

**A CHECKLIST FOR REVIEWING CITES LEGISLATION**

The following is a working checklist of provisions that must, should or could be included in a law or act to implement CITES. These include provisions that are required under the text of the Convention, along with provisions that the Conference of the Parties has recommended through the adoption of resolutions.

This checklist has been derived from the Resolutions of the Conference of the Parties and the Guidelines for Legislation to Implement CITES<sup>1</sup>.

General Considerations

1. It is essential that any national law contain a general clause empowering the government to control international trade (and also domestic trade, possession and transport) in any species of animal or plant for conservation purposes.
2. There should be a more specific provision prohibiting the import, export, re-export, and introduction from the sea of specimens listed in the schedules of the law other than in accordance with the provisions of the law or any of its implementing regulations.
3. It is essential for effective implementation of CITES that the taking and possession of and domestic trade in all indigenous species listed in the CITES appendices be regulated by national legislation.
4. It should be clear that CITES legislation should be binding on all government departments.
5. It should be made clear in the law or act that it is in addition to other domestic measures, wildlife laws, Customs, public health etc., and that nothing in the legislation affects the operation of these other laws.
6. It is recommended that as much as possible, detailed rules on the implementation of CITES be in ancillary regulations, and that the main legislation itself should be limited to laying down general rules, designation and role of Management and Scientific Authorities, enforcement agents, prohibitions, definition of infractions and penalties and granting powers for confiscation, as well as a general power for the government to make regulations as necessary.

Field of Application

7. The legislation must apply to all animal and plant species, including their parts and derivatives, listed in all three CITES appendices.
8. It is recommended that CITES implementation legislation include three schedules containing the species listed in Appendices I, II, and III and that these schedules be amended as soon as amendments to the appendices have come into force (there should be a mechanism in the legislation or

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<sup>1</sup> Shine C. and de Klemm, C. (1999). *Guidelines for Legislation to Implement CITES*. IUCN (Second edition), Gland, Switzerland and Cambridge, UK. Unpublished.

regulations to allow this). Other schedules may be used for non-CITES species the country may wish to include specifically within its trade controls.

9. It is essential that nomenclature adopted by the Conference of the Parties be followed in any listing of species in the legislation.
10. Non-CITES species may be covered by the legislation, as a stricter domestic measure. However, the distinction between CITES and non-CITES species must somehow be made, to avoid confusion and enforcement difficulties for both exporting and importing countries. Non-CITES species should be included in a separate schedule, or under separate regulations, making it clear that the permits required for these shall not be CITES permits.
11. Parties may wish to apply stricter controls. For instance, the legislation might specify that import permits are also required for specimens of Appendix-II species, or for conservation reasons some native species might be included in a stricter schedule than its corresponding CITES listing.
12. The Convention definition of 'specimen' should be used in the legislation, and parts and derivatives must be included.
13. Trade controls should apply to any specimens which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances to be parts or derivatives of CITES species, unless they are specifically exempted from the provisions of the Convention (the exemptions should be listed).
14. The definition of 'introduction from the sea' in the text of the Convention should be used.
15. Import may be interpreted several ways and requires clarification, but the introduction of specimens under any Customs procedure other than transit and transshipment should be considered as an import in the sense of the Convention.
16. Definitions of transit and transshipment should be provided in the legislation, and these should follow Resolution Conf. 9.7 (Rev. CoP15). Transit or transshipment should refer only to specimens that remain in Customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic (Resolution Conf. 9.7).
17. Resolution Conf. 9.7 also recommends that Parties adopt legislation allowing them to seize and confiscate specimens in transit or being transshipped without valid export documentation or proof of the existence thereof.
18. The Convention should be applied to the whole of the territory over which the Party has sovereignty.
19. It is necessary, to avoid all possible doubts, to state that the legislation is applicable to trade in CITES specimens with any country, whether a Party or not.

### Management and Scientific Authorities

20. The Management Authority should be the body designated to grant the permits and certificates required under the Convention.
21. The Scientific Authority should be an independent scientific body designated to advise the Management Authority in all matters for which this advice is required by the Convention. The tasks of the Scientific Authority, as outlined in Resolution Conf. 10.3, should be clearly spelled out in the legislation. Note - the Scientific Authority should have a right of veto on CITES exports where these may endanger the survival of the species concerned, and this should be reflected in the legislation.

