

**PARAGRAPH 31(I) OF THE DOHA DECLARATION – SPECIFIC TRADE OBLIGATIONS
SET OUT IN MULTILATERAL ENVIRONMENTAL AGREEMENTS –
IMPLEMENTATION OF CITES IN HONG KONG, CHINA**

Submission by Hong Kong, China

Paragraph 31 (i)

I. INTRODUCTION

1. Hong Kong, China proposed at the Special Session of the Committee on Trade and Environment (CTESS) in February 2003 that Members might start examining a few multilateral environmental agreements (MEAs) sequentially to identify concrete examples of specific trade obligations (STOs) therein.¹ To follow up on our suggestion, Hong Kong, China has attempted to examine relevant provisions in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the light of our implementation experience. Without prejudice to our position in the negotiations, we would like to share our observations with Members. In accordance with the scope set out in paragraph 31(i) of the Doha Declaration, the ensuing discussions are limited to trade between Parties to CITES.

II. TRADE OBLIGATIONS IN CITES

2. As an international treaty to protect wildlife against over-exploitation and to prevent international trade from threatening species with extinction, CITES has been in existence since 1973 with a wide membership. The Convention was extended to Hong Kong back in 1976. To discharge fully the obligations under the Convention, a comprehensive regime regulating import, export or possession of endangered species is implemented by virtue of the Animals and Plants (Protection of Endangered Species) Ordinance. Details of our implementation experience are set out in the Annex.

3. In comparison with other MEAs, the trade-related provisions of CITES are relatively simple and straightforward. They aim at regulating trade of endangered species of wild fauna and flora through the granting of import/export permits and certificates under specified conditions. Specifically, Articles III, IV and V of CITES stipulate the conditions for granting the required permits/certificates. Article VI of CITES further provides for the way of granting and handling these permits/certificates. These Articles specify explicitly trade measures Parties shall follow for the protection of endangered species. Supplementing these provisions, Article XIV of CITES allows Parties to take stricter domestic measures for, among others, the trade of endangered species. It however imposes no specific and clear obligation among Parties for action, and allows freedom in the choice of measures to be taken.

4. While implementation of the trade-related provisions of CITES such as Articles III, IV, V and VI are relatively straightforward because of their specificity, it is not so for those in Article XIV

¹ TN/TE/W/24, "Statement by Hong Kong, China at the meeting of the Special Session of the Committee on Trade and Environment of 12-13 February 2003", Paragraph 31(i), 20 February 2003.

because of their non-obligatory and open nature. In the case of Hong Kong, China, in order to ensure an appropriate level of protection for the endangered species concerned, we have introduced some requirements not specifically envisaged under Articles III, IV and V of CITES, but allowable under Article XIV. For example, Article IV of CITES only requires prior presentation of either an export permit or a re-export certificate for the trade of endangered species listed under Appendix II of CITES, and an import permit is not required. For the purpose of strengthening import control, the requirement for an import permit is instituted in Hong Kong, China. It should be noted that the additional requirement for an import permit for CITES Appendix II species is not uncommon among OECD countries. However, this does not mean that these stricter domestic measures constitute trade obligations specifically stipulated under CITES. The concern remains that non-specific trade measures leave much room for Parties to implement the types of measures they consider necessary, whether or not considerations like WTO consistency, effectiveness of control and trade facilitation have been taken into account. In this respect, Hong Kong, China has been conscious of striking a balance between control and trade facilitation. We have recently conducted a comprehensive review of the stricter domestic measures. Actions are being taken to streamline the existing control with a view to further facilitating legal trade.

5. Having examined our implementation of CITES, Hong Kong, China is convinced that an STO in an MEA should include at least the following elements: (a) it must be obligatory in nature; (b) it must specify explicitly the actions which Parties shall take to fulfill the relevant obligations in the MEA; and (c) it must be a trade measure that affects the free flow of goods. On (c), we note that the primary focus of the current discussion on WTO/MEA relationship is to consider the need for and possible ways of accommodating trade measures taken pursuant to MEAs under relevant WTO disciplines. Therefore, we also believe that the trade measure concerned must be hindering the free flow of goods, contrary to the principles and disciplines in relevant GATT/WTO provisions. In light of the foregoing, our preliminary view is that Articles II, III, IV, V and VI of CITES contain STOs, with the exception of paragraphs 1, 2 and 3 under Article II and paragraph 7 both under Articles IV and VI. The need for accommodating these Articles under relevant WTO disciplines is, however, an issue subject to further consideration.

