

# Chapter 1 Application of the CITES Resolution on closure of domestic ivory market to Japan - Objective and structure of this report -

## 1.1 Background

Every year, as much as 20,000 or 30,000 of African elephants (*Loxodonta africana*) are killed for their ivory tusks<sup>1</sup>.

African elephants living in the savanna (*Loxodonta africana africana*) started to decline at a continental level since 2007<sup>2</sup>. Between 2010 and 2014, 27,700 elephants were poached which led to an annual population decline of 8%<sup>3</sup>. The remaining population of savanna elephants, (estimated as of 350,000 at the time of 2014<sup>4</sup>) could drop by half in nine years (in 2023) if nothing changes<sup>5</sup>.

Similarly, population of forest elephants (*Loxodonta africana cyclotis*<sup>6</sup>), which inhabit the tropical forests of central Africa and a limited part of west Africa in small number, have declined by 63.7% during the period of 2002 – 2012<sup>7</sup>. Furthermore, even in one of the largest and most highly protected areas such as Gabon, where 50% of forest elephants in central Africa is thought to reside, the numbers declined by 78–81% (more than 25,000 elephants) in over ten years between 2004 and 2014<sup>8</sup>.

According to the "African Elephant Status Report 2016" launched by the African Elephant Specialist Group, Species Survival Commission (SSC) / International Union for the Conservation of Nature (IUCN) at the 17th meeting of the Conference of the Parties (CoP17) to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES) in September 2016, the elephant population in the African continent declined by 111,000 elephants since 2006, and as of 2015, the population was found to be only 415,000 elephants<sup>9</sup>.

1 Wittemyer et.al, 2014, Chase et.al., 2016

2 Chase et.al., 2016

3 Ibid.

4 Except for the Savanna populations in Namibia, South Sudan and Central Africa Republic (Chase et.al., 2016).

5 Ibid.

6 Based on genetic evidences, a compelling theory suggests that the Forest Elephant (*Loxodonta africana cyclotis*) should be a different species from the Savanna Elephant (*Loxodonta africana*), however, the African Elephant Specialist Group of SSC/IUCN claims that re-classification is pre-matured considering that dividing species may leave hybrids in an uncertain conservation status (Blanc et.al., 2008). The critics argued fears that some nations would pull out of all ivory trade restrictions if forest elephants would get listed on CITES Appendix I (as well as on 'Critically Endangered' under the IUCN Red List) have prevented the IUCN AfESG from recognizing them as different species (Poulsen et al., 2017).

7 Wittemyer et.al, 2014

8 Poulsen et al., 2017

9 <https://www.iucn.org/ssc-groups/mammals/african-elephant-specialist-group>

Under such situation, the United States and China recognized the reality that laundering illegal ivory using legalized domestic ivory market as a cover has caused the current devastating poaching of elephants, and China with the largest domestic ivory market in the world decided to move in steps with the US for closure of their legalized market in September 2015<sup>10</sup>, followed by Hong Kong SAR in January 2016<sup>11</sup> and France.<sup>12</sup>

These progressive efforts made by some selected countries led to adoption of the resolution on closure of domestic ivory market by consensus on October 3rd 2016 at CITES CoP17<sup>13</sup>.

In December, just after the resolution was adopted at CoP17, Hong Kong outlined a three step process for ensuring a complete prohibition of ivory trade to be completed by the end of 2021<sup>14</sup>. During that time China announced that it will prohibit some ivory manufacturing and sales of the products by some designated vendors by the end of March 2017, ensuring a complete ban on all sales of ivory by the end of December<sup>15</sup>.

The Government of Japan, however is taking a self-serving argument on the interpretation of the CITES resolution. It claims that Japanese market is not the subject of closure as recommended by the CITES resolution - ignoring the language and revising process of the resolution<sup>16</sup>.

Should Japan's domestic ivory market be exempted from the subject of closure?

