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August 6, 2020

**Re: Petition to Certify China Under the Pelly Amendment for Diminishing the Effectiveness of CITES for Ongoing Trade in Imperiled Pangolins**

Dear Secretary Bernhardt and Assistant Director Alvarez,

The Center for Biological Diversity, the International Environmental Law Project, and Environmental Investigation Agency UK (collectively, “Petitioners”) submit this petition requesting certification of the People’s Republic of China (“China”) pursuant to the Pelly Amendment of the Fishermen’s Protective Act (“Pelly,” or “Pelly Amendment”).<sup>1</sup>

Specifically, Petitioners seek certification that China is “diminish[ing] the effectiveness”<sup>2</sup> of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES” or “Convention”)<sup>3</sup> through illegal and excessive trade of eight gravely imperiled pangolin species threatened with extinction. Following certification, the Secretary of the Interior should recommend trade sanctions against China under Pelly.<sup>4</sup> In the absence of immediate corrective action, trade sanctions are necessary to induce China’s compliance with CITES.

As described below, widespread demand in China and the Chinese government’s failure to adopt and fully enforce bans on pangolin trade, possession, and use is driving illegal trade and, in turn, pushing pangolins toward extinction. After decimating local pangolin populations, the Chinese market for pangolin scales and meat shifted to populations in other countries, particularly

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<sup>1</sup> 22 U.S.C. § 1978. We ask that the Secretary consider this request to be a formal petition for agency action pursuant to the Administrative Procedure Act (“APA”). 5 U.S.C. § 553(e). Petitioners also note that China is still under a Pelly certification, issued in 1993, for trade in tiger bone and rhinoceros horn.

<sup>2</sup> 22 U.S.C. § 1978(a)(2).

<sup>3</sup> Convention on International Trade in Endangered Species of Fauna and Flora, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 (entered into force July 1, 1975) [hereinafter, “CITES”].

<sup>4</sup> 22 U.S.C. § 1978(a)(4).

in Africa.<sup>5</sup> As a result, pangolins are the most trafficked mammal in the world and are facing extinction if trade continues at current levels.<sup>6</sup>

In response to the current pandemic and early suggestions that pangolins may have played a role, China has announced several decisions aimed at increasing pangolin protections, with much media fanfare.<sup>7</sup> While helpful, these decisions fail to provide all the legal protections or the enhanced enforcement mandates necessary to end pangolin trade and demand in China and do not rectify China's CITES violations. For example, China's recent decision to upgrade the status of some species of pangolins is laudable, as it allows increased penalties for illegal pangolin trade.<sup>8</sup>

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<sup>5</sup> Daniel W.S. Challender et al., *International Trade and Trafficking in Pangolins, 1900–2019*, in PANGOLINS 259 (Academic Press 2020).

<sup>6</sup> Daniel W.S. Challender et al., *Scaling up Pangolin Conservation*, IUCN SSC Pangolin Specialist Group Conservation Action Plan, ZOOLOGICAL SOCIETY OF LONDON (2014); Erica Goode, *A Struggle to Save the Scaly Pangolin*, N.Y. TIMES (March 30, 2015) <https://www.nytimes.com/2015/03/31/science/a-struggle-to-save-the-scaly-pangolin.html>.

<sup>7</sup> The precise causal chain leading to SARS-CoV-2 is still being researched, and scientists are uncertain of the role, if any, a pangolin might have played in the spillover of the disease to people. Kangpeng Xiao et al., *Isolation of SARS-CoV-2-related Coronavirus from Malayan Pangolins*, 583 NATURE 286 (2020), <https://www.nature.com/articles/s41586-020-2313-x>; Xingguang Li et al., *Evolutionary History, Potential Intermediate Animal Host, and Cross-Species Analyses of SARS-CoV-2*, 92 JOURNAL OF MEDICAL VIROLOGY 602 (2020), <https://pubmed.ncbi.nlm.nih.gov/32104911/>; Kristian G. Andersen et al., *The Proximal Origin of SARS-CoV-2*, 26 NATURE MEDICINE 450 (2020), <https://www.nature.com/articles/s41591-020-0820-9>. However, the research has indicated that (1) pangolins may have served as an intermediary given genetic similarities between SARS-CoV-2 RBD and coronavirus samples from pangolins, *id.*, and (2) confiscated pangolins in China were documented as carrying coronaviruses and other viruses. Ping Liu et al., *Viral Metagenomics Revealed Sendai Virus and Coronavirus Infection of Malayan Pangolins (Manis javanica)*, 11 VIRUSES 979 (2019), <https://www.mdpi.com/1999-4915/11/11/979/htm?smid=nytcore-ios-share>; Xiao et al. (2020); Tao Zhang et al., *Probable Pangolin Origin of SARS-CoV-2 Associated with the COVID-19 Outbreak*, 30 CURRENT BIOLOGY 1578 (2020), <https://www.sciencedirect.com/science/article/pii/S0960982220303602>. Because a wide range of pangolin samples from animals confiscated in countries of origin tested negative for five viral families including coronaviruses, the risk of disease transmission from pangolins appears to increase along the supply chain.

<sup>8</sup> See State Forestry & Grassland Admin., *Authoritative Release: Announcement of the State Forestry and Grassland Bureau (No. 12 of 2020) (Pangolin Adjusting Protection Level)* (June 5, 2020), <https://www.forestry.gov.cn/main/72/20200605/141226066456941.html>; State Forestry & Grassland Admin., *Annex to Authoritative Release: Announcement of the State Forestry and Grassland Bureau (No. 12 of 2020) (Pangolin Adjusting Protection Level)* (June 5, 2020), [https://www.forestry.gov.cn/html/main/main\\_72/20200605141226066456941/file/20200605153110691216369.pdf](https://www.forestry.gov.cn/html/main/main_72/20200605141226066456941/file/20200605153110691216369.pdf). Over the years, the Chinese government has issued several legal amendments, administrative orders, and judicial decisions relating to or otherwise affecting pangolins. See, e.g., State Forestry & Grassland Admin., *SFA Notice [1993] No 48: Notice of*

Without enhanced enforcement, however, this change is of limited value. Further, despite media reports that China had removed pangolin scales from its official Traditional Chinese Medicine (“TCM”) Pharmacopeia, the revised 2020 Pharmacopeia continues to list pangolin as an ingredient in at least eight patented TCM formulas.<sup>9</sup> This is not a “ban” on pangolin scales in TCM.<sup>10</sup> And, like the species upgrade, this measure fails to rectify China’s longstanding record of inadequate enforcement. Indeed, pangolin seizures—the vast majority of which are destined for China—have drastically increased in recent years, demonstrating an ongoing market and demand in China, notwithstanding CITES’s ban on commercial pangolin trade.<sup>11</sup>

China has not taken the necessary steps to stop the continued trade and consumption of pangolin parts and derivatives within its borders. Until China bans the sale, use, and possession of pangolin parts and derivatives for TCM purposes, it invites sustained domestic commerce and international trade. And until China fully enforces CITES’s ban on international, commercial trade, pangolin parts will continue to pour over its borders. China’s persistent refusal to fully ban and address its pangolin trade and domestic consumption violates and diminishes the effectiveness of CITES and is causing the extinction of pangolins.

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*the approval of some endangered wildlife with special state protection* (1993); Supreme People’s Court and Supreme People’s Procuratorate, *Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Smuggling, Article 10* (September 10, 2014), [https://www.spp.gov.cn/zdgz/201409/t20140910\\_79908.shtml](https://www.spp.gov.cn/zdgz/201409/t20140910_79908.shtml); see also CITES, SC70 Doc. 27.4, National Ivory Plans Process: Report of the Secretariat, at Annex 7: Review Report on the Implementation of China’s Illegal Ivory Law Enforcement and the National Ivory Action Plan (October 2018), <https://cites.org/sites/default/files/common/prog/niaps/China%20E-SC70-27-04-A7.pdf> (describing decision of the Supreme People’s Court and Supreme People’s Procuratorate); State Forestry & Grassland Admin., *Method for Assessing the Value of Wild Animals and Their Products (Order No. 46)* (April 12, 2017), <https://www.forestry.gov.cn/main/146/20171204/1053751.html>. The resulting scheme may be sufficiently clear to Chinese government officials, but it remains opaque to many in the international community. To facilitate a common understanding of Chinese regulation of pangolins, we urge China to issue a comprehensive explanatory notice to the CITES Secretariat, as it has done in the past on other matters. See, e.g., CITES, *Notification to the Parties Concerning China, Urgent Measures Regarding Wildlife Trade Regulation (No. 2020/018)* (March 5, 2018), <https://cites.org/sites/default/files/notif/E-Notif-2020-018.pdf>.

<sup>9</sup> Environmental Investigation Agency, *Despite the Headlines, China’s Government Still Promotes Pangolin Scales in Traditional Medicines* (June 23, 2020), <https://eia-international.org/news/despite-the-headlines-chinas-government-still-promotes-pangolin-scales-in-traditional-medicines/>.

<sup>10</sup> See Elizabeth Claire Roberts, *Banned: No More Pangolin Scales in Traditional Medicine, China Declares*, MONGABAY (June 10, 2020), <https://news.mongabay.com/2020/06/banned-no-more-pangolin-scales-in-traditional-medicine-china-declares/>.

<sup>11</sup> United Nations Office on Drugs & Crime, *Wildlife Crime: Pangolin Scales*, at 66 (2020), [https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World\\_Wildlife\\_Report\\_2020\\_9July.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf) [hereinafter, “UNODC 2020 Report”].

The Pelly Amendment was designed for situations like this. China’s conduct poses a dual threat: It menaces the survival of pangolins and the integrity of CITES. Congress contemplated certification under Pelly in these circumstances. Now is the time to act.

### I. Pangolins Are Gravely in Danger of Extinction.

There are eight pangolin species in the world, four in Asia and four in Africa, and all are now threatened with extinction due to international trade. The IUCN has assessed three pangolin species as “Critically Endangered,” three as “Endangered,” and two as “Vulnerable.”<sup>12</sup> See Table 1. The threat to pangolins appears to be increasing: in its most recent assessment in 2019, IUCN moved three pangolin species into a more serious threat category.<sup>13</sup> The Chinese pangolin, which inhabits China and other Asian nations, is perhaps the most endangered, as scientists predict an 80% decline in the already-decimated population over the next 21 years.<sup>14</sup>

**Table 1: IUCN RedList Assessments for the Pangolin Species**

Common Name	Scientific Name	IUCN Assessment	CITES Appendix
Chinese pangolin	<i>M. pentadactyla</i>	Critically Endangered	I
Sunda pangolin	<i>M. javanica</i>	Critically Endangered	I
Philippine pangolin	<i>M. culionensis</i>	Critically Endangered	I

<sup>12</sup> Challender et al., *Manis pentadactyla*. *The IUCN Red List of Threatened Species 2019*: e.T12764A168392151, (2019a) (errata, 2020), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12764A168392151.en>; Challender et al., *Manis javanica*. *The IUCN Red List of Threatened Species 2019*: e.T12763A123584856 (2019b), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12763A123584856.en>; Schoppe et al., *Manis culionensis*. *The IUCN Red List of Threatened Species 2019*: e.T136497A123586862 (2019), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T136497A123586862.en>; Mahmood et al., *Manis crassicaudata*. *The IUCN Red List of Threatened Species 2019*: e.T12761A123583998 (2019), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12761A123583998.en>; Pietersen et al., *Phataginus tricuspis*. *The IUCN Red List of Threatened Species 2019*: e.T12767A123586469 (2019a), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12767A123586469.en>; Nixon et al., *Smutsia gigantea*. *The IUCN Red List of Threatened Species 2019*: e.T12762A123584478 (2019), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12762A123584478.en>; Pietersen et al., *Smutsia temminckii*. *The IUCN Red List of Threatened Species 2019*: e.T12765A123585768 (2019), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12765A123585768.en>; Ingram et al., *Phataginus tetradactyla*. *The IUCN Red List of Threatened Species 2019*: e.T12766A123586126 (2019), <https://dx.doi.org/10.2305/IUCN.UK.2019-3.RLTS.T12766A123586126.en>.

<sup>13</sup> IUCN SSC Pangolin Specialist Group, *IUCN Red List update highlights need for concerted conservation action for pangolins* (Dec. 23, 2019), <https://www.pangolinsg.org/2019/12/23/iucn-red-list-update-highlights-need-for-concerted-conservation-action-for-pangolins/>.