III. THE WAY FORWARD

6. The CTESS has hitherto conducted useful exchanges of views on a host of issues on paragraph 31(i) of the Doha Declaration. The time has come for Members to start a pragmatic and concrete review of a few MEAs and the STOs therein. A few Members have started working in this direction in their submissions. Hong Kong, China would like to contribute to the process by sharing its implementation experience of CITES. The exercise demonstrates the possible complications in identifying and recognizing STOs in MEAs. This echoes the need to examine each MEA in detail to look at possible problem areas. It also shows that it is futile to continue to dwell on debates on definitional issues. Hong Kong, China does not believe it is easy to generalize a set of common criteria for defining STOs from the MEAs. Nor do we think it is feasible to find a "one-size-fits-all" solution. A possible way forward is to screen trade obligations in different MEAs with a view to considering whether they are deemed as STOs, and if so, whether some tailor-made solutions are required. A detailed examination of the trade-related provisions in a few MEAs represents the first concrete step towards that direction. Hong Kong, China firmly believes that through sharing of actual experience, Members should have a better understanding of STOs across different MEAs. We hope that the exercise could help move forward the discussions on the relationship between WTO rules and STOs in MEAs.

ANNEX

IMPLEMENTATION OF THE CONVENTION ON INTERNATIONAL TRADE
IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)
IN HONG KONG, CHINA

CITES Trade-Related Provisions ²	Implementation in Hong Kong, China
<p>Article II</p> <ul style="list-style-type: none"> CITES regulates trade in endangered species by defining conditions under which import and export permits may be issued. The conditions are differentiated according to a classification system based on three appendices of protected species. 	<p>Article II</p> <ul style="list-style-type: none"> The Animals and Plants (Protection of Endangered Species) Ordinance (the Ordinance) and the Exemption Order made under Section 18 of the Ordinance³ give effect to CITES by regulating import, export or possession of endangered species. All trade in endangered species listed under the Schedules to the Ordinance must meet CITES' requirements. Commercial import, export and possession of all highly endangered species are prohibited. Trade in other endangered species is subject to licensing controls. The Agriculture, Fisheries and Conservation Department (AFCD) of the Government of Hong Kong Special Administrative Region (HKSARG) is the Management Authority and the Endangered Species Advisory Committee established under the Ordinance is the Scientific Authority in implementing CITES. <p>Observation</p> <ul style="list-style-type: none"> Since Article II.4 of CITES specifically prohibits trade in endangered species in the three appendices with the exception of cases where certain conditions are met, it is a specific trade obligation to be observed by all CITES Parties.
<p>Article III</p> <ul style="list-style-type: none"> Appendix I includes all species threatened with extinction which are, or may be, affected by trade. Trade in these species is subject to particularly strict regulation through both import and export 	<p>Articles III, IV and V</p> <ul style="list-style-type: none"> The Schedules to the Ordinance listed all endangered species listed in CITES Appendices I, II and III. Under the Ordinance, no person shall import, export (including re-export) or

² These summary provisions on trade-related measures in the CITES are based on the “Matrix on Trade Measures Pursuant to Selected Multilateral Environmental Agreements” (WT/CTE/W/160/Rev.1) prepared by the WTO Secretariat. They are listed for illustration only and trade-related amendments to the CITES after June 2001 may not be reflected in the table. For details of CITES provisions and its amendments, please refer to <http://www.cites.org/eng/disc/text.shtml>.

³ For details of the Ordinance and the Exemption Order, please refer to <http://www.justice.gov.hk/Home.htm>.

