

BRIEFING NOTE: PRECEDENT UNDER CITES FOR ADDRESSING DOMESTIC TRADE AND RELATED INTERNAL MATTERS

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Summary

CITES Parties have adopted several recommendations on domestic trade and other internal matters embodied in resolutions and decisions adopted by the CITES Conference of the Parties (CoP) and recommendations of the CITES Standing Committee. These resolutions, decisions and recommendations demonstrate that CITES Parties have agreed on a mandate to address domestic trade issues, including legal and illegal domestic trade, in certain circumstances. Below is a non-exhaustive list of examples of such recommendations adopted by the CoP.

It should also be noted that the precautionary principle which has been adopted under the CITES framework and which is also widely recognised as a principle of international law provides CITES Parties with the discretion to adopt, where necessary and appropriate, measures that address domestic trade or other related issues. For example, Resolution Conf. 9.24 (Rev. CoP17) on Criteria for amendment of Appendices I and II recognises “the importance of the application of Rio Principle 15, the Precautionary Approach, in cases of uncertainty” and “resolves that, by virtue of the precautionary approach and in case of uncertainty regarding the status of a species or the impact of trade on the conservation of a species, the Parties shall act in the best interest of the conservation of the species concerned.” There is compelling evidence which demonstrates that domestic trade restrictions/prohibitions adopted under the CITES framework have had a significant positive impact on wild populations of CITES species.¹

The following are a few examples of existing recommendations related to domestic trade:

- Resolution Conf. 17.11 on Conservation of and trade in helmeted hornbill, prohibits the display, domestic sale and acquisition of helmeted hornbill specimens.
- Resolution Conf. 12.5 (Rev. CoP18) on Conservation of and trade in tigers and other Appendix-I Asian big cat species in paragraph 5 recommends targeted measures to be adopted by consumer States “in order to eliminate the use of substances derived from Appendix-I Asian big cats”. At CoP18, an amendment was adopted urging “all Parties in whose jurisdiction there is a legal domestic market for specimens of tiger and other Asian big cats species that is contributing to poaching or illegal trade” to “take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in tiger and other Asian big cat specimens”.

¹ For example, implementation of recommendations in [Resolution Conf. 6.10](#) (replaced with Resolution Conf. 9.14 (rev. CoP17)) on closure of domestic markets for rhino horn successfully [reduced rhino poaching](#).

- Resolution Conf. 12.7 (Rev. CoP17), on Conservation of and trade in sturgeons and paddlefish, recognises the role of domestic markets in issuing CITES permits and Annex 1 of the Resolution sets out detailed guidelines on the management of fish stocks and the labelling of caviar for either domestic or international trade.
- Resolution Conf. 11.7 on Conservation of and trade in musk deer calls for range States to conduct surveys of domestic markets for musk deer, including both legal and illegal trade.
- Resolution Conf. 11.8 (Rev. CoP17) on Conservation of and control of trade in the Tibetan antelope calls for eliminating all trade and processing of Tibetan antelope parts and derivatives, especially shahtoosh.
- Resolution Conf. 10.8 (Rev. CoP14) on Conservation of and trade in bears calls for “stronger domestic trade controls and conservation measures.”
- Resolution Conf. 10.10 (Rev. CoP18) on Trade in elephant specimens, recognises the risks posed to elephants and communities by legal domestic markets for ivory, notes the growing momentum for closure of domestic ivory markets globally, and recommends that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency. Further, Resolution Conf. 10.10 contains additional recommendations directed at Parties to address domestic ivory trade. Decision 18.117 calls on Parties that have not closed their domestic ivory markets to report “on what measures they are taking to ensure that their domestic ivory markets are not contributing to poaching or illegal trade”.
- Resolution Conf 9.14 (Rev. CoP17) on Conservation of and trade in African and Asian rhinoceroses urges all Parties to adopt and implement comprehensive legislation and enforcement controls, including “internal trade restrictions”.
- Resolution Conf. 9.20 (Rev.) on Guidelines for evaluating marine turtle ranching proposals submitted pursuant to Resolution Conf. 11.16 (Rev. CoP15) calls for regulating, where necessary, domestic sale of marine turtle specimens.
- Resolution Conf. 9.24 (Rev. CoP17) on Criteria for amendment of Appendices I and II repeatedly recognises the importance of considering the role of domestic markets and trade in listing species under the Convention.
- Resolution Conf. 8.4 (Rev. CoP15) on National laws for implementation of the Convention recognises that the Convention has set the mandate to address “possession” of CITES specimens and calls on Parties to adopt “domestic measures” to address the offence of possession of CITES specimens. Indeed, Article VIII of the Convention itself contains the

requirement for Parties to take appropriate measures to enforce the provisions of the Convention by penalising “possession” of CITES specimens.