<sup>14</sup> Challender (2019a), *supra* note 12.

Indian pangolin	<i>M. crassicaudata</i>	Endangered	I
White-bellied pangolin	<i>M. tricuspis</i> <sup>15</sup>	Endangered	I
Giant ground pangolin	<i>M. gigantea</i>	Endangered	I
Temminck’s pangolin	<i>M. temminckii</i>	Vulnerable	I
Black-bellied pangolin	<i>M. tetradactyla</i>	Vulnerable	I

All species of pangolins are threatened primarily by international trade as well as habitat destruction.<sup>16</sup> As detailed below, pangolins are consumed for their scales, which are believed to have medicinal properties in TCM, and their meat, which is considered a delicacy. Recognizing this threat, in 2016, the CITES Parties voted to include all pangolins in CITES Appendix I. China is the primary source of demand for pangolins.<sup>17</sup>

## II. The Pelly Amendment Is Designed to Prevent Foreign Countries from Undermining International Wildlife Agreements.

The Pelly Amendment provides a powerful mechanism for identifying and taking action against foreign countries that contravene or undermine wildlife treaties to which the United States is a party. Under the Pelly Amendment, if the Secretary of the Interior “finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary . . . shall certify such fact to the President.”<sup>18</sup> Significantly, the Pelly Amendment does not require a showing of direct state responsibility for such trade. Pelly defines an “international program for endangered or threatened species” to mean “any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.”<sup>19</sup>

Pelly further requires the Secretary of the Interior to “periodically monitor,” “promptly investigate,” and “promptly conclude” such investigation of “activities of foreign nationals that may affect” international programs.<sup>20</sup> The present petition demonstrates that China is diminishing the effectiveness of CITES, an “international program for endangered or threatened species,” through significant, continued trade of pangolins.

Following certification by the Secretary, “the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of *any products* from

<sup>15</sup> The IUCN includes the white-bellied pangolin and black-bellied pangolins in the genus *Phataginus* and the giant ground and Temminck’s pangolin in the genus *Smutsia*.

<sup>16</sup> See IUCN assessments, *supra* note 12.

<sup>17</sup> See UNODC 2020 Report, *supra* note 11, at 70 (“Based on seizures, most pangolin scales are destined for traditional medicine use in China, followed by other Southeast Asian countries.”).

<sup>18</sup> 22 U.S.C. § 1978(a)(2) (emphasis added).

<sup>19</sup> *Id.* § 1978(h)(4).

<sup>20</sup> *Id.* § 1978(a)(3)(A)-(C).

the offending country for any duration as the President determines appropriate.”<sup>21</sup> Import bans under the Pelly Amendment are not limited to a particular class of products. So long as the ban is consistent with the General Agreement on Tariffs and Trade and associated World Trade Organization agreements, courts defer to the President’s decision.<sup>22</sup> Accordingly, the Pelly Amendment provides considerable leverage to “obtain commitments of future compliance” with international agreements.<sup>23</sup>

### **III. CITES Is a Critical Source of Protection for Pangolins.**

As the primary global treaty addressing trade in wildlife, CITES’s cornerstone rules are critical to pangolins’ survival. As detailed below, in addition to CITES’s prohibition on commercial trade in Appendix I species and its requirement to deter illegal trade through effective enforcement, the Parties to the Convention have recently adopted more aggressive measures specific to pangolins.

#### **A. CITES Bans International, Commercial Trade for Appendix-I Species and Requires Enforcement.**

Under CITES, over 36,000 species are listed in the three Appendices.<sup>24</sup> The Appendix designation hinges on the degree of the species’ imperilment. As a result, each Appendix is associated with different rules governing permissible trade.

Only Appendix I is at issue in this petition. When a species is listed on Appendix I, trade is only permissible if the importing country determines that the specimen will not be used for primarily commercial purposes, among other requirements.<sup>25</sup> Effectively, Appendix I listing bans commercial trade. As a result, all international, commercial trade in pangolin specimens and the subsequent distribution in Chinese markets, including for consumption as either medicine or food, violates and diminishes the effectiveness of CITES.

CITES also commands Parties to take enforcement actions in the event of illegal trade. Specifically, Article VIII of CITES provides that the “Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation

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<sup>21</sup> *Id.* § 1978(a)(5) (emphasis added).

<sup>22</sup> *Id.*; see also *Florsheim Shoe Co. v. United States*, 19 C.I.T. 295, 296 (1995) (approving a prohibition on importation of all wildlife products from Taiwan, even though the violation involved only tigers and rhinoceroses).

<sup>23</sup> *Japan Whaling Ass’n v. Am. Cetacean Soc.*, 478 U.S. 221, 222 (1986).

<sup>24</sup> CITES, *The CITES Species*, <https://www.cites.org/eng/disc/species.php>.

<sup>25</sup> CITES, 27 U.S.T. 1087, art. III, ¶¶ 3(c), 5(c). In addition, a state of import may not issue an import permit unless it has independently determined that the trade will not be detrimental to the survival of the species. For its part, a state of export may not issue an export permit unless it determines the trade will not be detrimental to the survival of the species and the specimen was legally acquired.

thereof.”<sup>26</sup> Under CITES, appropriate measures “shall include measures: (a) to penalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens.”<sup>27</sup> In other words, CITES requires, at a minimum, confiscation of illegally traded specimens and penalization of the underlying conduct.

#### **B. The CITES Parties Have Adopted Special Measures in Response to the Pangolin Crisis.**

In 2016, at the 17th Conference of the Parties (“CoP”), the CITES Parties developed a comprehensive suite of recommendations designed to complement the ban on commercial trade in pangolin species with concrete domestic actions. Specifically, through Resolution Conf. 17.10, the CoP urged all Parties to (1) adopt national legislation with deterrent penalties to address illegal trade of pangolins, (2) ensure strict enforcement control vis-à-vis illegal trade in pangolins, (3) strengthen inter-agency and international cooperation designed to combat the illegal pangolin trade, (4) ensure adequate control of existing pangolin stockpiles, and (5) reduce demand.<sup>28</sup> Together with the Convention’s core rules prohibiting commercial trade in Appendix I species and requiring enforcement of violations, these supplementary measures are critical to ensuring that international trade does not drive pangolins to extinction.

#### **IV. China’s Domestic Pangolin Markets, Illegal Trade, and Inadequate Regulation and Enforcement Violate and Diminish the Effectiveness of CITES.**

China is responsible for diminishing CITES’s effectiveness and pushing pangolins to the brink of extinction in two fundamental ways. First, China is the primary source of demand for pangolin products, catalyzing poachers, traders, and retailers to supply these products in violation of CITES. Second, the Chinese government is failing to take adequate regulatory, enforcement, and other action to combat this trade and to reduce domestic demand. These actions and omissions violate and diminish the effectiveness of CITES and are driving the eight pangolin species to extinction.

#### **A. Flourishing Domestic Markets in China for Pangolin Parts and Derivatives Drive Illegal Trade, Diminishing CITES’s Effectiveness.**

China is the center of the global trade network in both pangolin meat and pangolin scales.<sup>29</sup> China constitutes the primary source of demand and participates in the supply chain: Chinese consumers are willing to pay exorbitant sums for pangolin products, and trafficking networks to

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<sup>26</sup> *Id.* at art. VIII, ¶ 1.

<sup>27</sup> *Id.* at art. VIII, ¶ 1(a)-(b).

<sup>28</sup> CITES, *Resolution Conf. 17.10 (Rev. CoP18), Conservation of and trade in pangolins*, ¶ 1(a)–(c) (2019), [https://www.cites.org/sites/default/files/document/E-Res-17-10\\_0.pdf](https://www.cites.org/sites/default/files/document/E-Res-17-10_0.pdf).

<sup>29</sup> UNODC 2020 Report, *supra* note 11, at 70; Rachel Nuwer, *Illegal Trade in Pangolins Keeps Growing as Criminal Networks Expand*, NATIONAL GEOGRAPHIC (Feb. 11, 2020), <https://www.nationalgeographic.com/animals/2020/02/pangolin-scale-trade-shipments-growing/>.

and inside China meet that demand.<sup>30</sup> And despite the expansion of CITES protections for pangolins in 2016, recent reports suggest that pangolin trade has not only continued but has actually increased.<sup>31</sup>

### 1. Domestic Chinese Markets for Pangolin Scales and Meat Are Thriving.

There is a long history within China of hunting pangolins to satisfy local demand.<sup>32</sup> Pangolin scales are an ingredient in 80 TCM formulas,<sup>33</sup> and pangolin meat is a culinary status symbol.<sup>34</sup> While TCM companies, hospitals, pharmacies, and meat purveyors were once able to satisfy these markets from local pangolin populations, demand has outstripped the local “supply.” The Chinese pangolin population has crashed by more than 94 percent since the 1960s,<sup>35</sup> and other Asian pangolin populations declined precipitously thereafter. As Asian pangolins have grown scarce, African species are predominantly feeding Chinese demand.<sup>36</sup>

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<sup>30</sup> Karen Zhang, *Illegal Trade in Pangolin Thrives Despite 2017 Global Ban, According to Investigative Report that Blames Demand in China and Huge Profits on the Black Market*, SOUTH CHINA MORNING POST (Sept. 25, 2019), <https://www.scmp.com/news/hong-kong/health-environment/article/3030162/illegal-trade-pangolin-thrives-despite-2017>. Other nations are involved supply, transit, and demand of pangolins. In 2020, the UNODC identified Cameroon, Nigeria, DRC, CAR, Congo, Gabon, Uganda, Guinea, and Liberia as recent supply countries; Uganda, DRC, and particularly Nigeria as transit nations; and China, Vietnam, and Lao DPR as main destination/demand countries, with over 70% of seized scales destined for China. UNODC 2020 Report, *supra* note 11, at 67, 70.

<sup>31</sup> *Id.* at 66 (“[s]ince 2014, there has been a 10-fold increase in the number of whole pangolin equivalents seized globally” and the CITES “listing is unlikely to be solely responsible for the increase” in seizures); Hendelene Prinsloo, *Scaling Up: The rapid growth in industrial scale trafficking of pangolin scales*, WILDLIFE JUSTICE COMMISSION (2020), at 6 (data from 2016-2019 “shows an increase in trafficking at unprecedented levels” and that “[n]early two-thirds of the tonnage seized” during that time “was detected in the last two years (2018-2019)”), [https://wildlifejustice.org/wp-content/uploads/2020/02/The\\_Rapid\\_Growth\\_in\\_the\\_Trafficking\\_of\\_Pangolin\\_Scales\\_2015-2019.pdf](https://wildlifejustice.org/wp-content/uploads/2020/02/The_Rapid_Growth_in_the_Trafficking_of_Pangolin_Scales_2015-2019.pdf).

<sup>32</sup> Shibao Wu et al., *The Status and Conservation Strategy of Pangolin Resource in China*, 17 J. NAT. RES. 174 (2002).

<sup>33</sup> Elizabeth Alberts, *Did China Really Ban the Pangolin Trade? Not Quite, Investigators Say*, MONGABAY (June 24, 2020), <https://news.mongabay.com/2020/06/did-china-really-ban-the-pangolin-trade-not-quite-investigators-say/>.

<sup>34</sup> Sharon Guynup, *Pangolins on the Brink as Africa-China Trafficking Persists Unabated*, MONGABAY (May 8, 2018), <https://news.mongabay.com/2018/05/pangolins-on-the-brink-as-africa-china-trafficking-persists-unabated/>.

<sup>35</sup> Challender (2019a), *supra* note 12; Wu, *supra* note 32.

<sup>36</sup> Prinsloo, *supra* note 31 (finding that, between 2016 and 2019, pangolin scales exported from Nigeria accounted for 55 percent of global scale seizures).



### (a) Scales

Pangolin scales (also referred to as *Chuan shan jia pian* or *Manitis Squama*) have long been an ingredient in certain TCM products. TCM manufacturers claim the powdered scales “promote blood circulation, stimulate lactation, disperse swelling and expel pus,” and scales are an ingredient in around 80 TCM medicines.<sup>37</sup> These products have been available in some 700 hospitals and over 200 pharmaceutical companies.<sup>38</sup>

Within China, belief in the curative properties of pangolins is widespread. As of April 2019, 70% of individuals surveyed within China believed that products containing pangolin derivatives effectively treat a wide range of ailments.<sup>39</sup> Recent media reports in China wrongly suggested that pangolin scales contain the chemical compound tramadol, a synthetic opioid that is commonly used as an analgesic;<sup>40</sup> a subsequent recent lab study definitively disproved that claim.<sup>41</sup> Nonetheless, misinformation regarding the benefit of pangolin scales continues in China.