CITES Trade-Related Provisions ²	Implementation in Hong Kong, China
<p>permits and re-export certificate which may be issued only in exceptional circumstances.</p> <ul style="list-style-type: none"> • Trade in Appendix I species must meet two criteria: (a) trade must not be primarily commercial in nature; and (b) it must not be detrimental to the species. • While the species listed in Appendix I are prohibited for trade for commercial purposes, there are limited exceptions to this (details are provided in Article VII). The test for exceptions is: whether trade will be detrimental to the survival of the species. Export and import permits are required for such exceptions. <p>Article IV</p> <ul style="list-style-type: none"> • Species in Appendix II may become threatened with extinction unless their trade and the trade in species that resemble them is subject to strict regulation. Trade in Appendix II species is regulated by the issue of export permits which are subject to both a finding of non-detriment and legal acquisition. Under Appendix II, the granting of import permits is not a condition for import (except for some countries with stricter measures under Article XIV). <p>Article V</p> <ul style="list-style-type: none"> • Appendix III covers species identified by an individual Party as being subject to regulation within its jurisdiction and for which it requests the cooperation of other Parties in the control of trade. 	<p>possess a scheduled species except under and in accordance with a licence issued by AFCD. Certain exemptions are provided for in accordance with CITES provisions, such as that on personal and household effects.</p> <ul style="list-style-type: none"> • No licence will be issued unless it is satisfied that the current CITES provisions are met, including those set under the Articles, Resolutions, Decisions and Notifications. In practice, no licence will be issued for commercial import or export (including re-export) of CITES Appendix I species, except under very special circumstances meeting the requirements of CITES. For trade in CITES Appendices II and III species, the specimens must be from CITES-approved sources. All import shipments must be accompanied by a CITES export or re-export document issued by the Management Authority of the exporting country. • The import of CITES Appendix I species and Appendix II species (except those manufactured products made from and artificially propagated plants) require an import licence. CITES Appendix III species are exempted from such import licence requirement under the Exemption Order. • The licence requirements for the import of CITES Appendix II species and the possession of CITES Appendices I and II species are stricter domestic measures as allowed for under CITES Article XIV. • Both requirements are set for the purpose of strengthening import control. The former allows the authority to examine the export permit (a copy of which is required to be submitted together with the licence application as a supporting document) before an import licence is issued. In case of doubt, enquiries could be made to the CITES Secretariat or relevant Management Authority of the exporting country. Similarly, the latter provides an additional enforcement means to back up import control in case any illegal item is slipped through the control. • To streamline our existing control and to facilitate legal trade, the Ordinance has recently been reviewed and actions are being taken to remove most of the stricter domestic measures, including the requirements of a licence for the import of CITES Appendix II species (other than live animals and plants of wild origin) and the possession of all CITES Appendix II species

CITES Trade-Related Provisions ²	Implementation in Hong Kong, China
	<p>(other than live animals and plants of wild origin for commercial purposes).</p> <p>Observation</p> <ul style="list-style-type: none"> Articles III, IV and V of CITES clearly lay down the conditions under which import/export permits or certificate shall be granted, and hence, trade in the endangered species concerned shall be allowed. They are specific trade obligations with the exception of perhaps Article IV.7 which is not specific in setting out the procedure for the granting of a certificate for the introduction from the sea of CITES Appendix II species. It is noted that the stricter domestic measures allowed for under Article XIV of CITES form part of the regime in regulating the trade of the endangered species concerned. These stricter domestic measures are, however, not specific trade obligations <i>per se</i>. Please see Article XIV of CITES for details.
<p>Article VI</p> <ul style="list-style-type: none"> Regulates the granting of permits and certificates under Articles III, IV and V, including information to be contained in a permit, the validity period of a permit, and the distribution of a permit. 	<p>Article VI</p> <ul style="list-style-type: none"> The licensing procedures of AFCD fully complied with the requirements under Article VI of CITES. For details of the application for import/export/possession licence for CITES species, please refer to http://www.afcd.gov.hk/conservation/eng/a_license.htm. <p>Observation</p> <ul style="list-style-type: none"> Since Article VI of CITES specifies in detail the way of granting and handling permits and certificates, they are specific trade obligations which CITES Parties shall implement, except for Article VI.7 of CITES, which does not oblige Parties to fix a mark on specimen to facilitate identification.
<p>Article VII</p> <ul style="list-style-type: none"> Lists the Exemptions and Other Special Provisions Relating to Trade. This Article provides all the exceptions to the prohibitions of trade in endangered species listed in the three appendices. 	<p>Article VII</p> <ul style="list-style-type: none"> For endangered species or products in transit, they must be accompanied by a document issued by the CITES Management Authority of the exporting country. During its stay in Hong Kong, the item is subject to control by an officer of AFCD so authorized. Commercial trade in pre-Convention specimens of CITES Appendix I would be allowed in line with Article VII of CITES. As with Article VII of CITES, exemptions applied with stricter domestic measures, as allowed for