This report will make it clear based on the situation of Japan's domestic ivory market and the assessment of the effectiveness of Japan's control on ivory trade.

phant-specialist-group

10 <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>

11 [http://www.info.gov.hk/gia/general/201601/13/P201601130793\\_print.htm](http://www.info.gov.hk/gia/general/201601/13/P201601130793_print.htm)

12 <http://www.hsi.org/world/europe/news/releases/2016/05/francebansivorytrade050116.html?referrer=https://www.google.co.jp/>

13 <https://cites.org/sites/default/files/eng/cop/17/Plen/E-CoP17-Plen-Rec-04.pdf>

14 Hong Kong Free Press dated on 21th December 2016 <https://www.hongkongfp.com/2016/12/21/hong-kongs-ivory-trade-to-be-gradually-banned-by-the-end-of-2021/>

15 Website of Chinese government [http://www.gov.cn/zhengce/content/2016-12/30/content\\_5155017.htm?from=groupmessage&isappinstalled=0](http://www.gov.cn/zhengce/content/2016-12/30/content_5155017.htm?from=groupmessage&isappinstalled=0)

16 MoFA, METI and MoE, 2016

[http://www.meti.go.jp/committee/kenkyukai/seizou/zouge\\_torihiki/pdf/003\\_01\\_00.pdf](http://www.meti.go.jp/committee/kenkyukai/seizou/zouge_torihiki/pdf/003_01_00.pdf)

## 1.2 Resolution on closure of domestic ivory market

In April 2017, ten African elephant range states, including Kenya and Niger, proposed a draft resolution for the closure of domestic ivory market to CITES CoP17 to be held in South Africa on September, 2017<sup>17</sup>. The proposed agenda by the United States also included a draft revision of CITES Resolution Conf.10.10 (Rev. CoP16) recommending to the Parties to close the domestic ivory market.<sup>18</sup>

CITES CoP17 discussed these proposals jointly and adopted a revision to CITES Resolution 10.10, including a recommendation on closure of domestic ivory market to the related Parties at both of the Committee 2 and the Plenary on consensus,

The languages of the relevant paragraph related to the closure of domestic ivory market were negotiated at the working group organized by the Committee 2.

In fact, the resolution on closure of domestic ivory market forms a part of the revised Resolution 10.10. The relevant paragraphs to closure of domestic ivory market are as follows<sup>19</sup> (The underlines were made by the author).

**3. RECOMMENDS** that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency;

**4. RECOGNIZES** that narrow exemptions to this closure for some items may be warranted; any exemptions should not contribute to poaching or illegal trade

**5. URGES** those Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade and that have not closed their domestic ivory markets for commercial trade in ivory to implement the above recommendation as a matter of urgency

**8. REQUESTS** Parties to inform the Secretariat of the status of the legality of their domestic ivory markets and efforts to implement the provisions of this Resolution, including efforts to close those markets that contribute to poaching or illegal trade

**9.<sup>20</sup> FURTHER DIRECTS** the Secretariat, with reference to the findings of ETIS<sup>21</sup>, MIKE<sup>22</sup> and its findings on the status of domestic ivory markets, and within available resources

- a) to identify those Parties that have unregulated internal markets for ivory, where ivory is found to be illegally traded, where ivory stockpiles are not well secured, or that have significant levels of illegal trade in ivory;
- b) to seek from each Party so identified information concerning its implementation of the provisions of this Resolution relating to ivory trade and, where appropriate and in consultation with the Party, undertake in situ verification missions; and
- c) to report its findings and recommendations to the Standing Committee, which may consider recommendations to support the implementation of the present Resolution, including requests to identified Parties to develop and implement National Ivory Action Plans, and monitor progress in executing these Action Plans, in accordance with the Guidelines contained in Annex 3, as well as other appropriate measures in accordance with Resolution Conf. 14.3 on CITES compliance procedures

<sup>20</sup> This paragraph was established prior to the revision at CoP17.

The CITES Standing Committee is authorized to recommend the relevant Parties to develop and implement National Ivory Action Plans, and recommend the Conference of the Parties other appropriate measures including penal measures based on Resolution Conf.14.3 to support the implementation of the present resolution by a specific Party.

The Secretariat is directed to collect the information, undertake an in situ verification mission and report the findings to SC for assisting it for its action.

The revised resolution at CoP17 clearly stated "recommendation to support the present resolution" (Paragraph 9, (c)) and also mandated the Secretariat to prepare fact-finding regarding "on the status of domestic ivory markets" (Paragraph 9, main paragraph).

It can be recognized that securing compliance with the relevant paragraphs related to closure of domestic ivory market were integrated into the set of procedures including research, verification and report by the Secretariat and SC recommendation which is to bring a penal measure into view.

