

such trade will not be detrimental to the survival of a particular species. The importing country must normally accept the presentation of a duly issued export permit as sufficient evidence that the transaction is consistent with the obligations of the Convention. A problem here is that an importing country might believe that an exporting country is unduly limiting exports needed for a local processing industry (to take one example). The exporting country authorities might draw on Article IV(3) which mandates limitations "in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I..." (emphasis added). There is scope for disagreement here, given the ambiguity of the key concepts.<sup>37</sup>

To take one final example of a potential problem, Article XIV provides very broad, ill-defined authority that essentially allows any Party to unilaterally adopt stricter domestic measures than allowed under the Convention to regulate the "trade, taking, possession, or transport of species" whether or not listed in one of the three Appendices. To the degree that this provision is aimed at strengthening the domestic regime on domestic species it is likely unobjectionable in practice. Implicitly, however, this provision also includes the extraordinary authority to implement a complete prohibition of imports of a species, its parts and derivatives originating in another Party - i.e., the authority to act extraterritorially. Presumably, a country so exercising its right under this provision would justify its action by claiming that the species in question was in some way endangered in another Party.<sup>38</sup> At present, the resolution of a dispute arising in this regard would have to be addressed elsewhere, likely under a trade agreement such as the GATT, because the CITES, as we shall see below, does not have a well-elaborated dispute settlement system.

With respect to non-Parties, differences in treatment have gradually entered the CITES system. Pursuant to Article XIV, stricter trade measures (if a member State believes that trade threatens the survival of a species) are encouraged, "particularly when... trade with a non-Party is involved...". Parties may allow imports from a non-

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<sup>37</sup> The reverse problem is now subject to tighter international review. The Animals Committee of CITES was empowered in 1992 to monitor whether exports of specimens of a particular animal species are becoming detrimental to that species' survival. If so, the Committee can recommend corrective measures which, if not implemented, can lead to the suspension of trade with that Party in the affected species. See Resolution Conf. 8.9.

<sup>38</sup> A close reading of CITES can lead to an even more puzzling scenario. Article XV provides for amending the lists of endangered species, basically by a two-thirds vote. Theoretically, a Party could seek, in response to a domestic lobby, to shift a species found in another country from Appendix II to Appendix I, which would provide the importing authority with greater scope for trade restrictive action. The proposing Party, however, could fail to achieve the required support from other member countries, and yet still choose to prohibit imports of specimens of the species in question by exercising its right under Article XIV. See also Resolution Conf. 6.7 (July 1987).