

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Seventy-seventh meeting of the Standing Committee
Geneva (Switzerland), 6–10 November 2023

Compliance

Compliance matters

APPLICATION OF ARTICLE XIII IN CHINA

1. This document has been prepared by the Secretariat and should be read in conjunction with document SC77 Doc. 35.10 on Application of Article XIII in the Lao People's Democratic Republic.

Introduction

2. At its 74th meeting (SC74; Lyon, March 2022), the Secretariat brought to the attention of the Standing Committee the trade in live Asian elephants (*Elephas maximus*) from the Lao People's Democratic Republic to China in documents SC74 Doc. 28.1 and SC74 Doc. 28.2.1. After review of the matter under Article XIII, the Committee agreed that:

*The Secretariat shall continue to keep close communication and strengthen the cooperation with China and Lao PDR on this potential case and seek an invitation from China and Lao PDR to provide in-country assistance, conduct a technical assessment and a verification mission to understand the type of trade controls that are put in place, once the specimens had been introduced, to ensure compliance with Article III with respect to the import of live Asian elephants (*Elephas maximus*). The technical assessment of the facility(ies) hosting the live elephants should focus on clarifying the purpose of the transaction and the specific characteristics and objectives of the reported trade. The Secretariat shall present its findings and recommendations to the 75th meeting of the Standing Committee (SC75).*

3. Article XIII of the Convention stipulates that:
 1. *When the Secretariat, in the light of information received, is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.*
 2. *When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.*
 3. *The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.*
4. In accordance with the Guide to CITES compliance procedures contained in the Annex to Resolution Conf. 14.3 (Rev. CoP18) on *CITES compliance procedures*, the approach of CITES towards compliance matters is "supportive and non-adversarial" with the aim of ensuring long-term compliance. Compliance matters

are handled as quickly as possible. Such matters are considered by the Standing Committee and ensuing compliance measures are applied in a fair, consistent and transparent manner.

Background

5. The Secretariat brought the matter of trade of live Asian elephants (*Elephas maximus*) from the Lao People's Democratic Republic to China to the attention of the Standing Committee for the first time at its 69th meeting (SC69; Geneva, November 2017) in its report on the Application of Article XIII in the Lao People's Democratic Republic (see paragraphs 43 and 44 of document [SC69 Doc. 29.2.1](#)). At the time, the Secretariat received information suggesting the possible leasing of domesticated Asian elephants to China without CITES documentation. It is important to note that leasing (trade in) of Asian elephants for non-commercial purposes is authorized by Laotian national legislation (Articles 40 and 41 of the Wildlife and Aquatic Law 2007), and Article III of the CITES Convention.
6. However, if the trade in live Asian elephants is not approved by the Ministry of Agriculture (MAF) and the CITES Management Authority, pursuant to the relevant provisions of the Wildlife and Aquatic Law and CITES, the transaction should be considered contrary to the provisions of the Convention.

Invitation to conduct a technical assessment and a verification mission

7. Following SC74, on 17 August 2022, the Secretariat sent a letter to the CITES Management Authority of China communicating the recommendation of the Standing Committee and seeking an invitation to conduct a verification mission to China. The aim of the mission was to understand how the Management Authority of a State of import is satisfied that the specimens traded are not to be used for primarily commercial purposes. The Secretariat indicated its desire to conduct a visit to the facility(ies) to verify the type of trade controls that are put in place, once the specimens had been introduced, to ensure compliance with this requirement. The aim of the visit to the facility(ies) hosting the live elephants would also be to understand the purpose of the transaction and the specific characteristics and objectives of the reported trade.
8. On 30 June 2023, China extended an invitation to conduct the mission with the objectives set out in paragraph 7 above. Following the invitation received from the Chinese authorities, the CITES Secretariat conducted a technical mission to China from 23 to 29 July 2023. Field visits were made to the Wild Elephant Valley at Xishuangbanna Nature Reserve and Shanghai Wild Animal Park. The Secretariat met and interviewed representatives from the national and local authorities and the main private actors involved in the operation of these two facilities.
9. The Secretariat thanks China for its excellent cooperation within the framework of the technical mission, and for its continuous willingness to constructively engage on the conservation and sustainable use of CITES-listed species. The Secretariat also thanks the National Forest and Grassland Administration (NFGA) and its Wildlife Conservation Department, for the technical and logistical support provided in planning and coordinating these visits offered to the Secretariat during its mission. Several meetings and visits were set up in Beijing, Yunnan province and Shanghai with members of the CITES authorities, national, provincial, and local, and with relevant stakeholders. During the mission, the Secretariat met with the Head of the CITES Management Authority, i.e., the Executive Director General of the Wildlife Conservation Department, the deputy director and various directors working in CITES-related matters at the National Forest and Grassland Administration. The Secretariat also met the CITES Scientific Authority (Endangered Species Scientific Commission). The CITES Secretariat also used the opportunity to discuss other species-specific matters and capacity-building opportunities with NFGA, the CITES Scientific Authority (Endangered Species Scientific Commission) and representatives for aquatic species from the Ministry of Agriculture and Rural Affairs. The Secretariat is grateful to the representatives of the local authorities, private sector and native communities who took the time to meet with the Secretariat and provided relevant detailed information in a frank, open and gracious manner.
10. The Secretariat further acknowledges the sustained support received from China to implement its mandate and its efforts to implement the Convention and to adhere to CITES requirements, and more generally to harmonize wildlife conservation and community development in regard to the conservation and sustainable use of its own Asian elephant populations.