<sup>21</sup> "The Elephant Trade Information System", an official CITES program. <https://www.cites.org/eng/prog/etis/index.php>

<sup>22</sup> "Monitoring the Illegal Killing of Elephants", an official CITES program. <https://www.cites.org/eng/prog/mike>

<sup>17</sup> CoP17 Doc. 57.2

<sup>18</sup> CoP17 Doc. 27 Annex 1

<sup>19</sup> <https://cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>

### 1.3 Application of the resolution on closure of domestic ivory market to Japan in terms of the process of discussion at CoP17 and the adopted languages

#### 1.3.1 From the discussion on revising the draft resolution on closure of domestic ivory markets, it is apparent that Japan's domestic ivory market was also considered as a subject of attention.

The language of “that is contributing to poaching or illegal trade” was inserted on the process of discussion at the working group formed during CITES CoP17. Government of Japan (GoJ) seems to claim that Japan should be excluded from the mandated countries which are asked to close their markets referring that Japan “do not contribute” to poaching or illegal trade<sup>23</sup>. But, such a claim is contradictory to the process of revising the languages of the draft resolution.

The original draft resolution (before the amendment) was brought up to prevent legalized domestic ivory markets from contributing to poaching or illegal trade in ivory. In other words, it would not be logically required to be closed if there would have been any market such that it is not contributing to poaching and illegal trade. Means, the addition of the new phrase, “that is contributing to poaching or illegal trade”, in the final draft means is not to designate special exemption but merely to make the supposed effect of the original draft clearer.

In the first place, a market that does not contribute to poaching and illegal trade can happen only in theory, as legalized market do provide opportunities for laundering illegal ivory using legalized trade in ivory as a cover. Illegal markets also favor traders in cost and tax exemption despite of high price tag when the illegal products are transformed to as legalized products. Hence, there is a clear financial benefit for traders seeking profit by marketing illegal ivory.

Under such a situation, the attempt of Japan to insert the sentence “that is contributing to significant illegal trade increasing poaching”, instead of, “that is contributing to poaching or illegal trade” is to designate a special exemption from the market closure itself<sup>24</sup>. But, the working group did not support Japan's amendment, instead welcomed

23 GoJ stated, “as the result, an amendment was endorsed, which reflects the view of not only Japan but also the US, etc. that the domestic markets to be closed are ones that contribute to poaching or illegal trade. (MoFA, METI & MoE, 2016). See 7.3, also.

24 No official minute of the working group has not been prepared, however the author himself participated in the meeting.

the language of the final draft and adopted it.

It is apparent that Japan's domestic ivory market was supposed to be subject to closure when looking at the process of discussion above on revising the draft resolution.

#### 1.3.2 It is apparent that exempting an entire market from closure is beyond the scope of the assumption when looking at designation of a new paragraph warranting narrow exemptions to closure for some items

The working group formed during CITES CoP17 revised the original draft considering the negative position of EU, Japan, etc. by adding a new 4th paragraph “Recognize that narrow exemptions to this closure for some items may be warranted”.

It is very clear from the final draft of the resolution that, all domestic ivory markets in the world are subject of closure while a small part of ivory products may be allowed to be traded under the different circumstances in the countries concerned. It is beyond the scope of the assumption of the resolution that a market itself could be exempted from the subject of closure.

In fact, some countries like France<sup>25</sup> and UK<sup>26</sup> are considering to accept the recommendation mentioned in the 3rd paragraph of the document in closing their domestic ivory markets and to leave the discussions on the range of “narrow exemptions to this closure for some items” allowed to be traded on the 4th paragraph (e.g. certain antiques, a part of musical instruments and items that contain a small (de minimis) amount of ivory).

### 1.4 Japan, the largest legal ivory market in the world after the closure of the market in China and HK.

#### 1.4.1 Japan emerged as the world's largest ivory market in 1970s.

In 1970s the annual imports of raw ivory by Japan was 255 tons on an average. It reached to 368 tons in 1978 when Japan was regarded as the world's largest ivory consuming country<sup>27</sup>. The largest importing country of raw ivory at the time was Hong Kong SAR which imported average of 463 tons per year while considerable part of the imported ivory

25 <https://www.antiquestradegazette.com/news/2016/government-will-crackdown-on-sales-of-ivory-less-than-70-years-old-from-march/>

26 <https://www.theguardian.com/environment/2017/jan/07/uk-ivory-trade-fuels-poaching>

27 Martin, 1985

was re-exported to China and Japan<sup>28</sup>. Thereafter, Japan overtook HK with regard to the importing volume to become the world's largest importing country of ivory also, then imported 2,727 tons in total of raw ivory corresponding to 120,000 elephants within 10 years (1979 – 1988)<sup>29</sup> while elephants were slaughtered in African continent for taking ivory tusks in the same period.

