

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



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Geneva (Switzerland), 27 November -1 December 2017

IMPLEMENTING ASPECTS OF RESOLUTION CONF. 10.10 (REV. COP17)  
ON THE CLOSURE OF DOMESTIC IVORY MARKETS -  
DETAILS OF 5 MAJOR DOMESTIC IVORY MARKETS

1. This document has been submitted by Burkina Faso and Niger on behalf of the African Elephant Coalition (AEC).<sup>\*</sup> It provides additional information about 5 major domestic ivory markets, in support of the proposals in SC 69 Doc 51.2. The markets included in this document are: the USA, China, Hong Kong SAR, China, Japan and the European Union.

USA

2. Although no official stockpile of raw ivory exists and there has been no government census of private raw ivory stocks in the U.S., the country has in the past been referred to as the second largest ivory retail market in the world, after China/Hong Kong SAR.<sup>1</sup> Recently, significant domestic measures were taken to limit the U.S. market's impact on global illegal ivory trade.
3. In July 2013, then U.S. President Barack Obama signed an executive order on combating wildlife crime, which *inter alia*, established a multi-agency task force to look at measures to reduce consumer demand for trade in illicit species (including elephant ivory). This led to the Department of the Interior, through the U.S. Fish and Wildlife Service, to publish a final rule revising the Code of Federal Regulations, Vol. 50, Section 17.40(e). This rule was promulgated under the authority of 16 U.S.C. Section 1533(d) of the Endangered Species Act (ESA) of 1966 for African elephants. The rule builds on and expands restrictions already in place under the African Elephant Conservation Act of 1989 (AfECA)<sup>2</sup> and prohibits all commercial import, export, and interstate trade of African elephant ivory with some exceptions, including antiques that are proven to be more than 100 years old.<sup>3</sup> The final rule went into effect on July 6, 2016.
4. However, while the rule increases restrictions on imports, exports and the interstate trade of ivory, it does not deal with ivory markets *within* States (because there is no legal authority under the ESA to regulate intrastate commerce), which constitutes a significant portion of domestically traded elephant ivory. In addition to the

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<sup>\*</sup> *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

<sup>1</sup> Martin, E., and Stiles, D., (2008) Ivory markets in the USA. Published by Care for the Wild International and Save the Elephants

<sup>2</sup> which imposed a moratorium on the importation of African elephant ivory. 16 U.S.C. § 4222.

<sup>3</sup> other exceptions include certain manufactured or handcrafted items that contain a small (de minimis) amount of legally imported ivory (such as Musical instruments, and items that are part of a household move or inheritance); Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*); Final Rule <https://www.gpo.gov/fdsys/pkg/FR-2016-06-06/pdf/2016-13173.pdf>

federal ban, seven U.S. States with large ivory markets including New York,<sup>4</sup> New Jersey <sup>5</sup> Washington State,<sup>6</sup> Hawaii <sup>7</sup>and California,<sup>8</sup> have adopted even stronger legislative bans on ivory sales.

## China

5. Following President Xi Jinping's statement on 25<sup>th</sup> September 2015 committing to enact "*nearly complete*" bans on ivory imports and exports (delivered jointly with then-President of the U.S. Barack Obama), China's State Council issued a notice "*on the Orderly Cessation of Commercial Processing and Sale of Ivory and Ivory Products*"<sup>9</sup> on 30<sup>th</sup> December 2017. According to the notice, the ban will be implemented in phases, with ivory processing centres and approved ivory trading centres to be shut down by March 2017, followed by a progressive shutting down of all registered traders by 31<sup>st</sup> December 2017.
6. Following the shutdown of domestic carving and trade, "*government culture departments*" will help "*ivory carving skill successors and related practitioners*" find alternative jobs, including in museums and other venues for art restoration related to ivory. People who already own legal ivory products will be permitted to keep them or give them away as gifts. One exception to the ban on commercial sale appears to be made in relation to ivory "*relics certified by professional institutions*", whose auction will still be authorised "*under strict monitoring after administrative approval.*"
7. In March 2017, the State Forestry Administration, which oversees wildlife trade issues, announced<sup>10</sup> the closure of 67 licensed ivory facilities, including 12 ivory carving factories and several dozen ivory retailers. However, studies of China's domestic ivory market have shown that a significant portion of ivory available on the market is from non-registered traders.<sup>11</sup> Enforcement is still a concern, particularly as organised criminal syndicates in the illegal ivory trade appear to be based in China and control international smuggling