Identification of potential compliance matters regarding the trade in live Asian elephants from the Lao People's Democratic Republic to China

11. As set out in document SC74 Doc 28.1, the Secretariat wrote to China and the Lao People's Democratic Republic regarding the trade in live Asian elephants from the Lao People's Democratic Republic during the period from 2010 to 2018. The letters to the two Parties sent in October 2020 drew attention to the following, amongst others:
- a) The number of live Asian elephants reported as exported by the Lao People's Democratic Republic over the period was lower than the number of 99 reported as imported by China;
 - b) The exports of live Asian elephants with CITES documents had been recorded with source code C (captive-bred) and documentation for the fulfilment of the definition of specimens of animal species bred in captivity set out in Resolution Conf. 10.16 (Rev. CoP19) was requested by the Secretariat; and
 - c) If the animals did not meet the definition of captive-bred, concerns were raised about compliance with the conditions in Article III, and relevant Resolutions.

Regarding the reporting of the number of live elephants imported

12. With regard to the reporting issue on the number of live elephants imported from the Lao People's Democratic Republic to China over the period of 2010-2018, the two Parties agreed that the correct number is 87 specimens. China submitted documentation to the Secretariat to substantiate this number and the CITES trade database was corrected accordingly. The Secretariat considers this matter solved.

Regarding the use of source code C for the export of the live elephants

13. The main objective of the technical mission mandated by the Standing Committee was to clarify the purpose of the transaction and the specific characteristics and objectives of the reported trade in live Asian elephants under CITES permits using source code C for the export of the live elephants. The visits conducted to 'Xishuangbanna Wild Elephant Valley' in 'Jinghong, Yunnan Province' and Shanghai Wild Animal Park shed some light on the purpose of these transactions and the main findings will be described later in the present document.
14. It is important to bear in mind that the Lao People's Democratic Republic indicated in the past that "as captive-breeding Asian elephants is a tradition in the Lao PDR, it is natural that the source code of them is C." The Secretariat notes that the definition of 'captive-bred' in the context of CITES is contained in Resolution Conf. 10.16 (Rev. CoP19) on *Specimens of animal species bred in captivity*. To be traded with source code C under CITES, the specimen must have been (i) born or otherwise produced in a controlled environment, (ii) to captive-bred parents that (iii) mated in a controlled environment and the parental stock must have been established in accordance with the Convention. The Secretariat understands that it is the tradition and common practice in the Lao People's Democratic Republic that the mating of elephants occurs in the wild (i.e., not under controlled conditions) between a wild male and a captive female (i.e., not between two captive-bred parents): "Nearly 80% of calves born in captivity in Laos during the past decade are from wild genitors from the Nam Pouy Protected Area", according to a scientific article.¹

Regarding trade controls related to paragraph c) of Article III, paragraph 5

15. With regard to China as the State of import, it is recalled that the import of live Asian elephants (*Elephas maximus*) is governed by Article III, paragraph 3, subparagraph (c) of the Convention which *inter alia* states that:

The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

[...]

