

Chapter 4 The reality of internal trade in Japan's domestic ivory market, and the regulation over it / the registration scheme

4.1 Outlook of controls on internal ivory trade, and the regulation on it / the registration scheme as the primary component of the controls

As discussed in Chapter 3, enforcement of controls on import and export based on the Customs Law is at the water edge and is virtually constrained in functioning as the core of preventing illegal import/export.

Particularly looking into import/export mail service, both the rule of law, and implementation /enforcement of it would provide loopholes for importing and exporting ivory.

Thus, the importance of complementary measures in the regulation for preventing smuggling ivory must be recognized. The right measure is to strengthen the controls on internal ivory trade - "Law for Conservation of Endangered Species of Wild Fauna and Flora (LCES)"¹ and its bylaws^{2,3}.

1 "Law for Conservation of Endangered Species of Wild Fauna and Flora (Law No.75, June 5, 1992) (hereinafter "LCES" or "Law")

2 The basic bylaws include those as follows.

- Cabinet Order for implementation of law for conservation of endangered species of wild fauna and flora (Cabinet Order No.17, February 10, 1993) (hereinafter "Cabinet Order")
- Ministry Order for implementation of law for conservation of endangered species of wild fauna and flora (Cabinet Office Order No.9, March 29, 1993) (hereinafter "Ministry Order")
- Ministry Order with regard to the matters including notification of businesses activities in connection with designated internationally endangered species (Cabinet Office and Ministry of International Trade and Industry Order No.2, June 24, 1995) (hereinafter "Ministry Order on notification of business").

3 【Application of LCES to elephants】

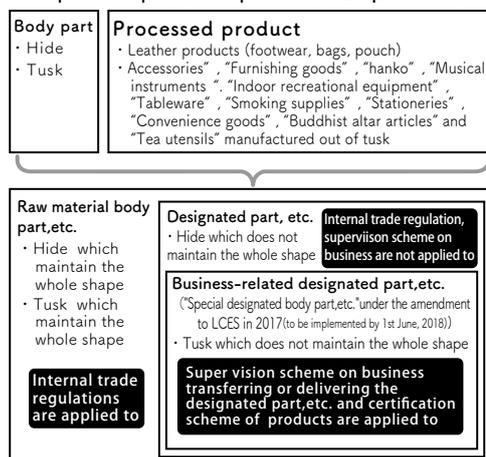
- LCES categorises "endangered species of wild fauna and flora" (LCES Article 4 Paragraph 2) which is subject to conservation is categorized in "nationally endangered species of wild fauna and flora" (LCES Article 4 Paragraph 3) and "internationally endangered species of wild fauna and flora" (LCES Article 4 Paragraph 4).
- "National guideline for the conservation of endangered species of wild fauna and flora" adopted by the Cabinet based on LCES (Article 6, Paragraph 1) states that "listed species on CITES Appendix I, except for the species specified in Japan's reservation" are to be selected as internationally endangered species of wild fauna and flora. *Elephas maximus* (Asian elephant) and *Loxodonta Africana* (African elephant) both belong to family Elephantidae are designated as it (Cabinet Order Article 1 Paragraph 2, Appendix 2 (12)).
- Regarding controls of treatment of individuals, etc. of Internationally endangered species of wild fauna and flora, LCES (Chapter 2 "controls of treatment of individuals, etc.") prescribes "Prohibition of the taking of individuals and transfers of individuals, etc. (Section 2)", "Registrations, etc. of individuals, etc. of internationally endangered species of wild fauna and flora (Section 3)", "Controls of businesses activities in connection with designated body parts of internationally endangered species (Section 4, Subsection 2)" and "Certification, etc. of products produced of legally-obtained materials (Section 5)" while the Chapter 1 of LCES prescribes "duties of owners, etc. of those individuals, etc. obliging owners and possessors of them to endeavour to properly treat the individuals, etc. (Article 7), and authority of Minister of Environment to give them necessary advice or guidance on treatment of the individuals, etc. (Article 8).

【Application of LCES and its bylaws to elephants' "body parts" and "products"】

- "Individuals, etc." defined in the Chapter 2 of "controls of treatment of individuals, etc." is a generic term used to refer to "individual", "body part" and "processed product" (Article 7). "Body part" means portions of individual, and "processed product" means a thing manufactured out of "individual" or "body part" as material (See Cabinet Order Article 3 Paragraph 2). Individuals, etc. have to be readily recognizable and designated by the Cabinet Order (LCES Article 6 Paragraph 2 (c)). Regarding "body part" in particular, see Cabinet Order Article 2-2 and Appendix 4. Regarding "processed product" in particular, see Cabinet Order Article 2-3, Appendix 4 and Ministry Order Article 1).
- "Hide" and "tusk" are designated as "body part" of family Elephantidae (LCES Article 6 Paragraph 2 (c), Cabinet Order Article 2-2 and Appendix 4). "Leather products" ("footwear", "bags", "pouch"), and "Accessories", "Furnishing goods", "hanko", "Musical instruments", "Indoor recreational equipment", "Tableware", "Smoking supplies", "Stationeries", "Convenience goods", "Buddhist altar articles" and "Tea utensils" manufactured out of tusk are designated as "processed product" of family Elephantidae (LCES Article 6 Paragraph 2 (c), Cabinet Order Article 2-3 and Appendix 4, Ministry Order Article 1).
- Those "body part" and "processed product" of family Elephantidae are entirely designated as "raw material body part, etc." as material of such products within Japan" (LCES Article 12 Paragraph 1 (c), Cabinet Order Article 2-4 and Appendix 5).
- The "raw material body part, etc." and its processed product "in which the used body part do not maintain the whole shape" (Cabinet Order Article 2-5) are defined as "the designated body part, etc." which are exempted from the regulation on internal trade (LCES Article 12 Paragraph 1 (c), Article 17).
- The business transferring or delivering the designated body part, etc. of "tusk and processed product of it" is subject to a supervision scheme by the administrations (MoE and METI) as "business activities in connection with designated internationally endangered species" (LCES Article 33-2, Cabinet Order Article 5-2), and the designated body part, etc. are called "business-related designated body part, etc." (Ministry Order on notification of business Article 6 (b)).

Under the amendment to LCES in 2017 (to be implemented by 1st June, 2018), the business is called "business activities in connection with special designated internationally endangered species", and the designated body part, etc. are called "special designated body part, etc." (The Bill for amendment to LCES Article 33-6 Paragraph 1),

Figure Legal schemes on LCES applied to the body part and processed product of Elephantidae



The main pillars of the internal trade controls prescribed in LCES are comprised of the following legal schemes;

- (1) Internal trade regulations⁴ / registration scheme
- (2) Supervision scheme on business dealing with ivory
- (3) Certification scheme of products.

This chapter discusses about (1) while the others will be discussed in Chapter 5.

4.2 Internal trade regulations / registration scheme

4.2.1 Outline of internal trade regulations / registration scheme

According to the internal trade regulations of Ivory or ivory tusks which maintain their whole shape (“whole tusks” hereinafter), are prohibited to transfer, deliver or receive them unless they have been registered⁵.

Display and advertisement for the purpose of selling or distribution, which include advertisement on the Internet shopping/auction site, without registration are prohibited as well⁶.

There are various procedural regulations for controlling treatment of the registered items and registration cards⁷.

⁴ This report calls the following regulations prescribed in LCES as “internal trade regulation” collectively.

- Prohibition on transfers (movement of ownership (Environmental Agency, 1995)), delivery (movement of occupancy (Environmental Agency, 1995)) or receiving them (Article 12 Paragraph 1)
- Prohibition on display and advertisement for the purposes of selling or distribution (Article 17)
- By the context, “internal trade regulation” may include various procedural regulations for making above regulations workable.

⁵ LCES Article 12, Paragraph 1. Those having violated the regulation with regard to prohibition of transfers shall be imprisoned for a term not exceeding 5 years and/or fined an amount not exceeding 5millions yen (US\$ 45,455) (LCES Article 57-2), while corporations violated the regulation shall be fined an amount not exceeding a hundred millions yen (US\$ 909,090) (LCES Article 65, Paragraph 1 (a)).

⁶ LCES Article 17. Those having violated the regulation in regard to prohibition of transfers shall be imprisoned for a term not exceeding 1 year or fined an amount not exceeding 1million yen (US\$ 9,091) (LCES Article 58 (b)), while corporations violated the regulation shall be fined an amount not exceeding twenty millions yen (US\$ 181,818) (LCES Article 65, Paragraph 1 (b)).

⁷

- Where the whole tusks are to be displayed for the purpose of selling or distribution, the registration cards shall be kept ready at hand (LCES Article 21 Paragraph 1).
- Where the whole tusks are to be advertised for the purpose of selling or distribution, information on that they have been registered and codes of the registrations shall be displayed (LCES Article 21 Paragraph 2, Ministry Order Article 11-3).
- The transfers, etc. of the registered whole tusks shall not be conducted without the registration cards (LCES Article 21

4.2.2 Registration scheme

It is clear from the provisions on internal trade regulations that the following registration scheme comprises the heart of the regulation.

- Any occupant based on a legitimate title of the whole tusks⁸ and satisfying the specific requirements may get the registrations approved by the Minister of Environment⁹.
- The Minister of Environment shall seek a registration organization to carry out registration-related affairs¹⁰. The registration organization which has ever been registered to MoE is only “Japan Wildlife Research Centre” (“JWRC” hereinafter)¹¹.
- The registration organization shall, where the registrations have been made, issue registration cards to the applicant¹².

4.2.3 Duties related to registration

The registration organization shall implement duties related to registration fairly and comply with the method as follows¹³.

- Identifying the species of the applied items for registration

Paragraph 3).

- The transfers, etc. of the registration cards shall not be conducted without the registered whole tusks (LCES Article 21 Paragraph 4).

- The transferees of the registered whole tusks shall make a report on the transfers, etc. to the registration organisation within 30 days (LCES Article 21 Paragraph 5, Article 23 Paragraph 7).

- The registration cards shall be returned to the registration organisation within 30 days in the case the owners cease to own the whole tusks or the case the whole tusks change the form as meeting with the change of category on “individuals, etc.” (body part or product manufactured out of the body part) of the whole tusks (LCES Article 22 Paragraph 1, Article 23 Paragraph 7). A typical case for the former (LCES Article 22 Paragraph (a)) is that they are divided or carved so that they do not maintain whole shape anymore while the case the owner lost the tusks in a literal sense. The latter case (LCES Article 22 Paragraph 1 (b)) actually means that raw whole tusks are processed into polished tusks or carved tusks falling under the category of “products”.

Those having violated the provisions above shall be fined an amount not exceeding 300 thousands yen (US\$ 2,727) (Article 63 (f)).

⁸ Ivory tusks falling under “designated body parts, etc.” or ones “in which the used body parts do not maintain the whole shape” cannot be registered (LCES 20 Paragraph 1).

⁹ Those having made the registration by a falsehood or other illegal means shall be imprisoned for a term not exceeding 1 year or fined an amount not exceeding 1 million yen (LCES Article 58 (c)), while corporations violated the regulation shall be fined an amount not exceeding twenty millions yen (LCES Article 65, Paragraph 1 (b)). Incidentally, the penalty will be increased by the 2017 amendment to LCES to be implemented by June, 2018.

¹⁰ LCES 23 Paragraph 1

¹¹ On the MoE website, only JWRC is mentioned as the contact for registration procedure.

<http://www.env.go.jp/nature/kisho/zougetorihiki.html>

¹² LCES 20 Paragraph 3, LCES 23 Paragraph 7

¹³ LCES Article 24 Paragraph 2, Ministry Order Article 14 Paragraph 1

- Confirming the items satisfy the registration requirements
- Confirming that the applied items for registration have not been registered already

The registration organization has to set the rules on implementation of the registration-related affairs and then get it approved by the Minister of Environment¹⁴.

The registration organization is given any authority to inspect neither the real item nor the place where the item exists, but only given to refer to the documents and photos attached to the application form¹⁵.

The registration organization has to equip a ledger, record specific matters on it and keep it¹⁶.

4.2.4 Requirements for registration

Individuals or their body parts or products thereof of international endangered species of wild fauna and flora will be registered if it falls under any one of the following five requirements¹⁷.

- (a) Individuals bred in captivity inside Japan or body parts, etc.¹⁸ derived from them¹⁹;
- (b) Individuals, body parts or products²⁰ acquired in or imported to Japan before the CITES application came into effect²¹ (“pre-convention acquisition” or “pre-convention stock” hereinafter)²²;

- (c-i) Individuals or body parts, etc.²³ imported to Japan under the permit based on the Customs Law after the CITES application came into effect, which have been bred in captivity for commercial purposes²⁴;
- (c-ii) Individuals, body parts or products²⁵ imported to Japan under the permit based on the Customs Law after the CITES application came into effect, which have been acquired in or imported to the exporting country before the CITES application came into effect²⁶;
- (c-iii) Individuals or body parts, etc.²⁷ imported to Japan under the permit based on the Customs Law after the CITES application came into effect, which derived from the populations listed in the CITES Appendix II²⁸

With regard to ivory tusks, the possibly applicable requirements are limited to (b), (c-ii) and (c-iii).

4.2.5 Confirmation that a whole tusk applied for registration would meet the requirement of “internal acquisition of pre-convention stock”

1) Mandated documents, etc. to submit

The following three documents, etc. are required when a whole tusk is applied for registration as met the requirement of “internal acquisition of pre-convention stock”.

- (i) An application form which includes all prescribed items²⁹;
- (ii) A statement clarifying the history of the acquisition written by the person who acquired the tusks in or imported them to Japan (“self-statement on the acquisition” hereinafter)³⁰.
If such a document is not available, any other document that proves the history of acquisition can be attached instead (“alternative documents” hereinafter)³¹;

¹⁴ LCES Article 24 Paragraph 4, JWRC has set them as “Rules on implementation of the registration-related affairs” (“JWRC registration rules” hereinafter).

¹⁵ No authority to inspect the real item, etc. is prescribed in LCES.

¹⁶ LCES Article 24 Paragraph 7. The items to be recorded on the ledger are names and addresses of the applicants (Ministry Order Article 15 (a)), the dates of applications (Ministry Order Article 15 (b)), the name of species of the whole tusks (Ministry Order Article 15 (c)), the categories (body parts or products manufactured out of the body part) of the whole tusks (Ministry Order Article 15 (d)), the key feature of the whole tusks (Ministry Order Article 15 (e)), the registration requirements applicable to the whole tusks (Ministry Order Article 15 (f)), the types of documents referred to for confirming the registration requirements (Ministry Order Article 15 (g)), the date of registration (Ministry Order Article 15 (h)) and the registration code (Ministry Order Article 15 (i)).

The ledger is kept in the form of computerized electronic data called as “Registration ledger for international endangered species of wild fauna and flora” (Rules on implementation of the duties related to registration).

¹⁷ LCES Article 20 Paragraph 1, Cabinet Order Article 4 (c). The ivory tusks have to have been imported with the permission based on Article 67 of Customs Law for registering under requirement (c).

¹⁸ They include body parts which comprised the individuals bred in captivity, and products manufactured out of the individuals or the body parts as material (see Cabinet Order Article 3 Paragraph 2).

¹⁹ Cabinet Order Article 4 (a)

²⁰ The body parts derived from acquired/imported individuals, the products derived from the body parts above and the products derived from acquired/imported products are to be included (Cabinet Order Article 4 (b)).

²¹ 18th January, 1990 (Cabinet Order Article 1 Paragraph 2, Annex 2 (12))

²² Cabinet Order Article 4 (b)

²³ See Note 18.

²⁴ Cabinet Order Article 4 (c) (i)

²⁵ See Note 21.

²⁶ Cabinet Order Article 4 (c) (ii)

²⁷ The body parts derived from individuals of the population listed in CITES Appendix II, the products derived from the individuals above or the body parts above are to be included (see Cabinet Order Article 3 Paragraph 2).

²⁸ Cabinet Order Article 4 (c) (ii)

²⁹ LCES Article 20 Paragraph 2

³⁰ LCES Article 20 Paragraph 2, Cabinet Order Article 4 (b), Ministry Order Article 11 Paragraph 1 (b)

³¹ LCES Article 20 Paragraph 2, Ministry Order Article 11 Paragraph 1 provisory clause.

A statement written by an heir of the acquirer of whole tusks, who died until by the time of application, is considered as one of the examples.

In that case, the date of inheritance or date of acquisition known to the heir is supposed written in the statement.

However, as discussed in 2), JWRC does not seem to inter-

- (iii) Photos of the tusks³²; and
- (iv) Any other document recognized as necessary for confirming that the registration requirements are met³³.

The applicants have to pay the charge of 3,200 yen (US\$ 29) per tusk to the registration organization³⁴.

2) Background of requiring a document supporting the background of acquisition in practice

The only document related to confirmation of registration requirements is the self-statement on the history of acquisition. However, the self-statement is subject to be written by the acquirer or his/her heir, who get benefited from getting the registrations.

Thus, objectively, the statement should not be considered as a proof of meeting legal requirement.

JWRC as a registration organisation “acknowledges that, requirement on MoE Order Article 11, Paragraph 2 Number 2³⁵ would be fulfilled if a document made by public agencies, such as a clearance certificate by the Customs, delivery slip for the purchased item or ‘statement of transfer’ written by the transferor of the item using a form prepared by JWRC” would be attached to the self-statement on the acquisition written by the acquirer. But, given that it would be difficult to submit those above, “JWRC accepted “statement of ownership” written by a third party who witnessed the acquisition or import, and acknowl-

edged that the requirement of “alternative documents” (MoE Order Article 11, Paragraph 2³⁶) are fulfilled.”³⁷

However, when JWRC recognised that false statements of transfer or statements of ownership have been occasionally submitted for registration, it sent a query to the Ministry of Environment, asking if JWRC can reject to accept any application not attached with a document made by public agency in principle in 2001.³⁸

However, “given that it would be difficult to attach those made by public agencies, JWRC then sought to seek an explanation on the history of the acquisition (from the applicant) and then if no specific question arises, it will request the applicant to prepare some necessary documents and then it would accept the application when the documents are attached to the application,”³⁹ so that JWRC still remains a loophole.

It is not clear on the face of the query if the “necessary documents”⁴⁰ mean the “statement of transfer” and/or “statement of ownership”.

In response to the query by JWRC, MoE replied that, “it has no objection against the proposed operation”⁴¹.

3) The existing practice on accepting a document recognized as necessary for confirming that an applied tusk would meet the registration requirement of pre-convention acquisition

The present Rules on implementation of the duties related to registration defines the “pre-defined documents, etc.” as “a document proving that the applied items for registration had been acquired before CITES application came into effect, or a document made by public agencies in principle proving that the items had been legally imported”⁴². The description on the rule above seems to mean that a document made by public agencies is not required when the applicants have to prove the pre-convention “acquisition in Japan” but when they have to prove pre-convention “import to Japan”.

pret “alternative documents” applicable to the case above. JWRC seems to regard the statement written by the heir as not “alternative documents” (Ministry Order Article 11 Paragraph 1 provisory clause) but “self-statement on the acquisition” itself (Ministry Order Article 11 Paragraph 1(b)).

32 LCES Article 20 Paragraph 2. The text of LCES does not mention about the necessary number of photos nor way of photographing.

33 LCES Article 20 Paragraph 2, Ministry Order Article 11 Paragraph 2.

This article was set by the 2014 amendment (Environment order No.17, 2014). It is assumed that the Government at last responded to the existing criticism that requiring a document supporting the history of acquisition described in the acquirer’s self-statement lacks legal basis (Sakamoto, 2002, Sakamoto, 2007, Sakamoto, 2013, etc.).

However, what kind of documents should be required is left to the discretion of the registration organization completely as they are defined as “documents as recognized necessary”.

Thus, the amendment of the Ministry Order was done only for justifying the prior problematic implementation for form’s sake.

34 LCES Article 29 Paragraph 1, Cabinet Order Article 5 (a). Only the ivory tusks which have been imported in Japan since 1 June, 2014 are required to be pay 1,600 per tusk (Cabinet Order Article 5 (b)). The supposed is an imported ivory in accordance with the annotation on Appendix II in future. <http://www.env.go.jp/press/files/jp/23650.pdf>

35 The provision of pre- amended MoE Order of the same content as Article 11, Paragraph 1 (b).

36 The provision of pre- amended MoE Order of the same content as Article 11, Paragraph 1 provisory clause.

37 JWRC, 2001

38 Ibid.

39 Ibid.

40 There had been no legal basis to request “necessary documents”, but at present, MoE Order Article 11 Paragraph 2 was provisioned, as mentioned in Note 33. The type of the “necessary documents”, however, is not specified in the text.

41 Ministry of Environment, 2002

42 Rules on implementation of the registration-related affairs Article Paragraph 2 (2)

On the other hand, JWRC makes it appear as though it urges the applicant of registration on its website to submit “a document made by a public agency in principle, proving that the applied items for registration had been owned before CITES application came into effect” as the supporting document for the self-statement on the acquisition⁴³.

Thus, as the existing practice on requiring a document recognized as necessary for confirming pre-convention acquisition, it is not clear how strictly “a document made by public agencies” is required, such as on whether a certificate written by a third party is accepted.

Table 4-1 Number and weight on newly registered tusk, and ones for which “registration card” was returned

Year	(A) Number of tusks registered	(B) Weight of tusks registered (kg)	(C) Number of tusks for which “registration card” was returned	(D) Weight of tusks for which “registration card” was returned (kg)
1995	2,252	40,354.32	0	821.90
1996	3,749	51,568.70	522	10,834.10
1997	347	5,952.25	384	7,853.40
1998	63	1,011.85	384	7,384.45
1999	5,501	50,346.78	1,203	13,576.53
2000	75	1,377.29	1,382	13,663.97
2001	119	2,070.41	752	8,897.35
2002	63	1,094.10	538	6,081.87
2003	75	1,528.56	443	4,756.13
2004	107	1,638.83	394	4,551.91
2005	252	3,877.07	153	2,510.53
2006	408	6,606.62	567	5,777.04
2007	358	5,557.92	378	4,835.35
2008	431	7,044.72	257	3,485.59
2009	3,664	43,460.83	488	5,967.21
2010	499	5,671.55	498	5,908.91
2011	1,137	11,565.55	961	10,345.13
2012	1,247	12,727.38	705	8,523.19
2013.1-6	536	5,146.79	195	2,297.75
2013.7-12	806	7,342.28	460	5,434.88
2014.1-6	925	8,843.63	210	2,856.06
2014.7-12	961	9,109.59	208	2,812.61
2015.1-6	1,251	13,009.03	228	3,034.14
2015.7-12	906	8,327.08	553	6,300.69
2016.1-6	824	7,593.30	642	6,948.55
2016.7-12	863	8,498.44	653	6,626.24
2017.1-6	723	7,006.07	787	8,500.84
Total	28,142	328,330.14	13,945	170,586.32

Source: MoE, 2012, MoE, 2013.a, MoE, 2013.b, MoE, 2015.a, MoE, 2016.e, MoE, 2016.f, MoE, 2017.f

4.3 Trends and background of registration and return of registration cards with regard to whole tusks

4.3.1 Volume of the registered whole tusks and the tusks for which the registration card was returned

Table 4-1 shows every year’s number and weight on newly registered whole tusks, and ones on whole tusks for which the registration card was returned (“whole tusks with the registration cards returned” hereinafter) since the application of the registration to ivory whole tusks has been implemented.

The registration cards shall be returned to the registration organization in the case the holders of the tusk cease to possess it⁴⁴. A typical case is that the whole tusk is divided so that it does not maintain the “whole shape” anymore. So, the tusk for which the registration card has been returned can be supposed to be consumed for manufacturing ivory products.

The number of existing stock are to be provided by the figure on (A) after deduction of the figure on (C), and the weight of existing stock are similarly provided by the figure on (B) after deduction of the figure on (D). The stock of registered whole tusks at the end of June, 2017 was 14,197 with 157.7 tons in weight⁴⁵.

The total weight of whole tusks newly registered in between 1995 and June, 2017 can be calculated as 328 tons on Table 4-1. 239 tons after deduction of 50 tons and 39 tons of ivory tusks imported in 1999 and 2009 each as one-off sold ivory tusks from the 328 tons, are as discussed later⁴⁶, are supposed to be registered mostly as pre-convention acquisition. Out of the 239 tons of tusks, 92 tons were registered at the beginning of implementation of the registration scheme (1995-1996), most of which were owned by traders and received the registration by confirmation of registration requirement (pre-convention acquisition) without objective proof⁴⁷.

44 See the sixth paragraph in Note 7

45 GoJ reported the stock of registered whole tusks as 11,415 in number with 136,135kg in weight on 24th April, 2014 (SC 65 Doc. 42.1 Addendum Annex 2), as 12,384 in number with 143,710.5kg in weight on 31st December, 2014 (SC 66 Doc. 29 Annex 20), as 13,583 in number with 155,314.3kg in weight on 31st July, 2015 (SC 66 Doc. 29 Annex 20).

46 See 4.5.5 1)

47 In 1995, internal trade control/registration scheme was applied to ivory whole tusks, and business notification scheme was applied to ivory traders who deal ivory other than finished products (that means manufacturers) by the Bill for amendment to LCES (see 7.1.2). So, the ivory manufacturers were supposed to register their whole tusks

43 <http://www.jwrc.or.jp/cites/regist/kikan/1.htm>
There has been no change on the description since the beginning of August 2015 till the end of February 2017 at least.

