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Proposal for a
COUNCIL DECISION

on common positions of Member States on proposals submitted to the 5th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to be held in Buenos Aires, Argentina, from 22 April to 3 May 1985

(submitted by the Commission to the Council)

CONFIDENTIAL

COMMISSION COMMUNICATION TO THE COUNCIL

Subject : Proposals submitted to the 5th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to be held in Buenos Aires, Argentina, from 22 April to 3 May 1985.

1. INTRODUCTION

1.1. Development

Since the entry into force of Council Regulation (EEC) n° 3626/82 (1) on 1 January 1984, Belgium, Luxembourg and the Netherlands became effective parties to the Convention so that at present eight Community Member States are a party. Ratification/accession procedures could not yet be finalized by Ireland and Greece. Today the Convention has 87 Parties.

The 5th meeting of the Conference of the Parties will take place in Buenos Aires, Argentina, from 22 April to 3 May 1985.

The European Communities will, as at all previous meetings, participate in the capacity of observer in accordance with Article XI (7) of the Convention. The Convention Secretariat was informed accordingly in October 1984.

(1) Council Regulation (EEC)N° 3626/82 of 3.12.1982, on the implementation in the Community of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (OJ L 384 of 31.12.82)

1.2. Community accession to the Convention

In September and October 1982 the Council Working Party on the Environment discussed and approved a Commission proposal for an amendment to Article XXI of the Convention allowing the Community as such to accede.

The Danish government, supported by the required one-third of the Parties, requested the Convention Secretariat to convene an extra-ordinary meeting which was held on 30 April 1983, at the end of the 4th regular meeting of the Conference of the Parties in Gaborone, Botswana.

It resulted in the adoption of a substantially modified text of the amendment, submitted by the United States in agreement with the Community, with 27 votes in favour, 9 against and 6 abstentions.

Amendments to the Convention enter into force for the parties which have accepted them 60 days after two-thirds of the parties have deposited an instrument of acceptance with the depositary government (Article XVII (3) of the Convention). In accordance with Resolution Conf. 4.27 of the Conference of the Parties, the "Community-amendment" will enter into force after its acceptance by two-thirds of the parties, i.e. 54, "at the time of its adoption".

2. INSTITUTIONAL AND LEGAL PROBLEMS RELATED TO THE ESTABLISHMENT OF COMMON POSITIONS TO BE TAKEN BY THE MEMBER STATES ON PROPOSALS SUBMITTED TO THE CONFERENCE OF THE PARTIES.

2.1. The Commission considers that since the adoption of Council Regulation N° 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora the Community has (external) competence in all matters concerning the regulation

of trade in specimens of endangered species, e.g. even in respect of species not yet included in the Annexes to the Regulation. This argument is based on the proposition that to modify the Convention would be to "affect" (in the sense of the ERTA - case ¹) the Regulation, because the latter would need to be amended to take into account the modifications. The objectives of the Regulation were in effect to prevent that national implementing measures, which were not uniform, would affect the free movement of products within the Community and would lead to distortions of competition (see 5th and 6th recital). Therefore, it was considered necessary at Community level to ensure that certain commercial policy instruments to be employed under the Convention are uniformly applied (4th recital). Those objectives cannot be attained unless the Community has external competence in all matters concerning the regulation of trade in specimens of endangered species.

In the opinion of the Commission, Article 15(3) of Regulation N° 3626/82 cannot be invoked to support an argument that the Community has no external competences with regard to species not yet covered by CITES, but for which proposals have been submitted to the Conference for including them. Article 15(3) has only internal effect. It allows Member States to apply in intracommunity trade certain restrictions for the trade in species not covered by the Regulation - restrictions which must be similar to those provided for in the Regulation. That Article defines, therefore, the measures which are considered to be justified under Article 36.

2.2. The Commission refers to the declaration it made in the Council minutes at the adoption of Regulation N° 3626/82.

It stays convinced that the main legal basis for any Community action on the subject is Article 113 of the EEC Treaty. However, the Community is not yet a Party to CITES. In these

¹22/70, (1971) ECR, 263

circumstances, the Member States have the obligation under Article 5 of the EEC-Treaty to facilitate the exercise by the Community of its competence at the Conference.

The Commission considers that during the transitional period, until the Community becomes a Party to CITES, the instrument for defining a common position with regard to the proposed amendments at the Conference is that given by Article 116 of the EEC Treaty. This Article states that Member States shall, in respect of all matters of particular interest to the common market, proceed within the framework of international organisations of an economic character only by common action and provides for the Commission to submit proposals for this purpose.

It is apparent from the motivation of Regulation n° 3626/82 that any amendment concerning the Annexes of the Convention is of particular interest to the common market.

With regard to the question whether CITES can be regarded as an international organisation of an economic character, the answer has to be affirmative. Although it cannot be denied that the objectives of CITES mainly relate to the protection of the environment, the instruments used to achieve the objectives are purely commercial. The Convention regulates the trade in endangered species, as appears already from its title. No other instruments are foreseen. CITES has therefore to be considered as an international organisation of an economic character, even if it has also other characteristics.

The Commission proposes that the Council adopt the attached proposal for a Council Decision.

