

Chapter 3 Import/export of ivory between Japan and the other countries including China, and regulation on Import/export in Japan

3.1 Movement of ivory between Japan and China

3.1.1 Cases of illegal export of ivory from Japan to China

Prior to the year 2000, the focus of illegal import of ivory was from China to Japan¹. However, this trend changed and illegal export from Japan to China became significant since the end of 2000 as a result of Chinese ivory market being active during that time.

There has been no criminal case related to the attempt of illegal export of ivory from Japan to China. The first case of administrative disposition² was recorded in 2009 where a Chinese man and a Japanese woman attempted to smuggle out 63 items of ivory and ivory carvings worth value of 650,000 yen (US\$ 7,303 at the exchange rate of 1US\$=89 yen) by hiding them inside their luggage from Fukuoka airport to China³. Subsequently, the Japanese Customs announced two administrative dispositions against illegal exports of ivory in 2014 and 2015 each⁴.

On the other hand, China has actively cracked down on illegal import of ivory shipped from Japan. According to the ETIS report⁵ submitted to CoP17, one Chinese couple was arrested, prosecuted and sentenced to 15 years imprisonment in China for importing more than 3.2 tonnes of raw and worked ivory from Japan over an 18-month period of time between November 2010 and April 2012. The ivory exported in the above case was bought at Yahoo! Japan Auction⁶.

In a similar incident, Beijing Forest Police arrested 16 suspects in a major wildlife trafficking case codenamed “May 21”, which led to the confiscation of wildlife products including 804.4 kg ivory, 11.3 kg rhino horn and 35 bear paws worth the total value of almost US\$ 4 million⁷. Those ivory, etc. were brought from Japan through Hong Kong to mainland China, where the gang was said to operate across a network that ranged

from Guangdong to Shandong and Beijing, using antique shops as cover for their operations⁸ and using online illegal trading and couriers for their distribution⁹.

The illegal ivory exporting cases cracked down in China or Japan are shown in the table 3-1.

3.1.2 Background of ivory outflow from Japan to China: “Buy-back” of Chinese antique exists in Japan

By the year 2013, China became the largest international art auction market in the world¹⁰. It was common in China to buy works of art for the purpose of investment so that it had evolved into the high-end art market¹¹. While the rapid economic growth must be behind the trend, the increase in the price of fine arts is especially significant, particularly since 2003 - 2004¹². It is due to the expansion of the whole art market by investment of the new wealthy class in China¹³.

Under such background, a phenomenon¹⁴ of buying back antique art works that once flowed out of China during the period of war, insurgency and; the disorder caused by the Cultural Revolution¹⁵, became popular since 2010.

In fact, Chinese buyers have actively purchased Chinese art works in Japan where a lot of Chinese art works had been once collected. Similarly huge

1 Sakamoto, 2013

2 See 3.3.1

3 MoF, 2010

4 MoF, 2015.a, MoF, 2016.a

5 CITES CoP17 Doc.57.6 Annex

6 The Court of Anhui website (Chinese) <http://www.ahcourt.gov.cn/sitecn/mtjahfy/57146.html>

7 TRAFFIC, 2015,

CCTV America news dated 12th October, 2015 “Ivory smuggling Learn: haul, market value, seizure, tusks, transported” <https://www.youtube.com/watch?v=DQ642JvCUuY>

8 TRAFFIC, 2015

9 Ibid.

10 Record china, news article dated on 26th August 2013 “China became world largest art auction market said Russian media” <http://www.recordchina.co.jp/a75961.html>

11 Ibid.

12 According to Handa (2007), sales of art works has got gradually popular in China since the launch of reform and door-opening policies in 1980s. After the first auction was held in Beijing in 1992, the art market started to expand rapidly. In 1995, the art auctions in Beijing, Shanghai, etc. joined to the existing Hong Kong market, and the deals have been made there actively. In 2004, they saw an upsurge in number and the price of art works to be sold mainly in HK. The HK auction market has attracted many Chinese people while it is an international market. Thus, buy-back of Chinese cultural treasures from overseas got significant there in association with China’s economic development and expansion of the art market.

13 Ibid.

14 There is a motivation not only for preventing flow-out of Chinese arts but also for buying back them which flowed out from China in the past. This motivation is likely to be related to the art- nationalism. It is a trend commonly seen in Japan or China trying to maintain national treasures inside the country and hostile to have them flow out to overseas (Handa, 2007).

15 Nojima, 2014

Table 3-1 Illegal ivory exports from Japan to China revealed by the Customs 2009-2016

· This list is comprised of the cases of which information has been obtained by JTEF. It does not necessarily list entire cases.
 · The year in bracket shows the year when the illegal export was found by the customs or the police.

	Facts	Place of exposure	Note	Source
Case 1 (2009)	Illegal export of 63 pieces of "ivory and worked ivory" from Fukuoka Airport	Japan (Fukuoka Airport Branch of Moji Customs)		A disclosed official document by Ministry of Finance under Information Disclosure Act
Case 2 (2014) *Performed in 2010 - 2012	Illegal export of 3257.204kg (135,700,000 Yuan)of "raw ivory and worked ivory"	China	The ivory was bought on Yahoo! Japan Auction.	CITES CoP17 Doc.57.6 Annex The Court of Anhui website (Chinese) http://www.ahcourt.gov.cn/site.cn/mtjyahfy/57146.htmlml
Case 3 (2014)	Illegal export of 22 pieces of ivory from Chubu Airport.	Japan (Chubu Airport Branch of Nagoya Customs)		A disclosed official document by Ministry of Finance under Information Disclosure Act
Case 4 (2014)	Illegal export of 6 "whole tusks", 64 pieces of "ivory products" (weighing 37.87kg and valued with 2 million Yuan) and over 40 "small cut pieces"	China (Dalian customs)	The ivory was concealed in a container	News article on NetEase dated May 29th 2014, "Seizure of smuggled ivory at 38kg valued in 2 million yuan in Dalian"
Case 5 (2015)	Illegal export of 105 pieces of "ivory and worked ivory" from Natira Airport	Japan (Narita Airport Branch of Tokyo Customs)		A disclosed official document by Ministry of Finance under Information Disclosure Act
Case 6 (2015)	Illegal export of 804kg of ivory and other items to Hong Kong.	China (Beijing Forest Police)	Online trade and couriers were used for their distribution.	TRAFFIC, 2015, "Beijing Forest Police smash major wildlife trafficking ring" , October 12, 2015
Case 7 (2015)	16 "raw tusks", 2 "carved tusks" (whole tusks), 2 "ivory products" (131kg, 3,870,000 Yuan in total)	China (Tsingtao customs International mail branch office)	The ivory was segmented into 7 EMS packages.	Chinatimes.com http://www.chinatimes.com/realtime/news/20150408004529260408
Case 8 (2016) *Performed down in 2014	Illegal export of 56 "ivory disks"(3,076 g) (desitined to Autonomous Region of Tianjin and Huludao, Liaoning Province.)	China	The ivory was enclosed in EMS.	On The Trail #14. 2016. Information and analysis bulletin on animal poaching and smuggling n 14 / 1st July - 30th September 2016. Robin des Bois/Robin Hood
Case 9 (2016)	Illegal export of 10g of "ivory products"and other items	China (Dalian customs, Dalian quarantine)		News article on www.dlxww.com dated in June 3rd 2016, "Dalian Customs made the first seizure of intact tiger skin"
Case 10 (2016)	Illegal export of 1,639 pieces of "ivory products" weighing 101.4kg to Hebei Province	China (Hebei customs and Capital Airport Customs in Beijing)		News article on Ecns dated August 15th 2016

quantity of fine arts has been brought in China¹⁶. Chinese buyers seeking for Chinese antiques have visited Japan frequently. Incidentally, an auction was found with about 150 Chinese buyers in the auction room held in 2013, and the number is said to increase year by year¹⁷.

In fact, ivory products are found in sales at those auctions which mainly focus on Chinese customers from the mainland (see Figure 3-1 and 3-2).



Figure 3-1
An example of sales in an auction: 1
 Source:JADE Auction
<http://www.jade-auction.com>

¹⁶ Ibid.
¹⁷ Shinta, 2014

Figure 3-2 An example of sales in an auction: 2
Source:Yokohama International Auction http://www.ykauction.com/index_jp.html



A Chinese antiquary purchased 40 carton cases of antiquities at an auction event in Japan, and then exhibited over 1000 for sales in his building¹⁸.

Even though the hosts of Japanese auctions caution notices Chinese buyers such as, “you cannot take the ivory with you to your country”; the probability cannot be denied that ivory could be exported to China together with various antiquities in a container shipping by sea, air cargo, passenger’s luggage, international mail and international courier.

The ivory traders investigated by phone and door-to-door surveys explained that they have even witnessed ivory been purchased in huge volume and exported to China¹⁹.

3.1.3 Internet trade provides a new platform for illegal export of ivory to China

1) Small whole tusks and cut pieces sold at auction

It is believed that 80% of raw material ivory is used to produce hanko²⁰. When blank hanko is

carved from a whole tusk or a cut piece with a lump size, cut pieces with small size including scraps are produced. Those cut pieces had been re-exported to HK SAR and Taiwan as the material of accessories, etc.²¹.

But, Japan is not allowed to re-export them under the ban of international trade in ivory. Even the cut pieces produced through the processing of legally imported tusks in 1999 or 2009 are prohibited to re-export²². The question is how to dispose the cut pieces produced through the process of manufacturing hanko. Considering the overwhelmingly smaller demand of ivory for accessories and ornaments than for hanko, those cut pieces should be in oversupply²³. Thus, they have no choice but to keep them within the country²⁴.

21 Kiyono, 1997

22 Annotation ii) of CITES Appendices with regard to *Loxodonta africana*

23 Also refer to 5.4.1, 1)

24 According to Anon. (1999.a), the exporting countries which arranged the auction for one-off sold ivory which was imported into Japan in 1999 set out 500kg piles of ivory tusks as sales unit. They say that each pile was formed by various sizes of ivory tusks including ivory pieces as small as 0.2kg - less than 1 kg. Experiences of ivory hanko manufacturers taught that limit of the weight for producing hanko efficiently is 7 - 8kg (ibid.), and smaller tusks or cut pieces have to be resold to accessory manufactures in Japan because they are prohibited to be exported to Hong Kong or the other countries (ibid.)

Incidentally, the one-off sold ivory included a lot of tusks

However, the following noteworthy facts were found through an analysis on the result of final closing bids of “Hon-zouge” (real ivory) at Yahoo! Japan Auction.

First, over 20 tonnes of cut pieces were sold between 2009 and 2015²⁵ though it is obvious that demand for cut pieces in Japan doesn't go that far.

