

## Annex 1

### Terms of Reference for the consultancy envisaged in Decision 14.30 (Rev. CoP15) on *Cooperation between Parties and promotion of multilateral measures*<sup>1</sup>

1. Assessment as to whether the Resolutions of the Conference of the Parties are implemented by all Parties as consistently as possible and whether there is a need to clarify, revise or repeal them.
  - a) identification of the Resolutions that are implemented inconsistently and the reasons for deviations from the provisions of the Resolutions.

Recommended approach: The consultant to be appointed by the CITES Secretariat will analyse biennial reports submitted to the Secretariat and identify Resolutions that are implemented inconsistently or provide challenges in terms of implementation. The following key issue must be identified by the consultant:

- i) reasons for deviation from the provisions of the Resolutions;
- ii) challenges experienced in terms of implementation; and
- iii) reasons for implementing stricter domestic measures.

Where required, further consultation with CITES Parties relating to the above will be undertaken.

Existing documents to be reviewed by the consultant include document CoP14 Doc. 17. Based on information contained in document CoP14 Doc. 17, the following Resolutions have been identified by the members of the Working Group and should form part of the assessment to be conducted by the Consultant:

<b>Resolutions</b>
Resolution Conf. 4.22 ( <i>Proof of foreign law</i> )
Resolution Conf. 6.7 ( <i>Interpretation of Article XIV, paragraph 1 of the Convention</i> )
Resolution Conf. 10.16 (Rev.) ( <i>Specimens of animal species bred in captivity</i> )
Resolution Conf. 10.19 (Rev. CoP14) ( <i>Traditional medicines</i> )
Resolution Conf. 10.20 ( <i>Frequent cross-border movements of personally owned live animals</i> )
Resolution Conf. 11.3 (Rev. CoP15) ( <i>Compliance and Enforcement</i> )
Resolution Conf. 11.11 (Rev. CoP15) ( <i>Regulation of trade in plants</i> )
Resolution Conf. 11.18 ( <i>Trade in Appendix-II and -III species</i> )
Resolution Conf 12.3 (Rev. CoP15) ( <i>Permit and certificates</i> )

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<sup>1</sup> Note from the Secretariat: Decision 14.30 (Rev. CoP15) was repealed at the 16th meeting of the Conference of the Parties (CoP16). These Terms of Reference, reproduced here for historical information, were accepted by the Standing Committee at its 62nd meeting (Geneva, July 2012) and amended at CoP16.

Resolution Conf. 12.10 (Rev. CoP15) ( <i>Registration of operations that breed Appendix-I species in captivity for commercial purposes</i> )
Resolution Conf. 13.6 ( <i>Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens</i> )
Resolution Conf. 13.7 (Rev. CoP14) ( <i>Control of trade in personal and household effects</i> )
Resolution Conf. 13.10 (Rev. CoP14) ( <i>Trade in alien invasive species</i> )

In instances where Working Groups have been established to discuss specific matters, for example the Working Group on personal and household effects, the consultant should obtain all relevant information from the Chairperson of the Working Group.

- b) Identification of the Resolutions that require clarification, revision or repeal and make recommendations relating to the appropriate action to be taken. Substantiation of the recommendations made relating to clarification, revision or repeal.

Based on the assessment referred to in subparagraph a) above and the key challenges identified by the Working Group, Resolutions that require clarification, revision or repeal will be identified by the consultant and recommendations made relating to the appropriate action to be taken.

The Working Group identified the following challenges relating to the uniform application or implementation of Resolutions:

- i) lack of knowledge about existing Resolutions and the provisions contained in Resolutions;
  - ii) complex issues and concepts are difficult to understand and interpret, especially in the absence of definitions or interpretation guidelines;
  - iii) difficulties experienced by Parties to implement provisions contained in Resolutions due to limited resources available;
  - iv) different interpretation of provisions or requirements by Parties. Some Parties may interpret a provision in a strict manner, while another may interpret it with greater leniency, resulting in differences in implementation; and
  - v) conflicting provisions in different Resolutions; or non-alignment between separate Resolutions that address similar matters.
2. Assessment as to whether the scope for multilateral CITES processes that reduce the need by Parties for recourse to stricter domestic measures and reservations should be further developed.
- a) Give examples of stricter domestic measures, i.e. legislation, directives and policies. Solely for purposes of the consultancy, and not for the purpose of serving as a definition of the measures provided for under Article XIV, paragraph 1(a), of the Convention, 'stricter domestic measures' means:

*Domestic measures (legislation, regulations, decrees, policies, directives, notices, etc.) adopted by a Party regarding conditions or restrictions for international trade, taking, possession or transport of specimens of species included in the Appendices, or the*

*complete prohibition thereof, which extend over and above the requirements of the Convention for that species.*<sup>2</sup>

b) Identify current stricter domestic measures

A list of Parties which do / do not accept certificates of ownership (in relation to frequent cross-border movements of personally owned live animals); and, various Notifications to the Parties contain detailed descriptions of Parties' stricter domestic measures. However, a comprehensive list of stricter domestic measures is not available on the CITES website. The consultant should provide information or recommendations which could assist the Secretariat to initiate in the future a portal or Web-based system for Parties to provide information on their stricter domestic measures on a voluntary basis.

c) Use of a case study approach to determine stricter domestic measures currently in place in selected countries and the scope and rationale for these measures, including divergence and convergence in stricter domestic measures between different countries.

The consultant will conduct case studies relating to stricter domestic measures currently in place. The Working Group recommended that at least two case studies be conducted, one involving a major importing country's stricter domestic measures, and one involving a major exporting country.

d) Review of current information on reservations entered by Parties (e.g. available on the CITES website).

Consultant to analyse information on the CITES website relating to reservations entered by Parties and collate a report relating to the Reservations currently in place. Other sources of information and relevant studies conducted should also be referenced.

e) Analysis of current multilateral measures and their appropriateness / potential to address Parties requirements that currently result in stricter domestic measures or reservations.

Based on the information contained in various documents relating to stricter domestic measures and discussions in the Working Group, it seems as if the existing measures, especially Resolutions and the process to review and amend these, assist in providing the means to obtain uniform implementation, but the provisions in the Resolutions must be aligned with the basic requirements in the text of the Convention (and not add additional burdens on Parties); Resolutions must be clear (unambiguous); definitions should be provided, where appropriate; guidelines should be developed, where needed (complex matters); capacity building should be provided in some instance; consistent alignment between Resolutions are required; and bilateral discussions should take place to address different interpretation of provisions.

Special care / consideration should be given to stricter domestic measures that result in complete / nearly complete closure of markets AND may conflict with processes already agreed in CITES (Periodic Review / Review of Significant Trade, etc).

With due consideration of information collated through the process, including Notifications and reports, the consultant should analyse the current multilateral measures and make recommendations relating to their potential to address Parties challenges relating to uniform implementation of the Convention.

f) Recommendation, if appropriate, of the amendment of current, or the development of alternative, multilateral measures that could assist or facilitate cooperation between Parties and reduce the need for stricter domestic measures or reservations.

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<sup>2</sup> *This definition is intended to encompass only those stricter domestic measures with strong relevance to the conservation of the species through the mitigation of impacts resulting from international trade in those species.*

Recommendations to be developed, if required, based on the analysis to be done in terms of paragraph v. It is anticipated that the amendment of current measures and development of new measures will be continuous processes as already observed in terms of the Resolutions adopted by the Conference of Parties to CITES.