#### 1.4.2 Consumers' ivory preference has maintained in Japan's market since 1994

Figure 1-1 shows the change in the Japanese consumer confidence index<sup>30</sup> between 1989 and 2015 together with the events influencing consumer views of ivory consumption, or illegalization of international trade in ivory (trade ban) and legalization of it (one-off sales and imports of the sold).

Considering those information, the change in consumers' ivory preference<sup>31</sup> can be discussed

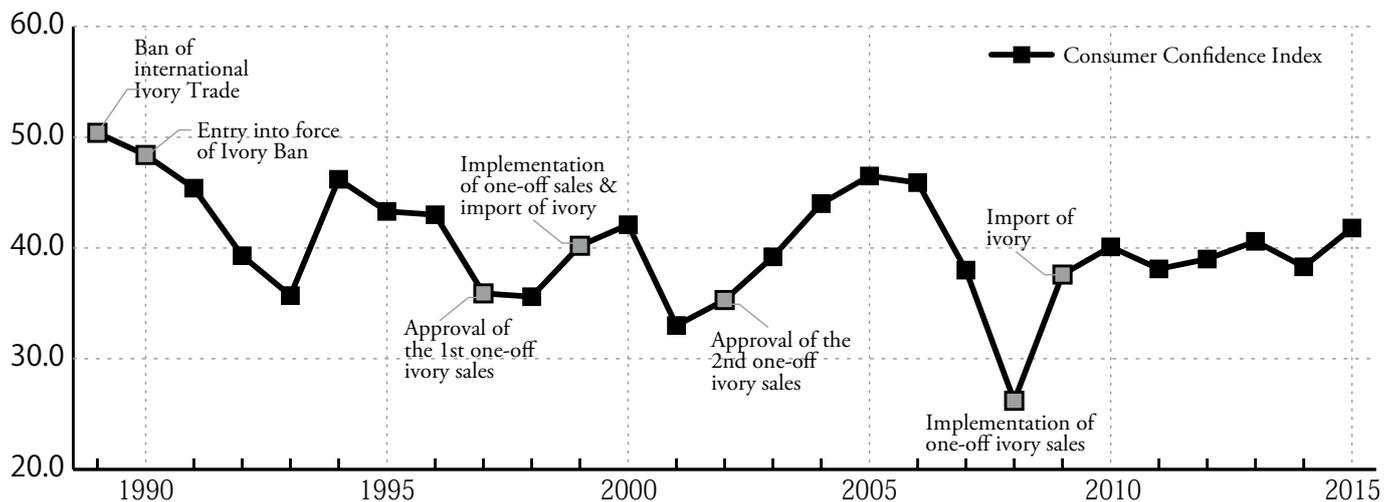
28 Ibid.  
 29 Milliken, 1989  
 30 "Consumer confidence index" are regularly announced by the Cabinet office as the result of the survey on consumption trend.  
<http://www.esri.cao.go.jp/en/stat/shouhi/shouhi-e.html>  
 The survey seeks to gain a quick understanding of shifts in consumer perception, price expectation, expenditure on services, and purchasing/replacement of principle consumer durables, as a basic tool for evaluating economic trends.  
[http://www.esri.cao.go.jp/en/stat/shouhi/shouhi\\_kaisetsu-e.html](http://www.esri.cao.go.jp/en/stat/shouhi/shouhi_kaisetsu-e.html)  
 31 A report attempted to estimate Japanese consumer's demand for and preference to ivory by comparing amounts of ivory items over the counter with those in the past, and interviews to ivory manufacturers, then concluded as "the golden days of ivory carving in Japan have ended", and "both traders and buyers are gradually losing confidence and thus interest in ivory" (Vigne & Martin, 2010). However, the former method is almost ineffective because it does neither consider the impact of production adjustment by the manufacturers (see 4.3.2) nor the scale of online sales of ivory items. The latter method is also unreliable because the narrative of the manufacturers about the trend of "whole" ivory

as follows;

