



Brussels, 12 September 2017

To the European Commission,

Subject: WCS's response to the DG Trade non-paper on Sustainable Development in EU Free Trade Agreements (FTA)

Introducing the Wildlife Conservation Society

The Wildlife Conservation Society (WCS) is a global conservation organisation working to save wildlife and wild places through science, conservation action, education, and inspiring people to value nature. We envision a world in which wildlife thrives in healthy lands and seas, valued by societies that embrace and benefit from the diversity and integrity of life on earth. Our field programmes in more than 60 countries in Asia, Africa, the Americas, and the Pacific build on more than 100 years of experience and scientific, technical, and policy expertise across the globe. To learn more about WCS and our conservation programmes, visit www.wcs.org.

WCS strives to ensure that all of our work supports the global agenda, as described in the United Nations' (UN) Sustainable Development Goals (SDGs), and delivers meaningful sustainable development outcomes. WCS welcomes the key recognition by governments, through the SDGs, that poverty alleviation and human development are inextricably linked with the conservation of wildlife and wild places. We have therefore analysed how our global programme helps to deliver the SDGs, ranging from work with local communities to manage subsistence hunting and coastal fisheries to ensure sustainability, to collaborating with government partners to manage and conserve approximately 6.6 million km² of terrestrial ecosystems, in Africa, Asia, and the Americas¹.

Response to the DG Trade *non-paper* on Sustainable Development Chapters in Free Trade Agreements

WCS appreciates and would like to thank the European Commission for starting a debate on Trade and Sustainable Development in European Union (EU) Trade Agreements and sending an associated *non-paper of the Commission services* to the European Parliament and the Council on July 11, 2017. WCS believes that including Sustainable Development chapters in Free Trade Agreements (FTAs) is crucial to ensuring responsible trade and the respect of commitments in bilateral trade agreements in policy areas of importance to the EU, such as

¹<https://newsroom.wcs.org/Portals/164/Documents/Sustainable%20Development%20Goals%20WCS%20Analysis.pdf>



wildlife conservation. In particular, opening a debate on Sustainable Development chapters in EU FTAs is important to meet EU's commitments to deliver the SDGs, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the three UN General Assembly Resolutions on tackling illicit trafficking in wildlife - adopted in 2015, 2016, and 2017². In addition, with the recent announcement by the United States (US) that it intends to withdraw from the UNFCCC Paris Agreement, there is a greater need than ever for the EU to play a global leadership role in tackling international environmental challenges, including wildlife trafficking.

We note further that sustainable wildlife trade and wildlife trafficking are critical issues, which we believe must be addressed in any EU trade agreements. WCS hopes publishing a *non-paper* does not mean that it is not a high priority for the Commission. WCS is also disappointed that the Commission did not explicitly mention tackling the illegal wildlife trade and ensuring the sustainability of legal wildlife trade within the *non-paper*, as it is an excellent example of how TSD chapters can have positive impacts by enhancing the delivery of international environmental policy objectives of high priority to the EU. We greatly appreciate the EU's strong commitments through its *EU Action Plan against Wildlife Trafficking*³, in particular, the third priority which explicitly states that there will be "ambitious commitments to combat wildlife trafficking proposed by the EU for inclusion in future Free Trade Agreements (FTAs)". Therefore, we expect the Commission to prioritise this discussion and take it further, starting with a full public consultation.

Although this *non-paper* was sent to the European Parliament and the Council, WCS takes this opportunity, as a civil society stakeholder, to provide feedback and comments on the debate and hereby submits its responses to the four questions laid out in the *non-paper*:

1. Are EU TSD chapters meeting expectations? If not, what are the shortcomings to be addressed and what could be done to improve them?

In its *Trade for all* strategy⁴, the Commission explicitly states that it will "increase the priority given to the sustainable management and conservation of natural resources (biodiversity, soil and water, forests and timber, fisheries and wildlife) and to the fight against climate change in FTAs and their implementation". WCS acknowledges the Commission's recent efforts to include text in FTAs on wildlife and specifically on the wildlife trade (legal and illegal). The 2016 EU-Vietnam FTA⁵ constitutes a good model with explicit references to CITES and provides strong and exhaustive commitments on this regard.

