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### **Joint Session of Trade and Environment Experts**

#### **EXPERIENCE WITH THE USE OF TRADE MEASURES IN THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES (CITES)**

*Attached is the revised study on CITES, incorporating the final amendments agreed by the Joint Session at its April 1997 meeting. It was also the wish of the Joint Session that this document be de-restricted by written procedure. Accordingly, in the absence of any written comment by Delegations by 15 May 1997, it will be de-restricted under the responsibility of the Secretary-General.*

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## TABLE OF CONTENTS

Introduction.....	5
I. The environmental context.....	5
II. The trade measures.....	12
A. In the Convention.....	12
B. As they are evolving.....	16
C. As implemented nationally .....	19
a) Australia.....	19
b) Canada .....	19
c) European Union .....	20
d) Japan.....	21
e) United States.....	21
III. Objectives of the trade measures .....	25
A. Primary objective .....	25
B. Secondary objectives.....	25
C. Other objectives, as they have been evolving.....	26
IV. Combating non-compliance and illegal trade.....	28
A. Non-compliance.....	28
B. Illegal trade .....	29
V. Addressing developing country concerns .....	34
VI. Assessing effectiveness of the trade provisions .....	38
A. Primary considerations .....	39
a) Formal and institutional effectiveness.....	39
b) Compliance: reporting and enforcement .....	41
c) Environmental: change in the conservation status of species subject to trade measures .....	42
B. Other effectiveness considerations .....	46
a) International co-operation.....	46
VII. CITES and the multilateral trading system .....	49
A. Introduction.....	49
B. Relevant CITES measures.....	49
C. Key provisions under GATT 1994.....	50
a) Obligations relating to quantitative restrictions .....	50
b) Non-discrimination obligations.....	50
c) General Exceptions.....	51
D. Other relevant considerations .....	51
E. Conclusions .....	52
VIII. Concluding remarks .....	54
END NOTES .....	56

**Diagrams**

1.	Structure of CITES bodies .....	11
2.	Specimens of Appendix I species: tradable or not tradable? .....	23
3.	Trade in CITES-listed plants: wild, artificially propagated and hybrids .....	24

**Graph**

CITES Parties and participation at CoP meetings.....	39
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**Text Boxes**

1.	Typology of CITES-related trade measures .....	15
2.	Abuse of CITES trade measures: forgery, smuggling and laundering .....	29
3.	Enforcing CITES: stings, seizures and sentencing.....	31
4.	CITES-related multilateral co-operation .....	36

**Tables**

1.	Wildlife trade for heavily traded specimens .....	7
2.	Commercial captive breeding operations (Appendix I species).....	14
3.	CITES mechanisms of flexibility: quotas, ranching and split-listings .....	17
4.	Black market values for wildlife .....	33
5.	Training seminars conducted by the CITES Secretariat .....	35
6.	CITES non-Parties and WTO membership .....	40
7a.	Transfers of taxa between Appendices I and II.....	45
7b.	Deletions of taxa from Appendices I and II	
8.	CITES environmental effectiveness: conclusions of species specialists .....	48

**ACRONYMS AND ABBREVIATIONS**

CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoP	Conference of the Parties
ERM	Environmental Resources Management
GATT	General Agreement on Tariffs and Trade
GEF	Global Environment Facility
INTERPOL	International Criminal Police Organisation
IUCN/SSC	World Conservation Union/Species Survival Commission
MEA	Multilateral environmental agreement
NIS	New Independent States
NGO	Non-governmental organisation
TRAFFIC	Trade Records Analysis of Flora and Fauna in Commerce
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WCMC	World Conservation Monitoring Centre
WTO	World Trade Organization
WWF	World Wildlife Fund for Nature

## Introduction

1. The use of trade measures in multilateral environmental agreements (MEAs) has long been an important element of the Joint Session's work programme. Following the May 1995 Joint Session report to OECD Ministers, a lengthy passage of which deals with MEAs, the group decided to continue its analysis of these issues by examining the actual experience with the use of trade measures in a number of MEAs. In June 1996, the Joint Session examined a summary of the Royal Institute of International Affairs study on International Trade and the Montreal Protocol. The study was appreciated by Delegations and it was decided in pursuing this work programme item that the general approach taken by the RIIA study would be emulated. A general outline for the other studies was so developed and appears as Annex 1 to the June 1996 Joint Session Summary Record [COM/ENV/TD/M(96)103]. The attached study on CITES is the first in this series.

2. At the ninth meeting of the Conference of the Parties, held in Ft. Lauderdale, USA in 1994, the CITES Parties decided to commission a study on how to improve the effectiveness of CITES. The study<sup>1</sup>, based on a questionnaire developed under the guidance of a Monitoring Group of the CITES Standing Committee and then processed, analysed and drafted by Environmental Resources Management (ERM), was turned over to the Standing Committee at its December 1996 meeting. Apart from specific suggestions which could be put into effect immediately by the CITES Secretariat, the Standing Committee, in turn, decided to refer the other recommendations, and particularly those on important policy issues, to the tenth meeting of the Conference of the Parties to be held in Harare, Zimbabwe in June 1997. When reference is made to the ERM study below, a distinction is drawn between its policy recommendations, which have not yet been decided by the Parties, and other information gathered in the course of the review by ERM, particularly the analysis of Parties' responses to the questionnaire.

### I. The environmental context

3. Biological diversity has been defined as the number, variety, and variability of all living organisms in terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they form part. Although difficult to quantify, the benefits biodiversity offers to human society are extensive. Vital ecosystem functions such as, *inter alia*, carbon exchange, watershed flows of surface and ground-water, the protection and enrichment of soils, and the regulation of surface temperature and local climate, are rendered possible through biodiversity. Furthermore, biodiversity is the source of many of the world's products, including foodstuffs, fibres, pharmaceutical products and chemicals. As the basis for the improvement of crop and livestock varieties, biodiversity also constitutes a fundamental input to biotechnology. Finally, biodiversity is usually associated with "intangible" or non-monetary values, whether aesthetic, cultural or scientific.

4. The decline in biodiversity levels, and implications for the continued habitability of the planet, are widely-recognised phenomena. Assessing how fast species are becoming extinct is rife with difficulties -- mainly due to the uncertainty surrounding the actual number of living species.<sup>2</sup> At the same time it is recalled that extinctions are natural phenomena and are not per se cause for alarm. As fundamental components of biodiversity, wild plant and animal species are subject to varying pressures including:

- loss of natural habitats, which is usually associated with the conversion of high diversity land, for instance natural forests, into land used for agriculture;

- introduction of new species into natural ecosystems, which may translate into new pests and diseases as well as increased competition between new and native species;
- over-exploitation of species, including through subsistence use, domestic commercial use and international trade, and
- pollution and global environmental change.

5. Due to the complex interaction between these and other, less-obvious factors such as the homogenisation of agricultural systems based on few species, the causes of species extinction are overly diffuse and difficult to identify. However, it is estimated that habitat loss plays the predominant role in the extinction of wildlife. One study estimates that 68 per cent of all endangered mammal species and almost 80 per cent of endangered reptiles and fish are threatened by the destruction or alteration of their habitats. The direct role of international trade is generally less significant in species extinction relative to other factors, particularly habitat loss, introduction of alien species to new ecosystems and domestic commercial use.<sup>3</sup>

6. As an earlier OECD study<sup>4</sup> pointed out, a few aspects of wildlife trade must be borne in mind when considering the pressure exerted by international trade on wild fauna and flora. First, the exploitation of wildlife for international trade is much less important than the domestic trade for the vast majority of wildlife species. Secondly, international trade consumes only a small fraction of the total species taken from the wild. Furthermore, although involving a multitude of species, most trade is concentrated on a few species. Finally, small relative to total trade flows, even for important individual trading countries, wildlife trade may be important for certain segments of the economy and overall for a few species.

7. Thus even if globally international trade is not the most important cause of biodiversity decline, the pressure of international demand as transmitted through trade is vital for a number of individual species -- and this is the situation that CITES mechanisms are designed to address. Examples include the poaching and trade in parts and derivatives of rhinos and the Siberian tiger and illegal extraction and trade in many parrot and macaw species. Causes other than international trade, such as agricultural policies including subsidies to ranching and land clearing have been prime factors responsible for deforestation in many countries<sup>5</sup>. But for certain high value timber species, extraction and trade are the primary causes. Thus, Brazilian rosewood (*Dalbergia nigra*) has long been used for inlays in musical instruments. In view of its being threatened with commercial extinction, it was placed on CITES Appendix I in 1992. Similarly, *Pterocarpus santalinus*, endemic to India, and exploited in large part for Japanese musical instruments, was listed at the ninth CoP meeting on Appendix II due to concerns about its conservation status.

8. In theory, (legal) international trade can also play a positive role in wildlife conservation. By maximising the economic value of the resource, trade provides commercial incentives for good management of the resource. This assumes, however, that property rights are clearly defined or that in the case of a common property resource good management regimes are in place -- conditions which in fact do not always hold.

9. The value of international wildlife trade (both legal and illegal) has been estimated<sup>6</sup> at between \$5 billion and \$8 billion, although such figures are difficult to arrive at<sup>7</sup> and substantiate. These figures do not cover fish and timber, the categories of wildlife for which trade is of greatest value; their inclusion would push these figures six to ten times higher. Only a few fish and timber species however are listed on CITES Appendices -- although interest has been growing to bring more of these commercially traded

species under CITES regulations. Among the most heavily traded categories of CITES-listed wildlife are live primates, parrots, and reptiles, reptile skins and orchids. As submitted by CITES parties and processed by the Wildlife Conservation Monitoring Centre in Cambridge, UK, data in the accompanying tables present an overview of net trade in volume terms (i.e. the larger of exports or imports minus the other) for these heavily traded groups of specimens for the three or four most important net exporters or net importers. But due, i.a. to late submission of annual reports and poor coverage of statistics in certain countries, these figures should generally be seen as minima. Year-to-year fluctuations are important for certain products, in some cases corresponding to introduction of policy measures. For example trade in live parrots is at less than half its level compared with the mid-1980s. This was largely due to restrictions on exports by Argentina and Indonesia and limits on imports into the US and the European Union, but a saturation of the consumer market and increases in domestic captive breeding, particularly in the US also contributed to declines in live parrot trade.

## CITES

10. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed in Washington on 3 March 1973 and today numbering 138 Parties, constitutes an attempt to reconcile international trade and species conservation. As one of more than 170 multilateral environmental agreements, CITES establishes an international legal framework for the regulation and restriction of trade in specimens of species of wild animals and plants.

11. The successful operation of CITES rests upon an evaluation of the impacts of international trade on the present and future status of the traded species. This evaluation, in turn, requires the availability of detailed scientific information in the form of, *inter alia*, the robustness of the traded species both locally and globally, the ecological significance of the traded species and its effect on other species, as well as the levels of exploitation and the effects of harvesting techniques on the traded species.

**Table 1. Wildlife trade in heavily traded specimens**

<b>World trade in live reptiles 1986-1994</b>									
	<b>(‘000)</b>								
<b>Country</b>	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>
<b>Net imports</b>									
<b>USA</b>	125	130	226	267	414	438	686	1,193	672
<b>EU</b>	48	66	77	124	70	125	87	118	101
<b>Japan</b>	12	4	7	31	29	64	63	78	77
<b>Hong Kong</b>	18	-	-	-	278	210	141	31	4
<b>Net exports</b>									
<b>Colombia</b>	-	-	1	8	189	161	283	410	446
<b>Togo</b>	24	33	64	75	98	111	98	100	70
<b>Suriname</b>	5	20	22	27	31	28	27	43	45
<b>Tanzania</b>	7	13	10	4	5	15	7	25	42
<b>Total trade</b>	216	220	350	439	824	879	1,013	1,527	870

**World trade in reptile skins 1986-1994**

Country	('000)								
	1986	1987	1988	1989	1990	1991	1992	1993	1994
<b>Net imports</b>									
Japan	641	869	950	1,327	1,514	955	1,158	599	813
Mexico	76	129	106	135	206	244	552	427	643
USA	884	1,184	1,641	1,996	1,415	466	759	897	265
Switzerland	144	110	158	162	193	85	148	80	171
Spain	881	768	627	270	316	232	88	216	159
<b>Net exports</b>									
Indonesia	3,081	2,008	3,032	3,466	1,306	1,320	1,972	1,036	853
Colombia	-	4	74	5	105	116	206	473	668
Malaysia	-	92	240	223	440	238	407	292	421
Argentina	1,152	1,420	1,773	2,464	1,919	771	887	758	138
Thailand	1,650	1,232	260	258	1,038	294	8	-	77
<b>Total trade</b>	<b>7,193</b>	<b>6,053</b>	<b>6,726</b>	<b>7,625</b>	<b>9,383</b>	<b>5,883</b>	<b>5,022</b>	<b>3,971</b>	<b>3,274</b>

**World trade in primates, 1986-1994**

Country	('000)								
	1986	1987	1988	1989	1990	1991	1992	1993	1994
<b>Net imports</b>									
USA	15.9	16.6	13.8	19.3	9.0	16.1	7.2	10.9	10.3
EU	9.0	9.1	11.8	12.1	8.0	6.7	7.8	6.6	7.2
Japan	4.8	3.8	7.1	4.2	6.0	6.3	8.0	5.7	5.4
USSR/Russian Fed (93-94)	2.9	1.8	1.7	1.6	1.6	1.7	0.4	0.5	1.4
<b>Net exports</b>									
Philippines	12.5	13.7	11.4	9.0	3.5	8.9	5.5	5.8	8.9
Mauritius	0.4	1.0	1.4	3.2	3.3	5.1	2.3	4.2	4.6
Indonesia	10.6	10.9	11.9	16.5	10.9	10.7	6.3	7.5	3.0
China	0.9	1.4	2.2	1.3	1.5	0.6	1.6	2.8	2.9
Tanzania	0.2	0.5	2.2	2.4	1.5	1.4	0.4	1.1	1.5
<b>Total trade</b>	<b>39.9</b>	<b>38.5</b>	<b>41.6</b>	<b>42.3</b>	<b>28.6</b>	<b>34.8</b>	<b>26.0</b>	<b>26.4</b>	<b>25.0</b>



**World trade in live Parrots, 1986-1994**

Country	('000)								
	1986	1987	1988	1989	1990	1991	1992	1993	1994
<b>Net imports</b>									
<b>EU</b>	172.5	199.2	199.5	226.0	200.4	201.7	129.6	120.7	141.6
<b>Japan</b>	27.9	36.6	35.1	12.7	38.5	41.1	50.9	67.0	74.3
<b>USA</b>	304.8	264.6	277.4	226.1	128.4	139.7	80.1	39.5	0.9
<b>Net exports</b>									
<b>Taiwan</b>	8.2	26.3	21.5	1.4	13.6	13.9	24.7	42.4	58.2
<b>South Africa</b>	-	-	-	-	-	0.7	4.3	24.2	33.9
<b>Senegal</b>	34.7	36.7	33.7	60.1	30.5	72.5	25.4	23.8	32.4
<b>Indonesia</b>	58.7	77.8	87.8	98.4	58.0	79.8	66.5	38.6	5.6
<b>Argentina</b>	178.0	151.0	179.8	171.5	77.1	70.2	37.6	17.8	5.1
<b>Total trade</b>	588.9	624.5	625.8	578.7	444.2	455.6	359.0	289.5	272.0

**World trade in orchids, 1990-1994**

Country	('000)				
	1990	1991	1992	1993	1994
<b>Net imports</b>					
<b>Korea Rep.</b>	548	808	140	273	344
<b>USA</b>	350	569	1 402	2 436	3 719
<b>Japan</b>	8 000	9 145	10 500	11 066	2 164
<b>Net exports</b>					
<b>Chinese Taipei</b>	1 505	1 984	2 861	3 854	15 438
<b>Thailand</b>	7 969	10 221	9 003	9 447	13 779
<b>China</b>	671	1 839	703	580	1 651
<b>Total trade</b>	10 665	14 544	13 268	14 368	34 316

Source: World Conservation Monitoring Center, Cambridge, UK

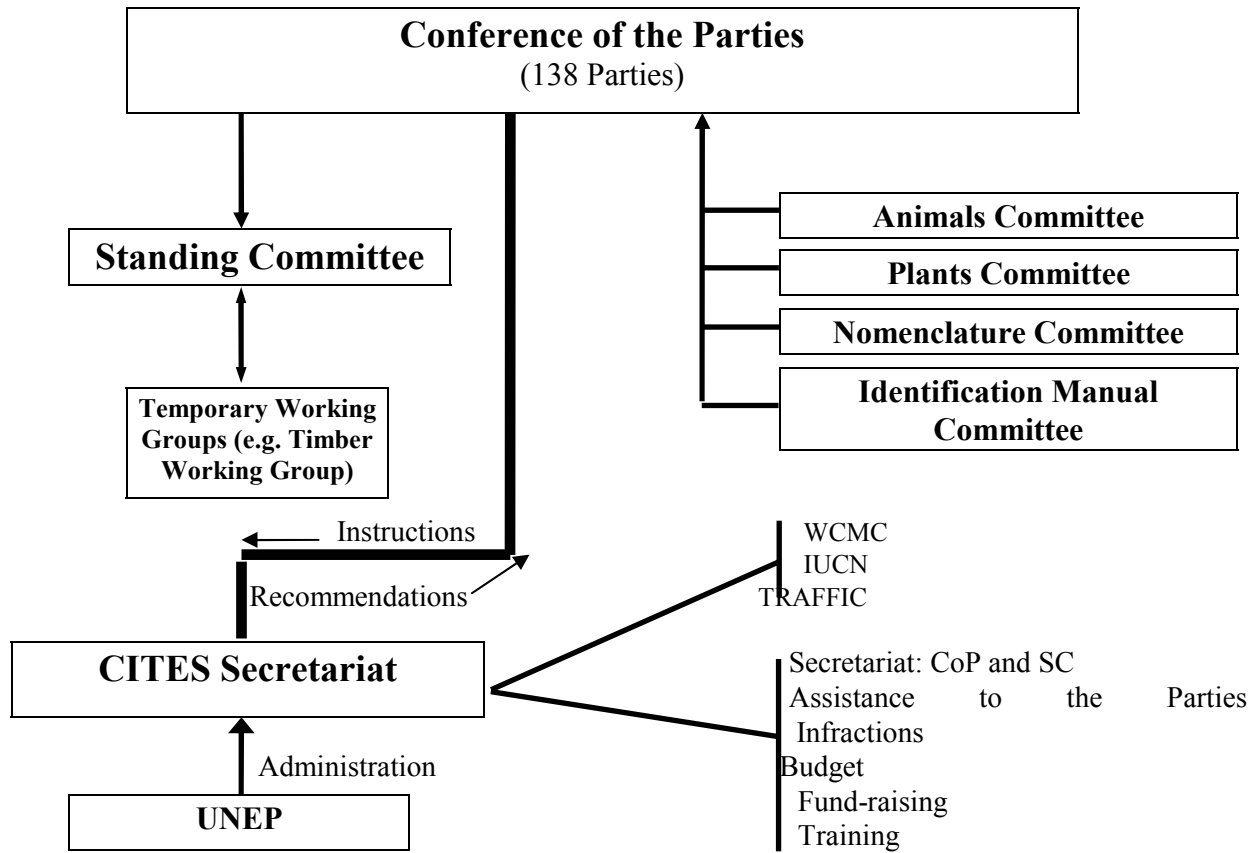
12. CITES regulates international trade in species of conservation concern through a system of permits and certificates required for the export, re-export, or import of wildlife and wildlife products. The degree of regulation applying to trade in particular animal and plant species depends upon the Appendix in which a species is listed.

