

## Comparative Case Study 3

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# The Convention on International Trade in Endangered Species (CITES)

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### 1. Architecture of the Regulatory System

CITES is a multilateral environmental agreement aiming to ensure that international trade in specimens of wild animal and plant species does not threaten their survival. The initiative originated in a resolution adopted in 1963 at a meeting of members of The World Conservation Union. The text of the convention was agreed at a meeting of representatives from 80 countries in Washington DC, on 3 March, 1973 (hence, its alternative title of 'the Washington Convention'). The Convention entered into force on 1 July, 1975. As of 2006, it had 169 member parties, on all five continents.

CITES' mandate is to control the effects of international trade on the conservation status of threatened species of animals and plants. Its primary aim is the prevention of unsustainable trade, not the promotion of sustainable alternatives or attention to the livelihoods of those who depend on the trade (Reeve, 2002:29; Roe *et al.*, 2002:89). The success of CITES must be measured against this remit. Although there are moves to give it regional and ecosystem ambitions, CITES currently has a species- and consignment-orientation, compatible with its focus on international trade.<sup>1</sup>

CITES is legally binding on its members (state parties), providing a framework of conduct which they must meet by enacting appropriate national legislation. Successful implementation relies on co-operation between governments and effective enforcement of domestic law at the national level. Bringing domestic legislation up to international standards has been a major focus of CITES in recent years, and is one of its more positive aspects.

CITES regulates wildlife trade primarily through a system of permits and certificates that must be issued by national authorities before specimens can enter or leave countries involved in international trade. The permit system is applied to a three-tiered classification which accords varying degrees of protection to listed species. These listings lie at the heart of the CITES system of compliance. In accordance with Article IX of the Convention, each party is required to nominate a national 'Management Authority'<sup>2</sup> which administers the licensing system and one or more Scientific Authorities to

provide guidance to the Management Authority on the effects of trade on the conservation status of the species in question. The Management Authority is responsible for implementing the Convention in its country, and is the sole body which can grant import and export permits and re-export certificates on behalf of the Party. Trade permits must conform to the requirements of the official listing of the species in question.

The official listings are agreed at the Conferences of the Parties (CoPs), held every two and a half years, and reviewed periodically. A two-thirds majority of the CoP is needed to agree a new listing or a change in them. Critics maintain that this imposes an excessive burden of responsibility on the proponents of a listing and works in opposition to the precautionary principle, which is otherwise central to the convention's rationale (Matthews, 1996: 422). At the same time, it does permit a certain flexibility and quicker responses than would the consensus-based decision-making favoured by other conventions.

#### 1.1 The Appendices

The CITES listing scheme is known as the Appendices.<sup>3</sup> These are annexes to the Convention. Parties may not trade in any listed species except in accordance with the provisions of the Convention. The initial classification criteria were identified at the 1st CoP in 1976 (the Berne Criteria) and subsequently modified at the 9th CoP in 1994 (the Fort Lauderdale Criteria). There are three tiers to the system, Appendices I, II and III.

Appendix I lists all 'species threatened with extinction which are or may be affected by trade'. International trade in Appendix I species is only authorised in 'exceptional circumstances', largely for scientific and educational purposes and not for commercial trade (Reeve 2001:p.138). Appendix II covers species which are not currently threatened with extinction but may become endangered if commercial trade is not strictly regulated. Trade is permitted subject to strict regulations in both exporting and importing states. Also included in Appendix II are Appendix I 'look-alike' species.<sup>4</sup> (Most listed species are found in Appendix II.) Appendix III



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Ministerie van  
Buitenlandse Zaken



species are listed by individual parties when they need cooperation from other countries to control trade, in order to prevent over-exploitation within their own borders. Certain exemptions are permitted, in accordance with Article VII of the Convention. For example, trade in captive-bred specimens, and those destined for circuses and zoos, may be permitted. The Criteria are reviewed periodically, at fora including the ad-hoc Criteria Working Group. There is no reference in the Convention to the issue of quotas, but export quotas are now used quite extensively by parties to limit the trade in CITES-listed species, and the Secretariat views this as an effective means of control. Quotas are usually set annually, either by individual parties or by the full CoP. In the latter case, they can be specified either in the Appendix I and II listings, or as Resolutions of the Conference.<sup>5</sup>

Dickson (2002:2) notes that some species which are *not* accepted for listing are also of considerable interest. Prominent among these are some commercially valuable timber species, whose listing has been vigorously resisted by timber interests. He argues that the general avoidance of commercially valuable species reinforces the character of CITES as primarily a conservation-oriented treaty, and that a greater emphasis on commercially valuable species might help to consolidate interest in their sustainable use (see also Roe *et al*, 2002:25).

### 1.2 The Permit Scheme

The Appendix classification is put into practice in the trade through a system of permits. A permit or certificate is compulsory for all international trade in listed species, with specific requirements according to the status of the listing (Reeve 2001:p. 139). Appendix I species are subject to the highest degree of regulation, and their trade requires both an export and import permit. An export permit should be granted by the Management Authority of the State of export only when its Scientific Authority has issued a 'no-detriment finding' stating that export will not be detrimental to the survival of the species. An export permit may not be granted until an import permit has been granted by the Management Authority of the importing state. Before an import permit is authorised, the Management Authority of the importing state must be satisfied that the specimen is not to be used primarily for commercial purposes. Re-export requires a re-export certificate and (in the case of living specimens), an import certificate. Introduction of an Appendix I species from the sea also requires a certificate, issued by the Management Authority of the State of introduction.

