

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



Seventeenth meeting of the Conference of the Parties
Johannesburg (South Africa), 24 September – 5 October 2016

Species specific matters

Maintenance of the Appendices

Decision-making mechanism for a process of trade in ivory

PROPOSAL OF NAMIBIA, SOUTH AFRICA AND ZIMBABWE

1. This document has been submitted by Namibia, South Africa and Zimbabwe.*

Background

2. At its 14th meeting of the Conference of Parties (CoP14, The Hague, 2007), the Parties adopted Decision 14.77 on a decision-making mechanism for authorizing trade in ivory, as follows:

Directed to the Standing Committee

The Standing Committee, assisted by the Secretariat, shall propose for approval at the least at the 16th meeting of the Conference of the Parties a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties.

3. This Decision formed part of an amendment to Proposal CoP14 Prop 4 and related draft Decisions (CoP14 Inf. 61) adopted at the 14th CoP to CITES [CoP14 Plen 6 (Rev. 1)] that was a compromise that included an agreement by Botswana, Namibia, South Africa and Zimbabwe to a nine-year moratorium and the development of the African Elephant Action Plan.
4. During discussions in Committee I at CoP14, CITES Parties were requested to acknowledge that, since the populations of Botswana, Namibia, South Africa and Zimbabwe were already included in Appendix II, no further decisions on trade in elephant ivory and other specimens was required at the Conference of Parties level.
5. At its 57th meeting (SC57, Geneva, July 2008), the Standing Committee discussed the best approach to implement Decision 14.77, and agreed to the following:

In order to initiate the implementation of this Decision, the Secretariat proposes that an independent study be undertaken on the development of a decision-making mechanism and process for future trade in elephant ivory for review by the Standing Committee. This study, which could be coordinated by the Secretariat in consultation with stakeholders including African and Asian elephant range States and which would be subject to the availability of external funding, is proposed to cover the following issues:

* *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.*

- a) *Examination of the various processes and decision-making mechanisms related to ivory trade that are or have been operating under the provisions of the Convention, including compliance and enforcement provisions;*
 - b) *evaluation of the strengths and weaknesses of international trade regimes and associated controls, safeguards and monitoring methods for other high-value commodities in the context of future trade in ivory;*
 - c) *basic principles and factors that could guide future trade in ivory, and proposals on how an effective, objective and independent decision-making mechanism could operate, taking into account the provisions of the African elephant action plan and experiences from Asia, and*
 - d) *exploration of the conditions under which international trade in elephant ivory could take place, taking into account: ecological and economic sustainability of ivory trade; the impact of trade on the illegal killing of elephants; the initial impact of the one-off sale of ivory that was agreed at CoP 14; levels of illegal trade; enforcement challenges and capacities; information on linkages between legal and illegal trade, and methods to elucidate these linkages; methods to track the chain of custody;*
6. At its 58th meeting of the Standing Committee (SC58, Geneva, July 2009), the CITES Secretariat reported on the progress made relating to the implementation of Decision 14.77 and the process agreed by the Standing Committee at SC57. At this meeting it was emphasized that the Parties had already decided on the time-frame for the implementation of Decision 14.77, and the recommendation of the CITES Secretariat contained in document SC58 Doc 36.5 was adopted.
 7. At its 61st meeting (SC61, Geneva, August 2011), the Committee agreed to the proposal for work towards the implementation of Decision 14.77 outlined in document SC61 Doc.44.4. This required the Secretariat to contract by October 2011 and in accordance with UN rules, a professional, independent, technical consulting firm or expert(s) to prepare the study, in line with the terms of reference agreed at SC57. It was clear that the purpose of the consultancy was not to determine whether there should or should not be international trade in ivory. The purpose was to provide a technically focused study on a “decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties” that could be used by the Parties, should they decide in the future to authorize commercial international trade in ivory under the Convention.
 8. The Committee also agreed that the following stakeholders should be consulted in the conduct of the study: China and Japan as trading partners; African and Asian elephant range States; the United Kingdom of Great Britain and Northern Ireland and the United States for America as donors; and the MIKE-ETIS TAG, the IUCN/SSC African and Asian Elephant Specialist Groups and TRAFFIC as technical experts. The Committee requested that consultations with the African elephant range States be conducted in English and French, as appropriate, and that the draft report thereof be shared with Committee members as early as possible. The Secretariat agreed to these requests, explaining that translations would have to be subject to available resources.
 9. The selection of the consultant was initiated after SC61 through an open tender process in accordance with UN rules. A First call for tenders were made through Notification to the Parties No. 2011/031 of 29 August 2011, and the Secretariat received three tenders in response. In view of this limited number of offers, the Secretariat issued a second call for tenders with Notification to the Parties No. 2011/046 of 12 October 2011. This generated a fourth tender and the resubmission of the three previous tenders, one of which with amendments. All bids were evaluated by a panel of six CITES Secretariat staff led by the Secretary-General. Selection was guided by: the quality of the written tender; technical competencies; the proposed approach to meeting the Terms of Reference; independence; and experience with relevant CITES procedures and processes. The panel’s decision was unanimous.
 10. Through Notification to the Parties No. 2012/013 of 20 February 2012, the Secretariat informed the Parties that a consortium of Africa-based experts led by Mr R. Martin (Zimbabwe) had been selected to conduct the study. The other members of the consortium were Mr D. Cumming (South Africa), Mr C. Craig (Namibia), Ms D. Gibson (Namibia) and Ms D. Peake (Botswana). The consultancy was initiated in December 2011. As a result of the delay caused by having to issue a second call for tenders, the draft report of the consultants could only be submitted to the Secretariat at the end of March 2012 instead of February 2012. The Secretariat then sought comments on the draft report from the identified stakeholders and formulated its own comments. The Secretariat also shared the draft report with the members of the Standing Committee. By mid-May 2012, comments have been received from Botswana, China, India,