In the period of 1989 – 1990 when the ivory trade ban was introduced<sup>32</sup>, ivory wholesalers rushed to ivory hanko manufacturers for securing their stocks, so the price of ivory blank hanko skyrocketed and the market was disrupted<sup>33</sup>. During this time, the negative impact of consum-

industry did not base concrete data but just played their hunch.  
 The other report introduced a survey to understand attitude and demand for ivory products like ivory hanko using structured questionnaires to general consumers including questions on interest in future purchases of it, and concluded as "from the consumers' perspective, however, interest in purchasing ivory products is low", "while ownership of a hanko is a necessity for adults in Japan, a preference for ivory is unlikely to remain"(Kitade & Toko, 2016). However, the report missed the fact that purchasing hanko, especially one to be officially registered, would be quite limited in general people's life, and therefore, awareness of selection of hanko material could be arose just at the opportunity of purchasing hanko. It means that a questionnaire not be conducted at the pinpoint of the opportunity of purchasing should lead to the conclusion that the questionees do not have specific interest in the matter. Such questionnaire is meaningless at least about hanko material.  
 Japanese consumer's selection of hanko material is considered to depend exclusively on the sales pitch by hanko retailers. The main stream of hanko retailing strategy thus far can be illustrated by an example as: "the appeal of ivory: the premier grand gru of hanko material"(Anon, 2015).  
 32 On 19th June, 1989, METI prohibited to import worked and semi-worked ivory, and allowed to import only the raw ivory which are exported as within the export quota mandated to each African range state.  
 Subsequently, METI applied Japan's import quota system to raw ivory and put zero quota to it (Milliken, 1989). It means import of ivory into Japan was totally banned at the time.  
 All populations of African elephants were transferred from Appendix I to Appendix II, so international trade in ivory was banned at CITES CoP7 in October, 1989.  
<https://www.cites.org/sites/default/files/eng/cop/07/E07-Appendices.pdf>  
 The decision entered into effect in January, 1990 (CITES Article 1 (c)).  
 33 As the result of increase in wholesale price of ivory blank hanko made by the manufacturers (Takaichi, 1992.a), the Tokyo Hanko Cooperative Association increased its recommended retail price (to the members) threefold or up to 63,000 yen (US\$504) for standard grade to 93,000 yen (US\$ 744) for extra grade (Anon., 2011).

Fig 1-1 Change in consumer confidence index and the process of legalization & illegalization of international ivory trade



ing ivory to elephant conservation was highlighted by mass media which then led to negative impression on ivory consumption<sup>34</sup>.

Therefore, consumers' ivory preference should have been damaged somehow in response to the event of illegalization of ivory import (1989-1990) while the boom price reduced soon<sup>35</sup>. However, observing the change in consumer confidence index, the demand for ivory is considered to have been damaged neither by the introduction of consumption tax in 1989 nor by the economic recession by bubble economy burst (March 1991 - October 1993)<sup>36</sup>.

After the economic recession, the consumer confidence which had recovered in 1994, turned down again in 1997. This is the time when the consumption tax was raised. But, the effect of the turndown to the preference for ivory as luxurious item was considered mostly mitigated by adoption of the first one-off sale/import of ivory at CITES CoP10<sup>37</sup> widely covered by media including TV and newspaper<sup>38</sup>, which took place on the same year (1997).

10 years later, the consumer confidence turned down in the period between March 2008 and March 2009 caused by the economic recession subsequent to the Global Financial Crisis<sup>39</sup>, however, the second one-off sale (auction) /import of ivory took place in this particular period<sup>40</sup> as if it were to be prepared to prevent consumer's preference from leaving from ivory.

34 Anon.(2011) presented a witness of a hanko retailer who did his business as a tenant of a department store as "The department store gave a warning to us to avoid standing out by increasing or decreasing the price of ivory hanko. It seems to be the common policy of department stores to hate attracting attention on ivory considering the social atmosphere. In fact, a department store withdrew ivory products from store shelves."

Also see Yomiuri Shimbun News article on dated 8th march 1990 "Stop selling ivory accessories by department stores in a stream, With an eye toward public opinion supporting conservation?, But hanko sales is still in business", and Takaichi, 1992.a

35 Takaichi, 1992.a

36 Incidentally, it was in the midst of an economic boom for hanko business in 1989 when the international ivory ban was adopted because of two big events promoting hanko demand, one of which is the change of era name from "Showa" to "Heisei" and another of which is introduction of consumption tax (Anon., 2013.a).