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<sup>4</sup> The New York statute can be found in the Environmental Conservation Law (ECL), article 11, title 5, section 11-0535-a. There are four exceptions to the complete ban on ivory trade. In order to claim any of them, a person needs to get a permit from the commissioner. ECL § 11-0535-a(3). The four exceptions which a permit may be issued for are: 1) The ivory or rhinoceros horn is a "bona fide antique" and is less than twenty percent by volume of such antique, and the owner has documentation that proves the item is not less than one-hundred years old; 2) The use of the ivory or rhinoceros horn is for educational or scientific purposes, or the ivory is used by a museum under specific requirements; 3) The distribution of the ivory or rhinoceros horn is to a beneficiary of a trust or an heir of an estate; and, 4) The ivory or rhinoceros horn is part of a musical instrument, but is no more than twenty percent by volume of the musical instrument, and the owner must have documentation to show that the item was manufactured no later than 1975 if it contains elephant ivory and no later than June 30, 2014 if the item contains mammoth ivory.

<sup>5</sup> New Jersey (NJSA § 23:2A-13.3) makes it "unlawful for any person to import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product." There are four exceptions to the ban: 1) The ivory can be passed through inheritance; 2) Law enforcement activity is exempt from this law; 3) Ivory can be imported when expressly authorized by a federal license or permit; and, 4) The Department of Environmental Protection can authorize exemption from this rule for bona fide educational or scientific purposes.

<sup>6</sup> Revised Code of Washington, Title 77, Chapter 77.15. The law makes it "unlawful for a person to sell, offer to sell, purchase, trade, barter for, or distribute any covered animal species part or product." (this includes elephant ivory). There are six exceptions to the ban: 1)The ivory is not less than one-hundred years old (antique), the owner has documentation proving the ivory is antique, and the ivory is not more than fifteen percent by volume of the antique item; 2) The ivory is used for bona fide educational or scientific purposes; 3)The ivory is part of an inheritance; 4) Law enforcement activity; 5) The ivory is part of a musical instrument and is not more than fifteen percent by volume of the instrument; and, 6) The trade of the ivory is expressly authorized by federal law or permit.

<sup>7</sup> Hawaii has added a new section to chapter 183D of the Hawaii Revised Statutes. The law makes it illegal to "sell, offer to sell, purchase, trade, or possess with intent to sell" any part or product from elephants, rhinoceroses, or other numerous animal species listed in the law. Exceptions to the ban are: 1) The ivory is not less than one-hundred years old (antique), it is not more than twenty percent by volume of the antique, and it is not the primary source of value of the antique; 2) The ivory is for bona fide educational or scientific purposes; 3) The ivory is part of an inheritance; 4) The ivory is less than twenty percent by volume of a gun, knife, or musical instrument and the owner or seller can prove the item was not manufactured after 1975 and the ivory is not the primary source of value for the item; and, 5)The trade of ivory is authorized by federal law or permit.

<sup>8</sup> California's Fish and Wildlife Code, section 2022 completely bans sales of ivory including marine mammal ivory; section 2011(1)(B)(2). There are five exceptions to the law: 1) Law enforcement activity; 2) An activity authorized under federal law or authorized with a federal permit or license; 3) A musical instrument consisting of no more than twenty percent by volume of ivory and the owner or seller has documentation showing the item was manufactured prior to 1975; 4) An antique item with no more than five percent ivory by volume if the owner or seller has documentation showing the ivory is over one-hundred years old; and 5) The ivory is being used for educational or scientific reasons by a bona fide scientific or educational institution if the ivory meets two additional requirements: There is not a federal ban on the ivory; and The ivory or rhinoceros horn was legally acquired before January 1, 1991, and was not subsequently transferred from one person to another for financial gain or profit after July 1, 2016.