Japan, Kenya, South Africa, the United Kingdom, the United States and IUCN. These were provided to the consultants to be taken into account, as appropriate, in finalizing their study before 24 May 2012.

11. At its 62nd Meeting, the Standing Committee (SC62) reviewed the report on the decision-making mechanism (DMM). The Committee also considered recommendations in the study to draft a proposal on a DMM for a process of trade in ivory under the auspices of the Conference of the Parties, for submission at the 16th meeting of the Conference of the Parties. Furthermore, the Committee was requested to agree on a timeframe and process for the further implementation of Decision 14.77 if necessary.
12. During its 64th meeting (SC64, Bangkok, March 2013), the Standing Committee established a Working Group to work inter-sessionally to develop a Decision-Making Mechanism (DMM Working Group) for a process of trade in ivory, as called for in Decision 16.55. SC64 agreed on the following membership of the Working Group: Botswana, Burkina Faso, Cameroon, China, Congo, India, Japan, Kenya, Nigeria, Rwanda, South Africa, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, the Chair of the Standing Committee (Norway; Chair of the DMM Working Group) and the Secretariat.
13. At its 16th Meeting of the Conference of Parties (CoP16) the Parties agreed to amend Decision 14.77 on a DMM for a process on future trade in elephant ivory. The Secretariat informed the Parties through document (CoP16 Doc.36 (Rev.1) that the DMM does not propose ivory trade but instead: clarifies the basis for the Conference of Parties to make a decision on whether to authorize commercial international trade in ivory; specifies criteria needed for such trade; explains the organization and management of any future trade; and determines the roles of CITES bodies in monitoring and evaluating compliance. In the Decisions, the Secretariat directed the next Standing Committee (SC66) to postpone approval of the mechanism to CoP17, establish a working group with regional representation from range states, among others, and conduct work in both French and English.
14. The Standing Committee at its 65th meeting (SC65, Geneva, July 2014) agreed that the Working Group on the Decision-Making Mechanism should continue to work inter-sessionally. It also requested the Secretariat, in collaboration with the Secretariat of the United Nations Environment Programme (UNEP Secretariat), to prepare a background document, as mentioned in paragraph 8 of document SC65 Doc. 42.3, and make it available to the working group by January 2015 at the latest. The working group was invited to report on progress in the implementation of Decision 16.55 at the 66th Standing Committee meeting.
15. At its 66th Meeting (SC66), SC 66 noted the report of the Secretariat and that the Working Group was unable to complete its work under Decision 16.55 and agreed to seek advice from the Conference of Parties at its 17th meeting whether the mandate under Decision 16.55 (and formerly Decision 14.77) should or should not be extended.

Discussion

16. Namibia, South Africa and Zimbabwe note with concern that despite substantial deliberations on the issue, there has been no progress made to date. It is clear that the Standing Committee has not been able to finalize the development of the Decision Making Mechanism for a process of future trade in elephant ivory as instructed by the Conference of Parties.
17. There is also concern that despite the clear recommendations by the Standing Committee at its 65th meeting that the Secretariat, in collaboration with UNEP, should prepare a background document, as mentioned in paragraph 8 of document SC65 Doc. 42.3, and make it available to the working group by January 2015 at the latest, these deadlines were not adhered to and consequently no progress has been made. It's not clear why the Secretariat and UNEP had difficulties implementing this recommendation from the Standing Committee. It is further not clear what caused the delays that resulted in the background document being made available only late in November 2015, resulting in insufficient progress made on this matter and the Standing Committee at its 66th meeting referring the matter to the 17th Conference of Parties to CITES, but without a substantive proposal.
18. In an attempt to address the lack of progress made by the Standing Committee, Namibia, South Africa and Zimbabwe have prepared the attached Decision Making Mechanism for a process of future trade in ivory, for consideration by the 17th Conference of Parties to CITES in order to bring this matter to conclusion.

