

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



Sixteenth meeting of the Conference of the Parties
Bangkok (Thailand), 3-14 March 2013

Interpretation and implementation of the Convention

Trade control and marking

PROPOSAL TO AMEND DECISION 14.77 ON A *DECISION-MAKING MECHANISM
FOR A FUTURE TRADE IN ELEPHANT IVORY*

1. This document has been submitted by Benin, Burkina Faso, Mali¹, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya².

Background

2. At the 14th meeting of the Conference of the Parties to CITES (the Hague, 2007), following extensive dialogue between the African elephant range States, the Parties adopted Decision 14.77 as follows:

Directed to the Standing Committee:

The Standing Committee, assisted by the Secretariat, shall propose for approval at the latest 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. At its 57th meeting (Geneva, 2008), the CITES Standing Committee agreed that an independent study should be carried out as using the following Terms of Reference:

The Secretariat wishes to commission an independent study on the development of a decision-making mechanism and process for future trade in elephant ivory for review by the CITES Standing Committee. This study, which will be coordinated by the Secretariat in consultation with stakeholders including African and Asian elephant range States, will cover the following issues:

- 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*

¹ Note from the Secretariat: no official submission of the present document has been received from this country.

² 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.

- 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 the 14th meeting of the Conference of the Parties (The Hague, 2007); 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; etc. The study is not to determine whether there should or should not be international trade in ivory.*
4. At its 61st meeting (Geneva, August 2011) the CITES Standing Committee approved the Secretariat's proposal for work towards the implementation of Decision 14.77. This directed the Secretariat to put out to tender and subsequently award a contract by October 2011, in accordance with UN rules, for a professional, independent, technical consulting firm or expert(s) to prepare the study.
 5. At SC61 it was made clear that the purpose of the consultancy was not to determine whether there should or should not be international trade in elephant 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.
 6. SC61 also agreed that the following stakeholders should be included in the consultation process: China, Japan, African and Asian elephant range States, the United Kingdom and the United States, the MIKE-ETIS TAG, the IUCN/SSC African and Asian Elephant Specialist Groups and TRAFFIC. The Standing Committee further requested that consultations be conducted in both English and French, as appropriate.
 7. Donations of \$20,000 and \$30,000 were made for the conduct of this study by Botswana and the European Commission respectively.
 8. According to SC62 Doc 46.4: *"A first call for tenders was 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."*
 9. The consultant's report was published in SC62 Doc 46.4 Annex, entitled *"Decision-Making Mechanisms and Necessary Conditions for a Future Trade in Ivory"*. Several Parties expressed concern that the study produced did not meet the Terms of Reference and that the mechanism proposed was not consistent with their interpretation of what a 'Decision-Making Mechanism' should be as per Decision 14.77. Various Parties also pointed out that Decision 14.77 needed to be extended and clarified accordingly.
 10. Following discussion between the UK and Botswana, SC62 approved the following process (as outlined in SC62 Sum 10):
 - a) *In order to assist the Standing Committee with its implementation of Decision 14.77, the Secretariat should invite further comments from the stakeholders identified at its 61st meeting on the study contained in the Annex to document SC62 Doc. 46.4. Replies should be submitted by 31 August 2012;*
 - b) *On the basis of the study and the responses received, the Secretariat should review the information and prepare a document for review by the same stakeholders and the Chair of the Standing Committee. Comments should be submitted well in time for the Secretariat to prepare a document for submission at CoP16;*
 - c) *The Secretariat should take all contributions into account and prepare a document on behalf of the Standing Committee for consideration at CoP16. This document should be approved by the Chair of the Standing Committee prior to its submission, and state that it has not been endorsed by the full Standing Committee;*

- d) *The report should include, in an annex, details of the responses which it seeks to address and from which it is derived, where the respondents have given their approval for these to be presented in this way; and*
- e) *The Secretariat should inform the Standing Committee of progress in the conduct of the work by electronic means.*

Summary of Elephant Crisis

- 11. Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya wish to convey to the Conference of the Parties their sincere and profound concern regarding the escalating and alarming levels of elephant poaching and illegal trade in ivory. It has been made very clear from data provided in numerous reports (such as SC62 Doc 46.1 Annex) that the situation has now reached crisis levels
- 12. Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya therefore believe that it is the fundamental responsibility of the Conference of the Parties to take this elephant crisis fully into account, and apply a precautionary approach when developing the Decision-Making Mechanism to ensure that it in no way stimulates, encourages, causes or provokes elephant poaching or illegal ivory trade.