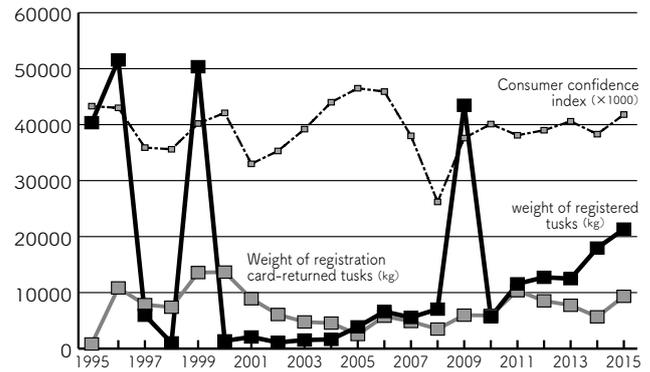
99 tons of the rest 147 tons of ivory tusks had been registered since 2011 when the seizure of illegal ivory increased globally. In fact, the volume of registered whole tusks in Japan has rapidly increased since the year and reached 2,100 in number and 21 tons in weight in 2015. It should be carefully examined whether illegally imported tusks had been effectively screened out at the time of registration of pre-convention acquired ivory, including the recently registered 99 tons of ivory tusks.

4.3.2 Changes and their background in weight of newly registered whole tusks and ones with the registration cards returned

Figure 4-1 shows the change in weight of newly registered whole tusks (based on (B) in Table 4-1) and one in weight of whole tusks with the registration cards returned (based on (D) in Table 4-1), together with the consumer confidence index⁴⁸.

Based on the figure, change of those weights of the whole tusks will be discussed as well as the history how potential consuming demand for ivory products manufactured in Japan has been controlled mostly through a production “adjustment” by ivory manufacturers regardless of the actual consumer perception.

Figure 4-1: Change in weights of registered whole tusks both stocked and consumed, and consumer confidence index



1) Change in weight of newly registered whole tusks

The registration scheme was applied to ivory whole tusks in June 1995. The figures of registered tusks are large during 1995 and 1996. It is thought that a considerable part of the registered was occupied by a part of stock⁴⁹ owned by ivory manufacturers⁵⁰.

The number of registration jumped up in 1999 and 2009 when the one-off sold ivory tusks were collectively registered. Among the fully registered tusks, excluding the ones brought through the one-off sale, was the whole tusks as of pre-convention acquisition⁵¹, which have dramatically increased since 2011 and reached to 21 tons in just one year of 2015.

2) Change in weight of whole tusks with the registration cards returned and the history of production adjustment by ivory manufacturers

Aforementioned, most of whole tusks with the registration cards returned can be assumed to be consumed for production.

Therefore, the weight may reflect the trend of production by ivory manufacturers while it does not reflect the total weight of whole tusks consumed for production⁵².

Then, the trend of production by ivory manufacturers will be discussed based on the weight of

in possession to JWRC (MITI (currently METI) and EA (currently MoE) made an administrative guidance to the traders to register their ivory stock.) and mandated to notify their stock of ivory cut pieces including scraps with 1kg or more in weight, and 20cm or more in length to the Director General of Environment (currently Minister of Environment) and Minister of International Trade and Industry (currently Minister of Economy, Trade and Industry).

At the time of the registration and the notification, those whole tusks and cut pieces under possession “having legitimate title” were each allowed to be registered or notified (MITI, 1995).

The said “having legitimate title” should be interpreted to mean not only a legitimate title of possession but also complying with CITES or acquired as pre-convention stock.

In fact, Japanese traders had imported ivory since 1980 with submission of a certificate of origin to the customs, and furthermore, they started to submit the CITES export permit to the customs since April 1985 (see 4.8.2, 6). It means that the traders could prove the date of import of those ivory by showing the copy of clearance certificate with the copy of the certificate or permit as long as they had actually imported the ivory in an official way.

MITI (currently METI), however under a condition, approved to register the whole tusks without any proof of pre-convention acquisition like an official document or a delivery slip, which include the transferor of which had been unknown.

The condition was to apply the registration within 6 months after implementation of the registration scheme (28th June 1995) with attached a confirmation letter by the Presidents of Ivory Arts and Crafts Association in Tokyo or Osaka saying that the date of pre-convention acquisition written in the registration application form “is confirmed to be true” (Ibid.).

Consequently, 3/4 of whole tusks registered in 1995 received the registration by submitting confirmation letter by the ivory associations (CITES Panel of the Experts, 1997).

48 See 1.4.2. In table 4-1, the numerical number of 1 thousand times of the index value for every December is shown for easier comparison of the trends with the weights of whole tusks.

49 The manufacturers’ stocks mandated to be registered are supposed to ones to be traded to the third party including the peer. Even ivory manufacturers are not mandated to register their whole tusks owned for self-consumption as manufacturing material (see 4.8.4).

50 CITES Panel of the Experts, 1997

51 See 4.5.5, 1)

52 Ivory products are made not only from the registered whole tusks but also the cut pieces which already existed in 1995 when the registration scheme was implemented, or ones not derived from registered whole tusks. Those cut pieces were added up to 98.3 tons at the time (see table 5-4).

However, it cannot be known how much those cut pieces have been consumed afterwards because only the data on stocks at the end of each fiscal year is available with regard to cut pieces (see 5.3.3, 5.3.4).

whole tusks with the registration cards returned in contrast with the change in consumer perception.

The weight was merely 11 tons in **1996** when the track record of returning registration cards was established for the first time.

The small amount is considered as the result of a strong production adjustment already made by ivory manufacturers on at least the stock of legalised whole tusks led to curb the process of whole tusks though the consumer perception was relatively high at the time⁵³.

In the succeeding **1997 – 1998**, the volume of whole tusks with the registration cards returned was also small, due to strict production adjustment. In June 1997, the first one-off sale of ivory was conditionally endorsed⁵⁴, therefore they saw day light to secure a new stock. Nevertheless, most of ivory manufacturers collectively launched to raise the price at high rate of 3- 40 % just after the decision, and in doing so, took a step to stronger production adjustment⁵⁵. The reason for the response comes from the concerns about depletion of stock within or around two years for that period they have to wait for arrival of the one-off sold ivory⁵⁶, and the concerns about if the strict conditions⁵⁷ for implementation of one-off sale would be met⁵⁸.

The tightening of production adjustment also appeared in the form of reduction of sales offered at so-called “ivory swapping party” or the ivory auction held by ivory manufacturers⁵⁹.

The major reason why the registered whole tusks were consumed so slowly was the strong production adjustment made by ivory manufacturers while consumer perception also fell in those days⁶⁰.

In 1999 – 2000, the volume of whole tusks with the registration cards returned mostly doubled than the ones in 1998. This trend may be encouraged by the prospect that one-off sold (and ex-

perimentally exported) 50 tons of ivory assumed to be imported from Botswana, Namibia and Zimbabwe to Japan in June 1999, and the manufacturers relaxed the adjustment and actively consumed registered whole tusks⁶¹. Incidentally, the high consumer perception in those two years might have pushed the trend incrementally.

During the 14 years **between 2001 and 2014**, volume of whole tusks with the registration cards returned were at a very low level. It obviously suggests that tightening of production adjustment by ivory manufacturers had continued during those years. The background of the strong production adjustment is as follows;

At the meeting of CoP11 held in April 2000, ivory trade was not reopened while the population of South Africa was transferred from Appendix I to II⁶². 2 years later, at the meeting of CoP12 in 2002, the second one-off sale of 60 tons of ivory owned by Botswana, Namibia, South Africa and Zimbabwe was endorsed while it was ensured that the sales would not be in place in the immediate future⁶³. Therefore, ivory manufacturers tightened production adjustment through price increasing of ivory blank hanko at the year end of 2002⁶⁴. Five years later, it was approved that the conditions set for one-off sales were met at SC55 held In June 2007⁶⁵. However, at the meeting of CoP14 which started in the next day of the SC, a decision that actually intended to suspend the one-off sale until China can participate in the auction later was adopted in consensus though Japan opposed up to the last minute⁶⁶. From there on, ivory manufactures were left with the uncertainty on when and how much they can import the ivory.

61 In fact, Takaichi, the largest ivory hanko manufacturer in Japan undertook “customer appreciation sale on ivory hanko as a gift celebrating graduation from school” as a celebration for the first import of ivory in 10 years, and a hanko business journal recommended the readers hanko retailers to promote ivory hanko sales actively at the opportunity of the import of ivory because it has become a hot topic for people broadly (Anon, 1999. b).

62 CoP11 Com. I. 11.10

63 CoP12 Com. I Rep. 9 (Rev.), CoP12 Com. I Rep. 10 (Rev.) It was decided that the export of ivory can be carried out not before May 2004, and in any event not before the Secretariat has verified the prospective importing countries or Japan, and MIKE has reported to the Secretariat on the baseline information. https://www.cites.org/sites/default/files/eng/cop/12/Adopted_Amendments.pdf

64 Anon., 2003

65 SC55 Summary Record

The completion of verifying Japan’s ivory trade controls by the Secretariat was reaffirmed and the baseline information of MIKE was reported to it. <https://www.cites.org/sites/default/files/eng/com/sc/55/E55-SumRec.pdf>

66 CoP14 Com. I Rep. 15 (Rev. 1) , CoP14 Inf. 61

53 Takaichi, the largest ivory hanko manufacturer in Japan stressed his concern about the runout of his stock and the necessity of a production adjustment on ivory hanko for preventing it at the time of 1992 as: “If you determined to buy the products actively and actually put the action in practice, our stock would soon disappear and we would run out the options (for continuing our business)” (Takaichi, 1992.b).

54 CoP10 Com.I 10.13 (Rev.)

55 Anon, 1997.b

56 It was decided that no international trade in ivory before 18 months after the transfer to Appendix II comes into effect (3 months after the decision). Therefore, the export of ivory was supposed to be in place total 21 months after the decision of CoP (CITES CoP10 Com.10.33).

57 CITES CoP10 Com.10.34

58 Anon, 1997.b

59 Ibid.

60 The rate of consumption tax was raised from 4% to 5% in 1997 <http://www.nippon.com/ja/features/h00013/>

In July of following 2008, China was endorsed as a designated trade partner of the one-off sold ivory at SC 57 meeting⁶⁷, and then competed with Japan at the ivory auctions held in 4 Southern African countries in October and November of that year⁶⁸.

As the result, Japanese ivory manufacturers ended up to buy only one third of the 102 tons or 39 tons of auctioned ivory which was imported to Japan in 2009. Rest of the stock was bought by China⁶⁹.

It means that the second one-off sales may not be so profitable for the Japanese traders comparing the first one in 1999. It provided less amount of ivory than previous one though it took 10 years to be in place. Furthermore, it was ensured that next import would take more than 10 years (at CoP18 in 2019 at earliest)⁷⁰. Additionally, it was easily anticipated that Japanese ivory manufacturers have to compete again with their tough rival possibly China. The former President of Takaichi, stated at the trial of violation against LCES as follows “The second import of legalized ivory after the ban realized in 2009, however Japan got only 40% of them and China won the rest of 60%. I’m mixed-up to think of what shall I do if ivory will be unavailable in future”⁷¹.

While the next import from 4 Southern African countries receded from view, Japanese ivory manufacturers had expected to lift the trade ban from Tanzania and Zambia⁷². However, The ivory manufacturers were disappointed that Tanzania withdrew its proposal for reopening international trade in its ivory stockpile before the opening of CoP16 to be held in 2013 and that Zambia did not even submit such a proposal to the Conference of the Parties, so they increased wholesale price of ivory blank hanko in the range of 10 to a bit less than 20% in 2013 and 2014 without a break under a reason that they have little hope of importing new ivory while their ivory stockpile provided by the last one-off sale is running⁷³.

67 SC57 summary record <https://www.cites.org/sites/default/files/eng/com/sc/57/E57-SumRec.pdf>

68 Anon. 2008

69 Ibid.

70 CoP14 Com. I Rep. 15 (Rev. 1) , CoP14 Inf. 61

71 Sakamoto, 2011.a

72 Anon., 2013.b

73 In 2013, Takaichi announced that it will increase the price of ivory products including ivory blank hanko from April 21st. The range of increase is between 10 and a little bit less than 20%. The other two ivory manufacturers in Osaka also decided to do so from April or May in the year (Anon., 2013.b).

In 2014 to follow, Takaichi announced another price increase of the products made of ivory, cow horn or buffalo horn (15% increase for ivory blank hanko) from July. It explained the reason for increase that suspension of ivory export from African countries is supposed to continue till 2019, so it has

Thus, it is a matter of course for ivory manufacturers to continue the strong production adjustment under the situation that they cannot help being pessimistic to securing stock of manufacturing material in future⁷⁴. Incidentally, the consumer perception during the period (2001 - 2014) had swung much more widely. It suggests that the consistent production adjustment based on prospect of securing manufacturing material had been made regardless of potential consumer’s demand for ivory products.

In 2015, however, the weight of whole tusks with ‘registration card’ returned slightly increased and production became active. As the background of the trend, registration of whole tusks has rapidly increased since 2011 to an unprecedented number of 2,100 tusks in 2015⁷⁵. Considering the fact that prices for purchasing whole tusks offered by Japanese manufacturers have been more expensive and stable than ones offered by Chinese buyers⁷⁶, most of increasing registered tusk are likely to fall into them. The active production in the year may come from the relaxation of the production adjustment driven

been struggling to buy ivory stock owned by individuals and corporates as an estate or arts and crafts, or purchased at the auction held for exchanging the stockpile among fellow traders, however the rising procurement costs forced it to decide to increase the wholesale price (Anon., 2014.a)

74 Incidentally, whole tusks with the registration cards returned tentatively increased in 2011 though there was no affirmative event for legalizing import under CITES. Additionally, the consumer confidence index in the year became lower than one in the previous year.

More interestingly, the stock of ivory hanko increased in that year (See Figure 5-5). It is difficult to comprehend that the production becomes so active that the stock of the product expands though the manufacturers cannot see their way to procure the ivory as manufacturing material near future. In fact, such a case has not been found. Therefore, it is suspected that some special conditions other than the production adjustment may affect the increase in the whole tusks with the registration cards returned and the increase in the stock of ivory hanko.

A theory is that the Takaichi case influenced the increases in both the tusks with the cards returned and ivory hanko stock, that the largest ivory hanko manufacturer and those involved were arrested and then convicted guilty. Arrests of the former president of Takaichi which had purchased a lot of unregistered whole tusks should raise deterrent effects to Takaichi itself and other ivory manufacturers somehow. Thanks to the effect, compliance of mandatory return of registration cards and recording produced ivory hanko in the ledger may be tentatively improved, so track records of those might increase. On the contrary to the trend above, the tusks with the cards returned in 2012 decreased to almost midway between 2010 and 2011. The change may be understood that the decrease occurred due to loosening the compliance by the manufacturers after the things simmered down and effect of the strong production adjustment came out to the open again.

75 See 4.3.1 and 4.5.5.1). Incidentally, the total weight of registered whole tusks and cut pieces owned by the notified dealers in 2015 followed the previous year to make all-time track record since 1995 of over 200 tons (calculated from Table 4-1 and Table 5-2).

76 See 4.4.3, 4).

by satisfactory stockpiling of manufacturing material. Incidentally, stock of hanko reduced in 2015. It suggests that purchasing ivory hanko by consumers was also going strong⁷⁷.

In conclusion, it can be said that ivory manufacturers have made production adjustment in a consistent way based on the prospect of securing manufacturing material, and that their decisions were not largely influenced by the trend of demand of consumers for products at the time.

Therefore, it should be noted that it is likely to lead to seriously marginalize the potential demand for ivory in Japan's domestic market if the estimation is based on the appearance of production trend as shown in the weight of whole tusks with the registration card was returned. Here, the fact that the production trend has been controlled by a strong production adjustment would be underestimated.

4.4 Survey on ivory traders who buy or sell ivory whole tusks

4.4.1 Objective

The objective of the survey is to understand how effective is the registration scheme of ivory whole tusks, where the core composing internal trade regulation of ivory based on LCES, functions in reality and then to clarify the problems of it by understanding the responses of ivory buyers and sellers about the deal of unregistered whole tusks.

4.4.2 Methodology

1) Identifying the targets

From July to August 2015, 51 traders were selected as target candidates for the phone / door-to-door survey. The selection was based on the following criteria;

- a) The traders who advertised "Hon-zouge (real ivory)" on "Rakuten Ichiba," "Yahoo! Japan Shopping," "Rakuten Auction" or "Yahoo! Japan Auction", and names and addresses of whom are available.
- b) The identified traders searched on google by entering "Buying ivory" as the key word.
- c) The traders with specific information ever provided from various sources.

2) Phone survey to ivory buyers

Between 7th August and 14th September, 2015, one Japanese investigator under the semblance of a buyer of unregistered whole tusks called the targeted traders to get the responses about the offer on sales and on whether the responses indicated any intention for illegal activity. The entire communications were audiotaped.

This survey was conducted by the U.S. based Environmental Investigation Agency⁷⁸. The following analysis is based on the original survey records provided by EIA.

Fact situation on the phone survey

- Two unregistered ivory tusks (a polished tusk weighing 21kg and a carved tusk weighing same) were found in the house of my father.
- He died this year.
- No one knows the details of the acquisition except for my father.
- My elder sister who lived with my father has heard from my father that he had bought the ivory or got them as celebratory presents about 15 years ago.
- Both of us don't know the profile of the transferor.
- Characteristics of the carved tusk: so-called openwork ivory with the smooth top, but the middle section has so many carvings on it that they can see the other side straight through the tusk. There is still a half crescent shape to the silhouette of the entire tusk. It means the tusk is creating a slight arch.

The investigator particularly took notice of the matter as indicated below.

- Legality of the suggested responses (purchasing unregistered whole tusks / false registration)
- Use of the whole tusks after purchasing
- Price for purchasing
- Modus operandi for false registration
- Recognition about the practice on registration duty by the registration organization
- Reality of illegal export to and from Japan to China

3) Survey on websites of ivory traders

This survey was conducted to analyse the results of EIA's phone survey.

While the website is known as one of the efficient tools for ivory traders to offer purchasing of ivory⁷⁹, it may also function as tools for them to disguise compliance with the law and regula-

⁷⁷ See 5.4.3.1).

⁷⁸ <http://eia-global.org/>

⁷⁹ Matsumoto, 2015

tion because some websites of the traders phone-surveyed (see 2)), who suggested illegal activities were found as emphasizing their compliance.

Then, with regard to the traders advertising purchasing of ivory whole tusks, correlation between the explanation regarding registration scheme on the website and the applied illegality category to those traders was reviewed. For reference, display of notification code of “specified business on international endangered species”⁸⁰ is shown as well.

4) Door-to-door survey to ivory sellers

This survey was conducted by EIA.

Between 3rd and 10th December, 2015, two Chinese investigators under the semblance of a person seeking as a seller of ivory whole tusks and cut pieces visited the targeted traders together with a translator to get the responses to the offer on purchasing unless they rejected to meet the investigators during the first contact by phone.

The entire communications were video-recorded.

4.4.3 Results of phone survey to ivory buyers

1) Targeted ivory buyers for analysis

Among 51 selected ivory buyers, 14 buyers were deselected. Of which, 4 buyers did not respond to the call, 5 buyers responded not to purchase an ivory whole tusk at the time of call, one of the investigated buyers was shared as an expert exclusively for purchasing ivory. This person and another trader were already investigated at the time of the call (though the ivory buyers advertise ivory purchasing separately as independent companies), and 3 buyers failed to let an employee respond with enough level of knowledge about ivory dealing (14 buyers in total).

Then, the recorded conversations with remaining 37 buyers were analysed.

The outline of the result is shown in Annex 1. The code put on each ivory buyer in this section responds to one for each buyer shown in the Annex.

2) legality of the responses

As the result of analysing the recorded conversation with 37 buyers above, their responses are categorised as follows (“category of legality” hereinafter).

- (i) Directly takes unregistered whole tusks, and then registers them under a fake name for resale (This category includes the case that transfer of occupancy of the whole tusks is subject to be made first, and payment will be made after the tusks

- would be successfully registered);
- (ii) Directly takes unregistered ivory, and then cuts or resale them;
- (iii) Requires registration prior to purchasing. Offers to act as an agent applying for registration based on false or unsubstantiated facts (suggesting explicitly or implicitly);
- (iv) Requires registration prior to purchasing. Recommends the seller to apply for registration based on false or unsubstantiated facts; and
- (v) Requires registration prior to purchasing. No suggestion of illegal activity in applying for registration while explaining the requirements and procedure of registration to the seller responding to his/her queries.

In what follows, legality of the acts shown in the 5 categories above as well as applicability of the responses of 37 buyers to the categories will be discussed.

Responses suggesting Illegal activities

The responses applicable to category (i) or (ii) are clearly illegal activities if they are actually undertaken. They meet the conditions for transfer of unregistered items⁸¹.

Furthermore, the response applicable to category (i) meets false registration⁸² as well. Additionally, a preparation of the paperwork for the application constitutes forgery of private document⁸³ if the holder of the title has not accepted it or has not comprehended the contents of the paperwork.

Responses suggesting Likely illegal activities

The responses applicable category (iii) or (iv) are likely illegal.

In the case applicable category (iii), the person who acts as the agent is chargeable as the co-principal with the applicant⁸⁴. Additionally, a preparation of the application form constitutes forgery of private document⁸⁵ if the holder of the title has not comprehended the contents.

The responses applicable to category (iv), the person who does not act as the agent but instruct the applicant a way based on specific false facts to get registration is likely co-principal (by reason of conspiracy), instigator⁸⁶ or accessory⁸⁷, considering he acknowledges that he will buy the ivory after a false registration is completed.

81 LCES Article 12 Paragraph 1 and Article 57-2

82 LCES Article 58 (c)

83 Penal Code Article 159

84 Penal Code Article 60

85 Penal Code Article 159

86 Penal Code Article 61, Paragraph 1

87 Penal Code Article 62, Paragraph 1

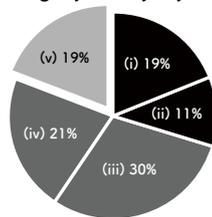
80 See 4.1 and 5.1 for further references.

Responses not suggesting illegal activity

There is no illegal activity suggested in the responses applicable to category (v).

The result of conformity of 37 dealers' responses with the categories of legality is shown in the following Figure 4-2.

Figure 4-2 Legality of ivory buyers' responses



- **Directly takes unregistered whole tusks**
(i) Then, registers them under a fake name for resale (This category includes the case that transfer of occupancy of the whole tusks is subject to be made first, and payment will be made after the tusks would be successfully registered). **Illegal** (transfer without registration + false registration)
- **Directly takes unregistered whole tusks**
(ii) Then, cuts or resale them. **Illegal** (transfer without registration)
- **Requires registration prior to purchasing**
(iii) Offers to act as an agent applying for registration based on false or unsubstantiated facts (suggesting explicitly or implicitly). **Likely to be illegal** (false registration)
- **Requires registration prior to purchasing**
(iv) Recommends the seller to apply for registration based on false or unsubstantiated facts. **Likely to be illegal** (false registration)
- **Requires registration prior to purchasing**
(v) No suggestion of illegal activity in applying for registration while explaining the requirements and procedure of registration to the seller responding to his/her queries. **Legal**

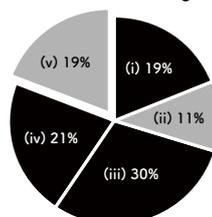
The ivory buyers with illegal responses (category (i) or (ii)) account for 30%, while the dealers with responses likely to be illegal (category (iii) or (iv)) account for 51%. Thus, total of those accounts for 81%. On the other hand, legal responses (category (v)) account for only 19%.

3) Proportion of the ivory buyers with intention to supply the laundered whole tusks into legal market

It is a form of “laundering” to pump the whole tusks which have been registered by a falsehood or other illegal means into legal market.

The “laundering” is inevitably made as the result of the activities suggested in the responses of (i), (iii) and (iv) (in the case a false application for registration is made). The number of ivory buyers included in those categories reached to 26 out of 37 (70%).

Figure 4-3 Proportion of ivory buyers' with intention to supply the laundered whole tusks into legal market



- **Directly takes unregistered whole tusks**
(i) Then, registers them under a fake name for resale (This category includes the case that transfer of occupancy of the whole tusks is subject to be made first, and payment will be made after the tusks would be successfully registered). **Illegal** (transfer without registration + false registration)
- **Directly takes unregistered whole tusks**
(ii) Then, cuts or resale them. **Illegal** (transfer without registration)
- **Requires registration prior to purchasing**
(iii) Offers to act as an agent applying for registration based on false or unsubstantiated facts (suggesting explicitly or implicitly). **Likely to be illegal** (false registration)
- **Requires registration prior to purchasing**
(iv) Recommends the seller to apply for registration based on false or unsubstantiated facts. **Likely to be illegal** (false registration)
- **Requires registration prior to purchasing**
(v) No suggestion of illegal activity in applying for registration while explaining the requirements and procedure of registration to the seller responding to his/her queries. **Legal**

4) Usage of purchased whole tusks

The usages of the whole tusks after purchasing include the resale to Japanese manufacturers of hanko, etc. and resale to Chinese traders. The former usage includes self-consuming by the manufacturers purchasing whole tusks as manufacturing material.

Among the 14 buyers whose usages were identified, the number of buyers who fell in each category of usage was same (7 buyers for each).

Some of them are of the misunderstanding that they can get export permits for pre-convention tusks. Such situation can be also recognized through the announcement on the website of MoE saying as “any registration card can't be used as evidence for export to prove pre-convention acquisition”⁸⁸.