19. The Conference of the Parties may recall that the establishment of a Decision Making Mechanism for a process of future trade in ivory was an integral part of the compromise reached that was incorporated in an amendment to Proposal CoP14 Prop 4 and related draft Decisions (CoP14 Inf. 61) adopted at the 14th CoP to CITES [CoP14 Plen 6 (Rev. 1)] that further included an agreement by Botswana, Namibia, South Africa and Zimbabwe to a nine-year moratorium and the development of the African Elephant Action Plan.
20. The Conference of the Parties may further consider that a failure to establish this Decision Making Mechanism within the agreed process and time frame significantly undermines the needs and interests of the affected range States and their conservation objectives and programmes, which rely on a) the creation of positive incentives for landholders, whether communal or private, and to set land aside for elephants and to co-exist with them instead of opting for forms of land use that would displace elephants and cause the loss of their habitat; and b) the generation of revenues from the sale of elephant products to finance elephant conservation programmes, including the management of protected areas and the combatting of illegal killing and trade. The current situation negatively affects African elephant range states, including Namibia, South Africa and Zimbabwe, and therefore runs counter to the letter and spirit of previous agreements of and decisions taken by the Conference of the Parties and infringes upon the legitimate rights of Parties enshrined in the text of the Convention.
21. Namibia, South Africa and Zimbabwe supported the drafting of the annotation as part of a compromise that would result in an objective process regarding future trade in ivory that should not repeatedly have to be discussed by the Conference of the Parties in the manner that characterized such past debates. Namibia, South Africa and Zimbabwe's African elephant populations do not meet the criteria to be listed in Appendix I and compromises reached to address the needs of other range States, while foregoing our own, should be honoured. This will ensure that the specific provisions that form part of the compromise are implemented and would not render the annotation inoperable.
22. The Conference of Parties should consider the fact that the provisions in the text of the Convention, which are legally binding, are adequate to regulate trade in specimens of Appendix II species and the use of annotations to place additional restrictions on the international trade in specimens of species listed in Appendix II species are not provided for in the text of the Convention. Annotations should be used to clarify the term: "any readily recognizable part of derivative thereof specified" in terms of Appendix II plant species and Appendix III plant and animal species. Footnote annotations should only be used for Appendix II animal species to clarify, among others, situations where split-listing of species has been adopted by the Conference of Parties, but not to introduce additional restrictions. In this regard, Namibia, South Africa and Zimbabwe would seek the Conference of the Parties to conclude the work on the Decision Making Mechanism as part of the compromise reached at COP14 so as not to render the annotation invalid.

Recommendation

23. Namibia, South Africa and Zimbabwe recommend that the Conference of Parties to CITES considers and adopts the proposal for a Decision Making Mechanism for a process of future trade in elephant ivory to be included in Resolution Conf. 10.10 (Rev. CoP16) as presented in Annex I of the document.
24. Namibia, South Africa and Zimbabwe request the Conference of the Parties to note that if a Decision Making Mechanism is not approved at the 17th meeting of the Conference of the Parties, the proponents of this document would consider the current annotation, negotiated as a compromise at COP14 and subsequently not implemented, as *pro non scripto* (as though it had not been written).

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat notes that the present document provides a practical outline of a decision-making mechanism for a process of international trade in elephant ivory that incorporates many of the considerations and conditions that have been tabled on this issue since CoP14. The proposed amendments to Resolution Conf. 10.10 (Rev. CoP16) contain provisions for financing the functions that would be assigned to the Secretariat, but the overall budget implications for implementing the proposed decision making–mechanism, which may be substantial, are not provided.

- B. In line with its comments on documents CoP17 Doc. 84.1 and 84.2, the Secretariat is of the opinion that the matter of agreeing or not to a decision-making mechanism for trade in ivory, or to suspend or renew instructions and discussions in this regard, be decided by the Conference of the Parties at its present meeting.
- C. Concerning the second recommendation in paragraph 24 of the document, it might be useful for Namibia, South Africa and Zimbabwe to provide further advice and information to support their consideration that the annotations to *Loxodonta africana* in the CITES Appendices could be considered *pro non scripto* should a decision-making mechanism for trade in ivory not be accepted at the present meeting of the Conference of the Parties.
- D. The Secretariat suggests that documents CoP17 Doc. 84.1, 84.2 and 84.3 be discussed together.