¹ <https://www.nature.com/articles/s41598-017-13907-x.pdf>

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

16. Requirement (c) should be read in conjunction with Resolution Conf. 5.10 (Rev. CoP19) on *Definition of 'primarily commercial purposes'* to ensure that the specimens imported are "not to be used for primarily commercial purposes". Resolution Conf. 5.10 (Rev. CoP19) reminds the Parties "of the fundamental principle in Article II, paragraph 1, of the Convention that trade in specimens of Appendix-I species must be subject to particularly strict regulation and only authorized in exceptional circumstances."

Main findings from technical mission

General considerations

17. During the technical mission conducted from 23 to 29 July 2023, the Management Authority of China (M.A.) explained the new institutional arrangements bringing together the Wildlife and CITES divisions under one single entity. The head of the M.A. further explained that wildlife conservation is one of the key components of the "ecological civilization construction". A new protected areas system was established under a new system of national parks. Wildlife is protected at the landscape level and 49 national parks are in preparation. China strictly prohibits the breeding of wild terrestrial animals for food consumption and has prohibited ivory commercial processing and sale since 2017 and import since 2016. It was also mentioned that an interministerial mechanism for combating illegal trade in wildlife is in place. According to Chinese laws, if a person commits an offence against CITES regulations, he or she can face a conviction of up to 10 years imprisonment.
18. The Management Authority of China indicated that it conducts a full investigation to ensure that all requirements are met before the issuance of a CITES permit or certificate. They informed the Secretariat that there are serious consequences in case mistakes are made and the suspicion of misbehaviour will trigger investigations to understand the root causes. Regarding the due diligence that a State of import should exercise before authorizing the entry into its territory of specimens of CITES-listed species, the Executive Director highlighted the importance of protecting each country's sovereignty and for this reason China cannot investigate without having solid evidence.
19. Regarding the elephants imported from the Lao People's Democratic Republic, it was explained that all elephants were sent to parks and qualified breeding facilities that provide a "benign environment" for elephants. No more live Asian elephant imports have been approved since August 2019. Since China enacted the Wildlife Protection Law in 1988, elephants have the highest degree of protection. It is estimated that the Asian elephant population increased in China from 100 to over 300 individuals in the wild. These animals can sometimes cause damage to the local population, and for this reason the government has created an innovative compensation scheme that has provided more than USD 10 million annually in incidents involving human-elephant conflict. According to the authorities, this compensation scheme is successful, and farmers are supporting conservation measures and accepting this policy in part because they see elephants as a symbol of good luck.

Visit to Xishuangbanna Wild Elephant Valley

20. On 26 July 2023, the Secretariat visited the Xishuangbanna Wild Elephant Valley and met with relevant national and local authorities and the main staff responsible for the facility. The Wild Elephants Valley is a tropical rainforest reserve for Asian wild elephants and is also the name of a special theme park located in the south of Mengyang Natural Reserve. To differentiate between the reserve and the park and avoid possible confusion, the document will refer to the park as "the elephant school". In China, Asian wild elephants can only be seen in the rainforests of Xishuangbanna and the Wild Elephant Valley is the only place where wild elephants can frequently be seen. The visit was divided in three different parts. The Wild Elephant Valley is managed by the Yunnan Investment Group LTD.
21. The first part of the visit was conducted at a highly frequented special theme park for wild Asian elephants, i.e., "the elephant school". At the facility, tourists, especially families with children, can appreciate the live sighting of elephants and learn about their biology, diet and feeding, and other relevant aspects of their behaviour. These shows attract thousands of spectators from all Chinese provinces. The Secretariat understands that thousands of visitors pay an entry fee during a high-season weekend to visit the site, generating over USD 1 million according to estimations consulted with the Chinese authorities, which is the budget estimated to ensure that safe and comfortable living conditions are provided to the elephants. Following the show, the Secretariat visited the enclosures where the elephants are kept before they are

released into the wild area of the park. According to the authorities, the five elephants performing that day at Xishuangbanna Wild Elephant Valley are sourced from neighbouring Myanmar.