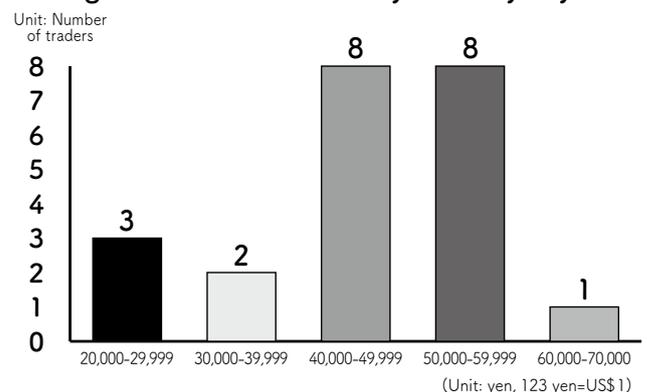
Such a misunderstanding might be the reason why some ivory buyers surveyed were attempting to make false registration for ivory tusks before they resale them to Chinese.

5) Relationship between purchasing price offered by the buyers and usage of the whole tusks after purchasing

The purchasing prices of the whole tusks (polished ones of 21kg) offered by the buyers in the conversation are shown in Figure 4-4 (22 dealers).

When some prices were shown by the buyers, the highest price in the range is adopted. Also, when both price of registered tusks and unregistered ones were shown, the price of registered ivory is adopted.

Figure 4-4 Price offered by the ivory buyers



According to the result, the 40,000 yen (US\$ 325) level and 50,000 yen (US\$ 407) level are the most common. The average purchasing price of those 22 buyers is 43,400 yen (US\$ 353).

Table 4-2 shows the price range offered by the buyers for each usage of the whole tusks including resale to Japanese manufacturers of ivory hanko, etc. or resale to Chinese.

⁸⁸ <http://www.env.go.jp/nature/kisho/zougetorihiki.html>

Table 4-2 Price range offered by the ivory buyers and usage of the bought tusks

Price (yen, 123 yen=US\$ 1)	Resale to hanko manufacturers (including purchase by manufacturers themselves)	Resale to Chinese	Unknown	Total
60,000 - 70,000	○			1
50,000 - 59,999	○○○○		○○○	8
40,000 - 49,999	○○	○○○	○○○	8
30,000 - 39,999			○○	2
20,000 - 29,999		○○○		3

It shows that the ivory buyers intend to resale to domestic manufacturers offered purchasing prices higher and less in variation than ones who intend to resale to Chinese. The former prices were averaged as 51,800 yen (US\$ 421) while the latter prices were as 35,300 yen (US\$ 287).

Accordingly, domestic ivory manufactures are securing whole tusk stock more stable and competitive than Chinese buyers at the time of survey.

It should be noted that , “during the course of the event, big tusks, small and broken tusks were purchased by China, and middle-sized tusks suitable for hanko manufacturing were purchased by Japanese” at the ivory auctions held in 2008 by four Southern African countries as the second one-off sale⁸⁹. It is because main usage of raw ivory as material is arts and crafts in China while it is hanko in Japan⁹⁰. In the case of arts and crafts, depending on the size of those, significantly large tusks are often required, while, small parts of ivory to be used in combination are also needed in vast amount⁹¹.

The weight of the whole tusk offered by the investigator was 21 kg which can be considered as “relatively” large-sized. However, given that the tusk would have been much larger, purchasing price offered by the dealers intended to resale it to Chinese might have been more expensive.

6) Modus operandi for false registration application

Disguising title of application

There are two categories of false registration application. The first one is the case faking the title of an application, the second one is the case that the application itself is false though the title is not disguised (including acting as an agent of the title holder).

With regard to the former case, the ivory buyers mentioned “The only way to play it safe completely would be for me is to make up each story and get the registration based on that. That way, you the customer, are completely innocent”⁹², “We often use a ‘pre-determined route’ for registration using the name of someone who owns lots of

ivory”⁹³, and “I will ask someone to fake that he has owned the ivory, then we will apply for registration (under his name).”⁹⁴

Required document for confirming the registration requirement (pre-convention acquisition)

All of ivory buyers who referred to the document for confirming pre-convention acquisition talked about the certificate written by the third party as “given”.

This certificate generally lacks the credibility and even JWRC pointed out the problem⁹⁵ (it will be discussed later where JWRC has broadly accepted the certificate written by a third party in reality⁹⁶).

The eligible “third party” for writing the certificate

Many ivory buyers recommended to request the person to write false information in the certificate as that he/she had seen the whole tusk before the international ban came into effect, and that it should not be the applicant (or successor) himself nor the relatives.

They showed several measures for false registration application as “It’s perfect if you can get permission to use the name of your relative or acquaintance with different surname from yours”⁹⁷, “Just call your neighbour over and use their name”⁹⁸, and “we can put the name of someone without his acceptance”⁹⁹.

An ivory buyer recommended to disguise the sister of the applicant as “a third party”, in the case her family name is different from the applicant, This tactic was recommended by the biggest manufacturer in eastern Japan (No.7).

Some buyers number of buyers claimed that even a relative is eligible. One of them explained how to persuade the registration organization to accept the written statement by a relative of the applicant as “you can ask your relatives to act as the witness under the assumption that no one other than him has seen the ivory. In that case, you can explain that no one other than the relative could have seen it because it had been stored in a warehouse”¹⁰⁰.

Description regarding the date of acquisition

The most important point on preparing a false self-statement and a false certificate written by a third party is how to fake the date of acquisition.

89 Anon, 2008

90 Anon., 2006

91 Ibid.

92 Phone survey to ivory buyer No. 20

93 Phone survey to ivory buyer No. 19

94 Phone survey to ivory buyer No. 32

95 See 4.2.5 2)

96 See 4.5.3 1)

97 Phone survey to ivory buyer No. 4

98 Phone survey to ivory buyer No. 6 (a major ivory hanko manufacturer)

99 Phone survey to ivory buyer No. 22

100 Phone survey to ivory buyer No. 21

The ivory buyers recommended to “create a story and most of them are pretty predictable, common stories”¹⁰¹. They expressed this tactic as “We must lie on these official statements”¹⁰², “Just make up a story”¹⁰³, “It is easy to get the certificate if you talk yourself into acquiring the ivory in the year...”¹⁰⁴, “It is prohibited but”¹⁰⁵, “cunning way”¹⁰⁶, etc..

In terms of the date of acquisition which is the most important element in the story, a trader referred to “1980s”¹⁰⁷ but many of them recommended to write “Showa era” (until 7 January, 1989) including “around 60th in the Showa era”¹⁰⁸, “around 63rd in the Showa era”¹⁰⁹ and “40s in the Showa era”¹¹⁰.

In fact, the most detailed tactic for fabrication was provided by the biggest ivory manufacturer in eastern Japan as “When they call to confirm your story, they might ask you, ‘How do you remember’ and just stick with your excuse that you precisely remember that it was during the bubble years”¹¹¹.

7) Recognition of the ivory buyers to the registration procedure conducted by the registration organisation

Power of inspection given to the registration organization

Some ivory traders stressed that the registration organisation is not authorized to conduct an inspection to reveal the false statement included in a ‘self-statement’ or a certificate written by a third party, as “Inspection of registration organisation is unlikely”¹¹², “They won’t come and audit you or ask you for a receipt of purchase, or a delivery report”¹¹³, and “The centre cannot examine whether the story is true or not”¹¹⁴.

Recognition of the limitation in the registration process

Many ivory traders recommended to apply the registration even if the investigator referred to the date of acquisition (15 years ago) not satisfying

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- 101 Phone survey to ivory buyer No. 36
102 Phone survey to ivory buyer No. 23
103 Phone survey to ivory buyer No. 7 (the biggest manufacture in eastern Japan)
104 Phone survey to ivory buyer No. 21
105 Phone survey to ivory buyer No. 12
106 Phone survey to ivory buyer No. 24
107 Phone survey to ivory buyer No. 30
108 Phone survey to ivory buyer No. 7 (the biggest manufacture in eastern Japan)
109 Phone survey to ivory buyer No. 12
110 Phone survey to ivory buyer No. 29
111 Phone survey to ivory buyer No. 7 (the biggest manufacture in eastern Japan)
112 Phone survey to ivory buyer No. 2
113 Phone survey to ivory buyer No. 7 (the biggest manufacture in eastern Japan)
114 Phone survey to ivory buyer No. 29

the legal requirement, as “it may be possible, so you could phone to the Japan Wildlife Research Centre”¹¹⁵, “It’s ok to be honest, too (if you just say that you received the ivory 30 years ago from someone it would not be a problem)”¹¹⁶.

The responses of those traders above seem to base on an assumption that JWRC would give full consideration to such application even if the applicant would mention a fact contradictory to legal requirements for the registration so that the ivory tusk to be applied would be eventually sold to them.

The surveyed traders, except for ones who intended to buy the tusks as unregistered scarcely suggested a concern to buy the whole tusks as unregistered.

In fact, some even suggested that as “The procedure is based on the assumption of successful registration”¹¹⁷, and “The mission of the centre is (not to screen ivory tusks whether they are to be registered but) to register an ivory in due course, so that it will not question you persistently”¹¹⁸.

It is considered that considerable limitation in the registration process is a common perception among the ivory traders.

8) Possible flow of ivory tusks to China

8 traders out of 37 surveyed indicated the flow of ivory whole tusks from Japan to China. Considering the topic was not necessarily so focused in the investigation, more traders were likely to recognize it actually.

The specific statements related to the following four subjects made by the statements of 5 dealers (No.12, No.19, No.20, No.29, No.36) are as follows.

Existing flow of whole tusks to China

They say that antique ivory including whole tusks once imported to Japan has been purchased back to China by smuggling recently¹¹⁹. It was also pointed out by an ivory trader that the market rate at the time when major demand had existed exclusively in Japan’s domestic market rose since commercial flow of ivory took place from Japan to China.

Incidentally, a dealer (No20) talked about a seizure of ivory in Dalian, which had been illegally exported from Japan. Such seizure actually took place on the 29th May, 2014¹²⁰.

-
- 115 Phone survey to ivory buyer No. 8 (the biggest manufacture in Japan)
116 Phone survey to ivory buyer No. 6 (a major ivory hanko manufacturer)
117 Phone survey to ivory buyer No. 5
118 Phone survey to ivory buyer No. 12
119 Also, see 3.1
120 See the Case 4 on Table3-1

No.12: "Until this point, Chinese traders have taken everything of ivory antiques which had been imported into Japan before."

No.20: "About 6 months ago, a large shipment from Osaka was discovered in Dalian. This stuff came from Japan. For such occasions, the traders who were involved with those businesses were all known to the authority."

No.29: "In earlier times, the price was lower because ivory was purchased inside Japan. The market rate upsurged after Chinese started to buy every product of ivory."

No.29: "Most buyers of ivory have been Chinese, even in Japan (so the market rate in Japan got seriously influenced by the situation in China). They may have smuggled ivory from Japan to China."

Recent environment surrounding the outflow of ivory from Japan to China

The ivory traders said that resale price of ivory to Chinese buyers has been dropping due to the increased enforcement action against illegal ivory trade and the economic downturn in China recently. Accordingly purchasing price of ivory tusk offered by Japanese traders has dropped as well.

In a door to door survey conducted by the investigation team, some traders stated that the outflow of ivory to China was at its peak during the end of 2014, But, according to one trader (No.24), the prime time was "two years ago", which means the end of 2013¹²¹.

No.12: "The sales to China still exist but, dropping due to the economic downturn of China."

No.19: "In China these days, illegal sales have a strict penalty such as death sentence. They can't buy it (in Japan) because they can't carry it (in China). We are also bothered by this too. In Japan, the price for ivory has dropped, therefore we cannot help keeping the stock of ivory tusks."

No.19: "The demand in China is there. But there are many troubles with that. Earlier, we had a customer who wanted a stuffed tiger for 3 million yen to take it home. He then realised that he would be facing death penalty, so he ended up backing out. The deal is tough."

No.29: "Ivory demand reduced in China by the end of last year and then economic deterioration followed it."

No.29: "Serious enforcement action in China drove down the market rate in Japan. It is said that the rate will return to the earlier unit price around 20,000 to 30,000 yen though Japanese market rate hit a high of 80,000 yen momentarily during a lim-

ited period last year."

No.36: "The majority of ivory flows towards China. It may get into China but these past 2-3 months, there has been a major crackdown by the Chinese authorities. Due to the strict management, the stores can't line up the tusks and sell them like they used to and it's become quite a taboo. They are going underground selling it only to people who really want to buy it. Of course, there is still a prevailing market but it has become much harder to sell it. Additionally, now it's difficult to obtain larger tusks and the price of ivory is dropping quickly."

No.36: "In China, the authorities are focusing on ivory in particular. When it comes to ivory, regardless of whether it is stolen goods or not, the internet site where it's listed will suddenly disappear. They are cutting out every way to buy or sell it other than being spread by "word of mouth." The value of ivory has fallen due to the very tight control on the demand. It's been in these last 6 months that it has changed. At the beginning of the year, the price was up around 45,000 or 50,000 yen if you had a 20kg piece."

Demand for ivory whole tusks in China

An ivory trader suggested that Chinese would manage to take large tusks out of Japan as much as possible while it is not the case for smaller tusks which they would carry in portions. It is assumed that larger tusks are to be carved to figurines by taking advantage of the size and that smaller one are used as material of accessories, beads, etc..

No.36: "Tusks have a higher value as a whole piece. In China, maybe in the case a 20 kg tusk, they would never want to cut it up, just as material for carving due to the high value of such a large piece. Say 7-8kg -nothing less than 10 kg would be cut up into 3 pieces as raw material for making it easier to smuggle. There is a demand for those cut pieces, but when you have a whole tusk it's more highly valued and there is still demand for it. It gets appraised for its precious value because it is so rare. If it were to go smoothly, then they could turn it around for 3 to 4 times the profit."

Existence of Chinese brokers or couriers for taking ivory from Japan to China

It is suggested that Chinese brokers who would buy ivory tusks in Japan and export it to China, and Chinese couriers who would get a contract to carry them from Japan to China.

No.36: "When I did come across someone like that it was on the internet when we were doing sales, and

¹²¹ See 4.4.5

giving quotes for an auction. There was a person who called in about an advertisement for red coral. This Chinese person talked about that and also inquired about ivory as well.” “Also aside from that there was a regular Japanese person who is dealing with antiques, who had other connections with Chinese people. They were able to unload some of my products using that avenue. When it is like that, if one person goes bad, the whole network is gone.” No.36: “They acted as the point of contact but it didn’t seem like they went to China themselves. There seemed to be another Chinese person who was doing the other part of the business.”

The existence of those Chinese brokers / couriers was also referred by other ivory traders investigated face to face¹²².

4.4.4 Use of websites for posing as a law-abiding trader

1) Risk to assume the law-abiding spirit of ivory traders based on description on their website

In the case of a type of regulation applied to displaying a specific information, it can be judged for certain whether it is adhered or not by observing the presence of the information. The regulation¹²³ which requires displaying information including description of having been registered and codes of the registrations when a person advertise a whole tusk for the purposes of selling or distribution is one of the examples.

¹²² Door-to-door survey to ivory seller No.1
¹²³ LCES Article 21 Paragraph 2, Ministry Order Article 11-3 See 2.3.4, 9) also.

It is possible to determine the violation when no description of the matters above is found on a trader’s website¹²⁴.

On the other hand, another type of regulation, in contrast with the case above, it is quite risky to assume the law-abiding spirit of the traders based on description on their website or other media for advertisement because they could utilise website, etc. for posing as a law-abiding trader.

2) Correlation between the explanation regarding registration scheme on the website and the applied illegality to their real responses

With regard to the traders showing the intention for purchasing ivory whole tusks on their website (30 traders), correlation between the explanation regarding registration scheme on the website and the applied illegality category to those traders is reviewed (Table 4-3). For reference, display of notification code of “business activities in connection with designated internationally endangered species” is shown as well.

4 of the 5 traders who fell under the category (v) (: not suggest illegal or unfair way of registration application) displayed a specific explanation about registration scheme. The result makes sense because those information-sharing benefits the dealers who are willing to comply with the law by making their purchasing process efficient.

¹²⁴ It is another story that subtle fact-finding might be inevitable in the process for individual cases of infraction. In a case regulation of advertisement based on LCES, such a situation may happen when the registration code cannot be clearly made out from the photos of registration card.

Table 4-3 Explanation of registration scheme by ivory traders on their website

Category of legality			Discription of purchasing whole tusks on the website						No ***	
			Yes							
			Specific explanation regarding registration scheme on the website							
			Yes *			No				Total
Total	Display of notification code of the ivory business		Total	Display of notification code of the ivory business						
	Yes **	No		Yes **	No					
Directly take unregistered ivory	Illegal (transfer without registration + false registration)	(i) Then, registers them under a fake name for resale (This category includes the case that transfer of occupancy of the whole tusks is subject to be made first, and payment will be made after the tusks would be successfully registered)	3	1	2	2	0	2	5	3
	Illegal (transfer without registration)	(ii) Then, cuts or resale them	1	1	0	4	0	4	5	0
Require registration prior to purchasing	Likely to be illegal (false registration)	(iii) Offers to act as an agent applying for registration based on false or unsubstantiated facts (suggesting explicitly or implicitly)	8	5	3	2	2	0	10	1
		(iv) Recommends the seller to apply for registration based on false or unsubstantiated facts	3	3	0	2	1	1	5	3
	Legal	(v) No suggestion of illegal activity in applying for registration while explaining the requirements and procedure of registration to the seller responding to his/her queries	4	3	1	1	0	1	5	1

* This category includes the traders whose websites describe specific explanation e.g. purpose, process, contact of the registration organization while the website only shows that any person cannot buy ivory without registration card, etc doesn't fall under it.
** This category does not include the dealer whose website just shows that they got some certification of MoE and/or METI but lacks the code of business
*** The traders are fell under this category, who did not display a description about ivory purchasing though they were searched with the key word of "ivory purchasing".

On the contrary, only one of the 5 traders who fell under the category (ii) (: suggest to take un-registered tusks directly and then cut or resale them) displayed a specific explanation of the registration scheme. It also makes sense because it is not necessary for the traders who intend to make business process inside black market from beginning to end to appeal their good face externally.

The trend of the remaining 20 traders who intended to supply the laundered whole tusks into legal market (Category (i): 5 traders, Category (iii): 10 traders and Category (iv): 5 traders) is worth noting. 14 of the 20 traders (70%) displayed a specific explanation on registration scheme on their websites. So, it is observed as matter of course that they are willing to evade the law and then fake their compliance.

3) Conclusion

From the above analysis, it can be seen that it would end up with misleading conclusions if the compliance is judged by what is provided in their website or other media advertisements.

4.4.5 Results of door-to-door survey with ivory sellers

Results of the survey are analysed on the following 9 categories. The findings are summarized in ANNEX 2. The code put on the traders shown in the following analysis accords with one indicated in ANNEX 2.

1) Types of business

The 8 ivory sellers to whom the door-to-door survey was conducted (include one ivory seller¹²⁵ interviewed at an antique auction market) include one ivory manufacturer¹²⁶ and 7 antiquaries.

2) Purchase and resale

5 ivory sellers (all of them were antiquaries) referred to their purchase and resale channels.

They were almost silent about how and where they purchase ivory tusks. Though it seemed that purchase is irregular, somehow they seemed to have devised a plan where the ivory seller obtains his ivory tusks through a network of his peers¹²⁷.

In terms of destination of resale, it was obvious that resale chain had been secured and systematic deal could be made. Many of the sellers have a list of regular clients or buyers¹²⁸. It means that their business method is to secure the buyers first

and then to purchase ivory tusks according to the clients demand.

3) Characteristic of resale destination

All of the ivory sellers have Chinese as one of the resale destinations.

The existence of Chinese buyer was revealed easily because this investigation was based on a cover story where a Chinese buyer is offering to buy ivory tusks.

In one case, an ivory seller unveiled that the domestic hanko manufacturers are included in the resale destinations¹²⁹. Furthermore, the other ivory seller¹³⁰ suggested that he can resale the tusks in bundle to a certain person or agency. It is assumed that the target of resale may be a big domestic hanko manufacturer, considering that the ivory seller is a big antiquary who had supplied lots of unregistered ivory whole tusks to Takaichi since 2005 to 2010.

Incidentally, the investigated ivory manufacturer who is also an ivory seller suggested that he would prioritize using the ivory as material for manufacturing instead of reselling¹³¹.

4) Resale price

One ivory seller mentioned that the Chinese had driven up the purchasing rate. The resale value was also high until recently due to this reason. However the price has now gone low¹³². According to him, resale value is now 43,000 yen (US\$ 435) per kg, but was 80,000 yen (US\$ 661) per kg previously or even 110,000 yen (US\$ 909) at the peak¹³³. According to him, the tightening of the law enforcement in China has made it difficult to deliver ivory tusks into China.

The other ivory seller offered resale price as 80,000 – 90,000 yen (US\$ 661-744) per kg for over 20kg tusks¹³⁴ while 30kg over tusks are still so expensive as offered 100,000 yen (US\$ 826) per kg¹³⁵ to 200,000 yen (US\$ 1,653) per kg¹³⁶ by some sellers.

The resale values of over 20kg tusks shown in this investigation are almost double for the purchase value¹³⁷ offered to a tusk with 21kg during the aforementioned phone survey.

129 Door-to-door survey to ivory seller No.2
 130 Door-to-door survey to ivory seller No.7
 131 Door-to-door survey to ivory seller No.1
 132 Door-to-door survey to ivory seller No.3, No. 8
 133 Door-to-door survey to ivory seller No.8
 134 Door-to-door survey to ivory seller No.6
 135 Door-to-door survey to ivory seller No.1
 136 Door-to-door survey to ivory seller No.2, No.7
 137 See 4.4.3 4)

125 Ivory seller No.8
 126 Ivory seller No.1
 127 Door-to-door survey to ivory seller No. 8
 128 Door-to-door survey to ivory seller No.2, No. 4, No.5

5) Resale of ivory scraps

Three sellers¹³⁸ of the investigated stated they deal with ivory scraps and they sold them to Chinese.

6) Resale of unregistered ivory tusks

Three sellers¹³⁹ were willing to sell unregistered whole tusks while two¹⁴⁰ stated that they only sold registered whole tusks.

The source of the unregistered whole tusks the ivory manufacturer¹⁴¹ intended to sell is noteworthy. It originated from an unregistered stock of manufacturing material. It is legitimate to possess an ivory whole tusk without registration under the existing laws and regulations while registration is mandated prior to internal trade including transfer, display for sales purpose, etc¹⁴². Consequently, a possession of unregistered whole tusks by a manufacturer who would keep whole tusks as material of manufacturing for self-consumption purpose cannot be determined as illegal as far as he has kept the tusks unregistered, which were acquired before the internal trade regulation was introduced. As discussed later, this investigation made it clear that the loophole of internal trade regulation creates a cover for illegal ivory in reality¹⁴³.

7) Separate transfer of a registration card

The ivory manufacturer¹⁴⁴ investigated agreed to sell a registration card separately from the whole tusk for which the card had been issued. It is assumed that he intended to sell the registration card saved without returning it to JWRC¹⁴⁵ even after he had divided the relevant whole tusk.

8) Illegal export of ivory to China

No ivory seller investigated intended to send ivory to China or any transit country by himself. However, all of them were willing to sell their ivory to the investigator, recognizing the buyer were supposed to tranship it to those countries.

An ivory seller who has been cracked down as a seller of unregistered ivory tusks to Takaichi in 2011 and is still managing resale business of ivory in big scale, said he intended to sell ivory only to buyers who has an address in Japan. This is because of the fear that his identification could be caught at the Chinese customs¹⁴⁶. It is assumed the seller is

managing his business in particularly careful manner.

The other remarkable points observed are as follows.

- A seller explained a system of transportation agency providing a paid service to carry ivory to China, and advised to use it (No.1).
- A seller explained that a trade partner based in Hong Kong has transported an ivory purchased in Japan to Viet Nam or Macao by a container, and then has carried the ivory to China, that the trade partner would divide a large tusk into pieces to bring it to China, and that ivory would be processed in HK after imported from Japan, then be brought into China (No.2).
- A seller advised buying ivory on online auction site like Yahoo! Japan auction through a bidding agent (No.7).
- A seller confessed that he had been stopped carrying ivory from China to Japan (No.5).

9) Recent environment surrounding the outflow of ivory from Japan to China

Most of ivory sellers pointed out that purchase and resale of ivory whole tusks have decreased.

The first reason raised by them is that Chinese had bought up huge number of ivory whole tusks already until the stock in Japan had dried up. According to them, only extra-large and expensive whole tusks remain in Japan¹⁴⁷, and that the whole tusks weighing 10 – 20 kg in high demand are especially difficult to obtain¹⁴⁸.

The second reason is that the ivory holders are hesitating to resale the tusks because resale value of them has decreased to the level not the worth the cost¹⁴⁹.

The third reason is that ivory manufactures used to resale their ivory stock to Chinese and are now holding off on reselling ivory tusks for securing manufacturing material for their self-consumption because they lost a perspective of resumption of legal import of ivory due to rising poaching crisis of elephants¹⁵⁰.

138 Door-to-door survey to ivory seller No.1, No. 4, No.5

139 Door-to-door survey to ivory seller No.1, No. 2, No.6

140 Door-to-door survey to ivory seller No.3, No. 7

141 Door-to-door survey to ivory seller No.1

142 LCES Article 12 Paragraph1

143 See 4.8.4

144 Door-to-door survey to ivory seller No.1

145 Ibid.

146 Door-to-door survey to ivory seller No.7

147 Door-to-door survey to ivory seller No.2

148 Door-to-door survey to ivory seller No.8

149 Ibid.

150 Door-to-door survey to ivory seller No.1, No.8

4.5 Surveys to the registration organisation

4.5.1 Objective

The objective of the survey is to assess how effective the registration scheme of ivory whole tusks, the core composing internal trade regulation of ivory based on LCES to clarify the problems of it by understanding the reality of operation of registration affairs.