Second, whole tusks presented on the Yahoo! Japan Auction share the characteristics as follows;

- The size is generally small²⁶;
- Ivory hanko manufacturers themselves presented whole tusks on the auction²⁷;
- Antiquaries who are suspected to make a pitch for whole tusks to ivory hanko manufacturers have sold only small tusks at the auction²⁸.

Considering the characteristics above, it is assumed that whole tusks presented to Yahoo! Japan Auction would not be bought by domestic hanko manufacturers²⁹. It means raw material ivory for domestic manufacturing may have been traded on a face-to-face basis³⁰.

If so, the major demand for huge volume of small whole tusks and cut pieces traded on the Yahoo! Japan Auction can be from the manufacturer of accessories and figurines in China including HK SAR and Taiwan, who require small pieces as raw material for the parts of those products. In fact, the illegally exported ivory from Japan to China in the case No.2 listed in Table 3-1 had been purchased on Yahoo! Japan Auction. An online trade was used in the case No.6, also.

2) Cross-border online bidding/shopping agent business

The existence of “cross-border bidding/shopping agent business” is considered to contribute to the promotion of illegal export of ivory obtained through internet auction/ internet shopping. It would also provide a service to their customers residing overseas of taking order to bid/buy a product on Japan's online auction/shopping sites through a dedicated site prepared by the business, bidding/buying the selected product by

using an agent deployed in Japan and transporting it to the address of the customers outside Japan. Figure 3-3 is an explanation of its service prepared by a business on its website.

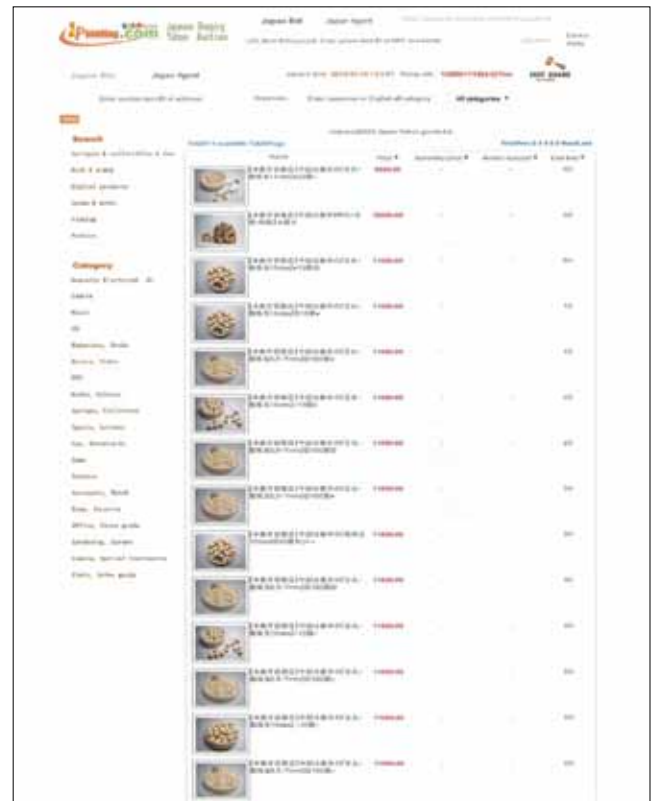
Figure 3-3



As shown in the figure, “cross-border bidding/shopping agent business” is handling the whole process for their customers including bidding/shopping of the selected products and international transportation.

Some examples of the website managed by “cross-border bidding/shopping agent business” are shown in Figure 3-4, 3-5, 3-6 and 3-7. In reality, general customers can search various “Hon-zouge” (real ivory) sold at Yahoo! Japan Auction, or shopping sites including Rakuten Ichiba and Yahoo! Japan Shopping through a variety of specially designated websites in Chinese many of which have prepared English pages.

Figure 3-4



losing their tips and with many cracks. Such tusks are usually with deep crack reaching to the core, so are unable to be used for production of hanko (Anon., 1999. c). Poorly preserved Ivory would cause it to rot/crack. The warehouse in Yokohama Port where the one-off sales of ivory was said to be enveloped by a spoiled smell (ibid.).

25 See 2.3.4, 5)

26 Figure 2-6, Table 2-18, Table 2-20

27 See 2.3.4, 8) 【Seller A】

28 See 2.3.4, 8) 【Seller B】

29 A whole tusk for manufacturing hanko requires at least 7-8 kg in weight (Anon, 1999.b).

30 See 4.4.3, 4.4.5

Figure 3-5

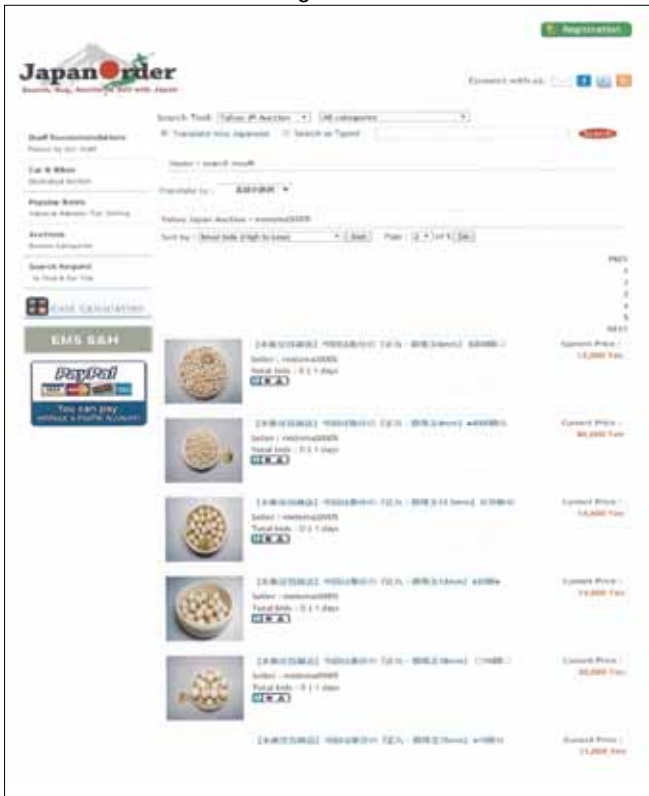
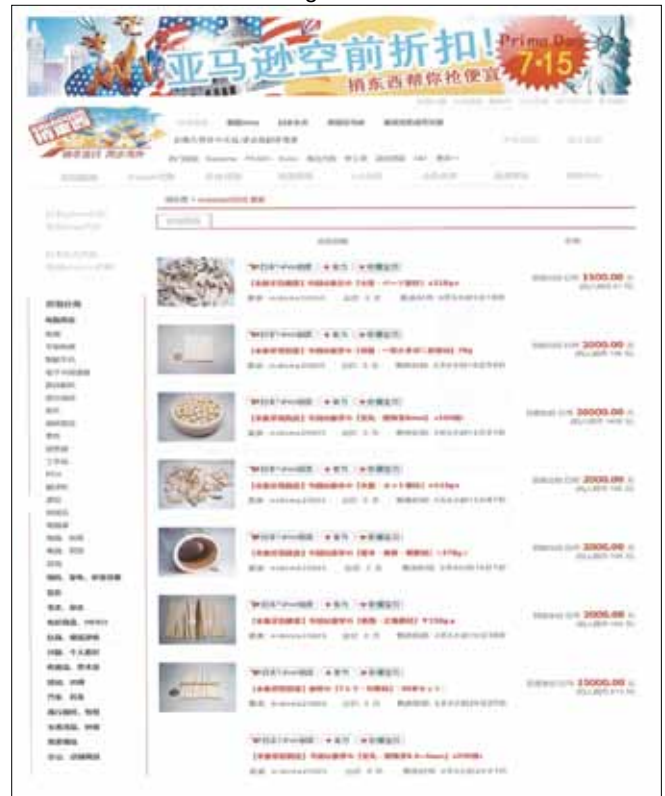


Figure 3-6



Figure 3-7



In 2010, a company based in Shanghai established a Japanese company managed by 2 Chinese board members in Tokyo. According to the copy of corporate registration of the company, the purpose of establishment is; “business on development of computer system and internet solution” and “import/export and sales” of various goods. The company in Shanghai was called as “China office” and one in Tokyo as “Japan office”. Then, it opened the dedicated website (see Figure 3-4) and launched the cross-border online bidding/shopping agent business.

If the ivory sold in Yahoo! Japan Auction would have been obtained by Chinese customers through those cross-border bidding agent businesses, it is understandable that huge volume of cut pieces and many small whole tusks, which are not suitable for the demand within Japan mentioned in “1)”, would have been exported to China .

In reality, online trade would be used for illegal export of ivory from Japan to China³¹ like the case No.2 listed in Table 3-1 in which the ivory had been purchased on Yahoo! Japan Auction³² as aforementioned.

31 Case 2 and 6 on Table 3-1

32 The Court of Anhui website (Chinese)

<http://www.ahcourt.gov.cn/sitecn/mtjjahfy/57146.html>

3.1.4 “Re-returned” ivory from China and its storage in Japan

According to the survey of ivory traders, most of them pointed out that purchase and resale of ivory whole tusks have decreased³³.

In terms of the causes of the trend, it was claimed that Chinese had bought up huge number of ivory whole tusks already until the stock in Japan had dried up, and that the ivory holders are hesitating to resell the tusks because resale value of them has decreased to the level not worth the cost³⁴. They stressed the reasons for the price decline as the increased enforcement action against illegal ivory trade and the economic downturn in recently in China³⁵.

There are more stories behind the flows of ivory from Japan to China.

It is said that the Chinese art market at present shares most of characteristics with Japanese art market during the bubble economy (December 1986 – February 1991), so may possibly go bankrupt in the future³⁶. In fact, the Chinese art market was stagnant during 2016³⁷. Additionally, antiquities have been highly appreciated as a bribery, but now, due to tightening by the law enforcement efforts against corruption in the series of the anti-corruption campaign by Xi Jinping administration, demand for antiquities is said to have been declining³⁸.

On the enforcement side, search of passenger’s luggage and international mail was tightened in China in September 2015 in order to crack down on the smuggled contrabands, and to strengthen tax collections with regard to imported goods through cross-border shopping agents, therefore collected customs duties and seizure of contrabands increased in Guangzhou, Dalian, Shanghai, etc.³⁹. Additionally, tax collection from private

import was strengthened in April 2016⁴⁰. Due to those actions, it is expected that the rate of inspection on the personal effects should have increased. It is likely that such measures taken by Chinese customs has influenced the frequent seizures of ivory illegally exported from Japan to China.

What is concerned under the situation is the “re-return” of the ivory and furthermore the attempt for making Japan as an “ivory ban haven” for storing ivory. It is said that wealthy Chinese who regard antiques as a more secured property than real estates, of which market rate cannot be controlled by themselves, have increasingly purchased antique arts in Japan. They consider Japan as a safe place of purchase and storage of antiques. For example, a warehouse for art in Japan, when advertising its business to foreign users at the beginning of 2015; the orders from Chinese rapidly increased since the summer of the year, which lead them to consider building an extension because existing 200 rooms including big and small were fully booked⁴¹.