COUNCIL DECISION

on common positions of Member States on proposals submitted to the 5th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to be held in Buenos Aires, Argentina, from 22 April to 3 May 1985

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 116 thereof,

Having regard to the proposal from the Commission,

Whereas the Convention on International Trade in Endangered Species of wild fauna and flora is implemented in the Community by Council Regulation (EEC) N^o. 3626/82 (1);

Whereas proposals for resolutions and amendments to the Appendices of the Convention are susceptible to affect the Regulation;

Whereas the Community is not yet a contracting party to the Convention, although an amendment for this purpose is at present before the contracting parties for their acceptance;

(1) OJ. N^o L 384 of 31.12.1982, p. 1

Whereas in these special circumstances it is for the Member States to act with respect to the proposals, within the framework of a common position to be decided by the Council;

HAS DECIDED AS FOLLOWS :

Article 1

The common positions of Member States to be taken at the 5th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of wild fauna and flora shall be in accordance with the positions contained in the annex to this decision.

Article 2

1. Where a common position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the meeting of the Conference of the Parties, Member States shall review this position in the light thereof and establish a common position on the proposal concerned before the Conference of the Parties is called to vote on it.
2. On proposals, on which a common position is not contained in the annex, such a position shall be established before the Conference of the Parties is called to vote on them.

Done at Brussels, .. April 1985.

For the Council,

ANNEX to Council Decision of .. April 1985 on common positions of Member States on proposals submitted to the 5th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of wild fauna and flora.

Agenda item XIII - Interpretation and implementation of the Convention

1. Report on national reports under Article VII, paragraph 7, of the Convention (doc. 5.19 and 5.20)

- (a) The discussions of the Technical Committee (Brussels, June 1984) demonstrate that neither of the identified main functions of annual reports is being effectively fulfilled. The available annual reports do not allow the monitoring of the implementation of the Convention by its Parties nor the monitoring of the quantity of trade in specimens of listed species, because of the failure to submit annual reports, late submissions and incomplete and improper compilation of annual reports. This situation was discussed at all previous meetings of the Conference of the Parties, the Technical Committee and several Working Groups and was subject to a number of resolutions, however, without a marked improvement. This implies that in its ten years of existence the Convention has not been able to provide reliable data which would allow the drawing of conclusions with regard to the effects of international trade on the conservation status of the species it covers.

The Common position is to support any action aimed at a better functioning of the annual reporting system.

(b) In the context of the discussion on annual reports the question of reports on intra-Community trade will be brought up. This issue was discussed at the June 1984 Technical Committee meeting, on the basis of a report from its working group on annual reports, at the 1984 general meeting of I.U.C.N. in Madrid and at the seminar on CITES implementation in Asia and Oceania held in Kuala Lumpur in October 1984. India submitted a draft resolution to the Conference of the Parties (doc. 5.20) recommending that each party to the Convention which is a member of a regional trade agreement within the meaning of Article XIV (3) of the Convention, include in its annual reports information on trade with other member states of that agreement, unless the record-keeping and reporting duties are in direct conflict with the provisions of the regional trade agreement.

Apart from the technical and physical impossibility to report on intra-Community trade in CITES specimens under the system adopted for the implementation of CITES in the Community, the controls necessary for such reporting would indeed be in direct conflict with the provisions (and the aims) of the Treaty. Although the proposal appears to have been put forward with regard to the Community, the common position is to abstain. A declaration shall be made on behalf of the Community explaining that for the above reasons the Community does not consider itself to be affected by the recommendations of the resolution. With a view to the possible negative consequences of a discussion on the issue, it will be necessary to allay the concern of some of the parties in this matter. Member States shall in their contacts with other Parties and non-governmental organizations explain the functioning of the Community regulations to implement the Convention.

2. Trade in ivory from African elephants (doc. 5.22)

This resolution, prepared and submitted by the United Kingdom, was discussed at the June 1984 Technical Committee meeting and found general support. The Committee on the Convention, established under

Council Regulation (EEC) N^o.3626/82, identified a number of difficulties related to the recommendations with regard to trade in stocks held in non-producer countries, i.e. stocktaking and marking before re-export. It agreed to submit an alternative approach, fixing a deadline for the re-export of unmarked stocks, to the Conference of the Parties for discussion. In view of the important step forward in the conservation of African elephant populations represented by this resolution, it deserves to be supported. Member States shall discuss the alternatives for the treatment of re-exported ivory and possibilities to ensure that annual quotas are based on scientifically sound management plans.

The common position is to vote in favour of the resolution resulting from the discussions of the Conference of the Parties.

3. Trade in leopard skins (doc. 5.23)

Resolution Conf. 4.13 allows trade in leopard skins for non-primarily commercial purposes (hunting trophies, personal effects, household goods) and in limited quantities (quotas agreed by the Conference of the Parties and only one skin per person per year). Zimbabwe, Zambia and Tanzania propose higher annual quotas which would be more in line with the number of animals actually killed either in the framework of management plans or for the defense of life and property.

Zimbabwe proposes that it be allowed to set annual quotas itself and communicate its decision to the Secretariat or - in case the Conference would not agree - that the Conference sets a quota of 350 animals per year.

Zambia submitted two similar proposals with an annual quota of 300 animals.

Tanzania proposes to increase its quota from 60 to 250.

