

A Seminar on CITES

NOTES FOR DELEGATES

19 January 2017 at County Hall, London

in association with SOFAA and supported by BADA



ATG SEMINAR ON CITES

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ANTIQUES TRADE
gazette
THE ART MARKET WEEKLY

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Disclaimer: This report is an account of proceedings at the *ATG* Seminar on CITES on 19 January 2017. You should not rely on the information in these notes as an alternative to legal or CITES advice from an appropriately qualified professional.

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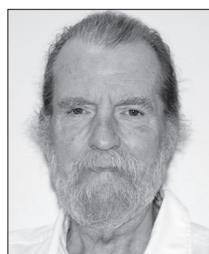
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Intro from Victoria Borwick MP

The ATG's Seminar on CITES was a great opportunity for us to ensure we all understand our obligations around the regulations when selling items that contain elements of endangered species. My congratulations to ATG and its event partners, SOFAA and BADA, of which I am president, on making this vital gathering happen.

Ivory in particular has been the subject of much debate and false trails in the media. The most important point I made at the seminar was that the antiques trade does not support the killing of elephants, nor does it support any system that allows raw ivory from post-1947 sources to be traded.

Dealers and auctioneers I have spoken to, and antique collectors, want nothing to do with items made from modern or poached ivory. They welcome tougher measures to remove from sale objects that are little more than tourist trinkets made in the last few decades.

I do not believe that recently-carved items and the use of raw and poached ivory will be stopped by a universal trading ban on important and ancient cultural artefacts.

With the ongoing debate about Brexit and the government consultation on ivory pending, this

is the time for us to make sure that our voices are heard in parliament.

We as an industry and country have always been great world traders, and this is our opportunity to re-write the rules to ensure that the art and antiques market continues to thrive.

I am heartened to note that many of you have told me you will take part in the forthcoming consultations to make clear the distinction between objects of artistic, historic and cultural significance and the illegal market in poached ivory that we all deplore.

This is an abridged version of Victoria Borwick MP's keynote speech at ATG's Seminar on CITES



Ivory in particular has been the subject of much debate and false trails in the media



Editor's note

Few issues span the antiques business – from the humblest stall at showground fairs to the glitziest stand at *TEFAF* – quite like ivory and other CITES-protected material.

This was the inspiration behind *Antique Trade Gazette's* Seminar on CITES, held on January 19, 2017 at County Hall, overlooking Westminster. The venue and the event's timing were carefully chosen, as the debate over the UK's continued trade in ivory antiques is delicately poised.

We don't have precise figures for the value of UK trade in antiques with CITES-protected materials. But the sheer volume of people who attended the seminar – more than 250 professionals – is testament to the critical nature of this subject.

We hope you find this report useful. The seminar and these notes are part of an ongoing commitment by ATG, together with its partners, to be the platform for debate on the art market's big issues.

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ATG SEMINAR ON CITES

Essentials of CITES: key points

Here we present a summary of the seminar's keynote presentation by **Kim McDonald**, Founder, Taxidermy Law and **Mark Dodgson**, Secretary General of BADA

What is CITES?

The Convention on International Trade in Endangered Species of Wild Fauna and Flora governs cross-border trade agreement between signatory states. With a permanent secretariat in Geneva, CITES holds a Conference of the Parties every three years during which the list of species under protection are reviewed.

Signatory states designate a management authority to issue standardised CITES permits for import, export and re-export. For the UK, this is the Animal and Plant Health Agency (APHA) at their new address of Horizon House, Deanery Road in Bristol. In the United States, it's the US Fish and Wildlife Service.

CITES appendices

The species listed by the Convention are afforded different levels or types of protection. New species are regularly added, so it pays to check.

Appendix I lists species that are the most endangered among CITES-listed animals and plants.

Appendix II lists species that are not necessarily now threatened with extinction, but may become so unless trade is closely controlled.

Appendix III is a list of species included at the

request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation.

CITES is implemented within Europe through two regulations which categorise species into four Annexes, from A-D. These rules apply CITES in a stricter manner than is required by the Convention. For example, the EU's list of Annex A species includes all CITES Appendix I species plus many from Appendix II and III for which the EU has adopted 'stricter measures'.

You can look up the EU species lists at:

gov.uk/guidance/cites-imports-and-exports

The penalties for failing to adhere to the EU regulations are set out in UK law, commonly known as the COTES regulations.

Other acts and regulations that control the trade of flora and fauna in the UK and the US include: The US Endangered Species Act (USESA); The Migratory Bird Treaty Act (MBTA); The African Elephant Conservation Act, the Wild Bird Conservation Act (WBCA); The Wildlife & Countryside Act 1981 and The Conservation of Species & Habitats Regulations 2010.



Kim McDonald, Founder, Taxidermy Law, explains CITES' Annex A

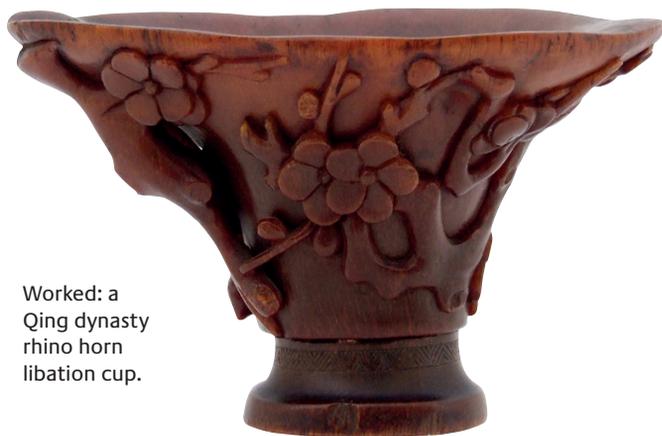


Mark Dodgson, Secretary General, BADA: 'EU rules go further than CITES'

CITES and the antiques trade

Most relevant to the antiques trade are Annex A and B species commonly used in creating works of art such as conch shell, shark and ray skin, coral, elephant ivory, mahogany, rosewood, tortoiseshell (turtle), crocodile skin and whale bone and teeth. Many rare animal species have also succumbed to the taxidermist's art.