² <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/10494/WCS-Commends-the-United-Nations-General-Assembly-for-Its-Leadership-to-Stop-Illegal-Wildlife-Trade.aspx>

³ http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF

⁴ http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

⁵ http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154229.pdf



However, we noticed that, for example, the proposed text on “Trade and biological diversity” in the EU-Mexico FTA⁶ (currently under negotiation) contains less precise and detailed commitments to promote sustainable trade in wildlife products and to combat the illegal wildlife trade.

This is further supported by an external study on *EU trade policy and the wildlife trade*⁷ commissioned by the European Parliament's Committee on International Trade published in November 2016, which states that “To date [EU] FTA agreements tend not to refer specifically to the legal or illegal wildlife trade, with the exception of the FTA with Vietnam. The inclusion of specific objectives linked to supporting a legal and sustainable wildlife trade, or preventing an illegal wildlife trade could be an area for development in future FTA negotiations”. The report also highlights additional relevant provisions in the Trans-Pacific Partnership⁸ (TPP) agreement such as addressing transnational environmental crimes, focusing on transparency and anti-corruption, and sharing information on investigations into wildlife trafficking, which could all be integrated into future EU FTAs.

The Commission must ensure that illegal and legal (but often unsustainable) wildlife trade are dealt with effectively in all FTAs and not just some of them. As mentioned above, this constitutes one of EU’s top commitments in the *EU Action Plan against Wildlife Trafficking*. WCS would like to know what steps the Commission is taking to ensure that strong language on sustainable trade in wildlife products, illegal wildlife trade, cooperation, and enforcement measures is included in every future EU FTA—such as the relevant text in the EU-Vietnam FTA or in the TPP agreement (see Article 20.17: Conservation and Trade; and Article 20.23.2: Dispute Resolution).

2. Should the EU pursue a more assertive partnership on TSD in bilateral FTAs as described in option 1?

WCS believes that upgraded partnership for enhanced coordination between all stakeholders is crucial for the success of any FTA. WCS encourages the EU to strengthen the collaboration with Multilateral Environmental Agreements (MEAs) bodies for improved monitoring and implementation, to provide an effective platform for complaints and allegations of non-compliance, to adequately use the TSD dispute settlement mechanism, and to enhance the advisory role of civil society. We consider both efforts through MEAs and bilateral FTAs to be crucial.

⁶ http://trade.ec.europa.eu/doclib/docs/2017/may/tradoc_155528.pdf

⁷ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578025/EXPO_STU\(2016\)578025_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578025/EXPO_STU(2016)578025_EN.pdf)

⁸ <https://ustr.gov/sites/default/files/TPP-Final-Text-Environment.pdf>



3. Do you think a sanction based approach as described in option 2 would address the shortcomings identified?

WCS believes that non-compliance issues should be associated with consequences, whether through trade or other sanctions. We believe that providing the option of sanctions encourages partners/States to comply more fully with TSD provisions and does not necessarily undermine future partnerships between the EU and its trade partners. The recent TPP agreement constitutes a relevant example as it follows a sanction-based approach and was signed by eleven⁹ countries (i.e. Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam).

There are several examples showing that trade sanctions do work and can have positive impacts on the conservation of wildlife. The Section 8 of the US Fishermen's Protective Act of 1967, also known as the Pelly Amendment, is one of them and seeks to reinforce the effectiveness of international programmes for the conservation of threatened species such as CITES, the International Whaling Commission, and the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere. The Pelly Amendment authorizes the US President to embargo wildlife products whenever the Secretary of the Interior or the Secretary of Commerce certifies that nationals of a foreign country are engaging in trade or taking that diminishes the effectiveness of such programmes¹⁰. To date, a number of countries have been certified under the Pelly Amendment, such as Japan in 1991 for taking of sea turtles and trading in sea turtle parts and products, China and Taiwan in 1993 for trading in rhino horn and tiger bone, and more recently Iceland in 2014 for trading in whale meat and products. Trade sanctions have only been applied once, against Taiwan for trading in rhino horn and tiger bone. However, the US President revoked those sanctions in 1995 after the Taiwanese authorities demonstrated significant progress in revising and enforcing its Wildlife Conservation Law and made several financial contributions to support rhino and tiger conservation programmes around the world¹¹. It is also noteworthy that Japan withdrew its CITES hawksbill sea turtle reservations and stopped its trade in response to the Pelly certification and to avoid the imposition of trade sanctions by the US government¹².