13. The institutional structure of CITES has evolved considerably over the years. The Conference of the Parties (CoP), which meets about every two years, is responsible for adopting amendments to the Appendices, reviewing the progress made towards the restoration and conservation of the species included in these appendices, and making recommendations for improving the overall effectiveness of the Convention through Resolutions. A number of subsidiary bodies have been established which operate between the biennial CoP meetings. These bodies include the Standing Committee and several technical committees: Animals, Plants, Nomenclature and Identification Manual. (See the organisational chart in Diagram 1.)

14. The Standing Committee was established in 1979 as an advisory body providing general policy and operational direction to the Secretariat between the meetings of the Conference of the Parties. It has also evolved into the principal instrument for collective action regarding non-compliance, both within and outside of the CITES regime.<sup>8</sup> The Animals and Plants Committees are in charge of evaluating whether species are appropriately listed in each of the appendices of CITES and advising the Standing Committee on other technical issues. Concretely, both Committees have to monitor Appendix II species which are considered to be significantly affected by trade and assess all available biological and trade information in order to either exclude a species from the appendix or formulate recommendations for those species believed to be threatened by trade. In addition, the Animals and Plants Committees are entrusted with periodic reviews of species included in all of the Appendices in order to alert Parties to potential problems concerning the biological status of a specific species.

15. Since CITES is a non-self-executing treaty, its enforcement depends entirely upon the adoption of appropriate legislation in each adhering country. In order to enforce the provisions of the Convention, Parties must not only take a series of appropriate measures including those to prohibit trade in specimens violating the Convention, but also design legislation which penalises violations of the latter prohibition and provides for the confiscation of any specimens traded illegally. Parties are also required to designate one or more Management Authorities, responsible for granting the permits and certificates through which trade in CITES is regulated. Given the absence of a central international scientific authority, questions relating to the effects of trade on the status of a particular species are determined by national scientific bodies. Therefore one or more Scientific Authorities must also be designated, to fulfil a two-fold role: first, to decide whether or not to limit exports of a particular species in order to ensure the species' presence is at a level consistent with its role in the ecosystems and well above the level at which it would be eligible for Appendix I listing; and second, to provide advice to the Management Authority whether or not proposed trade in CITES-listed specimens will be detrimental to the survival of the species involved.

**Diagram 1. Structure of CITES**



Source: *CITES/C&M International Magazine*, May 1994

## II. The trade measures

### A. In the Convention

16. CITES performs the regulation and restriction of international trade in wild fauna and flora through a system of trade controls on the taxa listed in three Appendices. For each Appendix different rules apply, representing varying degrees of strictness designed to be proportionate to the degree of danger arising from over-exploitation through international trade. The trade controls are implemented through a system of export and import permits and other trade-related certificates. Thus,

- Appendix I includes species threatened with extinction and which are or may be affected by international trade. Accordingly, international trade in specimens of these species is subject to particularly strict regulation and authorised only in exceptional circumstances
- Appendix II includes species which are not necessarily now threatened with extinction but may become so unless international trade is subject to strict regulation. This appendix also includes “look-alike” species in order to prevent threatened species listed in this appendix from being internationally traded under the guise of non-threatened species similar in appearance.
- Appendix III includes species which are subject to regulation only within the jurisdiction of a Party and whose control requires the co-operation of other Parties.

17. **Appendix I** includes approximately<sup>9</sup> 600 animals and 300 plant species, which are threatened with extinction. Examples of Appendix I species are: for *mammals*: primates including the great apes; great whales; spotted cats; Asian and African elephants; rhinoceroses; *birds*: certain birds of prey, parrots and cockatoos; *reptiles*: tortoises; sea turtles; crocodylians; boas and pythons; *fish*: sturgeons; bonytongues; *molluscs*: mussels. *Plants* include certain orchids and cacti; and Brazilian rosewood.

18. Trade in Appendix I species for commercial purposes is prohibited. This ban, with limited exceptions, may be considered a double security approach: for international trade to take place, both a CITES import permit and export permit must be granted -- each subject to specific conditions. The various checks are illustrated below in Diagrams 2 and 3, respectively for live animals and plants. Perhaps the most fundamental question -- required by the Convention to be posed both on the importing and exporting side -- is whether the trade will be detrimental to the survival of the species. For international trade to take place in an Appendix I species, the presumption -- by definition of its listing -- is that this may well be the case, and that therefore the burden of proof is clearly to demonstrate that trade will not be detrimental to the survival of the species.

19. Only after the import permit has been granted may the export permit or (re-export certificate for live animals) be issued by the Management Authority of the (re-)exporting State. Here the national Authorities must also determine that the trade will not be detrimental to the survival of the species; that the specimen was legally obtained and that, for live animals, the specimens will be transported humanely.

20. Exemptions and special provisions are provided for in Article VII of the Convention and concern, for example, acquisition of the specimen before the Convention entered into effect for that species, personal effects, certain captive bred or artificially propagated specimens, use for scientific

institutions, etc. To benefit from the captive-breeding exemption, the commercial operations must, according to later decisions of the Parties, be registered with the CITES Secretariat. This latter exemption has mostly been used for crocodiles, falcons and Asian bonytongues. The species for which commercial breeding operations have been registered with the Secretariat can be found in Table 2.

21. **Appendix II** includes about<sup>9</sup> 4000 animals and more than 25000 plant species which are not necessarily now threatened with extinction but may become so unless trade is subject to strict regulation in order to avoid utilisation incompatible with their survival, as well as the 'look-alike' species, the control of which is necessary in order to bring the first group of species under effective control. Examples of Appendix II listings are cetacea, bears, cats or felines, hippopotamuses; diurnal birds of prey, parrots and related birds; crocodylians and monitor lizards; Asiatic cobras giant clams; cacti and orchids and carnivorous plants (in each case, except for taxa specifically listed on Appendix I.)

22. Trade in Appendix II species is governed by export permits (or re-export certificates), issuance of which is subject to both a finding of non-detriment and legal acquisition of the species. The granting of an import permit is not a condition, under CITES, for trading in Appendix II species.

23. **Appendix III** currently covers some<sup>9</sup> 200 animals and 6 plants, which are protected in a country having requested assistance of other CITES Parties in controlling the trade. Examples include certain gazelles from Tunisia; the sacred ibis from Ghana and *Swietenia macrophylla* (American mahogany) in Costa Rica. The permitting process differs according to whether exports originate in the listing country or in another range state. In the former case an export permit must be granted by the Management Authority following a finding that the specimen was legally obtained. But in order to enforce these controls, the same specimens from other exporting States must also be recognisable: to this end CITES rules require the Management Authority of any other Party exporting an Appendix III species to produce a certificate of origin.

24. Changes in coverage of Appendices I and II are decided by a two-thirds majority vote at each meeting of the Conference of the Parties (or rarely, through postal procedure). On the other hand, since decisions on Appendix III are purely national in character and do not require the agreement of the CoP, these are not necessarily tied to the CoP meetings, as they do not require a vote.

25. A Party may enter a *reservation* regarding any listing -- whether in Appendix I, II or III. In such a case, trade with this Party in this species is considered to be as with non-Parties. Trade with non-Parties is permitted only on the condition that these non-Parties provide documentation comparable to CITES permits and certificates. CITES Parties have come to define this requirement as formally designating a scientific and management authority with competence for CITES matters, and registering these with the CITES Secretariat. Since the eighth meeting of the CoP, it has been decided that trade in Appendix I species with non-Parties should be limited to special cases which benefit the conservation of the species.

26. Among OECD Members, Japan and Norway have entered reservations on cetaceans. Switzerland has reserved on a large number of carnivores, aves, amphibia and cacti listed on Appendix I. On Appendix II, Switzerland also holds the largest number of reservations, mostly on psittaciformes (parrots and related). On Appendix III species, several EU countries and Switzerland have entered reservations on the India-entered listings of certain foxes, weasels and the stoat.

**Table 2: Commercial captive breeding operations (Appendix I species) registered by the CITES Secretariat**

<b>Species</b>	<b>Date of Appendix I listing</b>	<b>Number of registered operations and examples of countries</b>
<i>Anas laysanensis</i> Laysan duck	1975	1 commercial captive breeding operation (DE)
<i>Branta sandvicensis</i> Hawaiian goose	1975	1 commercial captive breeding operation (DE)
<i>Falco rusticolus</i> Gyr falcon	1979	10 commercial captive breeding operations (mainly CA, DE)
<i>Falco jugger</i> Laggar falcon	1985	2 commercial captive breeding operations (DE)
<i>Falco peregrinus</i> Peregrine falcon	1977	15 commercial captive breeding operations (mainly CA, DE)
<i>Tragopan caboti</i> Blyth's tragopan	1975	1 commercial captive breeding operation (CA)
<i>Crocodylus niloticus</i> Nile crocodile	1975	3 commercial captive breeding operations (MG, MU, NA)
<i>Aratinga guarouba</i> Golden conure	1975	2 commercial captive breeding operations (GB, PH)
<i>Psephotus chrysopterygius dissimilis</i> Parrot	1975	1 commercial captive breeding operation (GB)
<i>Alligator sinensis</i> Chinese alligator	1975	1 commercial captive breeding operation (CN)
<i>Crocodylus moreletii</i> Morelet's crocodile	1975	1 commercial captive breeding operation (MX)
<i>Crocodylus porosus</i> Estuarine crocodile	1979	10 commercial captive breeding operations (mainly SG, TH, MY)
<i>Crocodylus rhombifer</i> Cuban crocodile	1975	1 commercial captive breeding operation (CU)
<i>Crocodylus siamensis</i> Siamese crocodile	1975	7 commercial captive breeding operations (mainly TH)
<i>Scleropages formosus</i> Asian bonytongue	1975	12 commercial captive breeding operations (mainly ID)

Source: CITES Secretariat training materials, CITES Notification No 940. (See Table 3 for list of country codes).

27. A distinction can be made between reservations taken to make a point of opposition to the listing of a species (as not qualifying biologically or legally), as is the case in most of the Appendix II and III reservations. On the other hand a reservation entered for an Appendix I species may be taken to allow continued trading in specimens of endangered, Appendix I species, or in some cases because the Party does not consider that the listing is useful for conservation of the species or that the ban on trade is enforceable. Since trade is allowed in Appendix II and III species in any case, reservations in these two cases take on the character of an expression of principle. Their practical significance can be questioned. On the other hand, entering a reservation on Appendix I species can have the effect of introducing trade in that species.

### Box 1. Typology of CITES-related trade measures

#### General measures:

##### Quantitative Restrictions

###### a) Ban

Trade in specimens of Appendix I species is banned for commercial purposes.

- **rhino horn and tiger parts**

##### Other non-tariff measures

###### b) Export/import permits

Import and export permits (and re-export certificates) are required for trade in Appendix I species. Whereas CITES only requires an export permit, most OECD countries also demand an import permit for Appendix II species.

###### c) Registration

Documents certifying specimens from authorised captive breeding operation or nursery replaces all or part of required trade permits; (but export permits still required for captive-bred specimens of App I species.)

- **falcons and orchids**

###### d) Marking

Product identification required to distinguish trade in specimens originating from captive breeding, artificial propagation, or approved ranching operations, from those taken in the wild.

- **universal tagging system** for crocodilian skins; **microchip implants** in live animals, etc.

#### Country-specific measures

##### a) Ban

i) National population of a species, Appendix I-CoP listed on basis of population dynamics

- **Mexico** *Antilocarpa americana* (pronghorn)

ii) Non-Parties

Trade with non-Parties is not allowed unless comparable documentation is provided and Scientific/Management Authorities are duly registered with CITES Secretariat

- **Burundi and United Arab Emirates:** hubs of illegal ivory trade during the 1980s

iii) Parties

Failure to implement Animal Committee recommendations based on significant trade review of Appendix II species may lead to call for suspension of trade in affected species (Res. Conf. 8.9).

- **16 countries'** exports of specific species were affected in 1993; trade suspensions were lifted on exports from **9 countries** between 4.93 and 2.96.

##### b) Quotas

i) Down-listing from Appendix I to Appendix II status when populations are adequately managed or scientifically based national export quota is set and then approved by CoP, thereby allowing for commercial trade in otherwise prohibited species.

- **East and Southern African countries'** Nile crocodile populations

ii) Voluntary export quotas set by range states and notified by Secretariat to Parties

- **Argentina and Paraguay** quotas on *Tupinambus* (Tegus lizards)

##### c) Sanctions on Parties for non-compliance

Single-, or multi-CITES species trade bans have on several occasions been recommended by the Standing Committee and implemented nationally as "stricter domestic measures".

- **Thailand:** complete trade ban in CITES-listed species recommended by the Standing Committee in 1991 due to the lack of adequate national legislation; lifted one year later
- **Italy:** lack of adequate national legislation, insufficient inspections by customs services, as well as issuance of documents contrary to the provisions of the Convention led the Standing Committee to recommend a ban on all CITES-related trade with Italy in 1992; suspended in 1993; lifted in 1995.

**B. As they are evolving**

28. As conceived by the CITES negotiators, the text of the Convention crystallises a relatively straight forward separation in degree of control proportionate to the degree of danger. But this soon had to be adapted, *inter alia*, in the recognition that certain species were probably overprotected by an Appendix I listing.<sup>10</sup> Parties have had recourse to a series of innovative techniques to introduce flexibility in the strict process of listing and the associated trade controls.

29. One of these is a system of *quotas* specific to the population of a species. The use of quotas had not been foreseen by the Convention negotiators to control trade in listed species. Another innovation concerns *ranching* -- also a concept not to be found anywhere in the CITES treaty. In other cases, innovation was shown by building on existing provisions in the Convention, e.g. the concept of *split-listing* made possible from the Convention definition of species, and distinctions concerning wild specimens and those which are *bred in captivity* or *artificially propagated*.

30. Thus, in view of the significantly improved situation of the leopard already in 1983, national quotas for trophies and skins for personal use were established. These quotas have grown since 1983 from 460 to over 2000 agreed in 1994 for the 11 range States involved. Currently annual export quotas for live specimens and hunting trophies of cheetah are granted for three African countries. Both the leopard and the cheetah remain on Appendix I, thereby for all practical purposes maintaining the ban on commercial imports.

31. A limited broadening of the quota system was introduced in 1985 with the adoption of general provisions for down-listing taxa to Appendix II. These included the use of the wildlife management tool of quotas, calculated on the basis of population surveys and requiring the approval by Parties for each species and each country. But this option was restricted to those species which had not been placed on Appendix I with the use of the original Berne criteria.

32. Although strictly speaking not a Convention measure, the use of *national export quotas* has developed considerably due to the introduction of the significant trade review and the Convention's use of primary and secondary recommendations for Appendix II species as foreseen by Resolution Conf. 8.9. (See paragraphs 59-61 below). Such national quotas may be totally voluntary or follow from recommendations of the Animals Committee. The Secretariat plays an important role of clearing house by communicating to all other Parties, the quotas set by national authorities for exports of species included in the CITES Appendices. When quotas are increased from one year to the next, the Secretariat is also authorised to request the Management Authorities of the country in question, the basis for the increases. It should also be noticed that such quotas may be set at a level of zero, thereby effectively becoming an export ban. The Secretariat's notifications of export quotas also include national export prohibitions for particular species which have been communicated by Parties.

33. The new exemption on *ranching*, introduced at the third Conference of the Parties in 1981, involved developing procedures to allow commercial exploitation of Appendix I species which had been taken from the wild. The Convention definition of 'captive bred' was too restrictive to allow trade in specimens reared in a controlled environment but which had been taken from the wild. Like the quota system devised for the leopard, this proposal was seen as a compromise between continuing full Appendix I protection for all populations of a given species and down-listing certain populations of a species for which successful conservation programmes would allow these species to be traded without detriment to the survival of the wild populations.