The starting point is that the commercial sale of all Annex A species is banned, irrespective of age. However, most works of art are subject to the 'antiques derogation' – and it is this that allows dealers and auctioneers to sell pre-1947 worked specimens. EU member states will also issue commercial sale permits on a case by case basis – known as Article 10 certificates – for some unworked pre-1947 items and some items worked post-1947.



Worked: a Qing dynasty rhino horn libation cup.



Worked: a fully mounted (tanned and lined) tiger skin by Van Ingen & Van Ingen of Mysore.

The Worked Item Derogation

Article 2(w) of EC Regulation 338/97 (865/2006) states that:

“Worked items 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 [before 3 March 1947] and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions.

“Such specimens shall be considered worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose.”

CITES management authorities will ask the following:

- From the style or manufacture or other proof provided by the owner, could this specimen have reasonably been acquired or manufactured/worked prior to 1947?
- Has it been re-worked since that date?
- Has the degree of manufacturing/working significantly altered the specimen from its natural state?
- Does it clearly fall into one of the four categories: jewellery/adornment, art, utility or musical instrument?



Worked: two George III ivory veneered tea caddies.

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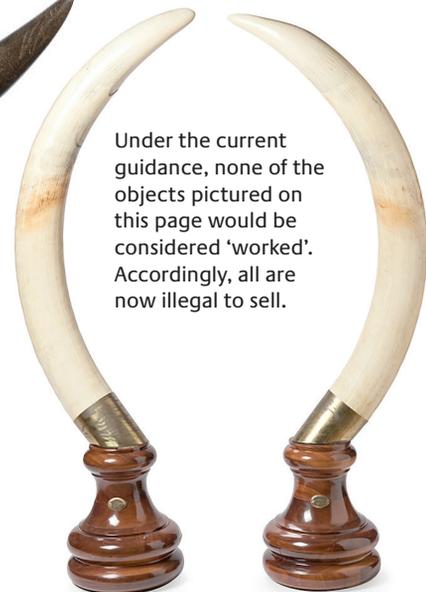
Guidance changes from April 2013

Elements of this part of the law are open to interpretation – and subject to change. New EU guidance on worked specimens was issued to CITES management authorities in April 2013. The Commission's guidance is intended only for internal use by member states' CITES management authorities and is available only on request.

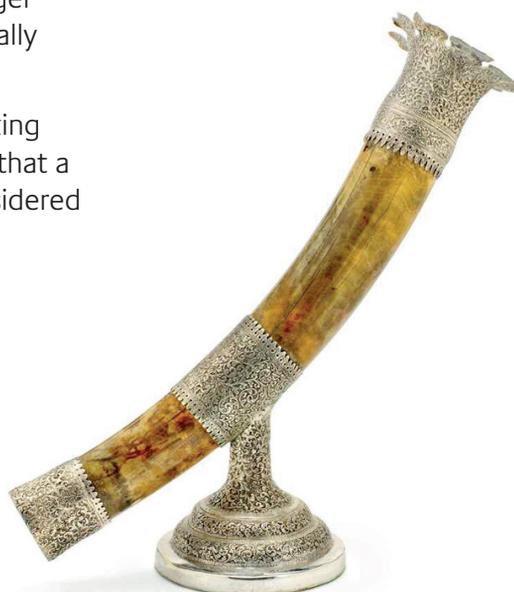
The new guidance means that many more items now require Article 10 certificates before they can be sold, while 'stricter measures' governing the sale of unworked elephant ivory, rhinoceros horn and tiger parts mean that trade in some of these items has effectively been banned.

Clarification on these changes can be sought from APHA. If you require formal legal opinion, this should be sought independently. However, the following items which were previously considered to be worked are now considered not worked and will therefore cannot be commercially traded.

- Antlers or horns, still attached to skull plate and mounted on a wooden plaque.
- Whole marine turtle shells, even if polished and ready for wall mounting.
- Saw fish rostrums, even if mounted.
- Elephant tusks mounted on a base with an object suspended between them, or a whole individual elephant tusk permanently mounted on a base or plaque.
- Whole elephant tusks or sections of tusk where the whole surface has not been fully carved.
- Jewellery where the CITES specimen (eg tiger claw) has been used without being substantially altered.
- Tiger skin without a head and hessian backing but tanned and used as a rug (advice now is that a tiger skin, with or without a head, is not considered worked unless it is tanned and lined).



Under the current guidance, none of the objects pictured on this page would be considered 'worked'. Accordingly, all are now illegal to sell.



Article 10 certificates

An Article 10 certificate (see diagram below) may be required from APHA when an Annex A specimen is used for commercial purposes. To legally sell an Annex B specimen, no Article 10 is required if proof can be provided that the specimen was legally imported into the EU, captive bred within the EU or pre-Convention.