- Decisions 17.87 (Rev. CoP18) and 17.88 (Rev. CoP18) direct the Secretariat and the Standing Committee to undertake a study on domestic controls in consumer markets for certain CITES-listed species and identify recommendations to strengthen domestic controls addressing illegal trade in such species.
- Decision 14.69 (which remains a valid Decision) recommends that “tigers should not be bred for trade in their parts and derivatives.” When CoP14 adopted Decision 14.69 in 2007, CITES Parties voted against the use of the term “international trade” and instead adopted the existing language which Parties expressly intended to include both domestic and internal trade.² Subsequently a number of CoP Decisions have been adopted to address domestic and international trade from and through Asian big cat captive facilities (see for example, Decisions 17.226 and 18.102).
- Decision 18.212 urges marine turtle range states “where domestic harvest of specimens of marine turtles, including eggs, is legal” to “ensure any domestic harvest quotas are established based on robust science-based methods and the principles of sustainability, including accounting for existing quota or no-take quotas in other States’ that share marine turtle stock(s), taking into account national enforcement capacity”.
- Decision 18.270 encourages Saiga antelope range states to “establish internal market controls for saiga parts, including registration of stockpiles, labelling of parts and products, and registration of manufacturers and traders, and report such information to the CITES Secretariat.”
- In relation to rhino horn trade, Decision 18.116 urges Parties “to close those markets that contribute to poaching or illegal trade.”

The following are a few examples of existing recommendations which address domestic/internal issues other than domestic trade:

- Regarding enforcement to tackle wildlife crime at the domestic level: The CoP has adopted multiple recommendations to address domestic measures related to national-level enforcement. Resolution Conf. 11.3 (Rev. CoP18) on Compliance and enforcement includes several recommendations urging Parties to adopt domestic measures to strengthen enforcement. For example, Resolution Conf. 11.3 recommends that Parties should:
 - coordinate with appropriate governmental and non-governmental agencies and establish inter-agency committees at the national level, bringing together Management Authorities and governmental agencies responsible for the enforcement of CITES, including Customs and the police

² CoP14 Com. II Rep. 14 (Rev. 1).

- put in place, or further enhance, national measures and communication channels to ensure that the required level of real-time support can be provided to park rangers, and other wildlife and enforcement personnel
- establish, at the national level, a unit dedicated to investigating wildlife crime linked to the Internet or incorporate wildlife trade issues into existing units that investigate or monitor computer or cyber-crime
- review and amend national legislation, as necessary and appropriate, so that offences connected to the illegal wildlife trade are treated as predicate offences, as defined in the United Nations Convention against Transnational Organized Crime, for the purposes of domestic money-laundering offences, and are actionable under domestic proceeds of crime legislation
- implement national legislation to combat money laundering and facilitate asset forfeiture to ensure that criminals do not benefit from the proceeds of their crimes

There are several other resolutions and decisions addressing national-level enforcement or issues related to domestic illegal trade. For example, Resolution Conf. 10.8 (Rev. CoP14) on Conservation of and trade in bears calls for “new national efforts in key producer and consumer countries to identify, target and eliminate illegal markets.” Decision 18.83 recommends that all Parties should provide the Secretariat with any changes or updates to domestic legislation or other domestic measures that pertain to wildlife crime linked to the internet. Decision 18.84 also directs the Secretariat to develop model domestic measures to tackle wildlife crime linked to the internet.

- Regarding demand-reduction initiatives at the domestic level: Resolution Conf. 12.5 (Rev. CoP18) on Conservation of and trade in tigers and other Appendix-I Asian big cat species in paragraph 5(b) recommends removal of references to parts and derivatives of Appendix-I Asian big cats from the official pharmacopoeia and to include acceptable substitute products that do not endanger other wild species.
- Regarding working with rural and local communities at the local level: Recommendations adopted by the CoP related to rural communities and livelihoods suggest that CITES Parties address issues that are applicable not only at the national-level issues but also local/provincial level. For example, Resolution Conf. 16.6 (Rev. CoP18) on CITES and livelihoods encourages empowerment of rural communities in the context of benefiting from legal trade as well as reducing illegal trade. Resolution Conf. 11.3 (Rev. CoP18) on Compliance and enforcement promote incentives to secure the support and cooperation of local and rural communities in managing wildlife resources and thereby combating illegal trade.
- Regarding processing/packaging of parts and derivatives of CITES-species: CITES recommendations related to processing is another example of CITES intervention at the domestic trade level. For example, Resolution Conf. Conf. 9.6 (Rev. CoP16) on Trade in readily recognizable parts and derivatives interprets the scope of the Convention to include trade in any specimen that may be packaged/labelled to suggest it is derived from CITES species. Resolution Conf. 11.8 on Conservation of and control of trade in the Tibetan antelope

recognises that “an effective ban on processing of and trade in shahtoosh is a critically important complement to effective in situ conservation of the species, including control of large scale poaching”, and calls for “processing countries of the products of the Tibetan antelope to continue their efforts to ban the processing of Tibetan antelope wool.” Resolution Conf. 17.12 on Conservation, sustainable use of and trade in snakes addresses processing of snake skins as an important contributor of revenue to local communities and recommends that Parties ensure that the inventories of the stockpiles contain information on the stage of processing of snake skins. Resolution Conf. 12.7 (Rev. CoP17), on Conservation of and trade in sturgeons and paddlefish includes recommendations on processing and packaging of caviar.