These proposals require careful consideration given the relation between financial benefits and the willingness of landholders to protect the species. The common position shall be established in the light of a discussion by the Conference of the Parties and, particularly in the case of the proposal by Tanzania, on the basis of additional scientific advice.

4. Trade in plant specimens (doc. 5.24)

The Plant Working Group, a sub-committee of the Technical Committee, made a great number of recommendations with regard to an improved implementation of the Convention for plants. The recommendations in Annex 1 and those under a) and b) of Annex 2) to doc. 5.24 have been endorsed by the Technical Committee in June 1984.

The common position is to support the recommendations concerned.

Recommendation c) of Annex 2 poses a number of difficulties. Its adoption would imply the use of plant health certificates, instead of export permits, for Appendix I plants propagated artificially for commercial purposes. This is not in conformity with the accepted interpretation of Article VII, paragraph 4, of the Convention. A second problem is related to the present impossibility to adapt the plant health certificate to the requirements of the recommendation under ii).

The common position is to discuss these difficulties in the Plant Working Group meetings and to not support recommendation c) of Annex 2 to doc. 5.24.

5. Trade in ranched specimens (doc. 5.25)

This proposal for a uniform marking system for products from ranching operations is a significant contribution to a solution of the identification problems related to trade in such products.

Although it is not clear how this resolution will affect existing ranching operations and those submitted to the Conference of the Parties for approval at this meeting and although the practicability of certain elements of the proposed resolution require further discussion.

The common position is to support its basic ideas.

6. Significant trade in Appendix II species (doc. 5/..)

The document concerned is not yet available. The subject therefore requires that a common position is established at a later stage.

7. Control of "readily recognizable" parts and derivatives (doc. 5/..)

The proposed resolution recommends the adoption by all Parties of a definition of the word "specimen" similar to the wording chosen for Article 2 of Council Regulation (EEC) n° 3626/82 in the version proposed by the Commission with document (COM (83) 557 of 26/9/83 (O.J. C 272 of 11/10/83, p. 7). The adoption of this proposal by the Council awaits the outcome of the meeting of the Conference of the Parties with regard to exempted parts and derivatives. It has proven impossible to introduce a "minimum list" similar to Annex B of Regulation 3626/82.

As its recommendation contributes to a better control of parts and derivatives, the common position is to support the resolution.

8. Definition of "primarily commercial purposes" (doc. 5/28)

Although the proposed resolution and its introduction demonstrate that a generally applicable definition of this term cannot be given, the resolution and the examples contained in its annex represent an important guideline for importing Parties in considering the issue of an import permit for Appendix I specimens.

The common position is to support the resolution.

9. Time validity of import permits (doc. 5/29)

The proposed resolution recommends that, for the purposes of paragraphs 2 and 4 of Article III of the Convention, a (re)exporting country considers an import permit to be invalid if it is presented six months after its date of issue. The proposal leaves it up to the Conference of the Parties to decide whether the recommendation should apply to all Appendix I specimens or to live specimens only. The common position is to support the resolution in annex 1 to doc. 5/29 which is in line with the provisions of Commission Regulation (EEC) N° 3418/83 on the subject.

10. Certificate of origin for Appendix III specimens (doc. 5/30)

The recommendation that the certificate of origin provided for in paragraph 3 of Article V of the Convention shall be issued by the competent CITES management authority solves the problem related to the different meaning of such a certificate issued under customs regulations. The common position is to support this resolution and to suggest that it is extended with a recommendation which defines the term "country of origin" for CITES purposes along the following line :

- a) For the purposes of the Convention, the term "country of origin" shall mean the country in which the specimens were taken from the wild, bred in captivity or artificially propagated.

b)

11. Definition of "pre-Convention specimen" (doc. 5/31)

This document deals with all aspects of the "pre-Convention" issue in great detail and clarifies the interpretation and implementation difficulties related to the wording of Article VII, paragraph 2, of the Convention and those that have arisen since the adoption of Resolution Conf. 4.11.

The common position is support the proposed resolution.

12. Cayman Turtle Farm (doc. 5/32)

This draft resolution was submitted by the United Kingdom on the request of the Secretariat and provides an alternative to the proposal to transfer the captive Cayman Islands green turtle population from Appendix I to Appendix II.

This resolution approach is the most appropriate. The absence of a wild population within the jurisdiction of the Cayman Islands excludes the adoption of a proposal on the basis of Resolution Conf. 3.15. The condition under a) of that Resolution, that a wild population of an Appendix I species occurring within the jurisdiction of a Party which is deemed to be no longer endangered and to benefit by ranching, is an essential element of the carefully designed ranching concept as such. Unfortunately the Cayman Turtle Farm has so far not been able to meet the condition under c) iii) of Resolution Conf. 2.12 on captive breeding. It cannot be considered to manage its parental breeding stock in a manner which "has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment". However, the Cayman Turtle Farm operations are conducted in such a way that they satisfy the remaining criteria of both Resolutions Conf. 2.12 and Conf. 3.15, its continued efforts are likely to result in the production of second-generation offspring in the near

future and its species survival research, educational activities, etc. are to be considered as providing clear benefits to seaturtle conservation. The common position is therefore to support the resolution contained in the annex to document 5.32, provided that it is extended with an additional control mechanism. For that purpose an additional paragraph shall be added to the draft resolution, reading :

e) that this Resolution be reviewed at the 7th meeting of the Conference of the Parties.