4.5.2 Methodology

1) Identifying the targets

Japan Wildlife Research Centre (JWRC), only registration organisation registered to the Minister so far was targeted for investigation.

2) Phone survey

This survey was conducted by EIA.

On 14th September, 2015, one Japanese investigator called to JWRC under the same fact situation as of the phone survey to ivory buyers¹⁵¹ and asked some questions about the procedure on registration of ivory whole tusks to the staff in charge to understand how they respond.

The following matters were particularly focused to catch.

- How strictly a document made by a public agency which is required on JWRC website in principle is actually required, and what kind of alternatives can be accepted as a necessary document for confirming the registration requirement (pre-convention acquisition)?
- If a certificate written by a third party would be accepted as a document confirming pre-convention acquisition, would a kin of the ivory owner (the inheritor of the owner under the prepared fact situation) be a “third party”?
- How much details about the date of acquisition would be requested to describe in the self-statement written by the acquirer of ivory (the inheritor)?
- How much information about the justification of the date would be requested to explain?
- How does JWRC explain about necessity of registration of various carved tusks?

The whole conversation was audiotaped, and then attached as in Annex 3.

3) An actual case of registration

In order to compare the findings in the phone survey of ivory buyers referred in “2)” with an

actual case of registration, a copy of a set of the application form and the attached documents used for applying registration which had been already received were obtained from the applicant, then the person was interviewed about the process of the registration application.

4) Survey of the record on registration requirements applied for each ivory tusk and types of documents used for confirming the registration requirement of pre-convention acquisition

MoE was requested to disclose the record from the time of implementation of registration scheme (June, 1995) to the time of survey (April, 2016) in terms of applicable registration requirements on ivory tusks and types of documents used for confirming the registration requirement or pre-convention acquisition. Then, those records were examined.

5) Survey on supposed personnel distribution, assigned operation to each personnel and time to be consumed for the operation with regard to registration affairs

The fee for registration on individuals, etc. of international endangered species is provisioned in LCES as to be fixed considering the actual expenses for the registration operation¹⁵². Incidentally, the registration fee was increased in June 1st 2014 as follows¹⁵³.

- An elephant Ivory tusk (supposed to be acquired as pre-convention): 3,200 yen per tusk (increased from 1,100 yen (US\$ 10 *US\$110) per tusk)
- “A collectively imported ivory tusk”: 1,600 yen (US\$ 15 *US\$110) per tusk
- An individual, body part or product of other species: 3,200 yen (US\$ 29 *US\$110) per number (increased from 2,600 yen (US\$ 24 *US\$110) per number)

The estimation of actual expenses is supposed to have been reviewed at the opportunity of aforementioned raise of registration fee. The basis of the new estimation provide a clear picture of existing personnel distribution, assigned operation to each personnel and time to be consumed for the operation with regard to registration affairs.

Then, MoE was requested to disclose the documents with regard to the basis for the change of registration fee from 1,100 yen (US\$ 10) to 3,200 (US\$ 29) yen, and the disclosed documents were examined.

¹⁵² LCES Article 29 Paragraph 1

¹⁵³ Amendment to the Cabinet Order Article 5

¹⁵¹ See 4.4.2 2)

6) Finance of the registration organisation on registration affairs

The expenditure and income regarding registration affairs disclosed on JWRC website was examined in reference to the financial statements¹⁵⁴ from fiscal year 2010 (July 2010 - June 2011) to 2015 (July 2015 - June 2016).

4.5.3 Results of phone survey to JWRC

1) Necessary documents to confirm the date of acquisition written in a self-statement on the acquisition

The investigator firstly mentioned that she doesn't have any official document issued by public agencies. In response, JWRC staff immediately concluded as "it's easy to understand that she may not have the records of these documents (like a document issued by the Customs) anymore because of passage of long time" though the investigator stated she saw the ivory 15 years ago, and continued to advise "we would need you to have just one person, possibly a third party, who can write a statement that the ivory was in your father's ownership from the Showa era". Consequently, the staff made it clear that the document can be accepted as the certificate written by a third party as the necessary document.

A certificate written by a third party has the least credibility as a document for proof, something which JWRC itself has admitted. Hence, the third party certification can be considered as a window-dressing¹⁵⁵. But, JWRC staff clearly expressed to accept the statement instead of a document made by public agencies. As mentioned earlier, JWRC appears to enforce strictness while acquiring an official document made by public agencies on its website¹⁵⁶. However, the investigation indicates a blatant gap between real intention and what is mentioned in its website.

2) The eligible third party for writing a certificate on the acquisition

In response to the request by JWRC to prepare of a certificate on the acquisition written by a third party staff, the investigator answered that she, and her sister or the inheritor (present owner) of the tusks, saw them. Then, the JWRC staff immediately explained as "ideally we would rather have a neighbour, or unrelated friend who just saw the item and then have them write that

down...that would be the very best situation", "But as the next step, if you just can't find anyone else who saw the ivory, in that case then even a relative is ok. For example you as the witness as long as you say the piece is from Showa era it would pass."

It means that JWRC stands the position officially that a person is ideal for being a third party eligible to write the certificate of acquisition, however it also accept one written by blood relatives as a third party pretty easily as a necessary document to confirm the registration requirement (pre-convention acquisition)¹⁵⁷.

3) Description about acquisition: coaching false description

Though the investigator told that her father seemed to acquire the ivory tusks around 15 years ago, JWRC staff advised as, "if it was Showa era, like 1985 or 1988 that is ok", "so anytime during the Showa era then there would be absolutely no question about the time period", the staff of JWRC stressed that point, and "if you enter into the Heisei era", "you say it's 15 years ago", he said against the investigator's talk, and then "if you were to tell me that your father had these things in his possession from the Showa era, then we can start on the process, and there would be no doubt, no problem" he determined.

JWRC staff clearly attempted to steer the investigator to make up the year of acquisition in the Showa era (until 7th January 1989) which is the period clearly preceding the date of CITES application on listing African elephant in Appendix I, which is 18th January in 1990 in the Heisei era (from 8th January 1989 to the present).

JWRC staff did not question anything about the reason for specifying the date of acquisition. He did not ask objective evidence to confirm the accuracy of the applicant's memory nor a social or private topic for tracing her memory¹⁵⁸.

And finally, JWRC staff started to narrate the example sentences to be written in the self-statement on the acquisition and the certificate on the acquisition written by a third party after he advised to take a note.

¹⁵⁷ The past record of registration reflects it clearly (4.5.5, 2), 4.6.3, 1)).

¹⁵⁸ The biggest manufacture in eastern Japan stated as, "When they call to confirm your story, they might ask you, 'How do you remember' and just stick with your excuse that you precisely remember that it was during the bubble years (Phone survey to ivory buyer No. 7 (the biggest manufacture in eastern Japan): See 4.4.3). But, JWRC did not even ask such question.

¹⁵⁴ <http://www.jwrc.or.jp/profile/profile.htm>

¹⁵⁵ See 4.2.5 2)

¹⁵⁶ See 4.2.5 3)

There were some items to be written in the documents, but in terms of the most important item or the date of acquisition (the date when the inheritors saw the tusks with regard to the case), JWRC staff read up the example sentences as, “In Showa 60 (1985), I saw my father Mr. XX holding the two tusks”. Furthermore, he made extra sure as, “it’s the most important to include the time period ‘about 1985 year’ so please be sure not to leave this part out”.

As mentioned above, the JWRC staff narration was so specific¹⁵⁹ that a person can complete a self-statement on acquisition and a certificate on acquisition written by a third party¹⁶⁰. It is obvious that JWRC assumed that the person is likely to prepare the documents to be enclosed for the registration application. Receiving registration is the absolute condition for an owner of an ivory whole tusk to sell them. There is no reason why such person would go beyond the example sentences given by the organization authorized to make registration.

4) Confirmation of authenticity and identification of species

As mentioned earlier, the registration organization shall “identify the species” of the applied items for registration¹⁶¹. In the case of ivory (a tusk of *Elephas maximus* (Asian elephant) or *Loxodonta africana* (African elephant)), it is supposed to confirm that the applied item is not a tusk of mammoth or other species, bones of some species, or a fake tusk.

But, the JWRC phone operator connected the call to the staff in charge after she checked with the investigator regarding whether the tusk is real ivory or not (it was likely that she would have not connected the phone unless the investigator confirmed it). The staff in charge of registration also mentioned that a registration card is not an evidence for authenticity of real ivory and that applicants are responsible for whether the tusk is

a genuine piece of ivory or not.

Far from the identification between African elephant or Asian elephant, he had no mind to even confirm if the item is tusks of Elephantidae¹⁶².

5) Confirmation of the applied item “maintaining its whole shape”

The investigator further asked the JWRC staff whether she should register a carved tusk which is so-called openwork ivory with the smooth top, but the middle section has so many carvings on it that they can see the other side straight through the tusk. There is still a half crescent shape to the silhouette of the entire tusk. It means the tusk is creating a slight arch.

The JWRC staff firstly explained that a tusk with “whole shape” is subject to registration, then demonstrated his recognition as “Since you say the silhouette is intact, if you try to get the piece registered, it will probably pass, I think”, however he also advised that the ivory owner can sell the tusk without registration by claiming that the tusk is “not maintaining its whole shape”, and that it’s a matter of applicant’s judgement whether she applies for registration of the tusk or not.

Under the existing laws and regulations, a tusk “not maintaining its whole shape” is exempted from the internal trade regulation, and then exempted from the target of registration¹⁶³. So, it is the alternative judgement whether an ivory tusk is subject to registration or not. Nevertheless, the JWRC official made an advice violating the laws and regulations as that the ivory owner can sell it without registration by discretion of him/her even if the tusk is supposed to be legally applicable to the subject of registration.

6) Coaching to justify oneself against investigation on transfer of unregistered tusks by police as being unaware that the ivory tusk in question would maintain its whole shape

The JWRC staff stated about registration of a carved tusk which can possibly be argued that it does not meet the tusk to be registered as maintaining its whole shape.

¹⁵⁹ JWRC official read up a specific sentences regarding the condition of the tusks when they were found, “when I realized it, it was displayed in the ‘Tokonoma’ (a built-in recessed space in a Japanese style reception room, in which items for artistic appreciation are displayed)”, “It was in the family warehouse”.

¹⁶⁰ The traders targeted by the phone survey (4.4.3) stated as, “The staff of the centre will guide you how to write in the documents” (No.12), “The mission of the centre is (not to screen ivory tusks whether they are to be registered but) to register an ivory in due course, so that it will not question you persistently” (No.12), and “The procedure is based on the assumption of successful registration” (No.5). It was proved by the phone survey against JWRC that the statements by the ivory traders were true.

¹⁶¹ See 4.2.3

¹⁶² An ivory seller surveyed by phone (4.4.3) criticized as “By chance, perhaps they might miss- register a piece made of plastic. Since they are only assessing the ivory by photograph” (Phone survey to ivory buyer No.5).

Such empty operation of registration affairs is attributed not to negligence of JWRC but to the limit of power authorized by the laws and regulations. Under the existing laws and regulations, the registration organization is only authorized to confirm the submission of the prescribed documents and the photos, and the contents of them as prescribed, so it can neither examine the real item applied for registration nor inspect the place where it exists (see 4.8.3).

¹⁶³ See 4.2.1, 4.2.2

- “In your case, I think it is more like 5-60cm or even 1 meter”, “In that case, it’s up to your judgement, to decide to register it for avoiding risk of being called out for not having a registration. You should stick to your argument. If you decide you don’t get it, then, you can just state flatly that the tusk is not in ‘whole shape’. No matter who like buyers on internet or even police, it is making the claim that you need a registration, you should argue ‘it’s not in whole shape’ and ‘is there a problem?’ ”
- “Just stand your ground. Just say ‘It is so carved up and it has ‘not maintained its whole shape’ and for this reason it doesn’t need a registration and is there a problem with that?’ ”

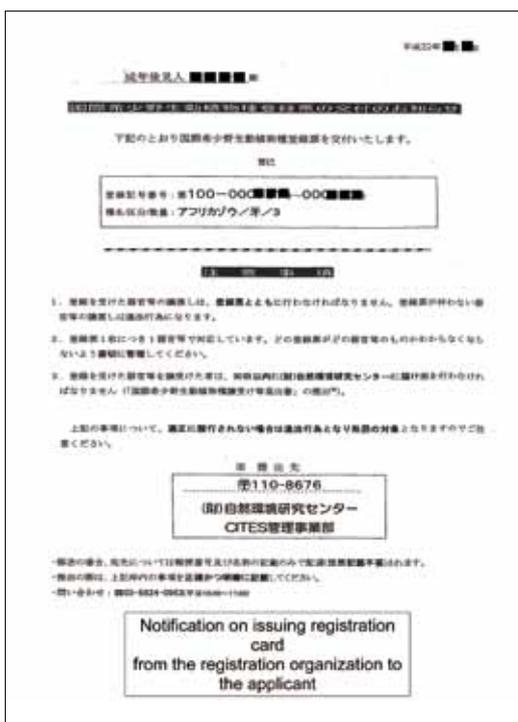
Those advices by JWRC can be considered as to abet the applicant in defending herself by claiming lack of criminal intent in a case transfer of the unregistered ivory would be accused. Considering those statements, the act of the JWRC staff may instigate the transfer of unregistered items¹⁶⁴.

4.5.4 An actual case of registration

1) Process of the application

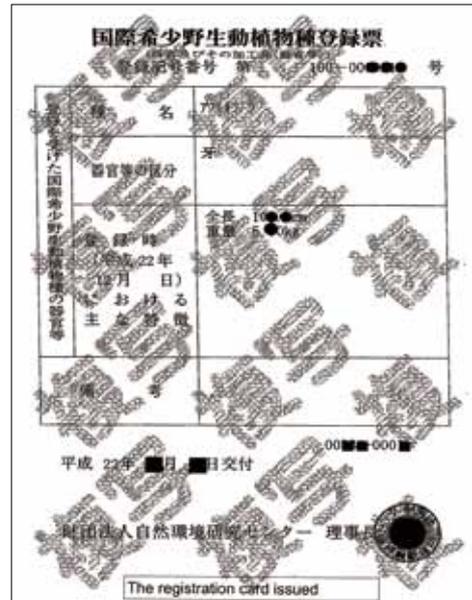
This is a case in 2010 that the guardian of a person who had owned ivory tusks made an application for registering three ivory tusks, then received the registration.

Figure 4-5 An actual case of registration: Notification on issuing registration card



164 LCES Article 12, Section 1 and 57-2, Penal Code Article 61, Paragraph 1

Figure 4-6 An actual case of registration: The registration card issued



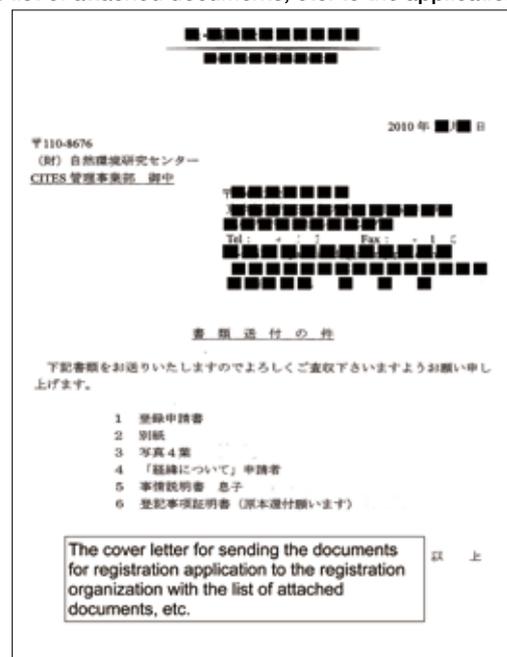
The process of registration application was as follows.

- Preliminary consultation on phone
- Sending the documents, etc. for application to the registration organisation.
- Next day of above, receiving the information on reception of the application and notifying details of remittance for registration fee.
- Next day of above, sending the charge.
- Next day of above, the registration was completed and the registration was sent to the applicant.

2) The documents submitted for registration application

Figure 4-7 show the cover letter prepared for sending the documents, etc. necessary for registration application.

Figure 4-7: An actual case of registration: The list of attached documents, etc. to the application form



The documents shown are as follows.

- Application form
- Annex of application form
- Photos
- Self-statement on the acquisition
- Certificate on the acquisition written by a third party
- Certified copy of guardian registration

The particular points to be examined are, firstly who is the third part wrote the statement on the acquisition and secondly the specific description on the self-statement and the certificate by the third party.

3) The third party who wrote the statement on the acquisition

As the title of the fifth item on the list of documents (Figure 4-6) is read as “Statement, the son”, the person who wrote the certificate on the acquisition was the son of the ivory owner.

4) Specific description on the self-statement

The figure 4-8 is the self-statement submitted. The guardian (applicant) of the ivory owner wrote it because of her lack of intent capacity. Personal information is masked.

Figure 4-8: An actual case of registration: The self-statement on the acquisition prepared by the applicant

According to the statement;

- As regards the date of acquisition, it was described roughly as “Around Showa 40th (1965)”.
- As regards the reason for specifying the date of acquisition, it was described only as “(The ivory owner’s) second son born in Showa 28th (1953) saw the ivory tusks during his middle high school and then recognizes well that they have existed since then.” And it was also described as “No one

has witnessed the background other than family members.”

- As regards the circumstance of finding ivory, it was described as “They are displayed on the Tokonoma (a built-in recessed space in a Japanese style reception room in which items for artistic appreciation are displayed) in our house.”

5) specific description on the statement by the third party

It was not allowed to be provided with the statement itself due to confidentiality obligation imposed on the guardian (applicant of registration), however the applicant explained as “the son had been requested to handwrite a situation as ‘The ivory tusks were in my house since my early childhood’”.

6) Conclusion

Those contents are well in conformity with the method of documentation advised by the registration organisation during the phone survey¹⁶⁵ as follows.

- A certificate on the acquisition written by a third party was accepted as the necessary document to confirm the registration requirement (pre-convention acquisition)
- A blood relative was allowed as a third party under the prior condition that no one other than family member had seen the ivory.
- As regards the date of acquisition, a vague year during the Showa era (Dec. 25th of 1926–Jan. 7th of 1989), that name of era had been changed to Heisei just one year before the CITES application in terms of transfer all the population of African elephant to Appendix I (July 18th of 1990) was accepted.
- As regards the circumstance of finding the ivory, a typical example sentences, like “displayed in Tokonoma” was accepted.

4.5.5 Record on registration requirements applied for each ivory tusk and types of documents used for confirming the registration requirement of pre-convention acquisition

1) Registration requirements applied for each ivory tusk

The record from the time of implementation of registration scheme (June, 1995) to the time of survey (April, 2016) in terms of applicable registration requirements on ivory tusks is shown in Table 4-4.

¹⁶⁵ See 4.5.3

From the table, it is figured out that all of 17,394 tusks were registered as applicable to pre-convention acquisition apart from the 8,811 in total as two-times imported one-off sold tusks in 1999 and 2009, and 19 in total as imported pre-convention acquisition tusks in exporting countries (registered in 2003, 2005, 2007 and 2008).

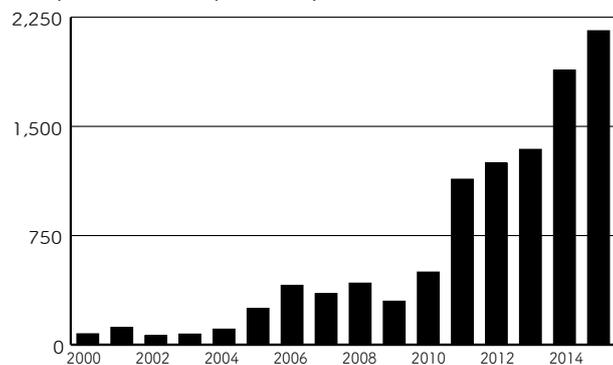
Table 4-4 Registration requirement applied to registered ivory tusks in 1995 - 2016*

Types of registration requirements provided in Cabinet Order on Notification of LDCS Article 4	(a) Bred in captivity inside Japan	(b) Acquired in or imported to Japan before the CITES application came into effect	(c) i Imported to Japan after the CITES application, but bred in captivity for commercial purposes	(c) ii Imported to Japan after the CITES application, which have been acquired in or imported to the exporting country before the CITES application	(c) iii Imported to Japan after the CITES application, which derived from the populations listed in the CITES Appendix II	Total																
							1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1995	0	2,252	0	0	0	2,252																
1996	0	3,749	0	0	0	3,749																
1997	0	347	0	0	0	347																
1998	0	63	0	0	0	63																
1999	0	55	0	0	5,446	5,501																
2000	0	75	0	0	0	75																
2001	0	119	0	0	0	119																
2002	0	63	0	0	0	63																
2003	0	73	0	2	0	75																
2004	0	107	0	0	0	107																
2005	0	250	0	2	0	252																
2006	0	408	0	0	0	408																
2007	0	351	0	7	0	358																
2008	0	423	0	8	0	431																
2009	0	299	0	0	3,365	3,664																
2010	0	499	0	0	0	499																
2011	0	1,135	0	0	0	1,135																
2012	0	1,246	0	0	0	1,246																
2013	0	1,342	0	0	0	1,342																
2014	0	1,886	0	0	0	1,886																
2015	0	2,157	0	0	0	2,157																
2016	0	495	0	0	0	495																
Total	0	17,394	0	19	8,811	26,224																

Unit: number
 * 1995: From 28 June to 31 December 2016: From 1 January to 30 April
 Source: Ministry of Environment, 2015.b, Ministry of Environment, 2016.c, Ministry of Environment, 2016.g, Ministry of Environment, 2016.i

Figure 4-9 shows the number of tusks registered as pre-convention-acquired from 2000 to 2015.

Figure 4-9 Number of registered ivory whole tusks as pre-ban stock imported into or acquired in Japan before the ban (2000 - 2015)



* The number of registered tusks derived from (i) legal import of the acquired in exporting countries before the ban (19 tusks) and (ii) one-off sale in 2008 (3,365 tusks) is excluded. It means that all the tusks on this figure have been registered as pre-ban stock imported into or acquired in Japan before the ban.
 Sources : MoE, 2015.b, MoE, 2016.c, MoE, 2016.g, MoE, 2016.i

The number of registered pre-convention-acquired tusks had shown signs of increasing (rapidly increased in 2011) and soaring. The total number of registered pre-convention-acquired tusks between 2011 and 2015 is around 7,800 with 76 tons in weight¹⁶⁶ which is correspondent to over 4,000 elephants¹⁶⁷.

2) Types of documents used for confirming the registration requirement of pre-convention acquisition

It was found that MoE and even JWRC have not counted the figures when MoE was requested to disclose the types of documents used for confirming the registration requirement of pre-convention acquisition.

But, as shown in Table 4-5, MoE exclusively counted the figures on December 2014 responding to the request from JTEF.

Table 4-5 Breakdown of the received documents as necessary for confirming pre-convention acquisition at the time of registration application of ivory tusks (in December 2014)

A	B	C		D	Total
Documents made by public agencies	Documents written by the transferor except for "A"	Documents written by the third party except for "B"		The others	Total
		Relatives	Other than relatives		
0	1	30	64	0	95
		94			

Unit: number of registration application (the number of application was 95 in total. The number of registered ivory tusks was 160.)

*The type of registration requirements applied to all of the tusks was pre-convention acquisition.
 Source: MoE, 2015.b.

Table 4-5 shows the data for only 95 registration application during one month because it was the only figure prepared at the time of response from MoE to JTEF¹⁶⁸.

Nevertheless, the result is noteworthy.

There is no case that a document made by public agencies was submitted.

The case that document written by the transferor was accepted was only one.

In the other 94 cases, a document written by a general third party was accepted. Furthermore, the documents were written by a family member of the applicants in one third of them (30 cases)¹⁶⁹.

¹⁶⁶ Counted based on Table 4-1

¹⁶⁷ Calculated provided that the average number of tusks one African elephant own is 1.88 tusks (Milliken, 1989)

¹⁶⁸ MoE, 2016.c

¹⁶⁹ See 4.6.3 1) with regard to the data on between 1st Jan. 2016 and 30th Apr. 2016.

4.5.6 Supposed personnel distribution, assigned operation to each personnel and time to be consumed for the operation with regard to registration affairs

1) Provisions on the rules on implementation of the registration-related affairs

“Rules on implementation of the registration-related affairs¹⁷⁰” prescribes the duties and personnel distribution related to registration to be made originally as follows¹⁷¹.

- **The person in charge¹⁷² shall carry out the duties as follows.**
 - Receiving documents, etc. for registration application
 - Recording given information on the “Registration ledger for international endangered species of wild fauna and flora” and the “Registration status ledger”.
 - Drafting request for approval
 - Issuing a registration card
 - Summarizing the status of implementation of the registration-related affairs
- **Head of the department in charge shall, under the supervision of Umbrella administrator, supervise the person in charge with regard to implementation of registration-related affairs.**
- **Umbrella administrator shall control the registration-related affairs overall and approve to accept a registration application.**
- **Adviser on identification of endangered species of wild fauna and flora shall, on the request of Head of the department in charge give scientific advice on taxonomy, identification, etc. for appropriate implementation of registration-related affairs.**

Incidentally, involvement of “Adviser on identification of endangered species of wild fauna and flora” is not supposed as registration-related routine duties as seen in 3).