Table 3. CITES mechanisms of flexibility: quotas, ranching and split-listings

Species/Taxon	CITES Appendix (date of listing)	Population-specific "derogation" (year of introduction, CITES appendix, populations.)
<b>QUOTAS</b>		
<i>Acinonyx jubatus</i> (cheetah)	I (1975)	1992: BW, NA, ZW (all quotas under App I)
<i>Panthera pardus</i> (leopard)	I (1975)	1983: quota introduced by resolution of the CoP in BW, MW, MZ, TZ, ZM, ZW; now includes NA, ZA (all quotas under App I)
<i>Crocodylus niloticus</i> Nile crocodile	I (1975)	1985 (App II): CG, CM, KE, MG, MW; 1987 (App II): BW, MZ, SD (ret. to App I in 1992) 1990 (App II): ET, SO (returned to App I in 1994); 1992 (App II): UG, ZA;
<b>RANCHING</b> (all species under App II)		
<i>Crocodylus niloticus</i> Nile crocodile	I (1975)	1983: ZW; 1987: ZM; 1990: BW, MW, MZ; 1992: ET, KE, TZ; 1994: ZA
<b>SPLIT-LISTING</b>		
<b>FAUNA</b>		
<i>Balaenoptera acutorostrata</i> Minke whale	I (1986)	1986 (App II): popn of west Greenland
<i>Balaenoptera physalus</i> Fin whale	I (1977)	1977 (App II): stocks in N. Atlantic off Iceland and off Newfoundland; stock in area from 40°S to the Antarctic continent, from 120°W to 60°W; all populations uplisted in 1981
<i>Prionailurus bengalensis bengalensis</i> (Bengal leopard cat)	I (1975)	1985 (App II): CN; 1995 (App II): all popns except BD, IN TH
<i>Ceratotherium simum simum</i> Southern white rhinoceros	I (1977)	1995 (App II): ZA (live animals and hunting trophies only until CoP10)
<i>Vicugna vicugna</i> Vicuna	I (1975)	1987 (App II): parts of popns of CL & PE; 1995 (App II): other popns of PE
<i>Ovis canadensis</i> Mexican bighorn sheep	II (1975)	1983 (deleted): CA and US
<i>Falco rusticolus</i> Gyr Falcon	I (1979)	1981 (App II): N American popn 1985: all popns back on App I;
<i>Cyrtonyx montezumae mearnsi</i> Mexican Montezuma Quail	II (1975)	1979 (deleted): US; 1992: all popns deleted from App II
<i>Melanosuchus niger</i> Black caiman	I (1975)	1995 (App II): EC (subject to quota from 1997)
<i>Struthio camelus</i> Ostrich	I (1983)	Populations of North and West Africa on App. I; others not listed.
<i>Cervus elaphus</i> Red deer; wapiti	I (1975) II (1975) III (1976)	Subspecies <i>hanglu</i> in I; <i>bactrianus</i> in II; <i>barbarus</i> in III. Other subspecies not listed.

Species/Taxon	CITES Appendix (date of listing)	Population-specific "derogation" (year of introduction, CITES appendix, populations.)
<i>Crocodylus cataphractus</i> African slender-snouted crocod.	I (1975)	1987 (App II): CG; 1992: all popns back on App I
<i>Crocodylus porosus</i> Estuarine crocodile	I (1979)	1979 (App II): PG; 1985 (App II): AU, ID
<i>Crocodylus niloticus</i> Nile crocodile	I (1975)	1983 (App II): popn of ZW; 1985 (App II): CG, CM, KE, MW, MZ, SD, TZ, ZM; 1992 (App II): ZA; popns of CG, CM, SD uplisted;
<i>Osteolaemus tetraspis</i> West African dwarf crocodile	I (1975)	1987 (App II): CG; 1992: all popns back on App I
<i>Scleropages formosus</i> Asian bonytongue	I (1975)	1990 (App II): ID; 1995: all popns back on App I;
<b>FLORA</b>		
<i>Fitzroya cupressoides</i> Chilean false larch, alerce	I (1975)	1983 (App II): coastal popn of CL; 1987: all popns back on App I (with CL reserving)
Source: WCMC, <i>Annotated CITES Appendices and Reservations</i> (Draft for Review), January 1997		

## ISO country codes:

AU	Australia	DE	Germany	MY	Malaysia	SG	Singapore
BD	Bangladesh	EC	Ecuador	MU	Mauritius	SO	Somalia
BW	Botswana	ET	Ethiopia	MX	Mexico	TH	Thailand
CA	Canada	GB	United Kingdom	MZ	Mozambique	TZ	Tanzania
CG	Congo	ID	Indonesia	NA	Namibia	UG	Uganda
CL	Chile	IN	India	PE	Peru	US	United States
CM	Cameroon	KE	Kenya	PG	Papua New Guinea	ZA	South Africa
CN	China	MG	Madagascar	PH	Philippines	ZM	Zambia
CU	Cuba	MW	Malawi	SD	Sudan	ZW	Zimbabwe

34. For the moment, essentially crocodylians have benefited from ranching. Proposals for other species, including marine turtles, have been submitted to various CoP meetings but have not been adopted. However, at the most recent, ninth, meeting of the Conference of the Parties, guidelines were adopted for evaluating marine turtle ranching proposals.<sup>11</sup> These new requirements by being more detailed, may overcome the past issues which arose in applying these innovative measures. Currently, the CITES Secretariat is investigating the applicability of the ranching mechanism to timber species, as relevant timber species have only recently been considered in the Convention.

35. In each of the above cases, it has been deemed necessary to identify the specimens as part of the agreed quota entering into international trade. In the case of leopard skins and crocodylian skins, a system of self-locking tags has been instituted, which indicates the export State, the species concerned, the year of production, a unique number, and, if appropriate, the number of the specimen. In the case of ranched populations, regulations became even stricter over time to emphasise the need for the *uniform* marking of products of ranched populations entering into trade to avoid confusion and increase chances of enforcement.

36. Based on the definition of "species" appearing in Article I (a), which includes "geographically separate population of a species", proposals for listing a "species" on Appendix I or II have been

interpreted to include certain populations of that species on one Appendix and others on the other Appendix. This is the so-called phenomenon of “*split-listing*”. It also has served as an incentive for active management of populations, commercial trade in which might otherwise be prohibited. As can be seen in Table 3 above, this flexibility mechanism can also mean movement not only to less restrictive but to more protective trade status (Appendix II to I, e.g. Asian bonytongue or the gyrfalcon).

### **C. *As implemented nationally***

37. The first two parts of this Section have set out the basic rules in the Convention and those which have evolved over time with respect to trade in listed species. It is important to reiterate that these are the minimum rules. Article XIV of the Convention stipulates that nothing in the Convention shall affect the right of Parties to adopt: [in XIV 1(a)] stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or [in XIV 1(b)] measures on other species than those in CITES Appendices. For example, as pointed out above, trade in Appendix II-listed species does not, according to the terms of the Convention, require an import permit. Many OECD countries, however, have instituted a system of import permits for trade in certain species listed under Appendix II and, in some instances, Appendix III. Examples include Australia, the European Union, Japan and the United States. Stricter domestic measures may also apply to exports. For example, some countries prohibit the export of native species, including those in CITES Appendix II. It is interesting to note the considerable range of mechanisms by which some countries go further than the Convention in adopting “stricter domestic measures”, examples from a few OECD documents appear below.

#### *a) Australia*

38. Australian legislation goes further than the Convention in two ways: first, the country bans all live exports of native wildlife. Second, it requires an import permit for trade in specimens of species listed in all CITES Appendices. Recently, the latter requirement, which used to cover imports for both commercial and non-commercial purposes, was limited to species imported for commercial purposes alone. Specifically, an import permit will be granted only if the specimen was taken in accordance with a management programme approved by Australia’s Management Authority or was derived from a specimen so taken. The approval of a management programme is partly based upon scientific criteria, including information on the role of a species in the ecosystems in which it occurs. While no exceptions apply to pre-Convention specimens, imports of captive-bred and artificially propagated specimens need not fulfil the “management programme” requirement. In both cases, an import permit will only be issued if the Australian Scientific Authority has sufficient reason to believe that specimens were either artificially propagated or captive bred.

#### *b) Canada*

39. After the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) received royal assent in 1992, consultations were undertaken with various stakeholders, notably the provinces, concerning implementation issues such as the modalities for controlling trade and prohibiting trafficking of endangered species. With the publication of the Wild Animal and Plant Trade Regulation, the Act then entered into force in May 1996 and replaced the CITES

Regulations that have been in effect since July 1975 under the Export and Import Permits Act. Further sets of regulations on other implementation issues (e.g. on permit issuance, including CITES permit exemptions, exemptions to the prohibitions in the Act, marking of specimens, fees or charges, etc.) are currently being developed. The new legislation and regulation consolidates existing federal trade controls; no new or additional permits are required for international or interprovincial trade in wild specimens.

40. In addition to implementing controls on lists under CITES, WAPPRIITA and its Regulations are designed to a) conserve Canadian wild animals and plants whose transport into or out of a province is controlled by provincial laws; b) co-operate in preventing illegal trade in all species from other countries, whether or not on CITES lists by prohibiting the importation into Canada of any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state; and c) protect Canadian ecosystems from wild, non-native species whose introduction would be harmful to indigenous species. Thus these three categories may be considered to be “stricter domestic measures” in the sense of CITES Article XIV 1 b).

41. *It would appear, however, that under the first regulation published associated with the implementation of WAPPRIITA, no stricter domestic measures in the sense of Article XIV 1 a) are imposed -- such as, import permits for CITES Appendix II species. And in fact, Environment Canada is considering undertaking consultations with a view to examining the administrative burden associated with CITES and the possibility of permit exemptions supportive of the conservation objectives of CITES. Currently, Canada does not implement exemptions for pre-Convention, captive-bred/artificially propagated specimens or personal or household effects, with the exception of captive-bred specimens exported by Canadian registered commercial breeders (Article VII-4 on export only), and for pre-Convention whalebone carvings (Article VII-2 on export only). In the interim a one-window approach is available to Canadians for obtaining import permits for specimens of Appendix I species, including those that are captive-bred, artificially propagated, or pre-Convention. The issuance of CITES export permits is, however, decentralised as most wildlife in Canada is under provincial or territorial jurisdiction. Aboriginal peoples have identified a particular problem with regard to the movement of ritual and ceremonial objects from species in CITES lists; these issues are being addressed through policies which have been developed in consultation with Aboriginal peoples.c) European Union*

42. In 1984, EU Regulation 3626/82, which imposed stricter domestic measures than those set forth in CITES, entered into force. Accordingly, EU member states are under the obligation to require an import permit or import certificate for imports of species appearing on all CITES Appendices. In addition, the EU Regulation provided (CITES) Appendix-I type protection for species listed in (EU Reg.) Annex C1, which includes certain species in Appendices I, II and III of CITES. Additional criteria were also developed for trade in species listed under Annex C2, which includes Appendix II and III species. In the latter case, import permits may only be issued where:

- it is clear, or where the applicant presents trustworthy evidence, that the capture or collection of the specimen in the wild will not have a harmful effect on the conservation of the species or on the extent of the territory occupied by the populations in question of the species;
- the applicant provides proof by means of documents issued by the competent authorities of the country of origin that the specimen has been obtained in accordance with the legislation on protection of the species concerned;

- in the case of the import of a living animal, the applicant provides evidence that the intended recipient possesses adequate facilities suitable for accommodating the species and suited to its behaviour and that the animal will be properly cared for;
- that there are no other requirements relating to the conservation of the species which militate against the issue of an import permit.

43. Finally, the Regulation prohibits the sale within the EU of Appendix I and Annex C1 species and establishes provisions regarding the transit, temporary storage and movement in the EU of listed species.

44. Beyond the above, the competent body, the EU Special Working Group has also made specific recommendations against imports of particular species or from specific countries.

45. Despite the fact that Regulation 3626/82 established stricter measures than the Convention itself, it “failed to specify certain aspects of implementation and enforcement essential to EU-wide application,”<sup>12</sup> thus leaving room for the development of disparate national measures, which considerably undermined the implementation of CITES in the European Union. On several occasions, the EU’s implementation of CITES has been targeted in CoP resolutions. In order to address this situation, a new regulation, aiming at harmonising and clarifying the control of wildlife trade by EU member states, while at the same time maintaining many of the stricter measures defined by its precursor, has been under discussion in various Community bodies since the late 1980s. The new CITES regulation was adopted by the Environment Council on 9 December 1996 and is now scheduled to enter into force on 1 June 1997. Specifically, the new regulation establishes criteria that will result in both the improved control of consignments and relevant CITES documentation at the Union’s external borders, as well as in penalties for non-compliance by member states.

*d) Japan*

46. Even though Japan has no specific legislation to fulfil its obligations under the Convention, the 1949 Foreign Exchange and Foreign Trade Control Law (FEFTCL) invests MITI with the authority to regulate the exportation and importation of CITES-listed taxa through a license or approval process and the general Customs Tax law (CTL) requires any person importing or exporting goods to obtain necessary permits and comply with inspections and other processing requirements. In addition to this legislation, the law for the conservation of endangered species of wild fauna and flora (LCES) was enacted in 1993. The LCES is designed to provide stricter measures than CITES by restricting domestic distribution of CITES Annex I species. Stricter domestic measures apply in so far as imports of taxa listed in Appendices II and III require either a license or approval by MITI.

*e) United States*

47. In the United States, CITES is implemented through the Endangered Species Act (ESA), signed in 1973 and amended subsequently. ESA prohibits the import, export, shipment, domestic and international sale, and the possession or transportation of endangered or threatened wildlife in the course of a commercial activity unless a permit has been obtained in advance. Whilst the United States does not automatically require import permits for species listed under Appendix II of CITES, imports of species that are not listed in CITES Appendix I will require a permit if the species in question is subject to ESA, the Wild Bird Conservation Act (WBCA), or the Migratory Bird Treaty Act. In all these cases, import

permits are required regardless of country of origin, except for species recorded in WBCA approved lists, which include certain species from approved foreign captive breeding facilities as well as certain wild-caught species from countries with approved management plans. Further, the Lacey Act makes it a violation of U.S. law to import into the US any wildlife specimen taken or exported in violation of any other country's laws, regardless of how the species is protected under CITES or other treaties or laws. The Marine Mammal Protection Act is also relevant in that it stipulates the conditions for the import, transport and take of marine mammals and their parts and derivatives.

48. On the other hand, for CITES-listed, wild-caught birds to be on the WBCA approved list, the US Fish and Wildlife Service must determine that:

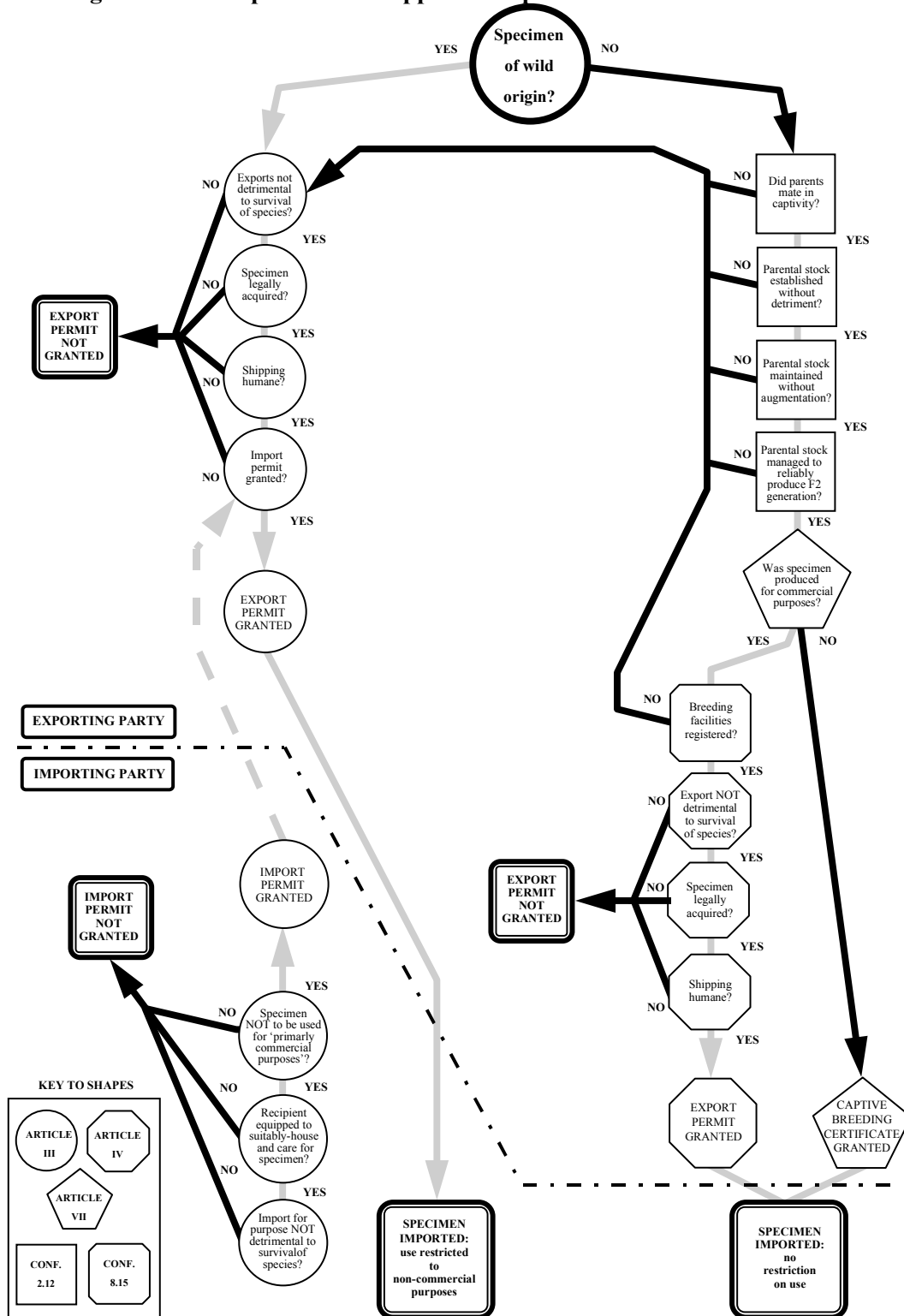
- CITES is being effectively implemented for the species for each country of origin from which imports will be allowed;
- CITES-recommended measures are implemented;
- there is a scientifically based management plan for the species that provides for the conservation of the species and its habitat, includes incentives for conservation, ensures that the use of the species is biologically sustainable and maintained throughout its range at a level consistent with its role in the ecosystem, and addresses factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and
- the methods of capture, transport and maintenance of the species minimise the risk of injury or damage to health.

Non-approved species can be imported with an import permit, for zoological breeding or display, co-operative breeding programmes, scientific research or as personal pets.

