

The use of detailed lists of endangered species provides considerable precision as to the scope of the obligations under CITES. Moreover, over the years the Parties have gradually increased the precision of a number of important definitions. For example, pursuant to Article VII specimens of an animal species bred in captivity or a plant species artificially propagated for commercial purposes shall be deemed to be specimens included in Appendix II even if listed in Appendix I (and thus only the authorization of the exporting State can normally be required by the importing State). The key terms were well defined during the Parties' second Conference in 1979, while the procedures for identifying and registering bona fide commercial captive-breeding operations have been considerably tightened, establishing an active role for the Secretariat and other Parties.³⁴ Nonetheless, ambiguities remain. Even more importantly, several provisions, though reasonably clear, can and have given rise to disputes. A few examples should suffice.

Trade in species threatened with extinction (listed in Appendix I of CITES) may occur only if the designated authorities of both the exporting and importing states specify that trading the specimen in question "will not be detrimental to the survival of that species".³⁵ Disagreements can arise in this regard. One recent high profile case relates to the decision taken by Parties in 1989 (not unanimous) to move the African elephant from the regulated list (Appendix II) to the list covering species threatened with extinction (Appendix I). This change led to a ban by most CITES members on imports of African elephant ivory over the objections of several African countries. These included Zimbabwe, which claimed, with some justification, that its practice of controlled harvesting actually had co-existed with an increase in its elephant population and, therefore, that regulated trade in ivory should continue as it was not detrimental to the survival of its African elephant population. The 1989 Conference of Parties established a Panel of Experts to undertake a case-by-case review, but its recommendations were not to be binding. Parties would simply "take into account the report of the Panel".³⁶ A more formal review mechanism leading to the resolution of the dispute based on the Panel's factual findings and recommendations would have been helpful in managing this matter.

A different problem arises with regard to regulated species (i.e., those listed in Appendix II). For a specimen in this category, the exporting country's authorities have the primary responsibility. They can issue an export permit if satisfied, inter alia, that

³⁴ Resolutions Conf. 2.12, 6.21 and 8.15. Other useful definitional work includes Resolutions Conf. 2.14, 3.15, 4.10, 4.11, 5.10, 5.16 and 8.17.

³⁵ CITES, Article III.

³⁶ Resolution Conf. 7.9.