Most Article 10 licences are transaction-specific licences (TSCs) – to be used once when the item is sold. TSCs must be returned to APHA for cancellation once the item is sold (and paid for). You can give the buyer a photocopy as proof of legal acquisition.

Occasionally an object may be given a specimen

specific licence – a ‘passport’ style certificate that stays with the specimen for all transactions. These are unusual in the UK as the specimen must be permanently marked (embedded with a micro-chip) to qualify.

Article 10s: How to apply

Complete as many boxes as possible to avoid a rejected application. Help in filling out the permit accompanies the form but if unsure check with APHA before submitting your application.

1. When filling out the form as an agent use the owner's details but accompany the application with a letter of authority.

Mark with an X for Certificate for commercial activities.

5. If the item incorporates inlay or veneers of the endangered species and it is not possible to estimate its weight, then no need to provide the weight.

4. Give as full a description as possible, noting in particular the date of the object. If possible, attach additional provenance or historical information about the piece. You are strongly advised to include a photograph, although the rules do not strictly require it.
This box should include the three letter code for the type of item. For carved ivory this will be ‘CAR’ or ‘IVC’.

8. This will always be Annex A.

9. For most antiques you will use the source code ‘O’ to indicate that the specimen was taken prior to the Convention.

16. The scientific name of the species is needed here. If you know the CITES Appendix number of the EU Annex letter, then provide it, though it is not strictly necessary.
Providing the exact species name can be difficult. These can be looked up on the online EU list. If you know the common name but cannot identify the precise species then use the family name. Check these from the published lists available on the APHA website.
If some species of a family are listed on Annex A and others are not listed at all (eg types of rosewood) then sell only without a permit if you can demonstrate the item is made from the unlisted species.

10. For most antiques you will not necessarily know the precise country of origin. So it is suggested that you use the source code ‘P/C’ for Pre-Convention.

18. Mark the appropriate box with an X.

19. Mark box ‘b’ with an X.

EUROPEAN COMMUNITY				
APPLICATION	1. Applicant	CERTIFICATE <input type="checkbox"/> <i>Not for use outside the European Union</i>	No	
	Telephone Number	<input type="checkbox"/> Certificate of legal acquisition		
	E-mail address	<input type="checkbox"/> Certificate for commercial activities		
	2. Authorised location for live specimens of Annex A species	<input type="checkbox"/> Certificate for movement of live specimen		
	4. Description of specimens (incl. marks, sex/date of birth for live animals)	Council Regulation (EC) No 338/97 and Commission Regulation (EC) No 865/2006 on the protection of species of wild fauna and flora by regulating trade therein		
		3. Issuing Management Authority UK CITES Management Authority Centre for International Trade - Bristol Horizon House Deanery Road Bristol BS1 5AH Tel: +0044(0)3000 200 301		
		5. Net mass (Kg)	6. Quantity	
		7. CITES Appendix	8. EU Annex	9. Source
		10. Country of Origin		
		11. Permit No	12. Date of issue	
3	16. Scientific name of species	13. Member State of import		
	17. Common name of species (if available)	14. Document No	15. Date of issue	
	18. I hereby certify that the specimens described above:			
	a) <input type="checkbox"/> were taken from the wild in accordance with the legislation in force in the issuing Member State b) <input type="checkbox"/> are abandoned or escaped specimens that were recovered in accordance with the legislation in force in the issuing Member State c) <input type="checkbox"/> are captive born-and-bred or artificially propagated specimens d) <input type="checkbox"/> were acquired in or introduced into the Union in compliance with the provisions of Council Regulation (EC) No 338/97 e) <input type="checkbox"/> were acquired in or introduced into the Union before 1 June 1997 in accordance with Council Regulation (EEC) No 3626/82 f) <input type="checkbox"/> were acquired in or introduced into the Union before 1 January 1984 in compliance with the provisions of CITES g) <input type="checkbox"/> were acquired in or introduced into the issuing Member State before the provisions of Regulations (EC) No 338/97 or (EEC) No 3626/82 or of CITES became applicable in this territory.			
	19. I request a document for the purpose of:			
	a) <input type="checkbox"/> confirming that a specimen to be (re-) exported has been acquired in accordance with the legislation in force on the protection of the species in question b) <input type="checkbox"/> exempting for sale Annex A specimens from the prohibitions relating to commercial activities listed in Article 8.1 of Regulation (EC) No 338/97 c) <input type="checkbox"/> exempting for display to the public without sale Annex A specimens from the prohibitions relating to commercial activities listed in Article 8.1 of Regulation (EC) No 338/97 d) <input type="checkbox"/> using the specimens for the advancement of science/breeding or propagation/research or education or other non-detrimental purposes e) <input type="checkbox"/> authorising the movement within the Union of a live Annex A specimen from the location indicated in the import permit or in any certificate.			
	20. Remarks	I attach the necessary documentary evidence and declare that all the particulars provided are to the best of my knowledge and belief correct. I declare that an application for a certificate for the above specimens was not previously rejected.		
	Name of Applicant	Signature	Place and date	

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Import and export permits information

Annex A and Annex B species will *always* need an import or re-export permit to enter or leave the UK to or from a non-EU country (see diagram below). As the EU regulations treat the EU as a single entity, you do not need an import or export permit in order to move Annex A or B species to another EU member state.