From the above example, a clear phenomenon of ivory flow from China to Japan has seemed to emerge in later 2010, contrary to the situation prior to early 2010.

Furthermore, such ivory may be stockpiled within Japan.

3.1.5 A “haven” for illegal ivory barred out from China and HK

As aforementioned, a movement for closing domestic ivory markets worldwide including China, the world’s biggest market emerged since 2015.

Then, the resolution on closure of the domestic ivory market was adopted by consensus on October 3 2016 at CITES CoP17, and China and HK SAR announced the schedule toward closure of their ivory markets⁴². France, UK, etc. are accelerating the discussion about the range of “narrow exception”, based on the premise of compliance with the resolution⁴³. Those movement may enhance not only the ivory movement from China/HK into Japan, but also moved stocks of ivory in the rest of the world’s ivory market, (Such as in the U.S., EU countries, etc.) would be directed to

33 See 4.4.5, 9)

34 Ibid.

35 See 4.4.3, 8)

36 Handa (2007) claims that Chinese art market resembles to Japanese market during the bubble economy. In the case of Japan, a lot of art galleries got bankrupt, many of galleries inside department stores were closed because the price of paintings had a great fall. Due to the loss of faith on art market, the market was downsized by one tenth as a whole.

37 Aforementioned Mainichi Shimbun, news article

38 It is the known tactic within the parties concerned that the bribe-giving side deliveries the art works to bribe-receiving side, and let him/her bring them under the hammer, and bribe-giving side takes bids at the rate of the supposed bribery (aforementioned Mainichi Shimbun, news article).

39 Daily Saizo news article dated 25th August, 2015, “End of Shopping spree?! Tightening inspection by Chinese customs” http://www.cyzo.com/i/2015/08/post_23560_entry.html

Chinese network Japanese edition, news article dated 21st October, 2015 “Impact blow against cross-border shopping agent Stricter inspection by Chinese customs? Shanghai cus-

toms denied the rumor”

<http://j.people.com.cn/n/2015/1021/c94475-8964983.html>

40 Financial Department of China, 2016, “Arrangement of customs duty imposed to international import shipments” Financial Department No.2 http://gss.mof.gov.cn/zheng-wuxinxi/zhengcefabu/201603/t20160324_1922971.html

41 Aforementioned Mainichi Shimbun, news article

42 See 1.1

43 Ibid.

Japan for avoiding stricter regulation. But, the most serious concern is that poached ivory in Africa could be headed to Japan, which will be the world's largest legal ivory market⁴⁴ following the closure of Chinese and Hong Kong's markets.

3.2 Japan's import/export of ivory in accordance with CITES

3.2.1 Whole structure of the regulation on import/export of ivory

In Japan, the permits required by CITES for import/export are implemented by the Ministry of Economy, Trade and Industry ("METI"), in compliance with the Law for Foreign Exchange and Foreign Trade Act⁴⁵ ("FEFT" hereinafter) and the regulations for implementing the law⁴⁶. Specifically, the approval of the Minister of Economy, Trade and Industry is required for importing/exporting ivory⁴⁷ because ivory is listed as 'a body part' of the listed species on CITES Appendix I⁴⁸. Any individual who attempts to import/export ivory without the approval shall be punished⁴⁹.

44 The theory is based on the historical trend of Japan's market described in 1.4.3 and 1.4.5, and the current prosperity of the market described in 2.4.1 and 2.4.4.

45 FEFT Article 48 Paragraph 3 (re. export), FEFT Article 52 (re. import)

46 With regard to export; the Export Control Order, the Export Control Regulation, METI Notification and Export Precaution are prepared.

With regard to import; Import Control Order, Import Control Regulation, Import Notification, and Import Precaution are prepared.

http://www.meti.go.jp/policy/external_economy/trade_control/01_seido/01_gaitame/gaiyou.html

47 With regard to export, FEFT Article 48 Paragraph 3, Export control order Article 2 Paragraph 1 (a), Export control order Annex 2 (36) and related articles of Export precaution are applied.

With regard to import, FEFT Article 52, Import control order Article 4 Paragraph 1 (b), Import notification (METI notification No.170) 2-2 and related articles of Import precaution are applied.

48 In terms of ivory, all African elephants including the populations of Botswana, Namibia, South Africa and Zimbabwe are regarded as listed in Appendix I except for the one-off sold ones with regard to the government stocks in 4 countries accumulated by the end of January 2007. <https://www.cites.org/eng/app/appendices.php#6>

Therefore, import/export regulation for Appendix I species is applied to ivory except for the ivory as hunting trophy derived from the population listed in Appendix II.

49 Any person who has imported/exported goods without obtaining approval shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both; provided, however, that when five times the price of the subject matter of the violation exceeds five million yen, a fine shall be not more than five times the price (FEFT Article 69-7 Article 1 (d) : in the case of import, (e) : in the case of export). When a representative or a worker of a juridical person has carried out non-approved import/export, not only the offender but also said juridical person shall be punished by the same fine (FEFT Article 72). Incidentally, the fine against import/export without approval was strengthened by the Bill for amendment to FEFT in 2017 (Extra Law No. 38, May 24, 2017). The upper limit

Compliance of FEFT at the time of the import/export of the shipment is to be secured by the Customs in accordance with the Customs Law⁵⁰. Any person who wishes to import/export a shipment has to get the permission of the Customs director. Any import/export without the permission shall be punished⁵¹.

3.2.2 Import/export process of ivory based on FEFT

1) Import/export process of ivory for non-commercial purposes

Import process of ivory for non-commercial purposes

Any person who wishes to import ivory is required to make an application for issuing the CITES import permit as well as an application for the import approval based on FEFT⁵². In particular, application for the CITES import permit has to be attached with provisioned documents⁵³ responding to the requirements of CITES⁵⁴.

Any person receiving the import approval has to show the proof of it (the application form for approval with the sign and mark of the METI Minister) to the customs⁵⁵ and submit the original of the CITES export/re-export permit with the original of the CITES import permit attached to them⁵⁶ when he/she imports the ivory.

Export (including re-export) process of ivory for non-commercial purposes

Any person seeking to (re-)export ivory is required to make an application to METI (the CITES Management Authority) for issuing the CITES (re-)export permit as well as an application for the export approval based on FEFT⁵⁷.

In particular, application for the CITES re-export permit has to be attached with provisioned documents responding to the requirements of

of the fine was increased from 5 million to 10 million yen (the Bill for amendment to FEFT Article 69-7 Article 1 (d), (e)) while the fine against the judicial person was increased from 5 million to 500 million yen (Article 72 Article 1 (c)) (to be implemented on October 1st, 2017).

50 Customs Law Article 70 Paragraph 1

51 Any person who has carried out import/export without permission by the customs director shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both (Customs Law Article 111 Article 1 Paragraph 1 (a)).

52 METI Notification No.170, Import Precaution 19 (d)

53 CITES Article III Paragraph 3

54 Import Precaution 11 (a)

55 Customs Law Article 70 Paragraph 1

56 Import Precaution 19 (d)

57 METI Notification No. 743, Export Precaution 24 (n)

CITES⁵⁸ as well as a copy of the CITES import permit (obtained from the importer).

In fact, re-export of the ivory imported based on the decision of CITES CoP10 or CoP14 shall not be approved⁵⁹.

Any person who has received the export approval has to show the proof of it (the application form for approval with the sign and mark of the METI Minister)⁶⁰.

2) Import/export process of pre-Convention acquired ivory

Import process of pre-Convention acquired ivory

Any person wishing to import a pre-Convention 'acquired ivory' is required to make an application for the import approval based on FEFT with two copies of the document certifying that the ivory was acquired before the provisions of the present Convention applied to it⁶¹ ("pre-Convention certificate" hereinafter)⁶².

The pre-Convention certificate should be the document which clearly demonstrates that the African elephants' or Asian elephants' ivory tusk or product made of it was acquired before the date⁶³ the provisions of the present Convention applied to it⁶⁴.

METI shall confirm the validity of the pre-Convention certificate by contacting the management authority of the range state, the country issued the certificate, or the CITES Secretariat if necessary⁶⁵.

Any person receiving the export approval has to show the proof of it (the application form for approval with the sign and mark of the METI Minister)⁶⁶, and submit the original of the pre-Convention certificate to the customs when he/she imports the ivory⁶⁷.

Export process of pre-Convention acquired ivory

Any person who wishes to export a pre-Convention acquired ivory is required to make an application for the re-export approval based on

FEFT with the original of import (duty) declaration certifying customs clearance⁶⁸ indicating the date of import of the ivory, which is before the date of CITES entered into effect for Japan⁶⁹, and a certificate of remaining stock of the imported ivory⁷⁰ attached.

Any person who received the re-export approval⁷¹ has to show it to the Customs when he/she exports the ivory⁷².

3) Import/export process of ivory as personal or household effects

In Japan, as the domestic implementation of the personal or household effects exemption⁷³, any person who is supposed to leave Japan tentatively and enter it again are to be exempted from the approval process for import/export based on FEFT as far as "personal effects"⁷⁴, "professional instruments" and "gifts"⁷⁵ are concerned⁷⁶.

In terms of ivory, it could be (re-)exported only as "personal effects" or "professional instruments".

68 METI requires the original of import declaration proving customs-cleared as the document of proof in principle. In reality, however "proof based on social science or natural science" including authentication on the date of antiques by an expert institution, etc. is widely accepted as the alternative (METI, 2016.c).

69 4th November, 1980

70 The quantity of the imported (the figure of the exported quantity recorded on the export permit which had been issued at the time by the exporting country) and the quantity of the re-exported with permission afterwards (a "statement on the residual quantity") are required to be submitted because it would be possible that the re-exporter has already re-exported a part of the imported. The "statement on the residual quantity" is required only when the goods are re-exported of which the original character and form has not changed since the import (Export Precaution 55 (q)).

71 Export Precaution 55 (q), METI, 2016.a

72 Import Precaution 19 (d)

73 CITES Article VII Paragraph 1

74 The "personal effects" to be imported is limited to ones declared at the time of embarkation.

METI website "Outline of eligibility, scope of applicability and notes" http://www.meti.go.jp/english/policy/external_economy/CITES/exemptions.html

75 The exemption for gifts is to be applied only if satisfying all of the following conditions.

See the aforementioned METI website.

1. The quantity of any species of animals or plants listed in Appendix II is not beyond the following limitations (abbr.) per person.