13. Regular review of alleged infractions (doc. 5/33)

The proposed resolution appears to charge the Technical Committee with functions attributed to the Secretariat under subparagraphs (d) and (e) of Article XII, paragraph 2, of the Convention. This resolution can therefore only be adopted with the consent of the Secretariat.

The common position shall be based on the reaction of the Secretariat on the matter.

14. Interpretation of Article XIV, paragraph 1 (doc. 5/34)

This draft resolution, prepared by ten African parties during the June 1984 seminar on the implementation of CITES in Africa, is a result of the dissatisfaction of certain producer countries with stricter measures taken in consumer countries with regard to trade in Appendices II and III specimens and in specimens of species not covered by CITES. During the seminar, the Community was criticized for its provisions in relation to Annex C to Council Regulation N^o. 3626/82 and mention was made of the U.S. Endangered Species Act and the Australian Wildlife Protection Act. In spite of the detailed oral and written information on the functioning of the Community regulations on CITES, provided at the June 1984 seminar and at previous meetings of the Conference of the Parties, a number of

producer countries persists in regarding stricter measures in consumer countries as interference in their national affairs. While recognizing the concern of producer countries, the Council is of opinion that Article XIV, paragraph 1, of the Convention leaves no room for a resolution of this kind.

The common position is therefore to oppose the proposal concerned.

15. Interpretation of "the text of the proposed amendment"

The document concerned is not yet available.

16. A CITES register of traders in live specimens of wild fauna (doc. 5/36)

The proposed resolution aims at protecting the interests of bona fide traders through their inclusion in a register containing their names, licence numbers, addresses, telephone and telex numbers, the names and addresses of their managers or directors and the kind of their trade. Permits should only be issued to traders figuring in the register. The system is also supposed to assist management and scientific authorities in carrying out their duties and to help producer countries economically. The register is to be made available to all parties. Although the problem of illegal wildlife dealers is well-known and requires the constant attention of the parties, it is highly unlikely that the proposed register will contribute to its solution. Annex 2 to document 5.36, explaining the term "register", limits its function to assisting a management authority in finding out whether a trader exists or not. The fact that the Convention does not require import permits for Appendices II and III specimens reduces that limited function even further and the fact that the register is only to be updated once a year implies the risk that decisions are based on the wrong information. Because of the very limited practical use compared to the enormous administrative burden, the common position is to oppose the proposed resolution.

17. Relationship between CITES Transport Guidelines for Live Animals and IATA Live Animals Regulations (doc. 5/..)

The document concerned is not yet available.

18. Endorsement in principle of a convention for the protection of animals (doc. 5/38)

The common position is to support the proposed resolution on the condition that a closer link in its preamble is made to the relevant CITES provisions on transport of and suitable accommodation for live animals and that the words "and without prejudice to the position of their governments with regard to its content and future conclusion" are added after the words "approves in principle" .

Agenda item XIV - General matters of principle relating to the appendices

1. Ten Year Review of the Appendices (doc. 5/..)

The document concerned is not yet available. It is, however, a well-known fact that the system established with Resolution Conf. 3.20 did not have the expected result. The only serious revision carried out was that concerning European species. In view of the importance of appropriate listings in the Appendices, the common position is to support any proposals aiming at a better implementation of Resolution Conf. 3.20.

2. Consideration of the criteria for amendment of Appendices I and II (doc. 5/40)

At the June 1984 seminar on the implementation of CITES in Africa, a Resolution was prepared recommending that in the case of taxa included in Appendix I before the adoption of Resolution Conf. 1.1. (Borne criteria) and for which the data required for their transfer to Appendix II cannot be obtained within a reasonable time or with

reasonable effort, the criteria of Resolution Conf. 1.2., shall not be applied if the countries of origin agree to introduce a quota system.

While recognizing the difficulties of developing countries in obtaining biological data which would meet the Berne criteria, it must be noted that a country of origin will in the absence of such data not be able to meet the conditions of Article IV.2.(a) of the Convention. Quotas which are not based on biological data are arbitrary and may result in over-exploitation. The adoption of the Resolution concerned would not be compatible with the provisions of the Convention and therefore the common position is to reject the proposal.

3. Guidelines for the Secretariat when making recommendations in accordance with Article XV (doc. 5/..)

The document is not yet available.

4. Criteria for the inclusion of species in Appendix III (doc. 5/42)

The common position is to support the recommendations under a) and b) of the draft resolution in which it is established that only those species shall be covered by Appendix III which are native to the country which submitted the species for inclusion (an important clarification of the situation with regard to family listings) and that only those species are included in Appendix III which are subject to conservation measures within the jurisdiction of the country concerned. Export restrictions for other than conservation purposes would not justify Appendix III listing.

With regard to recommendations c) and d) the common position is to be established in the light of the discussion thereof with producer countries.

5. Nomenclature and taxonomy used in the appendices (doc.5/..)

The document concerned is not yet available. The common position is to follow the recommendations of the Nomenclature Committee on this subject.