22. At the “elephant school”, eight females and three males were imported under a single export permit issued by the CITES Management Authority of the Lao People’s Democratic Republic in September 2014. All animals have microchips, and one of the eleven elephants is reported dead. The elephants were imported under source code C, with a contract of leasing which is expected to expire in the coming months. The Chinese authorities explained that the ten elephants imported from the Lao People’s Democratic Republic that the Secretariat saw at the back of the field have never been shown in the “Elephant School”. It was explained that this type of leasing arrangement is beneficial for the elephants and for the owners which have better living conditions in China than in their country of origin.
23. The second part of the visit was conducted at the Xishuangbanna Asian Elephant Rescuing and Breeding Centre. During that part of the visit, the authorities explained specific operations for rescuing and saving the lives of several wild individuals badly injured or in a difficult situation. They also provided details about how the captive-breeding of Asian elephant contributes to wild elephant conservation and local community development.
24. Concerning the contribution to wild elephant conservation, it was highlighted that, from 2015 to 2022, the Wild Elephant Valley, has paid a total of approximately RMB 50 million (about USD 7 million) for using the Valley to the Xishuangbanna National Nature Reserve Administration, located in the experimental zone of the Reserve. This payment accounts for roughly 5% of the total income of the Valley annually. It was reported that the money has been used for wild elephant conservation (i.e., renting land from local villagers and cultivation of plants that serve as food for the wild elephants to reduce the damage of local crops), scientific research, public awareness enhancement, and education for wildlife conservation by the Administration. The Administration has a research centre with more than 20 scientists working on elephant disease prevention and treatment, habitat improvement, etc.
25. Regarding the contribution to injured elephants and abandoned baby elephants rescue in the wild, it was mentioned that, from 2015 to 2022, the Yunnan Investment Group LTD has provided about RMB 47 million (about USD 6.6 million) to the Asian Elephant Rescue Centre for rescuing and recovering wild elephants. Altogether, they have rescued around 30 individuals. Nine baby elephants were successfully bred with artificial assistance. Nineteen academic papers on Asian elephant were published, and three provincial technical standards were developed by the Centre. The Centre was initially established by the government and the Yunnan Investment Group LTD together, and now its operation is funded by the Group. The director of the Centre is a senior veterinarian.
26. With regards to the contribution to rural community development, authorities declared that 50 percent of the employees of the Valley are from nearby villages. Nine villagers from 29 farm household from the neighbouring village, named as Xiangyanqing, are working for the Valley, including the village leader as a chef. The villagers set up homestays and provide accommodation to the tourists. The Group purchases the elephant grass, sweet dragon bamboo, plantain and other plants (roughly 26 ha) favoured by Asian elephant and produced by the contracted villagers. According to a recent study, there are about 300 households benefiting from the activities developed by the Yunnan Investment Group LTD with a total income of RMB 65 million (about USD 9.2 million).
27. The third part of the visit was to the Xishuangbanna National Nature Reserve. The reserve has 242,500 hectares in subtropical forests and tropical rainforests and is in the range of wild Asian elephants. In addition, there are more than 400 types of plants on either side of the ravine that is home to the wild elephant herds, including the banyan, olive, and longan tree. The main purpose of this third part of the visit was to understand the different strategies adopted by China to mitigate human-elephant conflict and compensate local villagers from damage caused by the elephants. Human–elephant conflict (HEC) is understood as any interaction between humans and elephants which have negative effects on human social, economic or cultural life or on elephant conservation or the environment.
28. China is facing wildlife damage to the villagers’ crops, property, human health and loss of life. The national and provincial authorities set up a system to mitigate the damage and HEC by monitoring and early warning, habitat improvement, live capture and translocation of wild elephants and compensation to the villagers. While some successes have been achieved in some regions, i.e., the Xiangyanqing co-exists well with the elephant with steel fences around the village, there are still many challenges.
29. The authorities from the National Forestry and Grassland Administration (National FGA) and Yunnan Provincial Forest Grassland Administration Yunnan Provincial FGA and Xishuangbanna Provincial Forest

Grassland Administration (Xishuangbanna FGA) explained that early warning is the key element of their strategy and is supported by the use of drones and an application that monitors in real time the presence and movement of elephants. Yunnan Province has introduced and implemented compensation policies for the losses caused by Asian elephants. For crops damaged by Asian elephants, insurance companies in Yunnan Province provide an Asian elephant accident compensation insurance to affected villagers. This seems to have an impact on their willingness to change their livelihood strategies.