2. Scientific names of animals or plants can be confirmed by documents provided by producers or distributors.

3. Only dead specimens, parts or derivatives

4. Not for commercial purposes.

76 Import Control Order Article 14 (b), Annex 2 Note
Export Control Order Article 4 Paragraph 2 (d), Annex 6 Note
METI website "Outline of eligibility, scope of applicability and notes" http://www.meti.go.jp/english/policy/external_economy/CITES/exemptions.html

58 CITES Article 3 Paragraph 2 (export), Paragraph 4 (re-export)

59 Ibid.

60 Customs Law Article 70 Paragraph 1

61 CITES Article VII Paragraph 2

62 METI Notification No.170, Import Precaution 19 (d)

63 1st July, 1975

64 Import Precaution 19 (d)

65 Ibid.

66 Customs Law Article 70 Paragraph 1

67 Import Precaution 19 (d)

3.2.3 Volume of pre-Convention acquired ivory imported/exported with CITES permit

1) Volume of pre-Convention acquired ivory imported with CITES permit

The volume of pre-Convention acquired ivory "tusk", "ivory piece", "ivory carving", "ivory scrap" and "carving" of Elephantidae, which had been imported into Japan during 11 years between 2005 and 2015⁷⁷ are as shown in Table 3-2-1, 3-2-2 and 3-2-3.

⁷⁷ The data on imported/exported pre-Convention acquired ivory with CITES permit is based on a "comparative tabulation report" of CITES TRADE DATABASE by selecting the data variables as follows. <https://trade.cites.org/>
Year range: 2005-2014, Importing countries: All, Exporting countries: Japan, Source: O, trade term: TUS/IVP/ IVC/ IVS/CAR, taxon: *Elephantidae spp.* / *Loxodonta Africana* / *Elephas maximus*

The followings facts can be observed from the tables (Table 3-2-1, 3-2-2 and 3-2-3).

- Less import of the "tusks" and "ivory pieces", and no import of "ivory scrap" were found during the 11 years.
- The "ivory carvings" / "carvings" had been constantly imported.
- The import records of "ivory pieces" / "carvings" by Japan in Table 3-2-3 are shown by countries in Table 3-3. It suggests the United States, UK, Germany, Austria and France are the major exporters of "ivory pieces" to Japan. In fact, EU member countries with the record of exporting to Japan are 11 in total (including UK) while a number of exports to Japan from other countries like East Asian nation including China and HK SAR, and African countries are found.

Table 3-2-1 Imported "TUS" (tusks) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing country (Japan)	0	0	8	0	0	0	2	0	0	0	0
	Volume reported by exporting countries	4 240kg	4	9	8	2	0	0	0	1	0	0
CITES Annual Report (Japan)		0	0	8	0	0	0	2	0	0	0	0

Table 3-2-2 Imported "IVP" (ivory pieces) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing country (Japan)	0	50	0	8	0	8.56kg	0	1	0	10.53kg	0
	Volume reported by exporting countries	27	0	23	0	44	5 8.56kg	16	1 1.26kg	52	105	0
CITES Annual Report (Japan)		0	50	0	8	0	8.56kg	0	1	0	10.53kg	0

Table 3-2-3 Imported "IVC" (ivory carvings) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing country (Japan)	493	443 28pairs	404 7pairs	0	0	0	0	0	0	230	0
	Volume reported by exporting countries	329 2pairs 88sets 400g	366 16pairs 104sets	152 79sets	404 78sets 0.022kg	111	508	376	621	384	304.5 680g	0
CITES Annual Report (Japan)		0	50	0	8	0	8.56kg	0	1	0	10.53kg	0

Table 3-2-4 Imported "CAR" (carvings) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing country (Japan)	0	0	0	432	377	699	288 0.61kg	253	352	0	0
	Volume reported by exporting countries	0	5	1	54	118	154 0.05kg	215 52.61kg	458.5	463 1.439kg	0	0
CITES Annual Report (Japan)		493	443 28pairs	404 7pairs	432	373 2pairs	639 30pairs	263 10pairs 5sets 0.61kg	257	351	229 1set	218.5

* The data from CITES TRADE DATABASE (<https://trade.cites.org/>) is based on a "comparative tabulation report" of CTD by selecting the data variables as follows. Importing countries: Japan, Exporting countries: All, Source: O, trade term: TUS/IVP/ IVC/IVS/CAR, taxon: *Elephantidae spp.*/*Loxodonta africana*/*Elephas maximus*

*No data was found in terms of IVS.

*The figures on the tables are the total of ones for *Elephantidae spp.*, *Loxodonta africana*, and *Elephas maximus*. The figures without description of the unit show the total of the figures which were recorded without unit, and are assumed to be in units of no.(number).

Table 3-3 Exporting countries of "IVP" (ivory pieces) / "CAR" (carvings) to Japan (importing country: Japan) 2005-2015

		2005		2006		2007		2008		2009		2010		2011		2012		2013		2014		2015	
		IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR	IVC	CAR
China	Imp.	0	0	16pairs	0	0	0	0	0	0	0	58	0	12	0	0	0	0	0	0	0	0	0
	Exp.	0	0	16pairs	0	0	0	1	0	0	0	64	0	6	0	0	0	0	0	0	0	0	0
Hong Kong	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	17	0	0	0	0	
	Exp.	0	0	50	0	0	0	0	0	0	0	0	0	0	0	0	17	0	0	0	0	0	
Taiwan	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	10	0	0	0	0	7	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Korea	Imp.	0	0	2pairs	0	2	0	0	0	0	0	4	0	14	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Sri Lanka	Imp.	0	0	0	0	0	0	0	30	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
U.S.	Imp.	272	0	221	0	119	0	5	0	66	0	10	0	55	0	52	0	72	84.5	0	52	0	
	Exp.	224	0	191	0	1	0	79	0	13	0	236	0	313	0	566	0	175	0	65	0	50	
Canada	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	10	0	0	0	1	0	0	0	0	
	Exp.	0	0	0	0	2	0	0	0	0	0	0	0	8	0	0	0	0	0	0	0	0	
U.K.	Imp.	10	0	87	0	36	0	0	36	0	102	0	384	0	17	0	52	0	70	63	0	36	
	Exp.	22	0	20	0	27	0	66	0	50	0	129	0.05kg	0	50	0	342	0	292	110	0	19	
Germany	Imp.	122	0	115	0	114	0	0	102	0	72	0	203	0	128	0	83	0	72	56	0	62	
	Exp.	30	2pairs	41	0	15	0	49	0	93	0	202	0	56	128	0	83	0	76	57	0	65	
Austria	Imp.	19	0	4	0	2	0	0	3	0	7	0	8	0	1	0	10	0	34	3	0	16	
	Exp.	1	5sets	3sets	0	1set	0	2sets	0	0	0	5	0	1	0	55	3	191	0	2	0	62	
France	Imp.	15	0	6	0	48	0	0	159	0	57	0	4	0	11	0.61kg	0	25	0	27	9.5	0	
	Exp.	5	0	2	4sets	5	54	0	147	0.022kg	0	0	55	0	19	0	14	0.61kg	0	27.5	0	38	
Belgium	Imp.	0	0	0	0	11	0	0	0	0	6	0	1	0	5	0	1	0	0	4	0	4	
	Exp.	0	0	1	0	7	0	1	0	0	8	0	5	0	11	0	1	0	1.439kg	4	0.6kg	0	1.6kg
Italy	Imp.	28	0	0	0	2	0	0	18	0	9	0	3	0	4	0	1	0	56	2	0	2	
	Exp.	0	0	0	0	1	0	18	0	0	3	0	0	0	4	0	1	0	56	0	0	4	
Denmark	Imp.	7	0	0	0	0	0	0	20	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	7	0	0	0	0	0	36	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Netherlands	Imp.	16	0	0	0	1	0	0	54	0	1	0	1	0	0	0	0	1	0	0	0	0	
	Exp.	16	0	4	0	0	1	0	54	0	2	0	1	0	52kg	0	0	0	1	0	0	0	
Poland	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	1	0	
	Exp.	0	0	48	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	52	
Czech	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Switzerland	Imp.	0	0	0	0	3	0	0	2	0	3	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	5	0	3	0	4	0	4	0	4	0	0	0	0	0	0	0	1	0	0	0	0	
Monaco	Imp.	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Spain	Imp.	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Portugal	Imp.	0	0	0	0	0	0	0	0	10	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Sweden	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Finland	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Turkey	Imp.	0	0	0	0	22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Russia	Imp.	0	0	0	0	40	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	41	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Israel	Imp.	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	
Tunisia	Imp.	0	0	0	0	3	0	0	0	0	17	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Senegal	Imp.	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
South Africa	Imp.	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Australia	Imp.	0	0	0	0	0	0	0	0	0	0	0	0	21	0	24	0	0	1	0	0	0	
	Exp.	1	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	
New Zealand	Imp.	0	0	1	0	1	0	0	0	0	0	21	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Mexico	Imp.	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Uruguay	Imp.	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Unknown	Imp.	0	0	0	0	0	0	0	0	26	0	0	0	0	0	0	0	0	0	0	0	0	
	Exp.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

*Source: The "comparative tabulation report" of CITES TRADE DATABASE (<https://trade.cites.org/>) by selecting the data variables as follows.

Importing countries: Japan, Exporting countries: All, Source: O, trade term: IVC/CAR, taxon: *Elephantidae spp./Loxodonta africana/Elephas maximus*

*The figures on the tables are the total of ones for *Elephantidae spp.*, *Loxodonta africana*, and *Elephas maximus*. The figures without discription of the unit show the total of the figures which were recorded without unit, and are assumed to be in units of no.(number).

**"Imp.": The data reported by Japan, "Exp.": The data reported by the countries which exported the items to Japan

2) Volume of pre-Convention acquired ivory exported with CITES permit

The volume of pre-Convention acquired ivory "tusks", "ivory pieces", "ivory carvings", "ivory scrap" and "carvings" of Elephantidae, which had been (re-) exported by Japan during 11 years between 2005 and 2015⁷⁸ are as shown in Table 3-4-1, 3-4-2 and 3-4-3.

The followings facts are found through the tables.

- Less export of the "tusks" and the "ivory pieces", and no export of "ivory scrap" were found.
- The "ivory carvings" / "carvings" had been constantly imported. The volume is a bit smaller than importing volume (Table 3-2-3).
- The export records of "ivory carvings" / "carvings" by Japan in Table 3-5 are shown by countries in Table 3-5.

It suggests the United States, UK, France, Denmark and HK SAR are the major importers of "ivory carvings" / "carvings" from Japan. The volume of import by China seems to be too small considering the aforementioned outflow from Japan to China⁷⁹. Most of those are assumed to be imported from Japan without CITES permits.