49. The following criteria apply for the approval of the importation of captive-bred bird species:

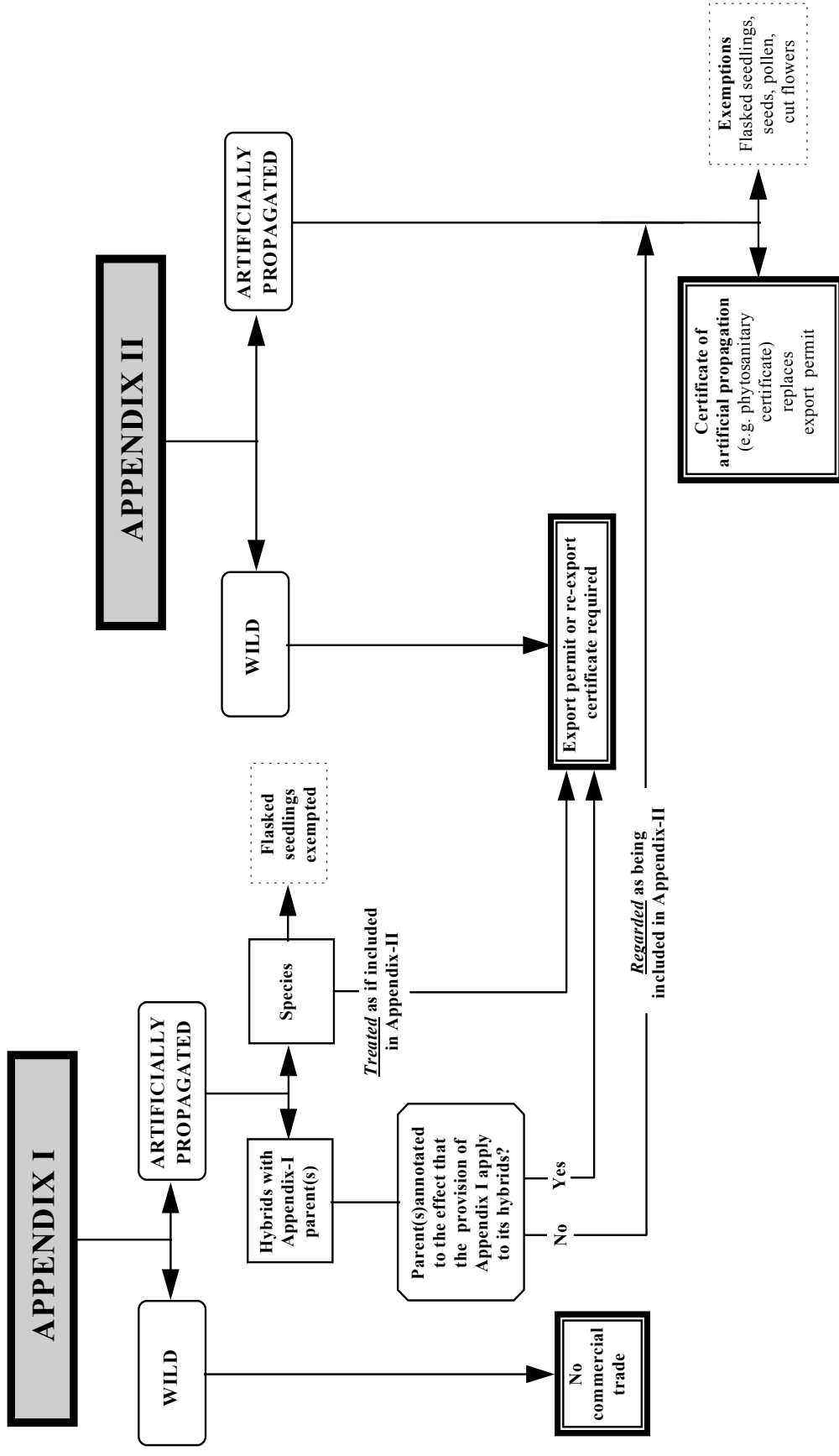
- all specimens of the species known to be in trade must be captive-bred;
- no specimens of the species can be known to have been removed from the wild for commercial purposes;
- any importation of specimens of the species must not be detrimental to the survival of the species in the wild; and
- adequate enforcement controls must be in place in countries of export to ensure compliance with the aforementioned criteria.

Diagram 2: Live specimens of Appendix I species: tradable or not tradable?



Source: Scientific Authority of Canada

Diagram 3. Trade in CITES-listed plants: wild, artificially propagated and hybrids



Source: Based on CITES Secretariat training material



### III. Objectives of the trade measures

#### A. Primary objective

50. The Convention does not explicitly state its objectives<sup>13</sup>. For the purposes of this note, primary and secondary objectives will be defined drawing from the preamble, recognised CITES authorities and resolutions of the Parties.

The Convention preamble reads:

*RECOGNIZING that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;*

*CONSCIOUS of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;*

*RECOGNIZING that peoples and states are and should be the best protectors of their own wild fauna and flora;*

*RECOGNIZING, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;*

*CONVINCED of the urgency of taking appropriate measures to this end,*

51. The final sub-paragraphs end with the concepts of over-exploitation, international trade and urgency. After this, the Convention moves directly, in its first five Articles, into definitions, fundamental principles and the regulation of trade in species listed.

52. Based on observers' analyses and information sheets prepared by Parties and the Secretariat, it will be taken that the primary objective of the CITES is to:

*ensure the international co-operation of Parties to prevent international trade in specimens of wild animals and plants from threatening their survival<sup>14</sup>*

53. The three key concepts behind the implied, but relatively clear, objective of CITES then are the use of a) international co-operation and b) trade controls towards the overall aim of c) survival of species.

54. Further essential points concern what CITES is not about. It does not purport to address biodiversity loss *per se*. Whilst considered a biodiversity-related Convention, it is clear that it was not negotiated to address other causes of biodiversity loss: habitat loss; habitat fragmentation; domestic commerce; invasions of predator and alien species, pollution, etc.

#### B. Secondary objectives

55. *Encouraging non-Parties to join* the Convention, or at least to co-operate closely with its operations, can also be considered an objective of the trade measures. Article X allows trade with non-Parties on the basis of "comparable documentation...substantially conforming" with the permits of the Convention. However the Parties have no obligation under the Convention to accept such documents. Problems of trading with non-Parties were addressed at several CoPs. To prevent non-Parties from being

used as a conduit for illegal trade, the general conditions appearing in Article X have been added to over time, such as the need for non-Parties to register with the Secretariat at least one authority competent to issue comparable documentation and one scientific institution capable of advising the competent authority that the export of a specimen of a CITES species will not be detrimental to the survival of the species concerned. The current resolution in force (Resolution Conf 9.5) tightens conditions even further by requiring specific conditions in great detail (stamp, signature; permit numbers; registration with the CITES Secretariat -- at intervals of less than two years -- of the details of the competent authorities; imports of captive-bred and artificially propagated specimens of Appendix I species only after favourable advice from the Secretariat, etc.)

56. These progressively stricter conditions were imposed following the experience with illegal trade, particularly in Appendix I species, transiting via non-Parties. Tightening conditions for trading with non-Parties would, therefore, it was argued, combat the tendency for illegal trade to seek transit routes to, from and through these countries.

57. The *monitoring of trade* is another secondary objective appearing in the Convention manifested in the requirement for parties to submit annual reports containing trade records on the number and type of permits and certificates granted; States traded with; and numerous details on the specimens traded (Article VIII 6(b) and 7). As discussed below, the use of the assembled trade data to help review species status, has since been considerably reinforced to become one of the most important bases to strengthen species management and further conservation objectives.

58. *Maintenance of a species' role in its ecosystem* could be considered a further secondary objective from a reading of Article IV, covering the regulation of Appendix II trade. A Scientific Authority is to advise the Management Authority whenever it determines that exports of Appendix II species should be limited "in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs..." (Article IV 3.)

### **C. *Other objectives, as they have been evolving***

59. *Significant trade and policy recommendations:* Trade in Appendix II specimens is allowed only when: such trade is not detrimental to the survival of the species (Art. IV.2); and, as mentioned above, whenever exports of species should be limited in order to maintain that species at a level consistent with its role in the ecosystem and well above the level at which that species might become eligible for inclusion in Appendix I (Art. IV.3). In the light of growing concerns over the absence of biological data to fulfil both objectives, a mechanism addressing trade control issues and identification of research needs for population studies and sustainable management for several key species has evolved in steps, beyond that of merely requiring data reporting.

60. CITES Parties requested the Technical Committee to identify Appendix II species that were subject to significant levels of trade. Based on Parties' annual reports, the Technical Committee produced a Significant Trade Review covering the period 1980-1982. In 1990, the Animals Committee was directed to proceed with this exercise and completed a second review of trade in a further list of CITES Appendix II species between 1983 and 1988. Most notably, however, the Animals Committee also developed a procedure which links the Significant Trade Review to the mechanism of "non-detriment" findings by enforcing compliance with the provisions of Article IV of the Convention. This policy adjunct was instituted at the eighth meeting of the Conference of the Parties through Resolution Conf. 8.9, entitled "The trade in wild-caught animal specimens".

61. Under Res. Conf. 8.9, the Animals Committee can make two types of recommendations: primary and secondary. The former consist of trade measures, such as specific quotas, zero quotas or temporary restrictions on exports of an animal species identified in the Review of Significant Trade. Secondary recommendations, on the other hand, call for field studies or evaluation of other threats to populations or other relevant factors, including illegal trade, habitat destruction, and internal uses. The Secretariat then determines whether the primary and/or secondary recommendations made by the Animals Committee have been met. When the Secretariat is not satisfied that a Party has fulfilled the recommendations, it is responsible for recommending to the Standing Committee that all Parties take strict measures, including, as appropriate, the suspension of trade in the affected species, vis-à-vis the Party concerned.

62. *Sustainable use*: It is perhaps an indication that the early 1990s were a watershed for CITES, when at the same Kyoto Conference in 1992 where the significant trade process was detailed, the CoP also recognised, in Resolution Conf. 8.3, that “*commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question.*” Furthermore, Resolution Conf. 8.20 also recognised that trade in wildlife products could be beneficial to conservation, expressing awareness of the fact that unless conservation programmes took into account the needs of local people and provided incentives for sustainable use of wild fauna and flora, conversion to alternate forms of land use might occur.<sup>15</sup>

63. But does this mean that CITES has evolved to incorporate sustainable use as one of its objectives? This is probably not the case. CITES is not *per se* a treaty to promote trade and use of wildlife. The principal objective of CITES is and has always been to make sure that international trade does not lead any species to extinction. However, it has been argued that CITES, in working to prevent overexploitation of listed species, also indirectly shares the goal of sustainable utilisation of wildlife. In particular, certain CITES mechanisms, and in particular the requirements for non-detriment findings by the range States (Article III and IV) and the more recent Significant Trade Review and Resolution Conf. 8.9, can be used to open up wildlife trade for commercial purposes. Thus from this point of view, CITES can be considered now to have the mechanisms necessary to allow sustainable use of species under its purview. In this sense the sustainable use of a species capable of withstanding a harvest can be viewed more as a consequence than an objective of the Convention’s mechanisms.

64. The author of the CITES reference guide declares that “one of the main challenges in the context of CITES is to find a proper balance between the sustainable use principle and the precautionary principle.”<sup>16</sup> The ERM analysis of the questionnaire on improving effectiveness of CITES, finds the issue of sustainable utilisation to be a major area of discussion amongst Parties and recommends that Parties set about, as a matter of priority, the process of working out an interpretative resolution and associated guidelines on the issue. A partial explanation of the apparent gulf between the champions of sustainable use and those who suggest that the Convention and adopted CoP Resolutions offer the mechanisms to further this goal may reside in a varying assessment of their effective application, viz. that certain Parties are not satisfied with the nature and pace of the opening-up of trade, whereas others consider that the conservation aims dictate continued dominance of the precautionary principle.

#### **IV. Combating non-compliance and illegal trade**

##### **A. Non-compliance**

65. As a non-self-executing treaty, CITES cannot be implemented until specific legislation has been adopted by each member. But this basic obligation, set forth in Article VIII of the Convention, has not been fulfilled by a majority of Parties. According to a 1993 report by IUCN--The World Conservation Union<sup>17</sup>, around 85 per cent of CITES Parties have incomplete or otherwise inadequate legislation for implementing the Convention. In this context, the most common deficiencies observed in national legislation include, *inter alia*, the absence of appropriate penalties to deter infractions and the limited coverage of species listed in the Appendices.

66. The failure to adopt domestic legislative and regulatory measures prevents Parties from utilising the trade policy instruments foreseen for implementation of CITES. In other words, countries without appropriate legislation have no framework to verify the validity of the import, export and re-export permits and certificates essential for regulating trade in CITES-listed species or interdict or seize illegal shipments or prosecute violators. This situation gives rise to a number of instances of non-compliance, identified in a recent report<sup>18</sup>, including:

- issuance of export permits for Appendix I species before an import permit is obtained;
- issuance of permits for wild Appendix I species for commercial purposes;
- issuance of permits for species whose export is prohibited by national legislation;
- issuance of export permits for species with zero quotas;
- issuance of re-export certificates for illegally obtained specimens;
- retroactive issuance of permits;
- issuance of pre-Convention certificates without date of acquisition, country of origin;

67. The lack of a legal framework for the implementation of CITES also affects many Parties' ability to monitor trade effectively. As a result, non-compliance with Article VIII.7 -- which requires Parties to provide the Secretariat with an annual report containing a summary of all records of trade in specimens included in the Appendices -- has been identified as a major problem of implementation of the Convention. Between 1986 and 1991, for instance, no more than 40 per cent of Parties submitted their reports on time.

68. Annual reports have two primary roles: first, in constituting the main input to a trade database managed by the World Conservation Monitoring Centre (WCMC), provide the basis for the monitoring of trade. Second, annual reports, by highlighting discrepancies between reported imports and exports, facilitate the detection of possible illegal trade. Consequently, during the eighth CoP, the Secretariat recommended that the failure to submit a report by the deadline be considered by the Standing Committee as a possible reason for sanctions. Even though this proposal never took the form of a resolution, the reporting rate has been steadily improving in recent years: in 1992, 50 per cent of Parties submitted their

annual reports on time. The quality of the reports has followed a similar trend. According to a report by WCMC, “the comparison of reported imports with the corresponding exports/re-exports reported indicates that the reporting of trade, particularly for animal taxa, is gradually becoming more accurate.”<sup>19</sup> For instance, the degree of perfect correlation between reported imports and corresponding exports/re-exports of crocodylians increased from less than 10 per cent in 1981 to almost 40 per cent in 1991. Similarly, the number of perfect correlations in plant reporting has improved from 6 per cent in 1989 to 12.9 per cent in 1991.

69. At the same time, however, the degree of trade for selected animal groups reported by the importer but not the exporter rose from 53 per cent in 1990 to 66 per cent in 1991. This development not only signals the presence of serious problems in the area of implementation, but also undermines the potential role of the CITES database as an instrument to assess the conservation status of species and detect flows of illegal trade.

**Box 2. Abuse of CITES trade measures: forgery, smuggling and laundering**

*a) Forgery of CITES documentation:* In November 1991, the CITES Secretariat received information on the forging in Thailand of Malaysian CITES permits, many of which had already been accepted by other Parties as legal documentation accompanying shipments of wildlife. Similarly, in 1992, it was found that various companies based in Tanzania were either altering genuine permits or using forged ones in order to export specimens of CITES-listed species, particularly reptiles.

*b) Smuggling (absence of CITES permits):* Co-operative investigation amongst the German, French and Danish police revealed an international smuggling ring of birds of prey between Europe, North America and countries in the Mediterranean, with the main organisation based in Spain. For example, four gyrfalcons (Appendix I), valued at \$200 000, were taken from the wild in Greenland in 1991 and smuggled into France and Germany. A further instance of fraudulent trade in wildlife is provided by the smuggling of parrots across the United States-Mexico border. A recent TRAFFIC USA report estimates that the number of parrots smuggled into the US from Mexico annually ranges from 20 to 25 thousand in the Rio Grande Valley alone.

*c) Laundering:* In the context of CITES, laundering occurs when a re-export certificate is not based on the document that originally accompanied an Appendix II specimen when it was shipped into the country of re-export. Thailand’s role as a laundering point for wildlife during the 1980s is well documented. Due to the country’s lack of both effective legislation and border controls, a large number of CITES-listed species, including crocodylians, primates, birds and plants, were smuggled into the country and then re-exported to global markets. In the case of orchids, for example, the Management Authority of Thailand repeatedly issued blank CITES certificates and permits to wildlife exporters, a situation which fuelled the trade in specimens protected by the Convention. In a more recent development, a TRAFFIC study reports that, due to the dramatic increase in legal exports of exotic birds from New Zealand, the country may have become a laundering point for illegally smuggled Australian parrots and cockatoos, whose trade is not only subject to CITES trade controls but export of which are banned under Australian law.

Source: Alleged Infractions Report to ninth CoP, 1994 and various TRAFFIC Bulletins.

**B. Illegal trade**

70. In economic terms, prohibitions on trade favour the development of a black market -- that is where demand and/or supply are not totally deleted, curtailing international movements of a good can be expected to lead to the emergence of illegal trade.<sup>20</sup> In the area of wildlife trade, the provisions of CITES,

by restricting trade in certain species, affect the demand and supply forces underlying this trade. On the supply side, penalisation of the prohibited trade will tend to increase prices as a result of the premium charged by those “producers” willing and able to take the risk of supplying specimens of CITES-listed species. On the demand side, the overall quantities of wildlife demanded will fall as legal trade disappears. However, some consumers will be willing and able to pay a price that covers the supplier’s premium for the risks involved in illegal trade. Thus, the market in wildlife specimens emerging from the interaction between producers willing and able to take the risk of being caught supplying CITES-prohibited wildlife and consumers willing and able to pay the additional risk premium and engage in illegal trade is thinner. The resulting price will be a function of the relative cuts in quantities supplied (disappearance of legal supplies) and the curtailment in quantities demanded. The prices of rhino horn and tiger parts and derivatives have risen over the period since their Appendix I listing. Ivory prices rose slowly during the 1980s when quotas were in place and then very quickly from speculative demand preceding the imposition of the ban, after which they fell back to levels of the mid-1980s.<sup>21</sup>

71. Policy responses to illegal trade involve relevant interventions therefore in both the supply and demand balance. Interdiction and seizure of prohibited goods at the point of international transfer is one, but not the only possible point of intervention. Beyond interdicting shipments at the point of international exchange, interventions may occur both by lowering demand -- through changing consumer tastes through public education or by raising the risk of detection for illegal “consumption” -- and by reducing supplies through increasing the risk of detection for illegal supply and the fear of the penalty.<sup>22</sup>

72. Making CITES trade controls credible involves combating this illegal trade. Emphasis in CITES meetings on strengthening enforcement has been heavy. At the national level this usually involves instituting close working relations amongst the national Management Authority and enforcement agencies, such as customs officials, wildlife inspectors and police authorities. Internationally co-operation has also been strengthened. Although moves to establish a separate CITES committee on enforcement have been resisted, certain Members have seconded staff to assist the Secretariat in its role of assisting enforcement efforts. The parallel network of TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce) offices also co-operate closely with national enforcement authorities and the Secretariat. Information and pressure from non-governmental sources are often instrumental in getting parties’ enforcement agencies to act in the face of resource constraints and less than top priority for environmental crime on enforcement policy agendas. In the light of the magnitude of illegal wildlife trade -- amongst the top illegally traded commodities along with drugs and weapons -- the International Criminal Police Organisation (INTERPOL) recently established a Sub-committee on Wildlife Crimes and organised the First International Conference on Environmental Crime in Lyon last September. The CITES Secretariat has a Memorandum of Understanding with INTERPOL, as it does with the World Customs Organisation (or Customs Co-operation Council). Recently signed, this latter provides, inter alia, for jointly devising measures to improve detection of consignments of wildlife subject to trade controls, setting up of a database on CITES offences; produce joint publications and participate in each other’s training sessions.