2) Implementation of registration-related duties shown in the estimation of registration fee

As aforementioned¹⁷³, the registration fee was originally provisioned as 1,100 yen (US\$10) per tusk across the board when the registration scheme was implemented in 1995. The value was later increased in 1st June, 2014 as 1,600 yen (US\$ 15) per tusk for one-off sold ivory tusks (collec-

tively imported ivory tusks) and 3,200 yen (US\$ 29) per tusk for “other cases” supposed to be pre-convention-acquired ivory tusks¹⁷⁴.

The registration fee is fixed considering the actual expenses for the registration operation¹⁷⁵. It means that value of the fee should be based on the supposed personnel distribution, assigned operation to each personnel and time to be consumed for the operation¹⁷⁶.

3) Personnel distribution for implementing registration-related duties and the time required for each personnel involved to handle one registration application

According to the document explaining the basis of evaluation of registration fee¹⁷⁷, the personnel distribution for implementing registration-related duties and the time required for each personnel involved to handle one (original) registration application are as follow.

“Executive Director” ¹⁷⁸ :	
The time required for approval	1 minute
“Senior Researcher” ¹⁷⁹ :	
The time required for approval	5 minutes
Person in charge:	
The time required for operation in the field	35 minutes ¹⁸⁰
Total	41 minutes¹⁸¹

174 MoE, 2016.d
 MoE explains the reason for differentiating the registration fee between collectively imported ivory tusks and pre-convention-acquired ivory tusks as follows.
 “In terms of ivory tusks collectively imported under CITES decision, MoE and METI are informed with the volume, furthermore those tusks are supposed to be applied for registration by a small number of persons. Therefore, less time are supposed to be consumed for confirming the registration requirement and implementation of registration-related duties is relatively simple.
 On the other hand, there exists a lot of ivory tusks which had been imported before CITES regulation was applied as provisioned in the Cabinet Order (18th January, 1990), and those tusks owned by individuals are occasionally bought as material by manufacturers of ivory products. In terms of those tusks, background of acquisition should be confirmed on a case-by-case basis, so registration-related duties for those require as much work as registration on individuals, etc. of other species.
 Therefore, the registration fee for collectively imported ivory tusks should be fixed as special case, and one for other ivory tusks should be fixed similar to registration of other individuals, etc..”

175 LCES Article 29 Paragraph 1
 176 See 4.5.2 5)
 177 MoE, 2016.d
 178 “Umbrella administrator” is authorized to approve to accept a registration application in the Rules on implementation of the registration-related affairs (Article 5), therefore the Executive Director is considered to be in the position.
 179 “Head of the department in charge” is authorized to supervise the person in charge in the Rules on implementation of the registration-related affairs (Article 5), therefore the Senior Researcher is considered to be in the position.
 180 The time required for the person in charge is estimated as 20 minutes in the case of registration of a collectively imported ivory tusk (MoE, 2016.d).
 181 The required time is estimated as 26 minutes in the

170 See 4.2.3
 171 Rules on implementation of the registration-related affairs Article 5
 172 The number of staffs at the time of 27th June, 2016 in charge of registration service of body parts and products of them, which includes ivory, is two apart from one part-timer. They are also in charge of ivory products certification-related affairs (JWRC, 2016).
 173 See 4.5.2 5)

4) Breakdown of the time allocated to the person in charge

Out of 35 minutes allocated to implement the operation by a person in charge, 20 minutes are supposed to be consumed for phone calls^{182 183}.

According to the aforementioned document, it is not clear how the 15 minutes not involving phone calls are supposed to be consumed. On the other hand, the duties related to registration according to the "Rules on implementation of the duties related to registration" are as shown in "1)". Furthermore, the result of the phone survey reported in "4.5.3" revealed that the duties would include "receiving documents, etc. for registration application" there would include preliminary consultation on phone, preliminary checking by exchanging fax on the description of the documents to be submitted for the application, receiving application documents and notifying details of remittance for registration fee¹⁸⁴.

5) Consumed time for confirmation of the registration requirement

MoE explained as follows, "there exists a lot of ivory tusks which had been imported before CITES regulation was applied as provisioned in the Cabinet Order (18th January, 1990), and those tusks owned by individuals are occasionally bought as material by manufacturers of ivory products. In terms of those tusks, history of acquisition should be confirmed on a case-by-case

case of registration of a collectively imported ivory tusk (MoE, 2016.d).

182 According to JWRC (2016), the person in charge would talk with an applicant by phone at least 4 or 5 times since receiving the first contact, therefore it is considered that the time consumed for those phone calls is supposed to be 20 minutes in total.

183 The time required for phone calls by the person in charge is estimated as 5 minutes in the case of registration of a collectively imported ivory tusk (MoE, 2016.d). It means that the difference of time required for a person in charge for handling the operation between the cases (15 minutes) directly reflects the difference of time to be consumed for phone calls.

184 Of the series of operations, preparation for posting, and sorting and recording the mail are left to part-timers (JWRC, 2016).

basis"¹⁸⁵.

However, no operation of registration-related duty for confirming background of acquiring the ivory tusk on a case-by-case basis is found other than the phone calls within 20 minutes in total¹⁸⁶.

4.5.7 Finance of the registration organisation on registration affairs

1) Structure of the account for registration affairs

JWRC designates an independent special account called "CITES Registration special account" for registration affairs, and its income is composed of just the fee for registration on individuals, body parts and products of internationally endangered species¹⁸⁷.

2) Trend of income gained for the CITES registration special account

Change of the income is shown in Table 4-6 where Ivory tusk is included in "body parts".

The total amount of registration fee had been 20 million yen (US\$ 181,818 *US\$110) level, and of which the registration fee regarding body parts and products including ivory remained at 2 to 4 million yen (US\$ 18,182 to 36.364 *US\$110) since 2010 to 2013.

In fiscal year 2014 (July 2014 - June 2015), about 5 million yen (US\$ 45,455 *US\$110) was added to the former year's income, which then came up to 9 million yen (US\$81,818 *US\$110). Of this 7 million yen (US\$ 63,636 *US\$110) is for ivory alone. In the total, income from registration alone exceeded 32 million yen (US\$ 290,909 *US\$110).

185 MoE, 2016.d

186 The whole time of 20 minutes may not be necessarily consumed for confirmation of pre-convention acquisition because some part of the talks on phone would be for the other business.

187 It is provisioned that a fee paid to a registration organization shall be treated as income of the registration organization (LCES Article 29 Paragraph 2).

Table 4-6 Total amount of income for "special account for registration affairs" of JWRC

(Unit:yen)

	2010(H22)FY (2010.7- 2011.6)	2011(H23)FY (2011.7- 2012.6)	2012(H24)FY (2012.7- 2013.6)	2013(H25)FY (2013.7- 2014.6)	2014(H26)FY (2014.7- 2015.6)	2015(H27)FY (2015.7- 2016.6)
Registration fee on individuals	18,374,000	23,886,900	24,027,200	25,829,500	23,080,900	23,027,900
Registration fee on body parts and products	2,205,000	4,130,300	3,155,900	4,064,500	9,043,500	7,002,500
Registration fee on ivory included in the above	841,500	1,419,000	1,303,500	1,904,100	7,078,400	5,536,000
Total	20,579,000	28,017,200	27,183,100	29,894,000	32,124,400	30,030,400
Provision from general account	392,724	81,397	0	0	0	0

* "Registration fee on ivory" was calculated by the provisioned registration fee at the time of the FY (1,100yen or 3,200yen) multiplied by the number of tusks recorded in each annual report. The fee on the registered between 1-30 June, 2014 was calculated based on the fee of 1,100 yen though the fee had been increased to 3,200 yen since this month because the monthly breakdown is unknown

Source: JWRC website (financial report of each FY) <http://jwrc.or.jp/profile/profile.htm>

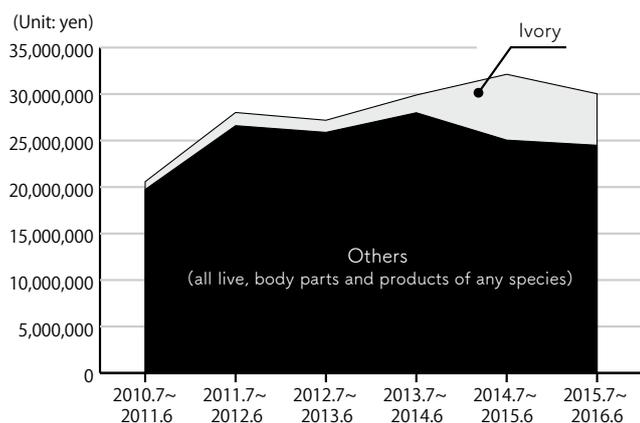
3) Increase on number of ivory tusks and reliance on ivory tusk for securing income from registration fee

One of the reasons for increase of the paid registration fee from FY 2013 to FY 2014 is the increase of the unit charge from 1,100 yen (US\$ 10 *US\$110) to 3,200 yen (US\$ 29 *US\$110) in the case of pre-convention-acquired ivory¹⁸⁸.

Another reason is 30% increase of registration of ivory tusks in about 500 tusks¹⁸⁹. 2,212 tusks were registered in FY2014 (2014.7 - 2015.6) while 1,731 tusks in FY 2013(2013.7-2014.6) were registered. The number of Ivory registration in 2,212 items accounted near to 80% of the total number of registration of body parts and products in 2,805 items in FY2014.

Consequently, the fee of the income of ivory registration has increased to 8.4 times since FY 2010 to FY 2014 and then its share in total fee income has increased from 4% in FY 2010 to 22% or 5 times of the former rate in FY 2014 (Figure 4-10). The share of ivory registration fee was still high in 2015 (18%).

Figure 4-10 Total amount of income from registration fee



Source: JWRC website (financial report of each FY) <http://jwrc.or.jp/profile/profile.htm>

It is obvious that the financial basis of registration operation by JWRC has been getting rapidly dependent on fee income of ivory registration in recent years.

It can be said that the financial structure of the registration organisation is in a way promoting illegal registration of ivory as the income of the institute is legally forced to depend on the registration fee.

4.6 Reality of supervision on the registration organization by MoE

4.6.1 Response of MoE to the expressed concern about the registration services

1) Expressing concern by EIA on registration affairs

EIA announced the result of the phone survey on JWRC¹⁹⁰ on 11th January, 2015. The points are summarized as follows;

- JWRC staff intended to accept a statement written by a family member of the applicant as the proof of pre-convention acquisition.
- JWRC staff recommended making up the year of acquisition in the Showa era on the documents to be prepared for registration application.
- JWRC official advised that an ivory tusk can be sold without registration though it is likely to “maintain its whole shape” objectively.
- JWRC official coached to justify oneself against investigation by police on transfer of unregistered tusks as being unaware that the ivory tusk in question would maintain its whole shape.

EIA provided the information about the result of the survey to the Metropolitan Police Department, MoE, METI and MoFA¹⁹¹.

2) Reality of “fact-finding” about registration affairs by MoE

On 18th January, 2016, MoE announced that it had conducted a fact-finding about what EIA announced, however, it could not confirm the fact that JWRC had made a false registration on an ivory tusk in conspiracy with the applicant¹⁹².

Needless to say, there’s no way that the EIA investigator actually made a registration application in accordance with the advice made by JWRC because it is illegal. The intent of EIA’s statement was that the authorities should take appropriate measures to counter the problems of registration services actually made and legal loopholes contributing to them as aforementioned in “1)”. Thus, it was reasonably considered that the “fact-

¹⁹⁰ See 4.5.3

¹⁹¹ EIA, 2016 EIA also announced result of the phone survey of ivory buyers (see 4.4.3) in 10th December, 2015 preceding to the press briefing on January, 2016 (EIA, 2015). The information regarding the result was also shared to the Metropolitan Police Department and the three Ministries.

¹⁹² MoE, 2016.b. MoE, however admitted the fact that a JWRC official in charge had explained a possible applicant the date which falls in the period of pre-convention before he confirmed the date of acquisition of the ivory tusks (*Asahi Shimbun* news article dated 19th January, 2016), and then issued an administrative guidance to JWRC for urging to implement registration affairs in appropriate manner (MoE, 2016.a).

¹⁸⁸ The change was implemented in June 1st of 2014 by the amended Cabinet Order Article 5 (Feb. 21st Feb in publication). But, as far as the ivory imported to Japan after July 1st of 2014, the charge costs 1,600 yen (US\$ 15 *US\$110) per tusk (Cabinet Order Article 5, Section 2). See the footnote “13”.

¹⁸⁹ See Table 4-1 with regard to the yearly change of registration volume.

finding”, as far as it would be meaningful, should have been done on the basis of a review on the operation of registration-related duties in the past and effectiveness of existing law and regulation.

Therefore, JTEF requested MoE to provide voluntarily a breakdown of the types of documents used for confirming pre-convention acquisition in terms of registration of ivory tusks (1995 - 2015). But, the response of MoE was as “the fact-finding based on the administrative guidance (to JWRC) was whether JWRC had made a false registration on an ivory tusk in conspiracy with the applicant or not. Therefore, we had not counted the said figures”¹⁹³.

JTEF questioned the response by MoE, and officially requested MoE to disclose all information exchanged with JWRC regarding the “fact-finding”¹⁹⁴. But, the disclosed information that existed was only “a report” and “an audio dataset” “sent from EIA to MoE”¹⁹⁵. It means that MoE had not exchanged any information including Email with JWRC.

In conclusion, the “fact-finding” made by MoE is determined that it confirmed the person of JWRC in charge whether he had received an application from an applicant suspected to be the EIA investigator later by referring to the audio data provided by EIA. No action was done to review the past operation of registration services.

4.6.2 Action taken by the registration organization responding to the administrative guidance by MoE

1) The administrative guidance by MoE and a plan for taking measures prepared by JWRC

While MoE did not review the past operation of registration services nor existing legislation, it may not ignore the announcement of EIA during the 66th meeting of the CITES Standing Committee, which resonated with media massively, thus issued an administrative guidance to JWRC as follows¹⁹⁶.

1. To make sure a confirmation of the ivory tusk subject to the registration¹⁹⁷ and the just title for ownership of the ivory tusk, etc.¹⁹⁸, and provide appropriate information to the applicant, etc. to the extent necessary for the confirmation.

193 MoE, 2016.c

194 MoE, 2016.h

195 Ibid.

196 MoE, 2016.a

197 It intends two matters. The first one is that the applied ivory tusk is authentic (instead other animal species' tusk, horn and bone, and an artefact), the second one is that the applied ivory tusk maintains “its whole shape”.
<http://www.jwrc.or.jp/cites/pdfs/zougeshinseiyouryou.pdf>

198 Literally, MoE and JWRC seem to intend to confirm if a non-owner applied for registration disguising the owner

2. To request the applicant to provide an information necessary for the judgement if a doubt arises about the confirmation, and refer to MoE immediately if the doubt could not be even cleared.
3. To prepare a manual for implementation of the item 1 and 2 above, and check the implementation regularly.

As the response to the item 1 on the administrative guidance, JWRC prepared “documents for providing appropriate information to the applicant, etc. as follows”¹⁹⁹.

- “Guidance of application for registration of ivory tusks”
- “Self-statement on acquisition (format)”
- “Certificate on the acquisition written by the third party (format)”

As the response to the item 2 on the administrative guidance, JWRC officials in charge were mandated to make inquiries by Email about a doubt on registration application to a MoE official in charge²⁰⁰.

As the response to the item 3 on the administrative guidance, JWRC seemed to prepare a manual, however the details are unknown because the request for disclosure of it was rejected²⁰¹.

2) The three confirmations highlighted in “Guidance of application for registration of ivory tusks”

The “Guidance of application for registration of ivory tusks” (“the guidance” hereinafter) newly prepared by JWRC demonstrates three confirmations as follows²⁰².

- Confirmation on authenticity of the ivory tusk
- Confirmation on legitimate acquisition of the ivory tusk
- Confirmation on the shape of the ivory tusk

3) Specific measure for “Confirmation on authenticity of the ivory tusk”

While the guidance stresses as “applicants are responsible for the confirmation” in terms of au-

(LCES Article Paragraph 1 provisions that “a possessor with just title” may receive the registration of the applied item). But, it’s not the case here but they intend to confirm if the tusk applied falls under pre-convention acquisition.
<http://www.jwrc.or.jp/cites/pdfs/zougeshinseiyouryou.pdf>

199 MoE, 2016.i

200 Ibid.

201 Ibid.

202 <http://www.jwrc.or.jp/cites/pdfs/zougeshinseiyouryou.pdf>

thenticity of the ivory tusk and advises applicants to “contact an ivory-specialty shop, a museum, etc. regarding appraisalment on authenticity”, it warns that “any person who deposit or send an unregistered ivory tusk to a third party” should fall under a violation of LCES²⁰³.

It means that MoE through JWRC recommends a possible applicant to receive an expert’s authenticity of the ivory tusk without depositing real one prior to application for registration. Those recommendations should be incompatible and place an unrealistic demand on the applicants.

The compelling reason for JWRC to make such tall order is that the registration organization is not given a power by the existing laws and regulations to carry an appraisalment on authenticity of the items to be applied for registration. The registration organization is merely authorized to judge the legality of the registration application based on the description of given documents, etc. submitted by the applicant²⁰⁴.

The limit of the existing law and regulation, however, should doubtlessly cause a consequence that an applied item cannot be accurately determined an authentic ivory tusk of Asian elephant or African elephant distinguished from other animal species’ tusk, horn and bone, and an artefact like one called as “paste” by ivory market players.

Furthermore, leaving authentication of the items to be applied for registration to an applicant may hinder effective prohibition to deliver or receive of possession of unregistered ivory tusks, as discussed later²⁰⁵.

4) Specific measure for “Confirmation on legitimate acquisition of the ivory tusk” (confirmation of pre-convention acquisition)

As the measure, a format of “self-statement on acquisition (format)” and “certificate on the

203 Even delivery of possession of an unregistered ivory tusk is prohibited under the existing law (LCES Article 12 Paragraph 1).

204 The existing laws and regulations mandates the registration organization “confirmation of species applicable to the applied individuals, etc. for registration” (LCES 24 Paragraph 2, Ministry Order Article 14 Paragraph 1 (a). See 4.5.3 4)). The provision looks like to urge the registration organization to carry an identification of species (therefore including an authenticity appraisalment), however it’s not the case. “Confirmation of species” means to judge if the species expressed on the application form and the attached documents including the photos falls under the list of species subject to the registration. It means that the provision does not mandate to examine the applied item actually falls under the expressed species, but merely mandate to confirm the name of African elephant or Asian elephant is described in the application form, and the expression don’t obviously conflict with the photos.

This interpretation is based on the range of the power given to the registration organization. It is merely authorized to process an application on the basis of documents.

See 4.8.3.

205 See 4.8.3 3)

acquisition written by the third party” were prepared²⁰⁶. The former has been publicized on JWRC website²⁰⁷ while the latter has not. It may attribute to a trick of JWRC for avoiding the contradiction between the existence of the format and the aforementioned²⁰⁸ announcement made on its website, which emphasizes the façade that a document issued by a public agency is required in principle.

The entries on “self-statement on acquisition” are as follows. They are almost similar to the items as ever required during preliminary consultation on phone²⁰⁹.

- Title
- Date of acquisition
- Who acquired the ivory tusk from whom and how
- Circumstance of acquiring the ivory tusk

The entries on “certificate on the acquisition written by the third party” are as follows. They are almost similar to the items as ever required during preliminary consultation on phone²¹⁰.

- Title
- Relationship with the applicant
- Date of sighting the ivory tusk
- Place of sighting the ivory tusk
- Circumstance of sighting the ivory tusk

In both of the formats, a check column for each entry is established with a sentence printed as “I hereby certify that the description on this document and my answer to the questions are truthful” and an explanation of criminal penalty on false registration.

In addition, a note that “Date of sighting the ivory tusk” should be “Described with a specific year. Like the expression ‘X years ago’ is disapproved” and a sentence as “The person wrote this certificate may be contacted directly” are printed on the format of “statement on the acquisition written by a third party”.

By 8th June, 2016, some applications for registration attached with a certificate on the acquisition written by a third party based on the format above had been approved and the ivory tusks in question had been registered²¹¹.

In summary, confirmation of registration requirements (pre-convention acquisition) has

206 MoE, 2016.i

207 <http://www.jwrc.or.jp/cites/pdfs/zougeshinseiyouryou.pdf>

208 See 4.2.5 3)

209 See 4.5.3 3)

210 Ibid.

211 MoE, 2016.l

been implemented based on a self-statement of acquisition and a statement of acquisition written by a third party even after the registration organization received the administrative guidance.

The measures for improving implementation of registration-related affairs taken by JWRC under the approval of MoE include two minor points. Firstly, it publicized of the format for self-statement of acquisition, which has existed internally. Secondly, a few notes are printed on the format to guide applicants to intend correct description.

It is obvious that MoE intends to maintain the existing implementation of registration-related affairs on ivory in principle.

5) Specific measure for “Confirmation on the shape of the ivory tusk” (confirmation if it maintains ‘its whole shape’)

As far as the inquiry made by JWRC to MoE on registration affairs between 19th January and 7th March, 2016, most of them related to if the tusks applied for registration maintains ‘its whole shape’²¹². The inquiry and the response were made by Email attached with the photos of the applied ivory tusks²¹³.

MoE had sent its response to the inquiries with simple explanation regarding the judgement if the applied ivory falls under one maintaining its whole shape so that it is eligible for registration.

But, the judgement standard adopted by MoE is considered as “if the general ivory-appearing shape as creating slight arch and tapering off from the base to the point is recognizable” as ever^{214 215}. If so, it is difficult to assume that a response of MoE had influenced JWRC officials significantly enough to change their mind.

The introduction of the prompt inquiry should be considered not function so much for direct improvement on registration-related affairs, but function for protecting the registration organization against the outside criticism by showing involvement of MoE to the registration process.

4.6.3 Record of registration after the registration organization improved the implementation of registration-related affairs

It is reviewed how the measures²¹⁶ taken by JWRC as the response to the administrative guid-

212 MoE, 2016.j

213 Ibid.

214 MoE, 2015.b See 4.8.4 about the details.

215 JWRC is supposed to have followed the new interpretation on “maintaining its whole shape” since MoE announced it later. See 4.8.5, 2).

216 See 4.6.2

ance issued by MoE on 18th January, 2016 affect the registration process.

1) Types of documents used for confirming the registration requirement of pre-convention acquisition

The number of applications for registering ivory tusks was 360 in total in January – April, 2016, and the type of registration requirements applied to all of the cases was pre-convention acquisition²¹⁷. The breakdown of the received documents as necessary for confirming pre-convention acquisition at the time of registration application of those ivory tusks is shown in Table 4-7.

Table 4-7 Breakdown of the received documents as necessary for confirming pre-convention acquisition at the time of registration application of ivory tusks (in January-April, 2016)

	A	B	C		D	Total
	Documents made by public agencies	Documents written by the transferor except for "A"	Documents written by the third party except for "B"		The others	Total
			Relatives	Other than relatives		
Jan.	0	0	32	58	0	90
			90			
Feb.	0	2	31	47	0	80
			78			
Mar.	0	0	58	42	0	100
			100			
Apr.	0	0	49	41	0	90
			90			

Unit: number of registration application (the number of application was 360 in total. The number of registered ivory tusks was 495.

*The type of registration requirements applied to all of the tusks was pre-convention acquisition. Source: MoE, 2016.i

In each case, a certificate written by a third party was accepted as for the confirmation, and no case receiving a document made by public agencies was found.

In the cases occupying 99% (356/358), the document was written by a third party other than the transferor. Furthermore, the documents were written by a family member of the applicants in the half cases of them (170/358).

The consequence was as expected because the measures taken by MoE through JWRC intended to maintain the existing implementation of registration affairs in principle²¹⁸.

2) Number of registered tusks

The number of originally registered ivory tusks in January - April, 2016 is as shown in Table 4-8.

Table 4-8 Number of registered tusks (in January - April, 2016)

	Jan.	Feb.	Mar.	Apr.	【Reference】 Monthly average in Jul. - Dec.
Number of tusks registered	123	111	132	129	151

Source : MoE, 2016.i

217 MoE, 2016.k

218 See 4.6.2 4)

The record shows the monthly number of registration is stabilized during the period, and any change is not visible after the administrative guidance issued by MoE on 18th January, 2016.

Incidentally, the registration during the period ran still high of a rate of 1,500 tusks per year²¹⁹ while it does not seem to overwhelm the latter half of the previous year (2015) of a rate of 2,157²²⁰.

4.7 Shock of the Raftel case

4.7.1 Summary of the “Raftel Case”

The Community environment division of the Metropolitan Police Department sent papers on the case to prosecutors on 20th June, 2017, that Shiko Nabeta (at the age of 35), the company president of an antiquary named “Raftel”, employees of the company and its customers, or 27 persons in total, and Raftel as the corporate body traded in unregistered ivory tusks illegally²²¹.

4.7.2 Background of the detection

“Raftel”, an antiquary located at Ueno, Taito-ku, Tokyo is one of the 37 ivory buyers surveyed on the phone by Environmental Investigation Agency (EIA) in August 2015²²². Raftel told the investigator that it intends to act for her to apply for registration of ivory and that it can get a registration for the tusk though she clarified the tusk had been acquired after the date of application of the Convention in 1990. EIA provided the information including the audio data recording the conversation with the buyers including Raftel during the phone survey to the Metropolitan Police Department before the press briefing in December 2015.

On 11th January, 2015, subsequently, EIA announced the result of phone survey on Japan Wildlife Research Centre, the registration organization which is registered to the Minister of Environment. One of the highlights was that JWRC staff had recommended making up the year of acquisition in the “Showa era” (1926-1989) on the documents to be prepared for registration application.

