

Chapter 6 Japan's compliance with the mandate on taking measures for internal trade controls urged by CITES Resolution Conf. 10.10

6.1 CITES Resolution Conf. 10.10 "Trade in elephant specimens"

The CITES Resolution 10.10 (Rev.CoP17) titled as "Trade in elephant specimens" ("CITES Resolution 10.10" hereinafter) prescribes the measures to be taken by the Parties, the Standing Committee, the Secretariat, etc. with regard to international trade and internal trade in ivory, etc. broadly¹.

The paragraphs of the resolution in direct connection with specific measures for internal trade controls to be compiled by the Parties are the 6th paragraph and the 2nd paragraph.

The measures prescribed are mandated to the Parties to take in parallel with the measures for closure of domestic ivory markets².

6.1.1 The 6th paragraph of CITES Resolution Conf. 10.10

The full text of the 6th paragraph of CITES Resolution 10.10 is as follows.

6. FURTHER URGES those Parties in whose jurisdiction there is an ivory carving industry, a legal domestic trade in ivory, an unregulated market for or illegal trade in ivory, or where ivory stockpiles exist, and Parties designated as ivory importing countries, to ensure that they have put in place comprehensive internal legislative, regulatory, enforcement and other measures to:

- a) regulate the domestic trade in raw and worked ivory;
- b) register or license all importers, exporters, manufacturers, wholesalers and retailers dealing in raw or worked ivory;
- c) introduce recording and inspection procedures to enable the Management Authority and other appropriate government agencies to monitor the movement of ivory within the State, particularly by means of:
 - i) compulsory trade controls over raw ivory; and
 - ii) comprehensive and demonstrably effective stock inventory, reporting, and enforcement systems for worked ivory;
- d) engage in public awareness campaigns, including supply and demand reduction; drawing attention to existing or new regulations concern-

ing the sale and purchase of ivory; providing information on elephant conservation challenges, including the impact of illegal killing and illegal trade on elephant populations; and, particularly in retail outlets, informing tourists and other non-nationals that the export of ivory requires a permit and that the import of ivory into their state of residence may require a permit and might not be permitted; and

- e) maintain an inventory of government-held stockpiles of ivory and, where possible, of significant privately held stockpiles of ivory within their territory, and inform the Secretariat of the level of this stock each year before 28 February, inter alia to be made available to the programme Monitoring the Illegal Killing of Elephants (MIKE) and the Elephant Trade Information System (ETIS) for their analyses, indicating the number of pieces and their weight per type of ivory (raw or worked); for relevant pieces, and if marked, their markings in accordance with the provisions of this Resolution; the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year

The origin of the existing 6th paragraph is found in the original text of CITES Resolution 10.10 adopted at CITES CoP10 in 1997. It has been repeatedly revised and evolved in the current text at CoP17 held in 2016. Nonetheless, the existing "b)" and "c)"; key sentences as the heart of the paragraph has not been changed in substantial manner and continued as mostly they were up to today³.

³ The history of change to the 6th paragraph of CITES Resolution 10.10 is as follows.

•The existing 6th paragraph was established in the original Resolution 10.10 in 1997 as titled "Regarding control of internal ivory trade". The paragraph was comprised of only two sentences of "a)" and "b)" prescribing specific measures for the control in the resolution. They are the origin of the existing sentences "b)" and "c)", and have already formed the heart of the current paragraph.

CITES Resolution Conf. 10.10 (in 1997)

"Regarding control of internal ivory trade"

a) register or license all importers, manufacturers, wholesalers and retailers dealing in raw, semi-worked or worked ivory products; and

b) introduce recording and inspection procedures to enable the Management Authority and other appropriate government agencies to monitor the flow of ivory within the State, particularly by means of:

i) compulsory trade controls over raw ivory; and

ii) a comprehensive and demonstrably effective reporting and enforcement system for worked ivory

<https://www.cites.org/sites/default/files/eng/cop/10/E10-Res.pdf>

•The paragraph was revised at CoP12 in 2002 and the origin of the existing sentence "d)" was added.

https://www.cites.org/sites/default/files/eng/cop/12/source_res.pdf

¹ <https://cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>

² See 1.2

6.1.2 The 2nd paragraph of CITES Resolution 10.10

The full text of the 2nd paragraph of CITES Resolution 10.10 is as follows.