73. Emphasis on enforcement of trade bans coupled with criminalisation of the market has in many cases proven relatively effective as a deterrent to consumers and producers and thereby undoubtedly reducing the extent of the black market. Examples of a few recent spectacular specimen seizures appear in Box 3. In addition, CITES discussions in recent years have evolved towards a greater recognition of the varying characteristics of the markets for the wildlife goods and implications of this economics for other appropriate responses.

### **Box 3. Enforcing CITES: stings, seizures and sentencing**

Customs officers, working closely with police officers, discovered approximately 500 dead specimens in the home of a Dutch taxidermist, N. P. Peters, in Wales, in August 1995. This was the largest seizure of its kind in the United Kingdom. Among the specimens, most of which were illegally exported from the Philippines, was the skull of a Philippine eagle (Appendix I), the wild population of which is estimated at between 50 and 200. Other animals and parts of animals held by Peters included a stuffed chimpanzee; one cotton-headed and two golden lion tamarins; one ruffed and five ring-tailed lemurs; skins and skulls of tiger, jaguar and Geoffroy's cat; two frozen red pandas; and the skin of a Komodo dragon. All these specimens are listed in Appendix I of CITES. Peters has been charged with importing specimens from the Philippines without the necessary documentation. Moreover, inquiries were launched in the Netherlands and Belgium after investigators found wildlife specimens on Peters' properties in these two countries.

In November 1996, a Federal court in Chicago, US, sentenced an internationally recognised expert and outspoken protector of exotic birds, Tony Silva, to nearly seven years of imprisonment and fined him \$100,000 for leading an international parrot smuggling conspiracy and a related income tax violation. Silva smuggled or attempted to smuggle into the United States some of the world's most endangered wild birds, including various hyacinth macaws, listed under Appendix I of CITES and with a wild population numbering between 2000 and 5000. The total value of the wildlife smuggled by Silva is estimated at more than \$1 million. The sentence came after a three-year international probe to stem illegal trade in wild birds conducted by the US Fish and Wildlife Service's Division of Law Enforcement's Branch of Special Operations.

Indian police officers arrested five key members of an international ring of poachers in West Bengal which had offered to sell 62 horns of Indian rhinoceros (Appendix I) to TRAFFIC investigators. The arrest of the ring's leader allowed investigators to uncover international smuggling routes between India, Nepal, Bhutan, and East Asia. The group in question is presumed to have supplied 22 rhino horns to a member of the Bhutanese Royal family who was recently imprisoned in Taiwan. Investigations also revealed that the group was involved in illegal trade of bear gall bladders, musk deer glands, as well as leopard and tiger skins.

In April 1995, law enforcement officials in Lilongwe, Malawi seized 22 elephant tusks being offered for sale in a city hotel. The ivory weighed more than 120 kg.

In Zambia, in February 1995, two individuals, including the head of a village, were found in unlawful possession of nine tusks of African elephant (Appendix I) and one leopard (Appendix I) skin. Both men were arrested and sentenced to five years imprisonment with hard labour following a joint operation conducted by the Species Protection Department and wildlife police officers.

Source: TRAFFIC Bulletin and US FWS News Release

74. On the demand side, studies have linked increased demand for wildlife and wildlife products with higher levels of income. For instance, an economic analysis of the demand for raw ivory in East Asia<sup>23</sup> concluded that ivory has an income elasticity equivalent to that of other luxury items. Consequently, higher rates of GDP growth can be expected to be accompanied by increased demand for ivory products in this area. Extrapolating the results of this study to other economies with known demand and experiencing high rates of economic growth leads to the conclusion that pressure on wildlife products, including elephant ivory, rhino horn and tiger bone, is bound to continue. Recognising this fact, recent meetings of the CoP have called for increased efforts in raising the public's awareness through education.

75. Whereas in the case of luxury items it may be possible to influence consumer preferences through publicity campaigns, the use of products like tiger bone and rhino horn dates back many centuries and forms part of a cultural tradition in many Asian countries. Accordingly, the success of demand-reduction publicity campaigns was in the first instance more successful in the markets of Europe and the United States. For similar reasons, the promotion of substitute products, for example saiga antelope horn or water buffalo horn, both of which have anti-pyretic effects comparable to those of rhino horn, have not been readily accepted. More recently educational campaigns in Chinese Taipei have proven successful and efforts are underway in China that appear to be making headway in changing consumer practices, through co-operative programmes with traditional medicine practitioners. Working with traditional medicine communities was addressed in both Resolution Conf. 9.13 (on conservation of and trade in tigers) and 9.14 (on the conservation of rhinoceros in Asia and Africa). The UK and the US have submitted discussion papers to the tenth meeting of the CoP on traditional East Asian medicine and CITES. The UK note argues that increasing understanding by users of the species of conservation concern and by the West of the health care factors involved is essential if harvesting of wildlife for medicinal purposes is to be sustainable, i.e. that more than trade controls are important. The US places significant emphasis on the need to work co-operatively with communities using traditional medicines that contain animal and plants and with practitioners of traditional medicine.

76. On the supply side, international trade in wildlife and wildlife products involves a long chain of suppliers ranging from poachers, gatherers and trappers through middlemen and smugglers to wholesalers in importing countries. Even as enforcement efforts are extended so as to target various stages of the supply chain, the low costs associated with poaching and trapping, coupled with the lack of other (legal) sources of income in many developing countries, act as the main incentive for engaging in illegal activities.



**Table 4. Black market values for wildlife**

<u>Item</u>	<u>Volume</u>	<u>Price</u>	<u>Source</u>
<b>MAMMALS</b>			
Rhino Horn	Kilo	£10 000	(in Asia, 1995)
	18" horn	£15 000	(UK Police Seizure, 1996)
	Kilo	£6 500	(Hong Kong, 1993)
	Kilo	£10 500	(Hong Kong, 1994)
	Kilo	£7 250	(Japan, 1994) 1g sample sliced horn
	Kilo	£11 600	(Japan, 1994) 0.5g sample sliced horn
Bear Gall Bladder	Each	£700	(UK, 1996)
	Gram	£4	(Russia, 1993)
Fake Gall Bladder	Each	£400	(UK, 1994)
Musk Grains	Gram	> gold; \$50	(Markets in China, 1996)
Tiger Skin	Rug mount	£2 500	(UK, 1996)
Tiger Bone	Kilo	£2 000	(Consumer countries, 1994)
Shahtoosh Shawl	One	£4 000	(UK, 1995)
	-- white	\$2-35000	
Orang-utan	Stuffed	£16 000	(UK, 1992)
<b>BIRDS</b>			
Hyacinth Macaw	One	£2 500	(UK, 1994)
Black Cockatoo	One	£8 000	(UK, 1995) Yellow-tailed Black
Stellar's Sea Eagle	One	£2 000	(UK, 1995)
Philippine Eagle	Skull	£2 000	(UK, 1995)
<b>REPTILES</b>			
Tuatara Lizard	One	£10 000	(UK, 1995)
Angonoka Tortoise	One	£1 000	(Europe, 1996)
Spider Tortoise	One	£3 000	(USA, 1996)
Boelen's Python	One	£2 000	(USA, 1995)
<b>AMPHIBIANS</b>			
Poison-arrow Frog	One	£300	(UK, 1996) rare colour morph
Tomato Frog	One	£400	(UK, 1994)
<b>FISH</b>			
Asian Arowana	One	£2 500/ \$3-5000	(UK, 1994) (Japan)
<b>INVERTEBRATES</b>			
Tarantula	One	£200	(UK, 1996)
Giant Clam	One	£300	
Swallowtail Butterfly	Mount	£200	Rare
<b>PLANTS</b>			
Rare Wild Orchids	One	£1 500	(Japan, 1995)
		\$2 000	
Cacti	One	£?	
		\$7 000	Candelabra cactus
Cycads	One	£?	

Source: £ prices, personal communication with C. Allan, TRAFFIC International;  
\$ prices from CITES Secretariat

## V. Addressing developing country concerns

77. Negotiators present in Washington in 1973 did not have economic development *per se* uppermost in their minds when working on the seven successive drafts of the Convention: the final Convention text does not contain the terms “development” or “developing countries”, let alone the term of more recent vintage -- “sustainable utilisation”. Even “range states”, the term which has tended in CITES parlance to become the ersatz, does not appear in the Convention text. This reflects the state of international thinking at the time: the thrust of international discussions in IUCN and other groups through the 1960s, when the ideas for an endangered species Convention were circulating, had been on conservation of species.

78. However, even if it did not explicitly take development into account in the text of its treaty, this CITES system of controls, based on import and export permits, re-export certificates and other trade-related documentation, quickly ran into one of the realities of under-development -- the lack of institutional capacity in many developing countries to administer a complex agreement. This had a number of consequences. The first were the difficulties in getting the system to function with the lack of basic infrastructure to administer trade controls. In several cases exporting countries had no specialised administrative authority in charge of issuing export permits; in others, there was no capability to print the official security CITES permits, etc.

79. A second order consequence flowed from the realisation in the importing countries that export permits issued by the mainly developing states, were not necessarily based on particularly sound non-detriment findings by a competent Scientific Authority. This led in several cases to a requirement of import permits for Appendix II species, additional to the CITES requirement of export permits.

80. This need for capacity building was officially addressed in 1981. The third meeting of the CoP in New Delhi recognised that two-thirds of CITES membership, being developing countries, encountered special difficulties in implementing CITES and called on Parties to ensure including technical assistance in bilateral and multilateral programmes of development aid.

81. Requests for training began to be met through the organisation and implementation of training seminars by the Secretariat, funded by bilateral aid from several governments and NGOs, as well as bilateral training seminars offered by key donor countries. For example, the United States has been funding both training programmes of the CITES Secretariat, as well as separate US-sponsored bilateral training workshops. Whilst the Secretariat's seminars have never been solely for developing countries, the training component has been an indispensable tool in helping developing range states to implement the Convention. Examples of activities concerning enforcement and capacity-building include: enforcement seminars, technical assistance for the development of national legislation to implement the convention, the creation of customs training packages, as well as the creation and translation of identification manuals. Seminar activities organised by the Secretariat since 1989 are shown in Table 5. Between 1994 and 1996, around half of the US\$ 4 million received by the Secretariat in external contributions was allocated to activities concerning enforcement and capacity-building. Principal donors to these activities include the European Commission, and several individual EU members, the US, Hong Kong, Japan and Australia as well as several NGOs.

82. The remaining 50 per cent of total external contributions received by the Secretariat between 1994 and 1996 were used on species-related surveys, a number of which aimed at gathering information

on a specific population's conservation status with a view to devising sustainable management programmes. Some of this financial support has also come from users of wildlife. Taxa covered in surveys with a sustainable use dimension include cats, parrots, pythons, crocodylians, lizards, corals and orchids. A major donor in the area of species-related projects was Belgium, which established a fund for elephant conservation in the United Republic of Tanzania with funds obtained from an auction of 9.6 tonnes of African elephant ivory that was confiscated in 1986. Other important donors included the European Commission, several EU countries, Japan, Switzerland, the United States, as well as a number of NGOs.

**Table 5. CITES secretariat training seminars**

<b>Year</b>	<b>Number of Seminars</b>	<b>Number of People</b>	<b>Number of Person Days</b>
1989	2	39	117
1990	4	300	1 040
1991	6	350	1 073
1992	10	310	1 975
1993	6	285	1 043
1994	5	388	1 350
1995	16	990	3 048
1996	20	1 119	4 647
<b>Total (89-96)</b>	<b>69</b>	<b>3 781</b>	<b>14 293</b>

Source: CITES/C&M Magazine; updated by CITES Secretariat

83. Bilateral aid flowing to projects directly<sup>24</sup> related to CITES implementation then has been relatively small. Assistance from established multilateral funds has been practically non-existent. Box 4 gives the flavour of the sole biodiversity conservation project funded through the Global Environment Facility (GEF) incorporating a component on management of wildlife trade. This project, with technical support from the CITES Secretariat, is an interesting one, based on assigning economic value to endemic wildlife -- which might be considered a prototype in bridging the system of trade controls with a more recent emphasis on economic incentives. Apart from one or two projects, CITES has not benefited from multilateral financial and technical assistance, despite calls to international aid agencies in general by the CoPs to support Convention-related activities (e.g. on tigers in Resolution Conf. 9.13) or the GEF in particular (e.g. Resolution Conf. 9.14 on conservation of rhinoceros in Asia and Africa). One of the difficulties for access to GEF funding has been the criteria established (by GEF management bodies) for the tranche of GEF money reserved for biodiversity projects. These work to favour ecosystem-oriented projects rather than a species approach, along the lines of which CITES operates.

84. Several issues affecting the (developing) range States' interests which have been identified in the effectiveness questionnaire analysed by ERM include: i) access to the GEF and relations with other biodiversity-related conventions and particularly the CBD; ii) sustainable use; and iii) use of stricter domestic measures.

85. In response to the ERM questionnaire, 95 percent of replies called for more use to be made of the GEF for CITES-related activities. But such access is dependent, the ERM notes, on the development of closer working relationship with the Convention of Biological Diversity (CBD). It adds that it is hard to see how this could be achieved effectively without some degree of subordination of CITES to the CBD, since the latter is one of the Rio Conventions which in general have succeeded in eclipsing previous conservation Conventions both in terms of political importance and international profile. Following the

call at the second CoP meeting of the CBD for closer relations with other biodiversity-related conventions (and the subsequent urging of CITES Management Authorities by the Secretariat to make contact with the ministries responsible for CBD in preparing project proposals for the GEF)<sup>25</sup>, the recent CBD CoP III held in November 1996 in Buenos Aires, reiterated the call for co-operation amongst the biodiversity-related conventions, but contained little of an operational nature<sup>26</sup>. Memoranda of Co-operation have been signed, although they appear to be of a general nature without particularly defined operational features, e.g. emphasising exchange of information on activities and mutual attendance at meetings. A latent fear of losing independence vis-à-vis the CBD was also apparent at the recent third meeting of the CBD Parties in Buenos Aires. Whilst co-operation amongst the biodiversity-related conventions was welcomed, in fact the CBD CoP resolution calls for another report for CoP IV (in 1998) and asks the other conventions to share their experience with the CBD. On the GEF, language is fairly general, inviting contracting parties to explore opportunities for accessing funding through the GEF, but without referring specifically to support CITES-related work. On the other hand, several specific provisions of the resolution address two other biodiversity conventions -- Ramsar and the Convention on Migratory Species. It seems particularly ironic that despite being the oldest, most experienced and best known of the biodiversity conventions, CITES appears to be benefiting financially less than the others.

86. In part to palliate these difficulties, the seventh Global Biodiversity Forum, co-sponsored by a series of organisations close to the CITES community, will host a series of workshops, just prior to the tenth CITES CoP meeting in June 1997, which will explore synergies between CITES and the CBD. Ideas for such synergies include the linking of trade measures and incentive measures, reconciling CITES' species approach and the CBD's emphasis on ecosystems, the relationship between sustainable use and CITES requirements for non-detriment findings, etc.

#### **Box 4. CITES-related multilateral co-operation**

As noted in the text above, multilateral aid to CITES projects has not been generally forthcoming. A notable exception is a current three-year project in Gabon funded by the Global Environmental Facility (GEF) programme. The GEF assists developing countries in meeting the incremental costs of dealing with transboundary environmental problems and has been designated as the interim funding mechanism for both the Biodiversity and the Climate Change Conventions. The GEF project in Gabon aims to involve local communities in the monitoring of wildlife populations, as well as to assess the impact of trade on wildlife populations in order to develop and implement sustainable trade strategies that ensure the long-term survival of wildlife species. The focus on wildlife use and trade stems from the significant role played by these two factors in the economies of West Africa, where bush meat is a major source of both protein and income. In recent years, however, the rapid rates of population growth experienced in this region have applied increased pressure on wildlife. The GEF project in Gabon, supported not only by local government agencies involved in wildlife conservation but also by organisations like TRAFFIC, WWF and the CITES Secretariat, will take the form of national training seminars for agents charged with wildlife conservation and control, the production of a practical manual for the identification of regional species as well as the revision of national conservation legislation with a view to ameliorating the implementation of the country's obligations under CITES. At the same time, the project is envisaging the development of simple methods (e.g. animal sighting rates) allowing local communities to monitor changes in wildlife populations and manage their resources in a more sustainable manner. Finally, a number of studies, for example on the wild parrot population will assess possible rates of commerce as well as the feasibility of captive breeding programmes with a view to assigning economic value to endemic wildlife.

Another project is now under discussion involving an ecosystem transcending boundaries of southern cone countries in Latin America, on which CITES might also work with other biodiversity-related conventions such as Ramsar (on wetlands) and the Convention on Migratory Species.

87. Another important aspect of how CITES is addressing developing country interests concerns the growing visibility of *sustainable utilisation*. As explained above in the section on objectives, the Conference of the Parties has recognised in Resolution Conf. 8.3 that commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people. Insofar as various provisions in the Convention require non-detriment findings before allowing trade, it has been suggested that Convention mechanisms are sufficient to allow for sustainable utilisation. Nonetheless, the ERM review found in the results to the questionnaire that there was a spectrum of views on the issue of sustainable utilisation among CITES Parties and identified this as one of the fundamental policy questions facing CITES<sup>27</sup>. The ERM report, to be discussed at the tenth meeting of the CoP, in Zimbabwe, in June 1997, includes a recommendation for the careful preparation of an interpretative Resolution of the Parties on this particular issue. It suggests that national experience in applying the concept of sustainable utilisation be analysed, perhaps most fruitfully in co-operation with a partner organisation, such as IUCN, which is currently carrying out case studies on sustainable utilisation, and with the Convention on Biological Diversity. Thus research, education and elaboration of guidelines would be undertaken, according to this ERM recommendation, over the 1997-99 period to address the equity concerns of developing range States.