<sup>9</sup> Original Chinese version available: [http://www.gov.cn/zhengce/content/2016-12/30/content\\_5155017.htm](http://www.gov.cn/zhengce/content/2016-12/30/content_5155017.htm) For English translation see: <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9578/China-Announcement-of-Domestic-Ivory-Ban-in-2017--English-Translation.aspx>

<sup>10</sup> [http://www.thepaper.cn/newsDetail\\_forward\\_1647114](http://www.thepaper.cn/newsDetail_forward_1647114)

<sup>11</sup> In fact, vendors selling worked ivory in non-licensed outlets believed that they could probably continue selling ivory illegally due to the general ineffectiveness of inspections. Vigne, L., and Martin, E., (2017) Decline in the legal ivory trade in China in anticipation of a ban. SAVE THE ELEPHANTS, Nairobi, Kenya.

networks from Africa to China. For example, a recent report identifies a major criminal hub in Shuidong,<sup>12</sup> and Chinese authorities have recently been active in seizing ivory openly on sale in markets in Beijing<sup>13</sup>

### Hong Kong SAR, China

8. Often referred to as one of the global 'hubs' of the ivory trade,<sup>14</sup> the government of Hong Kong SAR has recently taken major steps towards the closure of its domestic ivory market. On 13<sup>th</sup> January 2016, in his policy address, Hong Kong's Chief Executive Leung Chun-ying announced the Government's plan to "*kick start legislative procedures as soon as possible to ban the import and export of elephant hunting trophies and actively explore other appropriate measures, such as enacting legislation to further ban the import and export of ivory and phase out the local ivory trade, and imposing heavier penalties on smuggling and illegal trading of endangered species.*"<sup>15</sup> It follows the passage of a motion in the legislature in December 2015,<sup>16</sup> for a commercial ivory ban.
9. On Wednesday 14<sup>th</sup> June 2017, Hong Kong lawmakers presented a Bill to amend the Protection of Endangered Species of Animals and Plants Ordinance, looking to phase out the local ivory business by 2021. On 27<sup>th</sup> June, the government submitted its proposed plan<sup>17</sup> to the Legislative Council Panel on Environmental Affairs. The plan proposes a three-step approach and a five-year timetable (until the end of 2021), to phase out the local trade in ivory.<sup>18</sup> Following its initial reading on 14<sup>th</sup> June, no dates have yet been set for a 2<sup>nd</sup> reading.<sup>19</sup> A recent investigation<sup>20</sup> of existing ivory traders showed that 59% of outlets examined did not have (or even claim to possess) ivory retail licences, emphasising the point that sustained efforts to effectively enforce legislation is essential.

### Japan

10. In Japan, domestic trade in ivory is regulated by the Law for Conservation of Endangered Species (LCES) (1992) and its bylaws. In order to trade domestically whole tusks in Japan, elephant tusks must be registered. When registered whole tusks are cut into pieces, the registration of the ivory is erased. Whole tusks that are "only for possession" do not need to be registered.<sup>21</sup> The domestic trade of cut pieces or worked ivory is controlled through a registration system, which requires traders to register with the authorities in order to trade legally. In 2013, the Government of Japan strengthened the penalties for illegal trade and introduced control over advertisements.<sup>22</sup> In 2015, the Government of Japan provided the CITES Secretariat with information on its imports and exports of whole tusks and its annual stockpiles, concluding that its stockpiles and domestic demand were stable.<sup>23</sup> Japan has also claimed that its domestic market did not contain illegal ivory and that the recent CITES decisions on closure of domestic markets did not apply.<sup>24</sup>
11. Investigations by civil society<sup>25</sup> have noted that "*Japan's ivory control system is plagued by loopholes and undercut by weak legislation*" and that "*the volume of ivory being traded is on the rise, illegal activity is rampant, and abuse of the system is pervasive.*"<sup>26</sup> It was also found that the tusk registration scheme

<sup>12</sup> EIA (2017) The Shuidong connection: exposing the global hub of the illegal ivory trade <https://eia-international.org/wp-content/uploads/EIA-The-Shuidong-Connection-FINAL.pdf>

<sup>13</sup> [https://twitter.com/wildaid\\_sa/status/885373709669859329](https://twitter.com/wildaid_sa/status/885373709669859329)

<sup>14</sup> Knights, Peter; Hofford, A.; Andersson, A.; and Cheng, D. The Illusion of Control: Hong Kong's 'Legal' Ivory Trade. WildAid, October 2015.