An export permit only is required for Appendix II species, again dependent on a 'no-detriment finding'. Import of an Appendix II species requires prior presentation of an export permit or re-export certificate. The Scientific Authority is obliged to monitor export of Appendix II species, and whenever it determines that export should be curbed to preserve sufficient population levels, it must advise the Management Authority to limit exports. Import of Appendix III species requires a certificate of origin, and if the consignment originates in a state which has listed the species in Appendix III, an export permit is also required.

Article X of the Convention specifies the conditions of trade with non-party states. It says:

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms to the requirements of the present Convention for

permits and certificates may be accepted in lieu thereof by any Party.

Such permits are only accepted from non-parties whose authorities are already acknowledged as competent by CITES, or when the Secretariat gives its specific approval. The same standards of proof (e.g. for non-detriment findings) are applied as to CITES Parties (Reeve, 2002:pp.34-35). The voluntaristic nature of the Convention remains problematic though, as it allows non-parties to remain outside and act as trading entrepôts. This was reported to be the case with Singapore, until its accession in 1986 following a bilateral trade embargo imposed by the USA (Young, 2003:179).

## 2. The Scale of the International Trade

The worldwide trade in wildlife (excluding fisheries) has been estimated at between US\$5-50 billion per year (Reeve, 2002: 10). Brack *et al* give an estimate of US\$20 billion for all CITES-listed animals, plants and their products in the international trade (2002:35). The global timber trade, in contrast, is estimated at about US\$150 billion, and only about 20 of the 135-odd commercially important timber species are covered by CITES. Much of the CITES-relevant trade originates in range states (producer states where the species are indigenous) in the developing south, and is destined for markets in the post-industrial north. Japan, the USA and EU countries are prominent among the consumers. Some countries are both range states and consumers, such as Australia, China, Indonesia and South Africa (Reeve, 2002:9).

The full list of CITES species and sub-species is massive, covering approximately 5,000 species of animals and 28,000 species of plants (see Table 1). These are very variable in value but some species and products, such as caviar and ivory, have a very high market value. The huge diversity of listed species has major implications for verification, as discussed below.

The largest importer of wildlife is the USA, which accounts for 20% of all trade in wildlife and products. Over 50,000 shipments enter the country annually, and illegal imports of wildlife products are exceeded only by those of drugs. The global illegal trade is worth an estimated US\$5-10 billion per year, exceeded only by drugs and arms. (Lee quoted by McOmber, 2002:p.674).

## 3. Institutional Roles in CITES

Reeve identifies the main actors in the CITES compliance system as the Conference of Parties, the Standing Committee and the Secretariat (2002:37-47).

The **Conference of the Parties** comprises representatives of all the national parties and is the ultimate CITES authority. It currently meets every three years. Its main tasks include: considering and adopting amendments to Appendices I and II in accordance with the requirements of the Convention (Art.XV); reviewing progress towards the restoration and conservation of all listed species; review of reports from the Secretariat and Parties; and making recommendations for improving the effectiveness of the Convention (Article XI).

The **Standing Committee** is an executive body of 14 regional representatives of the parties which ensures operational continuity between CoP meetings. It has wide responsibilities, including supervision of other CoP committees and drafting CoP resolutions. The two main technical committees are the Animals and Plants Committees. Each has 20 members drawn equally from all five continents. These have a broad advisory brief, particularly with regard to the listings, and may be involved in the compliance system through assessments of the

conservation status of CITES species, and advice on remedial actions arising.

**Table 1. Approximate Numbers of Species, Subspecies and Populations on CITES Appendices (2005)**

[Source [www.cites.org](http://www.cites.org)]

	Appendix I	Appendix II	Appendix III
<b>Mammals</b>	228 species 21 subspecies 13 populations	369 species 34 subspecies 14 populations	57 species 11 subspecies
<b>Birds</b>	146 species 19 subspecies 2 populations	1401 species 8 subspecies 1 population	149 species
<b>Reptiles</b>	67 species 3 subspecies 4 populations	508 species 3 subspecies 4 populations	25 species
<b>Amphibians</b>	16 species	90 species	None
<b>Fish</b>	9 species	68 species	None
<b>Invertebrates</b>	63 species 5 subspecies	2030 species 1 subspecies	16 species
<b>Plants</b>	298 species 4 subspecies	28074 species 3 subspecies 6 populations	45 species 1 subspecies 2 populations
<b>Totals</b>	827 species 52 subspecies 19 populations	32540 species 49 subspecies 25 populations	291 species 12 subspecies 2 populations

The Secretariat is in Geneva and is quite small, with about 30 staff in all. The Secretariat is authorised to conduct compliance verification by virtue of its Convention mandate ‘to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention.’ In addition to information gathering and review, it is also authorized by the Convention to ‘undertake scientific and technical studies that will contribute to implementation and to prepare reports and make recommendations on implementation’ (Art.XII).

NGOs have played an increasing role in CITES in recent years. The Secretariat is mandated to consult widely, including among suitably qualified NGOs, and the role of one NGO (TRAFFIC) and two quasi-NGOs: the World Conservation Union (IUCN) and World Conservation Monitoring Centre (WCMC), are critical in supporting the Secretariat.

TRAFFIC, the joint wildlife trade monitoring programme of WWF and IUCN, was founded principally to assist in the implementation of CITES, though it is formally independent. It works in close co-operation with the Secretariat to actively monitor and investigate wildlife trade, through its worldwide network of offices. WCMC has maintained a CITES database throughout its existence, initially as an NGO and now as a semi-autonomous unit of UNEP (See Section 5.4). The database is now available online and is accessible to the general public. IUCN, which includes NGOs and governments in its membership, also plays a key role in trade reviews of

‘significantly traded species’ as well as in supporting national legislation (see Section 5.1).