88. Range states have also voiced concerns via the ERM questionnaire concerning Article XIV of the Convention, according to which the use of "stricter domestic measures" causes confusion and ill-feeling. However, given that Parties are to adopt national legislation to enforce CITES (Article VIII) and may adopt other, "stricter" measures (Article XIV), the potential effect of such national laws may depend on the form and the transparency of "stricter" legislation and associated regulations in each Party. It has also been recalled that "stricter domestic measures" are applied not only to control imports but also exports -- potentially raising questions of access to resources.

## VI. Assessing effectiveness of the trade provisions

89. Assessing the effectiveness of trade provisions in environmental agreements is more an art than a science. Assessment methodologies have been the discussion of considerable literature particularly with the intensification of the trade/environment debate in the last five years<sup>28</sup>. Much of this literature concerns assessing the *relative* contribution of trade and non-trade or so-called positive measures (transitional grace periods; special funds, soft loans; transfer of environmentally-preferable technology; capacity-building and other technical assistance, etc.) to achieving the environmental objective. In the case of CITES, for all practical intents and purposes, the matter of assessing the effectiveness of the trade measures comes down to discussing the effectiveness of the Convention itself, CITES being an MEA which is exclusively concerned with species of conservation concern *as they move in international trade* and which addresses those concerns *through trade measures*.

90. In assessing the effectiveness of trade provisions in CITES, use is made here of a hybrid approach along the lines of these emerging assessment methodologies. That is, a series of considerations are examined together with indicators designed to reflect their state. These have been grouped into primary considerations and secondary or others. The *primary considerations* include not only assessment of the movement towards the essential objective, but also involve assessing the adequacy of the formal or institutional conditions foreseen to make the various policy instruments effective. In particular, a) Does the Convention have the formal participation, including fulfilling of initial follow-up requirements required by the treaty? b) Do Parties meet their responsibilities in terms of complying with the basic requirements set out in the Convention and enforcing trade measures put in place to promote the treaty's aims? c) What are the results in terms of the environmental goals? *Other considerations* in assessing effectiveness include d) whether equity concerns are met to encourage full implementation of MEA?

91. For CITES, the following *primary considerations* are examined:

- a) formal/institutional:
  - i) numbers and pace of accessions and participation in CoP meetings;
  - ii) fulfilment of basic (Article VIII/IX) requirements, as reflected in national implementing legislation;
- b) compliance with reporting and enforcement
  - i) adequacy of reporting of trade in species;
  - ii) mechanisms for monitoring and improving enforcement of trade controls;
- c) environmental: change in the conservation status of species subject to trade measures;

92. Other effectiveness considerations examined are:

- d) international co-operation:
  - i) sensitivity in CITES decision-making bodies to developing country interests in wildlife;
  - ii) technical and financial co-operation, including multilateral funds, for assisting developing countries in CITES-related projects

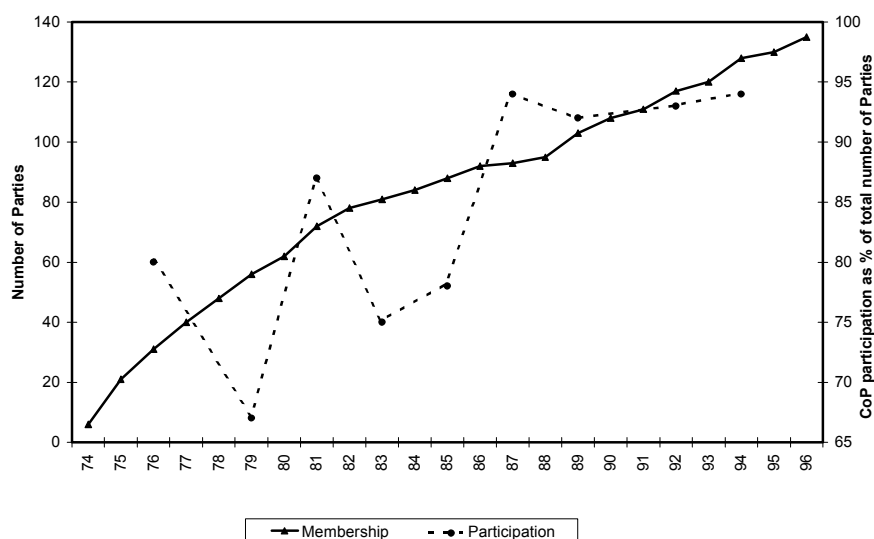
## A. *Primary considerations*

### a) *Formal and institutional effectiveness*

#### i) numbers and pace of accessions and participation in CoP meetings;

93. CITES now numbers 138 Members. Whilst less than the membership in the Montreal Protocol, at 154, it is slightly greater than that of WTO (127). Interestingly enough, the pace of ratification and accession to the Convention has over the last 21 years, since entry into force, been remarkably regular (see Graph). Contrary to what might have been expected, there was no rush of interested parties in the beginning, followed by a long period during which membership reached a plateau. This could be an indication that it became steadily obvious to non-Parties during the 1980s that the Parties were serious in applying treaty provisions, both trade controls on Members and non-Parties. This in itself is a significant positive factor in judging its effectiveness.

**Graph. CITES Parties and participation at CoP meetings**



94. The remaining non-Parties (see Table 6), apart from one remaining EU Member State, are mostly to be found in the Middle East, South East Asia, the New Independent States (NIS) and some islands. Examples of non-Parties which are important wildlife traders in at least one CITES-listed species are in addition to some of the NIS (e.g. Kazakhstan) and Middle East importers of birds of prey for falconry, Angola, Fiji, Haiti, Netherlands Antilles, Solomon Islands, Turks and Caicos Islands and Chinese Taipei<sup>29</sup>.

95. Participation in the meetings of the Conference of the Parties has been exceptionally high -- at the sixth through ninth CoPs, more than 90 per cent of Parties attended.

#### (ii) fulfilment of basic requirements, as reflected in adequacy of national implementing legislation;

96. On the other hand, members have made less progress when it comes to meeting the four minimum conditions under Articles VIII and IX of the Convention, viz. i) designate at least one Management Authority and one Scientific Authority; ii) prohibit trade in specimens in violation of the

Convention; iii) penalise such trade; and iv) confiscate specimens illegally traded or possessed. The results of analysis of some 80 Parties' (plus 6 dependent territories) national implementing legislation, carried out by TRAFFIC and the IUCN, under contract to and funded by CITES, divided the countries studied into three groups: i) 15 (14 of which were OECD Members) had legislation meeting all requirements for CITES implementation; ii) 41 (of which 4 OECD Members and a dependency) had legislation judged not to meet all the requirements; and iii) 28 (of which 2 OECD Members) had legislation believed generally not to meet the requirements for the implementation of CITES. Since the choice of these countries was made generally (but not exclusively) on the basis of importance in wildlife trade, it would seem conservative to generalise that some four-fifths of CITES parties do not have legislation meeting all requirements for CITES implementation. A new series of countries are to be studied before the tenth meeting of the Conference of the Parties.

**Table 6. CITES non-Parties and WTO Membership**

<b>Country</b>	<b>WTO Membership</b>
Albania*	no
Andorra	no
Angola*	no
Antigua and Barbuda*	yes
Armenia	no
Azerbaijan	no
Bahrain*	yes
Bhutan	no
Bosnia and Herzegovina	no
Cambodia	no
Cape Verde	no
Croatia*	no
Democratic People's Republic of Korea*	no
Faroe Islands*	no
Federated States of Micronesia	no
Fiji*	yes
Grenada	yes
Haiti*	yes
Iceland*	yes
Iraq	no
Ireland*	yes
Kazakhstan	no
Kiribati*	no
Kuwait	yes
Kyrgyzstan	no
Lao People's Democratic Republic	no
Lebanon*	no
Lesotho	yes
Libya	no
Lithuania*	no
Maldives	yes
Marshall Islands	no
Mauritania	yes



Myanmar*	yes
Netherlands Antilles*	yes
Niue*	no
Oman*	no
Palau	no
Qatar	yes
Republic of Moldova	no
Samoa	no
San Marino	no
Sao Tome and Principe	no
Slovenia*	yes
Solomon Islands*	yes
Syria	no
Tajikistan	no
Tonga*	no
Turkmenistan	no
Turks and Caicos Islands*	no
Tuvalu*	no
Macedonia	no
Ukraine	no
Uzbekistan	no
Chinese Taipei **	no**

\*Non-Parties that have provided the information requested by Resolution Conf. 8.8

\*\*As part of the UN family, the CITES Secretariat treats Chinese Taipei (comprising the island of Taiwan) as a province of China; following CITES Article I, which defines Parties as States, it may not become a Party. CITES Standing Committee recommendations have, however, specifically addressed infractions there. Membership negotiations for China, as well as separate accession negotiations for Chinese Taipei, are currently underway in the WTO.

*b) Compliance: reporting and enforcement*

97. *Reporting:* In general, monitoring the compliance of MEAs is accomplished through meetings, work of Committees, support from the Secretariat and reporting by Members. In the case of CITES, annual reports are particularly important. Article VIII.7 stipulates that Parties must prepare an annual report of trade records in CITES-listed specimens. The reports enable monitoring of the implementation of the Convention and the identification of potentially illicit trade. As mentioned in the section on objectives, CITES trade data has also been the basis of the significant trade review exercise. By studying the trade records, the Animals Committee, and increasingly the Plants Committee, have been able to identify potentially harmful trade flows leading to recommendations for policy action. Although improving, annual reports are not particularly satisfactory, as has been analysed for recent CoP meetings by the WCMC. Some specific findings were mentioned in the section on non-compliance above.

98. Article VIII also requires Members to submit a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention. According to the Secretariat, in fact compliance has been poor on this score; the ERM report confirms that “very few” are submitted.

99. *Enforcement:* As a non self-executing treaty, CITES depends on implementation at the national level. Beyond the four basic requirements needed in national laws, the Management and Scientific Authorities, and the enforcement agencies, such as customs, police wildlife agents, must have the

technical and financial capacity to enforce the national laws and regulations in place to implement CITES obligations. Findings on enforcement in the ERM analysis of the Parties' replies to the questionnaire give a good overview of the problems. In general, they found "effective national implementation and enforcement of CITES is hard to achieve, even for the richest countries, given the complex requirements of the Convention."<sup>30</sup> In replying to the question of how effective has CITES implementation in your country been, 85 percent of the respondents found efforts to be 'reasonably' successful. Interestingly, when replying on how effective implementation was in *other* countries, respondents tended to be more circumspect in their assessment. The two areas identified as the most important for hampering the effectiveness of CITES were domestic financial limitations and enforcement difficulties.

100. Problem areas associated with CITES enforcement were touched on in section IV above. In general, the seriousness and large number of problems suggests two things: first of all, that the monitoring apparatus, formal and informal, seems to be operating relatively well, since the problems facing CITES implementation are well catalogued. Secondly, enforcement of the trade control mechanisms, is a constant uphill struggle.

101. On the first point, CITES has unquestionably benefited greatly from the network of non-governmental organisations which are interested in wildlife conservation. Much of the Alleged Infractions Report and other less well publicised 'tip-offs' to the Secretariat and national enforcement agencies originate or have been channelled through these NGO contacts, the TRAFFIC network being the lead group. Of course, enforcement agencies of many Parties, such as the environment or wildlife ministries, customs and police, are continually seizing and confiscating illegally traded specimens and prosecuting those involved, events which do not necessarily get publicised or reported to the CITES Secretariat. But it would appear that without this source of non-governmental support, CITES, would in fact be weaker and less effective.

102. On the second point, the constant calls for better enforcement, which have been the subject of several resolutions of the Parties and will again be taken up at the tenth meeting of the CoP in June 1997, suggest that progress still needs to be made. Overall, it would seem that enforcement has been improving, whether it be in importing or exporting, rich or poorer Parties. Improving enforcement runs into the inherent difficulties in detecting smuggling (plants in tourists' suitcases; reptiles in small courier packages, etc.) and the need for technical expertise to identify listed species and determine allowed variants from regulated wild specimens mean training and equipment needs are great. This is particularly the case in developing countries, where in most instances CITES specimens originate and where technical and administrative barriers to CITES enforcement weigh relatively more heavily.

*c) Environmental: change in the conservation status of species subject to trade measures*

103. The assessment both of the species specialists consulted by ERM and most of the Parties replying to the questionnaire is that CITES has been effective in promoting the conservation status of some species and has not been for others.

104. Such an assessment is in the nature of an affirmation and remains unproved. Bringing hard data to the matter of evaluating the improvement/degradation in the conservation status of CITES-listed species due to international trade is fraught with difficulties -- if for no other reason than the sheer number of species -- estimated at between 30-35000 species, of which 25-30000 are plants (a very large number of which are orchids). Since assessing the biological status and trade flows for each of these therefore is out of the question, how can an assessment be approached at a macro level?

105. On the one hand the fact that “not one species listed under CITES has become extinct as a result of trade since the agreement took effect in 1975” has been advanced as an example of the effectiveness of CITES trade controls.<sup>31</sup> Of course, in and of itself, this situation cannot establish a causality link between the use of the instrument (trade measures) and the change in the environmental externality (species loss) and even less the nature or strength of such a link. However it does properly draw attention to the facts of the situation and it is implausible to advance that this is a matter of pure coincidence to which CITES cannot be associated. On the contrary (and this is underlined by the fact that CITES continues to attract membership and clearly has effectively curtailed trade in a number of cases) it is more plausible to presume that, at the overall level, the status of species conservation is better than it would have been had CITES not existed at all.

106. Such an approach, of course, can not resolve the matter definitively in an empirical way nor does it answer questions about specific species. What can be done however, is to assess the situation since CITES has been in force by looking at a variety of representative species. For example, two high profile, ‘mega’ species whose parts/derivatives are heavily traded (albeit illegally among Parties since their Appendix I listing) -- the rhino and the tiger -- have continued to dwindle in numbers since the CITES listing and in some quarters a future extension of their past losses would point to their potential disappearance from the wild. However, even here, this does not necessarily mean that CITES trade controls are ‘ineffective’. In fact for both of these, specialists feel that the ‘endangered’ status of Appendix I listing has helped to mobilise campaigns to address the factors other than trade which have been contributing to their declines. Also the most recent series of measures recommended at the ninth CoP meeting (cf. para. 75 above), shows that Parties have realised that the trade controls alone have not been sufficient in halting the decline of the tiger and the rhinoceros, but that, inter alia, demand side factors also have to be addressed. While these are important species of particularly high profile for the international community, they remain two out of some total 35000 CITES-listed species, or approximately 5000 animals.

107. It should also be noted that CITES has had clear success stories -- in particular the crocodilians. Thanks to the innovative measures of ranching, quotas, etc. and detailed technical work on tagging hides from such sources, illegal trade in the larger alligator and crocodilian skins has all but disappeared (although problems still remain in the smaller caiman hides.)<sup>32</sup> Today, 70 per cent of crocodilians have escaped the threat of extinction and trade in crocodilian skins is expected to grow from 1.3 million units in 1993 to more than 2 million by the year 2000.

108. Extending such examples would need to be done in a way where a statistically valid representation could be arrived at. And in fact the Conference of the Parties is responsible for “review(ing) the progress made towards the restoration and conservation of the species included in Appendices I, II and III.” (Article 11 3 c) However, this is a task that so far has received little attention. “Other than in the context of amendments to the Appendices, there has not yet been [such] a review... This is because the current knowledge of the conservation status of most species included in the Appendices and the effects of exploitation thereon is very limited.”<sup>33</sup>

109. The final decision at the ninth meeting of the Conference of the Parties to undertake a review of improving the effectiveness of the Convention implied that a species review would be included<sup>34</sup>. Due to resource and time constraints, only a small sampling exercise was undertaken to review the effect of CITES on the conservation status. Twelve species were chosen based on considerations of balance (geographical region; Appendix listing; fauna and flora; live specimens and parts/derivatives).

110. Nonetheless it is interesting to see what the ERM’s “representative selection” produced. The summary of the results with species specialists appears in Table 8. Out of the twelve species examined,

for two species [Hawksbill turtle; Nile crocodile] did the species specialists qualify CITES as being effective; for four [living rock cactus, Asian bonytongue; giant clams; afrormosia] CITES was found to have been 'moderately effective'. For the remaining six species, CITES has had only a minimal effect (e.g. tiger) or, according to the specialists, the evidence was insufficient to be conclusive (e.g. lady slipper). For no species was CITES deemed 'ineffective'.

111. The variety of effects of CITES listing is evident even from the short comments reproduced in Table 8. A number of analytical comments made by ERM on the basis of the limited survey are particularly instructive. Ineffectiveness of CITES (besides matters of lack of enforcement) was attributed to long standing and culturally driven markets; trade among non-Parties and key threats from factors other than trade, such as habitat loss and habitat fragmentation. On the other hand, positive effects were due to indirect effects of increasing the profile afforded species by their being listed, leading to improvements in national legislation and increased public awareness and through well managed ranching, captive breeding programmes or split listings. Specialists were of the view that controls on trade were a short-term conservation measure. Beyond that, in the longer term, *"the evidence would indicate that Appendix I listings must maintain a sufficient degree of flexibility to allow ranching or captive breeding programmes to develop or split-listings...in order to create sufficient conservation incentives for local communities."*<sup>35</sup> The specialists imply that there is a lag between the existing possibilities for flexibility which have been worked into CITES control mechanisms and the actual application to particular species of these innovative measures agreed by the Parties.

112. Perhaps inevitably, due to its lack of comprehensiveness -- both in terms of depth and breadth -- criticism has been voiced of the ERM species review. The ERM itself recognised that the species review was in no way an exhaustive study and recommended that a much fuller one be undertaken.<sup>36</sup> In any case, the Parties are entrusted by the treaty itself to undertake reviews of conservation status of listed species and this approximation -- based on interviews with the IUCN species specialist groups and key Scientific Authorities -- together with criticisms of it, can yield lessons on which the methodology for a future review can build.