<sup>15</sup> 2016 Policy Address <https://www.policyaddress.gov.hk/2016/eng/p204.html>

<sup>16</sup> <http://www.legco.gov.hk/yr15-16/english/counmtg/motion/cm20151202m-ge-prpt-e.pdf>

<sup>17</sup> <http://www.legco.gov.hk/yr15-16/english/panels/ea/papers/ea20160627cb1-1054-6-e.pdf>

<sup>18</sup> The first step (immediately in effect following the enactment of the Bill) is to ban the import and re-export of hunting trophies, ekipa and certain ivory carvings which are currently treated as specimens of CITES Appendix II under the "split listing" arrangement of CITES for African elephants. The second proposed step (to take effect three months following the enactment of the Bill) is to ban the import and re-export of pre-Convention ivory except "*antique ivory*" after an appropriate grace period and to subject pre-Convention ivory in the local market to licensing control. The final step is a total ban on the local sale of pre-ban and pre-Convention ivory after a grace period for the traders / owners to dispose of their commercial stock.

<sup>19</sup> <http://www.legco.gov.hk/general/english/bills/bill1617.htm>

<sup>20</sup> Lau, W., Xu, L., Guan, J. and Xiao, Y. (2017). Closing Strategy: Ending ivory trade in Hong Kong. TRAFFIC, Hong Kong. [http://static1.1.sqspcdn.com/static/f/157301/27549884/1493887091987/hk-ivory-report-closing\\_strategy.pdf?token=k68un7MofIT1sTBOX7Y5EPuclTA%3D](http://static1.1.sqspcdn.com/static/f/157301/27549884/1493887091987/hk-ivory-report-closing_strategy.pdf?token=k68un7MofIT1sTBOX7Y5EPuclTA%3D)

<sup>21</sup> CITES SC66 Inf. 24 view of japan regarding the conservation of African elephants and trade in ivory <https://cites.org/sites/default/files/eng/com/sc/66/Inf/E-SC66-Inf-24.pdf>

<sup>22</sup> CITES SC66 Inf. 24 view of japan regarding the conservation of African elephants and trade in ivory

<sup>23</sup> Ibid

<sup>24</sup> <http://www.bbc.co.uk/news/science-environment-37535717>

<sup>25</sup> Environmental Investigation Agency (2016) The dirty secrets of Japan's illegal ivory trade: Japan's twenty years of non-compliance with CITES trade controls

<sup>26</sup> Ibid, and Japan Tiger and Elephant Foundation (2016) The last ivory ban haven: the drivers of Japan's illegal ivory trade and the failure of Japan's domestic ivory legislation. Prepared for CITES CoP17

encouraged fraudulent declarations that allowed undocumented illegal ivory tusks to be legalised for sale onto Japan's domestic market.<sup>27</sup>

12. In reaction to this increased scrutiny from domestic and international civil society, the government of Japan began a process last year to revise its ivory control scheme. It formed the "Public-Private Council for the Promotion of Appropriate Ivory Trade Measures" in May 2016 to "*ensure thorough implementation of legal and administrative measures and to raise public awareness both within Japan and abroad of the various issues on ivory trade.*"<sup>28</sup> On 2<sup>nd</sup> June 2017, the Japanese Diet agreed the following amendments to the Law for Conservation of Endangered Species (LCES): changing the "notification scheme" for businesses engaged in ivory trade, manufacture or retail into a "registration scheme" which allows the government to shut down a business that is in violation of the LCES; a requirement that all whole tusks possessed by registered business operators be registered as opposed to only tusks destined for sale; creation of a mandate to establish a system for tracking cut pieces of ivory; and higher penalties for unregistered business activities.
13. However, a recent report on the online trade of ivory in Japan conducted by TRAFFIC,<sup>29</sup> concluded that operators of e-commerce websites are not doing enough to crack down on illegal sales of items made from elephant tusks. While significant improvements were noted in terms of LCES compliance regarding obligatory business notifications, the lack of control over online ivory trading has enabled some auction sellers to use the platforms for commercial purposes, despite not identifying themselves as businesses.<sup>30</sup> In addition, the government-issued voluntary product certification system was not found to constitute an effective tool for establishing the legality of worked ivory items marketed through online trading, as items illegally imported into Japan<sup>31</sup> were found on Mercari and on Yahoo Auctions. The report concluded that "the lack of regulation for products other than whole tusks was found to present severe challenges in identifying and preventing illegal ivory flows."
14. In June 2017, Tokyo Metropolitan Police seized 18 ivory tusks believed to have been illegally traded (in violation of the LCES). The seizure was linked to a series of illegal ivory transactions involving 27 suspects, including the owner and employees of a Tokyo-based antiques company between December 2015 and February 2016.<sup>32</sup> The antiques company is suspected to have purchased the 18 tusks without obtaining the required government registration documents. Media reports<sup>33</sup> also noted that the company owner has regularly exploited the lack of oversight over the tusk registration system, buying over 400 tusks in the last five years and obtaining registration documents by making false statements regarding their origin.
15. In June 2017 TRAFFIC East Asia expressed concern over the laxity of Japan's proof-of-legality requirements under its registration system stating that, "While enforcing the new LCES regulations will be critical to deterring illegal activities, Japan's domestic ivory market is still filled with loopholes that are leaking substantial quantities of ivory to other markets, such as China... an overhaul of Japan's market oversight and regulation is urgently needed to ensure it does not undermine the global fight against illegal ivory trade."<sup>34</sup>