Other NGOs (for example, the Environmental Investigation Agency) also have established reputations as external monitors of the illegal wildlife trade. In Notification No. 2004/078, the Secretariat provides NGO informants with guidance on supplying information.<sup>6</sup> NGOs may be represented at meetings of the CoP as observers, though, like intergovernmental bodies, they do not have voting rights.

#### 4. CITES Funding

The core costs of maintaining the Secretariat and operating the CoP and committees are covered by the CITES trust fund, which is replenished periodically by the parties on the basis of the UN scale of assessment. The core budget is just under US\$5 million per annum (2005), with a current backlog of unpaid dues in excess of US\$500,000. Additional funds may be provided by parties and others, sometimes in response to requests from the Secretariat for funding of specific projects. Most are provided by the traditional donor states. CITES partners such as the WCMC are under subcontracting agreements. WCMC has no core funding, but works to an annual, renewable contract. This ensures efficiency and cost-effectiveness in its operations, though with limited opportunity for new ideas and ambitions.

#### 5. Verification Methodology in CITES

Clearly, the huge numbers of CITES species and subspecies occurring in both the legal and illegal trade are daunting by any standard, as are the wide variations in their value (see Table 1). These features pose major problems for compliance control, including verification. Customs officers cannot recognise more than a small fraction of the species of concern. Customs officers cannot be expected to recognise more than a small fraction of the species of concern. This would apply in any context, but probably particularly so in the developing countries, where most species originate but the customs services of which are often under-funded, under-trained and under-staffed. An additional complexity is that, at the level of the Parties, management of the legal trade is usually separated from the control of the illegal trade. The former is in the hands of the national Management Authority, while the latter lies with the Customs and Police.

Verification within CITES depends heavily on willing tracking, by all parties, of all movements of listed species across national frontiers. Thus:

- Parties should verify the origins and species of the specimens for which they sign export certificates (Decision 9.7);
- Parties should verify the origins and authenticity of all CITES permits and certificates (Section XIV of Resolution Conf. 12/3; see also Resolution Conf. 3.7);
- Parties should verify the provenance of any specimens in travelling exhibitions;
- Parties should verify the origins of specimens in transshipments (Resolution Conf. 9.7);
- Parties should verify authenticity of certificates relating to imports, by reference to the issuing Management Authority (Resolution Conf.4.25); and so on (see Wijnstekers, 2003: passim).

A basic dilemma in the CITES system is that the Convention has a strong orientation to compliance but no central enforcement capacity. Nor does it have any capacity to impose penalties, except insofar as it may press for them



to be applied 'appropriately' without specifying their content (Matthews, 1996: 422). The Secretariat's status as central authority is not backed up by anything more substantive than recourse to persuasion (Young, 2003: 174).

To strengthen the Secretariat's capacity to deal with compliance and enforcement issues, a Legislation and Compliance Unit was established in the CITES Secretariat in 2000, with four staff: a Chief of Unit, Senior Enforcement Officer, Legal and Trade Policy Officer and Unit Secretary. According to Yeater, the present Chief of the Unit, CITES compliance and enforcement indicators are focussed on five key programmes: the National Legislation Project; annual and biennial reports; permit confirmation; the 'review of significant trade'; and reports on enforcement matters (2003:1). Other compliance measures include:

- Recordkeeping, monitoring, inspection and controls;
- Intelligence and targeting;
- Legal actions;
- Assessment and verification missions;
- Implementation of agreed compliance plans;
- Meeting of deadlines set by the Convention;
- Positive responses to offers of assistance;
- Integration of CITES in standard curricula for Customs, Police, etc;
- Participation in cooperative mechanisms;
- Strategic use of the media (Yeater, 2003:4).

Verification in CITES thus involves a variety of means to generate information on compliance, and, in the event of perceived default, a number of possible non-compliance responses. These address problems both of overall country performance, and performance in relation to individual species at risk. In the next section, the five main programmes are reviewed in turn.

### 5.1 Implementation of national legislation

Unlike, say, the Montreal Protocol of the Vienna Convention for Protection of the Ozone Layer, a formal verification system is not provided for in the text of the CITES treaty. It is not, therefore, a 'self-executing treaty', but requires national legislation by the parties to implement its decisions. Enforcement measures are also mainly in the hands of the state parties (McOmber, 2002: 687). This dependence on national processes has led to a heavy emphasis on urging the parties to enact the necessary legislation. CITES is unusual among MEAs in that it applies trade sanctions in instances of non-compliance with national legislation.

The CITES National Legislation Project was initiated in 1992, and is generally viewed as having made an important contribution to improving national legislation and creating a more positive profile for the Secretariat. The IUCN Environmental Law Centre and TRAFFIC USA monitor parties' legislation for compliance with CITES requirements, using a threefold classification (Categories 1-3, indicating near to complete compliance/partial compliance/ general non-compliance). The CoP sets deadlines for parties in the latter two categories to enact adequate CITES legislation against the threat of trade sanctions, while the Secretariat arranges technical assistance to willing but non-compliant parties to help them develop their legislation appropriately.<sup>7</sup>

### 5.2 Reporting Requirements

The CITES compliance system is based on self-reporting by parties, complemented and cross-checked with intelligence gathered by the Secretariat and by activist NGOs. Annual

Reports are required of all parties, and provide the main means of assessing CITES-related trade at national level. There is a standard format, and guidelines for their preparation and submission, detailed in the 'Guidelines for the preparation and submission of CITES annual reports (2002/3)'. Reports include details of the number and type of permits and certificates granted, the states with which trade occurred, and the species and number of specimens traded from each Appendix list. This information is entered into the UNEP-WCMC database. The purposes of annual reporting are to monitor trade in listed species and to provide information on compliance, primarily in the breach, in relation to suspected illegal trade (Reeve, 2001:140).