MoE may not ignore the announcement of EIA during the 66th meeting of the CITES Standing Committee, which resonated with media mas-

219 Consequently, 1,687 whole tusks (16 tons) were registered in 2016. See Table 4-1.

220 See Table 4-1

221 *Kyodo* News article dated 20th June, 2017, “An antiquary sent to prosecutors on illicit trade in ivory, Unregistered 18 tusks, 27 people including the company president” http://www.47news.jp/news/2017/06/post_20170620113814.html

222 The trader No.9 on Annex 1 is “Raftel”.

sively, thus issued an administrative guidance to JWRC, which includes requesting the applicant to provide an information necessary for the judgement if a doubt arises about the confirmation of registration requirements, and refer to MoE immediately if the doubt could not be even cleared²²³.

Afterwards, 18 ivory tusks were applied for registration as with different owners and channels of acquisition for each tusk²²⁴. JWRC is assumed to have reported a doubt about the applications to MoE in accordance with the aforementioned administrative guidance. The police which seemed to be informed by MoE suspected that the photos attached to the application forms were taken at the same place²²⁵. The police must have questioned the applicants for registration, and it is supposed to have got a statement that they asked Raftel to act for them to apply for the registration and they were hardly involved with preparation of the paperwork.

Therefore, the police was convinced that the suspect Raftel has prepared the paperwork for applying the registrations of the 18 tusks using fake entries, so that it could possess the 18 unregistered ivory tusks under its hand, which were further intended to be registered. Then, the police made a search at the business facility of Raftel in February 2016²²⁶, and seized 18 unregistered ivory tusks²²⁷.

4.7.3 The suspects and the facts constituting the offence

The suspects are Raftel (Shiko Nabeta (at the age of 35), the company president, 8 employees of the company and Raftel as the corporate body) and its 18 customers. In total 27 persons (one person died already²²⁸), and one corporate body²²⁹.

The facts constituting the offence is that 18 customers of Raftel delivered (in other words, “deposited”²³⁰) one ivory whole tusk owned by

223 See 4.6.2, 1)

224 *Asahi Shimbun newspaper* article dated 20th June, 2017, “Ivory, Suspect of illegal trade, An antique dealer acted for registration and disguised the channel of acquisition” <http://digital.asahi.com/articles/ASK6N3C6NK6NU-TIL00L.html>

225 *Ibid.*

226 *Ibid.*

227 Different newspapers and TV featured the seized 18 ivory tusks.

228 *Asahi Shimbun newspaper* article forecited

229 *Kyodo* News article forecited

230 LCES defines “transfers” and “receipt of transfers” (movement of ownership), “delivery” and “receipt of delivery” (movement of occupancy though they are similarly prohibited and subject to same penal provisions (Environment Agency, 1995, Domestic trade control of endangered species of wild fauna and flora, Chuohoki Publishing).

each of them (18 tusks in total) to Raftel and that Raftel received the deliveries from them between December 2015 and February, 2016^{231 232}.

Raftel paid 3,555,000 yen for receiving the deliveries of 18 tusks²³³. The paid money is considered to be a kind of deposit given “receiving the delivery” is to be without transfer of ownership. It suggests that buying and selling were supposed to be completed when the rest of the amount is paid.

4.7.4 Process leading to the offence by Raftel

Raftel started purchasing ivory tusks around 2012 and is suspected to have bought about 400-500 (100 tusks per year) tusks from the customers so far²³⁴. 80% of them are alleged to be unregistered²³⁵. Raftel increased the purchase of ivory tusks attracting its customers by offering services as agent for registration application²³⁶, then earned profit by reselling them²³⁷ to domestic ivory hanko manufacturers²³⁸.

4.7.5 Process of the services as agent by Raftel is comprised of “receiving delivery of the unregistered” and “false registration”

Raftel had offered a service as agent to the customers for applying the registration, then;

- (i) received the delivery of unregistered ivory tusks, and
- (ii) submitted the documents with untrue entries

231 *Mainichi Shimbun* news article dated 20th June, 2017, “Unregistered ivory trade, the case by 27 persons including the trader sent to prosecutors, MPD”
<https://mainichi.jp/articles/20170621/k00/00m/040/002000c>

232 It falls under receipt of delivery of unregistered ivory tusk in violation of Article 12 Article 1, LCES and is subject to the penal provision of Article 57-2.

233 *Sankei Shimbun* news article dated 20th June, 2017, “Legalization’ by false registration, Receiving unregistered ivory, the case by an antiquary and 27 persons sent to prosecutors, MPD”
<http://www.sankei.com/affairs/news/170620/afr1706200026-n1.html>

234 *Nikkei Shimbun* news article dated 20th June, 2017, “Suspect illicit trade in ivory, Receiving unregistered ivory, the case by an antiquary and 27 persons including the company president sent to prosecutors, MPD”
<http://www.nikkei.com/article/DGXLZO17872960Q7A620C-1CC0000/>

235 TV Tokyo “Satellite in the evening” news dated 20th June, 2017, “Violation of LCES, illicit trade in ivory, the case sent to prosecutors”
http://www.tv-tokyo.co.jp/mv/you/news/post_134510/

236 *Sankei Shimbun* news article forecited

237 *Mainichi Shimbun* news article dated 20th June, 2017, “Illicit trade in unregistered ivory, the case of 27 persons including the trader and its customers, MPD”
<https://mainichi.jp/articles/20170621/k00/00m/040/002000c>
NHK news dated 20th June, 2017, “Illicit trade in ivory, the case of the company president and others sent to prosecutors”
<http://www3.nhk.or.jp/news/html/20170620/k10011023611000.html>

238 *Tokyo Shimbun* news article dated 20th June, 2017, “Illicit trade in unregistered ivory, the case of 27 persons sent to prosecutors, 18 unregistered tusks Antiquaries expand a deal through service as agent”

with regard to acquisition of the tusks to the registration organization²³⁹.

Needless to say, not every service as agent is illegal. However, the service as agent provided by Raftel aforementioned is comprised of the following;

- (i) “receiving delivery of the unregistered” and
- (ii) “false registration”.

It means that Raftel’s service as agent was involved in two above mentioned illegal activities.

4.7.6 Involvement of Japan Wildlife Research Centre as the registration organization supporting the illegal service of Raftel

The company president of Raftel told the Police as “when I made an inquiry to JWRC in advance, I’m advised by them that I can act for my customers for the process”²⁴⁰.

Hearing the statement, police became suspicious that illegal services as agent for applying registration are rampant under the situation of lax oversight by the registration organization (JWRC)²⁴¹. On April 2017, the police made a search in the business facility of JWRC to investigate the violation of LCES²⁴². During the investigation, an official of JWRC who was in charge of the registration process, stated to the police as follows, “I recognized Raftel has acted as an agent, but regardless, I approved the applications while the provisioned documents were prepared”²⁴³, and admitted the truth of connivance of Raftel’s service as an agent”²⁴⁴.

This clearly means that illicit registration was more a rule rather than an exception²⁴⁵ under the lax oversight of the registration organization²⁴⁶.

Furthermore, despite the denial by JWRC²⁴⁷, the police suspected that a part of customers delivered ivory tusks to Raftel were likely to have been

239 *Asahi Shimbun* and *Sankei Shimbun* forecited
ANN news dated 21st June, 2017, “Illicit trade in unregistered ivory, the case of the company president and others sent to prosecutors”
http://news.tv-asahi.co.jp/news_society/articles/000103628.html?r=rss2&n=20170621084209

240 *Asahi Shimbun* and *Sankei Shimbun* forecited

241 *Asahi Shimbun* forecited
FNN news dated 20th June, 2017, “Registration service as agent... Illicit trade in ivory”
<http://www.fnn-news.com/news/headlines/articles/CONN00361854.html>

242 *Asahi Shimbun* forecited

243 *Sankei Shimbun* forecited

244 *Asahi Shimbun* and FNN forecited

245 *Sankei Shimbun* forecited

246 *Asahi Shimbun* and FNN forecited

247 <http://www.jwrc.or.jp/cites/infomation/kenkai20170623.pdf>

referred to Raftel by JWRC²⁴⁸.

In the case announced at this time, the papers on the case of JWRC and its officials have not been sent to prosecutors for receipt of delivery of unregistered ivory tusk and false registration. The reasons, however, are simply considered by JWRC was unlikely to know the detailed situation on the receipt of delivery of each of the 18 tusks (regarding the suspect of receipt of delivery of unregistered ivory tusk), and as any whole tusk registered in the past based on the documents with untrue entries could not be seized (regarding the suspect of false registration).

As far as JWRC is an expert “registration organization”, connivance at Raftel’s service as agent should mean that it had let receipts of delivery of unregistered ivory tusks and registration applications based on untrue entries pass.

Even though the papers on the case of JWRC have not been sent to prosecutors, there can be little doubt that JWRC as the registration organization had been involved with the illegal services as agent comprised of receipt of delivery of unregistered ivory tusks and false registration. Furthermore, given that JWRC has referred some applicant (who made inquiry about registration process to JWRC) to Raftel, it should be regarded as actively encouraging illegal activities by the ivory trader.

4.7.7 Flawless case

The Community environment division of the Metropolitan Police Department sent papers on the case of trade in unregistered ivory tusks against LCES to prosecutors on 25th August, 2017 of the company president of an antiquary named “Flawless” locates in Taito-ku, 4 employees of the company, “Flawless” as the corporate body, and its 7 customers and one corporate as a trading partner of it (12 persons and 2 corporates in total)²⁴⁹.

The facts constituting the offence is that 7 customers including one antiquary company²⁵⁰

248 *Kyodo* News article dated 20th June, 2017, “Ivory, Referred to illicit trader, By corporate designated by MoE?” <https://this.kiji.is/249829069836748280?c=39546741839462401>

249 *Sankei Shimbun* news article dated 24th August, 2017, “Suspect for trading unregistered ivory, the case by the president of jeweller at Ueno and others will be sent to prosecutors on 25th, MPD” <http://www.sankei.com/affairs/news/170825/afr1708250004-n1.html>

Hokkaido Shimbun news article dated 25th August, 2017, “Suspect for 9 ivory tusks trade sent to prosecutors, 12 suspects including president of antiquary” <https://www.hokkaido-np.co.jp/article/127864>

250 *Hokkaido Shimbun* news article forecited

delivered (in other words, “deposited”) 9 ivory whole tusks in total to Flawless and that Flawless received them between December 2015 and January, 2016²⁵¹.

Flawless estimated the value of the 9 tusks as 2.4 million yen (US\$ 20,339)²⁵².

The Flawless case was detected together with Raftel case under the mutual background²⁵³.

The modus operandi for offering illegal service as agent to the customers for applying the registration is common with Raftel. Flawless intended to receive the delivery of unregistered ivory tusks first and pay the cost to the customers after the tusks are registered²⁵⁴, and it defended itself against the police in the same manner as Raftel by saying “I did not think it illegal only to receiving the delivery”²⁵⁵.

It is said that Flawless purchased 158 ivory tusks between 2012 and 2015 with the value of 3.2 million yen (US\$ 26,446)²⁵⁶.

4.7.8 Problems of Japan’s domestic ivory market based on the findings in Raftel case / Flawless case

The Raftel case and Flawless case is a noteworthy case and the findings support the following hypothesis;

1. A laundering system for ivory tusks is well deep rooted in Japan’s domestic ivory market.
2. As one of the methods of purchasing ivory tusks a service as agent was provided, which necessarily comprised of (i) “receiving delivery of the unregistered” and (ii) “false registration”;
3. JWRC, the registration organization has processed a lot of registration of ivory while it connived at Raftel’s illegal service as agent, therefore JWRC should understood that the laundering system is well rooted in the Japanese domestic market. It also means that JWRC is disqualified as a registration organization and oversight of it by MoE has become dysfunctional.

251 *Mainichi Shimbun* news article dated 25th August, 2017, “Suspect for 9 unregistered ivory tusks trade sent to prosecutors, 12 suspects including president of antiquary” <https://mainichi.jp/articles/20170825/k00/00e/040/231000c>

252 NNN news dated 25th August, 2017, “Suspect for unregistered ivory tusks trade, 12 suspects antiquary and others sent to prosecutors, Tokyo”

253 The No.11 trader on Annex 1 is “Flawless”.

254 *Mainichi Shimbun* news article forecited, NNN news forecited

255 *Nikkei Shimbun* news article dated 25th August, 2017, “Suspect illicit trade in ivory, an antique company president at Taito, Tokyo and others sent to prosecutors” <https://www.nikkei.com/article/DGXLZO20377290V-20C17A8CC0000/>

256 See forecited *Nikkei Shimbun* news article. The value may be stated to the police by Flawless, however the value obviously looks too less.

4.8 Discussion

4.8.1 Loopholes driving smuggled ivory to blend into the legalized domestic ivory market

Based on the findings through a series of survey and investigation, and legal analysis, the problems of internal trade regulation / registration scheme will be further discussed.

Two Key questions can be raised as follows.

- Loopholes driving smuggled ivory to enter easily into the domestic market
- Relationship between the loopholes found and the modus operandi for laundering ivory tusks recognized through the investigation against the ivory buyers /the ivory sellers / JWRC.

With the key questions in mind, the following subjects will be discussed.

- Laundering system on the basis of fraudulent registration established by ivory manufacturers abusing the legal loophole specifically: objective evidence is not required for confirming that the tusk was acquired before the ivory ban (see 4.8.2)
- Laundering unregistered ivory tusks by reusing the registration cards prepared for tusks already divided or using one fraudulently obtained for fake ivory tusks abusing the legal loophole specifically: a physical inspection of ivory tusks for authenticity, identification nor marking is not required (see 4.8.3)
- Laundering unregistered ivory tusks by ivory manufacturers, etc. abusing the legal loophole specifically: unregistered whole tusks can be legally possessed (see 4.8.4)
- Laundering ivory cut pieces with unknown origin abusing the legal loophole specifically: internal trade regulation is not applied to cut pieces (see 4.8.5)

4.8.2 Laundering system on the basis of fraudulent registration established by ivory manufacturers abusing the legal loophole specifically: objective evidence is not required for confirming that the tusk was acquired before the ivory ban

1) A laundering system has firmly taken root in Japan's domestic ivory market

According to the phone survey with ivory buyers²⁵⁷ who intended to supply a laundered whole tusk in the legal market by using a fraudulent registration accounted for 70% of the total (26/37

traders)²⁵⁸. Additionally, it was found that those traders would tend to improve their appearance of compliance with the law on their website by describing details of the registration scheme²⁵⁹. Those facts suggest that an ivory laundering system using fraudulent registration has already firmly taken root in Japan's domestic ivory market.

It is the networked antiquaries who have a special relationship with ivory manufacturers in Japan that are actually supporting the laundering system. The trick to collect ivory tusks nationwide through the antiquary network was developed by Takaichi who is the biggest ivory (hanko) manufacturers in Japan²⁶⁰. The number of unregistered tusks purchased through 4 channels of such networked antiquaries and one ivory manufacturer by Takaichi during 5 years (between 2005 and 2010) was estimated as 630- 1,680²⁶¹. In June 2010, Takaichi faced a seizure of 58 unregistered ivory tusks which had been purchased during the 6 months prior to the seizure and remained without division, and was found guilty and sentenced for purchasing those tusks in the following year²⁶².

It is assumed that the case might teach an important lesson to ivory traders including Takaichi itself. Ivory manufacturers then developed a trick to have antiquaries arrange registration of ivory tusks on their side to avoid being directly involved with the trade on unregistered tusks while the manufacturers, including Takaichi itself, continued to use networked antiquaries for collecting unregistered ivory tusks²⁶³.

This has become the origin of the present laundering system of ivory tusks using fraudulent registrations. Here the risk is extremely low that laundering could be detected under the existing law and regulation, which does not require any

258 See 4.4.3, 3)

259 See 4.4.4

260 The ex-President of who virtually ruled management of Takaichi gave a statement at the trial on the LCES violation case as "I already distributed a price list to antiquaries around 2005" (Sakamoto, 2011. a). Incidentally, a trader (No. 24 of the phone survey) stated during the phone survey (see 4.4.3) as "Ivory industry set the price", and other trader (No. 6 of the door to door investigation) showed a price list to the investigator during the door-to-door investigation (see 4.4.5). Those price lists may be the ones distributed by Takaichi or the other ivory hanko manufacturers who followed suit.

261 Sakamoto, 2013

262 Ibid.

263 The trader investigated (No6 of the phone survey. See 4.4.3) said as "we have antiques dealers that buy them for us. And occasionally we have customers like yourself, who are not sure about what to do. In most cases, people do not have the registration card. The Antiquaries teaches the people how to get a registration card and they often bring it to us. This is the way we are doing things".

257 See 4.4.3

objective evidence for confirming the registration requirement. Furthermore, such small risks are carefully shifted from the manufacturers to the antiquaries.

Ivory manufacturers including the biggest ivory manufacturer in eastern Japan seems to have adopted the laundering system and purchased a considerable amount of ivory tusks²⁶⁴.

In 2017, “Raftel” and “Flawless”, (both were antiquary companies) were cracked down²⁶⁵ and the case supported the hypothesis that a laundering system for ivory tusks is well rooted in Japan’s domestic ivory market and that a service as agent provides the necessary services such as (i) “receiving delivery of the unregistered ivory” and (ii) “false registration” has been adopted in the market.

2) The process of the whole tusks trade by using the laundering system

The laundering system follows the procedure as described below. The name of the antiquary is not supposed to appear officially as the holder of the registration.

- The antiquary keeps the unregistered ivory tusk deposited by the seller who retains ownership until the product is sold²⁶⁶ and authenticate it.
 〈The antiquary does not notify the delivery of possession to the registration organization (JWRC).〉²⁶⁷
- The antiquary communicates the arrival of a new ivory tusk to its clients who are ivory manufacturers or larger antiquaries²⁶⁸, and makes a provisional contract to sell the piece of ivory to them.
- The antiquary rates the tusk, making an offer of the purchasing price not more than one shown in the price table prepared by the manufacturers in advance, and then makes a provisional contract²⁶⁹.
- The antiquary applies registration of the tusks to JWRC under the name of the seller on behalf of him or of the third party lending his name, or coaches the seller how to make a fraudulent application for the registration.

264 This trader is the No.7 surveyed by phone (see 4.4.3) who said as “I’ve done 500-600 of these cases”.

265 See 4.7

266 Transfer of possession is defined separately from transfer of ownership in LCES (Article 12, Section 1) though both of them are equally regulated.

267 It is the violation against LCES Article 21 Section5 and Article 23 Section 7.

268 It is a control of antiquaries, which collects ivory tusks from many antiquaries and sells them in bulk to ivory manufacturers. The typical example of such control is No.25 surveyed by phone (see 4.4.3) and No.7 investigated by door-to-door (see 4.4.5) .

269 The trader No.14 surveyed by phone (see 4.4.3) mentioned as “We can finally settle the deal and own the ivory when the registration is completed. Up to that time, you are supposed to deposit the ivory to us on trust.”

〈At any rate, the application is based fundamentally on a false background of acquisition. When there are cases where a third party’s name is used to for the application process, it is often found that multiple tusks are bundled together. Different sellers with one tusk are bundled and the application for registration paperwork is made under someone’s name as if the pieces are all owned by one person. This helps to reserve more names on the list of people lending their names which are able to be used just one time²⁷⁰.〉

- The registration is completed.
- The antiquaries make the final contract with the manufacturer (or the larger antiquary), receive payment and physically transfer the tusk to them.
- The antiquary makes the payment to the seller (the amount is approximately half of what is received from the manufacturer²⁷¹).
- The manufacturer may presumably notify the transfer of ownership or possession to JWRC (the title of registration²⁷² is assumed to be transferred from the original seller or the name-lender to the manufacturer directly.)

3) The laundering system is based on the loopholes of the registration scheme

The laundering system is based on the loophole that the law does not require objective evidence for confirming the registration requirement that the applied tusk was imported to or acquired in Japan before the application of the Convention.

Under such legislation, the registration organization may not force the applicant to submit such evidence proving the source of the ivory, and the administration or Ministry of Environment cannot make any intervention in the process of registration.

Actually, as an established practice, the registration requirement would be confirmed on the

270 The trader No.19 surveyed by phone (see 4.4.3) mentioned as “In house, we currently have three pieces that need registration so we would just add yours to that group.” The trader No.32 also said as “I know enough not to do so, but I will ask someone to disguise that he has owned the ivory, then we will apply for registration (under his name).” Incidentally, the staff of Japan Wildlife Research Centre mentioned in an interview made by TRAFFIC that registration sometimes involves multiple tusks recovered following a relative’s death (Kitade and Toko, 2016). The applications for registering multiple tusks mentioned above are likely to be fraudulent ones made under the name of the third party though the authors of TRAFFIC seem to be unaware of such a suspect.

271 The sales price of ivory whole tusks offered during the door-to-door investigation are almost double of the buying price suggested during the phone survey (4.4.5, 4)).

272 When the transfer of registered tusks are notified to JWRC, the name and address of the transferee, date of transfer and, etc. are subject to be recorded as electronic data in the Ledger on registration of international endangered species of wild fauna and flora (Registration service regulation Article 9 Section 7. See 4.2.3 about the Regulation and the ledger.)

basis of the self-statement by the applicant (acquirer of the tusk) and a certificate written by a third party including acquaintances and/or family members²⁷³.

Referring to the reality of the application process, it is obvious that it was practice among ivory buyers to write fraudulently such as “acquired in Showa era” which is a period certainly precedent to the time of the application of the Convention (18th January, 1990) in the narratives²⁷⁴.

Considering that the confirmation of registration requirements is officially supposed to be implemented through a preliminary consultation by a 20 minute phone call, the mentioned trick deserves to flourish as a technique-free and risk-free modus operandi²⁷⁵. Furthermore, the registration organization actually gave the applicants specific guidance to write “acquired in Showa era” in the documents to have their application proceed smoothly²⁷⁶. Incidentally, the registration scheme is institutionally designed to depend financial resources for the registration service on the registration charge paid by each applicant. Thus, the fundamental institutional design may cause the registration organization or JWRC to minimize the time needed for confirmation of registration requirements, and actively guiding applicants toward successful registration²⁷⁷.

As a result, 17,394 whole tusks have been registered as pre-convention -acquired ones since 1995 when the registration scheme was implemented until April 2016²⁷⁸. The accepted documents as the necessary document for confirmation of the registration requirement or pre-convention-acquisition were supposed to be mostly certificates written by the third party in a considerable rate of family members²⁷⁹ (except for the certificates made by the chairmen of the ivory associations in the case of registration of ivory stocks owned by ivory manufacturers, which were received by JWRC in the beginning of application of the reg-

istration scheme to ivory tusks²⁸⁰). Taking into account that the investigated buyers on the phone survey, who were willing to be involved with supplying laundered ivory into the legal market (70% of the total), they supposed certificates written by third parties as the necessary documents for confirmation of the registration requirement²⁸¹.

Considering both the reality of registration services and the direct responses of the ivory buyers investigated, it is not an exaggeration to say that whole tusks recently registered as ‘pre-convention-acquired’, to be doubted and categorized as laundered.

4) Non-working supervisory scheme over the ivory business as a deterrent against the laundering system

The laundering system was established by ivory manufacturers in order to buy in whole tusks efficiently while avoiding exposing themselves and reducing the risk of being traced is supported by an affiliation of antiques dealers. The antiquaries which would have been seen as not so conscious to social credibility and collapsible²⁸² are used as a tool to make the system work.

A suggestion to encourage antiquaries to notify their ivory trade business to the administrations was found²⁸³, and GoJ seems to believe this is an effective measure enough for controlling domestic ivory trade²⁸⁴. But, it does not have a significant or direct effect for combating the whole tusk laundering system because the supervisory measures on notified business only involves the trade in cut pieces and products²⁸⁵.

280 See Note 47

281 See 4.4.3, 5) “Supporting documents for background of ivory acquisition”.

282 The number of licensing antiquaries has been increasing since 2005 at latest, and reached to 774,157 in 2016. It means the number of licensee increased by 9,251 from the year before (Website of National Police Agency http://www.npa.go.jp/safetylife/seianki/statistics/H28_kobutsu.pdf https://www.npa.go.jp/safetylife/seianki/statistics/H27_kobutsu.pdf).

It is supposed to be behind the increase that it is easy to get the license and that more dealers are launching internet trade. Incidentally, sources in the business insist as “there are many dealers the reality of their business is not known well (Sankei News, January 4th 2016) . <http://www.sankei.com/west/news/160104/wst1601040044-n1.html>

The number of cases administrative penalty (revocation, business suspension and instruction) against antiquaries were imposed by the competent authority (National Police Agency) were 1,336 in 2016 (the aforementioned website of NPA).

283 Kitada & Toko, 2016

Incidentally, the attempt to encourage antiquaries to notify their ivory business to the competent authority missed before (Sakamoto, 2007) .

284 Ivory Public-Private Council, 2016

285 The amendment to LCES in 2017 applies a business registration scheme instead of the existing business notifica-

273 See 4.5.3, 4.5.4, 4.5.5, 4.6.2, 4), 4.6.3, 1)

274 See 4.4.3, 5)

275 See 4.5.6, 5)

276 See 4.5.3, 3), 4)

277 See 4.5.7

278 See 4.5.5, 1)

279 The received as supporting document for the background of ivory acquisition in the 95 applications in December 2014 were all narratives written by the third party (one case by the transferor, 30 cases by family members and 64 cases by the third party except for the aforementioned (4.5.5, 2)). Those in between January and April 2016 were also all narratives written by the third party (two cases by the transferor, 170 cases by family members and 188 cases by the third party except for the aforementioned (4.6.3, 1)).