113. In principle, drawing on the mechanisms actually built into the CITES listing processes, one should be able to produce an overall picture of the direction of change in conservation status of species which move in international trade. One problem is that over time such mechanisms have been constantly refined in order to work out early teething problems. For example, when establishing the first sets of lists for Appendices I and II, where, it is generally recognised, Parties erred on the conservative side, i.e. by listing a higher taxon including the particular species known to be of concern, even though relevant information on the others was lacking. In addition the so-called 'look-alike' provision (Article II 2 (b)) was interpreted in the beginning so that large numbers (e.g. of cacti and orchids) of species were caught up. More recently, attempts have been made to 'clean up' this past tendency towards over-listing. Therefore it can be considered that most deletions, particularly of Appendix I, correspond to such administrative housekeeping of the Appendices.

114. Notwithstanding such problems, the movement over time of species between Appendices I and II provides a certain record of the operations of the Convention -- albeit one which is less than precise as to definite conclusions to be drawn. Such an approach as been outlined in a study of the effectiveness of various international environmental agreements (including CITES) prepared for the Preparatory Committee of UNCED and co-ordinated by a former Secretary-General of CITES.<sup>37</sup> According to this approach, an approximation of the relative movement in pressures on CITES-listed species would involve counting the movement of species from Appendix I to II and vice versa. Since the overall objective of CITES is to prevent trade from threatening the species survival, a move to prohibit trade by 'up-listing' to

Appendix I would indicate increased pressure and a down-listing to Appendix II should reflect a lessening of pressure on the trade and/or conservation status for the species.

115. Under such an approach, a count of Appendix transfers yields the following numbers:

**Table 7a. Transfers of taxa between Appendices I and II**

	Appendix I to Appendix II	Appendix II to Appendix I
Fauna	16 species + 5 subspecies + 27 popns.	4 groupings of species into a higher taxon + 73 species + 5 subspecies + 17 popns.
Flora	17 species + 1 subspecies + 1 popn.	9 groupings of species into a higher taxon + 77 species + 2 popns
Total of all taxa	67	187

**Table 7b. Deletions of taxa from Appendices I and II**

	Appendix I deletions	Appendix II deletions
Fauna	10 species + 9 subspecies + 1 popn	1 grouping of species at a higher taxon + 46 species + 19 subspecies + 4 popns
Flora	13 species	9 groupings of species at a higher taxon + 19 species + 2 subspecies
Total of all taxa	33	100

116. The author of the reference guide to CITES indicates that “Of course, the downlisting of species or their delisting may be a confirmation of the fact that its conservation status has improved. It may, however, also mean that the species should not have been listed in a particular Appendix in the first place or that the species is not in trade.”<sup>38</sup> Elsewhere he states that “Every transfer of a species from Appendix II to Appendix I can therefore be considered as an example of the failure of the Parties to fulfil their obligations under the Convention.”<sup>39</sup> That is, the Party in question did not fulfil its obligation of making non-detriment findings about exports of species listed under Appendix II, leading to over-exploitation to a point where Appendix I protection became necessary.

117. According to the numbers in Table 7a, for fauna and flora taken together, between two and three times as many taxa were transferred from the status of potentially threatened by trade (Appendix II) to that of threatened (Appendix I) than the reverse.

118. Table 7b shows deletions of 133 taxa deletions from Appendices I and II, which could, as mentioned above, indicate improvements in the conservation status of the taxa concerned. In fact, a large number of these were deleted as having been inappropriately listed in the first place. For example, 29 species were deleted from Appendix II in 1987 for this reason<sup>40</sup>.

119. Care should be exercised in interpreting these figures. In fact it would appear that some qualifications ought to be made with at least several provisos being necessary. In particular, it would be

ideal to be able to remove those species movements reflecting ‘administrative housekeeping’ of the lists over the years. In addition it is necessary to recognise that a host of factors other than trade threaten the survival of species, even for those which have been listed on CITES Appendices, reflecting the Parties’ perception that species could be threatened with extinction unless trade is strictly regulated (Art II. 2 (a).) Species for which there are only small numbers and geographically isolated populations also have entered into the listing criteria.<sup>41</sup> In several cases the ‘failure’ of the Parties referred to by Wijnstekers to fulfil their obligations under the Convention can be imputed to a laxist attitude or lack of technical capacity (and in particular to make a non-detriment finding) on the part of a single Party, since the up-listed species in question is endemic to one country. Sometimes the Appendix II listing of a species has allowed data to be collected thereby improving the conservation knowledge base on which to judge the appropriate listing. Assuming that these various ‘noise’ factors could be reduced in the information on the transfers and deletions based on (Parties’ decisions about) conservation status, then a cumulative picture would be obtained, based on a reasonably large sample over 20 years, of how Parties have decided over time that the strictness of CITES trade controls need to be adjusted (up or down).

120. On this currently uncorrected basis, it would seem reasonable to observe that these indicators fall short of being a reliable benchmark of effectiveness. Nonetheless, they can give a broad indication of where potential problems may be found.

**B. Other effectiveness considerations**

*a) International co-operation*

*i) sensitivity in decision-making bodies to developing country concerns about wildlife*

121. As noted in the section above in developing countries, the text of the Convention does not mention development; needs for technical assistance have been addressed in resolutions since the third CoP. The eighth meeting of the CoP, held in Kyoto in 1992, marked a watershed for CITES in terms of explicitly addressing the needs of local people and the need to provide incentives for sustainable use in order to stave off conversion to alternate forms of land use. It was also at the Kyoto Conference that in Resolution Conf. 8.3 the parties recognised that “commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question.”

*ii) technical and financial co-operation, including multilateral funds, for developing countries on CITES-related projects*

122. Section V above has discussed the quasi-lack of access to the GEF, in contrast to the Rio Conventions for which it is the interim financing mechanism or managing agency. The ERM questionnaire reveals that 86 per cent and 82 per cent, respectively, of respondents gave a high ranking to ‘training and other activities’ and ‘special projects’ as to priority for increased funding. 88 per cent of respondents answered in the affirmative to whether an international plan should be drawn up to identify and mobilise additional revenues. And as quoted in the previous section, nearly 95 per cent of replies supported more use being made of the GEF for CITES-related activities.

123. On the other hand, several donors have poured large amounts of bilateral assistance into wildlife projects in range States. These funds have sometimes been directly related to CITES-listed species, e.g. support of anti-poaching, public education and outreach, and population studies, or related more generally to wildlife trade. However relatively little bilateral money has been funnelled directly into building

capacity for the implementation of the Convention and with the exceptions of a few donors, this financial assistance has been co-ordinated by the Secretariat. More indirectly, official support as well as large private monies support -- perhaps by as much as an order of magnitude compared to the CITES Secretariat budget -- the several associated NGOs whose activities serve in part to support CITES work.

124. There is a question as to whatever there is scope within CITES for trade measures to be further complemented with other measures, thereby further enhancing CITES effectiveness. To a certain extent externally funded CITES projects for matters other than training or implementation of the Convention already represent an important step in this direction (e.g. undertaking a population study in order to permit a range state to benefit from some of the flexibility mechanisms (quotas, ranching, etc.)) But for the moment CITES Parties have been quite prudent in extending any such peripheral activities, and have not undertaken certain activities not closely linked to implementing the Convention. In this context, contacts between CITES and the CBD with a view to working out possible synergies between the two Conventions are encouraging. Whereas CITES is a taxon-based treaty, CBD tends to focus more on ecosystems. Various areas of co-operation could be imagined, e.g. where CITES also has an indirect role in ecosystems since authorisation of exports of Appendix II listed species are to be determined with a view to "maintain the species throughout its range at a level consistent with its role in the ecosystem in which it occurs..." (Article IV. 3)

**Table 8. CITES environmental effectiveness: conclusions of species specialists**

Species	Distribution	Traded Products		Appendix	Effect of Listing	Comments	Research needed?
<i>Ariocarpus agavoides</i> (Living rock cactus)	America	Lv		I	e	CITES has raised the profile considerably but may have obstructed development of artificial propagation.	yes
<i>Panthera tigris</i> (Tiger)	Asia	Lv, Tr,	Sk, Bo	I	m	High levels of illegal trade continue due to market values & demand for products.	no
<i>Eretmochelys imbricata</i> (Hawksbill turtle)	World-wide	Lv, Sh	Mt,	I	E	CITES has provided higher profile for the species and has induced key consumer countries to limit and then halt the trade.	no
<i>Scleropages formosus</i> (Asian Bonytongue)	Asia/ Oceania	Lv		I	e	Little incentive to trade illegally in this species, due partly to successes with captive breeding programmes.	no
<i>Crocodylus niloticus</i> (Nile crocodile)	Africa	Sk, Sh, Mt	Bo, Lv,	I/II	E	CITES has provided flexible mechanism for regulation & monitoring of <i>App. I</i> and <i>II</i> trade.	no
<i>Moschus moschiferus</i> (Musk deer)	Asia	Dr, Lv	Mt,	I/II	i	Although insufficient information it is suspected that significant unregulated trade continues.	yes
<i>Python regius</i> (Albino Ball Python)	Africa	Lv, Sk, Sh		II	i	Levels of trade have increased consistently due to ineffective implementation of Article IV by exporting nations.	yes
<i>Amazona aestiva</i> (Blue Fronted Parrot)	America	Lv		II	m	CITES has had a minor effect on trade despite its endangered status, requiring intervention elsewhere.	yes
<i>Tridacnidae spp.</i> (Giant Clams)	Asia/ Oceania	Lv, Sh	Mt,	II	e	Nat'l legislation in key exporting countries has improved, although implementation remains weak.	no
<i>Cypripedium californicum</i> (Lady Slipper)	America	Lv		II	i	Artificial trade is well regulated while illegal collection from the wild continues.	yes
<i>Pericopsis elata</i> (Afromosia)	Africa	Dr		II	e	CITES has raised the profile but enforcement remains weak.	yes
<i>Odobenus rosmarus</i> (Walrus)	North Atlantic	Bo, Lv	Mt,	III	m	CITES has no effect on int'l trade while in parts of its range serious over-exploitation is likely.	yes

Source: ERM (1996)

KEY: *Effect of Listing*: E -- effective; e -- moderately effective; m -- minimal effect; i -- inconclusive.*Traded Products*: Lv-live; Tr-trophy; Sk-skins; Bo-bones, teeth, claws, tusks; Mt-meat; Sh-shell, scales, eggs; Dr-derivatives



## VII. CITES and the multilateral trading system

### A. Introduction

125. In accordance with the terms of the study<sup>42</sup>, this Section attempts to describe briefly some key aspects of the relationship between the trade provisions of CITES and the main potentially relevant provisions of the GATT/WTO. This section is structured as follows: first, there is a brief description of the range of measures under CITES that may be deemed to be relevant. Second, there is a review of certain key provisions under GATT 1994, focusing on Articles XI, I and XIII, and XX. Third, a section addresses other relevant considerations. Finally there is a brief conclusion.

126. It should be noted at the outset that, in the 21 years since CITES entered into force, no challenge to any of its provisions, nor to the domestic measures taken pursuant to it, has ever been raised directly<sup>43</sup> in GATT/WTO dispute settlement proceedings. Given the large - and still growing - membership of CITES (currently 138 Parties), there is not reason at present to anticipate change in that situation.

127. This Section then endeavours to focus on WTO obligations that may be considered to be most pertinent when it comes to measures taken under CITES<sup>44</sup>. Of course, discussing the relationship between trade-relevant provisions of CITES and WTO obligations implies no *a priori* presumption as to whether one treaty is inherently superior to the other. It is simply a matter of drawing attention to areas where potential for friction could exist. This serves the purpose of meeting a key challenge in much trade-environment discussion: how to ensure that policies and approaches in differing policy domains can be crafted or adapted to be more sensitive to the overarching objectives of each other. Analysis is the necessary first step in that process

128. That this is an analytical rather than prescriptive matter is underlined by the fact that as far as Parties to the Convention are concerned, CITES itself provides for its own form of dispute resolution. Article XVIII of CITES relating to Resolution of Disputes provides that

- "Any dispute...with respect to the interpretation or application of the provisions of the present Convention, shall be subject to negotiation between the Parties involved in the dispute.
- If the dispute cannot be resolved...the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at the Hague and the Parties submitting the dispute shall be bound by the arbitral decision."

129. In this context, it can be noted that, among its conclusions and recommendations, the WTO Committee on Trade and Environment recently suggested "While WTO members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms available under the MEA."<sup>45</sup>

### B. Relevant CITES measures

130. CITES provisions provide for regulation or restrictions (including prohibitions) of trade for Appendix I, II and III species. The key articles of CITES in this case are Articles III, IV, V and VI

providing for import and export permits and re-export certificates to regulate the trade in such specimens. The way in which the system operates, and the types of trade measures used are explained above in Section II, including Box 1.

131. The actual domestic application of the measures concerned is a matter for the individual parties. Accordingly, they are required under Article VIII.1 to take "appropriate measures to enforce the provisions of the present Convention". The terms of that requirement seem to go beyond measures limited strictly to domestic implementation to include additional measures to deal with cases where there is a violation of the obligations of the agreement. In such a case, the Article provides that parties are "to prohibit trade in specimens in violation [of the Convention]".

132. Article XIV also provides that nothing in the Convention prevents Parties from adopting "stricter domestic measures", (see Section II.C. above).

### **C. Key provisions under GATT 1994**

#### *a) Obligations relating to quantitative restrictions*

133. It would appear that, in the case of import and export permits and re-export certificates to regulate trade in Appendix I-III species, including the prohibition or restriction of trade for "primarily commercial purposes" in Appendix I species, as required by relevant CITES Articles, these are measures for which the obligations of GATT Article XI.1 concerning quantitative restrictions may be relevant. The same would appear to be the case for measures considered to be enforcement measures taken pursuant to Article VIII.1 or "stricter domestic measures" referred to in Article XIV, irrespective of whether the measures were applied to Parties or non-Parties.

#### *b) Non-discrimination obligations*

134. Articles I and XIII of the GATT could be relevant also to measures taken to implement CITES. Pursuant to these Articles, there are obligations to treat "like" products in the same way, no matter what their country of origin. For instance, Article XIII permits application of (otherwise legitimate) quantitative import restrictions to the product of one Party only if the restriction is applied also to the "like products" of other parties.

135. The question of whether fauna or flora taken from the wild are "like" their captive bred, ranched or propagated counterparts could be of potential relevance in any situation where a country applied trade restrictions on imports of wild specimens where it permitted imports of propagated or ranched specimens from other suppliers.<sup>46</sup> This may also be an issue that is relevant in the case of split listings (See Section II B. above). In these situations, there can be different Appendix listings, and different trade treatment of geographically separate populations of the same species.

136. However, this is not a matter that can be settled in the abstract. The criteria for determining when products are "like" products have been subject to extensive deliberation and adjudication in past GATT/WTO dispute settlement cases, but in very specific circumstances. The "like product" concept appears in a number of WTO provisions which have been scrutinised under Dispute Settlement proceedings (perhaps most controversially in the context of the national treatment obligation under Article III)<sup>47</sup>. and it is not feasible to attempt to summarise here the relevant jurisprudence.

*c) General Exceptions*

137. The preceding provisions may also be considered in conjunction with Article XX. Under this "General Exceptions" Article, trade measures that would otherwise be inconsistent with the GATT may be applied in defined circumstances. This is subject also to the general requirement that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

138. A threshold question however would arise. Given that CITES reflects the views of the international community, it is not clear how far a WTO Panel would enquire into the specific requirements of Article XX in the case of a trade measures taken under the Convention. On the one hand, it is possible that a (rebuttable) presumption would be made that an international consensus exists on the validity and necessity of the instruments it has chosen to meet its objectives. It could for example decide to solicit the view of the Convention or associated experts on the specific matters raised by Article XX. On the other hand, a WTO Panel may consider its mandate limited to examining WTO provisions, and not the provisions of other international agreements.

139. It would appear that at least XX(b) (regarding measures necessary to protect human, animal or plant life or health), and XX(g) (covering measures relating to the conservation of exhaustible natural resources) would be potentially relevant.

140. With respect to Article XX(b), it is a matter of whether the measures would be considered to be "necessary" to protect human, animal or plant life or health. Past cases under the GATT/WTO have addressed this standard although none, to this point, has directly addressed measures taken pursuant to a multilateral environmental agreement. Of some relevance might also be the difference between implementation through national measures and trade measures specifically mandated in CITES

141. With respect to Article XX(g), it is a matter of whether these are measures "relating to conservation of exhaustible natural resources [and] made effective in conjunction with restrictions on domestic production or consumption". This provision has, similarly, been the subject of dispute settlement under GATT/WTO. The word "necessary" does not appear in the case of XX(g). Rather, the reference is to measures "*relating to*" the conservation of exhaustible natural resources.

142. There would seem to be little purpose in speculating further on how these provisions would apply in relation to hypothetical situations. This is all the more so given that, as a practical matter, CITES has been ratified by most WTO members.

**D. Other relevant considerations**

143. It may also be noted that there are two categories, as it were, of WTO members when it comes to dealing with the subject of CITES and WTO obligations. There are (many) WTO members that are also parties to CITES, and there are (a few) WTO members that are *not* parties to CITES.

144. There are additional considerations which could be borne in mind in the case of WTO members which are also parties to CITES. In this case the view could be taken that CITES provisions would in any case prevail according to the principles of customary international law. According to this view, when two agreements signed by the same parties relating to the same subject matter are in conflict, the agreement later in time (*lex posterior*) is presumed to prevail<sup>48</sup>.

145. Thus, CITES provisions could have been held to have prevailed over any conflicting GATT provisions for as long as CITES post-dated the original 1947 GATT Agreement. Has the situation changed in the case of GATT 1994, which now formally post-dates CITES? In this regard it should be noted that Article II.4 of the WTO Agreement makes it clear that it is a legally distinct Agreement:

"The General Agreement on Tariffs and Trade 1994 is legally distinct from the General Agreement on Tariffs and Trade dated 30 October 1947..."

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

"...environmental agreements are clearly more specific than GATT in terms of their subject matter. Under the principle of *lex specialis*, it is normally presumed that the more specific of two agreements is meant to control, even when the more general agreement happens to be later in time."<sup>49</sup>

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

"In general, these principles would suggest that GATT should step aside whenever a GATT member government has signed an international environmental agreement authorising other signatories to impose trade restrictions against it. The general concept is that GATT members who sign such an agreement can quite properly be deemed to have waived their GATT legal rights against such trade restrictions".<sup>50</sup>

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

"In practice, in cases where there is a consensus among Parties to an MEA to apply among themselves specifically mandated trade measures, disputes between them over the use of such measures are unlikely to occur in the WTO".<sup>51</sup>

149. It is difficult to see how considerations regarding *lex posterior* and *lex specialis* would be applicable in the case of measures (whether these be specific measures laid down in the Convention or pursuant to enforcement measures taken under Article VIII or as recommended by a body of CITES or as "stricter domestic measures") applied by a WTO member Party to CITES to a WTO member non-Party to CITES<sup>52</sup>.