Agenda item XV - Consideration of proposals for amendment of Appendices I and II

1. Proposals submitted pursuant to the resolution on ranching

1.1. The Australian proposal to transfer its *Crocodylus porosus* population from I to II

This proposal was earlier submitted to the 4th meeting of the Conference of the Parties in 1983 and withdrawn on the recognition that it did not provide adequate data on the status and on the conservation management of the population concerned and that it did not meet the Berne criteria. These shortcomings have been overcome in the new submission. The common position is to support the proposal. The IUCN/SSC Crocodile Specialist Group unanimously supported the proposal at its October 1984 meeting, believing that it will have benefits for the conservation of the species without detriment to the Australian *Crocodylus porosus* population.

1.2. The Indonesian proposal to transfer its *Crocodylus porosus* population from I to II

The IUCN/SSC Crocodile Specialist Group unanimously opposed this proposal on the basis that the provided information is sometimes misleading and that essential data on the conservation status, field studies to provide a management basis, control of hunting, regulations on the collection of young crocodiles to stock farms,

licensing of hunters and farmers, the marking of hides, etc. are missing. Recent reports on the Irian Jaya situation indicate that the population is heavily depleted.

As the proposal clearly neither meets the Berne criteria nor those of Resolution Conf. 3.12. The common position is to oppose it while recognizing the need of the Indonesian government to relate conservation efforts to revenues.

1.3. The French proposal to transfer the *Chelonia mydas* populations of Europe and Tromelin Islands from I to II

A similar proposal was submitted to the 4th meeting of the Conference of the Parties in 1983 and withdrawn because of the fact that essential data for a proper consideration of the merits of the proposal were lacking.

The question is therefore whether the present proposal contains sufficient information allowing the Conference of the Parties to reach a positive decision.

The reports of a team of seven international experts who investigated the operation in March 1984 are generally supportive of the ranch. The proposal meets the conservation criteria laid down in Resolution Conf. 3.15 and if, at the Conference of the Parties, the French delegation provides some additional information on marking techniques, the requirements of Resolution Conf. 3.15 will also be met in that respect.

The common position is to support the proposal.

1.4. The proposal from Suriname to transfer its *Chelonia mydas* population from I to II.

This proposal was approved by the Conference of the Parties at its 4th meeting in 1983 subject to the approval of an adequate marking system. Item 7 of the proposal describes the proposed marking techniques in detail, which fully meet the requirements of Resolution Conf. 3.15.

In accordance with the decision of the 4th meeting of the Conference of the Parties, the common position is to support the proposal.

1.5. The proposal from the United Kingdom to transfer the captive population of *Chelonia mydas* in the Cayman Islands from I to II.

The position referred to under agenda item XIII - 12 refers which implies that this ranching proposal shall be withdrawn at an appropriate moment during the discussions of the Conference on the subject and in any event before the Conference would be called to vote on it. Member States shall ensure that document 5.32 is decided on by the Conference before the ranching proposal would be considered.

2. Other proposals for amendment of Appendices I and II

Australia 2 - Inclusion of *Hoplocephalus bundaroides* in II

The species is endemic to Australia, is protected under Australian law, the proposal indicates that there is no legal international trade and that nothing is known about illegal trade. It is doubtful whether the proposal meets the Berne criteria (lack of information on population size and trends and minimal risks of the species entering trade). In view of the very restricted distribution area and to avoid that the species will enter trade, the common position is to nevertheless support the proposal unless Australia can be convinced of listing the species in Appendix III.

Australia 3 - Inclusion of Rheobatrachus spp. in Appendix II

These frogs are sought after for scientific research. The position on the preceding proposal refers.

Australia 4 - 8 - The inclusion of Hippopus hippopus, H. porcellanus, Tridacna crocea, T. maxima and T. squamosa in Appendix II.

The above five species of giant clam are probably less vulnerable to trade, because of their smaller size, lower value and faster rates of growth, than the two species included in Appendix II in 1983 (Tridacna gigas and Tridacna derasa). The biological and trade data presented in the proposal meet the Berne criteria. The adoption of the proposal would result in full Appendix II coverage of the Tridacnid family which would eliminate the problems of the identification of parts and derivatives caused by the earlier inclusion of only two species of the family.

The common position is to support the proposal.

Australia 9 - 25 - The inclusion of 17 genera of stony corals in Appendix II.

Although there are many reasons for the inclusion of stony corals in Appendix II, the proposal submitted by Australia seems to be premature. It presents no scientific data whatsoever and only very general information on trade. It is further unclear if other genera should be covered. The proposal does not contain comments from other countries of origin nor addresses likely enforcement difficulties.

In its present form the proposal risks to become subject to heavy opposition which would prejudice future improved proposals for stony corals. It would therefore be advisable that the proposal is

withdrawn after having been discussed at scientific working group level and before the plenary session of the Conference of the Parties.

The common position is to reject the proposal in the case Australia wishes to put it to a vote.

Australia 26 - 35 - Deletion from Appendix II of Anigozanthos spp., Macropidia fuliginosa, Banksia spp., Conospermum spp., Dryandra formosa, Dryandra polycephala, Xylomelum spp., Crocea spp., Gelznowia verrucosa and Pimelea physodes.

A similar proposal to the 4th meeting of the Conference of the Parties resulted in the deletion of three taxa (Chloantaceae spp., Verticordia spp. and Boronia spp.). The other proposals were rejected. This new proposal concerns ten taxa including those that were earlier rejected.