Regarding marking

2. RECOMMENDS that whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight, be marked by means of punch-dies, indelible ink, or other form of permanent marking, using the following formula: country-of-origin two-letter ISO code, the last two digits of the year / the serial number for the year / and the weight in kilograms (e.g. KE 00/127/14). It is recognized that different Parties have different systems for marking and may apply different practices for specifying the serial number and the year (which may be the year of registration or recovery, for example), but that all systems must result in a unique number for each piece of marked ivory. This number should be placed at the ‘lip mark’, in the case of whole tusks, and highlighted with a flash of colour

The 2nd paragraph: “Regarding marking” has not been substantially changed while some explanatory languages were just added at CoP16 in 2013⁴.

The response to the Resolution and the non-compliance with measures urged there by GoJ are discussed further.

6.2 Regulating the domestic trade in “raw and worked ivory”

The 6th paragraph, a) of CITES Resolution 10.10 urges the related Parties to “regulate the domestic trade in raw and worked ivory”.

As aforementioned⁵, the subject of internal ivory trade regulation in Japan is limited to a whole tusk. Thus, raw and worked ivory without maintaining the whole shape are entirely exempted from the regulation.

Moreover, even the internal trade regulation/registration scheme applied to a whole tusk itself faces serious loopholes as follows.

- Laundering of unregistered whole tusks on the basis of fraudulent registration cannot be prevented because objective evidence is not required for confirming that the tusk was acquired before the ivory ban⁶.
- Laundering unregistered ivory tusks by diverting the registration cards prepared for tusks already divided or using one fraudulently obtained for fake ivory tusks cannot be prevented because a physical inspection of ivory tusks for neither authenticity, identification nor marking is required⁷.
- Laundering unregistered ivory tusks by ivory manufacturers, etc. cannot be prevented because unregistered whole tusks can be legally possessed⁸.

Thus, Japan is considered to be non-compliant with CITES Resolution 10.10, Paragraph 6, a).

6.3 Registering or licensing all traders dealing in raw or worked ivory

CITES Resolution 10.10, Paragraph 6, b) urges the related Parties to register or license all importers, exporters, manufacturers, wholesalers and retailers dealing in raw or worked ivory.

It is important that the resolution particularly refers to “register or license”.

As aforementioned⁹, the existing notification scheme of “business activity in connection with a designated internationally endangered species, etc.” is in both name and reality not applicable to a “register or license” scheme¹⁰.

<https://www.cites.org/sites/default/files/eng/cop/12/doc/E12-20-1.PDF>

•The next revision was made to the paragraph at CoP16 in 2013. The whole paragraph was more organized by adding a new sentence of “a)”, and clarification and modification of the language. Moreover, “d)” received a major revision, a new sentence of “e” was added. Thus, the paragraph was developed to almost the existing contents.

<https://www.cites.org/eng/res/10/10-10R16.php>

•Apart from an additional clause included in “e)”, which emphasizes the utility of the information on the ivory stock for MIKE/ETIS analysis, no substantial change was made to the paragraph at CoP17 in 2016 but a few pro forma revisions were made as follows.

Firstly, “FURTHER” was added prior to “URGES”. It is due to inserting the new “5th” paragraph ahead of the (6th) paragraph, which urges those Parties that have not closed their domestic ivory markets for commercial trade in ivory to implement the above recommendation as a matter of urgency”.

Secondly, a phrase in the preceding sentences of the 6th paragraph of “Parties that may be designated as ivory importing countries,” was corrected as “Parties designated as ivory importing countries”.

4 With regard to the details of marking, it is supposed to respect the methodology taken by each Party.

5 See 4.2.1 & 4.8.5

6 See 4.8.2

7 See 4.8.3

8 See 4.8.4

9 See 5.5.2

10 The Bill for amendment to LCES 2017 designated the business dealing with ivory cut pieces/products as one to be registered to the administrations (to be implemented by

Thus, Japan is considered to be non-compliant with CITES Resolution 10.10, Paragraph 6, b).