At the national level, Scientific Authorities have a primary role in verification through monitoring export permits against actual export, generating no-detriment findings and ensuring that exports conform to conservation needs. Internationally, the WCMC has a key co-ordinating role. Illegal trade is detected primarily by comparing import and export data and monitoring trade against quotas. In cases where records do not match, or parties report possible illegal trade, the WCMC first informs the national Management Authority of the discrepancy. If this does not lead to satisfactory action, the WCMC then informs the Secretariat, which makes a judgment as to the implications and takes appropriate action.

Conference Resolution 11.17 (Rev CoP 12) on annual reports and monitoring acknowledges the sovereignty of states over the trade, noting the 'importance of annual reports as the only available means of monitoring the implementation of the Convention and the level of international trade in specimens of species included in the Appendices.' Response levels for annual reporting are uneven, but overall are surprisingly poor. For example, the Secretariat's 1999 report indicates that only 80 parties out of a membership of 146 (55%) submitted partial or complete Annual Reports that year. To the extent that such returns are normal (as they appear to be), the information base for compliance control is clearly affected adversely, in that the reports which are most urgently required for effective management are the ones which are most likely to be lacking.

Annual reporting is an important aspect of convention discipline, though it has limitations particularly in relation to monitoring. For fragile or consumable commodities, such as caviar, annual reports provide only historical information, so there are plans to introduce more 'real-time' monitoring, as is discussed below. Since CITES is not a self-enforcing treaty, monitoring the enactment of appropriate domestic legislation plays a vital role in both assessing compliance with requirements and (hopefully) moving recalcitrant states towards greater compliance.

A system of biennial reports is intended to promote this agenda. Under Article VIII, paragraph 7 of the treaty, each Party to the Convention is required to submit a biennial report on legislative, regulatory and administrative measures taken to enforce the Convention. These reports assist in measuring the progress and development of laws and regulations, administrative procedures, economic and social incentives and wildlife trade policies. The Secretariat views their functions as follows:

'Biennial reports provide an opportunity for Parties to share information regarding their overall implementation of the Convention, including their progress in the development and application of laws and regulations, administrative procedures, economic and social incentives and wildlife trade policies...

At the national level, biennial reports serve as a tool for self-assessment through which Parties can identify achievements, significant developments or trends, gaps or problems and possible solutions. At the international level, the comparison and synthesis of information in biennial reports can support substantive and procedural decision-making' (<http://www.cites.org/eng/resources/reports.shtml>).

Since the success of CITES depends on the political will of each party to enforce the Convention (Young 2003: 174), the national aspect of biennial reports is potentially important, documenting information on domestic implementation and encouraging remedial actions. A format for reporting was agreed at CoP 13.

### 5.3 Permit Verification

This relates to the use of permits and certificates to attest to the validity of shipments (exports, imports, and re-exports). The main requirements of the permit system are:

- Issuing restricted to national CITES management authorities;
- Consignment-specific permit or certificate;
- Maximum validity of six months for export and re-export permits, and twelve months for import permits;
- The use of security stamps cancelled by an authorised signature, and a stamp of seal, preferably embossed; restriction of authorised signatures to those notified by the Parties to the Secretariat; use of security and tamper-proof forms for high-value specimens;
- Numbering systems which facilitate tracking and monitoring;
- Source of specimens and purposes of the transaction to be stated on permits and certificates;
- Use of standardised CITES nomenclature for species, measurements and quantities. (2002: p.32-3, with modifications)

The nomenclature of the permit system is a subject all by itself, and has immensely exercised the Parties over the years. Ambiguities and vagueness in the terminology pose a number of difficulties for compliance control, even in relation to such basic terms as 'species'. Particular concern has been expressed over such expressions as 'primarily commercial purposes' and 'readily recognisable part or derivative', both of which invite abuse from persons keen to subvert their intentions (McComber, 2003:690 et seq). The Convention has made advances in the standardisation of terms, and has issued several manuals and guides to facilitate control, though it is difficult to squeeze out all uncertainties from a system with such a broad remit.

The possibility of permit fraud is a constant hazard in the CITES system of control, and verifying the authenticity and veracity of documents is a central preoccupation. Parties are encouraged to use various means for this, including: consultations up and down the line to cross-check claims on documents; reference to the CITES database; use of tamper-proof security paper (supplied by the Secretariat); and reference to sample documents. Nonetheless there are frequent accusations of document fraud, and numerous instances where the full procedures are not followed through (as regards, for example, inspection of consignments at the port of exit).<sup>8</sup> A particular area of concern where export consignments are not inspected is unspent balances. For example, a permit may allow for the export of, say, 100 parrots, but in the event (and for quite logical reasons, as these are living beings), only 60 parrots

are exported in a particular consignment, and purchased by a middleman who looks to re-export the consignment. The opportunity then exists for an unscrupulous trader to include 40 illegally acquired parrots into the batch to be on-traded, and great vigilance would be required for the discrepancy to be noted by the authorities.

The Secretariat does not have access to a cadre of professional inspectors (though conservation NGOs may sometimes play a similar role). The potential for the WCMC to act in a supportive capacity is restricted by its limited brief, which is to manage a database of CITES transactions not to undertake investigations.

The evidence on national inspections is not very encouraging, even from the better resourced countries; for example, only 25% of shipments entering the USA in 1994 were subjected to inspection (Young, 2003:174).