DECISION MAKING MECHANISM FOR A PROCESS OF
INTERNATIONAL TRADE IN ELEPHANT IVORY

The purpose of the Decision-Making Mechanism (DMM) is to:

- a) Establish a basis for agreement on how to make the decision, in terms of the Convention, on how commercial international trade in elephant ivory, should be authorized;
- b) Clarify the roles of CITES bodies to authorize commercial international trade in ivory from countries with African elephant populations listed in Appendix II of CITES;
- c) Specify the criteria to be met by exporting countries as well as importing countries to regulated international trade in ivory;
- d) Provide guidance relating to the principles / conditions that should form part of the trade mechanism adopted by countries authorised to trade in ivory; and
- e) Determines the role of CITES bodies in monitoring and evaluating compliance with conditions for international trade in ivory.

PROPOSED AMENDMENT TO RESOLUTION CONF. 10.10 (Rev. CoP16)

(deletions in strike-through and new text in *italics*)

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

Regarding trade in raw ivory for commercial purposes

~~RECOMMENDS that trade in raw ivory for commercial purposes from elephant populations not included in Appendix I be authorized only in accordance with provisions agreed by the Conference of the Parties;~~

DIRECTS that international trade in raw ivory for commercial purposes be authorized by the Standing Committee, if the following criteria have been met by the respective exporting and importing States:

- a) *Criteria to be met by the exporting African elephant range States:*
 - i) *In terms of the African elephant population and management-*
 - a. *The African elephant population of the exporting range State is listed in Appendix II of the Convention;*
 - b. *The African elephant range State participates in the MIKE programme and submits information to the ETIS system;*
 - c. *The African elephant range State adopted and implements a national elephant conservation management plan;*
 - d. *The African elephant range State implements a system that ensures that the proceeds of the trade are used exclusively for elephant conservation and community conservation and development programmes within or adjacent to the elephant range; and*
 - e. *The African elephant range State supports the implementation of the African Elephant Action Plan.*
 - ii) *In terms of marking, inventories, inspections, traceability and reporting-*

- a. *Whole tusks of any size and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight are marked in accordance with this Resolution;*
 - b. *Exporters, manufacturers, wholesalers and retailers dealing in raw or worked ivory are registered in terms of national legislation;*
 - c. *Recording and inspection procedures that enable the Management Authority and other appropriate government agencies to monitor the movement and export of ivory within the State are implemented;*
 - d. *Inventories of government-held stockpiles and privately held stockpiles of ivory within their territory are maintained and the Secretariat is informed about the ivory sales that occurred and the level of stockpiles each year before 28 February; indicating the number of pieces sold and their weight per type of ivory (raw or worked); the number of pieces remaining in the stockpile and their weight per type of ivory (raw or worked); for relevant pieces, and if marked, their markings in accordance with the provisions of this Resolution; the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year;*
 - e. *Samples of each tusk introduced in international trade are collected and maintained by the Management Authority to support traceability systems;*
 - f. *A special report on the international trade of ivory is submitted to the CITES Secretariat on or before 28 February each year.*
- b) *Criteria to be met by the importing States (trade partners):*
- i) *In terms of legislative provisions, enforcement and reporting-*
 - a. *Policy and regulatory regimes to regulate legal trade are developed, implemented and enforced;*
 - b. *Information is submitted to the ETIS system;*
 - c. *Importers, manufacturers, wholesalers and retailers dealing in raw or worked ivory are registered in terms of national legislation;*
 - d. *Samples of each tusk imported into the State are collected and maintained by the Management Authority to support traceability systems;*
 - e. *Inventories of government-held stockpiles and privately held stockpiles of ivory within their territory are maintained and the Secretariat is informed about the ivory sales that occurred and the level of stockpiles each year before 28 February; indicating the number of pieces sold and their weight per type of ivory (raw or worked); the number of pieces remaining in the stockpile and their weight per type of ivory (raw or worked); for relevant pieces, and if marked, their markings in accordance with the provisions of this Resolution; the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year; and*
 - f. *Illegal trade is addressed through strict law enforcement and reports relating to enforcement actions submitted to the Secretariat on or before 31 December each year.*
 - g. *A special report on the international trade of ivory is submitted to the CITES Secretariat on or before 28 February each year*
 - ii) *In terms of support of elephant conservation-*
 - a. *Annual contributions are made to the African Elephant Fund to support the implementation of the African Elephant Action Plan;*
 - b. *Contributions made on an annual basis to support the Secretariat in fulfilling their functions as specified in this Resolution.*

DIRECTS the Secretariat, with reference to the information submitted by States involved in trade in raw ivory for commercial purposes and within available resources:

- a) *to analyse the special report on international trade and stockpile information submitted to the Secretariat as well as compliance with the criteria to be met by exporting States and report to the Standing Committee, which should consider the report and may consider appropriate measures in accordance with Resolution Conf. 14.3 on CITES compliance procedures.*
- b) *to analyse the special report on international trade and stockpile information submitted to the Secretariat as well as compliance with the criteria to be met by importing States and report to the Standing Committee, which should consider the report and may consider appropriate measures in accordance with Resolution Conf. 14.3 on CITES compliance procedures.*