CITES Trade-Related Provisions ²	Implementation in Hong Kong, China
	<p>under Article XIV of CITES, include:</p> <ul style="list-style-type: none"> – The exemptions concerning personal and household effects are only limited to manufactured products and artificially propagated plants. They do not cover specimens which were acquired by a person outside his country of usual residence and are being imported into that country, including that is listed in CITES Appendix II. – On exemptions related to trade in captive-bred animals or artificially propagated plants, an import licence is required for specimens of captive-bred animals (other than manufactured products). – Exemptions provided for herbarium and museum specimens do not cover live plant material. – Movement (import and re-export) of specimens of travelling zoo or exhibition requires a licence. <ul style="list-style-type: none"> • Apart from travelling zoo or exhibition, all stricter domestic measures mentioned under Article VII of CITES will be removed after legislative amendment. The current stricter measure on travelling zoo or exhibition is not to be removed because they involve animal health and welfare issues and are subject to permit requirement under the Public Health (Animals and Birds) Ordinance. • In consideration of exemptions, both the conditions listed under Article VII of CITES and the Exemption Order will be taken into account. The conditions are applied equally to all applications. Anyone could obtain the exemptions provided for under the Exemption Order if the required conditions are met. <p><u>Observation</u></p> <ul style="list-style-type: none"> • The exemptions under Article VII of CITES are specifically set for implementation by Parties, unless Article XIV of CITES is invoked. There is, however, no need to consider whether this Article constitutes specific trade obligation since the requirements therein do not lead to restrictions in international trade.

CITES Trade-Related Provisions ²	Implementation in Hong Kong, China
<p>Article VIII</p> <ul style="list-style-type: none"> Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation of the Convention. 	<p>Article VIII</p> <ul style="list-style-type: none"> Any person contravening the Ordinance will be prosecuted and may be subject to a maximum fine of HK\$5 million, imprisonment for 2 years and mandatory forfeiture of the specimens upon conviction. <p><u>Observation</u></p> <ul style="list-style-type: none"> Some provisions under Article VIII of CITES impose certain requirements on Parties. For example, Article VIII.1 of CITES obliges CITES Parties to take appropriate measures to enforce the Convention. Yet, it has not specified the measures to be taken and is therefore not a specific trade obligation. Similarly, Article VIII.3 of CITES is neither definite in requiring Parties to allow specimens to pass through formalities with a minimum delay, nor specific in requiring Parties to ensure that all living specimens are properly cared for during transit, holding or shipment. It is again not a specific trade obligation. In fact, there is no need to consider whether the requirement for proper care is a specific trade obligation since it does not constitute restrictions to international trade.
<p>Article XIV</p> <ul style="list-style-type: none"> Parties are allowed to take stricter domestic measures. Appendix II does not require an import permit but many OECD countries have instituted a system of import permits for trade in certain species and in some instances, with species listed in Appendix III. 	<p>Article XIV</p> <ul style="list-style-type: none"> Stricter domestic measures implemented have been mentioned as above. Most of them will be removed after legal amendments. The current requirement of a possession licence for CITES Appendix I species will however continue in order to maintain a higher degree of protection to such species. <p><u>Observation</u></p> <ul style="list-style-type: none"> Since CITES Parties are not obliged to take stricter domestic measures and that an individual Party is free to determine stricter domestic measures to be taken, Article XIV of CITES is not a specific trade obligation.