The situation is comparable in the Secretariat. Given the paucity of headquarters staff, the best the Secretariat can usually do in the face of evidence of continued abuse of permits (for example evidence of forgery, invalid or suspiciously altered permits, or unclear documentation) is to demand copies of all permits issued by the party in question. It can then compare these with the corresponding documentation received by other parties. Such arrangements are clearly heavily dependent on the capacities of the issuing and receiving authorities.

### 5.4 Significant Trade Reviews

The 'Significant Trade Review' process addresses problems relating to trade in significantly traded Appendix II species. It arose because of concerns that CITES was passively documenting decline in Appendix II species, and their eventual slippage into Appendix I, rather than seeking to do something about it (ART, 2001: paragraphs 5&6; Reeve, 2002: 158) A particular concern was laxity in the use of the 'non-detriment finding' requirement in relation to the survival of the species, laid down in Article IV which regulates the trade in Appendix II species.<sup>9</sup> There was a view that export permits were being given too readily for Appendix II species, without the benefit of rigorous 'non-detriment findings' (CITES, 2002:2). The Convention stipulates that trade should not compromise the wider ecosystem functions which species might perform.

The Technical Committee (later succeeded by the Animals Committee and Plants Committees) took up this matter and established the 'Significant Trade Review' mechanism, with the aim of linking trade more explicitly with the management of species in the range states (Dickson, 2002:2). It hoped to increase confidence that the provisions of the Convention were being met for Appendix II species which appeared vulnerable to significant over-trading (ART, 2001: paragraph 6). As of 2002, 79 taxa of birds, 94 of reptiles, 8 of amphibians, 10 of fish, 7 of molluscs and 12 of arthropods have been submitted to significant trade reviews (Roe *et al.*, 2002: 28).

The procedure begins with a candidate list of significantly traded species selected by the WCMC. Information provided by the Secretariat and range states is then used to identify species of particular concern, and consultants are commissioned to work with range states (Yeater, 2003:5). Species not at risk are eliminated, and the remaining species are separated into two categories: those for which CITES provisions are evidently not being met; and those where the findings are unclear. The Secretariat then negotiates a process of improved management, which may include the imposition of trade quotas. If parties do not heed its recommendations, they risk sanctions and ultimately a full suspension of trade.

The Secretariat also verifies the implementation of recommendations, and reviews the status of species eliminated from the system so they can be reintroduced if necessary. This helps to compensate for the difficulties which many range state authorities face in implementing measures. The fact that very few species subjected to significant trade reviews have since been transferred to Appendix I has been viewed as evidence of the success of the mechanism (Roe et al, 2002: 28). However, as there is no systematic on-site verification of Parties' compliance, the effectiveness of the system is difficult to assess. Reeve expresses reservations, though she welcomes the broadening of CITES' remit to include ecosystem functions, and (though this is still only a proposition) regionally-oriented significant trade reviews. The latter would be particularly useful in countering the tendency for traders to move between countries to overcome localised trade controls (2002:173-184). A start has been made with the implementation of the first country-based significant trade review (Madagascar, 2006).

### 5.5 Reports on Enforcement Matters

Responsibility for reporting on enforcement matters lies mainly with the Secretariat, which reports periodically to the Standing Committee and CoP. A typical report contains information such as: the record of official notifications to the Parties on diverse subjects; identification manuals in various languages to assist identification of shipments in transit; updated checklists of CITES species; user guides in relation to CITES plants and animals; training courses undertaken or organised by the Secretariat at various international sites, and assessments of their effectiveness; special missions undertaken (for example, to West and Central Africa in 1999); updates on special programmes and projects such as MIKE ('Monitoring the Illegal Killing of Elephants'); updates on the state of annual reporting by parties; updates on the situation regarding non-compliance and infractions; relations with key partners such as the World Customs Organization and Interpol; activities to promote the Convention (including membership changes); and updates on progress in tasks requested by previous CoPs.

In 2003 the Secretariat radically reoriented its reporting strategy and began to focus on reporting against the various goals and objectives in its strategic plan, 'Strategic Vision through 2005'. This gives the reports a stronger structure, though arguably with some loss of detail (the compliance rate on annual reports is omitted, for example). In recent years, the Secretariat has played a more active role in organising and participating in field missions, improving its information base and helping it to establish its independent function.

*Inspection missions* are undertaken primarily by the Secretariat. *Ad hoc missions* are only conducted with the consent of the country concerned, which somewhat constrains their timing and what they can achieve.<sup>10</sup> Missions serve several purposes – most notably country performance review, assessing country-specific violations, and deciding whether to impose sanctions. Bolivia, Greece and Italy have all suffered trade sanctions following such visits. More routine missions are also undertaken to gather information, assess problems, and provide advice to national authorities.

Missions may also be conducted in sanctioned states to verify progress towards conditions for lifting of sanctions (recent cases include missions to Italy and Thailand). The Secretariat also organises technical expert missions, often to investigate alleged species-specific violations, some of which have focused on high profile Appendix I species. In 1999,

for example, two linked tiger missions took place: a technical mission led by the Secretariat, and including national enforcement officers and TRAFFIC staff, and a political mission led by the chair of the Standing Committee (Reeve, 2001:150; DETR, *pers.comm.*)

## 6. Response to Non-Compliance

As the above examples illustrate, the mechanisms available to the Convention to monitor performance and encourage compliance are fairly wide-ranging, although none have the ability to demand compliance. McComber notes that 'there is nothing in the Treaty that requires member countries to take positive action with regard to recommendations by the Secretariat' (2002:698). While some carrots and sticks are used – chiefly technical aid and trade sanctions – the main driver is reputational. The potential reputational damage when a recommendation is made to parties to 'refuse all imports, exports or re-exports of CITES species originating in, or destined for' a state, is usually greater than the commercial cost of sanctions. This threat probably contributes to the general willingness of states to take remedial actions when recommended for sanction. When the 10th CoP threatened sanctions against seven parties in the 1990s, five took corrective action immediately and the rest within months of the application of sanctions (Reeve, 2001:147).