30. The insurance mechanism mentioned above appears to be an innovative approach and a sound model to deal with negative interactions between CITES-listed species and humans.
31. In addition to the compensatory schemes, education continues to play a key role: the director of the Centre and deputy director of the Group, together with their colleagues, go to local primary and middle schools at least four times a year to highlight the importance of Asian elephant conservation and introduce protocols on how to avoid human-elephant conflict to the largest extent. They implement these awareness activities on the occasion of the World Elephant Day, using rescued elephants that have appeared on mainstream media.

Visit to Shanghai (CITES office and Wild Animal Park)

32. On 27 July 2023, the Secretariat visited the Shanghai branch of the CITES Management Authority of China and the facilities of the Shanghai Wild Animal Park.
33. The staff from the Shanghai branch explained the permit system they have put in place to handle CITES trade in the world's busiest port and showed the Secretariat the rooms where the permits archive is located. The Secretariat was able to consult different types of permits corresponding to several species from different years. Staff from the branch were able to provide a hard copy of any requested permit within seconds from the archive system. The Secretariat commends the Shanghai branch of the MA for its excellent organization of CITES documentation, its training facilities and outreach material.
34. The Secretariat also visited the facilities of the Shanghai Wild Animal Park, China's first national wildlife park, and met with the owner and main staff responsible for the facility. In October 2012, the park imported two Asian elephants from the Lao People's Democratic Republic, two in March 2014, four in August 2014 and four in September 2016. The twelve elephants were imported under source code C. The animals are displayed for the public in facilities specially conditioned for them. It was explained that one of the imported elephants died owing to a severe health condition.
35. Elephants are visible to the public. The Secretariat has not seen any show or performance of elephants during its visit. After visiting the park, the technical mission was able to verify the documents and follow a presentation explaining the biology, diet and feeding, breeding and other relevant aspects of elephant behaviour.

Brief analysis of the requirements for trade in Appendix-I animal species

Regarding the use of source code C for trade of live Asian elephants from Lao People's Democratic Republic to China

36. The Secretariat recalls that the codes used on permits and certificates to indicate the type of specimen being traded are expected to conform to the relevant article of the Convention together with the guidance and interpretation provided in the relevant Resolutions. For instance, if the source code used in the document is code C [Animals bred in captivity in accordance with Resolution Conf. 10.16 (Rev. CoP19)], the specimens will be exported under the provisions of Article VII, paragraph 5 and a certificate by that Management Authority of the State of export to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III. However, if the source code used is code W (specimens taken from the wild), Article III applies.
37. Consequently, the correct use of the source code is critical in the determination of the regime that applies to the transaction. In the case of trade in specimens of species listed in Appendix I, such as Asian elephants, the use of the source code will determine the regime that applies, the type of document (permit or certificate), permit requirements, etc. It is important to bear in mind that Asian elephants are considered to be "threatened with extinction" and are listed in Appendix I of the Convention.

38. The general rule is that the import of live Asian elephants (*Elephas maximus*) is governed by Article III. In practical terms, this means that the determination of the source code is necessary for the issuance of the import permit which shall be issued prior to the issuance of the export permit. Furthermore, according to paragraph 3 (c) of Article III of the Convention, prior to the issuance of an import permit, the Management Authority of the State of import must be satisfied that the specimen is not to be used for primarily commercial purposes so as not to “endanger further their survival”.
39. In practice, this implies that the Management Authority has to determine if the specimen will be used for primarily commercial purposes or not. The plain text of the requirement therefore puts emphasis on the use of the specimen upon the import, and not on the motivation for the export. Principle d) of Resolution Conf. 5.10 (Rev. CoP19), which provides further guidance on the definition of ‘primary commercial purposes’, further confirms that the element of “use” is of utmost importance in this provision. Principle d) states that “Article III, paragraphs 3 (c) and 5 (c), of the Convention concern the intended use of the specimen of an Appendix-I species in the country of import”.
40. Following the explanation provided in paragraph 14 above, the mating of elephants in the Lao People’s Democratic Republic occurs in the wild (i.e., not under controlled conditions) between a wild male and a captive female (i.e., not between two captive-bred parents). The offspring therefore does not fulfil the definition of ‘captive-bred’ in Resolution Conf. 10.16 (Rev. CoP19) and cannot be exported with source code C.
41. Based on the documents and facts provided during the mission, the Secretariat did not find any evidence to demonstrate that the CITES Management Authorities of the State of export and the State of import have satisfied themselves that the traded elephants have met the definition under Resolution Conf. 10.16 (Rev. CoP19), and Article VII, to be exempted from Article III of the Convention. It is further noted that the Lao People’s Democratic Republic does not have any CITES registered commercial breeding facilities for Asian elephants (see also document SC77 Doc. 33.10).
42. In light of the above, the Secretariat understands that live elephants imported from the Lao People’s Democratic Republic to China do not meet the definition of ‘bred in captivity’ in accordance with the criteria set out in Resolution Conf. 10.16 (Rev. CoP19), and therefore the exemptions under Article VII of the Convention do not apply.