Pangolin scales have been a lucrative and prevalent commodity in the TCM industry. According to an undercover market survey conducted in China in June and July of 2016, 35% of surveyed animal medicine wholesalers and 62% of TCM retail shops sold pangolin scales.<sup>42</sup> Online dealers also have a significant presence in the scale trade. Based on a survey of 39 Chinese websites, researchers recorded 153 different advertisements for pangolin scales.<sup>43</sup> Online retailers are able to avoid China’s minimal regulatory scrutiny by posting innocuous-sounding terms with links leading to separate webpages containing advertisements for pangolin products.<sup>44</sup> Given China’s enforcement track record, as documented below, these market channels are likely to continue to serve ongoing demand.

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<sup>37</sup> Ling Xu et al., *An Overview of Pangolin Trade in China*, TRAFFIC BRIEFING, at 1, 3, 5 (Sept. 2016), <https://www.traffic.org/site/assets/files/10569/pangolin-trade-in-china.pdf>; Alberts, *supra* note 33.

<sup>38</sup> Xu, *supra* note 37; SGA, *National Medical Products Administration: Notice on Strengthening the Protection of Saiga, Pangolin and Rare Snake Resources and Regulating the Management of their Products* (Nov. 12, 2017), <http://www.nmpa.gov.cn/WS04/CL2079/333353.html>.

<sup>39</sup> Tiffany May, *Seizure of 14 Tons of Pangolin Scales in Singapore Sets a Dismal Record*, NEW YORK TIMES (Apr. 8, 2019), <https://www.nytimes.com/2019/04/08/world/asia/pangolin-singapore-seizure-poaching.html>.

<sup>40</sup> Xu, *supra* note 37.

<sup>41</sup> Rachel L. Jacobs et al., *Myth Debunked: Keratinous Pangolin Scales Do Not Contain the Analgesic Tramadol*, CONSERVATION SCIENCE AND PRACTICE, at 2 (Jun. 12, 2019), <https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/csp2.82>.

<sup>42</sup> Xu, *supra* note 37, at 3, 5.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 3.

Contrary to recent reports (described in more detail below in Section IV(B)(2)), pangolin scales remain a listed ingredient in several TCM formulas in China’s official 2020 Pharmacopeia.<sup>45</sup> Despite recent amendments to China’s wildlife law, pangolin scale consumption is not prohibited, nor are sales for TCM.

**(b) Meat**

China also hosts a significant market for pangolin meat. Rural populations in China traditionally consumed pangolins as a source of meat.<sup>46</sup> Recently, demand has shifted to urban areas.<sup>47</sup> Meals featuring pangolin, such as pangolin fetus soup, are served as a “delicacy to flaunt wealth and influence.”<sup>48</sup> “[N]ewly rich urbanites” view pangolin meat as a luxury food superior to farmed meat,<sup>49</sup> and prices can reach \$300 USD per kilogram.<sup>50</sup> And pangolin consumption is conspicuous: Some pangolin consumers in China post and share videos and pictures of pangolin meat consumption on social media.<sup>51</sup>

Although China has nominally outlawed consumption of pangolin meat, the market for pangolin meat continues.<sup>52</sup> While not common, pangolins can still be found on restaurant menus in mainland China.<sup>53</sup> In Hong Kong SAR, “business people are treated to pangolin meat openly” at some establishments, where “it is often used for boasting rights” to secure deals.<sup>54</sup> While China

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<sup>45</sup> Environmental Investigation Agency, *Despite the Headlines, China’s Government Still Promotes Pangolin Scales in Traditional Medicines* (June 23, 2020), <https://eia-international.org/news/despite-the-headlines-chinas-government-still-promotes-pangolin-scales-in-traditional-medicines/>.

<sup>46</sup> Jon Fasman, *Taste For Rare, Wild Pangolin Is Driving The Mammal To Extinction*, NPR (Aug. 3, 2014), <https://www.npr.org/sections/thesalt/2014/08/03/337162283/taste-for-rare-wild-pangolin-is-driving-the-mammal-to-extinction>.

<sup>47</sup> *Id.*

<sup>48</sup> Guynup, *supra* note 34.

<sup>49</sup> Fasman, *supra* note 46.

<sup>50</sup> Paul Hilton, *Haunting Photos Of The Black Market For An Endangered Species* (Apr. 30, 2018), <https://www.thedodo.com/haunting-photos-of-the-black-market-for-an-endangered-species-1118859358.html>

<sup>51</sup> Neil Connor, *‘Pangolin Princess’ Detained in China After Posting Images Online of Cooked Wildlife*, THE TELEGRAPH (Feb. 14, 2017), <https://www.telegraph.co.uk/news/2017/02/14/pangolin-princess-detained-china-posting-images-online-cooked/>.

<sup>52</sup> Rachel Bale, *Trafficked Pangolins Can Carry Coronaviruses Closely Related to Pandemic Strain*, NATIONAL GEOGRAPHIC (Mar. 26, 2020), <https://www.nationalgeographic.com/animals/2020/03/pangolins-coronavirus-covid-possibility/>.

<sup>53</sup> *Id.*

<sup>54</sup> Alexis Kriel, *Africa’s Pangolins Caught in ‘the Perfect Storm’*, OXPECKERS (May 6, 2019), <https://oxpeckers.org/2019/05/africas-pangolins/>; Wang Yan, *The Plight of the Pangolin in China*, CHINA DIALOGUE (May 6, 2019),

currently has a ban in place on sales of wild animals for consumption in response to COVID-19, concerns remain that, as in the aftermath of SARS, such precautions could be readily lifted. Both due to pangolins' threat of extinction in the wild and zoonotic risks, consumption and trade for consumption of pangolins must end.

## **2. China Is the Center of the Global Illegal Trade Network for Pangolins.**

China is the primary market for pangolin parts and derivatives, and Chinese actors are integral to the international pangolin trade network. As Chinese pangolin populations declined up to 94% between the 1960s and 1990s,<sup>55</sup> growing Chinese demand for pangolins gave rise to a surge in international trade.<sup>56</sup> Unfortunately, this trend did not abate following the 2016 Appendix I CITES listing of pangolins. Seizure data, as well as intelligence reporting in China, neighboring countries, and Africa, demonstrate China's continued, central role in the illegal trade of pangolins.

### **(a) Chinese Demand Drives Illegal Trade at an Extraordinary Scale.**

The ongoing flow of pangolin imports into China is demonstrated, in part, through seizure events. As described below, recent seizure data suggests an increase in both the number of seizure events and amounts seized, both within China and globally, with China as the top destination.

Significant seizures have occurred recently in both Hong Kong SAR and mainland China. In Hong Kong SAR, customs officials reported confiscations of more than 17 metric tons of pangolin scales in 2018, double that of 2017.<sup>57</sup> In late January 2019, Hong Kong SAR customs officials seized a single shipment from Nigeria containing a significant 8.2 metric tons of pangolin scales.<sup>58</sup> The haul, estimated to be worth \$5 million USD on the black market, was Hong Kong SAR's largest seizure ever. With this interception, seizure amounts in Hong Kong SAR through only the first month of 2019 had already matched the total from all of 2017.<sup>59</sup> A similar dynamic appears to be at work in mainland China. In November 2017, China announced the seizure of 11.9

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<https://www.chinadialogue.net/article/show/single/en/11275-The-plight-of-the-pangolin-in-China>; see also Kenneth Tan, *Guangxi Officials Investigated over Claims that They Hosted Banquets Serving Pangolin Meat*, SHANGHAIIST (May 5, 2018), [http://shanghaiist.com/2017/02/07/pangolin\\_banquet/](http://shanghaiist.com/2017/02/07/pangolin_banquet/).

<sup>55</sup> Dan Challender et al. (2019a).

<sup>56</sup> *Id.*; see also Alex Hofford, *Strong Public Support for Removing Pangolins from Traditional Medicine as China Considers Increasing Protection*, WILDAID (Aug. 8, 2019), <https://wildaid.org/strong-public-support-for-removing-pangolins-from-traditional-medicine-as-china-considers-increasing-protection/>.

<sup>57</sup> Echo Huang, *A Record Seizure of Pangolin Scales in Hong Kong Brings the Species Closer to Extinction*, QUARTZ (Feb 1, 2019), <https://qz.com/1539839/latest-seizure-of-pangolins-in-hong-kong-signals-its-looming-extinction/>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

tons of scales from a ship in Shenzhen, which at the time was the largest single seizure of pangolin scales ever.<sup>60</sup>

Seizures in source and transit countries also show substantial continued pangolin trade. Indeed, the 2017 seizure record was broken in 2019, with two seizures within one week in Singapore: 12.9 tonnes (14.2 tons) of scales in the first seizure and 12.7 tonnes (14 tons) in the second, both destined for Vietnam, a known hub for pangolin scale trafficking to China.<sup>61</sup> Over the course of 2019, EIA recorded a minimum of 105,891 kilograms (approximately 117 tons) of pangolin scales seized globally, based upon publicly reported seizures weighing over 100 kilograms, with significant amounts headed for the Chinese market.<sup>62</sup> Consistent with this trend, the 2020 report by the UN Office of Drugs and Crime analyzed data between 2007 and 2018 (both before and after the CITES Appendix I listing) and concluded that “71 per cent of seizures” reviewed “were destined for China.”<sup>63</sup>

Apart from the sheer quantity of seizure events, the average size of seized shipments has been increasing. Between 2014 and 2018, the average weight per seizure of pangolin scales increased from 207.9 kilograms to 723.2 kilograms.<sup>64</sup> While the averages are based on worldwide seizure events, analysis of the same data pointed to Hong Kong SAR and mainland China as “persistent hotspots for seizures of pangolin scales[.]”<sup>65</sup>

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<sup>60</sup> Agence France-Presse, *China Confiscates 12 Tonnes of Endangered Pangolin Scales in the Country’s Biggest Seizure*, SOUTH CHINA MORNING POST (Nov. 30, 2017), <https://www.scmp.com/news/china/society/article/2122348/china-confiscated-12-tonnes-endangered-pangolin-scales-countrys>.

<sup>61</sup> Vanessa Liu, *Second 12-tonne Haul of Pangolin Scales Seized in Less than a Week*, THE STRAIT TIMES (Apr. 10, 2019), <https://www.straitstimes.com/singapore/second-12-tonne-haul-of-pangolin-scales-seized-in-less-than-a-week>.

<sup>62</sup> EIA, *Pangolin Seizures Dataset—Seizures of Pangolin Scales Weighing >100kg (2020)*; see also Alice Su, *It’s a Mammal. It Looks Like an Artichoke. And China Is Driving It Toward Extinction*, LOS ANGELES TIMES (Sep. 1, 2019), <https://www.latimes.com/world-nation/story/2019-08-31/its-a-mammal-it-looks-like-an-artichoke-and-china-is-driving-it-toward-extinction> (citing to Hofford, *supra* note 56).

<sup>63</sup> UNODC 2020 Report, *supra* note 11, at 70.

<sup>64</sup> *No Rest for Pangolins: Trafficking Rates Spike While Crime Displaces to New Regions*, WILDLIFE JUSTICE COMMISSION (Feb. 15, 2019), <https://wildlifejustice.org/no-rest-for-pangolins-trafficking-rates-spike/>.

<sup>65</sup> *Id.* Analyzing the global seizure data from 2016 to 2019, a recent report concluded that the illegal trade in pangolin scales is actually showing signs of growth, fueled in part by the involvement of organized criminal groups originally formed around the ivory trade. Prinsloo, *supra* note 31. With African countries now the primary source of seized scales trafficked to Asia—and with many seized shipments containing both scales and ivory—ivory traffickers are expanding their operations to take advantage of the lucrative pangolin market. *Id.* As the wholesale price of ivory in Asian markets has plummeted in recent years, smuggling rings have shifted from ivory to pangolin scales. In 2016, ivory accounted for 83% of the weight of seized shipments that contained both ivory and pangolin scales; pangolin scales constituted only 17%.