The fees vary between £37 for re-exports of animal products, such as ivory, to £74 for plants, eg rare wood import certificates. All the relevant forms and guidance are available at gov.uk/guidance/cites-imports-and-exports#guidance-documents

The form plus any attachments, photographs and so on can be submitted by post or email. APHA aims to process 90% of completed licence applications within 15 working days and the remainder within 30 working days.

Retrospective applications can be made only in some circumstances. Remember that once issued, the CITES permit is valid for a limited period so check the expiry date.

How to apply

Complete as many boxes as possible to avoid a rejected application. Help in filling out the permit accompanies the form but if unsure check with APHA before submitting your application.

8. Give as full a description as possible, noting in particular the date of the object. If possible, attach extra provenance or historical information about the piece. You are strongly advised to include a photograph, although the rules do not strictly require it. This box should include the three letter code for the type of item. For carved ivory this will be 'CAR' or 'IVC'.

21. The scientific name of the species is needed here. If you know the CITES Appendix number of the EU Annex letter, provide them, but it's not strictly necessary. Providing the exact species name can be difficult. These can be looked up on the online EU list. If you know the common name but cannot identify the precise species then you can try using the family name (eg for ivory, *Elephantidae spp.* rather than *Loxodonta africana* (African) or *Elephas maximus* (Asian)). Check these on the published lists available on the APHA website. If some species of a family are listed on Annex A and others are not listed at all, then you should export without a permit only if you can demonstrate the item is made from the unlisted species. If you cannot be sure, it is better to apply for a permit quoting the higher taxon family name.

EUROPEAN UNION	
APPLICATION	5 1. Exporter/Re-exporter Telephone Number E-mail address
	3. Importer Telephone Number E-mail address
5	5. Country of import
6. Location at which live specimens of Annex A species will be kept:	7. Issuing Management Authority UK CITES Management Authority Centre for International Trade - Bristol Horizon House Deanery Road Bristol BS1 5AH Tel: +0044(0)3000 200 301
8. Description of specimens (incl. marks, sex/date of birth for live animals)	9. Net mass (kg) 10. Quantity
	11. CITES Appendix 12. EU Annex 13. Source 14. Purpose
	15. Country of Origin
	16. Permit No 17. Date of issue
	18. Country of last re-export
	19. Certificate No 20. Date of issue
21. Scientific name of species	
22. Common name of species (if available)	
23. I hereby apply for the permit/certificate indicated above. Remarks (e.g. on purpose of introduction, details of accommodation for live specimens, etc.)	
I attach the necessary documentary evidence and declare that all the particulars provided are to the best of my knowledge and belief correct. I declare that an application for a permit/certificate for the above specimens was not previously rejected.	
Live animals will be transported in compliance with the CITES Guidelines for the Transport and Preparation of Shipment of Live Wild Animals or, in the case of air transport, the Live Animals Regulations published by the International Air Transport Association (IATA).	Signature _____ Name of Applicant _____ Place and date _____

If the species is not indigenous to the UK or was not born here in captivity you should indicate that you are applying for a re-export permit, not an export permit.

9. If the item incorporates inlay or veneers of the endangered species and it is not possible to estimate its weight, then no need to provide the weight.

14. Use the Purpose code 'T' to indicate commercial trade.

13. For most antiques you will use the source code 'O' to indicate that the specimen was taken prior to the Convention.

The export check-list

Before exporting from the UK...

- ✓ Check whether the destination country will allow the species to enter (notably for the United States where African elephant ivory cannot be commercially imported).
- ✓ Check whether the destination country requires an import permit to be applied for in advance. Some countries, such as the US, do not require this. In other countries (such as EU states), arrival at the border unaccompanied by an import permit is an offence.
- ✓ Having made these checks, first apply for your UK re-export permit.
- ✓ If an import permit to the destination is required in advance, then apply for this accompanied with a photocopy of your UK re-export permit. Import permits to third countries will not be issued unless the application is accompanied by the re-export permit.

Before importing into the UK...

- ✓ Check export requirements of the source country. Apply first for the re-export permit from the source country.
- ✓ Only then apply for your UK import permit and remember to include a photocopy of the re-export permit with your application, putting details about the re-export permit into boxes 16 and 17 of your UK import application form.
- ✓ Only once you have both the re-export permit and import permits can you use them to ship the goods to the UK.

The US import check-list

Importing species into and selling in the United States

Details of the primary Federal laws governing the trade in endangered species in the US are available at Department of Fish and Wildlife website fws.gov

These include the Endangered Species Act (ESA), the African Elephant Conservation Act, the Migratory Bird Treaty Act and the Wild Bird Conservation Act. However, individual state laws will also apply.



Special rules apply for ivory. A complete ban on commercial imports of African ivory has operated since July 2013. There are no exceptions to the commercial ban – whether a tiny amount of inlay or a large carving.

In theory, Asian ivory can be imported but since distinguishing between Asian and African ivory is difficult, invasive and expensive, the ban has affected both species of elephant ivory.

Commercial export is allowed provided it can be demonstrated that an item is 100 years old, has not been repaired since December 1973 and was either in the US prior to 1982 or, if imported after that date, it entered via a designated endangered species 'antique port'.

When trading within the US both Federal and State laws apply

There are distinctions between intra- and inter-state sales of ivory, but in essence Federal rules allow the sale of worked items if they are 100 years old, have not been repaired since 1973, were either imported prior to 1990 or if imported after that date, they came in via a designated port accompanied by a re-export permit from the exporting country.

If the ivory forms only part (up to 50% by volume up to a maximum of 200g) of a larger object, then it is permissible to sell pre-1980 worked items.

