

# What Are the Active Effects of the SPS Agreement on the Conservation of Asian Elephants in China during COVID-19 Pandemic

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**Abstract:** As COVID-19 pandemic has amplified and in the context of human-elephant conflict, a sub-topic under the trade and environment topic has given high attention, which is the role of entry and exit animal and plant quarantine in preventing the spread of diseases. Against this background, this study aims to formulate a theoretical insight from SPS Agreement and Conservation of Asian elephants, which are synthesised in the context of COVID-19 pandemic, based on which a conceptual framework is thus proposed. I have used thematic analysis to analyse data collected from textual sources. It is found that when China adopts special SPS measure(s), even if it does not comply with GATT, it can still apply SPS Agreement to claim an affirmative defense. Furthermore, our finding also suggests that China can benefit from the SPS Agreement as it provides an international framework for SPS arrangements among countries. In addition, it is interesting to note that as more attention is paid to animal and plant quarantine. Therefore, the room of application of the SPS Agreement will be further expanded. With the findings, we contribute to extending the theory of the conservation of Asian elephant and drawing attention to Asian elephants' sanitary and health. Our findings also provide guidelines for filling the legal gaps in managing the quarantine in China.

**Keywords:** Asian Elephant; Sps Agreement; Risk Assessment; Quarantine; Covid-19

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## 1. Introduction

Asian elephants are considered to be "threatened with extinction" in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and also enjoys Class-A protection in China.

On closer inspection, the CITES relate to the relationship between trade and environment. Trade and environment, as a topic, is not a new one.

Of note, as COVID-19 pandemic has amplified and in the context of the globalization of free trade, a sub-topic under the trade and environment topic has given high attention, which is the role of entry and exit animal and plant quarantine in preventing the spread of diseases and protecting wildlife.

There is an agreement, the SPS Agreement, which stipulates specific and strict requirements for animal and plant quarantine in international trade, so it is a good way to prevent the spread of diseases among animals and plants. In this regard, the SPS Agreement is significant to the conservation of Asian elephants in China.

Therefore, my research will review the Conservation of Asian Elephants through the lens of the SPS agreement during Covid-19 pandemic.

Research in this area has resulted in several theoretical topics. They are the importance of regulated trade for biodiversity, the connections between infectious zoonotic diseases, wildlife, and human, etc. What is more, there are three main topics when it comes to the conservation of Asian elephant. They are illegal killing and trade, habitat loss, as well as human-elephant conflicts.

However, to date there has been little attention given to what the effects of the SPS Agreement, the animal and plant quarantine, on the conservation of Asian elephants.

So present research is aimed at extending the theory of the conservation of Asian elephant and drawing attention to Asian elephants' sanitary and health, which are necessary conditions for their survival and reproduction.

### 1.1 Findings and Discussion

Today, the number of Asian elephants in China has gradually increased under the situation that the total number of Asian elephants in the world has been decreasing. Of note, human-elephant conflict is one of the main threats to Asian elephants and two-thirds of the wild elephants today are now living outside the reserve. In this sense, more human-elephant contact is certain, thereby Asian elephants are more easily contract diseases from other organisms.

The COVID-19 crisis provides a clear reminder of the ease at which pests and diseases can spread worldwide. When disease threaten organisms, the disputes between animal trade and corresponding environmental security that cause disease become more acute. WTO members focus on resolving these disputes through the WTO legal system. The legal framework in this regard is the SPS Agreement, and one of the focuses currently involved in the SPS Agreement is animal and plant trade

quarantine. In a nutshell, the positive effect of the SPS Agreement on the conservation of Asian elephants are reflected in the following aspects:

## **1.2 Claim an Affirmative defense**

When China adopts specific SPS measure(s) during the pandemic, even if it does not comply with GATT regulations, it can still apply SPS Agreement to claim an affirmative defense. This is because, the SPS Agreement is an interpretation of the general exception included in Article 20(b) of the GATT, which is based on the principle that member states can legitimately assert that their SPS measures are intended on the necessary basis to protect human, animal or plant life or health from risks. It is a perfect example that when a country imposes quarantine measures on the same type of products, one from the epidemic area and the other from the non-epidemic area, but only the products from the epidemic area are subject to quarantine measures, this might run counter to the principle of non-discrimination in GATT. Then in this case, if a country, such as China, imposes this measure in accordance with the preconditions attached to the SPS agreement, then China can claim an affirmative defense in order to realize its goal of protect the health of its wildlife.

## **2. Provide an international framework for SPS arrangements**

China can benefit from the SPS Agreement as it provides an international framework for SPS arrangements among countries. China's current law that specifically regulates animal and plant quarantine is only the Quarantine Law, which was promulgated and implemented in 1992. Taking the Quarantine Law as an example, to improve it, China can start from the following aspects:

### **2.1 Stipulate that under certain circumstances, China can take measures to restrict international trade**

In the vast majority of cases, existing international standards have a sound scientific basis. However, there may be deficiencies in international standards, since different conditions. Therefore, Article 3.3 allows members to use different standards for achieving their own level of protection. It is a suitable example that many countries, especially developed ones, have eradicated rabies. This is because, they impose the requirement that animals be vaccinated against rabies and have not spent the previous six months prior to import in an area where rabies still occurs.

### **2.2 Establish a risk assessment mechanism**

Article 5.2 stipulates various factors that "shall" be considered when conducting a risk assessment, but the agreement itself does not stipulate that the enumeration in this provision is closed. Additionally, the Appellate Body in hormone case noted that Article 5.2 is not closed. Thus, it leaves room for the risk assessment to consider other factors, such as cultural orientation and social values. To this end, China can set its own specific risk assessment mechanism to achieve its goal to protect their wildlife.

### **2.3 Set procedural regulations**

The core provisions of the Agreement have strong operability. However, China's Quarantine Law lacks procedural provisions. Article 25 of the Quarantine Law stipulates: "Transit animals are allowed to transit if they pass the quarantine inspection." The law only grants agencies the substantive rights and procedural principles for quarantine, but lacks procedural mechanisms. The lack of procedures will lead to disputes, which may cause unavoidable harm to our country. Taking a closer look, according to the official website of the SPS notification, China notified a Measures for Administration of Quarantine Access of Entry Animals and Plants (Draft) in January this year, which is expected to be implemented in April this year. The reason for its promulgation may be related to the rapid spread of the COVID-19, that is, the government with a view to controlling the spread of the virus. This Measures adds specific norms and details about the implementation process of risk assessment, which is undoubtedly conducive to improving China's risk assessment system.

## **3. The room of application of the SPS Agreement will be further expanded**

As the pandemic and international trade continues to escalate, people's requirements for environmental protection continue to increase, and more attention is paid to animal and plant quarantine. Therefore, the room of application of the SPS Agreement will be further expanded. Subsequently, the conservation of Asian elephants will also be guaranteed to some extent.

From a theoretical perspective, this research provides a refined view of extending the theory of the conservation of Asian elephant and drawing attention to Asian elephants' sanitary and health, which are necessary conditions for their survival and reproduction.

Yet, it is necessary to recognize some of the limitations of this research. One limitation concerns the deficiency of journal articles on Asian elephant sanitary and health promotion and protection. The other one is to access up-to-date information, namely the measures and current situation for promoting Asian elephant sanitary and health in China as well as application and transformation of the SPS Agreement in China.

## Recommendations

Of note, the complex nature of the interactions observed, particularly for conservation of Asian elephant and quarantine, raises several issues to investigate in future research. Future research might be directed at more closely examining the application of the SPS Agreement in China and exploring the quarantine basis for the conservation of Asian elephants as a means for better understanding its moderating role.

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