CITES itself also constitutes an outstanding example that trade sanctions do work and can have positive impacts on the conservation of wildlife. Over the past 30 years, according to Sand¹³, country-specific CITES trade suspensions (i.e. recommendations to deny acceptance

⁹ The TPP agreement was originally signed by the United States as well, although the United States has subsequently withdrawn from the agreement on January 23rd 2017.

¹⁰ <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/pelly-amendment.html>

¹¹ <https://www.fws.gov/news/Historic/NewsReleases/1996/19960911.pdf>

¹² <http://www.seaturtle.org/mtn/PDF/MTN54.pdf>

¹³ Sand, P. H. (2017). International protection of endangered species in the face of wildlife trade: whither conservation diplomacy? *Asia Pacific Journal of Environmental Law*, 20(1), 5–27.

of all CITES export permits issued by the targeted country anywhere else in the world) have been imposed in more than a hundred cases targeting 60 countries. The reasons for these trade sanctions/suspensions comprise, among others, persistent general compliance issues, inadequate CITES-implementing legislation, inadequate reporting, inadequate scientific non-detriment findings, and inadequate controls of ivory trade. CITES embargoes or trade suspensions represent significant economic stakes for the targeted country as the country is then excluded from access to the lucrative legal export markets for some 35,000 species of wildlife and wildlife products if the suspension is on all exports from that country. The fact that in more than 80 per cent of the cases, trade suspensions could be lifted within less than a year shows the effectiveness of this system. CITES trade suspensions or its threat often tends to result in rapid compliance by enacting or amending the necessary legislation, submitting overdue reports, or complying with action plan requirements^{14,15}. This is further supported by a United Nations University study on Environmental Treaties and Trade which credits CITES trade bans as an enforcement mechanism “with an almost 100 per cent success rate”¹⁶.

These above-mentioned cases constitute a precedent proving that trade sanctions or their threat can make a difference and that properly designed trade measures can be an effective tool in enforcing international environmental agreements.

Finally, WCS would like to highlight that both approaches as described in option 1 and 2 are not mutually exclusive and could be complementary. In the *non-paper*, examples are drawn from the Canadian and US experiences but it is important to underline that a sanction-based approach could be adapted to the EU context.

4. Are there any other issues related to TSD to be addressed?

WCS takes this opportunity to highlight the importance of transparency in EU debates and in EU FTA processes. We hope that the Commission will continue to improve its work to increase the transparency of EU decision mechanisms and will provide opportunities to receive further input and expertise from civil society at every stage of the process.

¹⁴ Sand, P. H. (2005). Sanctions in Case of Non-Compliance and State Responsibility: Pacta sunt servanda – Or Else? *Making Law Work: Environmental Compliance and Sustainable Development*, Durwood Zaelke et al (eds), 1, 259–71.

¹⁵ Sand, P. H. (2017). International protection of endangered species in the face of wildlife trade: whither conservation diplomacy? *Asia Pacific Journal of Environmental Law*, 20(1), 5–27.

¹⁶ Brack, D. (2002). Environmental treaties and trade: Multilateral environmental agreements and the multilateral trading system. *Trade, environment, and the millennium*, GP Sampson and WB Chambers (eds), United Nations University Press, 2, 321-352 at 334.



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While this *non-paper* was directly sent to the European Parliament and the Council, WCS requests that a transparent public consultation is launched as the debate on TSD in EU trade agreements moves forward to allow all stakeholders to provide comments and suggestions.

We look forward to sharing our work on wildlife trade (illegal and legal) with the Commission and to discussing how the EU could improve TSD chapters in future trade agreements.

For further information, please contact Janice Weatherley-Singh, Director of European Policy (jweatherleysingh@wcs.org) and Arnaud Goessens, EU Policy Manager (agoessens@wcs.org).