Stricter restrictions operate in the states of New York, California and New Jersey. In New York, for example, it is lawful to sell objects comprising only

less than 20% ivory by volume and auctioneers and dealers need to apply for a licence to be a seller of ivory.

More information is available in the Fish and Wildlife Questions and Answers document fws.gov/international/pdf/questions-and-answers-african-4d-final-rule.pdf



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Trading in the US, continued

Other endangered species

Imports of antique specimens of endangered species are allowed, provided they have necessary re-export permits from the exporting country. Antique is defined as 100 years old.

Specimens can be imported only via ports designated for endangered species. Make sure you or your customer keep the records relating to this to prove items were legally imported.

A UK re-export permit must accompany importation, and be presented at the border, where your agent should obtain a form 3-177 import declaration.

Make sure the importer retains a copy of the import declaration to demonstrate at a later date that the item was legally imported.

There is an increasing requirement for third party confirmation that a scientific species name is correct. For tortoiseshell – typically made using the shell of the hawksbill sea turtle – this may involve obtaining a certificate from the Natural History Museum.

Published rules suggest that in the case of antiques a higher taxon family name can be used on import applications. This has yet to be confirmed in practice.



The consultation about a ban on the UK ivory trade

The Environment Secretary of State has proposed to ban the sale of all ivory including worked ivory objects made since March 1947 – that is, all ivory objects made during the last 70 years. The Secretary will also consider a wider ban and issues relating to compliance.

The consultation will take the form of a questionnaire, which will be downloadable soon from gov.uk. As with all formal consultations, members of the public will be able to express their views while the antiques trade bodies, led by the British Art Market Federation, are making additional submissions.

Feedback on the Seminar on CITES: reaction on Twitter

You Retweeted
Jeremy Lamond @JeremyLamond · Jan 19
 Great and useful seminar on CITES. Thank you @ATG_Editorial for bringing the trade together on this important issue

You Retweeted
claire rawle @clairerawle · Jan 19
 Excellent day with @ATG_Editorial CITES seminar caught up with loads of people, how's this for view?



Lacy Scott & Knight @LacyScottKnight · 3h
 Thank you @ATG_Editorial & all the guest speakers at yesterday's CITES seminar - extremely useful and informative.

Mark Goodger @HamptonAntiques · 2h
 Thank you @ATG_Editorial for the #cites seminar. Highlight for me was the inspirational @gavinmegaw #AntiqueDealersComeTogether #Heritage

Joe Trinder @TrinderJoseph · 17h
 Congrats and thank you to @n_mcelhatton & team @ATG_Editorial on today's excellent seminar. Just what was needed - bravo to @gavinmegaw too!

Chloe Wood @Chloe_E_Wood · 18h
 @ATG_Editorial CITES conference done. Now on the train home. A HUGE Thankyou to all the speakers and attendees. Some real food for thought!





Left: Question Time for Dealers session. Below: the panel at Question Time for Auctioneers



Your queries answered

At the seminar, parallel question and answer sessions were held for dealers and auctioneers, featuring two separate panels of experts, including lawyers and police authorities. Here we list the questions raised by delegates and summarise the responses given by the experts

GENERAL

Q: In the UK and EU, what proportion of CITES-protected material in an object renders that object subject to CITES?

The panellists: Any amount, as the UK does not have a *de minimis* rule (unlike the US). A violin bow, for example, has a sliver of ivory and if that violin bow was manufactured post-1947, it requires an Article 10. On the other hand, the bow will be classed as 'worked' and if manufactured pre-1947, an Article 10 is not needed.

Case study: A recent case involved an application for the return of an object that was less than 1% ivory. The fact that such a small percentage of ivory was involved was deemed completely irrelevant by authorities.

Q: What obligation is there on the consignor to obtain an Article 10 certificate if the age of an object cannot be proven?

Acceptable proof of age can include purchase

receipts, photographs, newspaper cuttings, old catalogues and an expert's opinion that the item is pre-1947. If no such proof exists, the obligation rests with the consignor to obtain an Article 10.

Q: We deal a lot with mid-20th century furniture made of a variety of rosewood. How can we know which variety needs an Article 10?

The many species of rosewood or *dalbergia* are now listed by CITES. The Brazilian rosewood variety, or *dalbergia nigra*, has a particularly rich hue and was a favourite material for Regency cabinet makers and Scandinavian mid-century modernist furniture makers, as well as manufacturers of musical instruments such as guitars and violins.

However since 1992, Brazilian rosewood has been CITES-listed in the Convention's most protected category – Appendix 1 (EC Annex 'A'). While antiques made of rosewood acquired before 3 March 1947 are exempt from sales controls, under the CITES antiques derogation, furniture made after this time requires an Article 10 certificate for trade purposes.

Auctioneers and dealers are advised to cover

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Question Time continued

themselves completely if they don't know whether the rosewood in question is Brazilian or Indonesian. The safest option is to register the rosewood as *dalbergia nigra* and obtain an Article 10 certificate at the cost of £31.

There is a test that brings out Dalnigrin, the chemical found only in *dalbergia nigra*. But as the test involves drilling through the wood, it tends to be applied only to objects in poor condition.

Q: What authorities do CITES administrators recognise for decisions on materials such as bone, ivory or rosewood?

When exporting overseas, it depends on the national authority with which you are dealing.