37 CoP10 Com.I 10.13 (Rev.)

38 News article on NIKKEI Shimbun dated 20th June, 1997 "CITES meeting, Reopening ivory trade in 1999, Lifting the ban adopted, Exporting to Japan becomes possible", and on Asahi Shimbun dated 20th June, 1997 "Ivory export exclusively for Japan, Lifting the ban adopted with conditions", "'Lifting the ban of ivory conditionally' Bringing utilization of natural resources to the forward, Some concern about compatibility with conservation", etc..

39 Cabinet Office website  
<http://www.esri.cao.go.jp/jp/stat/di/150724hiduke.html>

40 CITES SC58 Doc.36.3 (Rev.1)

Afterwards, the consumer confidence has become stable or moderately increasing.

Observing the changes mentioned, there is no evidence found that the consumer's ivory preference has further declined since 1994 until 2015. There was no specific event causing negative image to ivory consumption, on the contrary, two influential events bringing positive image to it occasionally took place<sup>41</sup> at the right time to support the bottom of consumer confidence.

### 1.4.3 Chinese ivory market overwhelmed Japan in the middle of 2000s

As mentioned above, Japan's ivory market has maintained its scale after the certain shrinking in a time of introducing international ban.

On the other hand, ivory demand in China has rapidly increased driven by its economic growth and the boom in retrieving Chinese antiquities from overseas<sup>42</sup>.

An analysis of ivory seizure worldwide reported at CITES CoP12 in 2002 paid great attention at China<sup>43</sup>, and the subsequent analysis reported at CoP13 in 2004 suggested that China has been surpassing Japan's scale of ivory manufacturing<sup>44</sup>. From that time, China has been considered as the largest ivory market in the world.

### 1.4.4 Recent trend of Japan's ivory market

But, since 2011 when the news of several ivory seizures broke out worldwide<sup>45</sup>, Japan's ivory market activated again with assistance of a new trade platform - online trade. The details will be reported in [Chapter 2](#).

This trend of legalizing illegal ivory remains significant even during this time, and in especially converting the whole tusks as the raw material for manufacturing. The details will be further discussed in [Chapter 4](#).

41 The fall in human population in Japan is considered to affect the ivory demand but should exert long-time effect slowly.

42 See 3.1.2.

43 CoP12 Doc. 34.1

44 CoP13 Doc. 29.2 Annex

45 CITES CoP16 Doc.53.2.2 (Rev.1)  
<https://www.cites.org/sites/default/files/eng/cop/16/doc/E-CoP16-53-02-02.pdf>

### **1.5 Reality of Japan's controls on ivory trade and application of the resolution on closure of domestic ivory market to it.**

An ivory market with a serious loophole in the controls on ivory trade should be regarded as “contributing to poaching or illegal trade”.

The reality of Japan's controls on ivory trade and the assessment of it will be discussed in [Chapter 3](#) (The controls on import and export of ivory), [Chapter 4](#) (The controls on internal trade of ivory / the registration scheme of ivory tusks) and [Chapter 5](#) (The supervision scheme over the business and the products certification scheme, for internal trade control on ivory cut pieces and ivory products).

### **1.6 Japan's non-compliance with the mandate on taking measures for internal trade control urged by CITES Resolution Conf. 10.10 for 20 years, and application of the resolution on closure of domestic ivory market.**

CITES Resolution Conf.10.10 has urged the measures for controlling internal ivory trade to the relevant countries since the adoption at CoP10 in 1997. An ivory market of the country lacking the controls complying with the resolution should be regarded as “contributing to poaching or illegal trade”.

The reality on compliance CITES Resolution Conf.10.10 by Japan will be discussed in [Chapter 6](#).

### **1.7 Perspective of Japan's controls of ivory trade whether to be tightened by the government in the wake of the CITES resolution on closure of domestic ivory market.**

An ivory market of the country lacking the will to make drastic reform of deficiency of ivory trade controls should be regarded as “contributing to poaching or illegal trade”.

The recent responses of GoJ to the CITES resolution as well as assessment on the effectiveness of the revised controls on internal ivory trade by LCES amended in June 2017 will be discussed in [Chapter 7](#).

### **1.8 Final discussion, Conclusion and Recommendation.**

Based on all of discussions done in each chapter, it will be thoroughly discussed in [Chapter 8](#) if

“Japan's domestic ivory market is to be exempted from the subject of closure”, a conclusion will be stated and further, a set of recommendations with regard to compliance with the resolution on closure of domestic ivory market will be made.