Recommendations to suspend trade can be made either by the CoP or Standing Committee, on the advice of the Secretariat. In either case, time is allowed for the non-compliant party to make improvements. At the time of writing, 31 countries were subject to a recommendation to suspend trade, for the reasons shown in Box 1.

### Box 1. Recommendations to Suspend Trade By and With a Party (as of September 2005)

	No. of States
<b>Reasons for recommended suspension:</b>	
Significant trade review (1 species)	19
Significant trade review (2 species)	2
Significant trade review (3+ species)	4
Inadequate National Legislation	6
<i>(Includes Inadequate National Legislation &amp; Lack of Annual Reporting)</i>	3)
<b>Classification under UNDP's 'Human Development Index' for 2005*:</b>	
High human development	4
Medium human development	13
Low human development	12
[*2 countries not scored by UNDP: Liberia & Somalia]	
<b>Geographical location:</b>	
Developing countries (including Argentina & Peru)	27
Former Soviet Union States (including the Russian Federation)	4

Recommendations to suspend trade are normally rescinded automatically once the Party complies. The Secretariat has shown itself increasingly unwilling to compromise where a party is unable to comply despite its offer of technical assistance, although the negotiations can be tortuous. Despite Fiji's indication that it was unable to comply with certain conditions for internal political reasons (relating to the 2000



coup), the Secretariat recommended suspension of all trade with the country in 2002. Fiji took action to introduce new legislation during 2002, leading to a temporary withdrawal of the recommendation, at the 46th meeting of the Standing Committee in March 2002. However, continuing irregularities in Fiji's coral trade led to a further recommendation from the Secretariat that the withdrawal should be annulled. The suspension was renewed in October 2003, but withdrawn again the following month, when Fiji met the Secretariat's demands regarding both legislation and coral export quotas. Reeve notes that this case not only illustrates the role played by the Secretariat in using sanctions against recalcitrant Parties, but also the 'extension effect' by which measures in one area (legislative change) are extended to other areas (coral trade). She also notes the inequity in the implementation of the national legislation project, in that other parties with a longer track record of uncompleted legislative reform still went unpunished (Reeve, 2004:5).

At the end of the day, and failing all other measures, there are only two enforcement measures available to the Convention: penalising and prohibiting trade, and confiscating exported items (Yeater, 2002:4). If a Party is openly unwilling to conform to the consensus view, there is little that can be done about it. The United Arab Emirates is a case in point; Reeves documents the limited success of the Secretariat in dealing with this case, and notes that it remains problematic even after 20 years of negotiations (2002:103-110). It is interesting to note, however, that while the UAE withdrew from the Convention in 1988 it rejoined in 1990, and has remained a member ever since, despite suffering a suspension of trade from 2001-2002. Since the ban was lifted, it has been implementing a major capacity-building programme, assisted by the Secretariat. This attests to the fact that parties, even heavily sanctioned ones, do perceive there to be benefits from membership and make some efforts to retain it.

## 7. An Assessment of Verification Effectiveness in CITES

Compliance control in CITES is a complex matter, demanding heavy inputs of time from Secretariat staff, often arguably disproportionate to the commercial value of the trade, though not necessarily its global sensitivity. The fact that the trade concerns relations between sovereign states imposes limitations on the ability of the Convention to act in a policing role, though at the same time, its international trade focus does expand the information base available to it, and gives it some authority to act on behalf of the international community.

Compounding the sovereignty dimension, there are some issues of perception and political will. Controlling exports of CITES listed animals and plants may not be very high in the order of priorities of countries where the natural world does not appear as threatened as it does in the post-industrial north. The major imbalance in technical skills and competences between developed and developing countries is also a serious obstacle, and CITES has to be careful not to become polarised between skills-rich, rule-making countries in the north and skills-poor, weakly- or non-compliant countries in the south, which lack both the political will and the capacity to implement scientifically demanding legislation generated elsewhere. This danger is most apparent in the area of enforcement and sanctions. While not all sanctioned parties are in the south, there is a major bias in that direction.

Criticisms of CITES and its verification potential occur at

a number of levels. At the highest level are those who question whether CITES is the right sort of convention to deal with the underlying threats to endangered species. There are concerns that CITES doesn't adequately address the issue of sustainable use, being more focussed on mitigating the effects of trade on species preservation (Young, 2003:p.172). A related view is that the major threats are rarely from trade, and that habitat loss is likely to be a much more influential factor. A skills-intensive but narrowly trade-focused convention may not be the best way to address this issue (see Hutton and Dickson, 2001: passim; Dickson, 2002). Thirdly, the approach from economics would tend to question the likely effectiveness of trade bans on the conservation of species. Much of the work here relates to ivory, where the argument is that the increased black-market price which results from suppression of the legal trade will only further stimulate the market (Barbier et al, 1990). Such questions are highly pertinent, though somewhat outside the scope of this review.

Coming down one level, however, there are two issues which are of greater pertinence here. The first of these is the extent to which effective monitoring and compliance control by CITES does have a positive impact on the status of the species under consideration. The second concerns the impacts of trade controls on people, particularly those sections of the population most dependent on the trade for their livelihoods and wellbeing.