In general, seizure data reflects only a sliver of illegal commerce,<sup>66</sup> and for pangolins, experts believe that the seizure data captures only “a fraction of all pangolins traded, and an even smaller proportion of the number of pangolins hunted” to fuel that trade.<sup>67</sup> The rate of undetected trade is likely particularly high for pangolins because key source countries, such as Nigeria, Cameroon, and the Democratic Republic of Congo, have poor detection rates.<sup>68</sup> And even when traffickers are arrested, it is likely they had previously smuggled other shipments without detection. For instance, in October 2019, Chinese authorities seized a shipment containing 10.65 metric tons of pangolin scales.<sup>69</sup> Upon further investigation, the authorities determined that the same network had successfully smuggled two other shipments, totaling over 12.5 metric tons, since November 2018.<sup>70</sup>

To be sure, seizure data is a “mixed indicator, demonstrating both the presence of a problem and the initiative of the relevant authorities in addressing it.”<sup>71</sup> However, given the failure of the Chinese government to stem demand, it is clear that the seizure data demonstrates a sustained, and even growing, stream of illegal imports is flooding into the region to meet Chinese demand.<sup>72</sup>

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*Id.* By 2019, the numbers had inverted: pangolin scales constituted 70% of the weight of combined shipments, with the share of ivory by weight falling to 30%. *Id.*

<sup>66</sup> See, e.g., *Illegal Trade Seizures: Elephant Ivory in Europe*, ENVIRONMENTAL INVESTIGATION AGENCY, <https://eia-international.org/wildlife/wildlife-trade-maps/illegal-trade-seizures-elephant-ivory-in-europe/> (noting that “[s]ince 2000, seizures of ivory attributed to the EU but seized outside of Europe have totaled 6,490.02kg—likely a fraction of the actual level of illegal ivory linked to Europe.”); see also United Nations Office on Drugs & Crime, *WORLD WILDLIFE CRIME REPORT: TRAFFICKING IN PROTECTED SPECIES* 14 (2016), [https://www.unodc.org/documents/data-and-analysis/wildlife/World\\_Wildlife\\_Crime\\_Report\\_2016\\_final.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf) (“[L]ike a pixel in a snapshot, wildlife seizures can be misleading in isolation, but when combined in great numbers can yield penetrating insight into a hidden world. Seizure data require careful interpretation because they are a mixed indicator, demonstrating both the presence of a problem and the initiative of the relevant authorities in addressing it. On their own, they cannot be used to demonstrate the magnitude of the trafficking or shed much light on law enforcement capacity.”).

<sup>67</sup> Daniel J. Ingram et al., *Assessing Africa-Wide Pangolin Exploitation by Scaling Local Data*, 11 CONSERVATION LETTERS 1, 2 (2018), <https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1111/conl.12389>.

<sup>68</sup> Prinsloo, *supra* note 31.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> UNODC, *supra* note 66.

<sup>72</sup> See Daniel W.S. Challender et al., *International Trade and Trafficking in Pangolins, 1900–2019*, in PANGOLINS 259, 266 (Academic Press 2020) (“International trafficking in pangolins and their derivatives between August 2000 and July 2019 involved an estimated equivalent of 895,000 animals. This is based on 1474 seizures and other records of illegal trade . . . . The actual number of pangolins trafficked likely exceeds this figure as only a portion of illegal trade is intercepted.”); *id.* at 269 (“Assuming reported destinations are accurate, trafficked scales were primarily destined to China, as well as Vietnam and Lao PDR.”).

**(b) Chinese Demand Fuels Poaching and Illegal Trade in Pangolin Range States and Neighboring States.**

Pangolins are now captured outside of China, increasingly in Africa but also in neighboring countries, to feed Chinese demand. Deepening Chinese investment in African nations appears to have accelerated the pangolin trade.<sup>73</sup> A recent study found that rising exports of African pangolins to China are facilitated by “broader economic and international development trends, including increasing investment, trade, and trade volumes between East Asian and many African countries.”<sup>74</sup> In Gabon, for instance, a separate investigation found that Asian industry workers request pangolins from local hunters more than any other species.<sup>75</sup> A 2020 report found that in Cameroon and Uganda, pangolins were typically hunted by members of the local community, transferred to urban areas, and “sold to international traffickers, primarily Chinese, [though] also some Nigerians and Vietnamese.”<sup>76</sup>

The evidence suggests that traders use Vietnam as a transit nation en route to Chinese markets. Vietnam’s extensive border with China provides numerous opportunities for overland smuggling, which traffickers exploit with regularity.<sup>77</sup> According to local experts, many of the pangolin scales that have been seized in Vietnam originate in Africa and are bound for China.<sup>78</sup> In fact, the U.S. Department of State is currently offering a reward of up to \$1 million for

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<sup>73</sup> Jacopa Costa, *Preliminary Report—Examining Wildlife Trafficking Networks in East Africa Through the Lens of Social Network Analysis*, BASEL INSTITUTE OF GOVERNANCE (Jan. 2019), <https://www.baselgovernance.org/sites/default/files/2020-01/IWT%20through%20the%20lens%20of%20social%20network%20analysis.pdf>.

<sup>74</sup> Daniel J. Ingram et al., *Characterizing Trafficking and Trade of Pangolins in the Gulf of Guinea*, 17 GLOB. ECOLOGY & CONSERVATION (Nov. 2018), at 2, <https://reader.elsevier.com/reader/sd/pii/S2351989418304414?token=255CDCA524711941C57F681149BB535E2DE7B858799998B612324E7119C9EB3B918827623D9F8C12C6839BC63A94D348>.

<sup>75</sup> M.M. Mambeya et al., *The Emergence of a Commercial Trade in Pangolins from Gabon*, 56 AFR. J. ECOL. 601 (2018); Francesca Baker, *Assessing the Asian Industry Link in the Intercontinental Trade of African Pangolins, Gabon* (2014), [https://www.iccs.org.uk/wp-content/uploads/2011/10/Baker\\_Francesca-ConSci-2014.pdf](https://www.iccs.org.uk/wp-content/uploads/2011/10/Baker_Francesca-ConSci-2014.pdf).

<sup>76</sup> UNODC 2020 Report, *supra* note 11.

<sup>77</sup> The Pangolin Reports, *Trafficked to Extinction: Vietnam, Taiwan, China*, RAPPLER (Sept. 27, 2019), <https://www.rappler.com/science-nature/environment/241189-pangolins-report-vietnam-taiwan-china>.

<sup>78</sup> Khanh Vu, *Vietnam Seizes 5.26 Tonnes of Pangolin Scales Hidden in Cashew Containers*, REUTERS (May 23, 2009), <https://www.reuters.com/article/us-vietnam-wildlife-trafficking/vietnam-seizes-5-26-tonnes-of-pangolin-scales-hidden-in-cashew-containers-idUSKCN1SU0JF>; *see also* Xu, *supra* note 37 (discussing survey results which placed Vietnam as the source of 25% of pangolin seizures in China).

information leading to the dismantling of the Xaysavang Network, a transnational group known to smuggle pangolin scales from Africa to Vietnam and China.<sup>79</sup>

China also impacts the pangolin trade in other neighboring countries, with traders trafficking across China's porous borders with Laos, Myanmar, and Pakistan.<sup>80</sup> A one-day study conducted in Boten, Laos, located one kilometer from the Chinese border, documented approximately 200 pangolin scales for sale.<sup>81</sup> The market in Boten is overwhelming aimed at Chinese tourists.<sup>82</sup> The Boten Special Economic Zone (SEZ) offers visa-free entry to Chinese citizens and is owned by a Chinese national with a 50-year land tenure.<sup>83</sup> Chinese entrepreneurs own the majority of the businesses selling wildlife products in the Boten SEZ, and they advertise their products in Mandarin.<sup>84</sup>

In Myanmar, the small border town of Mong La plays a similar role.<sup>85</sup> Mong La is a hub for wildlife trafficking, almost all of which flows to China.<sup>86</sup> Signs are in Mandarin, the cellular network and electricity providers are Chinese, and the Chinese Yuan is the currency of choice.<sup>87</sup> During four visits to Mong La, observers found forty-two bags of scales, thirty-two skins, sixteen fetuses or pangolin parts in wine, and twenty-seven whole pangolins for sale.<sup>88</sup> All of these products were aimed at Chinese buyers.<sup>89</sup>

In response to Chinese demand, poachers in Pakistan are driving local populations of the Indian pangolin to extinction.<sup>90</sup> Traffickers purchase the specimens from the poachers, smuggling

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<sup>79</sup> U.S. Department of State, *Transnational Organized Crime Rewards Program: Xaysavang Network*, <https://www.state.gov/inl-rewards-program/transnational-organized-crime-rewards-program/xaysavang-network/>.

<sup>80</sup> Haroon Janjua, *Pakistan Struggles to Save Pangolins from Poachers*, DEUTSCHE WELLE (June 20, 2019), <https://www.dw.com/17.8/en/pakistan-struggles-to-save-pangolins-from-poachers/a-49276023>

<sup>81</sup> Kanitha Krishnasamy et al., *Observations of Illegal Wildlife Trade in Boten, a Chinese Border Town Within a Specific Economic Zone in Northern Lao PDR*, 14 GLOB. ECOL. & CONS. 1 (2018), <https://www.sciencedirect.com/science/article/pii/S2351989418300052>.

<sup>82</sup> *Id.* at 3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 4–5.

<sup>85</sup> Vincent Nijman et al., *Pangolin Trade in the Mong La Wildlife Market and the Role of Myanmar in the Smuggling of Pangolins into China*, 5 GLOB. ECO. & CONS. 118, 120–121 (2016); Xu, *supra* note 37, at 2–3.

<sup>86</sup> Nijman, *supra* note 85, at 120–121.

<sup>87</sup> *Id.* at 119.

<sup>88</sup> *Id.* at 120.

<sup>89</sup> *Id.*

<sup>90</sup> CITES, *Species specific matters: Pangolins (Manis Spp.)*, SC69 Doc. 57, ¶ 11 (2017), <https://cites.org/sites/default/files/eng/com/sc/69/E-SC69-57.pdf>.

pangolin parts to China via airplane or ship.<sup>91</sup> There is also evidence that traffickers sell the meat to Chinese citizens who are in Pakistan to work on projects related to the China-Pakistan Economic Corridor.<sup>92</sup>

**(c) Chinese Demand for Pangolins Induces Fraud and Corruption.**

With pangolin trafficking as extensive and lucrative as it is, traffickers have developed more sophisticated methods to trade, despite CITES's ban on commercial, international trade, including falsification of CITES permits. In 2016 and 2017, the CITES Secretariat received several inquiries regarding suspicious, and possibly fraudulent, permits for pangolin specimens.<sup>93</sup> The Democratic Republic of Congo had apparently issued nine export permits for 10,650 kilograms of pangolin scales, with mainland China and Hong Kong SAR as the primary destinations.<sup>94</sup> However, further investigation revealed that seven of these permits, corresponding to some 5,650 kilograms, were fakes.<sup>95</sup> Similarly, Nigeria had ostensibly issued one export permit for 15,000 kilograms of pangolin scales destined for China, but that permit, too, was bogus.<sup>96</sup> It is likely traffickers have successfully used false or corruptly obtained permits, undetected. The diversity of source countries identified in the Secretariat's report suggests that this may be a widespread phenomenon.

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From data regarding seizures in China, to evidence of trade growing from China's investments in African source countries, to studies demonstrating that neighboring nations serve as transit points and markets for Chinese tourists, the available information demonstrates the Chinese trade network for pangolin parts and derivatives is sprawling, mature, and even growing.

**B. The Chinese Government Is Failing to Enforce the International, Commercial Trade Prohibition and Maintaining Domestic Laws and Policies that Facilitate the Market for, and Trade of, Pangolins, Diminishing the Effectiveness of CITES.**

The scale of Chinese demand, coupled with the Chinese government's inadequate policies and weak enforcement, leads to "trade or taking which diminishes the effectiveness" of CITES for

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<sup>91</sup> The Pangolin Reports, *Trafficked to Extinction* (2019), <https://globalstory.pangolinreports.com/#lede>.

<sup>92</sup> Shahid Shah, *Pakistan's Pangolins Fall Victim to Chinese Demand*, THE THIRD POLE (May 28, 2019), <https://www.thethirdpole.net/en/2019/05/28/the-pangolin-disappears-from-pakistans-sindh/>; Haroon Janjua, *Pakistan struggles to save pangolins from poachers*, DEUTSCHE WELLE (June 20, 2019), <https://www.dw.com/en/pakistan-struggles-to-save-pangolins-from-poachers/a-49276023>.