### Permit Requirements

22. The normal conditions relating to the granting of permits and certificates for the import, export, re-export or introduction from the sea are laid down in Articles III, IV and V of CITES. However, legislation is necessary to lay down in more detail the conditions and procedures that must be observed by Management Authorities, including, where appropriate, the taking of stricter measures than those required under CITES. The legislation should therefore contain basic rules on the issuing of permits for trade in all species listed in the appendices/schedules.
23. Legislation should specify that, subject to the conditions of the Convention and the legislation, the Management Authority may at its discretion grant or refuse a permit, or grant a permit subject to conditions. (The Management Authority should always be free to deny a permit, but in granting a permit it has to comply with CITES and the legislation.)
24. Legislation should state that any specimen to be exported or re-exported, or to be traded, must not have been obtained in contravention of the law.
25. For re-exports, it is an obligation that the Management Authority be satisfied the specimen was imported in accordance with the provisions of CITES.
26. The Management Authority, for export or re-export, must be satisfied that any living specimen will be prepared and shipped so as to minimize the risk of injury, damage to health or cruel treatment. Mention of the CITES guidelines for transport of live specimens and the IATA air transport guidelines can be incorporated into the legislation.
27. For specimens of Appendix I species, an import permit must be issued before an export permit is granted. This can be stated in the national legislation to avoid misunderstandings.
28. The legislation of any State should distinguish between Appendix-III species that have been listed at the request of that State and those which have been listed by other Parties.
29. Quotas may be set in legislation, or by the Management Authority or the Scientific Authority if the legislation empowers it to do so. The legislation should provide that no export permits shall be granted after the quota has been reached.

### Form and Validity of Permits and Certificates

30. It is recommended that legislation require permits to be in any form prescribed by regulations, or by the Management Authority. A model of the required permit form should be appended to the regulations. The regulations should specify in detail all the information which should be included in the permits and certificates (see Resolution Conf. 12.3 (Rev. CoP16)). The permit form should follow that recommended in Resolution Conf. 12.3 (Rev. CoP16).
31. The period of validity of permits should be specified in the legislation (export and re-export permits are valid for import purposes only if presented within six months of issue at the most; the validity of import permits should not exceed twelve months). Note: there may be exceptions made for permits for timber species, provided that Article VI, paragraph 2 is respected.
32. The legislation should specify that a separate permit or certificate is required for each consignment of specimens (this is an obligation under Article VI.5).
33. The following are useful requirements that may be added to the legislation:
  - a. include procedures for permit applications and application forms.
  - b. empower the Management Authority to require applicants to provide necessary information.
  - c. institute fees for processing applications and issuing permits and certificates.
  - d. describe procedural requirements, like surrendering permits to Customs or returning unused permits to the issuing authority etc.
  - e. describe the non-transferability of permits
  - f. make retrospective permits unlawful except in specified circumstances (see Resolution Conf. 12.3 (Rev. CoP16)).
  - g. penalize fraudulent permit applications.
34. Legislation should specify that all permits and certificates issued shall comply with the legislation (and its regulations) and that any breach of this condition will automatically invalidate the document. The legislation could require a statement of this condition to be included on all permits and certificates.

### Revocation, Modification and Suspension of Permits

35. The Management Authority must be empowered to amend, suspend or revoke permits or certificates as might be required, and the procedure for revocation, modification or suspension of permits should be laid down in regulations as a guarantee against arbitrary decisions.
36. The Management Authority or other competent authority, including the courts, should be empowered to disqualify a person, temporarily or permanently, from obtaining a permit or certificate. This may constitute an effective deterrent to unlawful trade.
37. The legislation should provide for the possibility to appeal against decisions of the Management Authority relating to permits, attached conditions, disqualifications etc.

## Exceptions to Permit Requirements

38. No derogation other than those allowed for under Article VII of the Convention is allowed. If any of the possible derogations or special provisions in that Article are allowed for in the legislation, their definitions should be included in the legislation, such as for 'pre-Convention' and 'bred in captivity' (the latter should follow that given in Resolution Conf. 10.16 (Rev.))

Note: As these definitions may change as a result of Resolutions, it might be best to include details of these in implementing regulations, and only include a reference to them in the legislation itself.

39. The export of pre-Convention specimens must be prohibited except under a pre-Convention certificate issued by the Management Authority. There should also be a procedure to register such specimens with the Management Authority within a certain time after the date on which the Convention became applicable to them. Also, provision should be made to empower the competent authority to order that registered specimens be marked.
40. A definition of 'personal or household effects' should be included in the legislation. It is important to note that Article VII.3 specifies when the derogation does not apply. It is recommended that legislation follows Resolution Conf. 13.7 (Rev. CoP16)
41. Captive breeding for commercial purpose should follow the guidelines laid out in Resolution Conf. 12.10 (Rev. CoP15).
42. Legislation should require export permits for captive-bred Appendix-I specimens of live animals for commercial purposes, and certificates of captive-breeding for all others.
43. Legislation should provide a licensing procedure for commercial operations, requirements that captive-breeding operations keep records, and provide for the Management Authority or other competent authority to inspect premises and records, ask for information, mark specimens as necessary, and revoke licences or cancel registrations when offences have been committed or when conditions of the licence or registration have not been fulfilled.
44. The definition of "artificially propagated" in Resolution Conf. 11.11 (Rev. CoP15) should be incorporated into legislation. However, as this may change at meetings of the Conference of the Parties, the law can refer to the CITES definition or to CITES resolutions.
45. Exchange of scientific material should follow Article VII.6 of the Convention and Resolution Conf. 11.15, and legislation should provide for the registration of institutions. The Scientific Authority should be empowered to advise on registration standards.
46. For travelling zoos, circuses and travelling exhibits, Article VII.7 and Resolution Conf. 12.3 should be followed, requiring that captive-bred and pre-Convention animals are registered with the Management Authority that issued the documents.