#### European Union

16. CITES is implemented in the EU through Regulation (EC) No 338/97,<sup>35</sup> with detailed rules on how the Regulation is to be implemented being contained in Commission Regulation (EC) No 865/2006<sup>36</sup> and Commission Regulation (EU) 2015/870,<sup>37</sup> collectively referred to as the EU Wildlife Trade Regulations. The species controlled within the EU fall into one of four separate Annexes, A-D. Elephants are in Annex A, apart

<sup>27</sup> EIA (2015) Japan's Illegal Ivory Trade and Fraudulent Registration of Ivory Tusks

<sup>28</sup> [http://www.meti.go.jp/english/press/2016/0520\\_02.html](http://www.meti.go.jp/english/press/2016/0520_02.html)

<sup>29</sup> Kitade, T., (2017) An updated review of online ivory trade in Japan. TRAFFIC Briefing August 2017.

<http://www.traffic.org/home/2017/8/8/traffic-surveys-find-thousands-of-ivory-items-sold-weekly-on.html>

<sup>30</sup> in 2014 only 11 percent of businesses on Yahoo Auctions and 22 percent on Rakuten Ichiba notified bureaus that they traded in ivory and listed their license numbers. The latest survey highlighted significant improvements, with 88% of sellers on Yahoo Auction and 85% on Rakuten-Ichiba displaying compulsory business notification numbers in 2017.

<sup>31</sup> advertisements were found on Mercari for ivory jewellery recently brought back from Asia and Africa with explicit statements about their origins, in clear breach of CITES but legal under the LCES, which allows them to be traded without any requirement for proof of legality (e.g. CITES import permit or the LCES registration)—unless they are whole tusks.

<sup>32</sup> TRAFFIC (2017) Ivory seizure exposes Japan's lax ivory trade controls, 23 June

<sup>33</sup> Asahi newspaper <http://digital.asahi.com/articles/ASK6N3C6NK6NUTIL00L.html> and Sankei Newspaper <http://www.sankei.com/affairs/news/170620/afr1706200026-n1.html>

<sup>34</sup> Ibid, quoting Dr Yannick Kuehi, Regional Director for TRAFFIC East Asia

<sup>35</sup> Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein; amended by Council Regulation (EC) No 398/2009 of 23 April 2009 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as regards the implementing powers conferred on the Commission

<sup>36</sup> of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

<sup>37</sup> Of 5 June 2015

from the four populations listed in Annex B.<sup>38</sup> According to EU Wildlife Trade Regulations, intra-EU trade of elephant ivory is generally not permitted.<sup>39</sup> However, a number of exceptions to this rule exist, which still allow intra-EU trade subject to the issuance of a certificate.<sup>40</sup> A further exemption is the so-called 'antique ivory' exception, whereby the commercial trade of 'worked specimens'<sup>41</sup> within the EU does not require a certificate.<sup>42</sup>