6.4 Recording and inspection of “raw ivory” by means of compulsory trade controls

CITES Resolution 10.10, Paragraph 6, c), i) urges the related Parties to introduce recording and inspection procedures to monitor the internal movement of “raw ivory” which includes most of whole tusks¹¹ and cut pieces¹² without carving, shaping or processing (just polished pieces are included in raw ivory) by means of a compulsory trade control.

However, according to Japan’s law and regulation controls;

- While whole tusks without registration in advance cannot be transferred, and the transferee is mandated to notify the fact of the transfer, etc. to the authority¹³, it is impossible to monitor the internal movement of them because neither identification nor marking is required¹⁴.
- Cut pieces are entirely exempted from the internal trade regulation, so are merely a subject of the supervisory scheme over the business¹⁵.

Thus, Japan is considered to be non-compliant with CITES Resolution 10.10, Paragraph 6, c), i).

6.5 Recording and inspection of “worked ivory” by means of comprehensive and demonstrably effective stock inventory, reporting, and enforcement systems

CITES Resolution 10.10, Paragraph 6, c), ii) urges the related Parties to introduce recording and inspection procedures to monitor the internal movement of “worked ivory” by means of a comprehensive and demonstrably effective stock inventory, reporting, and enforcement systems.

According to existing law and regulation of Japan, the notified business operators shall enter the matters they have confirmed, obtained information and other given matters in ledgers and shall preserve them. The authorities may seek reports from the notified business operators and may enter the business facilities and inspect documents, etc.. The authorities, where those notified operators have violated the matters to be adhered to, may issue instructions to take necessary actions, and may order those who violated the instruction to suspend the whole or a part of their transfer or delivery businesses¹⁶.

However, the authorities collect a copy of the ledgers just once a year from manufacturers and once two years from wholesalers and retailers. Furthermore, the copies would be submitted paper-based, and traceability-related information on each trade recorded in the ledgers are never compiled into a database.

Thus, even the basics for monitoring the traceability are not feasible due to lack of information collection and analysis¹⁷.

Consequently, it is almost impossible within Japan’s domestic ivory market to supervise the movement of cut pieces included in “worked ivory”¹⁸ and all ivory products¹⁹. So, it is simply unrealistic that Japan’s controls would meet “comprehensive and demonstrably effective stock inventory, reporting, and enforcement systems”.

Thus, Japan is considered to be non-compliant with CITES Resolution 10.10, Paragraph 6, c), ii).

June, 2018). See 7.4.2 about the details.”

11 Only the whole tusks whose whole surface has been carved are included in “worked ivory”. See the following definition in CITES Resolution 10.10 Paragraph 1 “Regarding definitions”.

Regarding definitions

1. AGREES that:

a) the term ‘raw ivory’ shall include all whole elephant tusks, polished or unpolished and in any form whatsoever, and all elephant ivory in cut pieces, polished or unpolished and howsoever changed from its original form, except for ‘worked ivory’; and
 b) the term ‘worked ivory’ shall be interpreted to mean ivory that has been carved, shaped or processed, either fully or partially, but shall not include whole tusks in any form, except where the whole surface has been carved.

12 A cut piece is to be included in “raw ivory” as far as the change to the intact form of it is not more than polishing. On the other hand, carved, shaped or processed one is to be included in “worked ivory”. See the aforementioned definition in CITES Resolution 10.10 Paragraph 1 “Regarding definitions”.

13 See LCES Article 21 Paragraph 5

14 See 4.7.3

15 See 4.2.1, 5.1.1

16 See 5.1.3 and 5.1.4. The business registration scheme introduced by the amendment to LCES 2017 scarcely changed the mechanism of watchdog on the trade. Mandating the manifest is the only novelty, however, it is not a full but a partial mandatory system. Consequently, a cut piece without the manifest pertaining to it is supposed to be traded together with one with the manifest. Such situation makes the effect so dubious to exclude illegal ivory trade from the market. See 7.4.2, 4).

17 See 5.5.3, 1) and 2)

18 An ivory that has been carved, shaped or processed, either fully or partially is to be included in “worked ivory”. See NOTE 11. See also “Terminology of ivory” at the beginning of this report.

19 All ivory products are included in “worked ivory”. See CITES Resolution 10.10 Paragraph 1 “Regarding definition”.

6.6 Engaging in public awareness campaigns including “supply and demand reduction”

CITES Resolution 10.10, Paragraph 6, d) urges the related Parties to engage in public awareness campaigns including supply and demand reduction and several matters.