78 Ibid.

79 See 3.1.

Table 3-4-1 Exported "TUS" (tusks) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing countries	11	0	0	0	0	0	0	1	0	0	0
	Volume reported by exporting country (Japan)	0	0	0	0	0	3	0	0	0	0	0
CITES Annual Report (Japan)		-	0	0	0	0	3	0	0	0	0	0

Table 3-4-2 Exported "IVP" (ivory pieces) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing countries	0	1	0	0	16	4	13	1	0	1	0
	Volume reported by exporting country (Japan)	2	0	0	1	0	0	0	0	0	20	0
CITES Annual Report (Japan)		-	0	0	1	0	0	0	0	0	20	0

Table 3-4-3 Exported "IVC" (ivory carvings) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing countries	465 2pairs 1sets 0.3kg	251 16pairs	346	210 26pairs	45	121	28	165	92	186	173
	Volume reported by exporting country (Japan)	236 37pairs 1sets	371 37pairs 13sets	186 143pairs	0	0	0	0	0	0	209.5	83.5
CITES Annual Report (Japan)		-	0	0	0	0	0	0	0	0	0	0

Table 3-4-4 Exported "CAR" (carvings) by Japan with CITES permits 2005-2015

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CITES Trade Database	Volume reported by importing countries	0	0	0	2	115	160	114	55	167	0	0
	Volume reported by exporting country (Japan)	0	0	0	547	299	375	291	284	295.5	0	0
CITES Annual Report (Japan)		-	371 37pairs 13sets	186 143pairs	353 97pairs	334 6pairs	294 42pairs	192 47pairs 5sets	284	295.5	209.5	83.5

*The data from CITES TRADE DATABASE (<https://trade.cites.org/>) is based on a "comparative tabulation report" of CTD by selecting the data variables as follows. Exporting countries: Japan, Importing countries: All, Source: O, trade term: TUS/IVP/ IVC/IVS/CAR, taxon: *Elephantidae spp./Loxodonta africana/Elephas maximus*

*No data was found in terms of IVS.

*The figures on the tables are the total of ones for *Elephantidae spp., Loxodonta africana, and Elephas maximus*. The figures without description of the unit show the total of the figures which were recorded without unit, and are assumed to be in units of no.(number).

3.3 Japan's Illegal import/export of ivory

3.3.1 Import/export declaration, permission and compliance measures based on the Customs Law

As aforementioned⁸⁰, the regulation at the water-edge is enforced by the customs based on the Customs Law.

Any person wishing to export/import goods shall declare the name of goods, volume, price and other necessary matters to the customs director, receive the necessary inspection, and receive the permission⁸¹. The declarant shall prove that the goods have been approved for importing/exporting under FEFT to the customs⁸². The goods should not be permitted to import/export unless the required proof would not be done⁸³.

However, the import/export procedure of a mail requires considerable attention. The declaration and permission are required for mails in principle, but the way of administrative operation for implementing the process is different from the other shipments due to the huge quantity. Furthermore, a certain range of international mail is exempted from the mandate of declaration and permission. The details about international mail will be discussed in 3.3.2.

If an ivory not approved under FEFT is found, it cannot be permitted by the customs to import/export logically, then the ivory for export is to be returned to the exporter while one for import is to be suspended. The importer has no choice but to abandon the ownership of the ivory or to ship it back.

In the case of an intentional offense, the customs inspects the offence as an "infraction case"⁸⁴. Under the process, the customs director will notify the offender of the requirement to make a payment of an amount corresponding to the fine plus the goods themselves (or the value of them instead) ("Notified disposition") while if the "Infraction case" is considered particularly serious enough to justify imprisonment, the customs director immediately charges the offender and the case is handed over to prosecutors ("Criminal charge")⁸⁵.

80 See 3.2.1

81 Customs Law Article 67

82 Customs Law Article 70 Paragraph 1

83 Customs Law Article 70 Paragraph 3

84 Customs Law Article 119 and the following articles

85 Customs Law Article 138 Paragraph 1

3.3.2 Regulation on international mail

1) Principle regulation on international mail

Importing process of a mail⁸⁶

When a mail⁸⁷ from abroad reaches an office of Japan Post Co. Ltd, it will inspect the mail⁸⁸. Then, it will send a notification to the addressee, guiding the process for customs clearance to be required unless the office judges that it is the case of exemption for international mail. It is supposed that a description requesting submission of the approval under FEFT would be included in the notification in the case the office found an ivory in the import mail.

The addressee is expected to declare import of the mail with necessary documents to the international mail office of the customs with jurisdiction of the bonded area (the customs office located in the designated post office), then would be given permit.

Procedure on exporting using postal mail service⁸⁹

When a mail is posted for a foreign destination, the post office will inspect the mail⁹⁰. Then, it will notify the addresser of the process for customs clearance to be required unless the office judges that it is the case of exemption for international mail. It is supposed that a description requesting submission of the approval under FEFT would be included in the notification in a case if the office finds an ivory specimen in the export mail.

The addresser is expected to declare the export item with necessary documents to the international mail office of the customs within the jurisdiction of the bonded area (the post office), then would be given permit.

86 Customs Law Article 67, "Customs Law Basic Circular" (MoF No. 0100) 76-4-2, 76-4-4, "Customs answer" No.6101 http://www.customs.go.jp/tetsuzuki/c-answer/topcontents_jr.htm

87 International courier is a different service for international transportation from international mail. International courier is a consistent international transportation service from door to door for 30kg around or less shipments in general. It includes the courier service for a document except for confidential correspondence and other goods, and small package service (SP service) for a small-sized and light package (MLIT, 2014).

The exemption for international mail is not applied to the international courier service (based on the opposite interpretation of the Customs Law Article 76).

88 As to be mentioned in "3)", an exemption of customs declaration and permission is to be applied to international mail of which taxable amount 200,000 JPY or less. Thus, the international mail offices of the customs have to inspect international mails whether they fall under the exemption or not (Customs Law Article 76 Paragraph 1).

89 Customs Law Basic Circular 76-2-1, 76-2-5

90 As is the case with import.

2) “Exemption” of the regulation for international mail: the mail for which import / export declaration and permission are not required

A special provision in terms of simplified import / export process for a mail is prescribed in the Customs Law. The declaration and permit procedure are supposed to be exempted for the mails which the special provision is applied to⁹¹. Consequently, smuggling using those mails cannot be punished as non-permitted import / export under the Customs Law.

Those mails subject to the exemption are as follows⁹²;

- A mail of which taxable amount is 200,000 yen (US\$1,818) or less;
- (Only if the case of import) A mail for gift; and
- (Only if the case of import) A mail of which the addressee cannot evaluate the amount for some reasons e.g. a gift, an unsolicited mail⁹³.

Needless to say, the exemption does not influence the application of other law than the Customs Law. It means if an international mail subject to the exemption encloses CITES listed species, the mail should be approved under FEFT to import/export. In the case where the international mail has to get the FEFT approval, it should be declared to the customs director and get the permission of him/her.

The import/export process of international mail where an ivory specimen is found during the search⁹⁴ at a customs is as follows;

Procedure for incoming mails which doesn't require customs declaration and permission⁹⁵

When a mail from abroad reaches a post office, it will be subject to an inspection. If ivory is found in the mail during the inspection, a post card titled “Notification on the procedure of customs clearance for the mail arrived from abroad” as the matter of import approval under FEFT will be sent to the addressee, and submission of necessary documents to the international mail office of the customs within one month will be advised in the notification. If delayed, the mail will be returned to the addresser. (The post office can keep

the mail further within the limit of two months if the procedure would need more time⁹⁶.)

Procedure for an outgoing mail for which doesn't require customs declaration and permit⁹⁷

The addresser should do nothing other than posting the mail attached with a simple notification card⁹⁸ to the customs. The mail is transferred to the designated post office where the international mail office of the customs is located. This is then, subject to inspection and then would be sent abroad. If an ivory is found in the mail during the inspection, a paper titled “The process of customs clearance for export mail” will be sent to the addresser, requiring for getting the approval based on the FEFT regulation.

3.3.3 Causes making the inspection on a mail for preventing illegal Import/export of ivory difficult

1) Needs for swift customs clearance and the inspection prioritizing prohibited goods

The discovery and suspension of smuggled contrabands is the most direct countermeasure against smuggling. However, in recent years of expanding globalization, the customs officials have been pressured to handle huge number of international freights and international passengers swiftly. Now the customs finds itself in the middle of swift customs clearance and careful inspection⁹⁹.

Furthermore, the priority of the inspection is primarily on prohibited goods¹⁰⁰ including drugs like stimulant drugs, narcotics and psychotropic drugs, guns, explosives, child porn and goods detrimental to intellectual property rights like fake products¹⁰¹. As ivory smuggling is related to earlier-mentioned illegal activities and has been a source of money laundering and terrorist financing, ivory trade should be definitely monitored

96 International Post Clauses of Japan Post Co., Ltd. Article 66, 97

97 Customs Law Basic Circular 76-2-1, 76-2-5

98 In the case of “Express Mail Service (EMS)”, the notification card is already attached to the tag to be attached to the package, so the necessary entries on the tag are automatically copied on the card.

99 MoF, 2015.b <http://www.naccs.jp/archives/unkyou/20150306/kouen.pdf>
MoF, 2016.b <http://www.naccs.jp/archives/unkyou/20160304/kouen.pdf>

100 Customs Law 69-11

101 Any person who has imported/exported prohibited goods without obtaining approval shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 30 million yen, or both (Customs Law Article 108-4, 109). The penalty is almost twice stricter than the case of ivory.

91 Customs Law Article 76 Paragraph 1

92 Customs Law Article 76 Paragraph 1, Cabinet Order on Implementation of Customs Law Article 66, Article 3 Paragraph 3 (a), Article 2 Paragraph 5 (a), (b)

93 “Customs answer” No.6101 http://www.customs.go.jp/tetsuzuki/c-answer/kokusaiyubin/6101_jr.htm

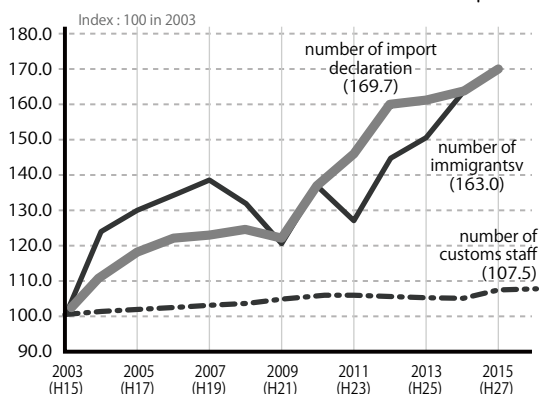
94 Incidentally, the customs offices are supposed to record the name of addresser, number of mails, name of goods, price and weight, etc. of the inspected mail in an ununiformed format (Customs Law Basic Circular 76-2-1).

95 Customs Law Basic Circular 76-4-4

and enforcement strengthened. However, in reality, strict inspection for ivory at the customs has become more and more difficult.