With reference to the first of these issues, the developing capacity of the Convention in areas such as Significant Trade Review is particularly interesting, in that it inevitably raises broader questions about the linkages between outputs and objectives, and the extent to which the listing system which drives so much of CITES aids or obscures positive changes in conservation status of key species. This may be a valuable development given the consensus that CITES needs to operate at more of a systems level than is inherent in its original species focus. However, the effectiveness of Significant Trade Review is as yet unknown as it has not yet been submitted to critical evaluation. Even then, it might be difficult to fully assess, as factors such as elasticities in demand may make it difficult to assess impact at anything other than the species level.

The impact of CITES' trade controls on the poor is difficult to assess when so little is understood about the role which trade plays in their overall welfare. To answer this question would require a framework which goes beyond the specific species traded and takes account of whole livelihoods. As Roe *et al* note, 'there are currently more questions than answers with regard to the contribution of the wildlife trade to rural livelihoods and the impacts of related trade controls' (2002:7). At the same time, 'CITES incorporates some valuable mechanisms that could be adapted to take into account socio-economic issues and enable the Convention to more effectively contribute to sustainable development' (Roe *et al*, 2002:6). Among the suggestions are: including socio-economic information in significant trade reviews, careful consideration of split-listing,<sup>11</sup> and examining the potential for synergy between CITES and voluntary certification and labelling schemes (Roe *et al*, 2002:7).

At the operational level, a number of issues have also been raised about the application of CITES controls, ranging from political to purely practical concerns. The Achilles heel of the reporting system is the ease of permit fraud and the vulnerability of a permit-based system to abuse. Where restrictions are applied to a high-value trade such that demand exceeds supply, the controlling documentation itself

achieves a market value equal to the marginal value of the traded commodity and corruption is generated within the regulatory framework itself. For some commodities, such as caviar, mahogany and the rarer parrot and primate species, the margins are substantial and offer considerable potential for abuse. The Secretariat has reacted by recommending a series of measures to help parties clamp down on fraud – for example, holding back the issue of permits until just before shipments are to be made and encouraging document and shipment inspections at the place of export (see Brack *et al.*, 2006:16). The Secretariat and WCMC are also investigating methods to track high value commodities more closely by means of near real-time trade monitoring. This would ideally be online (though faxing and postage are not excluded), to increase transparency and allow short-term decision making while the item in question is still actively in the trade.

Both Brack and Reeve see the lack of an independent means of on-site verification as a particular weakness, a problem compounded by the rather marginal position of most NGOs (other than TRAFFIC and IUCN) in the decision-making processes. While WCMC would be the obvious candidate for this role in many ways (as it is best placed to identify permit fraud and other discrepancies in recorded data), it must be wondered whether this legitimately falls within its remit, and whether, given the huge range of species under CITES listings, the task would even be feasible. An alternative view is that, given that existing NGO and quasi-NGO involvement (by TRAFFIC, IUCN, and ‘detective’ outfits such as the Environmental Investigation Agency) already function in this fashion, the way forward is to facilitate and promote this association, rather than set up an expensive and ultimately unenforceable in-house facility. . Against this is the argument that such organisations are very much a product of western post-industrial society, and this diminishes their legitimacy in a global policing role.

In institutional terms, Reeve identifies the absence, until recently, of an adequate reviewing and recommendatory body as a major weakness in the CITES system of compliance control (2001:151). This argument develops Lang’s view that there are three minimum institutional requirements for effective compliance control.

- A secretariat, to collect national reports and other information;
- A separate reviewing body of experts to interpret and evaluate this data;
- A political body (probably the supreme decision-making body, as with the CoP) to take measures (Lang, 1996:694).

The existence of such an independent intermediary body, Reeve argues, would check the tendency to overload the Standing Committee with implementation issues, which fit uneasily with its other agendas and political constitution. It would also counter-balance the growing power of the Secretariat. The Secretariat has increasingly sought to influence decisions of the CoPs by offering formal written recommendations to proposals which it places before them. The IISD comments that:

‘Despite the Secretariat’s self-description as a “humble servant of the parties”, many believe that it is subtly stretching its powers to a level of involvement not witnessed in other international environmental fora’ (Reeve, 2002:264).

Such interventions commit the Secretariat to positions that might compromise its status as an independent broker in

an arena dominated by some emotive issues (ivory trade and whaling for instance) and some powerful international players such as Japan and Norway. When they disregard or challenge the science, then they also undermine its authority in the eyes of a community which has a strong natural science bias. Given the heavy dependence of CITES on sanctions, which are based on evidence presented by the Secretariat, there are strong arguments for the latter not to reveal its own leanings.

### 7.1 New Developments

Calls for a less punitive approach to non-compliance began at the 12th CoP in 2002. This had its origins in a growing threat of trade sanctions against parties that had failed to meet a deadline of May 2002 set for submitting national legislation plans. Faced with the threat of action against over 90 members, including three of its own voting members, the Standing Committee backed down and began to look for a more supportive and facilitative approach. This eventually led to a proposal for the Secretariat to prepare guidelines to ensure consistent application of measures for non-compliance. Considerable international debate ensued on the role of trade suspensions, and the issue of enforcement, with different parties adopting quite polarised positions and culminating in strong calls from some parties to create a formal compliance committee. Reeve favoured the establishment of such a committee, to relieve the burden on the Standing Committee and the Secretariat which perform this role ‘as part of an increasingly busy agenda, which squeezes compliance matters between finance, administration and other delegated functions’ (2002: 265).