5) Constraints of law enforcement efforts caused by the laundering system

Cracking down on receiving the delivery of an unregistered whole tusk

The police can seize the whole tusks under the suspect of receiving the delivery of unregistered ivory tusks if the antiquary actually possesses them at the time of seizure. Seizing the whole tusks themselves is quintessential evidence-collection for the police to proceed with the investigation toward sending the case to prosecutors.

However, once the tusks are registered, resold to manufacturers then divided by them, the existence as whole tusks are to be erased. Consequently, the seizure has to be unsuccessful.

As aforementioned process of the fraudulent registration laundering system, the whole tusks would be immediately transferred to the manufactures once the registrations are completed. Furthermore, it should be easy for the antiquaries who have repeatedly laundered ivory tusks to arrange the routine paperwork very quickly. It takes only 10 days from submission of the application for registration²⁸⁶, and there is actually an example in 2010, where a registration card was issued only 3 days after submission of the application²⁸⁷.

Therefore, it is likely that there would not be any whole tusk there when the police raid the business facility of the antiquary. Successful seizure of whole tusks in a timely fashion may be sometimes a matter of luck in the absence of a detailed tipping.

Cracking down receiving fraudulent registration

Seizure of the whole tusks for proving the existence of the object of registration is also quintessential for the police to crack down receiving fraudulent registration²⁸⁸. Consequently, the same

problem arises as the case of receiving delivery of unregistered whole tusks. Further, successful seizure is more difficult than the former case because the investigation may not start before the registration is done and the crime (fraudulent registration) is completed²⁸⁹.

Tentative conclusion

Therefore, the police have a significant hurdle to overcome with regard to evidence-collection when they try to crack down the players using the fraudulent registration laundering system. It means that the criminal penalty may not provide sufficient deterrent force against those players.

In conclusion, the only measure against the fraudulent registration laundering system rooted firmly in Japan's domestic ivory market should be considered radical reform of the registration process for preventing fraudulent registration.

6) GoJ's consideration on tightening registration process and the proposal for registration promotion campaign of legally possessed ivory

Difficulty in solving the problem caused by existing stock of unregistered ivory tusks

The registration of a whole tusk is merely required prior to internal trade in it²⁹⁰. It does not matter whether the possessor of the tusk is a business operator or non-business. Therefore, even a business operator can possess an unregistered whole tusk which has been owned since the registration scheme was entered into effect. Such existing stock of unregistered ivory tusks may provide a cover for illegal ivory.

On the other hand, an alarm has been repeatedly raised against encouraging registration of those unregistered tusks for the purpose of collecting information of them without a makeover

tion scheme and requires to the applicant of business registration to attach a document to the application, proving that he has received registrations for all the whole tusks actually possessed by him have been registered (see 7.4.2, 2)). However, that scheme is unlikely to impact the illegal transfer of ivory under the prevailed laundering system.

In the case of ivory manufacturers are supposed to buy up registered ivory tusks under the tactic of the laundering system. So, they will care nothing about complying the obligation introduced by the amendment to LCES.

In the case of antiquaries who actually carry out the laundering are supposed not to show up in the deal under the tactic of the laundering system. So, they are likely to apply the business registration as "not own any whole tusk". Such fraud applications are, however, unlikely to be detected because the registration organization and the administrations are not legally authorized to inspect the stocks possessed by those applicants (7.4.2, 4)).

286 See the result of phone survey against JWRC (Annex3) .

287 That was the case in the real example of registration application shown in 4.5.4.

288 LCES Article 58 (c)

289 Difficulty of proving falsity depends on the case.

It is not difficult to prove the false if it is obvious that a third party took care of paperwork on background of acquiring the tusks regardless of how the owner recognized the background.

Moreover, it is easy to prove the false when a fraudulent registration was made using a name of the third party as far as the police can specify the true seller (original owner or acquirer of the tusks) because a story about acquisition explained by a false acquirer should be inevitably regarded false.

But, it cannot be expected to always be successful if the application was done under the name of the seller himself because it is unlikely that the police can prove completely that the facts in the story were false even if the story is a commonly fabricated one. Actually, a buyer advised the investigator that it may be even better for her to have 'no idea' about the details of the background of acquisition (No.13 trader surveyed by phone (4.4.3)). He may know so well that onus of proof is not imposed on the applicant of registration but on the registration organization and the police to prove it false.

290 See 4.2.1

of existing registration process because such attempt would unnecessarily increase the opportunity of laundering²⁹¹.

In response to the paradoxical issues, both GoJ²⁹² and TRAFFIC²⁹³ have depreciated the latter issue, and actively encouraged tusk registration.

However, even promoting the registration of unregistered tusks without closing the loopholes of registration procedure is nearly equivalent to adopting the laundering officially²⁹⁴ under the

291 Sakamoto, 2007, Sakamoto, 2013

The existence of unregistered whole tusks and the rampant laundering of them would make it difficult to eliminate smuggled ivory from the legalized market. In order to address those issues, it is necessary to get a true figure of and take some control of the stock of unregistered tusks legally possessed while it should be noted that supplying the registered whole tusks into the legal market by promoting registration may encourage the laundering.

Thus, a separated measure from registration scheme for authorizing trade the items in question has to be taken in order to collect the information of and take control over the legally possessed unregistered ivory tusks. Sakamoto (2013) proposed a new scheme on notification of unregistered ivory tusks under legal possession. The following is the brush-upped version.

- Any occupant based on a legitimate title of the whole tusks without the registered business operators shall be mandated to notify his/her tusks to the authorities (The registered business operators are to be exempted from the mandated because the Bill for amendment to LCES 2017 introduces a registration confirmation scheme targeting them.).

- Any occupant who wishes to apply the registration for the tusks afterwards shall notify his/her tusks within the time limit set force.

- The application for registration of the ivory shall be rejected if the notification has been failed or conducted out of the time limit.

- A criminal penalty would be imposed to non-compliance of the mandate of notification if any occupant failed after the penal provision with transitional measure came into effect (Imposing this criminal penalty to a non-business is to require that sufficient opportunity to acknowledge is given to the general public. Given the penalty is applied, the ivory tusks are likely to be forfeited in the case of a serious offence).

- The matter to be notified shall be a minimum information to identify the ivory including length, weight, the date of the first possession, etc..

- The authorities shall be authorized to request a report and conduct an on-the-spot inspection on the possession of the tusks.

292 GoJ applauds the increase in registration cases as arguing that possessors' will to voluntarily comply with the law, owing to the system being informed and known widely contributed the increase in registered whole tusks seen after 2011 (CITES SC66 Inf.24). Incidentally, the staff of Japan Wildlife Research Centre stated in an interview made by TRAFFIC that it is the government's intension to salvage more tusks so that they are brought under the regulatory framework while he clarified that the confirmation of registration requirements remains the level of scrutinizing the validity of applicant's claims by phone interview (Kitada & Toko, 2016).

293 While TRAFFIC recommends that a nation-wide registration programme of all ivory tusks and cut pieces in private possession should be conducted to delineate the total domestic stocks, it does not recommend any improvement of registration procedure (Kitada & Toko, 2016).

294 Behind their silence on tightening the verification of the registration requirements, GoJ and TRAFFIC must have recognized that such action will block the ivory manufacturers to buy whole tusks as pre-convention stock.

Incidentally, The ex-President of Takaichi who virtually ruled management of the company explained the reason for going on a buying spree of unregistered tusks at the trial on the LCES violation case as "When we receive the application

situation that the reality of the laundering system has taken root into Japan's domestic ivory market as aforementioned, and that the number of registered tusks has skyrocketed since 2011 that is when seizures of illegal ivory shot up. Then, the position of GoJ and TRAFFIC faced a backlash of international organizations²⁹⁵.

Development of the Ivory registration promotion campaign by GoJ

The Minister of Environment, in February 2017, announced to launch a campaign promoting registration of individually owned ivory whole tusks in a manner that it accepted the proposal²⁹⁶ by TRAFFIC²⁹⁷. The campaign is one of the components of the "Strengthening program on ivory trade control"²⁹⁸ which had been prepared in parallel with the Bill for amendment to LCES. According to the program, a "campaign to promote registration of unregistered ivory under legal possession" including distribution of posters, holding some events and PR by local governments nationwide were planned between the summer of 2017 and one of 2019, then afterwards, stricter registration process would be implemented²⁹⁹.

form from JWRC, they request us to attach an evidence to prove that the tusks had displayed at a Tokonoma (alcove in a traditional Japanese room where art or flowers are displayed) or in a drawing-room 30 to 40 years ago by a document written by the third party other than family members. I did not get the tusks registered because I could not prepare those documents." (Sakamoto, 2011.a)

It must have been a common demand of the ivory industry that fairly strict verification of registration requirements should be avoided. GoJ and TRAFFIC may hesitate to clamp down the demand of the industry (at the time of August 2017) under the situation that there is almost no hope in resumption of international ivory trade in near future.

But, such a response should be criticized as preposterous which would virtually allow the laundering of illegal ivory to benefit the ivory manufacturers.

295 EIA, et.al, 2017

296 Kitade & Toko, 2016 (See 292), TRAFFIC East Asia Japan, 2017

297 The Minister of Environment Koichi Yamamoto commented on the minutes of a press briefing held at 9:12am - 9:25am, Tuesday 28th February 2017 (in Meeting room 1 of Ministry of Environment) as "We will launch a registration promotion campaign. We are calling the people who own ivory tusks to apply the registration for them proactively".

See MoE website

<http://www.env.go.jp/annai/kaiken/h29/0228.html>

298 MoE, 2017.c

299 According to "Strengthening program on ivory trade control", "a feasibility study on scientific proof and a study assessing the impact of stricter registration process" will be conducted and, based on the results of the studies, "a stricter registration process comprised of "proof by public agencies (proving legal import before the ban) or scientific proof (?)" is supposed to be introduced (MoE, 2017.c).

It means that any scientific proof will not be introduced if the feasibility study would conclude it is not practically feasible, and that stricter registration process itself might not be introduced depending on the result of the impact assessment study.

Thus, it is concerned GoJ would have drawn a scenario

Launch of ivory registration promotion campaign

Minister of Environment announced the launch of ivory registration promotion campaign to the press on August 29th, 2017³⁰⁰. No change was made from the announcement in February of the plan in any matter including effect, outline and schedule³⁰¹. Incidentally, the name of the campaign was changed from “campaign promoting registration of individually owned ivory whole tusks” in February to “campaign for getting the picture of ivory stockpile” at the time of launch³⁰². But, the fact remains that the action called for in the campaign is to apply for whole tusk registration³⁰³.

Attempt to justify the ivory registration promotion campaign by assuming “legally mass-stored unregistered ivory tusks”

As mentioned above, unregistered whole tusks can be legally possessed in Japan. But, it is unknown how many ivory tusks are there, which have been under possession in Japan since before the implementation of the registration scheme and have remained as unregistered³⁰⁴ because

that any stricter registration process is to be shelved on the ground that proof by public agencies is too much strait gate when scientific proof cannot be adopted due to its infeasibility.

300 MoE, 2017.g

301 MoE explains the idea of the campaign as “it is needed to get the picture of ivory whole tusks stockpile in Japan” “because of the international expectation” “though it is unlikely that consuming ivory in Japan affect poaching of African elephants”.

The effect of the campaign is to familiarize private owners of ivory whole tusks with the government’s policy for getting the picture of the stockpile through hand-outs and PR magazines and to call them for registration of the ivory whole tusks. Distribution of hand-outs and featuring an article on the PR magazines are to be requested to local governments nationwide. The campaign launched on 31st August, 2017 and will continue for some 2 years.

302 MoE, 2017.g

303 The idea of ivory registration promotion campaign was criticized by Mr. Ryosuke Takeda, a Diet member of the House of Councillors at the session of the Environmental Committee held on 25th May, 2017 as “But, based on the present system, the campaign will consequently make them rush to register. I still think it will become such a campaign unavoidably. When we see Japan jut domestically by the eyes of Japanese government, that’ll be that way. But if I consider how we’ll be seen by international societies, since in Japan once they register they will be able to trade, so I’d like to point out again, unavoidably, that’ll be the idea of putting them (elephant’s tusks) into Japan now while they can” (House of Councillor, 2017). It is considered that Ministry of Environment changed the name of campaign at launch for tricking its way out of such criticism.

304 MoE claimed that the volume of 305 tons of whole tusks registered between 1995 and 2015 (216 tons in the case one-off sold ivory is exempted) is fairly small considering the volume of 2,006 tons of ivory imported between 1981 and 1989, so that considerable volume of unregistered whole tusks are likely to remain intact (see MoE website: http://www.env.go.jp/nature/kisho/zougetorihiki/FAQ_on_ElephantIvory_JP.pdf)

the total volume of ivory whole tusks imported prior to the international ban which have been consumed (divided) for manufacturing, and the breakdown of it into registered tusks / unregis-

Afterwards, in the “strengthening program on ivory trade control” (MoE, 2017.c), MoE showed an estimate of the unregistered whole tusks owned by business/non-business as around 1,230 tons based on the calculation as follows.

- The total volume of 2,000 tons of imported prior to the international ban (1981 – 1989) (counted through CITES Trade Database) and 90 tons of one-off sold ivory are 2,090 tons (A)
- The total volume of registered ivory whole tusks is 320 tons (B)
- The total volume of unregistered ivory whole tusks processed into products is 540 tons (C)
- (A) – (B) – (C) = 1,230 tons (D)

However, the figure of (C) is definitely not able to be calculated unless the data of total volume of consumed (divided) whole tusks for manufacturing, which were imported prior to the international ban and the data of breakdown of it into registered tusks / unregistered tusks would be successfully provided by all the manufacturers. Such calculation as well as accurate estimation should be said no longer possible. MoE does not show the source of the figure of (C) in the “strengthening program on ivory trade control” but admitted it is based on a hearing to an ivory trader.

Incidentally, Kitagawa Ivory which is a core member of Japan Ivory Association and the largest ivory manufacture in eastern Japan posted a blog article as titled “Re. news articles causing a disturbance to the public” on its website in February 2016, which seems to intend to counter the results of investigation on and criticism of the registration scheme by EIA, which were covered by all over newspapers (<http://skyivory.net/?p=2192>). Kitagawa mentioned in the blog article as “Ivory import was internationally banned in 1989, but Japan had imported over 6,000 tons of ivory during 45 years between 1945 and 1989”, “the importers sold good-shaped one of 20 % to 30% or 1,200 – 1,800 tons of the totally imported tusks to Japanese customers for ornamental use,” “it means that considerable part of imported tusks should have remained intact because those must be neither worn away nor lost”.

Kitagawa seems to regard the volume of the existing unregistered whole tusks as a supposed volume of the polished or carved tusks sold as ornamental products after imported before the international ban.

However, it is impossible for only one trader to estimate the total volume of sales of ivory tusks for ornamental use.

Furthermore, ivory traders should have bought back those tusks sold for ornamental use from their customers in the past for securing manufacturing material diligently even more than now because they could purchase unregistered whole tusks legally before June 1995 when the internal trade regulation on ivory whole tusks entered into force. But, how much ivory tusks they have bought back is totally unknown.

Consequently, the assumed volume of existing unregistered ivory tusks by Kitagawa Ivory should be suspected as over-estimation based on the intention to appeal “considerable amount of ivory tusks still exist in Japan” as well as on subjective view.

MoE, however, seems to snatch to the figure of “1,200 – 1,800 tons” of ivory tusks shown by Kitagawa as of the sold to Japanese customers as intact for ornamental use, take the lower limit of the figure (1,200 tons) as the total volume of unregistered ivory tusks possessed by non-business, add some small stock possessed by business and fix (D): total volume of the existing unregistered ivory tusks (1,230 tons), back-calculated (C) and arranged the estimation above.

The “strengthening program on ivory trade control” notes that breakdown of possessors (business/non-business) is not known, but should have estimated the share of the business as quite small (the broken number of 30 tons?). Otherwise, it should be contradictory to the supposed effect of the administrative guidance by MITI (now METI) directed to the ivory traders to have them register their stock of whole tusks in 1995 that is when the registration scheme was applied to ivory tusks (see note 47).

Thus, GoJ is supposed to have established the “strengthening program on ivory trade control” based on the huge stock of unregistered whole tusks lacking objective basis for estimation at trader’s word.

tered tusks is still unknown.

However, considering the crunch time in reporting for the traders threatened by dwindling stock of ivory that are subsequent to the international ivory ban³⁰⁵, and no import during 9 years since the ban, it is a matter of common sense to understand that many of ivory tusks suitable for manufacturing have been salvaged and consumed already, so that the volume of the unregistered ivory whole tusks under possession at present should be minor, except for the ones owned by some special collectors who have declined to resell them³⁰⁶.

Problems of the ivory registration promotion campaign

The ivory registration promotion campaign has a bunch of serious problems.

Firstly, the expected result of the campaign is contrary to the CITES resolution.

Secondly, it is inappropriate to supply many ivory tusks to the legalized domestic market, which were imported prior to international ivory ban through GoJ's import permits in violation of CITES.

Thirdly, promotion of registration without closing the loopholes of registration process would encourage laundering illegal ivory.

Those issues will be further discussed.

Ivory registration promotion campaign is contrary to the CITES resolution

Seeing that the LCES designs the registration as the condition for allowing internal trade in an ivory whole tusk, such campaign promoting registration should be regarded as an attempt to supply ivory whole tusks proactively into the market. It would enhance demand for ivory inevitably. Such attempt, however should violate the CITES resolution which urges the Parties to engage in public awareness campaigns including supply and demand reduction³⁰⁷.

Many of ivory tusks imported prior to international ivory ban were obtained through GoJ's import permits in violation of CITES

It should be pointed out that many of ivory tusks actually imported prior to international ivory ban which are still possessed without registration are the ones imported using GoJ's import permits in violation of CITES provision.

Since November 1980 when CITES entered into effect for Japan until January 1990 when international ivory ban entered into effect, or during about 9 years between 1981 and 1989, Japan had imported ivory tusks of African elephants under the regulation of CITES³⁰⁸.

Namely, the exporting countries of African ivory had been mandated to issue export permits because African elephants were listed in Appendix II at the time. However, Japan had permitted the imports of African ivory based on country-of-origin certificates instead of the prescribed export permits by CITES provision^{309 310}.

In the Seminar on CITES Implementation in Asia and Oceania held in KL, Malaysia in October 1984, a condemning resolution against Japan's non-compliance about CITES including the ivory issue was adopted as "aware that the Government of Japan has acknowledged its consistent failure to meet this obligation through non-compliance with the provisions of the Convention and Resolutions adopted by the Conference of the Parties" and "recommends that if the Government of Japan does not take the necessary measures before the fifth meeting of the Conference of the Parties, the Parties address the problem at that meeting with a view to finding an immediate and effective solution"³¹¹. In response, GoJ established the liaison meeting of the Ministries related to CITES in October 1984 to discuss the issue³¹². Consequently, GoJ agreed to mandate an export permit issued by the relevant Management Authority of the exporting countries in line with CITES provision since 1st April 1985³¹³.

305 The reality was that manufacturers were worried their material ivory would run out and rushed to the importers to increase a stock for more than half a year. In fact, Takaichi who was the largest ivory importer talked "there was an atmosphere in the manufacturers that more than half a year stock should be increased though the stock for a few months was normally enough. It was a scramble among manufacturers to get ivory." (Takaichi, 1992.b)

306 As an ivory seller mentioned during the door-to-door investigation by EIA as "Because Chinese bought all tusks in Japan, stock is out"(door-to-door survey (4.4.5) to ivory seller No.2), considerable volume of ivory tusks seem to have flown out from Japan's domestic market to China in recent years.

307 CITES Resolution 10.10, Paragraph 6, d) urges the relevant Parties to engage in public awareness campaigns about "including supply and demand reduction". See 6.6

308 Japan totally prohibited import of ivory voluntarily in September, 1989. See Chapter 1 Note 32.

309 CITES Article IV Paragraph 2

310 Miyoshi, 1987, Milliken, 1985

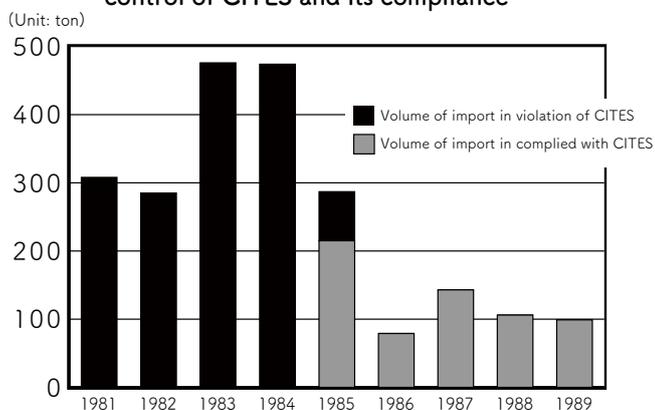
311 Ibid.

312 Ibid.

313 The change was implemented by the amended Paragraph (h) (ii) of the "Announcement of necessary matters with regard to the items of shipment subject to import quota, the countries of origin of the shipment or the countries of shipment subject to import permission and others related to import of shipment" (dated on 30th April, 1966, Notification by the Ministry of International Trade and Industry No. 170) based on the Import Trade Control Order (Cabinet order No. 414, 1949) Article 3 Paragraph 1, which was partially amended by the "Notification on amendment to the an-

So, ivory tusks imported by the end of March 1985 or 70% of ones imported during the period between 1981–1989 (1600/2255 tons³¹⁴) should be regarded as imported in violation of CITES provision (Figure 4-11).

Figure 4-11 Japan's import of raw ivory under the control of CITES and its compliance



* The volume of import is sourced in Japan Customs Statistics quoted by Kiyono(1997) and Milliken (1989)

* The volume of import for full year of 1981-1984 and for one fourth of 1985 (as for three months in average) are regarded as the imported volume in violation of CITES, and the volume for full year of 1986-1989 and three fourth of 1985 are regarded as the imported volume in complied with CITES,

(Source)

- Kiyono H, 1997, The Ivory Trade in Japan, Still in Business: The Ivory Trade in Asia Seven Years After the CITES Ban, TRAFFIC International
- Milliken, 1985, Japan's Ivory Trade, Traffic Bulletin, Vo1. VII NOS. 3/4, WTMU IUCN Conservation Monitoring Centre
- Milliken, 1989, The Japanese trade in ivory: tradition, CITES and the elusive search for sustainable utilization, The ivory trade and Future of the African Elephant, Ivory Trade Review Group
- Notification on amendment to the announcement of import (dated 11th March, 1985, Notification by the Ministry of International Trade and Industry No. 99)

Ivory registration promotion without closing the loopholes of registration process would encourage laundering illegal ivory

What's worse is that the stricter registration process is to be considered after a period of 2 years for registration promotion campaign. It is quite contradictory and inappropriate for GoJ to approve the registration of whole tusks before setting up an improved registration process under consideration though it has acknowledged the defects of the existing registration process for eliminating illegal ivory from the domestic ivory market.

7) Conclusion

It is mostly impossible to counter the laundering system under the current registration scheme because the loophole easily allows false registrations of illegal ivory into Japan's domestic ivory market, and traders have abused the system

ouncement of import (dated 11th March, 1985, Notification by the Ministry of International Trade and Industry No. 99).

314 Kiyono,1997, Milliken, 1989

broadly and deeply. It is truly alarming that the number of tusks newly registered have dramatically increased since 2011, and recorded 1,886 tusks in 2014, 2,157 in 2015 and 1,687 in 2016 as seen in Table 4-1. It is thus mandatory to introduce a stricter registration process for combating the laundering system.

GoJ, however, formulates the policy intending to leave a stricter registration process on a backburner for 2 years and launch a PR for promotion of ivory registration as if the government itself would assist ivory industries to launder whole tusks. The campaign is extremely problematic because it should encourage the laundering of illegal ivory, violate the CITES resolution and supply many ivory tusks to the legalized domestic market, which were imported prior to international ivory ban through GoJ's import permits in violation of CITES.

4.8.3 Laundering unregistered ivory tusks by reusing the registration cards prepared for tusks already divided or using one fraudulently obtained fake ivory tusks abusing the legal loophole specifically:

a physical inspection of ivory tusks for neither authenticity, identification nor marking is required

1) Reusing a registration card not returned after dividing the tusk for which the card has been prepared

There are many tusks with similar length and weight, and shapes. Thus, it is mostly impossible in many cases to accurately identify a whole tusk from many others just based on the description on the registration application form and the photos attached to it. Based on the reality above, a modus operandi or reusing the registration cards prepared for other tusks would be adopted.

This trick is used for disguising unregistered tusks to the third party including the police as the registered tusks³¹⁵. Furthermore, it can be used to sell them as registered tusks.

An ivory manufacturer who was a target of door-to-door survey intended to sell a registration card separately from the tusk corresponding to the registration card in question³¹⁶. It is

315 Takaichi wrote the registration numbers for registered ivory tusks on masking tape pieces and pasted them on to unregistered ivory tusks for a disguise (Sakamoto, 2011a.) They might fail to return the registration cards even after the registered ivory tusks were cut into pieces, and keep the cards to use for disguising unregistered tusks as registered (ibid.).

316 Door-to-door survey (4.4.5) to ivory seller No. 1

assumed that he intended to sell the registration card saved without return to JWRC even after he had divided the relevant whole tusk.