The US Fish and Wildlife Service, for instance, will accept verification from the (British) Timber Trade Federation regarding rosewood and may accept a document from other accredited experts, or 'qualified appraisers' as they term it. It will accept verification only from a third party and not anyone involved in the transaction – that is, the importer, exporter or agent.

For transactions in the UK and questions over, for example, the difference between polished bone and ivory, delegates were advised to form connections with experts in trade bodies such as the Guild of Taxidermists or curators at local natural history museums.

Delegates were told that there is no visual way of telling the difference between African and Indian ivory. Only an invasive and costly DNA test could achieve a definitive diagnosis.

Q: What should auctioneers do when, in the course of a house clearance or handling a

deceased estate, they end up in possession of ivory clearly dating from the 1960s and 70s?

If it forms part of a deceased estate, an object can be given to the estate's beneficiaries to consider what they want to do with it. The item could be donated to a museum or if surrendered to police, the object may be used for educational purposes.

Delegates heard that Border Force is looking to create a process whereby items can be surrendered for disposal by a Border Force office, to take them out of circulation.

Auctioneer body NAVA Propertymark is also exploring a formal route for disposal of Post-war ivory that may enter auction rooms.

Case study: Delegates were warned against the reuse and abuse of Article 10s, with a case involving the successful prosecution of an individual who was advertising taxidermy birds of prey. The seller applied for six permits, one for each species, and was convicted for using them to sell more than 200 items.



There is no visual way of telling the difference between African and Indian ivory

IMPORT AND EXPORT

Q: What is the relevance of the 1947 cut-off date outside the EU?

The 1947 milestone is a purely European concept. In markets such as the US and China, the definition of antique ivory is 100 years.

Q: Can I still export such items to mainland China, now that the country has announced a ban on 'all trade in ivory'?

On 30 December 2016, China announced it would



ban all domestic ivory trading and processing by the end of 2017. Information on whether this involves antique ivory is conflicting.

The best advice, currently, is to let the buyer in China do the leg work in that country – not least because it is easier from a linguistic point of view.

Q: What can I do if Border Force seizes an object from me?

Border Force will sometimes forgive an ‘honest mistake’, but not more than once. If Border Force decides to confiscate an item, you have options:

1. Accept Border Force’s decision and loss of item.
2. Make an application to contest the decision, which will be heard in a magistrate’s court. Both sides can plead their case and a decision will be made based on whether the item was liable to seizure because it is subject to CITES restrictions and if Border Force has followed the correct processes.
3. If the confiscation was legitimate but the trader would still like their goods returned, an application for ‘restoration of ownership’ of the goods can be made. Download a form from the gov.uk website* and when filled in, send it back to Border Force.

A decision will be made on returning the object, with possibly a penalty payment to pay.

* gov.uk/customs-seizures

BREXIT & TRADE IN THE US

Q: There are currently no CITES certification requirements for transporting items through the EU. Will Brexit impact this?

Clearly the regulations on the control of trade in endangered species governing the sale of species in the UK – which stem from the EU Wildlife Trade Regulations – will have to change with Brexit.

There are, however, many in the legal and political

professions who believe the UK will adopt a post-Brexit regulatory framework that is very similar to the current regime.

Currently, the UK laws on endangered species are typically stricter than those in other EU countries, for example ‘special measures’ in effect regarding rhino horn and elephant ivory.

The issue of import and re-export permits will, perhaps, be most pressing. At present it is difficult to predict whether UK dealers and auctioneers will be required to apply for permits to move CITES species in and out of the EU. This will depend on whether we have a so-called ‘hard’ or ‘soft’ Brexit.

One practical issue is that APHA, which already has a heavy work load, is unlikely to want to absorb more administration surrounding applications.



The best advice is to let the buyer in China do the legwork in that country

Q: As owners of ivory works of art in the US (and now France) are finding it difficult to sell their collections following changes in the law, is it possible to sell on their behalf in the UK?

The panels deemed it currently very difficult to move legal and antique ivory items from the US to the UK.

Commercial export is allowed but only if it can be demonstrated that item is 100 years old, has not been repaired since December 1973 and was either in the US prior to 1982 or, if imported after that date, it entered via a designated endangered species ‘antique port’.

As historic import paperwork seldom survives, many items do not have sufficient documentation.

Meanwhile the situation in France remains in a state of flux.



ATG SEMINAR ON CITES

Question Time continued

THE PROSECUTION PROCESS

Q: What triggers the National Wildlife Crime Unit and police forces to get involved in a trade relating to CITES?

The National Wildlife Crime Unit is a small team of former police officers, receiving much of its information from the public and other sources. The unit does not speculatively search for breaches of CITES regulations. Delegates were heartened to hear that auctioneers and dealers are very rarely found guilty of breaking CITES regulations.

When the unit does identify possible deliberate CITES breaches or when an individual or firm have made too many 'honest mistakes', it will investigate in more depth to assist local police forces and give a national perspective.

Investigations can be initiated retrospectively, after a trade or auction sale, with contact made with the buyer as well as the seller.

Q: Can you talk us through the steps in the prosecution process?

1. INTELLIGENCE GATHERING

The process starts when the police receive intelligence about activity that may contravene CITES. The NWCU, if tipped off about illegal trade of an object such as an unworked tusk, will contact the relevant local police force, who in turn will contact the seller – be it an auctioneer, a dealer and so on – to ask to view the object(s).

2. SEIZURE OF OBJECT(S)

For more blatant breaches, a warrant to seize objects and documents for investigation will be

produced. The NWCU and the police consult wildlife inspectors and other experts, including auctioneers and dealers, to identify their issues with an object. This may be followed by an invitation to attend a police station to be interviewed under caution.