The EU member states argued for the formal constitution of such a committee, to comprise independent experts from all the CITES regions, although this was opposed by several influential members including Japan, Mexico and the USA. An important area of controversy was the future roles of the CoP and Standing Committee in determining non-compliance. Eventually it was agreed to set up an open-ended working group on compliance, with a broad brief to define a strategy on this matter. This was established at the 50th meeting of the Standing Committee in March 2004 (see: <http://www.cites.org/eng/notif/2004/052.pdf> ). The committee is now functional, though Reeve is sceptical that it will flourish if those who favour an early move towards a strong sanctioning committee press too hard in this direction. She favours a more gentle approach, focused initially on improving information on compliance among the membership (Reeve, 2004, *passim*). The ultimate goal would be the creation of a formalised committee, whose virtues would include: the provision of a dedicated forum for assessment of compliance issues; a more consistent, more robust and less politically vulnerable approach to compliance and enforcement issues; an independent forum to review Secretariat recommendations which often have their origins in the reports of sub-contracted NGOs; and a vehicle to draw in more funding for capacity building in the areas of implementation and enforcement (Reeve, 2002:269).

## 8. Conclusion

National sovereignty and responsibility are at the heart of the CITES approach. In the words of one commentator, ‘CITES actively embraces the principle that individual states are the best protectors of native species and endeavours to establish an arena of international cooperation [around it]’. (Young, 2003:173) The impact of the Convention depends heavily on the validity or otherwise of that principle.



Many of the limitations of the system derive from the gulf between the expectations of the Secretariat and its mandate, resources and capacity. The absence of systematic extra-house monitoring is an issue, in part because it diminishes the credibility of the most crucial elements of the information system, generated where the consignments are sourced. External NGO monitors perform important monitoring functions, though they are restricted in their access, and, as far as the producer countries are concerned, have to rely heavily on the evidence of a few exposed points in the trade. These include species in transit and transshipment (which is a weak point in the system, only addressed outside the Convention, under CoP Resolution R9.7).

However, the management of an extra-house monitoring facility would need careful handling in the context of an international convention covering items within sovereign territory, and the effects on the general functioning of the Secretariat could be significant. Nor would it necessarily be regarded as a positive development. For all its limitations, CITES does benefit from the active participation of a multiplicity of stakeholders, in both formal and informal arenas. In the words of one informant, NGOs 'circle the CoPs like hawks', and contribute actively to ensuring that such meetings are marked by a high level of debate. While this does tend to mean that northern interests are represented disproportionately, this is a situation which reflects global realities and is not CITES-specific.

All in all, CITES is widely viewed as one of the more effective Conventions. It has shown a willingness to evolve in positive directions and it offers a forum which, if not always fully transparent, does give all players an arena in which to express their views. It is evidently one in which the parties see some value, illustrated by their willingness to participate actively in its deliberations and the steps which some of them take to try to influence its decisions.

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## Endnotes

<sup>1</sup> Matthews (1996:421-1) notes that a greater focus on keystone species would help link species protection and ecosystem functions. However important keystone species, e.g. sea-otters, may not be intensively traded and might be more at risk from other threats.

<sup>2</sup>There may be multiple Scientific Authorities but only one Management Authority. In the UK, the Department for the Environment, Food and Rural Affairs (DEFRA)-Ministry for the Environment form the sole Management Authority but there are two scientific authorities – the Royal Botanic Gardens at Kew for plants, and the Joint Nature Conservation Committee (JNCC) for animals.

<sup>3</sup>Throughout this paper, implicit reference is made to the relevant appendices of the CITES Convention text. For ease of reading, however, the relevant Articles are not referred to specifically.

<sup>4</sup>The problem with 'look-alike' species is that they may allow for the export of endangered species under cover of certification for non-endangered but look-alike species. Even where this is not intentional, it would be excessively demanding of customs authorities (which are

often unqualified in technical terms) to have to police the boundary between the two. Hence the Appendix II listing of Appendix I look-alikes.

<sup>5</sup>Some parties maintain their own listing schemes which may be more restrictive. The EU has a 4-category listing scheme.

<sup>6</sup>CITES Notification to the Parties 2004/078: 'Submission of enforcement related information by the public and non-governmental organizations to the CITES Secretariat'.

<sup>7</sup>It should be noted that CITES does not preclude parties from adopting stricter measures than it requires (see Article XIV:1). The EU is a case in point. It requires an import permit for Appendix II specimens (in addition to an export permit from the country of origin). The former is only to be issued when the Scientific Authority in the relevant EU member state has given a positive assessment, on a no-detriment basis. It must also 'be satisfied that there are no other factors relating to the conservation of the species which militate against issuance of the import permit' (*EC Regulation 338/97* Arts. 4.2. a/c). A consultation process would normally be undertaken with the range state of other country of export before a decision is taken. The possibility is therefore allowed of individual parties suspending imports from certain countries or of certain species, outside of the CITES arrangements.

<sup>8</sup>It is said, for example, that some customs halls have 'secure areas' which are out of bounds to staff, and reserved for consignments of goods being shipped in and out by senior politicians. If such arrangements are routine, there are opportunities for smuggling.

<sup>9</sup>This might be due, among others, to the Scientific Authority's lack of means to assess no-detriment, or failure of the Management Authority to take note of the Scientific Authority's recommendation.

<sup>10</sup>The sole exception is the UAE, whose government refused to meet a CITES delegate sent in 1986 to discuss the threat of trade sanctions. As a result, a total ban on trade with the country was issued to all CITES Parties in 1987. (Reeve, 2002: 73, 103-5)

<sup>11</sup>'Split listing' is the practice of listing a particular species in more than one appendix, according to its status in different situations. While the benefits, particularly in relation to migratory species, can be significant, it poses managerial difficulties and is generally regarded with some caution. The most famous case is the African elephant, where southern populations are listed in Appendix II, and more northerly populations in Appendix I. Split listing also provides a means to acknowledge the needs of specific forest dependent human populations, particularly where hunting for particular species is integral to cultural and livelihood practices.

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