17. It has been argued that the exception for 'antique ivory' is inconsistent with the minimum standard set by CITES which requires pre-Convention specimens to have an (individual) certificate issued by a Management Authority (Article VII.2).<sup>43</sup> The EU Regulation also allows Member States to issue pre-Convention certificates for ivory claimed to have been acquired before 1990, in contradiction to CITES Resolution Conf. 13.6 (Rev. CoP16) which only accepts the validity of such certificates for ivory dated from before 1976 when African elephants were first listed in the CITES Appendices. In addition, there is no uniform date across the EU for pre-Convention ivory.<sup>44</sup>
18. An Interpol report on the ivory trade via internet auction sites in ten EU countries that was carried out in cooperation with Member State authorities in 2013 concluded that "law enforcement is unable to distinguish legal ivory from illegal ivory in advertisements."<sup>45</sup> Evidence of abuse of the EU ivory antique exemption through online auction sites and markets was presented in a BBC documentary in 2016. Radiocarbon dating of nine items offered for sale revealed that four were not antiques at all and two others had been reworked illegally.<sup>46</sup>
19. Another significant loophole is that the EU does not implement key provisions of Resolution Conf. 10.10 (Rev. CoP17) that *inter alia* require ivory importers, exporters, traders and manufacturers to be registered or licensed, nor does it require ivory stockpiles to be inventoried. There are also no specific recording, inspection and enforcement procedures to monitor the movement of ivory. Instead, enforcement efforts and evidence required for proof of legal acquisition vary significantly between Member States.<sup>47</sup> This makes it extremely difficult – and often even impossible – to distinguish legal from illegal ivory.
20. In February 2016, the EU published the EU Action Plan against Wildlife Trafficking,<sup>48</sup> which aims to provide a framework for joined-up efforts to fight wildlife crime inside the EU, and for strengthening the EU's role in the global fight against illegal wildlife trade. Action 2 of the EU Action Plan is to "Further limit trade in ivory within and from the EU" including through the development of guidelines by the Commission.
21. In 2016, the European Parliament passed two resolutions on the subject of domestic ivory markets, the first, passed on 15 September 2016 concerning EU strategic objectives for the upcoming 17th CITES CoP in South Africa "Recalls the call made in its resolution of 15 January 2014 on wildlife crime on all 28 of its

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<sup>38</sup> The same four populations listed conditionally on CITES Appendix II: Botswana, Namibia, South Africa and Zimbabwe

<sup>39</sup> Regulation (EC) No 338/97 art 8(1) and Regulation (EC) No 865/2006 art 19

<sup>40</sup> As outlined in Regulation (EC) No 338/97 art 8(3): In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora, exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimen: (a) were acquired in, or were introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens; or (b) are worked specimens that were acquired more than 50 years previously; or (c) were introduced into the Community in compliance with the provisions of this Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned; or (d) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens; or (e) are required under exceptional circumstances for the advancement of science or for essential biomedical purposes pursuant to Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (1) where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have been born and bred in captivity; or (f) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned; or (g) are intended for research or education aimed at the preservation or conservation of the species; or (h) originate in a Member State and were taken from the wild in accordance with the legislation in force in that Member State.

<sup>41</sup> defined in Article 2(w) of Regulation (EC) No 338/97 as "worked specimens that were acquired more than 50 years previously" shall mean specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation" (i.e. before 3 March 1947)

<sup>42</sup> Commission Regulation (EC) No 865/2006 art 62(3)

<sup>43</sup> EU IVORY TRADE: THE NEED FOR STRICTER MEASURES Paper submitted to the European Commission, January 2017 on behalf of: Pro Wildlife, David Shepherd Wildlife Foundation, Born Free, IFAW, EIA, Robin des Bois, Eurogroup for Animals, SSN, WCS, HSI Europe, Rettet Die Elefanten Afrikas, Japan Tiger and Elephant Foundation, Big Life Foundation, Stop Ivory, Elephant Voices, Tusk, Amboseli Trust for Elephants, WildAid, NRDC, Deutscher Tierschutzbund, National Council of SPCAs South Africa, RSPCA, GSM, ZSL, Southern Tanzania Elephant Program, WPSI, Elephant Action League, Born Free USA, Center for Biological Diversity, Vulcan.