Regarding trade controls related to paragraph c) of Article III, paragraph 5

43. The Preamble of the Resolution Conf. 5.10 (Rev. CoP19) recognizes that, because the term “primarily commercial purposes” is not defined in the Convention, it can be interpreted by the Parties in different ways. The Resolution further acknowledges that “the facts concerning each import will determine whether a proposed use would be for primarily commercial purposes”. Additionally, the Resolution provides general principles and examples to guide the Parties in assessing the commercial elements of the intended use.
44. Paragraph 1 of the Resolution recommends general principles, including principles a) and b):
 - a) *Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.*
 - b) *An activity can generally be described as ‘commercial’ if its purpose is to obtain economic benefit (whether in cash or otherwise), and is directed toward resale, exchange, provision of a service or any other form of economic use or benefit.*
45. Furthermore, according to principle c), the term “commercial purposes” should be defined by the country of import as broadly as possible so that any transaction which is not wholly “non-commercial” will be regarded as “commercial”. As a result, “all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature, with the result that the import of specimens of Appendix-I species should not be permitted.”
46. Therefore, the legal considerations to determine whether Article III, paragraph 5(c) of the Convention is being effectively implemented are: i) whether the intended use of the specimens in the country of import is commercial; ii) whether the trade is authorized in exceptional circumstances; iii) whether the purpose of the activity is to obtain economic benefit, and; iv) whether non-commercial aspects of the use clearly predominate.

47. In light of those provisions, the Standing Committee may conclude either that:
- a) the Management Authorities of the concerned Parties have not had reasons to be satisfied that the specimens are not to be used for primarily commercial purposes, which would therefore be inconsistent with Article III, paragraph 5(c) of the Convention; or
 - b) the Management Authorities have had reasons to be satisfied that the Appendix-I specimens are not to be used for primarily commercial purposes.
48. The most fundamental consideration is the actual degree of commerciality of the transactions. It is common practice for zoos and safari parks around the world to charge entrance fees, and the determination of primarily commercial purpose depends on several circumstances, including the legal nature of the facility, i.e. public or private, etc. The key fact to be considered is that some individuals are used for performances that can be appreciated by the tourists prior to the payment of an entry fee, although it is important to note that the entrance fee is not just for the elephant shows but includes a wide range of entertainment and other activities. For instance, in addition to viewing elephants in “Elephant Schools”, tourists can also go to the tropical rainforest sightseeing, watch the Asian Elephant Museum, the Bird Park, the Butterfly Park, experience the ropeways, high altitude stacks, etc. The show, called the “Elephant school”, as well as the elephant canteen is free to visit once the tourists have entered the facility. According to the CITES authorities of China, these kinds of activities are conducted to explain the scientific knowledge around the elephants on display and has clearly obvious significance for popular science education.
49. In light of the text of Article III, paragraph 5(c) of the Convention and general principle d) in Resolution Conf. 5.10 (Rev. CoP19), the Secretariat is of the opinion that live elephants found in the facilities visited during the technical mission are a great tourist attraction that gives the name to the one of the facilities, i.e., Wild Elephant Valley, and are imported into China for an intended use of a commercial nature, which suggests that, in CITES terms, they have been imported for primarily commercial purposes.
50. The Secretariat questions whether Article III, paragraph 3 (c) of the Convention is currently being effectively implemented in China with regard to the import of live Asian elephants. On the basis of the elements gathered during the technical mission and this brief legal analysis, the Secretariat has formulated some recommendations for the consideration of the Standing Committee as set out in paragraphs 53-54 below.