The common position is to support the proposal. It concerns taxa which are endemic to Australia and which are now subject to national legislation containing sufficient safeguards for their protection, including provisions on management and monitoring.

Bangla Desh 1 - 2 - Transfer from I to II of Kachuga tecta tecta and Lissemys punctata punctata.

The proposal contains no scientific data on the population status, mentions legal export to Singapore, Hong Kong and Malaysia inspite of its Appendix I listing and certainly does not meet the Berne criteria.

Unless the IUCN/SSC Freshwater Turtle Specialist Group supports the proposal inspite of its present deficiencies, the common position is to reject the proposal. Also see India 6.

Bangla Desh 3 and 4 - Transfer from I to II of Varanus bengalensis and Varanus flavescens.

Through these proposals Bangla Desh seeks to solve its problem of possessing over two million lizard skins which cannot be exported because of the Appendix I listing of Varanus bengalensis and V. flavescens. Although the proposals state that trapping, killing and hunting is prohibited since 1973, they also mention an export figure of over five million reptile skins, mainly of lizards, between 1972/73 and 1979/80.

As the proposals do not meet the Berne criteria, the common position is to reject them in their present form. However, Member States shall discuss the possibilities for alternative solutions in the relevant working groups and at the plenary session of the Conference. It should be noted that in the context of the "ten year review of the appendices" it was recognized that the listing of Varanus species appeared to require modification, but no further action was taken since.

A final common position shall be established in the light of the suggested discussions.

Brazil 1 - 8 - Transfer from II to I of seven Cattleya species and of Laelia tenebrosa.

The proposals do not meet the Berne criteria, only three of the species are protected under Brazilian law, the mentioned trade with the U.S. and European countries should be impossible in the absence of Brazilian export permits. The inclusion of single orchid species in Appendix I would aggravate the already existing identification and enforcement problems. It is also a known fact that Appendix I listing of orchids brings about a dramatic increase of trade pressure and is therefore counterproductive.

The common position is to reject the proposals concerned.

Chile 1 - Transfer from I to II of the Andes population of Fitzroya cupressoides.

At the 4th meeting of the Conference of the Parties, the Chilean coastal population was transferred from Appendix I to Appendix II. The data presented in this new proposal appear to meet the Berne criteria. Nevertheless the proposal is heavily opposed by Chilean and international nature conservation organizations and there is evidence that the numbers decrease rapidly inspite of protection and owing to a lack of enforcement measures.

As the biology of this unique species warrants a cautious approach, the common position is to reject the proposal.

China 1 - Transfer from II to I of Pygathrix (Rhinopithecus) spp.

The proposal fully meets the Berne criteria. The common position is to support it.

China 2 - Transfer from I to II of Selenarctos thibetanus.

The proposal contains no data on the conservations status of the species, it admits that in certain regions its distribution area was reduced and that populations decreased. It does not meet the Berne criteria. India and Thailand are opposed to the proposed downlisting. The common position is to reject the proposal.

China 3 - Transfer from I to II of the Chinese population of Felis bengalensis bengalensis.

Felis bengalensis bengalensis is indeed a common subspecies in China - more abundant than Felis bengalensis chinensis for example which is listed in Appendix II.

The subspecies is, however, threatened in Thailand, protected in India and considered as endangered under Nepalese Law. Therefore a transfer of the entire subspecies to Appendix II would probably not be feasible. A transfer of the Chinese population only would from a scientific point of view be appropriate but pose enforcement difficulties. The present situation in which two almost identical subspecies, F. b. bengalensis and F. b. chinensis, are listed in different Appendices already makes enforcement of Appendix I controls almost impossible. It is obvious that the inclusion of some populations of F. b. bengalensis in Appendix I and another in Appendix II would lead to even more serious complications. While recognizing the scientific justification of the Chinese proposal, the common position is to reject it in its present form. The attention of the Parties shall be drawn to the existing identification problems caused by the inclusion of F. b. bengalensis in Appendix I and it shall be suggested to investigate whether on the basis of Resolution Conf. 2.20., its transfer to Appendix II might be appropriate.

China 4 - The inclusion of Camelus bactrianus in Appendix I.

Although its present distribution is very restricted and its population small, it is doubtful whether the proposal to include the Wild Bactrian Camel in Appendix I meets the Berne criteria. Information on population numbers and trends is not presented, there is no legal international trade and there is no information on illegal trade. The impossibility to distinguish between the hair of domestic animals and that of wild ones would make Appendix I listing unenforceable.

The common position is to reject the proposal.

China 5 - 7 - The inclusion in Appendix I of Cervus albirostris, Muntiacus crinifrons and Budorcas taxicolor.

The presented data are minimal and do not meet the Berne criteria. Additional justifications for the necessity of Appendix I listing should be provided during the meeting of the Conference of the Parties. The common position shall be established in the light of the recommendations of the scientific working group on amendment proposals (screening committee).

China 8 - 10 - The inclusion of Cycas panzhihuaensis, Cathaya argyrophylla and Camellia chrysantha in Appendix I.

These species qualify for Appendix I listing. Enforcement of controls would, however, be very difficult because of the fact that trade, if any, would be in seedlings and seeds.