3. INVESTIGATION

The police will complete their investigation and seek advice from the NWCU and possibly the CPS.

4. SUMMONS

If the decision is to prosecute, a 'postal requisition' (formerly known as a 'summons') will be sent inviting the recipient to attend court on a date about three weeks after delivery of the letter.

5. AT COURT

If a guilty plea is entered at the first hearing, the case may end at this stage, depending on how serious the CITES breach is, the value of the items involved and other factors.

If the defendant decides to plead not guilty, cases relating to a failure to obtain an Article 10 certificate can be dealt with by magistrates courts or the Crown Court, where the case will be adjourned for two weeks for a date to be fixed.

The prosecution process is a lot quicker than in the past, as the courts want to reduce the amount of hearings. So if an adjournment to get legal advice is requested, this may not be granted.

“

If a guilty plea is entered at the first hearing the case may end at this stage



Q: How often and in what circumstances do the police use scientific testing?

The police and the NWCU do not often resort to scientific tests, partly due to their cost and invasive nature. Expert advice, from APHA and from the antiques sector is often the first port of call.

Scientific tests may be commissioned, however, in the event of a dispute*.

Delegates heard that authorities will endeavour to take a common sense approach and that it is rarely necessary to prosecute a dispute such as this. If a dispute does reach court, the prosecution will need to prove the object has been illegally traded beyond all reasonable doubt.

There may be times, delegates were advised, where deciding not to sell or trade an object is the right decision if the provenance and age are unclear, especially for objects dating close to 1947.

***Case study:** Delegates were shown a tiger skin rug confiscated by the Met Police force as an example. It had been advertised as pre-1947 but an APHA inspector believed it dated from post-1947. At this point a carbon dating test was used to support APHA's conclusion.

Q: Do professionals tend to get prosecuted under CITES more than the general public and if so, why?

The decision to prosecute is down to the Crown Prosecution Service (CPS), not the NWCU. Those who are prosecuted tend to be at either ends of the

'compliant' scale, with people who do not want to abide by the CITES regulations at one end.

Delegates were told that larger auction houses are, because of their size, expected to have systems in place to ensure they have obtained Article 10 certificates when appropriate.

The NWCU tends to pursue, not art and antiques professionals, but people who trade outside the arena of auctions and dealerships – often selling online with items sent via the post to China and the US, ignoring or ignorant of the regulations.



Delegates were advised to be truthful about a mistake and not to 'cover their tracks'

Q: If I get prosecuted, how can I extract myself from the process?

Each case turns on its own facts. The panellists agreed that people who have made a single 'honest mistake' are not likely to end up in court. Delegates were advised to be truthful when an error is made and not be tempted to 'cover their tracks'.

If a prosecution is launched, it may influence proceedings to show contrition and provide evidence that your auction house or dealership has now got an effective CITES-compliant system in place.

The ultimate decision makers, the CPS, will take account of this, as well as the public interest, when considering whether to prosecute.



ATG SEMINAR ON CITES



‘Tell your positive story’

To close the seminar, reputation specialist **Gavin Megaw**, managing director, corporate and brand at Hanover PR, had some strong advice for the trade on communicating around endangered species

You do amazing work. You add value to your trade and your clients. You help the local and national economy. You tell stories about objects from our history, something of great importance to our country.

But as a trade, you fail to tell this positive story and are being dragged onto the wrong side of a debate that some might believe connects you to the modern ivory trade.

Perception is often different from reality. Be aware that you do not own your reputation. Everyone else does. Your reputation is what exists in public about you and your industry.

In my assessment of your collective reputation, the public profile of your world, mostly seen on TV, is positive, expert, respected.

Explore social media and the data is interesting. Mentions of ‘ivory trade’ and ‘antiques’ rose from a handful in 2015 to over 50 in 2016. That may seem bad, but it isn’t a huge problem – yet.

The phrase ‘ivory antiques’ gets a lot of play on Twitter. But very rarely is it used with emotive hashtags, such as #Elephant.

Yet the fact is, ivory is not going away as an issue. More celebrities are rightly going to back the anti-poaching campaigns.

If you don’t do anything, it makes it harder to argue the relevance of historical items that may contain ivory. Here are some actions to take now:

- ✓ State your stance on endangered species and abhorrence of modern poaching wherever possible but particularly on your website.
- ✓ Back an anti-poaching campaign – and then talk about that support on your website.
- ✓ Go early and deliver what you think the 2017 government consultation will recommend. This shows you are willing to move.
- ✓ Find more advocates from outside your sector. You have one person making the ivory case publically: Victoria Borwick MP. She needs more support – on social media, in letters to MPs and by completing the consultation questionnaire.
- ✓ Talk to the young historians forever on the airwaves these days. They value the historical role antiques play in telling stories. Work with them as advocates to make your messages stick.

To sum up: Don’t sit back and allow people to change the perception of your sector. Take action, get on the front foot and make the case.

ANTIQUES TRADE
gazette
THE ART MARKET WEEKLY

The trade in endangered species is governed by the Convention on International Trade in Endangered Species of Wild Flora and Fauna, better known as CITES.

'Worked' antiques, however, enjoy an exemption from the controls. This is known as the 'antiques derogation'. This states that an item shall be exempt from normal sales controls if it was acquired prior to 1947 and has been significantly altered from its natural raw state for jewellery, adornment, art, utility or musical instrument before that date. Most taxidermy qualifies under the derogation too.