<sup>93</sup> CITES, *Species Specific Matters: Pangolins (Manis Spp.)*, *supra* note 90, at ¶ 7.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*



endangered pangolins.<sup>97</sup> Specifically, the Chinese government is (1) violating its treaty obligation to enforce the prohibition on international, commercial trade in pangolins and (2) failing to ban all pangolin trade, use, and possession and maintaining policies that tacitly promote domestic commerce.

### **1. China Is Failing to Enforce CITES’s Commercial Trade Prohibition.**

As stated above, Article VIII of CITES provides that the “Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof.”<sup>98</sup> Although China has increased law enforcement efforts to combat pangolin trafficking through seizures and some targeted operations against Chinese trafficking networks, current seizures represent only a fraction of illegal pangolin trade and criminal networks continue to operate with impunity, particularly in light of few prosecutions targeting these networks and affiliates.

Criminal networks operating in China continue to illegally import significant amounts of pangolin parts, despite CITES’s ban on commercial trade, due to China’s enforcement failures. A powerful example of this is China’s failure to conduct enforcement operations targeted at the known border-town hotspots of Boten SEZ in Lao and Mong La in Myanmar (described above). Even without bilateral cooperation, China could conduct interdiction operations on the Chinese side of these border hotspots. Reports document that Chinese consumers frequent Boten SEZ and Mong La in significant numbers to purchase parts and derivatives from CITES-listed species, including pangolins.<sup>99</sup>

Moreover, when China has seized illegally traded pangolin parts and derivatives, it has neglected to follow up with sufficient prosecutions and corresponding penalties. Under CITES, appropriate measures “shall include measures . . . to penalize trade in, or possession of, such specimens, or both[.]”<sup>100</sup> While China has seized a considerable amount of pangolin parts and derivatives traded in violation of CITES, it has done a meager job of imposing deterrent penalties.

For example, seizures in Hong Kong SAR, which is a hub of the global wildlife trade,<sup>101</sup> often make headlines, but authorities do not follow-up with prosecutions. From 2013 to 2017,

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<sup>97</sup> 22 U.S.C. § 1978(a)(2).

<sup>98</sup> CITES, 27 U.S.T. 1087, art. VIII, ¶ 1.

<sup>99</sup> Environmental Investigation Agency, *Sin City: Illegal Wildlife Trade in Laos’ Golden Triangle Special Economic Zone 3* (Mar. 2015), <https://eia-international.org/wp-content/uploads/EIA-Sin-City-FINAL-med-res.pdf>.

<sup>100</sup> CITES, 27 U.S.T. 1087, art. VIII, ¶ 1(a)-(b).

<sup>101</sup> CITES, *Species Specific Matters: Pangolins (Manis Spp.)*, *supra* note 90, at ¶ 33; *see also* WildAid, *Smugglers Turn to Endangered Pangolin Scales as China’s Ivory Ban Bites* (Feb. 4, 2019), <https://wildaid.org/smugglers-turn-to-endangered-pangolin-scales-as-chinas-ivory-ban-bites/>.

Hong Kong SAR authorities seized illegally imported wildlife products on 379 occasions.<sup>102</sup> Yet they proceeded to prosecution in only 1% of the cases.<sup>103</sup> For every 100 seizures, authorities prosecute only a single case. The low prospect of prosecution does not deter traffickers.

As for mainland China, a lack of government transparency impedes assessment of the prosecution rate. In its latest CITES Implementation Report, mainland China reported that it had instituted some criminal prosecutions for offenses involving CITES-listed species.<sup>104</sup> However, it did not provide any additional information (*e.g.*, number of prosecutions, species involved).<sup>105</sup> While it is possible that some of these prosecutions involved pangolins, it is difficult to confirm as much.

Even when high-profile incidents appear in international news outlets, China furnishes virtually no information regarding subsequent prosecution efforts.<sup>106</sup> For instance, in 2015, provincial government officials in Guangxi allegedly participated in a lavish banquet serving pangolin meat.<sup>107</sup> When photos of the event surfaced online in February 2017, provoking public outrage, China's Forestry Department announced that it was launching an investigation. Yet, in the nearly three years since, the government has not provided any updates.<sup>108</sup> In the context of what appears to be a clear case of serious crime at the hands of public officials—consuming pangolin meat in China is punishable by up to ten years in prison—there has been silence from the government.<sup>109</sup>

Taken as a whole, Hong Kong SAR and mainland China diminish the effectiveness of CITES through inadequate enforcement of the trade prohibition on all species of pangolins.

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<sup>102</sup> Karen Zhang, *Customs Urged to Step up Prosecutions in Illegal Wildlife Trade – With Blood of 3,000 Elephants, 65,000 Pangolins and 51 Rhinoceros on Hong Kong's Hands*, SOUTH CHINA MORNING POST (Jan. 21 2019), <https://www.scmp.com/news/hong-kong/health-environment/article/2183040/customs-urged-step-prosecutions-illegal-wildlife>; Editorial, *Wildlife Smugglers Must Face Justice*, SOUTH CHINA MORNING POST (Feb. 1, 2019), <https://www.scmp.com/comment/insight-opinion/article/2184731/wildlife-smugglers-must-face-justice>.

<sup>103</sup> Karen Zhang, *supra* note 102; Editorial, *supra* note 102.

<sup>104</sup> CITES, *Mainland China Implementation Report*, ¶ 1.7.3d (2018), <https://cites.org/sites/default/files/reports/15-17China.pdf> (submitted by China along with Macao and Hong Kong reports).

<sup>105</sup> *Id.* at ¶ 1.7.3f.

<sup>106</sup> *Guangxi cracks down on smuggling of endangered species, seizes more than 9,673 kilograms of ivory*. CHINA NEWS.COM (Dec. 2, 2019), <http://www.chinanews.com/sh/2019/12-02/9022887.shtml>; *Guangxi police investigated over 78 criminal cases of endangered species valued at 1.85 billion yuan, including 8.8 tonnes of ivory*, QQ.COM (Aug. 21, 2019), <https://mp.weixin.qq.com/s/br6QwOly0uK-wFp4112Xww>.

<sup>107</sup> *China Investigates 'Rare Pangolin Banquet' in Guangxi*, BBC NEWS (Feb. 8, 2017), <https://www.bbc.com/news/world-asia-china-38902961>; *see also*, Guynup, *supra* note 34.

<sup>108</sup> BBC, *supra* note 107.

<sup>109</sup> *Id.*

Conducting some confiscations alone does not meet CITES’s mandate that Parties “shall take appropriate measures to enforce” the Convention,<sup>110</sup> as confiscations are not a meaningful deterrent without additional financial penalties, imprisonment, or both. Mainland China is ignoring rampant trade at the known border towns of Boten SEZ in Lao and Mong La in Myanmar. Prosecution rates in Hong Kong SAR are low, while mainland China’s lack of transparency on the subject provides little reason to conclude that its prosecutorial efforts are any better.

## **2. China’s Law Allowing TCM-Use of Pangolin Scales and Its New TCM Policy Are Insufficient to Eliminate Demand.**

Despite well-documented demand for pangolins scales in TCM practice and the substantial threat pangolins face from that demand, Chinese law continues to allow the sale and use of imperiled pangolins in TCM. And despite laudatory press coverage in June 2020 that pangolin scales had been removed China’s official 2020 Pharmacopeia, pangolin scales actually remain an ingredient in several patented medicine formulas within the Pharmacopeia and continue to be used. China’s legal loophole and the continued legitimization and promotion of pangolin scales for TCM use facilitates the market for and international trade in pangolins, diminishing the effectiveness of CITES.

First, while granting some protections, China’s wildlife law maintains a gaping exception allowing continued use and sale of imperiled species, including pangolins, for TCM purposes. China’s Wildlife Protection Law directs the Chinese government to designate wildlife that is “rare or near extinction” as “wildlife under special state protection.”<sup>111</sup> Pangolins were effectively listed as “wildlife under special state protection” under China’s Wildlife Protection Law in 1989.<sup>112</sup>

The Law generally prohibits the “hunting, catching or killing” and the “sale, purchase and u[se] of wildlife under special state protection,” as well as the products of such wildlife.<sup>113</sup> However, the Wildlife Protection Law exempts the purchase, sale, and use of wildlife under special state protection for “scientific research, captive breeding, public exhibition or performances, heritage conservation or other special cases,” with approval from the appropriate governmental unit.<sup>114</sup> This exception has been interpreted to exempt TCM,<sup>115</sup> and thus allows the sale of

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<sup>110</sup> CITES, 27 U.S.T. 1087, art. VIII, ¶ 1.

<sup>111</sup> Wildlife Protection Law of the People’s Republic of China, art. 10 (revised Oct. 2018), [https://eia-international.org/wp-content/uploads/WPL-Final-Law\\_translation\\_rev-January-2019.pdf](https://eia-international.org/wp-content/uploads/WPL-Final-Law_translation_rev-January-2019.pdf).

<sup>112</sup> Xu, *supra* note 37; Peter J. Li, *Enforcing Wildlife Protection in China: The Legislative and Political Solutions*. China Information (2007), <https://theasiadialogue.com/wp-content/uploads/2017/06/Enforcing-Wildlife-Protection-in-China.pdf>.

<sup>113</sup> Wildlife Protection Law of the People’s Republic of China, *supra* note 111, art. 21, 27.

<sup>114</sup> *Id.* at art. 27.

<sup>115</sup> Environmental Investigation Agency, *China’s Wildlife Protection Law* (undated), <https://eia-international.org/wildlife/saving-tigers/tiger-farming/chinas-wildlife-protection-law/> (“In practice, the ‘heritage conservation’ loophole is being interpreted to allow large-scale commercial trade in leopard bone—and potentially other species—for production of medicinal

pangolin scales for TCM, if the seller has a permit and the TCM is labeled as sourced from verified “stockpiles.”<sup>116</sup> The open use of TCM containing pangolin scales is allowed without a permit.<sup>117</sup> And despite the permitting regime, “uncertified pangolin scales are sold illegally and are widely available in China.”<sup>118</sup>

While China’s TCM exception does not authorize importation of pangolins for TCM, its presence in the law diminishes CITES effectiveness by both allowing and promoting domestic commercial trade of CITES species. The lawful sale and use of pangolin scales also provides opportunities for traffickers to push illegally-imported scales into the legal TCM market. China recently recognized as much in the context of ivory from African elephants.<sup>119</sup> China’s domestic legal ivory trade flourished from a renewed stream of legal trade following the Parties’ authorization of “one-off sales” of stockpiled African ivory in 2008, China’s decision to maintain a legal domestic ivory market led to a significant increase in demand for ivory in China and a spike in illegal trade in ivory to meet the rising demand. In 2017, China enacted a law banning the legal sale of ivory in China that went into effect over the course of several years. The new ban is already showing results, in no small measure thanks to its simplification of the enforcement landscape. Unlike pangolin scales, ivory is no longer a legal commodity in China.<sup>120</sup> This is important because a legal market complicates enforcement—officers are forced to distinguish between legal and illegal products, and the presence of legal products opens opportunities for traffickers to pass off illicit TCM products as authorized TCM products.

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products.”); Xu, *supra* note 37 (sale, purchase, and use of pangolins “for the purposes of scientific research, captive breeding, . . . and other special purposes (e.g., use in TCM)” allowed with approvals); Mingxia Zhang et al., *Illegal pangolin trade in northernmost Myanmar and its links to India and China*. 10 GLOBAL ECOLOGY & CONSERVATION 23-31, 24 (2017) (“In China, pangolin scales presented in stockpiles can be used as Traditional Chinese Medicine (TCM) when labelled accordingly . . . , and they can be sold in 700 designated hospitals.”); PROCEEDINGS OF THE WORKSHOP ON TRADE AND CONSERVATION OF PANGOLINS NATIVE TO SOUTH AND SOUTHEAST ASIA 95, TRAFFIC Southeast Asia (Sandrine Pantel & Chin Sing Yun eds., 2009), [http://www.trafficj.org/publication/09\\_proceedings\\_pangolin.pdf](http://www.trafficj.org/publication/09_proceedings_pangolin.pdf) (discussing how TCM use is legal under Chinese law).

<sup>116</sup> State Forestry & Grassland Admin., *Notice on strengthening the protection of saiga, pangolin, and rare snake resources and standardizing the management of their products as medicines* (2007), <http://www.forestry.gov.cn/main/4818/content-796751.html> [in Chinese].