Though it is legally mandated to return the registration card when a whole tusk is divided³¹⁷, MoE is not authorized to verify whether the tusks remain as it is (“maintains its whole shape”) or not³¹⁸. It means that any active supervision by the administration on registered tusks is not possible. That is why ivory manufacturers can easily keep some registration cards without returning them³¹⁹.

2) Using a registration card fraudulently obtained for fake or faux ivory

Ingenious counterfeit of ivory is sometimes found, which is mostly impossible to be differentiated on photo basis from a real one. Based on the reality above, a modus operandi or using the registration cards fraudulently obtained using fake or faux ivory is developed.

An ivory trader surveyed by phone stated as follows, “By chance, perhaps they might miss-register a piece made of plastic since the authorities are only assessing the ivory by photograph”³²⁰.

As elaborated in 4), the traders owe little risk of being accused for false registration³²¹ because the registration organization is not responsible for authentication and the process is entirely left to the applicants’ responsibility. That is why ivory manufacturers can easily get registration cards for fake or faux ivory tusks.

317 LCES Article 22 Paragraph 1, Article 23 Paragraph 7, Article 63 (f) (Penalty: a fine not more than 300,000 yen)

318 The scope of the on-the-spot inspection (LCES Article 33 Par.1 which will be applied Mutatis Mutandis Pursuant to Article 33-5) against a notified traders on business activities in connection with a designated internationally endangered species is limited to “designated body parts, etc.” or ivory except for whole tusk. See 5.1.4

319 In terms of live animals of internationally endangered species, MoE pointed out that the number of returned registration card is too small and some illegally acquired animals are possibly traded attached with an unreturned registration card issued for other individual (MoE, 2016. O). MoE presumably made the suggestion because it is relatively easy to assume the time when the registration card should be returned, based on the life duration of the animal in question.

320 Phone survey (4.4.3) to ivory buyer No. 5

321 The act to apply a fake one intentionally and to get the registration for it falls under the charge of false registration (LCES Article 58 Number 3).

3) Placing responsibility for authenticity of the item to be applied for registration on the applicant is to lead up hindrance to the enforcement of prohibition on delivery of occupancy of unregistered ivory tusks

JWRC, the registration organization connived at Raftel’s service as agent³²². It means that it should have acknowledged that Raftel had kept unregistered ivory tusks in advance, those were later used for applying for registration. This seems to influence the prosecutor to make a decision not to allow the police to arrest the suspects but to send the document on the case to him/her. He/she must have thought that it is unfair to lay all the blame on Raftel while the registration organization has connived the illegal activities.

On the other hand, it may not be necessarily true that connivance by JWRC at receiving unregistered ivory tusks is peculiar to Raftel’s case because the registration organization (JWRC) would have required the applicants as general business process a matter which could be contradict to compliance with prohibition of delivery of unregistered ivory. This is the authenticity of the object to be applied for registration. In fact, Raftel justified itself as “I thought it should be allowed to receive and keep the tusks for authenticity”³²³.

JWRC stresses in the guidance for registration application as “applicants are responsible for the authenticity” and advises applicants to “contact an ivory-specialty shop, a museum, etc. regarding appraisalment on authenticity”³²⁴. But, it must be difficult for the applicants to delegate an expert the authenticity without depositing the object. That is why JWRC has had an inclination to connive at the delivery of occupancy of unregistered tusks for authenticity purpose.

The root cause of this problem is that the existing laws and regulations does not authorize the registration organization to process authenticity while it punishes delivery of occupancy of unregistered ivory tusks including temporal one.

In fact, the lack of authority for authenticity of the registration organization attributes the power of the registration organization. It is merely authorized to process an application on the basis of documents.

Such deficiencies of the laws and regulations should not only lead up to possible registration

322 See 4.7.6

323 *Tokyo Shimbun* news article dated 20th June, 2017, “Illicit trade in unregistered ivory, the case of 27 persons sent to prosecutors, 18 unregistered tusks Antiquaries expand a deal through service as agent”

324 See 4.6.2, 3)

of the fake but also make the self-justification of the suspect on illegal ivory trade persuadable.

4) It is impossible for the registration organization to conduct a physical inspection of ivory tusks required for authenticity, identification and marking as basis of the monitoring for preventing diversion of registration cards

It is necessary to make an authentication as a precondition to registration for preventing fraudulent registration of a fake or faux ivory tusk.

The authentication is also necessary for preventing diversion of a registration card to identify each tusk, and put an accordant marking on the tusk and the registration card at the time of registration.

Furthermore, it is necessary to give a power to the authorities to inspect registered tusks if they still exist and they have been replaced by another, and to execute regular monitoring on the domestic stock of registered tusks.

But, the registration process is designed under the existing laws and regulations as an administrative act³²⁵ to confirm the legality of registration through the description on the provisioned application documents and the photos³²⁶.

It means that the registration organization is not authorized to examine whether the descrip-

325 *Details are elided, but this note discusses about the interpretation by Japanese court precedents how the public agency is authorized to verify an application by a national for making a judgement whether an approval or license should be given to him/her.

326 LCES only makes provisions for registration process that a possessor having legitimate title to an individuals, etc. from an internationally endangered species of wild fauna or flora (LCES Article 20 Paragraph 1) who intends to obtain the registration shall submit a registration application form and prescribed documents to the registration organization in accordance with the Ministry Order (Article 20 Paragraph 2, Article 23 Paragraph 1). Furthermore, LCES makes provisions neither verification nor inspection on registration requirements and legitimate title.

As that composition of provisions in LCES, the registration organization is merely authorized to confirm the legality of registration through the description on the provisioned application documents at the time of registration.

Consequently, the registration process is supposed to come into practice as follows.

- If a pre-convention date both on "A document written by the person who acquired in or imported to Japan, which gives an account of the import or acquisition" (referred as "self-statement on acquisition" in this report. Ministry Order Article 11 Paragraph 1 (b)) and "Any other document recognized as necessary for confirming that the registration requirements are met" (referred as "certificate on the acquisition written by a third party" in this report. Ministry Order Article 11 Paragraph 2), registration requirement (pre-convention acquisition) should be regarded as confirmed.
- If a description of "Tusk of Asian elephant" or "Tusk of African elephant" is made on the registration application form, species identification (premised on authenticity) should be regarded as confirmed.
- If the applied tusk can be interpreted as "maintaining its whole shape" on the received photos, the shape eligible for registration should be regarded as confirmed.

tion on the documents would accord with the truth. Therefore, it is impossible for the registration organization to order to submit the real item for verifying it, let alone to authenticate, to make identification and marking on it^{327 328}.

5) Conclusion

It is necessary for preventing fraudulent registration and reusing of registration card to provision a procedure for making authentication on ivory tusks (and species identification) by the registration organization. Given it is authorized to be a tusk of Asian or African elephant, it should be verified if the registration requirements would meet. If it is confirmed that the ivory tusk which meets a registration requirement, identification of the tusk and marking on both of the tusk and the registration card with a marking of the ID should be made at the time of registration.

The fast-evolving forensic technique including species identification and assigning the general location of origin using DNA analysis of ivory, and determining the date of death of the elephants using radiocarbon dating of ivory should be adopted as a method of identification of ivory tusks at the time of registration³²⁹.

Furthermore, it is necessary to give a power to the authorities to inspect registered tusks and have them execute regular monitoring.

However, such authentication, identification and marking should premise the power of the authorities to confirm that the applied facts expressed on the documents would accord with the truth. A drastic reform of the laws and regulations should be required for that.

327 The Bill for amendment to LCES 2017 prescribes that an individual identification measure should be put on a registration application form (the Bill for amendment Article 20 Paragraph 2 (iv)), however, the provision are applied "for the individual, body part and product designated by the Ministry Order as one for which individual identification is particularly needed", and are supposed to be applied not to ivory but to live animals (MoE, 2017.a).

Furthermore, it merely mandates an applicant to show the measure of individual identification taken by the applicant at the time of registration, and it authorizes the registration organization neither to make the identification by itself nor to verify the authentication and accuracy of the identification by the applicant.

328 The "Act for Controlling the Possession of Firearms or Swords and Other Such Weapons" (Act No. 6 of 1958) makes a provision on the authentication process made by a public agency for registration of designated firearms or swords for exceptional possession.

329 CITES Resolution Conf.10.10 (Rev. CoP17) recommends that Parties cooperate in the development of techniques to enhance the traceability of elephant specimens in trade, for instance by supporting research to determine the age and origin of ivory and other elephant specimens, by supplying samples for forensic research, and collaborating with relevant forensic research institutions.

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

4.8.4 Laundering unregistered ivory tusks by ivory manufacturers, etc. abusing the legal loophole specifically: unregistered whole tusks can be legally possessed

1) Existence of unregistered ivory tusks in Japan's domestic ivory market

As aforementioned³³⁰, existence of unregistered ivory tusks owned by unauthorized business operators or non-business persons are within the assumption of the existing laws and regulations.

2) Flow-in of unregistered ivory tusks newly acquired by manufacturers into their legal stock of unregistered tusks

Such “legal stock of unregistered tusks” would provide a serious cover for trade in illegal ivory. It should be particularly concerned that ivory manufacturers would bring unregistered whole tusks provided through networked antiquaries into the “legal stock of unregistered tusks”

There is no way for the authorities to know the reality of the “legal stock of unregistered tusks”. Therefore, it is difficult for the police to differentiate the illegal ivory to be seized from the other legal unregistered whole tusks possessed by a manufacturer even if it raid the office of the ivory manufacturer and find an unregistered tusk.

In fact, one ivory manufacturer was revealed during the investigation by EIA to have laundered unregistered ivory tusks by the modus operandi above. This major ivory manufacturer has not registered their stocked ivory tusks as to be used for manufacturing material as said “I myself have not registered the tusks because I would (not trade in them but) cut by myself though it is possible to register them.”³³¹ At the same time, he clearly intended to enter the purchased unregistered tusks into his “legal stock of unregistered ivory” as said “We can purchase your ivory without registration because we directly cut it up into body parts used for manufacturing. If you can bring it to here, we can negotiate the price then settle the deal by check”³³². EIA's investigation led to the crackdown of that ivory manufacturer by the local police for purchasing 5 unregistered ivory tusks by 1.3 million yen³³³.

Similarly, another ivory trader stated as “I have many clients who can purchase ivory without

registration. I can sell them to hanko manufacturers in Japan. The point is, small companies want materials even without registration while bigger companies can't buy them without registration. Those manufacturers don't mind buying unregistered tusks to that end. They would divide the tusks as soon as they buy them from me. I have those clients who will buy unregistered tusks”³³⁴.

3) Conclusion

Covering up illegal whole tusk trade with “legal stock of unregistered ivory” would precisely abuse the existing laws and regulations³³⁵. For preventing such illegal trade, a new specific measure has to be taken to officially cover the stock of unregistered tusks under possession, separately from the registration scheme for legalizing trade in the tusks³³⁶.

334 Door-to-door survey to ivory seller No.2(see 4.4.5 6)

335 As aforementioned, the amendment to LCES in 2017 establishes a new business registration scheme, and mandates a person who applies the business registration to attach a document to the application, proving that he has obtained registrations for all the whole tusks actually possessed by him have been registered (see 7.4.2 2))..

The provision is supposed to pursue to resolve the “legal stock of unregistered ivory” owned by business operators, however the effect should be limited (7.4.2, 4)).

336 Sakamoto (2013) proposed a new scheme on notification of unregistered ivory tusks under legal possession (see Note 291 in details). However, now the registered business operators are supposed to register all stock of whole tusks possessed by them because the Bill for amendment to LCES 2017 introduces a registration confirmation scheme targeting them. Therefore, they have to be exempted from the proposed possession notification scheme.

Then, the important points with regard to the stock of the business operators are; firstly, application of stricter registration process; and secondly the disposition of the tusks which are not confirmed as satisfying the registration requirement due to the stricter process. If possession could be allowed to continue, the registration confirmation scheme would be meaningless. Thus, the administrations should monitor the condition of such unregistered ivory tusks continually whether the owners would continue to possess them or destroy them (see Chapter 7 Note 82, also).

330 See 4.2.1 and 4.8.2, 6)

331 Door-to-door survey to ivory seller No.1(see 4.4.5 6))

332 Phone survey to ivory buyer No.17 (identical to ivory seller No.1 of Door-to-door survey) (see 4.4.3)

333 See Case No.15 on ANNEX 4

4.8.5 Laundering ivory cut pieces with unknown origin abusing the legal loophole specifically: internal trade regulation is not applied to cut pieces

1) Limited application of internal ivory trade regulation to whole tusks

An ivory tusk which does not “maintain its whole shape” becomes exempted from internal trade control and then registration scheme³³⁷. The conclusion above is prescribed in the laws and regulations as that “body part” and “product” of tusk of family Elephantidae are designated as “raw material body part, etc.” as being used as materials of products produced in Japan, ones of which satisfy the requirements of its form, size, or other matters are designated as “the designated body part, etc.” which are specifically defined as “in which the used body parts do not maintain the whole shape”³³⁸.

The reason why ivory tusks which do not “maintain the whole shape” are exempted from internal trade regulation is explained by MoE as “it is practically difficult to register subdivided ivory material (cut pieces)”³³⁹. But, in reality, not only “subdivided” ivory but also every ivory lacking whole shape in “the designated body part, etc.” which are out of the scope of regulation. The background of such arrangement of subject of the regulation is not documented, but can be seen as the result that constraint-free procurement of raw material for ivory manufacturers was disproportionately prioritized.

2) Criticism to the scope of internal trade control of ivory, which is limited to whole tusks, and the MoE’s response to it

The extreme limitation of the range of ivory tusk to be regulated under the existing laws and regulations has been repeatedly criticized as too narrow and inappropriate³⁴⁰ and it has been suggested to expand the scope through a legal reform³⁴¹.

Recently, MoE started to review the existing judgement standard as to “maintaining its whole shape”³⁴². Previously, MoE has only adopted a judgement standard for “maintaining its whole shape” as “if the general ivory-appearing shape

as creating slight arch and tapering off from the base to the point is recognizable”³⁴³ had never intended to show more details³⁴⁴. But, at this time, MoE might aim to clarify the boundary of the concept of “maintaining its whole shape” and even broaden the range by a specific interpretation of the existing judgement standard.

According to the announced interpretation (referred to “MoE interpretation” hereinafter)³⁴⁵, an ivory tusk with a tip should be regarded as “maintain its whole shape” if its pulp cavity or if it has a size of no less than 20cm in length, as far as a record cannot be confirmed that a manifest has been prepared for it^{346 347}.

However, the MoE interpretation should go beyond the general understanding of the concept or “maintain its whole shape”. Therefore, the MoE interpretation is likely to violate the Constitution of Japan³⁴⁸.

Furthermore, the MoE interpretation is unlikely to resolve the serious loopholes found in Japan’s internal trade control as to be mentioned in “3)” and “4)”. Moreover, it will cause a new problem as to be mentioned in “5)”.

3) Little hope to eliminate an ivory smuggled in the form of cut piece from the legalized domestic ivory market

In certain large-scale smuggling cases, whole tusks were divided into two to five pieces (Figure 4-12, 4-13). Hence, it is necessary to apply the internal trade regulation to the ivory in such form in order to prevent them from entering in the legalized domestic market.

343 MoE, 2015.b

344 Ibid.

345 MoE, 2016. n

346 The reason why MoE limits the interpretation of whole tusks to the case a record cannot be confirmed that a manifest has been prepared for the tusk is as follows.

Preparation of manifest by manufacturers is a part of the business supervisory scheme and ivory products certification scheme (see 5.1.3). Logically, the ivory for which a manifest has been prepared is to be “designated body parts, etc.” or ivory not maintaining its whole shape. Therefore, a contradiction on implementation of the laws and regulations is inevitable unless any ivory with the record of preparation of manifest, regardless of ways of division, would be regarded as NOT “maintaining its whole shape”.

347 The suggestion by the MoE interpretation is noteworthy that an ivory product like a polished tusk or a carved tusk, regardless of the degree of processing, would be regarded as “maintain its whole shape” if it falls under the existing judgement standard.

348 *Details are elided, but this note discusses if Japanese court precedents which showed the criteria for judging violation of the Constitution would be applicable to the MoE interpretation.

337 See 4.2.1, 4.2.2

338 Ibid.

339 EA, 1995

340 Sakamoto, 2002, Sakamoto, 2007, Sakamoto, 2013, EIA, 2015, Kitade and Toko, 2016, etc.

341 Sakamoto, 2002, Sakamoto, 2007, Sakamoto, 2013

342 MoE, 2016. m



Figure 4-12-1 Ivory smuggled at Kobe port in 2000:1



Figure 4-12-2 Ivory smuggled at Kobe port in 2000:2³⁴⁹



Figure 4-13-1 Ivory smuggled at Osaka port in 2006:1



Figure 4-13-1 Ivory smuggled at Osaka port in 2006:2³⁵⁰

However, ivory cut pieces are widely traded legally because only tusks maintaining its whole shape are regulated. Thus, smuggled ivory cut pieces can easily slip into those legalized trade in cut pieces.

For example, “naka-giri”, a form of ivory with both edges cut off, can be found, which Japanese manufacturers would deal with routinely³⁵¹. Those ivory are sold online. In fact, such ivory was found during the survey of closing bids of Yahoo! Japan Auction³⁵². An ivory tusk found during the survey just divided in two and sold is shown in Figure 4-14. The piece without a tip is “naka-giri”.

349 Sakamoto, 2002

350 Sakamoto, 2007

351 In fact, the existing business supervisory scheme suppose a type of business trading such form of cut pieces including “naka-giri”. See 5.3.4

352 See 2.3.2 4)



Figure 4-14-1 Cut pieces sold on Yahoo! Japan Auction:1



Figure 4-14-2 Cut pieces sold on Yahoo! Japan Auction:2

An ivory without tip like the “naka-giri” is still out of scope of internal trade regulation even if the MoE interpretation would be applied. However, this conclusion should damage the internal trade control seriously.

Furthermore, smuggled whole tusks in the divided form often lose their tips in order to take advantage of concealment. This reality was clearly shown in the case of smuggled ivory at Osaka Port in 2006 (see Figure 4-13-3).



Figure 4-13-3 Ivory smuggled at Osaka port in 2006:3

Thus, it is almost impossible to eliminate the smuggled ivory in the shape of cut pieces which have been brought in domestic market under the existing laws and regulations even if the MoE interpretation is adopted.

4) Little hope to eliminate a smuggled whole tusk from legalized domestic ivory market if it would be divided and then brought into there

It is easy to bring an ivory smuggled in the form of whole tusk into legalized domestic market if it is divided afterwards. Thus, the divided pieces should be included in the internal trade regulation.

Incidentally, it is not so disadvantageous for ivory manufacturers to divide a whole tusk as far as the way of division is appropriate for their

manufacturing. This is because those tusks will be divided anyway during the processing stage.

During EIA investigation, a major manufacturer stated as “We can purchase your ivory without registration because we directly cut it up into parts used for manufacturing”³⁵³, the other ivory trader also talked as “*We can possibly buy your ivory if we could cut the tip of it, then the ivory will be processed into hanko. As I said, we can make the deal without registration certificate unless the ivory remains as ‘Horn’ (which means whole tusk³⁵⁴). Namely, registration is necessarily required for ‘Horn’ trade but we can overcome the obstacle by strategic processing. Please make it sure my saying is very secret*”³⁵⁵. As can be noticed from the conversation, the tactic to divide the whole tusks for eluding the internal trade regulation, seems quite popular among ivory traders.

Even if the MoE interpretation would be adopted, it is easy to sneak through the regulation by dividing the whole tusk in the way to produce a piece with the tip and less than 20cm in length, and another piece or “naka-giri” with big size. The statement, “*We can possibly buy your ivory if we could cut the tip of it*” should be beyond an irony to the MoE interpretation and rather, raises a serious concern regarding the internal regulation.

5) Loophole created by the MoE interpretation, which makes law enforcement more difficult

The MoE interpretation which absolutely requires an ivory tusk qualified for registration to be with **the tip** premises that the part of a whole tusk with the tip remained should be regarded as the original whole tusk regardless on how the appearance of the whole tusk changed by the division, so that there is no room for the possessor of the divided tusk to take any registration-related procedure including new registration or receiving an alteration of registration card³⁵⁶.

However, such high-handed interpretation should cause new problems.

Firstly, the premise of the MoE interpretation

³⁵³ Phone survey to ivory buyers No.17 (see 4.4.3)

³⁵⁴ A scene that a craft man is processing an ivory whole tusk is drawn titled as “Horn work” in “Jinrin-kinmou-zui” published in the 3rd year of the Genroku era (1690 A.D.) (Anon. 1997.a).

³⁵⁵ Phone survey to ivory buyers No.27 (see 4.4.3)

³⁵⁶ It cannot be justified to mandate the possessor of the new cut piece produced by division of a whole tusk to take registration-related procedure including new registration or receiving an alteration of registration card without revising the law. The MoE interpretation which regards a part of a whole tusk with the tip and not less than 20cm in length as identical to the original whole tusk would exempt the possessor to take any registration-related procedure. He/she would be just mandated to return the registration card if the part of the whole tusk with the tip is less than the prescribed size.

should make the identification more difficult than ever between a whole tusk targeted by law enforcement action and other registered whole tusk traded in the legalized domestic ivory market.

The police should prove the unregistered tusk in question to be nothing like other registered tusks based on its appearance because the only tool for identification provided is the photos received at the time of registration³⁵⁷. The MoE interpretation, however, makes the identification more difficult than ever because it would judge the identity of tusks regardless of its appearance (e.g. in the case of identification between a tusk found with 20 cm in length and a tusk on the photos received at the time of registration originally reported as with 1m in length).

Secondly, the premise of the MoE interpretation should make the reusing of registration card prepared for a registered tusk for trading illegal ivory easier than ever.

According to the MoE interpretation, the registration card doesn’t need to be returned and does remain in his hand as far as the tusk is to be with the tip and no less than 20 cm in length. It means, it can happen that the owner of the tusk does not need to return the registration card even though he/she divided it. Therefore, return of registration should logically decrease than ever. Such situation would reduce the risk of detection of reusing a registration card as follows.

Under the existing law and regulation, MoE is not authorized to monitor the registered ivory tusks, and cannot acknowledge the possession and division of those tusks after registration³⁵⁸. Therefore, even if the rate of returning registration card decreased because more ivory owners have attempted to keep registration card in hand, MoE has no choice but to regard the reason for decreasing as mere increasing such division producing a tusk with the tip and no less than 20cm in length, and overlook the ongoing problem underneath the surface.

Thus, MoE interpretation which intends to register an ivory tusk with the tip and size not less than 20cm in length without reforming existing law and regulation would create a new loophole making law enforcement action difficult³⁵⁹.

³⁵⁷ See 4.2.5 1)

³⁵⁸ The scope of the on-the-spot inspection (LCES Article 33 Par.1 which will be applied Mutatis Mutandis Pursuant to Article 33-5) against a notified traders on business activities in connection with a designated internationally endangered species is limited to “designated body parts, etc.” or ivory except for whole tusk. See 5.1.4

³⁵⁹ The Bill for amendment to LCES 2017 mandates registered business operators to prepare a manifest for the ivory

6) Conclusion

The shape of ivory tusks found in Japan's domestic ivory market is various depending on the ways of division. Furthermore, as seen in the past large-scale ivory smugglings, attempts to smuggle divided pieces of ivory tusks and enter them into the domestic ivory market are evident. If the laws and regulations continue to limit their scope on ivory tusk to one "maintaining its whole shape" under the situation above, the effect of regulation remains meaningless.

Some might argue that the range of ivory to be regulated should be limited to whole tusks because only the body parts of individuals "readily recognizable"³⁶⁰ should be regulated to trade. However, such argument should not be justified considering the popularity of various shapes of divided ivory tusks apart from one with shape as "creating slight arch and tapering off from the base to the point" among the general consumers due to flourishing internet trade in recent years.

Furthermore, determination of the range of regulated ivory tusks by a shape like "maintain its whole shape" would raise chaotic argument inevitably with regard to what degree of division would damage the "whole shape" because it's extremely difficult to set an objective and clear criteria for the judgement. It means that determination of range of an ivory tusk to be regulated by a simple concept of shape is inappropriate.

Japan's existing laws and regulations excluding all ivory tusks "not maintaining its whole shape" are also contradictory to The CITES Resolution Conf.10.10 revised at CoP16 in 2013³⁶¹ which urged the relevant Parties to "regulate the domestic trade in raw and worked ivory"³⁶².

In conclusion, the internal trade regulation should be applied to all ivory cut pieces in principle³⁶³.

cut piece acquired by dividing a cut piece which he/she obtained legally, and he/she has to transfer or deliver it with the manifest together (see 7.4.2).

The intent is considered to secure the traceability with regard to the process on division and trade of cut pieces which are out of the scope of the trade regulation.

However, the cut pieces produced by division prior to implementation of the Bill are out of scope of the mandate above. Furthermore, identification of each cut piece necessary for tracking the process of division and trade should be made only by the description on the manifest. Thus, there are big questions on the effectiveness of securing traceability of cut pieces by the manifest scheme (see 7.4.2 4)).

360 LCES Article 6 Paragraph 2 (c)

361 The revised version of Conf.10.10 at CoP17 adhered the provision as it is.

362 See 6.2

363 When applying the internal trade regulation (prohibition of transfers, etc., and advertisement and display for the purpose of sales or distribution in principle) to most of cut pieces, it should be discussed which part of them is to be allowed as the subject of registration for internal trade. The

cut pieces subject to registration can be traded if they would be successfully registered while the others are to be totally prohibited to trade. This discussion should be concluded in the context of "narrow exemptions to this closure for some items" prescribed in the CITES resolution on closure of domestic ivory markets (see 8.3).