matters.

2. Assessment as to whether the scope for multilateral CITES processes that reduce the need by Parties for recourse to stricter domestic measures and reservations should be further developed.

- a) Give examples of stricter domestic measures, i.e. legislation, directives and policies. Solely for purposes of the consultancy, and not for the purpose of serving as a definition of the measures provided for under Article XIV, paragraph 1(a), of the Convention, 'stricter domestic measures' means:

Domestic measures (legislation, regulations, decrees, policies, directives, notices, etc.) adopted by a Party regarding conditions or restrictions for international trade, taking, possession or transport of specimens of species included in the Appendices, or the complete prohibition thereof, which extend over and above the requirements of the Convention for that species.¹

- b) Identify current stricter domestic measures

A list of Parties which do / do not accept certificates of ownership (in relation to frequent cross-border movements of personally owned live animals); and, various Notifications to the Parties contain detailed descriptions of Parties' stricter domestic measures. However, a comprehensive list of stricter domestic measures is not available on the CITES website. The consultant should provide information or recommendations which could assist the Secretariat to initiate in the future a portal or Web-based system for Parties to provide information on their stricter domestic measures on a voluntary basis.

- c) Use of a case study approach to determine stricter domestic measures currently in place in selected countries and the scope and rationale for these measures, including divergence and convergence in stricter domestic measures between different countries.

¹ This definition is intended to encompass only those stricter domestic measures with strong relevance to the conservation of the species through the mitigation of impacts resulting from international trade in those species.

The consultant will conduct case studies relating to stricter domestic measures currently in place. The Working Group recommended that at least two case studies be conducted, one involving a major importing country's stricter domestic measures, and one involving a major exporting country.

- d) Review of current information on reservations entered by Parties (e.g. available on the CITES website).

Consultant to analyse information on the CITES website relating to reservations entered by Parties and collate a report relating to the Reservations currently in place. Other sources of information and relevant studies conducted should also be referenced.

- e) Analysis of current multilateral measures and their appropriateness / potential to address Parties requirements that currently result in stricter domestic measures or reservations.

Based on the information contained in various documents relating to stricter domestic measures and discussions in the Working Group, it seems as if the existing measures, especially Resolutions and the process to review and amend these, assist in providing the means to obtain uniform implementation, but the provisions in the Resolutions must be aligned with the basic requirements in the text of the Convention (and not add additional burdens on Parties); Resolutions must be clear (unambiguous); definitions should be provided, where appropriate; guidelines should be developed, where needed (complex matters); capacity building should be provided in some instance; consistent alignment between Resolutions are required; and bilateral discussions should take place to address different interpretation of provisions.

Special care / consideration should be given to stricter domestic measures that result in complete / nearly complete closure of markets AND may conflict with processes already agreed in CITES (Periodic Review / Review of Significant Trade, etc).

With due consideration of information collated through the process, including Notifications and reports, the consultant should analyse the current multilateral measures and their appropriateness and make recommendations relating to their potential to address Parties challenges relating to uniform implementation of the Convention.

- f) Recommendation, if appropriate, of the amendment of current, or the development of alternative, multilateral measures that could assist or facilitate cooperation between Parties and reduce the need for stricter domestic measures or reservations.

Recommendations to be developed, if required, based on the analysis to be done in terms of paragraph v. It is anticipated that the amendment of current measures and development of new measures will be continuous processes as already observed in terms of the Resolutions adopted by the Conference of Parties to CITES.