<sup>117</sup> Dan Challender & Carly Waterman, *Implementation of CITES Decisions 17.239 b) and 17.240 on Pangolins (Manis spp.)* 70 (2017), <https://cites.org/sites/default/files/eng/com/sc/69/E-SC69-57-A.pdf> (IUCN document to CITES noting China’s report, stating, “only trade in and transport of pangolins requires permits issued by domestic authorities, while private use does not require such permission”); Xu, *supra* note 37, at 1.

<sup>118</sup> Challender & Waterman, *supra* note 117, at 70.

<sup>119</sup> Kevin T. Bielicki, *China’s Ivory Ban: A Work in Progress*, THE DIPLOMAT (Mar. 15, 2019), <https://thediplomat.com/2019/03/chinas-ivory-ban-a-work-in-progress/>.

<sup>120</sup> *Id.*

Second, on June 9, 2020, Chinese media incorrectly announced—to much fanfare and worldwide media interest—that “[t]he latest version of the Chinese Pharmacopoeia for 2020 does not include pangolins, which means the mammals will no longer be used in traditional Chinese medicine.”<sup>121</sup> The Chinese Pharmacopoeia is a Chinese-government-published compendium of drugs, including Traditional Chinese Medicinal drugs, describing the drug, dosages, and precautions. The Pharmacopoeia is published in both Chinese and English and is used as a reference guide by TCM and other practitioners in China and in other parts of the world.

Unfortunately, these media reports were both incorrect and misleading: China did not remove pangolin scales from its Pharmacopoeia, and even if it had, removal would not end the use of pangolin scales in TCM. Specifically, following the TCM announcement, EIA obtained a copy of the 2020 Pharmacopoeia and confirmed that “while pangolin has been removed from a section listing key TCM ingredients, it is still included as an ingredient in patent medicines” within the Pharmacopoeia.<sup>122</sup> EIA researchers “identified eight patent medicine formulae [that] still list pangolin scales as an ingredient, including *Zaizao Wan*, which comes in pill form and is used to help blood circulation, and *Awei Huapi Gao*, a treatment used to relieve, among other things, abdominal pain.”<sup>123</sup> As a result, the Chinese Government “continues to legitimise and promote the medicinal use of pangolin scales.”<sup>124</sup>

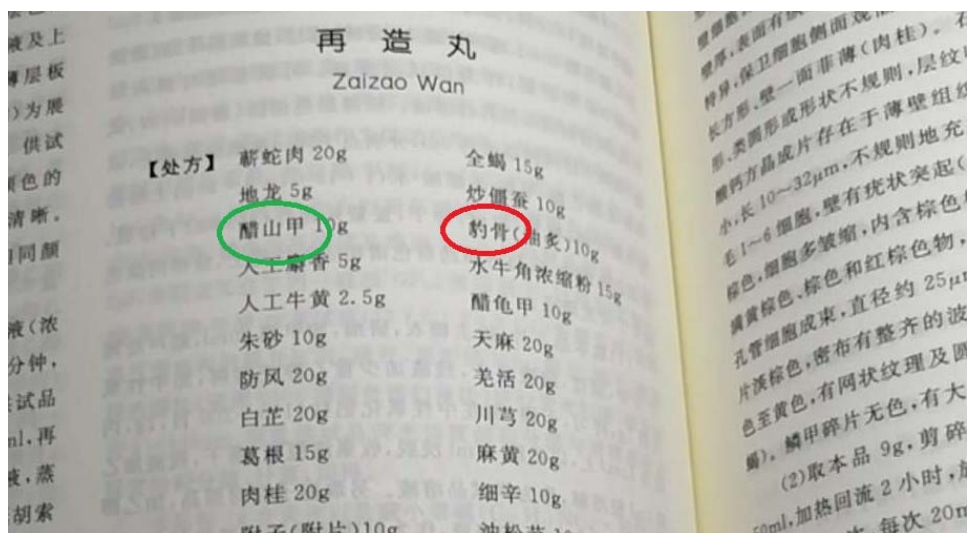
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<sup>121</sup> Leng Shumei & Wan Lin, *Pangolin Officially Removed from TCM List*, GLOBAL TIMES (June 9, 2020), <https://www.globaltimes.cn/content/1191044.shtml>; *Pangolin Has Been “Delisted” from the Chinese Pharmacopoeia*, XINHUA NEWSPAPER NETWORK (June 9, 2020), [http://www.xhby.net/index/202006/t20200609\\_6681027.shtml](http://www.xhby.net/index/202006/t20200609_6681027.shtml).

<sup>122</sup> Environmental Investigation Agency, *Despite the Headlines, China’s Government Still Promotes Pangolin Scales in Traditional Medicines* (June 23, 2020), <https://eia-international.org/news/despite-the-headlines-chinas-government-still-promotes-pangolin-scales-in-traditional-medicines/>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*



Pharmacopoeia of approved ingredients of patent medicine Characters circled in green mean ‘vinegar processed-pangolin.’<sup>125</sup>

Moreover, even if pangolin scales were fully removed from the official Chinese Pharmacopoeia of 2020, the removal does not “ban” the use of non-listed products. Legal TCM products are not limited to ingredients and patent medicines listed in the Pharmacopoeia. Rather, the Pharmacopoeia is just one of several medical standards used in legal production of TCM products. For example, leopard bone was also removed from the Pharmacopoeia’s section listing key TCM ingredients, but EIA researchers reported products in legal trade that list leopard bone as an ingredient.<sup>126</sup> China also removed tiger from its Pharmacopoeia in 1993, and initially, tiger bone TCM sales appeared to decline.<sup>127</sup> But tiger seizures subsequently increased, and a 2007 survey of Chinese residents revealed that “43% of all respondents had used some product thought to contain tiger derivatives, and 90% of these consumers stated that they had used tiger products since 1993.”<sup>128</sup> A 2016 TRAFFIC report found that, from 2000-2015, China remained “the most

<sup>125</sup> *Id.*

<sup>126</sup> Environmental Investigation Agency, *Down to the Bone: China’s Alarming Trade in Leopard Bones* (Sept. 25, 2018), <https://eia-international.org/wp-content/uploads/Chinese-Government-agency-issuing-permits-for-commercial-trade-in-bone-of-hundreds-of-leopards.pdf>; Environmental Investigation Agency, *China’s Widely Publicised New Pangolin Protections Might Not Mean a Total Ban on Use of the Species* (June 10, 2020), <https://eia-international.org/news/chinas-widely-publicised-new-pangolin-protections-might-not-mean-a-total-ban-on-use-of-the-species/>.

<sup>127</sup> Brian Gratwicke et al., *Attitudes Toward Consumption and Conservation of Tigers in China*, 3(7) PLOS ONE e2544 (2008), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0002544> (noting 2005 study finding fewer TCM shops offering tiger bone-products).

<sup>128</sup> *Id.*

commonly reported destination of [t]iger seizures (almost half).”<sup>129</sup> Removal of tiger bone from the Pharmacopeia did not ban or eliminate the use of tiger bone in TCM.

The solution is simple: China must (1) fully remove all references to pangolin parts and derivatives in its Pharmacopeia and other nationally approved patent medicine lists, and (2) strictly ban all sales and uses of pangolins for TCM. China’s failure to ban TCM-use of pangolins undermines CITES’s effectiveness.<sup>130</sup>

### **3. China Has Not Outlawed Possession of Specimens Imported in Violation of CITES.**

Among other recommendations, CITES Resolution Conf. 17.10 urges Parties to adopt comprehensive national legislation that includes deterrent penalties to address illegal trade of pangolins.<sup>131</sup> China’s failure to prohibit the possession of illegally imported specimens is a glaring omission in its national legislation.

Regulating possession is critical; possession is often the easiest offense to detect and prosecute, all while producing secondary benefits in the fight against illegal trade. CITES suggests that either illegal trade, possession, or both should be penalized,<sup>132</sup> and the loophole that exists when possession of illegally imported specimens is not also punishable has been recognized by the Parties to CITES. Resolution Conf. 8.4 (Rev. CoP15) and the National Legislation Project treat outlawing possession as a positive factor when analyzing whether a country has effectively implemented CITES through national legislation.<sup>133</sup> Among other points, Resolution Conf. 8.4 directs the Secretariat “to identify those Parties whose domestic measures do not provide them with the authority to . . . confiscate specimens illegally traded or possessed[.]”<sup>134</sup>

China’s Wildlife Protection Law does not prohibit, let alone criminalize, possession of specimens imported in violation of CITES, hamstringing efforts to combat trafficking in pangolin parts and derivatives. The Wildlife Protection Law provides that “the sale, purchase and utilisation of wildlife under special state protection or the products thereof shall be prohibited[.]”<sup>135</sup> By excluding possession from the list of prohibited activities, the law frustrates enforcement efforts in countless situations.

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<sup>129</sup> Sarah Stoner et al., *Reduced to skin and bones re-examined: Full analysis. An analysis of Tiger seizures from 13 range countries from 2000-2015*. TRAFFIC Southeast Asia (2016), [https://wwfeu.awsassets.panda.org/downloads/reduced\\_to\\_skin\\_and\\_bones\\_re\\_examined\\_full\\_analysis.pdf](https://wwfeu.awsassets.panda.org/downloads/reduced_to_skin_and_bones_re_examined_full_analysis.pdf).

<sup>130</sup> CITES, 27 U.S.T. 1087, art. VIII, ¶ 1(a)-(b).

<sup>131</sup> CITES, *Resolution Conf. 17.10*, *supra* note 28.

<sup>132</sup> CITES, 27 U.S.T. 1087, art. VIII, ¶ 1(a)-(b).

<sup>133</sup> CITES, *Resolution Conf. 8.4 (Rev. CoP15)*, *National laws for implementation of the Convention*, [https://www.cites.org/sites/default/files/document/E-Res-08-04-R15\\_0.pdf](https://www.cites.org/sites/default/files/document/E-Res-08-04-R15_0.pdf).

<sup>134</sup> *Id.* at ¶ 1(a)(iv).

<sup>135</sup> Wildlife Protection Law of the People’s Republic of China, *supra* note 111, art. 27.

#### 4. China Recklessly Manages Its Stockpiles of Pangolin Scales.

China further diminishes the effectiveness of CITES by (1) maintaining large stockpiles of pangolin scales, and (2) managing those stockpiles in an extremely opaque fashion. Indeed, according to the CITES Secretariat, reports suggest “that China has large stockpiles of pangolin scales, but . . . the size of these stockpiles [remain] unknown.”<sup>136</sup> China’s actions contradict Resolution Conf. 17.10’s call for Parties “to ensure that adequate control measures are in place to secure” stockpiles of pangolin parts and derivatives.<sup>137</sup> They also run afoul of the Standing Committee’s subsequent request to Parties to “maintain an inventory of government-held stockpiles of pangolin scales . . . and inform the Secretariat of the level of this stock and date of acquisition; the source of the stockpile; and the reasons for any significant changes in the stockpile[.]”<sup>138</sup> Despite this request, “there are no official, publicly available data on stockpiles of pangolin scales.”<sup>139</sup> In fact, it appears that the Forestry and Grassland Administration last verified Chinese pangolin stockpiles in 2007.<sup>140</sup>

In the absence of effective tracking and management of Chinese stockpiles, it is impossible to guarantee the legal integrity of stock supplying the TCM market. Medical use of pangolin scales in China is regulated by a marking system, established by the Forestry and Grassland Administration.<sup>141</sup> The law allows “verified stockpiles” to be directly used in about 700 different hospitals and over 200 pharmaceutical companies to produce approximately 80 different medicines.<sup>142</sup> Records of official government documents show that between 2008 and 2014, China’s National Forest and Grassland Administration (NFGA) released annual quotas for the use of 186,067 kg of pangolin scales.<sup>143</sup> There are no public records for quotas from 2014 onwards.

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<sup>136</sup> See CITES, *Species Specific Matters: Pangolins (Manis Spp.)*, *supra* note 90.

<sup>137</sup> CITES, *Resolution Conf. 17.10*, *supra* note 28, at ¶ 1(b).

<sup>138</sup> CITES, *Summary Record (S.C. 69)*, at 58 (2017), <https://cites.org/sites/default/files/eng/com/sc/69/sum/E-SC69-SR.pdf>.