The common position is to be established on the basis of the recommendations of the Plant Working Group.

Costa Rica 1 - The deletion of Alouatta palliata from Appendix I.

The proposal does not meet the Berne criteria as far as the required scientific data are concerned. It does not contain information on the status of the species and conservation measures in other countries of origin nor the comments of those countries.

The common position is to reject the proposal.

Costa Rica 2 - The inclusion in Appendix I of Jabiru micteria.

The species qualifies for Appendix I listing and ornithologists participating in the Conference's scientific working group on amendment will certainly provide more supportive evidence than that contained in the proposal.

The common position is to support it.

Costa Rica 3 and 4 - The transfer of Ara ambigua and Ara macao from II to I.

Both macaw species qualify for Appendix I. The available scientific data to justify the proposals are not presented but the cases are nevertheless clear.

The common position is to support these proposals.

Costa Rica 5 - The deletion of Bufo periglenes from Appendix I and its subsequent inclusion in Appendix III by Costa Rica.

It is not clear why this proposal was made. Total protection under national legislation will remain in force. Trade in live animals is an important potential threat if the species is downlisted. In addition, the proposal contains no scientific data whatsoever. The common position is to reject the proposal.

Denmark/Norway 1 - The transfer of the North American population of Falco rusticolus from II to I.

The common position is to support this proposal, which is well documented and fully meets the Berne criteria. Its adoption would repair an obvious mistake of the 3rd meeting of the Conference of the Parties.

Federal Republic of Germany 1 - The transfer of Monodon monoceros from Appendix II to I.

The proposal appears to meet the Berne criteria. The possibility that the annual take exceeds recruitment warrants protective measures. It is, however, doubtful whether the inclusion of the Narwhal in Appendix I would influence the hunting level. If that

were not the case, Appendix I listing would only result in the impossibility to trade a by-product of a subsistence hunt internationally. That question needs to be resolved before stricter measures under CITES are taken. National conservation measures, including the establishment of cautious catch quotas, might be more effective although it should be recognized that the fact that the hunt takes place in remote areas poses enforcement difficulties.

These aspects of the proposal should be discussed in the framework of the meeting of the Conference of the Parties. The common position is that, if it is established that Appendix I Listing would not reduce the hunting level, the proposal shall be withdrawn, but to support the proposal if there is concrete evidence that it would influence catch levels.

Federal Republic of Germany 2-3 - The inclusion of Rana hexadactyla and Rana tigerina in Appendix II.

The proposal presents sufficient information on international trade but lacks biological data which would make it meet the Berne criteria. If before or during the meeting of the Conference of the Parties, the statement that the population "was drastically reduced in the whole of Bangla Desh as well as in India" can be substantiated, the common position shall - in view of the high volume of trade - be to support the proposal. It should be noted that Appendix II listing would assist countries of origin in designing new or adapting existing conservation measures as well as in enforcing such measures.

India 1 - The transfer of Loris tardigradus from II to I.

The data provided in the proposal are insufficient for it to meet the Berne criteria. In scientific circles there is, however, no doubt about the fact that population numbers have rapidly decreased

and that hunting and habitat loss represent important factors for a further decline. Also in view of the potential trade threats, the common position is to support the proposal.

India 2 - The transfer of Presbytis entellus from I to II.

The proposal provides no population data other than that the "population is quite good in India". It admits that in neighbouring countries the populations are under pressure, that there are few in Pakistan and only 250-300 in Bangladesh. It also states that fourteen of the fifteen subspecies have a local distribution and that trade in those subspecies poses a threat to their populations.

The common position is to reject the proposal.

India 3 - The transfer of Presbytis phayrei from II to I.

The data presented in the proposal are minimal but the status of the species is known to justify Appendix I listing. Additional information, if required, can certainly be provided in the Conference's scientific working group on proposed amendments.

The common position is to support the proposal.

India 4 - The transfer of Equus kiang from II to I.

The remarks on the preceding proposal refer.

The common position is to support the proposal.

India 5 - The transfer of Falco jugger from II to I.

The same situation as the preceding two proposals.

The common position is to support the proposal.

India 6 - The transfer of Kachuga tecta tecta from I to II.

See proposal Bangladesh 2.

India 7 - 8 - The transfer of Trionyx gangeticus and Trionyx hurum from I to II.

The proposals do not provide adequate biological data to meet the Berne criteria. Export from India is prohibited and the species are strictly protected. It is unclear why the species are proposed to be transferred to Appendix II.

The common position is to reject the proposals.

India 9 - The transfer of Saussurea lappa from II to I.

Its very limited distribution and small population numbers together with the potential trade threats and reported illegal trade make this plant a clear case for Appendix I listing.

The common position is to support the proposal.

Indonesia 1 - The transfer of the Indonesian population of Chelonia mydas from I to II.

The proposal provides insufficient biological data to meet the Berne criteria. It is clear that the endangered status of Chelonia mydas cannot support exploitation without compensation. The green turtle is only locally protected in Indonesia, the "Green Turtle Management Action Plan" is still in its preparatory stage and certain aspects of it are unrealistic.

The common position is to reject the proposal.

Indonesia 2 - The transfer of Eretmochelys imbricata from I to II.

This proposal is comparable to the preceding one. The Hawksbill turtle is, however, not at all protected under Indonesian law.