However, GoJ has not engaged in a public awareness campaign with regard to “supply and demand reduction” at all.

On the contrary, GoJ demonstrates on its website - “Please trade in ivory in accordance with the rule.”²⁰ This seems to claim that manufacturing, selling and buying ivory are OK as long as they are not prohibited by the law and regulation.

The “Public-Private Council for the Promotion of Appropriate Ivory Trade Measures” established by GoJ together with the related businesses seems to have neither plan for encouraging the business to reduce the supply nor for curbing the demand of the consumers at all²¹.

Nevertheless, GoJ launched a campaign to promote registration of unregistered by distribution of posters and PR by local governments nationwide in August, 2017 and intends to continue it for 2 years²². As long as an internal trade in ivory whole tusks is approved based on the registration by LCES, promotion of the registration accordingly means encouraging supply of whole tusks into the market in a positive manner. It would then, by default, promote the demand for ivory. Thus, the result is totally contradictory with the aim of the resolution, where it urges on building awareness for “supply and demand reduction”.

Due to such attitude of GoJ, business sectors tend to neglect the core purpose of reducing ivory supply and demand²³.

Yahoo! Japan, the leading online shopping/auction company, the disclaimer certification reads as follows; “*We only permit legal transactions of ivories in accordance with the Japanese law which*

was enacted to conserve the endangered species”²⁴. It means that there should be no reason to restrict ivory trade as far as it is legalized²⁵.

Thus, Japan is considered to be non-complied with CITES Resolution 10.10, Paragraph 6, d) as far as the public awareness campaign with regard to “supply and demand reduction” is concerned.

6.7 Maintaining an inventory of stockpiles of ivory and informing the level and reason for the change of it to the Secretariat

CITES Resolution 10.10, Paragraph 6, e) urges the related Parties to maintain an inventory of ivory stockpiles, and inform the Secretariat each year of the level of the stock and reasons for any significant changes in the stockpile compared to the preceding year each year before 28 February.

However, the reason was not publicized by GoJ for the extraordinary 150 tons of change in the stockpile found between the figures of cut pieces including scraps reported at SC65 and one at SC66.

6.8 Marking

CITES Resolution 10.10, Paragraph 2 recommends the Parties that whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight, be marked by means of punch-dies, indelible ink, or other form of permanent marking.

However, no such marking has been made in Japan. On the contrary, such marking cannot be forced to the ivory owners under the Japan’s laws and regulations²⁶.

Thus, Japan is considered to be non-complied with CITES Resolution 10.10, Paragraph 2.

6.9 Summary of the discussion

The main points discussed are summarized in Table 6-1.

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

21 See 7.2.3

22 See 4.8.2, 6)

23 Rakuten which had established a major platform for mass sales of ivory just stated in its website as follows until just recent days, “*committed to working with our merchant partners to ensure their businesses are conducted in accordance with all applicable local and international laws and that products available on our e-commerce marketplaces are sourced in an appropriate and legal manner.*” Afterward, Rakuten decided to prohibit their merchants to sell ivory products on “Rakuten Ichiba”. <https://global.rakuten.com/corp/about/governance/compliance.html>

See NOTE 55 of Chapter 2, also.

24 <https://publicpolicy.yahoo.co.jp/2016/01/2918.html>

25 Yahoo! Japan reacted sharply against the response of Rakuten and declared that it does not intend to prohibit sales of ivory products (See Chapter 2, NOTE 55).

26 See 4.8.3, 3)

Table 6-1 Response to Resolution Conf. 10.10 (Rev. CoP17) "Trade in elephant specimens" by the Government of Japan and the problem