Existence of an “economic benefit” for the Wildlife Safari Parks visited in China

51. According to general principle b) of Resolution Conf. 5.10 (Rev. CoP19), the existence of economic benefit does not depend on the purpose for which the economic benefit is derived. Regardless of whether the proceeds from the activity are used for scientific or education purposes or not, an activity can be qualified as commercial under general principle b) from the moment that an economic benefit is derived from this activity.
52. The Secretariat considers that the entry fees paid by tourists to visit the parks, which includes watching the performance of elephants, is an activity that can generally be described as ‘commercial’ because its purpose is to obtain an economic benefit and is directed toward a form of economic use and benefit, noting that in some cases the proceeds from the sale are used to finance research programmes.
53. In the view of the Secretariat, the personal commitment of the owners of those facilities to contribute to the conservation of Asian elephants and the education of the general public is not a determining factor to assess the actual degree of commerciality of the transactions and the commercial nature of the operations. The fact that the proceeds of the tourism activity do not cover the whole budget of a given research programme is also of little relevance for making that determination.
54. Application of Article III, paragraph 5(c) of the Convention, and of the general principles a), b), and d) in Resolution Conf. 5.10 (Rev. CoP19) to the matter before the Standing Committee provides grounds for the Standing Committee to conclude that the Management Authority of the concerned Party has not had reasons to be satisfied that the import of live Asian elephants listed in Appendix I are not to be used for primarily commercial purposes.
55. It is important to bear in mind that, according to general principle d) in Resolution Conf. 5.10 (Rev. CoP19),

Article III, paragraphs 3 (c) and 5 (c), of the Convention concern the intended use of the specimen of an Appendix-I species in the country of import, not the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import. It can be assumed that a commercial transaction underlies many of the transfers of specimens of Appendix-I species from the country of export to the country of import. This does not automatically mean, however, that the specimen is to be used for primarily commercial purposes.

Recommendations

56. In light of the above, the Standing Committee is invited to:

- a) determine that Article III and Article VII, paragraph 5, of the Convention are not being effectively implemented by China with regard to the import of live Asian elephants from the Lao People's Democratic Republic, in particular concerning two main elements:
 - i) the evidence that the specimens do not meet the definition of 'bred in captivity' in accordance with the criteria set out in Resolution Conf. 10.16 (Rev. CoP19) on *Specimens of animal species bred in captivity*, and therefore the exemptions under Article VII of the Convention do not apply;
 - ii) the primarily commercial nature of the facilities housing, displaying, showing and breeding Appendix-I live Asian elephants.
- b) take one or more of the measures referred in paragraphs 29 and 30 of the Annex to Resolution Conf. 14.3 (Rev. CoP19) on *CITES compliance procedures*. This may include a recommendation that China suspend with immediate effect the authorization of imports of wild Asian elephants from the Lao People's Democratic Republic that are to be used for primarily commercial purposes using the source code C . Similarly, in document SC77 Doc. 33.10, the Secretariat recommends that the Lao People's Democratic Republic "take measures to ensure that no live Asian elephants are exported from the Lao People's Democratic Republic until the Lao People's Democratic Republic is able to demonstrate to the satisfaction of the Secretariat that specimens to be traded with source code C comply with the definition of captive-bred specimens set out in Resolution Conf. 10.16 (Rev.) on *Specimens of animal species bred in captivity*."
- c) encourage China to develop an action plan with cooperative measures that would support *in situ* conservation of Asian elephants in the Lao People's Democratic Republic. The action plan could take the form of an *in situ* joint conservation programme consisting of, *inter alia*, conservation transboundary measures, information and marking systems, technical support, enforcement assistance, contribution of funds, strategies for the prevention of human-elephant conflict, exchange of specimens for reintroduction into the wild, capacity-building and training, technology transfer, investment, infrastructure and other measures.
- d) commend the Yunnan Provincial Forest Grassland Administration (FGA) for the compensation scheme for the losses caused by Asian elephants through an insurance company which can serve as an inspiring model to address human-wildlife conflict incidents in other parts of the world. The Standing Committee is also invited to commend the Shanghai branch of the CITES Management Authority of China for its efficient organization of the CITES documentation, the training facilities and the outreach material produced. They should also serve as an inspiring model for the issuing, handling and recording of CITES permits and related information for other CITES offices in the world.