## **E. Conclusions**

150. The purpose of this section has been to underline that there are specific areas where respective rights and obligations under GATT/WTO and CITES may bear particularly close scrutiny. It appears that there have been no practical problems which have arisen to date. At the same time, this section has indicated that, albeit as a purely technical matter, there are certain areas where there may be at least potential for questions of interpretation to arise. The nature and extent of those potential issues differs in

accordance with whether one is dealing with a case of (a) measures taken by parties that are strictly based on the text of the Convention or on consensus of the CITES parties; (b) measures applied by one CITES party to another which are not manifestly based on the Convention itself or an agreed interpretation; and (c) measures applied by CITES Parties to WTO Members not CITES parties.

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

### VIII. Concluding remarks

152. 21 years old, CITES is of age and has acquired vast experience in addressing, within its mandate of regulating international trade, the protection of wild fauna and flora. It is a popular environmental agreement with widespread support from NGOs within the scientific and enforcement communities, as well as the interested public groups. In the words of its Secretariat's annual reports, CITES is a 'living Convention' -- it has shown resilience and adaptability to changing circumstances. The system of trade controls has undoubtedly been effective in a number of cases in limiting the role demand, as transmitted by international trade, has played in the over-exploitation of species.

153. CITES relies essentially on trade-related measures. Limited access to multilateral funds, a reduced role for economic incentives and more generally, few policy instruments contrast this MEA with multilateral environmental agreements negotiated in the run-up and since UNCED, which were furnished with additional instruments to supplement trade measures. The fact is that CITES has had its role defined essentially in these terms; in judging its effectiveness, this has to be taken fully into account.

154. Identified in the recent ERM review of improving effectiveness of CITES, which will be considered at the forthcoming tenth CoP meeting in June 1997, as a major area of discussion amongst CITES Parties is the issue of sustainable utilisation. In this context it should be noted that over the past twenty years, new mechanisms of flexibility have been introduced, which, while still founded on the key operational precept of only allowing trade pursuant to a non-detriment finding, can permit limited trade to take place in otherwise strictly regulated conditions, according to species and/or geographic population, and subject to quota, ranching practices, registration of commercial breeding/propagation operations etc. Allowing Range states to take full advantage of such trade facilitating mechanisms usually means bringing to bear additional resources to carry out population studies and devise and implement sound management plans. External funding, a fair share of which now goes to such work, increased over the past biennium.

155. Similar to the matter of promoting biological diversity through the use of economic incentives is the issue of relations amongst biodiversity-related Conventions. Strengthened co-operation has been encouraged in resolutions adopted at the last two meetings of the CoP of the Convention on Biological Diversity, including joint approaches to improve access to multilateral financing mechanisms such as the Global Environmental Facility. Initial fears of the CBD dominating the other biodiversity-related Conventions may have been set aside following recent meetings of co-ordination amongst the various conventions and in view of the forthcoming five year review of activities for the CBD. CITES has an important role to contribute based on its relatively lengthy existence and lessons learnt from the monitoring of trade as well as the technical work in, i.a. the Plants and Animals Committees and the associated organisations (IUCN/SSC; WCMC; TRAFFIC).

156. Thus far no systematic investigation of effectiveness has been undertaken, although the Convention gives a mandate to the Conference of the Parties for regular reviews of the conservation status of the listed species. The recent ERM report undertook a rapid review of a representative sample of twelve species. The results both from the species specialists and the replies of Parties to the questionnaire, while remaining less than comprehensive, indicate that the environmental effectiveness of the CITES system of trade controls has been variable: positive in some cases, indifferent or less effective in others. To be considered at the tenth CoP meeting is the ERM recommendation for a wider and more in depth species review. The WCMC has developed a research proposal<sup>53</sup> which would complement such a taxon-oriented review by analysing the role of the trade measures in meeting the conservation objectives.

157. Enforcement is also an issue and strong calls continue for improvements in combating illegal trade. At the same time, pressure on biodiversity is not mono-causal and in instances where trade controls have proved less effective, this often reflects the extent of those other factors contributing to the deterioration in the conservation status. In the case of the rhino and tiger, Parties have made recommendations which propose actions going beyond trade measures *per se*. It should be noted that in some cases, the relative success can also be attributed to indirect results of CITES listing -- e.g. by raising the profile of the species and problems associated in general with the species' conservation, leading to increased public awareness.

158. In other success stories, conservation has been enhanced by creating incentives through the development of ranching, captive breeding programmes or other split-listing possibilities. These are further, positive examples of the flexibility of implementing the Convention. Can these be built upon and extended to other species? In response to the fundamental question of whether the model provided by *Crocodylus niloticus* (Nile crocodile) was applicable to other CITES species, the species specialists replied that the lesson was undoubtedly transferable. Economic incentives, which relaxing of trade controls offer, would reinforce this. And yet crocodilians are among the few species to have benefited from the ranching and quota adaptations of the trade regulation regimes foreseen in the Convention. Assessments vary as to whether this is solely because of the biological characteristics of the species.

159. It is worth noting that the ERM report on improving effectiveness recommends that CITES, as a matter of priority, take up the GATT/WTO issue, including the relationship with CITES Article XIV 'stricter domestic measures' and, further, that co-operation and information exchange with WTO be enhanced.<sup>54</sup> This is in line with the recommendation of the Committee on Trade and Environment's report to the WTO Ministerial in Singapore of December 1996, where it was stated that "co-operation between the WTO and relevant MEAs institutions is valuable and should be encouraged. The CTE recommends that the WTO Secretariat continue to play a constructive role through its co-operative efforts with the Secretariats of MEAs and provide information to WTO Members on trade-related work in MEAs. ... observer status for relevant MEAs in WTO bodies, as appropriate, can play a positive role in creating clearer appreciation for the mutually supportive role of trade and environmental policies."<sup>55</sup>

160. Some of the more relevant GATT provisions appear to be those on quantitative restrictions and those concerning 'like products'. These bear careful scrutiny as do the general exceptions in Article XX, particularly the headnote to XX, XX(b) and XX(g). Articles I and XIII may be relevant to matters where country-specific trade treatment is involved.

161. Overall, it is reasonable to consider that with the large and growing number of Parties (currently at 138), any matters of dispute among Parties would be worked out within the Convention. Trade measures, it is recalled, have been recommended on several occasions to sanction non-complying Parties, both by the Conference of the Parties, as foreseen in the Convention, and more recently by the 14-member Standing Committee. On the other hand, there are a few countries which are not (yet) Parties to CITES and are important traders in wildlife for at least one species, but which are WTO members -- mostly amongst the New Independent States, in south-east Asia and a few island States and territories. The situation of Chinese Taipei presents a particular case: on the one hand it cannot become a Party to CITES, but consideration is currently being given to full membership status in WTO.

162. Discussions to be held soon by Parties in Harare, Zimbabwe on improving the effectiveness of CITES, together with the ongoing examination in the Joint Session of the actual experience with the use of trade measures and the discussion of the relationship between MEA provisions and the rules of the multilateral trading system in the WTO CTE, can also help the process of developing mutually supportive approaches to trade and environment issues where trade measures are involved.

## END NOTES

- <sup>1</sup> Environmental Resources Management (1996), *Study on How to Improve the Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*, Final Report to the CITES Standing Committee, September 1996.
- <sup>2</sup> A recent study by the United Nations Environment Programme (UNEP) estimates that between 2 and 25 per cent of examined species in tropical forests might become extinct by the year 2020.
- <sup>3</sup> Peter H. Sand (1997), "Commodity or Taboo? International Regulation of Trade in Endangered Species", *Green Globe Yearbook 1997*, Fridtjof Nansen Institute, Oslo (advance draft). The author was Secretary General of CITES from 1978 to 1981.
- <sup>4</sup> J. Burgess, "The environmental effects of trade in endangered species" in *The Environmental Effects of Trade*, 1994, OECD.
- <sup>5</sup> E. Barbier, "The environmental effects of trade in the forestry sector" in *The Environmental Effects of Trade*, 1994, OECD.
- <sup>6</sup> United States General Accounting Office, *Wildlife Inspection: Fish and Wildlife Service's Inspection Program Needs Strengthening*, GAO/RCED-95-8, 1995.
- <sup>7</sup> For example, at what point in the supply chain does one value the price of the good. A grey parrot exported from the Cote d'Ivoire may have a value at time of capture of US\$20 and at the point of export, US\$100. The importer's sale price to the retailer will be \$600 and in the shop, \$1100.
- <sup>8</sup> Sand (1997), *ibid.*, Note 3 *supra*
- <sup>9</sup> Numbers of species on the CITES appendices
- |         | Appendix I                      | Appendix II                      | Appendix III                 |
|---------|---------------------------------|----------------------------------|------------------------------|
| Animals | 510 spp. + 44 sspp + 21 popns.  | 4066 spp. + 99 sspp. + 18 popns. | 224 spp + 11 sspp. + 0 popn. |
| Plants  | 320 spp. + 1 sssp. + 1 popn.    | 25161 spp. + 1 sssp. + 1 popn.   | 6 spp. + 0 sspp. + 1 popn.   |
| Totals  | 830 spp. + 45 sspp. + 22 popns. | 29227 spp.+100 sspp.+ 19 popns.  | 230 spp. + 11 sspp. +1 popn. |
- Source: Wildlife Conservation Monitoring Centre, Cambridge, U.K.
- <sup>10</sup> Criteria for downlisting species from Appendix I to Appendix II were adopted at the first meeting of the CoP (Resolution Conf. 1.2). These included the necessity to provide positive scientific evidence, including documenting the population status to show that increased levels of trade could be tolerated. In 1979, at CoP2, Parties decided (Resolution Conf. 2.23) that species included in Appendix I or II during or before CoP I might be proposed for deletion or for transfer from I to II, if a careful review of all available information on the status of the species did not lead to the conclusion that the species would be eligible for retention in its Appendix under the adopted criteria. However, these provisions had very little practical effect in terms of correcting inappropriately listed species, as recognised in Resolution Conf. 8.20. W. Wijnstekers, *The Evolution of CITES, A reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 4th Edition, 1995, page 27.
- <sup>11</sup> Resolution Conf. 9.20.
- <sup>12</sup> TRAFFIC Europe, *The Implementation and Enforcement of CITES in the European Union*, 1994.



- <sup>13</sup> This is in contrast to Article 1 on “Objectives” of the Convention on Biological Diversity, which begins with: “The objectives of this Convention...are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources...”
- <sup>14</sup> Based on “A brief introduction to CITES”, by the CITES Secretariat.
- <sup>15</sup> Wijnstekers, *op. cit.* pg 29.
- <sup>16</sup> *ibid*, p. 14.
- <sup>17</sup> C. de Klemm, *Guidelines for Legislation to Implement CITES*, IUCN Environmental Policy and Law Paper No. 26, 1993.
- <sup>18</sup> S. Nash, *Making CITES work, a WWF Report*, WWF (UK), 1994.
- <sup>19</sup> WCMC, “A Report on Annual Reports Submitted by the Parties for 1990, 1991 and 1992”.
- <sup>20</sup> A similar general point in the context of prohibitions on ozone-depleting substances in the Montreal Protocol is made in the Royal Institute of International Affairs’ summary presented to the Joint Session. “If an MEA is to place restrictions on the production and consumption of, and trade in, any particular substance, it is almost inevitable that a black market will appear.” D. Brack, “International trade and multilateral environmental agreements: evidence from the Montreal Protocol”, para. 63 of Summary of Royal Institute of International Affairs study in COM/TD/ENV/(96)75.
- <sup>21</sup> Barbier E, “Elephant Ivory and Tropical Timber: The Role of Trade Interventions in Sustainable Management,” *Journal of Environment & Development*, 4,2 (Summer 1995). Dublin, Milliken and Barnes, *Four Years after the CITES Ban: illegal killing of elephants ivory trade and stockpiles*, IUCN/SSC African Elephant Specialist Group, 1995. Barbier, E., Burgess J., Swanson T. and Pearce D., *Elephants, Economics, and Ivory*, Earthscan: London, 1990.
- <sup>22</sup> UK Department of the Environment, “Why is there Environmental Crime? the financial incentives”, Working paper prepared for Combating Environmental Crime Workshop, October 1996.
- <sup>23</sup> Barbier, E. et al (1990), *op. cit.*
- <sup>24</sup> Of course this is not the case for donor assistance, both official and private, to wildlife protection in general and even to protection of particular species in conjunction with CITES decisions. For example, significant support to anti-poaching efforts and institution building was provided to certain African range States at the time of the management quotas (1980s) followed by the up-listing of *Loxodonta africana* at the seventh meeting of the CoP in 1989.
- <sup>25</sup> Notification No. 934, 4 September 1996.
- <sup>26</sup> UNEP/CBD/COP/3/L.9, 13 November 1996.
- <sup>27</sup> ERM (1996), *op. cit.* Executive Summary, page i).
- <sup>28</sup> Harold K. Jacobson and Edith Brown Weiss (1995), “Compliance with international environmental accords: achievements and strategies”. Peter H. Sand (1992), editor, *The Effectiveness of International Environmental Agreements A Survey of Existing Legal Instruments*, for UNCED Preparatory Committee, published by Grotius Publications, Cambridge. *The Effectiveness of Multilateral Environmental Agreements -- A report from a Nordic Project*, TemaNord 1996:513, Nordic Council of Ministers, Copenhagen 1996. C. I. Osawke (1997), “The Effectiveness of trade measures and non-trade “other” policy instruments in multilateral environmental agreements

(MEAs); and, the trade and competitiveness effects of MEAs on developing countries.”, draft for UNEP MEA project. *The Use of Trade Measures in Select Multilateral Environmental Agreements*, UNEP, Environment and Trade No. 10, 1995.

- <sup>29</sup> Although dependent territories and other entities which are not “States” cannot become Parties to CITES, the situation is different in the WTO where separate customs territories may become members, with full rights including the right to bring complaints for dispute settlement.
- <sup>30</sup> ERM (1996), *op. cit.* point 5.2.1, page 50.
- <sup>31</sup> “The Effectiveness of Trade Measures in CITES and the Montreal Protocol”, cited in “Overview”, Chapter 1 by Robert Housman and Durwood Zaelke in *The Use of Trade Measures in Select Multilateral Environmental Agreements*, UNEP, Environment and Trade No. 10, 1995.
- <sup>32</sup> *World Trade in Crocodilian Skins, 1992-1993*, prepared under contract to the International Alligator and Crocodile Trade Study, World Conservation Monitoring Centre, April 1996.
- <sup>33</sup> Wijnstekers, (1995) *op. cit.* note 305, page 236.
- <sup>34</sup> Under point 3 -- Scope of the Study, “The review team will present a detailed study design...that will provide information...: b) the extent to which the conservation status of a representative selection of species listed in each of the three appendices of CITES has been affected since listing, and the extent to which this can be attributed to the application of CITES, in both Party and non-Party States” From Document 9.10 “Decision Directed to the Standing Committee”, ninth meeting of the CoP, November 1994.
- <sup>35</sup> ERM (1996), *op. cit.* Annex C, page C6
- <sup>36</sup> Another approach consists of examining all effects -- intended and unintended -- of the use of trade measures on species status. The WCMC has recently developed a research proposal on the basis of a pilot study it carried out on the impact of wildlife trade bans. The objective of one case study was to determine the impact of the Malaysian macaque export ban (1984) on the international trade in these primates. The case study concluded that the ban had successfully reduced trade in the Malaysian macaque, however, trade in other populations increased. For example, exports from the Philippines doubled in the year following Malaysia's ban. Exports from Indonesia, which had been declining over the period 1981 to 1984, also increased. It would appear, therefore, that the Malaysian ban on the macaque in the mid-1980's had the effect of displacing international demand and thus put pressure on the Philippine and Indonesian populations. In 1994, both of these countries introduced export bans on wild macaques.
- <sup>37</sup> P. Sand, editor, (1992), *op. cit.* Chapter II, (18), pp. 79-86.
- <sup>38</sup> Wijnstekers (1995), *op. cit.* page 236.
- <sup>39</sup> *ibid.*, note 94, p. 76.
- <sup>40</sup> Sand (1997), endnote 150.
- <sup>41</sup> Resolution Conf. 9.24
- <sup>42</sup> COM/ENV/TD/M(96)103 pp 5 and 10
- <sup>43</sup> In Tuna-Dolphin II (1994), an unadopted GATT panel report, it was argued that dolphins were protected by CITES, but the panel did not address this issue in its findings.

- <sup>44</sup> Thus this Section does not comment on what, if any, relationship may exist between certain other WTO-covered agreements (such as the Agreements on Import Licensing Procedures, Technical Barriers to Trade and On the Application of Sanitary and Phytosanitary Measures) and CITES.
- <sup>45</sup> WT/CTE/1, para. 178, p 40.
- <sup>46</sup> The question of “likeness” could, of course, also be relevant under other provisions of the General Agreement.
- <sup>47</sup> It should be noted that during the discussions at the London session of the Preparatory Committee (for the ITO - later the GATT), it was stated that, in considering the terms "like product": "the expression had different meanings in different contexts of the Draft Charter"(quoted in *Analytical Index* Vol. 1 p35).
- <sup>48</sup> Vienna Convention on the Law of Treaties, Articles 30(3) and 30(4)
- <sup>49</sup> R. Hudec, “GATT Legal Restraints in the Use of Trade Measures against Foreign Environmental Practices” in Bhagwati and Hudec, *Fair Trade and Harmonization: prerequisites for Free Trade?* Vol. 2, p.121, Cambridge, Mass., MIT Press, 1996 (emphasis added).
- <sup>50</sup> *Ibid.*
- <sup>51</sup> WT/CTE/1, 12 November 1996
- <sup>52</sup> The list of countries not parties to CITES and their WTO membership status is shown in Table 6 above.
- <sup>53</sup> WCMC (1996). “The impact of wildlife trade bans (pilot study)”, World Conservation Monitoring Centre, Cambridge, UK.
- <sup>54</sup> ERM (1996), *op. cit.* pages 52,58,77,79.
- <sup>55</sup> WT/CTE/1, para. 175.