<sup>44</sup> Ibid

<sup>45</sup> Interpol 2013: An Investigation into the ivory trade over the internet within the European Union  
<http://www.ifaw.org/sites/default/files/Project%20Web%20-%20PUBLIC.pdf>

<sup>46</sup> <http://www.bbc.co.uk/programmes/b0813xr2>

<sup>47</sup> Ibid

<sup>48</sup> [http://ec.europa.eu/environment/cites/pdf/WAP\\_EN\\_WEB.PDF](http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF)

*Member States to introduce moratoria on all commercial imports, exports and domestic sales and purchases of tusks and raw and worked ivory products until wild elephant populations are no longer threatened by poaching.”*<sup>49</sup> The second resolution was passed in October 2016, and called for “a full and immediate ban at EU level on trade, export or re-export of ivory and rhinoceros horns.”

22. This is all the more relevant, as a recent analysis of the CITES Trade Database export data for elephant ivory and ivory products for 2006–2015,<sup>50</sup> reveals the EU to be the single largest exporter of ivory items by number of reported transactions<sup>51</sup> and recent seizures confirm the increased role of Europe as a transit route and consumer market for poached ivory. The majority of these exports are reported to be for commercial purposes, and the largest importers are China and Hong Kong, which, as highlighted above, have now taken steps to close their domestic ivory markets due to acknowledged enforcement challenges and the risk that these markets pose to continued poaching and laundering of illegal ivory.
23. Within the EU France has played a leading role over the last 2-3 years in calling for action at EU level and in taking measures within France to tighten up controls on ivory commerce. However it is challenging for individual Member States to take measures affecting trade because of EU rules. Further action at EU level is on going. In May 2017, the Commission issued new guidelines to Member States on ivory advising them to suspend all re-exports of raw ivory outside the EU and to closely scrutinise intra-EU trade. The guidelines recommend that Member States interpret the definition of ‘worked specimens’ (which as identified above, do not require a certificate) narrowly, and that they should require potential sellers to demonstrate that their specimen was in fact acquired before 3 March 1947<sup>52</sup>. However, there are currently no proposals to close the large internal EU domestic market in worked or raw ivory in response to the decisions agreed at CoP17. Nor are there any moves at present to remove the current exemption of pre-1947 (“antique”) worked ivory from any CITES documentation which provides a major opportunity for introducing modern ivory to the market illegally. The Commission is also currently working with Member States to gather data on the extent of legal and illegal ivory trade in, to and from the EU, in order to guide possible future initiatives at the EU level. The Commission has also indicated that it is likely to launch a formal public consultation process later in 2017 on options for further controls on ivory.<sup>53</sup> The UK, which is in a unique position as result of its decision to leave the EU, has also promised to issue a consultation document to deliver the long-standing UK Government commitment to stop the ivory trade. After Brexit, the UK, as the largest ivory trader in Europe, would be able to implement a complete ban without seeking EU agreement.

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<sup>49</sup> 2016/2664(RSP) [http://parltrack.euwiki.org/dossier/2016/2664\(RSP\)](http://parltrack.euwiki.org/dossier/2016/2664(RSP))

<sup>50</sup> EU Member States collectively reported 1,874 ivory export transactions (28.3% of the total), compared to 832 (12.6%) by the United States and 761 (11.5%) by South Africa, the two next largest exporters. Individual EU Member States comprised 44 of the top 10 ivory exporters by number of reported export transactions. See *EU Ivory Trade: The Need for Stricter Measures*, submitted to the European Commission, January 2017, Annex A, Jones, M., (2016) A descriptive analysis of ivory exports from the European Union 2006 to 2015. Born Free Foundation.

<sup>51</sup> 4 Individual EU Member States (UK, Italy, France and Germany in that order) are amongst the top 10 ivory exporters by number of reported export transactions.

<sup>52</sup> European Commission (2017) Commission notice guidance document EU regime governing intra-EU trade and re-export of ivory. Official Journal of the European Union. [http://ec.europa.eu/environment/cites/pdf/guidance\\_ivory.pdf](http://ec.europa.eu/environment/cites/pdf/guidance_ivory.pdf)

<sup>53</sup> Minutes 7<sup>th</sup> MEETING OF THE GROUP OF EXPERTS OF THE COMPETENT CITES MANAGEMENT AUTHORITIES 22 June 2017 <https://circabc.europa.eu/sd/a/b05c2de0-5da2-4e49-9b33-4efa0de1343e/ExGr%207-%20SoC%20-%20final.pdf>