Conf. 10.10 (Rev. CoP16) "Trade in elephant specimens"		Response of Government of Japan: Application of the Law for Conservation of Endangered Species (LCES) and other measures	Incompliance of Resolution 10.10 by GoJ	Corresponding section	
The 6th paragraph	a) regulate the domestic trade in raw and worked ivory	<ul style="list-style-type: none"> Whole tusks without registration are prohibited to be traded, or displayed or advertised for the purpose of selling or distributing. 	<ul style="list-style-type: none"> ✓ Cut pieces are not regulated. ✓ Ivory products are not regulated. (Except for the whole tusks with whole carved surface which are still regarded as whole tusks on LCES while those are regarded as Ivory products in the Resolution.) ✓ There are serious loopholes in registration scheme. 	4.8.5 4.8.1	
	b) register or license all importers, exporters, manufacturers, wholesalers and retailers dealing in raw or worked ivory	<ul style="list-style-type: none"> Any person or company who is engaged in businesses of transfers of ivory (except for whole tusks) shall notify in advance to the administrations of their names, addresses, stocks, and the other given matters. 	<ul style="list-style-type: none"> ✓ Ivory traders are not registered nor licenced. Under the existing notification scheme, no legal requirement is imposed to those who intend to start business associated with ivory trade. Instead, they can do it without any official screening after they notify their name, address, volume of stocks, etc.. Neither rejection nor revocation of notificatin is supposed. However, new business registration scheme is to be introduced by June, 2018. 	5.5.2	
	c) introduce recording and inspection procedures to enable the Management Authority and other appropriate government agencies to monitor the movement of ivory within the State, particularly by means of:	<ul style="list-style-type: none"> i) compulsory trade controls over raw ivory ii) comprehensive and demonstrably effective stock inventory, reporting, and enforcement systems for worked ivory 	<ul style="list-style-type: none"> Whole tusks without registration are prohibited to be traded, or displayed or advertised for the purpose of selling or distributing. The transferees of whole tusks are mandated to notify the registration organisation with the information on the transfer. The notified traders of (cut pieces and) ivory products are mandated to confirm the ID of the transferors and the sources of the ivory, and to record the details on each trade including the matters above on a ledger, and keep it. The administrations can collect reports from and conduct on-the-spot inspection to them. The administrations may issue instructions to them to take necessary actions, and may order them to suspend the businesses where they have violated the instructions. 	<ul style="list-style-type: none"> ✓ Active monitoring of the movement of whole tusks is impossible because identification and marking are not supposed. ✓ In terms of cut pieces, merely the same scheme for ivory products are applied. 	4.8.3 4.2.1 5.1.1
	d) engage in public awareness campaigns, including supply and demand reduction; drawing attention to existing or new regulations concerning the sale and purchase of ivory; providing information on elephant conservation challenges, and, particularly in retail outlets, informing tourists and other non-nationals that the export of ivory requires a permit and that the import of ivory into their state of residence may require a permit and might not be permitted	<ul style="list-style-type: none"> Lecture sessions to industry members by an association of ivory manufactures Proactive communications to secondhand dealers Publicity efforts towards industry and travelers Dissemination of information on regulatory regimes, status and government position on ivory trade through government webpages 	<ul style="list-style-type: none"> ✓ Awareness of "supply and demand reduction" is totally ignored. 	4.8.2, 6)	
	e) maintain an inventory of stockpiles of ivory, and inform the Secretariat of the level of this stock each year before 28 February, indicating the number of pieces and their weight per type of ivory (raw or worked); for relevant pieces, their markings the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year	<ul style="list-style-type: none"> The figure of stockpiled cut pieces was reported by GoJ to SC 66 as 54 tons at the times of Feb. 1 and Sep. 1, 2015 while it had been reported at SC 65 as 204 tons at the time of May 8th, 2014. 	<ul style="list-style-type: none"> ✓ GoJ has not been publicized the reason for the extraordinary 150 tons of change in the stockpile. 	5.4.2 2) 5.5.3 2)	
	The 2nd Paragraph	Mark whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight by means of punch-dies, indelible ink, or other form of permanent marking	None	<ul style="list-style-type: none"> ✓ No marking is mandated by LCES, so it has never happened. 	4.8.3

6.10 Conclusion

It is obvious that Japan is considered to be almost non-compliant with CITES Resolution 10.10 (Rev.CoP17).

Furthermore, considering the sentence b) and c) in the Paragraph 6 of the resolution have not been substantially changed since the original resolution was adopted as well as the Paragraph 2 of it, which are the heart of specific measures for controls on internal ivory trade prescribed. In

this regard, Japan is becoming more and more non-compliant to Resolution 10.10 when compared to almost 10 years when the original Resolution came into effect.