

3.3 CITES

As discussed in Part 2.3, a comprehensive CITES mechanism for resolving differences effectively is necessary. Current provisions are inadequate. The Convention's Secretariat, if satisfied that an endangered species is threatened by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented, must notify a designated authority of the country in question. In response, that Party must provide relevant information and may hold an inquiry ("expressly authorized by the Party"). The information provided and the results of any inquiry must be reviewed by the next Conference of Parties to CITES which may make recommendations for further action.⁵¹ The information produced by this process would usually become public, generating pressure for remedial action.

Overall, a negotiated outcome is clearly preferred. There are notification and consultation commitments. The CITES Secretariat has a "good offices" role in trying to solve problems.⁵² If a solution is not found (as defined by either Party to the dispute), the Parties may, by mutual consent, submit the dispute to arbitration. In such a case, the arbitral decision is to be binding (but there is no follow-up mechanism to ensure that it is).⁵³

A 1992 Resolution of the Parties highlights the importance of establishing a comprehensive dispute settlement mechanism. In order to ensure that trade in Appendix II fauna does not become detrimental to the survival of a particular species, the Animals Committee of CITES is directed to monitor such trade and make corrective recommendations. The Secretariat communicates these to the Party concerned, which must "satisfy" the Secretariat within a specific time period that it has taken action to implement the recommendations. If the Secretariat is not satisfied, it refers the matter to the Standing Committee of the Parties (comprising a representative number of signatories) which may recommend to other Parties that they take "strict measures, including as appropriate suspension of trade in the affected species..." with the Party complained against. In one sense, this Resolution is a hopeful sign that signatories have begun to flesh out what is, in practice, a more elaborate dispute settlement process. Yet critical procedural balances are missing

⁵¹ CITES, Article XIII.

⁵² For example, see respectively Conf. 6.7 (July 1987) and Resolution Conf. 7.5 (October 1989).

⁵³ CITES, Article XVIII. This Article, entitled "Resolution of Disputes", comprises two brief paragraphs covering just seven lines of text.