Defining the Decision-Making Mechanism

- 13. Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya believe that the Conference of the Parties needs to clarify what they mean by a 'decision-making mechanism' in the text of Decision 14.77, as it was clear from the discussion at SC62 that there is currently some considerable confusion in this regard.
- 14. Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Cote d'Ivoire and Kenya believe that it was not the intent of the Parties when approving Decision 14.77 to develop a trade procedure or a trade control mechanism, but rather to develop, as stated in the Terms of Reference of the independent study, 'a decision-making mechanism and process for future trade in elephant ivory' in other words, to develop criteria that could be used by the Parties to assess any proposal for future trade in ivory with respect to its conservation impact on elephant populations nationally, continentally and globally. Furthermore, in the event that a proposal for future trade in ivory is approved by the Conference of the Parties, the Decision-Making Mechanism should contain a review procedure for use by the Conference of the Parties setting out a clear process for assessing the impact of any approved trade on elephant populations and poaching levels and including mechanisms for ending such trade should it have an actual or inferred negative impact on elephants and their security. The DMM should further include (among other things) a process for approving and reviewing the status of trading partners, reporting requirements concerning the provision of information to the CoP, the Animals Committee or the Standing Committee as appropriate, and measures that the CoP could mandate, including modification, postponement or cessation to the implementation or use of the decision-making mechanism if necessary.
- 15. Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya therefore believe that the Conference of the Parties should clarify what is meant by a decision-making mechanism in the revised text of Decision 14.77, and extend this Decision to allow the development of a new draft mechanism for consideration at the 17th meeting of the Conference of the Parties to CITES.
- 16. Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya would like to express its thanks to all those that have so far assisted in the implementation of Decision 14.77, and note that any delay in the process of the development of the decision-making mechanism is not a reflection on the diligence of the Standing Committee, but rather on the complexity of the task at hand.

Recommendations

17. In light of the above Benin, Burkina Faso, Mali, Liberia, Central African Republic, Nigeria, Côte d'Ivoire and Kenya propose the following amendments to Decision 14.77 (deleted text ~~struck through~~ and added text underlined):

Directed to the Standing Committee

The Standing Committee, assisted by the Secretariat, shall propose for approval at the latest at the ~~46th~~ 17th meeting of the Conference of the Parties a decision-making mechanism for a process for any future ~~of~~-trade in elephant ivory under the auspices of the Conference of the Parties, and in accordance with the Vision, Goals and Prioritised Objectives of the African Elephant Action Plan.

The Standing Committee shall ensure that this decision-making mechanism is consistent with the African Elephant Action Plan, and that it includes clear criteria to be used by the Conference of the Parties to assess any possible trade mechanism with respect to its conservation impact on elephant populations nationally, continentally and globally.

Work on the development of a decision-making mechanism shall be conducted by the Standing Committee in both French and English, and shall fully integrate the participation of all African and Asian elephant range States.

COMMENTS FROM THE SECRETARIAT

- A. The present document repeats parts of document CoP16 Doc. 36, submitted by the Chair of the Standing Committee, and presents the views that the proponents expressed during consultations of stakeholders about a decision-making mechanism for a process of trade in ivory. The consultation process is fully described in document CoP16 Doc. 36. The proponents of the present document were fully engaged in this inclusive, participatory, CITES-wide process, led by the Standing Committee, which gave the opportunity to all relevant stakeholders, including the proponents of the present document, to feed into the Standing Committee's deliberations on the implementation of Decision 14.77. The Chair of the Standing Committee took the opinion of all stakeholders fully into consideration in developing his recommendations in paragraphs 18 to 21 of document CoP16 Doc. 36.
- B. With regard to the draft amendment to Decision 14.77 in paragraph 17 of the present document, it is unclear what is meant by a decision-making mechanism needing to be "in accordance with the Visions, Goals and Prioritized Objectives of" and "consistent with" the *African elephant action plan*. The *African elephant action plan* was not conceptualized to support the implementation of Decision 14.77. CITES and trade in ivory are hardly mentioned in the *Action plan*. Important basic components of a future decision-making mechanism for trade in ivory are not mentioned at all, such as: the roles and responsibilities of Asian consumer countries and other Parties; Asian elephant conservation issues; and global enforcement, monitoring and compliance measures. Furthermore, the *Action plan* does not have a global scope, which is essential for a decision-making mechanism for trade in ivory, which will affect and involve all Parties, and not only 38 African elephant range States. Additionally, the *African elephant action plan* has not been reviewed or adopted by the Conference of the Parties. An important decision-making mechanism for global trade in ivory, such as the one envisaged in Decision 14.77, could fully take account of the *African elephant action plan* but cannot be based on it. With regard to the other aspects of the proposed amendments to Decision 14.77, the Secretariat believes that the way forward, as proposed by the Chair of the Standing Committee in paragraph 21 of document CoP16 Doc. 36, is more constructive and practical, and will ensure a more balanced approach.
- C. Consequently the Secretariat is not in favour of the recommendation in paragraph 17 of the present document.