47. Legislation should empower the Management Authority to mark any CITES specimen if required. The legislation should state that any person who alters, defaces, erases or removes a mark shall be guilty of an offence.

#### Border Controls

48. The requirement that relevant CITES documents be presented at the time of export/import must be in the legislation. Documents should have to conform with the prescriptions of CITES before being accepted. The authority competent to check the documents and consignments should be clearly designated in the legislation. In the case of transit or transshipment, the authority should also require the presentation of the relevant permits or certificates.
49. Legislation should provide for the Management Authority to refuse to accept permits from exporting countries when they have reasonable grounds to do so, for example if it appears that substantial irregularities have taken place. Legislation could require import permits for Appendix-II and -III species (as a stricter domestic measure), to enable the Management Authority to determine the validity of documents before the specimens enter the country.

#### Control of Consignments and Permits

50. The legislation should prohibit the possession, transport, sale, offering for sale, and purchasing of any specimen of CITES-listed species that has been imported, introduced from the sea or taken from the wild without the required permits. The onus of proof of legality should fall on the owner or trader.
51. Legislation should empower the Management Authority or any other authorized body to proceed with any required investigation and to detain specimens where there are reasonable doubts on their identification, pending the results of other investigations.
52. Legislation should specify the ports of exit and ports of entry at which specimens must be presented for clearance.
53. Legislation should make seizure mandatory whenever there are reasonable grounds to believe a transaction is in violation of CITES.
54. Legislation should empower the Management Authority to cancel and retain the export permit or re-export certificate and any corresponding import permit presented for the import of a specimen. Provision should also be made for the cancellation and retention of permits and certificates that have been refused when the specimens are presented for import.

#### Control of Traders, Possession, and Domestic Trade

55. Legislation should prohibit the possession, trade and transport of unlawfully imported or acquired specimens.
56. Legislation may include a requirement that traders exporting or re-exporting CITES specimens keep a register of all transactions, and that the Management Authority may inspect the register and the premises of the trader at any time.

### Enforcement and Penalties

57. Legislation must prohibit and make it an offence to import or export specimens in violation of the provisions of the Convention (i.e. without appropriate/valid permits) and should prohibit and make it an offence to trade in, or possess, or both, specimens that have been imported in violation of the Convention.
58. The departments and agents responsible for enforcement of CITES and any implementation legislation must be clearly designated in legislation.
59. The powers of enforcement officers need to be clearly established by the legislation. These powers may include powers to search persons, baggage or other property and vehicles; powers to search premises (may require powers to request a warrant); powers to request information, to inspect documents, and to take samples for identification purposes; powers to seize specimens where illegalities are suspected; and powers of arrest.
60. The legislation should clearly mention the activities which are prohibited. At minimum this should include import/export of CITES specimens without a permit; use of invalid documents; and possession of and/or trade in specimens illegally imported.
61. If possible, offences committed by corporations relating to trade in CITES specimens should be made punishable by national legislation.
62. Attempts to commit an offence as well as aiding and abetting the committing of an offence under the legislation should also be punishable offences.
63. Legislation must provide for the confiscation or return to the State of export of all illegally traded specimens.
64. Penalties outlined in the legislation must be high enough to constitute an effective deterrent.

### Disposal of Confiscated Specimens

65. Refer to Resolution Conf. 10.7 (Rev. CoP15) for details. It is recommended that legislation allow for the costs of returning confiscated live specimens to the country of origin or re-export to be charged to the guilty importer and/or carrier.

### Acceptance and Refusal of Foreign Permits

66. The legislation must empower the Management Authority to refuse invalid foreign permits.
67. Legislation should specifically mention that only valid export permits from exporting countries shall be accepted.
68. Legislation should provide that a permit issued in violation of the law of the exporting country is invalid when presented in an importing country (or if any condition which may be attached to it has not been complied with).

## Reports

69. The preparation and submission of annual reports and biennial reports on legislative measures as required by Article VIII.7 should be listed in the legislation as one of the duties of the Management Authority. A listing of the due date for the annual report would be useful to include in the law (this is 31 October for the report on the previous year, as per Resolution Conf. 11.17).

## Financial Matters

70. It may be useful to include in the legislation funding mechanisms for supporting the authorities, i.e. funds from selling security stamps, permit forms, proceeds from fines etc. The legislation should specify that these funds should be used to finance the operation of the Management and Scientific Authorities.

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