The serious situation in the field can be also assumed from the figure of the customs personnel which has never kept up with the increasing number of applications for customs clearance and immigration (Figure 3-8).

Figure 3-8 Change in the number of import declaration, immigrants, and the number of staff at the customs offices of Japan



The index will increase to 208.9 if the number of immigrants would reach to 40 million including 20 million of foreign visitors and 20 millions of Japanese tourists in 2020.
Source : Ministry of Finance, 2016 <http://www.naccs.jp/archives/unkyou/20150306/kouen.pdf>

2) Difficulty of careful inspection on international mail due to its vast amount

According to postal regulation, international mail is subject to inspection by the customs¹⁰². However, if several of these international mails are actually opened and searched, it may take enormous work and the process of customs clearance will be considerably delayed.

The number of international mail has gone up to 40,000s, and has reached to a volume of 48,857

¹⁰² Customs Law Article 76 Paragraph 1

in 2015 FY¹⁰³.¹⁰⁴ Considering the reality, it is likely that only a small part of international mail is being inspected. If so, it is a concern that international mail could be used for illegal import/export of ivory within 30kg¹⁰⁵.

Furthermore, ivory purchased on internet sales site through shopping/bidding agents has been illegally exported to China¹⁰⁶. One of the transportation measures for those agents is international mail or international courier service.

Therefore, high attention should be paid to transactions through postal service.

3.3.4 Cases on illegal import/export of ivory using international mail (EMS)

1) Cases on illegal import

The information in terms of the cases ivory had been discovered inside an international mail owned by all of the customs offices¹⁰⁷ at the time of 7th November, 2016 was requested to be provided on the basis of the information disclosure law. Then the obtained information is shown in Table 3-6 by combining the information included in the record on import suspension of CITES-related shipments (the cases of “medicine” containing ivory were excluded).

¹⁰³ Press releases by Japan Post Co., Ltd. “Numbers of the received mails” (14th May, 2013, 14th May 2014, 14th May 2015 and 12th May, 2016)

¹⁰⁴ The survey on international air cargo by MLIT concluded that it is impossible in practice to figure out the number of international couriers because such survey will impose too much burden upon the related business operators (MLIT, 2014).

¹⁰⁵ The upper limit of weight for EMS is defined as 30kg. <http://www.post.japanpost.jp/int/ems/index.html>

¹⁰⁶ See 3.1.1, 3.1.3

¹⁰⁷ There are 8 customs offices as a branched agency of the Ministry of Finance in Hakodate, Tokyo, Yokohama, Nagoya, Osaka, Kobe, Moji and Nagasaki as well as Okinawa Regional Customs. <http://www.customs.go.jp/zeikan/z-kikou.htm>

Table 3-6 Import mail containing ivory to Japan

No.	2009-1	2009-2	2009-3	2009-4
Date of record	2009/02/02	2009/05/12	2009/09/18	2009/10/28
Competent office	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Kobe Overseas Mail Sub-branch
Kind of mail	Air parcel	EMS	EMS	Sea parcel
Declared exporting country	Germany	USA	Mongolia	China
Number of mail	1	1	1	1
Declared name of goods	Antique	Antique	Knife	Hanko
Response of addressee	Mail	Yet acceptant	Mail	Mail
Form recorded on "import suspension record"	-	-	-	ivory hanko
Number recorded on "import suspension record"	-	-	-	2
Disposal recorded on "import suspension record"	-	-	-	Abandonment of ownership

Table 3-6 Import mail containing ivory to Japan (continued)

No.	2009-5	2010-1	2010-2	2010-3
Date of record	2009/11/18	2010/03/09	2010/03/16	2010/04/17
Competent office	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Kawasaki Overseas Mail Sub-branch	Fukuoka Overseas Mail Sub-branch
Kind of mail	EMS	EMS	Sea parcel	EMS
Declared exporting country	USA	USA	France	Taiwan
Number of mail	1	1	1	1
Declared name of goods	Groceries	Bachi (plectrum)	Toy	Hanko
Response of addressee	Mail	Mail	Yet acceptant	Yet acceptant
Form recorded on "import suspension record"	Worked horn/tusk	Worked horn/tusk	horn/tusk	Worked horn/tusk
Number recorded on "import suspension record"	5	1	2	6
Disposal recorded on "import suspension record"	Ship-back and return	Ship-back and return	Abandonment of ownership	Ship-back and return
No.	2010-4	2010-5	2010-6	2011-1
Date of record	2010/06/21	2010/07/12	2010/11/16	2011/02/15
Competent office	Tokyo Overseas Mail Sub-branch	Osaka Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Osaka Overseas Mail Sub-branch
Kind of mail	Air parcel	EMS	EMS	EMS
Declared exporting country	Denmark	UK	UK	USA
Number of mail	1	1	1	1
Declared name of goods	Ivory carvings	Antique	Ivory instruments	Groceries
Response of addressee	Mail	Yet acceptant	Mail	Window
Form recorded on "import suspension record"	Worked horn/tusk	-	-	Worked horn/tusk
Number recorded on "import suspension record"	2	-	-	1
Disposal recorded on "import suspension record"	Ship-back and return	-	-	Ship-back and return
No.	2011-2	2012-1	2014-1	2014-2
Date of record	2011/04/11	2012/09/18	2014/08/07	2014/08/07
Competent office	Tokyo Overseas Mail Sub-branch	Osaka Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch
Kind of mail	EMS	Air parcel	EMS	EMS
Declared exporting country	China	Germany	China	Nigeria
Number of mail	1	1	1	1
Declared name of goods	Musical instruments	Netsuke	Ivory products	Sample
Response of addressee	Yet acceptant	Phone	Yet acceptant	Yet acceptant
Form recorded on "import suspension record"	-	-	Accessories	-
Number recorded on "import suspension record"	-	-	1	-
Disposal recorded on "import suspension record"	-	-	Ship-back and return	-
No.	2014-3	2014-4	2014-5	2014-6
Date of record	2014/08/14	2014/08/28	2014/11/03	2014/12/17
Competent office	Tokyo Overseas Mail Sub-branch	Kawasaki Overseas Mail Sub-branch	Kawasaki Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch
Kind of mail	EMS	Air parcel	Air parcel	EMS
Declared exporting country	UK	Denmark	Portugal	Nigeria
Number of mail	1	1	1	1
Declared name of goods	Antique	Wallet	Ivory	Sample
Response of addressee	Yet acceptant	Window	Phone	Yet acceptant
Form recorded on "import suspension record"	-	Worked horn/tusk	horn/tusk	-
Number recorded on "import suspension record"	-	16	4	-
Disposal recorded on "import suspension record"	-	Abandonment of ownership	Ship-back and return	-

Table 3-6 Import mail containing ivory to Japan (continued)

No.	2014-7	2014-8	2015-1	2015-2
Date of record	2014/12/17	2014/12/18	2015/04/16	2015/05/13
Competent office	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch
Kind of mail	EMS	EMS	EMS	EMS
Declared exporting country	Zimbabwe	Nigeria	Nigeria	Nigeria
Number of mail	1	1	1	1
Declared name of goods	Sample	Sample	Sample	Ivory
Response of addressee	Yet acceptant	Yet acceptant	Yet acceptant	Yet acceptant
Form recorded on "import suspension record"	-	-	Worked horn/tusk	Worked horn/tusk
Number recorded on "import suspension record"	-	-	583	15
Disposal recorded on "import suspension record"	-	-	Ship-back and return	Ship-back and return
No.	2015-3	2015-4	2015-5	2015-6
Date of record	2015/06/24	2015/11/25	2015/11/26	2015/12/17
Competent office	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch
Kind of mail	EMS	EMS	EMS	EMS
Declared exporting country	Zimbabwe	Zimbabwe	Zimbabwe	Japan
Number of mail	1	1	1	1
Declared name of goods	Sample	Sample	Sample	Accessory
Response of addressee	Yet acceptant	Yet acceptant	Yet acceptant	Phone
Form recorded on "import suspension record"	Worked horn/tusk	-	-	-
Number recorded on "import suspension record"	50	-	-	-
Disposal recorded on "import suspension record"	Ship-back and return	-	-	-
No.	2016-1	2016-2	2016-3	
Date of record	2016/07/08	2016/08/31	2016/10/19	
Competent office	Tokyo Overseas Mail Sub-branch	Osaka Overseas Mail Sub-branch	Tokyo Overseas Mail Sub-branch	
Kind of mail	EMS	EMS	EMS	
Declared exporting country	France	Belgium	Nigeria	
Number of mail	1	1	1	
Declared name of goods	Ivory products	Ivory figurine	Ivory	
Response of addressee	Mail	Mail	Yet acceptant	
Form recorded on "import suspension record"	-	-	-	
Number recorded on "import suspension record"	-	-	-	
Disposal recorded on "import suspension record"	-	-	-	

* The information above are based on the records of 9 Customs office nationwide, which are possessed by them at the time of Nov. 7th 2016.

* The records related to medicine including ivory are excluded.

Source : Tokyo Customs, 2016. a. Disclosed administrative document based on No.636 (14-Jun-16). Tokyo Customs, 2016. b. Disclosed administrative document based on No.1221 (25-Nov-16). Yokohama Customs, 2016. Disclosed administrative document based on No.135 (14-Jun-16). Osaka Customs, 2016. a. Disclosed administrative document based on No.167 (22-Jun-16). Osaka Customs, 2016. b. Disclosed administrative document based on No.271 (28-Nov-16). Kobe Customs, 2016. Disclosed administrative document based on No.658 (15-Jun-16). Moji Customs, 2016. Disclosed administrative document based on No.168 (9-Jun-16). Ministry of Finance, 2010. CITES import suspension record (2009). Ministry of Finance, 2011. CITES import suspension record (2010). Ministry of Finance, 2012. CITES import suspension record (2011). Ministry of Finance, 2013. CITES import suspension record (2012). Ministry of Finance, 2014. CITES import suspension record (2013). Ministry of Finance, 2015. CITES import suspension record (2014). Ministry of Finance, 2016. CITES import suspension record (2015).

Summary

- As far as the disclosed records existing at the customs offices at the time of information request, the oldest record was dated as February 2009. Since then, 31 cases have been found by 5 customs offices during 7 years and 8 months until October 2016. Those cases are exclusively related to import mail (no case on export mail is recorded).
- In one case, true exporting country is unknown because it was described as "Japan". Remaining 30 mails include 10 from Nigeria and Zimbabwe, and 11 from EU member states.

- The weight and number of the ivory discovered are unknown from the record disclosed by the customs offices.
- Among 28 cases provided by the customs offices as with the date of which is until the end of 2015, only 13 cases of import suspension records of 2009 – 2015 which were compiled by the Ministry of Finance were shared. The cause for the gap is unknown¹⁰⁸.