<sup>139</sup> Xu, *supra* note 37 (“At present, there are no official, publicly available data on stockpiles of pangolin scales in China.”).

<sup>140</sup> See *id.* (“Legal use and consumption of pangolins thus relies on the remaining stockpiles that were verified by SFA before the Notice was issued in 2007, which should have reduced considerably by now, after ten years without replenishment.”); see also Wang Yan, *The Plight of the Pangolin in China*, 69 CHINADIALOGUE 63, 65 (2019), [https://chinadialogue-production.s3.amazonaws.com/uploads/content/file\\_en/11488/CD69-6.pdf](https://chinadialogue-production.s3.amazonaws.com/uploads/content/file_en/11488/CD69-6.pdf) (stating, “[t]he national legal stockpile of pangolin scales also remains a mystery” and the agency “did not respond to NewsChina’s inquiry on the current status of stockpiles of pangolin scales and the annual allocated consumption quotas”).

<sup>141</sup> *Id.* at 1.

<sup>142</sup> *Id.*

<sup>143</sup> State Forestry & Grassland Admin., *Notice 238, Notice of the State Forestry Administration on issuing the 2008-2009 annual consumption control of pangolin tablets and rare snake stock raw materials* (2008). <http://www.forestry.gov.cn/uploadfile/history/data/2009/uploadfile/2009-05-18-514519-%E6%9E%97%E6%8A%A4%E5%8F%91%5B2008%5D238%E5%8F%B7->



There is a two-fold problem with stockpiles of pangolin scales in China. First, according to experts, even if all confiscated pangolin scales were placed in “verified stockpiles,” current consumption would vastly exceed available stocks.<sup>144</sup> This suggests demand is met through illegal imports of pangolins and not just “legal” stockpiled pangolin parts and derivatives. Second, if China is allowing the entry of pangolin scales confiscated due to illegal trade to enter commercial use streams, China is acting contradictory to CITES policy. Resolution Conf. 17.8 provides that Appendix I confiscated specimens should be used “only for *bona fide* scientific, educational, enforcement or identification purposes[.]”<sup>145</sup> Commercial use, including for TCM, is not a legal option for such confiscated scales.<sup>146</sup>

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%E4%B8%8B%E8%BE%BE%E7%A9%BF%E5%B1%B1%E7%94%B2%E3%80%81%E7%A8%80%E6%9C%89%E8%9B%87%E7%B1%BB%E6%B6%88%E8%80%97%E9%87%8F.doc ; State Forestry & Grassland Admin., *2009-2010 Notice on Consumption Control of Pangolin Tablets and Rare Snakes* (2009), <http://www.forestry.gov.cn/zrbh/4833/88561/7.html>; State Forestry & Grassland Admin., *Notice of the State Forestry Administration on issuing the annual consumption control volume of raw materials of pangolin tablets from 2011 to 2012* (2011), <http://www.forestry.gov.cn/main/4818/content-797383.html>; State Forestry & Grassland Admin., *Notice of the State Forestry Administration on Issuing the Annual Consumption Control Volume of Raw Materials of Stock Pangolin Tablets from 2010 to 2011* (2010), <http://www.qikan.com/article/glg20100404.html>; State Forestry & Grassland Admin., *2012-2013 relevant provinces, autonomous regions and municipalities: Annual consumption control scale of raw materials for stock pangolin tablets* (2012), <http://www.forestry.gov.cn/uploadfile/main/2012-10/file/2012-10-10-6447cb26f457472887c4727faf467475.doc>; State Forestry & Grassland Admin., *Notice of the State Forestry Administration on Issuing the Annual Consumption Control Volume of Raw Materials of Stock Pangolin Tablets from 2014 to 2015* (2014), <https://www.hb0561.com/read-hm-tid-717788-page-1.html>

<sup>144</sup> Xu, *supra* note 37, at 1.

<sup>145</sup> CITES, *Resolution Conf. 17.8 (Rev. CoP17), Disposal of Illegally Traded and confiscated specimens of CITES-listed species*, ¶ 2(a), <https://cites.org/sites/default/files/document/E-Res-17-08.pdf>.

<sup>146</sup> China’s questionable treatment of seized live specimens also raises the concern that it is supplementing its stockpiles with scales from recently deceased pangolins. In the case of an illegally imported living specimen, CITES directs the Management Authority of the state of import to either (a) return the specimen to the State of export, or (b) place the specimen in a “rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the . . . Convention.” CITES, 27 U.S.T. 1087, art. III, ¶ 3(c). China does not consistently implement these rules. For instance, in August 2017, Chinese authorities found thirty-three live pangolins in a smuggler’s car. The authorities transferred each of the pangolins to a government-run care center—and each was dead within three months. *China Has Laws to Stop Pangolin Trafficking – But What Happens to the Seized Animals?*, SOUTH CHINA MORNING POST (Jan. 25, 2019), <https://www.scmp.com/news/china/politics/article/2183640/china-has-laws-stop-pangolin-trafficking-what-happens-seized>. It remains unclear what happened to the bodies, which is concerning, as the care center in question, managed by the Guangxi Forestry Department,

Serious issues surround the claim that China’s pangolin stockpiles supply hospitals and pharmacies with 26 metric tons of scales every year.<sup>147</sup> By failing to disclose data on its pangolin stockpiles, including rates of depletion, sources, and management policy, the Chinese government is diminishing the effectiveness of CITES and Resolution Conf. 17.8 and Resolution Conf. 17.10.

## 5. China Has Failed to Reduce Demand.

China further diminishes the effectiveness of CITES because it has not met Resolution Conf. 17.10’s exhortation for Parties to “implement measures to reduce the demand for illegal pangolin specimens[.]”<sup>148</sup> TCM is the leading source of demand for pangolin scales.<sup>149</sup> Where it ought to prohibit TCM products containing pangolin scales, sales and use of pangolins is still allowed for TCM purposes, and pangolin scales remain an ingredient in some formulas in China’s Pharmacopeia (*see supra* Section IV(B)(2)). Accordingly, China not only allows but promotes the use of pangolins for use in TCM, contravening CITES’s directive to reduce demand.

Indeed, despite increasing world recognition of pangolins and their plight, surveys indicate that demand for pangolin TCM products is on the rise in China. Based on a survey conducted in 2018, “[t]he number of people who reported they had bought pangolin products in the last 12 months increased by 12%” in Beijing and Shanghai, compared to a 2012 survey.<sup>150</sup> Of those individuals, 68% said they planned to buy pangolin products again in the future.<sup>151</sup>

By authorizing TCM uses of pangolin scales, the Chinese government is condoning the use of pangolins through market endorsement. Consumers of pangolin scales for TCM experience no sense of government condemnation or disapproval.

Banning domestic markets, in addition to prohibiting international trade, can shift consumer preferences in favor of conservation. When China banned the sale and purchase of ivory in late 2017, Chinese consumers began to view ivory differently. In a survey following the ban,

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previously transferred live pangolins to industry groups including a steel factory and a farm associated with a TCM facility. *Id.*

<sup>147</sup> Simon Denyer, *China’s Push to Export Traditional Medicine May Doom the Magical Pangolin*, WASH. POST (Jul. 21, 2018), [https://www.washingtonpost.com/world/asia\\_pacific/chinas-push-to-export-traditional-medicine-may-doom-the-magical-pangolin/2018/07/20/8d8c52d4-7ef1-11e8-a63f-7b5d2aba7ac5\\_story.html](https://www.washingtonpost.com/world/asia_pacific/chinas-push-to-export-traditional-medicine-may-doom-the-magical-pangolin/2018/07/20/8d8c52d4-7ef1-11e8-a63f-7b5d2aba7ac5_story.html).

<sup>148</sup> CITES, *Resolution Conf. 17.10*, *supra* note 28; CITES, *Resolution Conf. 10.19 (Rev. CoP14), Traditional Medicine*, ¶ 1(c) (2007), [https://www.cites.org/sites/default/files/document/E-Res-10-19-R14\\_0.pdf](https://www.cites.org/sites/default/files/document/E-Res-10-19-R14_0.pdf).

<sup>149</sup> UNODC 2020 Report, *supra* note 11, at 70 (“Based on seizures, most pangolin scales are destined for traditional medicine use in China[.]”).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

80% of interviewees agreed that the ban “will make them completely stop buying ivory . . . suggesting that the ban has a significant impact on the reported purchase intention.”<sup>152</sup>

Moreover, to boost the effectiveness of the ivory ban, China partnered with civil society to spread the word about the new law and its underlying social message: ivory has no place in the market. In airports and other prominent public spaces, the government worked with NGOs to launch a public-awareness campaign informing Chinese citizens and visitors of the ivory ban.<sup>153</sup> There has been no similar effort with respect to pangolins.

Far from reducing demand, it appears that China is actually aiming to expand TCM abroad, potentially complicating global pangolin-conservation efforts. According to a recent report, China’s TCM industry plans to proliferate along the Belt and Road trade routes, with 57 international cooperation projects in the works.<sup>154</sup> In an April 2019 press release, Chinese government officials stated that China had already “established overseas [TCM] centers and 43 bases for international cooperation on TCM in 35 countries along the Belt and Road.”<sup>155</sup> In the absence of clear commitments to end use of pangolins in TCM, international expansion of TCM could promote demand for pangolin scales in other countries.<sup>156</sup>

In an ominous development, in early June 2020, authorities in Beijing released draft legislation that would outlaw certain forms of criticism of TCM in the Chinese capital.<sup>157</sup> In addition to further restraining freedom of expression, this policy, if adopted as law, would amount to extra state support for TCM.<sup>158</sup>

Overall, the Chinese government has failed to reduce demand for pangolins in TCM products. Even when China has taken steps that could potentially reduce demand, it has continued

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<sup>152</sup> Bielicki, *supra* note 119.

<sup>153</sup> Press Release, World Wildlife Foundation, On One-Year Anniversary of China’s Ivory Ban, New Campaign Targets Travelers Abroad (Jan. 21, 2019), <https://www.worldwildlife.org/press-releases/on-one-year-anniversary-of-china-s-ivory-ban-new-campaign-targets-travelers-abroad>.

<sup>154</sup> Denyer, *supra* note 147.

<sup>155</sup> State Council Information Office, *SCIO Briefing on the Belt and Road Initiative: Progress, Contributions and Prospects* (Apr. 23, 2019), [http://www.china.org.cn/china/2019-04/23/content\\_74712268.htm](http://www.china.org.cn/china/2019-04/23/content_74712268.htm).

<sup>156</sup> Amy Hinsley et al., *Building Sustainability into the Belt and Road Initiative’s Traditional Chinese Medicine Trade*, 3 NATURE SUSTAINABILITY 96 (2020), <https://www.nature.com/articles/s41893-019-0460-6> (“On a global scale, this is likely to increase both TCM demand and the sourcing of wildlife-based TCM ingredients from new areas.”).

<sup>157</sup> Helen Davidson, *Beijing Draws up Plans to Outlaw Criticism of Traditional Chinese Medicine*, THE GUARDIAN (June 3, 2020), <https://www.theguardian.com/world/2020/jun/03/beijing-draws-up-plans-to-outlaw-criticism-of-traditional-chinese-medicine>; Owen Dyer, *Beijing Proposes Law to Ban Criticism of Traditional Chinese Medicine*, 369 BMJ m2285 (June 9, 2020), <https://www.bmj.com/content/bmj/369/bmj.m2285.full.pdf>.

<sup>158</sup> *Id.*

to maintain contradictory policies that hamper the efficacy of those steps. For example, the positive signal sent through China's recent decision to remove pangolins from a section listing key TCM ingredients in the Pharmacopeia is muddled, at best, by China's refusal to eliminate all patented medicines and its promotion of TCM abroad. This diminishes the effectiveness of the Appendix I listing of pangolins under CITES.

#### V. **China's Response to COVID-19 Does Not Provide Adequate Protections for Pangolins.**

Following the outbreak of COVID-19, China adopted new restrictions on wildlife trade and consumption in a decree entitled "Comprehensively Prohibiting the Illegal Trade of Wild Animals, Eliminating the Bad Habits of Wild Animal Consumption, and Protecting the Health and Safety of the People."<sup>159</sup> Despite its ambitious-sounding title and flattering news coverage, this new decree does not provide pangolins needed protections. In fact, it has very little bearing on pangolins at all.