However, in May 2013, new guidance on the interpretation of the term 'worked' was issued by the European Commission. Many more items now require licences (a so-called Article 10 certificate) from the Animal and Plant Health Agency (APHA) before they can be sold. Meanwhile 'stricter measures' governing the sale of unworked elephant ivory, rhinoceros horn and tiger parts mean that trade in some of these items has effectively been banned. Here is a brief summary of some of the changes plus some examples.

KEY

-  Legal to sell within the EU. CITES 'Annex A' listed species are subject to the usual rules.
-  Illegal to sell regardless of age. Certificates will not be issued.
-  Can be sold but licences or pre-sale approval documentation will be required.

RHINO HORN



Strict rules surround the sale and export of rhino horn but it is still legal to sell 'worked' items acquired or prepared prior to 1947.

Providing they were 'worked' before 1947, taxidermy rhino heads are okay to sell, as are some of the other items pictured here – a libation cup, a string of beads and a turned bowl. Whip and dagger handles and knobkerries are also considered worked.

What cannot be sold regardless of age are uncarved rhino horns including those mounted in silver as inkwells, clocks etc, or those mounted as big game trophies on or off shields.



TIGER

The new rules have outlawed the sale of tiger claw jewellery – a staple of the colonial period – even when embellished with gold, silver and precious stones.



The May 2013 guidance has also tightened up the sale of tiger skins. Even when worked by a respected taxidermist such as Van Ingen & Van Ingen of Mysore, these can only be sold when they have been tanned and lined. Many skins include claws but when still part of the skin they are considered 'worked'.



CETACEA ETC

Items of scrimshaw (carved or incised whalebone and whale teeth) are considered 'worked' and can be sold freely within the EU subject to the usual rules. So too can objects fashioned from the shells of marine turtles, commonly known as 'tortoiseshell'.



However, the new rules mean that CITES licences are required for sawfish rostrums, whole marine turtle shells, 'raw' narwhal tusks and sperm whale teeth whatever their age. They can be sold but only when accompanied by an Article 10 certificate from APHA. Certificates cannot be obtained retrospectively.



ANTLERS & HORNS

The vast majority of mounted horns and antlers (even big game trophies) do not pose a problem – unless the species is on the CITES 'special status' list. It is important to do some homework. The springbok, for example, is not on the CITES list so the horns **below right** can be sold. The horns **below left** are from a red deer stag and present no problem. However, those **below centre** are from the Bawean deer, a critically endangered species of deer found only in the island of Bawean in Indonesia. These would require a certificate to be sold at auction.



OTHER SPECIES



It is only the parts of species listed on CITES 'Annex A' list that are problematic. The items pictured here (a silver cocktail shaker with a warthog tusk handle and three silver-mounted cow horn beakers) are permissible as the species used are not on the endangered list.



ATG's QUICK GUIDE TO CITES

ELEPHANT IVORY



The definition of what constitutes 'worked' elephant ivory within the European Union has changed significantly under the rules introduced in 2013.

For tusks or sections of tusks to be considered 'worked' they now need to be fully carved or shaped into a new form such as a paper turner. Even when tusks are polished and mounted as part of a decorative or functional object, they no longer qualify as worked.

Four of the items pictured here would no longer qualify as the tusks essentially remain in their natural state. In short, if it looks like a raw tusk, it might be a problem.

The tusk carved across its whole surface and the section of tusk fashioned as a brush pot are both permissible, as are tea caddies veneered in sheets of ivory. Painted sheets of ivory, as seen in a portrait miniature, are also considered worked.

US laws on selling ivory changed significantly in 2014. New regulations banned the commercial import of African ivory of any age while limiting the domestic and export trade to antiques defined as objects more than 100 years old.



ROSEWOOD

The term 'rosewood' can refer to any of a number of richly hued timbers and not all species are problematic*.

East Indian rosewood (*Dalbergia latifolia*) and Indian rosewood (*Dalbergia sissoo*) are listed by CITES in categories that refer only to raw timber rather than finished furniture. But Brazilian rosewood (*Dalbergia nigra*), the favourite of English cabinetmakers in the Regency period and the Scandinavian modernists, is now threatened by habitat loss and was CITES-listed in Annex A, Appendix I in 1992 and thus subject to tight controls.

While most pieces of antique rosewood furniture enjoy an exemption under the 'antiques derogation', any furniture made after 1947 needs to be accompanied by an Article 10 certificate issued by APHA in Bristol in the event of its sale (or advertising for sale). Certificates cannot be obtained retrospectively.

*Determining the precise species of rosewood can be difficult. It is possible to send a small sample of the wood for laboratory testing at the Royal Botanic Gardens, Kew (at a cost of around £120), but typically this is an invasive procedure unsuitable for furniture or works of art.



USEFUL INFORMATION

Article 10 certificates and import and export permits for wildlife specimens are available from CITES management team at the Animal and Plant Health Agency (APHA) Centre for International Trade.

Current prices:

Article 10 certificates **£31**

Import permits (outside the EU only): For animal species **£67**; for plant species **£74**

Export and re-export permits (outside the EU only): for animal species **£37**, For plant species **£59**

CITES Management Team
Animal and Plant Health Agency
Horizon House, Deanery Road
Bristol, BS1 5AH
0117 372 3700
wildlife.licensing@apha.gsi.gov.uk

Further guidance on applications at gov.uk/guidance/cites-imports-and-exports