¹⁰⁸ With regard to the cases of No. 2015-4, 2015-5, and 2015-6, the reports of those cases from the competent customs offices to the Ministry of Finance was likely to yet have been completed by the reporting deadline for compilation of the record on import suspension 2015. If so, those would appear on the record on import suspension for the year of 2016.

- The methods of disposal of the goods after the import suspensions are referred in the import suspension record. In the case of mails, there is no choice for the suspended item to be shipped back and returned to the addressers¹⁰⁹ if the addressees don't respond to the queries from the customs ("Yet acceptant") because the customs cannot confirm if the addressee is the real importer with the intention of import.
- On the other hand, if the addressee contacted to the customs by some means including "posting", "phone" or visiting the "window", unless it is considered an intentional offense which should be inspected as an "infraction case" the customs handle the case as "voluntary abandonment of ownership" when the addressee intended to do so, or handle the case as "shipping-back and return" when he/she does not intend to do so.
- Out of 13 cases of international mail recorded in the import suspension record, 10 cases were handled as "shipping-back and return" while 3 cases were as "voluntary abandonment of ownership"¹¹⁰.

Continuous attempts for exporting ivory enclosed in EMS from Nigeria or Zimbabwe to Japan

- The most noteworthy fact is that similar 10 imports are confirmed with ivory enclosed in EMS which was sent from Nigeria or Zimbabwe between 2014 and 2016 (see the shaded area of the table).

Figure 3-9 Smuggled ivory from Nigeria by using EMS:1 Figure 3-10 Smuggled ivory from Nigeria by using EMS:2 Figure 3-11 Smuggled ivory from Nigeria by using EMS:3



- In August 2014, the Tokyo Customs opened and searched an EMS (Figure 3-9) exported from Nigeria as "sample of cassia wood" and found ivory pieces. The addresser may be a Nigerian considering the name described on the shipping tag, and the address of him was of the military base in Lagos, Nigeria.

- The EMS enclosed more than 10 ivory cut pieces coloured up in blue with whole the surface (Figure 3-10). Each size of the ivory cut piece is around 7cm in diameter and 6 cm in height (Figure 3-11).
- After the first finding in August 2014, 2 EMS in December 2014, one in April 2015, one in May 2015 have reached from Nigeria.
- Additionally, one EMS from Zimbabwe containing ivory was found in December 2014. Subsequently, one in June 2015, two in November 2015 were found.
- At a later time, one EMS reached from Nigeria was further found to have ivory in October 2016.
- EMS was used in all of the 10 cases for exporting ivory from Nigeria and Zimbabwe into Japan.
- The volume of ivory enclosed in EMS is known for three cases recorded in the import suspension records (No. 2015-1, 2015-2, 2015-3), namely 583 pieces, 15 pieces and 50 pieces. Those look to be considerable number, but the weight cannot be estimated because even the form of the ivory is unknown¹¹¹.
- Those EMSs had been "yet acceptant" at the time of November, 2016 except for one for which the process by the customs office was ongoing¹¹². It means the ivory enclosed may be returned to the addressers because the addressees don't respond to the queries from the customs ("Yet acceptant")¹¹³.
- The names of products with regard to the mails from Nigeria or Zimbabwe are expressed as "ivory" in 2 cases but as "sample" in the other 8 cases including the case in August, 2014. The impact of this modus operandi to the law enforcement efforts will be discussed later¹¹⁴.

2) Illegal export utilizing international mail

As shown in Table 3-6, any export mail enclosing ivory was not found as far as known from the existing records in the customs offices.

However, according to the news sources in China, it has been revealed that international mail or courier service would have been used in the cases that ivory sent from were seized in China¹¹⁵.

109 See 3.4.5

110 With regard to the case of No. 2010-2, the record of import suspension was dealt as "voluntary abandonment of ownership" though the original record of Tokyo Customs dealt it as "yet acceptant".

Considering the record on import suspension is a compilation of the report from each customs office, accuracy of the record on import suspension is doubtful as far as the case.

111 The upper limit of the weight for EMS is defined as 30kg. See 3.3.3, 2)

112 The most recent case of No. 2016-3 is likely to remain to be done at the time of information disclosure application for the case due to time space.

113 In fact, all such cases found in the record of import suspension as well are disposed as "shipping-back and return". (See Table 3-6).

114 See 3.4.4

115 Case 6, 7 and 8 on Table 3-1.

For example, ivory was exported from Japan to China by international mail in case No.7 and 8 listed in Table 3-1. The weight of imported ivory in the Case 7 was 131kg. The ivory was segmented in 7 EMS packages. It may be due to the maximum weight of EMS set at 30kg¹¹⁶.

3.4 Discussion

3.4.1 Concerns that illegal ivory is slipping away in the ivory permitted under CITES

The customs have distinct limitations on strengthening inspection on the shipments regarding international mail, international courier, passenger's luggage or the other freight, which cannot be overcome due to the reality of the priority of customs administration affairs¹¹⁷.

Relying excessively on the water-edge controls under such situation is equivalent to turn a blind eye to the flow of ivory into/out of domestic market¹¹⁸.

From the above it is clear that, as far as there is a limitation on customs inspection, the possibility that illegal ivory can slip away in the ivory permitted under CITES. In terms of import/export of ivory which can be allowed under CITES, stricter domestic measures¹¹⁹ are taken by some countries. An example from United States is shown in Table

116 See 3.3.3, 2)

117 See 3.3.3

118 However, the MoE claims as follows on the FAQ posted to its website.

"Q11. Could smuggled ivory be laundered as legally imported one within Japan and re-exported due to a flaw in the management system of the domestic ivory in Japan?"

"A11. Considering the strict control over the imports and domestic trade in elephant ivory in Japan, we think that such criticism is not substantiated by facts."

http://www.env.go.jp/nature/kisho/z_as_follows_ougetorihiki/FAQ_on_ElephantIvory_JP.pdf

As shown in the description, GoJ is excessively relying on the crackdown of the customs to prevent illegal ivory flowing into/out of domestic ivory market.

119 CITES Article XIV 14 Paragraph 1 (a)

3-7.

Raw ivory is not allowed for general public to import/export except for hunting trophy as the unique aspect of the U.S. with a lot of sports hunters.

It draws attention particularly about worked ivory. Even though a worked ivory can be imported/exported as exemption of pre-convention stock under CITES, import of it for commercial purposes is not allowed at all, and export for commercial purposes is also not allowed except for antiques which is 100 years old or older. Japan should follow this level of import/export restriction. In fact "antiques of an age exceeding one hundred years" is categorized in the Harmonized Commodity Description and Coding System (HS)¹²⁰ as the world standard.

3.4.2 "Japan-China ivory market": Dynamic traffic of ivory between Japan and China

As aforementioned, under the background of demand for ivory in China and development of art market there, the chances for the flow of ivory into China are still significant¹²¹.

A greater attention should be continually paid to illegal export in ivory from Japan to China by using antiques bought at real auctions targeting Chinese art works as a cover and, using cross-border online shopping/auction agents.

On the other hand, the activities for the flow of ivory from Japan to China are likely to become

120 That is a code prescribed in the Harmonized Commodity Description Coding System based on HS Convention. The system is used by major trading nations including Japan, which are the member of the World Customs Organization (WCO). Those countries which are implementing customs administration based on the HS occupy almost all of the world trade volume.

<https://www.jetro.go.jp/world/qa/04A-010701.html>

The HS code is called as "customs tariff schedule" in Japan.

<http://www.customs.go.jp/toukei/index.htm>

121 See 3.1.2

Table 3-7 Import/export requirements with regard to ivory introduced by the United States

	Raw ivory	Worked ivory
Import	<ul style="list-style-type: none"> ○ No commercial imports allowed. ○ Noncommercial imports as follows are allowed: <ul style="list-style-type: none"> · Limits import of sport-hunted trophies to two per hunter per year. · Law enforcement and bona fide scientific specimens. 	<ul style="list-style-type: none"> ○ No commercial imports allowed. ○ Noncommercial imports as follows are allowed: <ul style="list-style-type: none"> (Limited to legally acquired and removed from the wild prior to February 26, 1976 when African elephant was firstly listed in CITES Appendices.) · Part of a household move or inheritance · Part of a musical instrument · Part of a traveling exhibition
Export	<ul style="list-style-type: none"> ○ No export allowed. 	<ul style="list-style-type: none"> ○ Commercial imports as follows are allowed: <ul style="list-style-type: none"> · Antiques (It is 100 years or older and it has not been repaired or modified with any such species after December 27, 1973 when Endangered Species Act came into effect.) ○ Noncommercial exports as follows are allowed: <ul style="list-style-type: none"> · Antiques (as aforementioned) · Worked ivory legally acquired and removed from the wild prior to February 26, 1976, and is either: <ul style="list-style-type: none"> * Part of a household move or inheritance; * Part of a musical instrument; or * Part of a traveling exhibition. · Worked ivory that qualifies as pre-Act (acquired before December 27, 1973). · Law enforcement and bona fide scientific specimens.

Source : USFWS website <https://www.fws.gov/international/pdf/questions-and-answers-african-ivory-4d-final-rule.pdf>

more difficult than ever due to increased enforcement action against illegal ivory trade, stricter control on antique market, etc.¹²².

Under such situation, a phenomenon is becoming realized that Chinese would transfer their art works to Japan as a place for storing them. It seems a new age of “re-return” of ivory from China to Japan and introduction of ivory acquired by Chinese anywhere to Japan seems to advent after the age of ivory flow from China to Japan.

In the first place, Chinese ivory market including the ones in HK and Taiwan has been having a close relationship with Japan’s market. The import of ivory by HK had been the largest in the world until Japan overtook it in 1982. But, even before the event, considerable amount of ivory had been re-exported from HK to mainland China and Japan¹²³.

The case revealed in April 2000 that HK broker who illegally imported 500kg of ivory cut pieces into Kobe Port had played a key role as a supplier of ivory to Japan, and had a close relationship with most of Japanese ivory traders including a member of “Japan Federation of Ivory Arts and Crafts Association” (JIA) who had been involved with the case¹²⁴. Incidentally, one of the traders

¹²² See 3.1.4

¹²³ In 1970s, annual imports of raw ivory by Japan was 255 tons in average, it reached to 368 tons in 1978 thus Japan was regarded as the world’s largest ivory consuming country. 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 was re-exported to China and Japan (Martin, 1985). In fact, 49% of the imported ivory by Japan during the 5 years between 1974 and 1978 had been exported from Hong Kong SAR (Ibid.). Two-thirds of the imported ivory by Japan between 1981 and 1986 were provided by Belgium and HK SAR (Milliken, 1989).