The common position is to reject the proposal.

Malawi 1 - The transfer of Crocodylus niloticus from I to II.

This proposal is related to the proposal under agenda item XIV/2 and was prepared by Malawi on behalf of a number of African CITES Parties as a result of the June 1984 seminar on the implementation of CITES in Africa. Appendix II to the proposal contains suggested quotas for each of the countries of origin. In view of the comments on the proposal under XIV/2, the common position is to reject the proposal in its present form. It is, however, to be expected that a recent scientific investigation of the situation of the Nile crocodile in Africa - which was carried out under the auspices of the Secretariat and with financial contributions from the Community - resulted in a more concrete data base for an appraisal of the possibilities for a limited exploitation of the species in certain countries of origin. In that case the common position shall be established in the light of the recommendations of the relevant working groups of the Conference of the Parties.

Mozambique 1 - The transfer of the Mozambican population of Crocodylus niloticus from I to II.

The presented biological data are insufficient to meet the Berne criteria and it is unclear what management programme is envisaged. The information provided on envisaged ranching operations is also insufficient and the proposal does not meet the requirements of Resolution Conf. 3.12.

The common position is to reject the proposal, but the comments on the preceding proposal refer.

Seychelles 1 - The transfer of the population of the Seychelles of Eretmochelys imbricata from I to II.

The proposal admits that the population is declining which is in itself sufficient to reject the transfer from Appendix I to II. It further admits that there is an important illegal trade. The envisaged restriction of the hunt and of exports to male turtles is unenforceable because of look-alike problems.

The common position is to reject the proposal.

Sweden 1 - The inclusion of Cystophora cristata in Appendix II.

Although the proposal was prepared before the data presented and discussed at the January 1985 meeting of the NAFO Standing Committee on Fisheries Science, where available, most of the scientific data provided are still valid. The aerial surveys carried out in 1984 in the Davis Strait and at the Front resulted in the first reliable estimates of the size of the Northwest Atlantic population. Calculations of the population dynamics indicate that that stock should be able to sustain the Greenland catch plus a take of up to 12,000 animals at the Front. These conclusions must be interpreted with some caution. Estimates of total mortality for the Front herd indicate that it has suffered a very high hunting mortality that does not appear to be compatible with a population size of around 250,000 animals. These and other inconsistencies can only be resolved by further scientific studies. The data base on the other hooded seal populations is still the same and is reflected in the proposal. Because of the fact that the present low hunting level is mainly due to measures taken by the community, outside the framework of CITES, international monitoring is required.

The common position is to support the proposal.

Switzerland 1-5 - The deletion of Gymnocarpus przewalskii,
Melandrium mongolicus, Silene mongolica,
Stellaria pulvinata and Ammopiptanthus
mongolicum from Appendix I.

The species are not included in the IUCN Plant Red Data Book, there is no existing legal or illegal international trade and there is no potential trade threat. The species were included in Appendix I in 1973 and the Threatened Plants Committee proposed their deletion at the 3rd meeting of the Conference of the Parties in 1981.

The common position is to support the proposal.

Switzerland 6-7 - The deletion of Thermopsis mongolica and
Caryopteris mongolica from Appendix II.

The remarks on the preceding proposals refer.

The common position is to support the proposals.

Tunisia 1 - The inclusion in Appendix II of Vulpes (Fennecus)
zerda.

The biological data provided do not meet the Berne criteria but the reported illegal trade circuit is sufficient reason for protective measures.

The common position shall be established in the light of the results of the Conference's scientific working group on amendments.

United Kingdom 1 - The inclusion in Appendix II of Gruidae spp.
(species not yet included in Appendix I).

Eleven species are already included in the Appendices and this proposal, made as a result of a recommendation of the screening committee at the 4th meeting of the Conference of the Parties, aims at listing the remaining nine species in Appendix II which is in accordance with the Berne criteria.

The common position is to support the proposal.

U.S.A. 1 - The deletion of Mirounga angustirostris from Appendix II.

The biological data provided would justify deletion of the species from Appendix II. Past exploitation of both the Northern and Southern elephant seal nearly led to their extinction and future exploitation cannot be ruled out. Both Argentina and Australia are of opinion that continued careful international monitoring is required.

The common position is therefore to reject the proposal.

U.S.A. 2 - The inclusion of Brachypelma smithi in Appendix II.

The proposal lacks population data but the high international demand and existing illegal trade warrants monitoring. The fact that the species is easily confused with Brachypelma emilia and that both these species are frequently traded as "Aphonopelma species", however, makes that monitoring difficult. It is therefore not clear why B. emilia was not proposed for Appendix II simultaneously, especially because trade is likely to shift easily to that species.

The common position shall be established in the light of the results of the Conference's Scientific working group on amendments.

U.S.A. 3 - Transfer of Ceratozamia spp. from II to I.

The proposal lacks biological data. The common position shall be established in the light of the recommendations of the Plant Working Group.

U.S.A. 4 - The inclusion of all parts and derivatives of FLORA spp. listed in Appendix II, except those specified.

This proposal needs to be discussed in the Plant Working Group. Parties were given time until 20/1/1985 to suggest additional exceptions.

The common position shall be established on the basis of the recommendations of the Plant Working Group.