First, it is unclear whether the ban is or will become permanent. When China first released the decree, it characterized the measures as temporary.<sup>160</sup> Later, on February 24, 2020, China stated that the ban was now permanent.<sup>161</sup> However, the ban is not yet enshrined in China's Wildlife Protection Law.<sup>162</sup> Until that happens, its durability is questionable. For example, when SARS struck in 2003, China banned a slew of activities related to the wildlife trade and consumption, but those prohibitions only lasted for three months.<sup>163</sup>

Second, the new policy does nothing to restrict international trade and domestic commerce for TCM and other non-food uses.<sup>164</sup> As described above, sale and use of pangolin scales for TCM remains legal, and Chinese demand for pangolin scales for TCM is endangering pangolin species both in Asia and Africa. While China's pandemic response could conceivably reduce illegal trade and sales in pangolin meat—for example, through heightened enforcement at wildlife markets offering animals as food—it will in no way mitigate illegal trade in scales for TCM. Indeed, in a subsequent guidance document, the National Forestry and Grassland Administration encouraged wildlife breeding facilities to "shift the direction of their production and trade" to TCM and other

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<sup>159</sup> James Gorman, *China's Ban on Wildlife Trade a Big Step, but Has Loopholes, Conservationists Say*, N.Y. TIMES (Feb. 24, 2020), <https://www.nytimes.com/2020/02/27/science/coronavirus-pangolin-wildlife-ban-china.html>.

<sup>160</sup> Alice Su, *Why China's Wildlife Ban Is Not Enough to Stop Another Virus Outbreak*, L.A. TIMES (Apr. 2, 2020), <https://www.latimes.com/world-nation/story/2020-04-02/why-china-wildlife-ban-not-enough-stop-coronavirus-outbreak>.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Gorman, *supra* note 159; see also Aron White, *Chinese Government Policy on Wildlife Trade: What Has Changed, What Has Not, and Why It Matters*, ROYAL UNITED SERVS. INST. (July 13, 2020), <https://www.rusi.org/commentary/chinese-government-policy-wildlife-trade-what-has-changed-what-has-not-and-why-it-matters>.

non-food uses.<sup>165</sup> Because this guidance document concerns only those species previously bred for food under authorized programs, it is not directly relevant to pangolins. Yet, through this guidance, China once again demonstrates its policy of sheltering TCM uses of wildlife—a policy that continues to drive market demand at cross-purposes with pangolin conservation efforts.

## **VI. Because China Has Violated and Diminished the Effectiveness of CITES, the Secretary of the Interior Must Certify China under the Pelly Amendment.**

As detailed above, China has both violated and diminished the effectiveness of CITES. Because all pangolin species are currently listed on Appendix I, CITES strictly prohibits all international, commercial trade in pangolins.<sup>166</sup> Moreover, CITES requires that all “Parties shall take appropriate measures to enforce” CITES’s bans and “prohibit trade in specimens in violation thereof.”<sup>167</sup> Thus, China must “penalize trade in, or possession of[,]” illegally imported specimens.<sup>168</sup>

China has violated these critical mandates. China remains the primary source of demand for pangolin products worldwide, catalyzing poaching and international trade in pangolins, in violation of CITES. On the supply side, Chinese actors also serve as traders and retailers, which in turn drives poaching and international trade into China, again in violation of CITES. The Chinese government has failed to take adequate enforcement action to combat this trade; Chinese law continue to authorize domestic sale and use of pangolin scales in TCM; and Chinese law does not prohibit possession of illegally imported pangolin scales. These actions and critical omissions both violate and diminish the effectiveness of CITES, while they simultaneously drive pangolins to extinction.<sup>169</sup>

More generally, because China’s ongoing pangolin trade threatens the very existence of the eight pangolin species, China increases the likelihood that these species may be lost forever. Causing a species to decline to near-extinction “diminishes the effectiveness” and the purpose of CITES, a treaty negotiated to protect species from extinction due to trade.

As such, we petition the Secretary of the Interior to certify that China, through its nationals, “directly [and] indirectly, [is] engaging in trade [and] taking which diminishes the effectiveness

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<sup>165</sup> National Forestry & Grasslands Admin., *Notification Regarding Reliable and Proper Follow-Up Work on the Prohibition on Eating Wild Animals (No. 42)* (2020), <https://eia-international.org/wp-content/uploads/NFGA-notification-regarding-reliable-and-proper-follow-up-work-on-the-prohibition-on-eating-wild-animals.pdf>; Aron White, *China’s Wildlife Trade Policy—Where Are We Now and What Might Come Next?*, ENVTL. INVESTIGATION AGENCY (May 7, 2020), <https://eia-international.org/blog/chinas-wildlife-trade-policy-where-are-we-now-and-what-might-come-next/>.

<sup>166</sup> CITES, 27 U.S.T. 1087, art. III.

<sup>167</sup> *Id.* at art. VIII, ¶ 1.

<sup>168</sup> *Id.* at art. VIII, ¶ 1(a)-(b).

<sup>169</sup> 22 U.S.C. § 1978(a)(2); *see also Am. Cetacean Soc’y v. Baldridge*, 768 F.2d 426, 439 (D.C. Cir. 1985) (suggesting a nation’s action may not “violate” a treaty but still “diminish the effectiveness” of the agreement).

of” CITES, an “international program for endangered or threatened species.”<sup>170</sup> We urge the Secretary to act quickly, consistent with his duty under Pelly to “promptly investigate” and “promptly conclude” such investigation of “activities of foreign nationals that may affect” international programs.<sup>171</sup> As such, we ask that the Secretary certify China within 60 days.

**VII. Following Certification of China, the President Should Impose Pelly Trade Sanctions Unless China Takes Meaningful and Substantiated Legal Action to Halt Pangolin Trade.**

China’s failures, both under national law and policy and through lack of enforcement effort, combine to violate and diminish the effectiveness of CITES as it relates to pangolins. China must take immediate and concerted action to come into compliance with CITES and, importantly, to save the pangolin from extinction. We recommend the following actions, and we urge the United States to use its Pelly authority to pressure China for the following commitments to avoid trade sanctions:

- (1) Close the legal, domestic market for traditional Chinese medicines containing pangolin parts and derivatives.** China’s Wildlife Protection Law allows the sale and use of otherwise protected wildlife, like pangolins, for TCM purposes.<sup>172</sup> This exception underpins a legal domestic market that in turn spurs illegal trade, creates opportunities for wildlife laundering, and frustrates enforcement. China recently faced a similar dynamic with respect to ivory. Laudably, for ivory, China made the decision to close its legal domestic market, realizing that this was a necessary first step to combatting illegal trade.<sup>173</sup> China should follow its own example; it should shut down the domestic market for TCM containing pangolin parts and derivatives. This could be accomplished through a tax-specific decree or, better yet, through a broader amendment to the Wildlife Protection Law. Indeed, China is presently engaged in an effort to revise the Wildlife Protection Law.<sup>174</sup> **Recommendation: China should amend its Wildlife Protection Law to prohibit TCM uses of wildlife subject to special state protection.**

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<sup>170</sup> 22 U.S.C. § 1978(a)(2).

<sup>171</sup> *Id.* § 1978(a)(3)(A)-(C).

<sup>172</sup> *See supra* Section IV(B)(2).

<sup>173</sup> *See* Laurel Neme, *How World’s Largest Legal Ivory Market Fuels Demand for Illegal Ivory*, NAT’L GEO. (Oct. 22, 2015) (reporting that, prior to the ban, Chinese ivory deals would “routinely replenish their legally held private stocks with illegal ivory from recently poached African elephants”), <https://www.nationalgeographic.com/news/2015/10/legal-loopholes-fuel-ivory-smuggling-in-hong-kong/>; *cf.* Bielicki, *supra* note 119.

<sup>174</sup> *China to Amend Law on Wildlife Protection*, XINHUANET (Feb. 11, 2020), [http://www.xinhuanet.com/english/2020-02/11/c\\_138773881.htm](http://www.xinhuanet.com/english/2020-02/11/c_138773881.htm); *see also* White, *supra* note 164 (noting amendment process and calling for changes).

- (2) **Amend the Wildlife Protection Law to criminalize possession of illegally obtained wildlife, including pangolins.** China’s Wildlife Protection Law does not prohibit, let alone criminalize, possession of illegally obtained specimens.<sup>175</sup> The exclusion of possession hinders enforcement efforts to a substantial degree. In contrast, the U.S. Endangered Species Act explicitly prohibits possession of a specimen of a listed species that was imported in violation of CITES or U.S. law.<sup>176</sup> Moreover, Article VIII of CITES and Resolution Conf. 8.4 (Rev. CoP15) encourage Parties to penalize trade *and* possession.<sup>177</sup> **Recommendation: China should reform its law to prohibit possession of illegally taken or imported specimens.**
- (3) **Make an institutional commitment to seek deterrent penalties in all cases involving illegally-traded wildlife, including pangolins.** The evidence suggests that China does not consistently seek or secure deterrent penalties in cases involving illegal trade of CITES-listed pangolins. As noted above, CITES instructs Parties to seize illegally traded specimens *and* “penalize trade in, or possession of, such specimens.”<sup>178</sup> **Recommendation: China should commit to seek deterrent penalties in all cases involving illegally-traded wildlife, including pangolins.** The United States has insisted on a similar commitment from Mexico and Canada in its trade negotiations with those countries.<sup>179</sup> Moreover, for transparency and to verify that China is in fact seeking and securing deterrent penalties through prosecutions and other enforcement actions, China should include detailed information in its CITES illegal wildlife trade reports and through other periodic reports made available to the public.
- (4) **Adopt and implement a clear confiscation and disposal policy for illegally traded pangolin scales; destroy existing stockpiles in a verifiable manner.** China must align its stockpile management with Resolution Conf. 17.10 and Resolution Conf. 17.8. Resolution 17.10 calls on Parties “to ensure that adequate control measures are in place to secure” stockpiles of pangolin parts and derivatives.<sup>180</sup> Citing this language, the Standing Committee asked Parties to “maintain an inventory of government-held stockpiles of pangolin scales . . . and inform the Secretariat of the level of this stock and date of acquisition; the source of the stockpile; and the reasons for any significant changes in the

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<sup>175</sup> See *supra* Section IV(B)(IV).

<sup>176</sup> 16 U.S.C. § 1538(c)(1).

<sup>177</sup> CITES, 27 U.S.T. 1087, art. VIII, ¶ 1(b).

<sup>178</sup> *Id.*

<sup>179</sup> See Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), art. 24.22(4) (Nov. 30, 2019) (“In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence, were taken or traded in violation of that Party’s law or another applicable law, the primary purpose of which is to conserve, protect, or manage wild fauna and flora. *These measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade.*”) (emphasis added).

<sup>180</sup> CITES, Resolution Conf. 17.10, *supra* note 28.

stockpile[.]”<sup>181</sup> So far, China has not heeded this call. Separately, Resolution Conf. 17.8 calls for secure storage or destruction in the case of dead specimens of illegally traded Appendix I species, with release permitted “only for *bona fide* scientific, educational, enforcement or identification purposes[.]”<sup>182</sup> Based upon the evidence, China’s ability to provide secure storage is in doubt. **Recommendation: China should develop an action plan, in consultation with U.S. officials, to achieve (1) confiscation and disposal of illegally-traded pangolin specimens going forward, and (2) destruction of existing stockpiles of pangolin scales in a verifiable manner.**

## CONCLUSION

Petitioners Center for Biological Diversity, International Environmental Law Project, and Environmental Investigation Agency UK request certification of China pursuant to the Pelly Amendment because China is “diminish[ing] the effectiveness” of CITES by failing to enforce CITES’s ban on international trade in highly endangered pangolin species; failing to ban possession and use of pangolin scales, particularly for TCM; and overall, causing pangolins’ impending extinction. We urge the Secretary to move quickly, to reflect the urgency of pangolins’ decline and the gravity of China’s CITES violations. Following certification, we urge the Secretary to recommend trade sanctions against China, in the absence of immediate corrective action, in order to induce China’s compliance with CITES.

Please contact us any time if you have questions or would like to discuss this petition. Upon filing this petition via email, we will be sending hard copies of the petition and a CD of references cited herein, to be included in the administrative record. We appreciate your time and attention in addressing this critical conservation issue.

Sincerely,

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<sup>181</sup> CITES, *Species Specific Matters: Pangolins (Manis Spp.)*, *supra* note 90, at 58.

<sup>182</sup> CITES, *Resolution Conf. 17.8 (Rev. CoP17)*, *supra* note 145.



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