¹²⁴ This case marked the third largest amount of smuggled ivory in Japan. This smuggling was projected through the involvement of a board member of “Tokyo Ivory Arts and Crafts Cooperative Association” forming Japan Federation of Ivory Arts and Crafts Association” (JIA) together with “Osaka Ivory Arts and Crafts Cooperative Association”, who had legally imported one-off sold ivory in 1999 while the smuggling into Kobe was carried out during the eleventh meeting of the Conference of the Parties to CITES (Sakamoto, 2000). Thus, the case shocked the international community. It can be summarized as below.

In April 2000, a Hong Kong broker smuggling the ivory originally possessed by a Taiwanese, from Singapore into Kobe port of Japan (Ibid.). The imported ivory tusks which were alleged as deprived from forest elephants inhabit in the forest in west and central Africa were comprised of 27 raw tusks chopped into 132 pieces with about 30cm in length each (492.375kg in total) (Ibid.).

A Taiwanese who has a company in Taiwan and his employees were involved with the customs clearance while a Japanese ivory hanko manufacturer (deceased) who was a board member of the ivory association joined to transport the ivory to his workshop for storage (Ibid.).

The HK broker had played a main role in importing ivory from HK into Japan since 1982 and had connections with many Japanese ivory business people before the trade ban. The president of the ivory association at the time visited the broker in the detention centre (Ibid.).

Consequently, the HK broker was found guilty at the Urawa

investigated during the door-to-door survey has had a business connection with some HK buyers since long time ago¹²⁵.

Such relationship with China and HK has grown closer over time because of the increase in movement of people and goods both on business and tourism, and through the internet as a new platform of business¹²⁶. Now, it seems to be difficult to understand each market separately, but it would rather be appropriate to consider that ivory would enter into the integrated “Japan-China” market from Africa via various areas and move inside the market in dynamic way.

Illegal ivory is destined to “the Japan-China ivory market” and attempts to enter in a country or area with high-profit and low-risk. The destination country or area has changed depending on each country’s economy or trade policy of the time.

Since around the end of 2000s, destination of ivory started to shift from Japan to China. But, more recently, changes in economy, society and law enforcement on the Chinese side are likely influencing the direction of movement of ivory.

Then, with developing implementation of closure of domestic ivory markets in China and HK SAR, the new trend would become definite. Thus, Japan may become the new ‘haven’ for even poached ivory as it paves way into the world’s biggest legalized domestic ivory market.

3.4.3 The special provision on exemption for international mail makes crackdown of the smugglers of the ivory impossible, while it makes the inspection weaker as a matter of practice

It is quite worrying to know that international mails have been frequently imported into Japan with ivory enclosed inside. Particularly, those international mails disguising the name of goods have been destined to Japan from specific African countries¹²⁷.

Recently, it seems that international community is aware that international mails are abused to smuggle contrabands including ivory because huge amount of international mails make the customs difficult to intensively open and check them. For example, the State Postal Administra-

District Court (now Saitama District Court) as import without permission and sentenced to a suspended one year and 6 months imprisonment with work for import of ivory without permission of the customs, while the ivory hanko manufacturer was sentenced to a fine of 300,000 yen (US\$2400: based on 125 yen to the dollar exchange rate at the time) for internal transportation of the contraband.

¹²⁵ The seller No.2 surveyed by door-to-door (see 4.4.5)

¹²⁶ See 2.4.4

¹²⁷ See 3.3.4 2)

tion of China issued a Notification in July, 2015 to include the wildlife protection in key list of safety supervision and inspection of mails and express, in order to enhance the supervise of smuggling of endanger species and its products including ivory in the mails and express¹²⁸. Then, the State Postal bureau joined enforcement agencies for CITES training in December 2016¹²⁹.

On the contrary, Japan retains some loopholes on the Customs Law and the related circular by the Ministry of Finance, contributing the modus operandi abusing international mail system. Actually, the exemption of the regulation for international mail is likely to be applied when the description of the contents is shown as “a gift” or “a sample” on the tag unless there is some reasons for being suspicious to the true contents. In the case the exemption is applied, there is no room that infraction of the Customs Law would be pursued.

The problem of the exemption is more than what is described above. The existence of the exemption itself makes the customs clearance inspection weaker. It is true that the customs are authorized to inspect even an international mail to which the exemption is applied, however the existence of the exemption itself must be a message to the customs and their officials that the law would not expect them to inspect mails as strictly as other shipments.

Therefore, the inspection on vast amount of mails is concerned to be possibly conducted weaker than generally imagined. The exposure of ivory enclosed import mails aforementioned¹³⁰ may be a tip of ice burg. Scarcity of findings of ivory from the export may suggest inspection on export mail may be weaker than one for import mail¹³¹. Considerable exposure of ivory by China from import mail from Japan¹³² demonstrates the assumption above.

3.4.4 Even in the case import / export declaration and permit is required, illegal importer/exporter can avoid any blame due to the blanket practice based on the circular issued by the Ministry of Finance instructing each customs office to inform the addressee / addresser the fact by mail that the international mail in question was identified as required to get import / export approval based on FEFTL

When an **import mail** from abroad reaches to the international mail office of the customs and an ivory is discovered, according to the circular issued by the Ministry of Finance, the required customs clearance procedure is to be uniformly notified to the addressee¹³³. If the said addressee truly planned to import the ivory illegally, he surely recognizes that ivory was found. Such perpetrators will definitely keep themselves away from visiting the customs for declaring the import.

In fact, all of the addressees of the EMSs arrived from Nigeria or Zimbabwe with ivory enclosed (see Table 3-6) didn't respond to the queries from the customs¹³⁴. Additionally, among the 21 cases besides the Nigeria/Zimbabwe cases, 7 cases were found that the addressees of the EMSs with ivory enclosed didn't respond to the queries from the customs¹³⁵.

Under such a situation that the addressee intends to avoid declaring import, it is desperate to charge him for offence of the Customs Law¹³⁶. Consequently, there is no way for the mail to be returned to the addresser, and then an opportunity is to be given them to smuggle the ivory into Japan again.

When an **export mail** is posted and any ivory is happened to be found at the international mail office of the customs, according to the circular issued by the Ministry of Finance, the required customs clearance procedure is to duly notify the matter to the addresser¹³⁷. In this case, the addressee can recognize that the ivory is found, and can keep himself from visiting the customs for declaring the export. Thus, it gets very difficult to

133 See 3.3.2, 1)

134 See 3.3.4

135 Ibid.

136 The addressee has not moved into the action of declaration for import at that moment. Therefore, an attempt on import without permission (Customs Law Article 111 Paragraph 3) has yet been consisted. A preparation on import without permission (Customs Law Article 111 Paragraph 4) might possibly be consisted, however the inspection by the customs would be still hindered until the intention of the addressee for such preparation becomes distinct. It is because the addressee cannot be assumed to intend so if the contraband was unilaterally sent to him/her.

137 See 3.1.2, 1)

128 SC66 Doc.29 Annex3

129 In the training workshop, it was pointed out that more and more wildlife products are being traded using the internet and social media with delivery taking place via courier companies so the overseer of the courier industry, the Postal Bureau is an important stakeholder to help implement CITES measures (TRAFFIC, 2016).

130 See 3.3.4, 1)

131 See 3.3.4, 2)

132 See 3.1.1

crack down the addresser¹³⁸. The mail will finally be returned to the said addresser.

As discussed above, the people attempting illegal import or export of ivory by utilizing international mail system need to take almost no risk of charge and seizure but only a risk that the mail would be returned to the addresser or to himself.

It would have to be said that the international mailing system in Japan establishes serious loopholes of enforcement of the Customs Law.

3.4.5 The circular issued by the Ministry of Finance on import / export declaration and permit makes crackdown of violation of FEFT impossible as a matter of practice

When an import mail from abroad reaches to the international mail office of the customs and an ivory happened to be found, there should be an opportunity to crack down the non-approved import as the violation of FEFT¹³⁹. However, there is almost no opportunity to do so because it is unlikely to be determined if the said addressee imported the mail by himself at the stage. In order to admit an import by an addressee, a proof is required to show that the addressee recognized the mail as exported with his name designated as the addressee. In the story that the addresser sent the mail to the addressee in a unilateral way, such proof is unlikely.

Under the circular issued by the Ministry of Finance, the customs has no way but to notify the required customs clearance to the addressee uniformly, and then he will surely recognize that ivory was found. Therefore, even if the police would contact with the addressee after it got a related-information from the customs or the designated post offices, the addressee is likely to justify himself that the mail was not intended for him. The investigation by the police will meet with a setback unless some proof of his import is provided besides the address on the mail.

¹³⁸ The addresser has not moved into the action of declaration for export at that moment. Therefore, an "attempt" on export without permission (Customs Law Article 111 Paragraph 3) has yet been consisted. A "preparation" on export without permission (Customs Law Article 111 Paragraph 4) would be strongly suspected, if the addresser truly posted the contraband. However, considering that the addresser who got aware of the ivory exposed is likely to justify himself by claiming someone disguised his name, the inspection by the customs may be difficult as a matter of practice unless the proof of true addresser is secured.

¹³⁹ This is because the import without approval in violation of FEFT (Article 69-7 Article Paragraph 1(e)) is generally considered to be consisted the shipment landed regardless of whether the shipment is international mail or another. Incidentally, the attempt of import without approval is not punished by FEFT.

When an export mail is posted and an ivory is happened to be found at the international mail office of the customs, the required customs clearance procedure is also uniformly notified to the addresser in accordance with the circular issued by the Ministry of Finance. Again, the addresser need not visit the customs. In this case, the addressee cannot be cracked down as the non-approved export under FEFT because the offence has yet been consisted before the addresser declares the import to the customs¹⁴⁰.

Thus, the implementation of the Customs Law under the circular issued by MoF makes crack-down of offences against FEFT also impossible as a matter of practice.

In terms of illegal import/export using international mail, it is required to make it possible for the customs officer to inspect infraction case and charge it to the prosecutors under the Customs Law by changing the blanket practice based on the circular issued by the Ministry of Finance. Unless such action can be taken by the customs officers, they could not request cooperation to the police, thus no investigation against violation of FEFT would happen also¹⁴¹.

¹⁴⁰ The attempt of export without approval is not punished except for the export of documents, pictures or data storage medium containing information on the specified technology to the specified state as being considered to undermine the maintenance of international peace and security (FEFT Article 69-7 Article 2).

¹⁴¹ More specifically, "Customs Law Basic Circular" should be changed in order to make it possible to take the following action when the customs official found a CITES listed species and suspected the circumstances of the crime is grave.

Import mail

To make it possible to send the mail directly to the addressee without the notification about the procedure on customs clearance in advance. (Thus, the customs official can inspect the addressee who intends to receive the mail as a suspect of "infraction case" against the Customs Law.)

Export mail

To make it possible to inspect the addresser as a suspect of "infraction case" without the notification about the procedure on customs clearance in advance.