

## Chapter 7 Perspective of tightening controls of ivory trade by Government of Japan in the wake of the CITES resolution on closure of domestic ivory market

### 7.1 Japan's policy on maintaining and promoting its domestic ivory market

#### 7.1.1 Existing basic policy

METI has been running a pro-trade policy which states, “while the government made a decision to prohibit the international trade in hawksbill turtle and elephant's ivory for their conservation and serious compliance with CITES, it is required as the responsibility of the government to establish a captive breeding technique<sup>1</sup> and win the down-listing of the species<sup>2</sup> so that the tortoise shell and ivory industries can be put on a road to secure the stable supply of the material, which have suffered difficulty on securing the materials, less scale-merit and inflexible manufacturing technique for being transferred to other industry.”<sup>3</sup>The above mentioned policy adopted by METI is considered as one of the prioritized policy in the entire government with regard to CITES. Based on this clause, GoJ has continued to seek resumption of international ivory trade to secure the material for the industry under the cover of the logic directed at international community as “promotion of ivory trade to enhance elephant conservation and regional development”<sup>4</sup>.

#### 7.1.2 The history of tightening controls of domestic ivory trade and the triggers for the actions

GoJ, in principle, and as a Party, should adhere to the decisions adopted by CITES. On the contrary, GOJ has actually put its policy goal on securing supply of the material for its domestic industry since the international ivory ban. Recognizing the dilemma that tightening controls

over ivory trade may increase the burden on the ivory industry so that it may contradict with promotion of the industry, GoJ has been negative to tightening the controls seriously. All domestic decisions where stricter control of domestic ivory trade controls adopted were triggered by an expectation that Japan may receive the benefit of resuming international ivory trade<sup>5</sup>.

Table 7-1 shows the process and trigger of legislation to the laws and regulations on controls of domestic ivory trade<sup>6</sup>.

The table suggests two important matters.

Firstly, in all the cases, the decision by GoJ to direct action for tightening the controls over domestic ivory trade were not made until it ensured that the decision on resumption of ivory trade by CITES was directly related to its bringing control of its internal ivory markets.

Secondly, as shown in 1998 amendment and 2004 amendment, GoJ has not touched the internal trade regulation/registration scheme, and confined to strengthening supervisory scheme on business activities (expanding the scope of the form of the ivory dealt in the business activities, which is to be accompanied by expansion of business type of ivory traders to be supervised),

5 It is obvious that the amendment to LCES in 1994 (implemented in 1995) was with a short-term mission particularly to realize lifting the international ivory ban from the commitments by officials of the competent administrations and ivory traders at the time.

An official of MITI (now “METI”) in charge of the amendment wrote in a hanko business magazine (Hosoda, 1994) as “The Ministry of International Trade and Industry well understands that resumption of international ivory trade based on the concept of sustainable use is the long-cherished wish of the business community.” “Internal trade control of ivory within Japan has become needed as the condition of lifting the international ivory ban. The purpose of introduction of the regulation by LCES is to meet such international expectations, therefore your business community should be advised to realize the effect well and cooperate with implementation of the regulation positively in order to realize your long-cherished wish”. The article also exposed that establishment of ivory products certification scheme (see 5.2) has roots in the request from the business community (ibid.).

Incidentally, an ivory business player commented as “Whatever registration scheme or partially regulation, a legal response should be presented to the coming session of the Diet. By doing so, we can see the light about the decision at CITES meeting. If we miss the current Diet session, we will see the end of our hope for lifting ivory ban for 2 years” (Anon., 1994).

6 Incidentally, a procedural regulation on advertisement of the designated “internationally endangered species” mainly targeting internet trade was introduced in LCES together with tightening criminal penalty against prohibition of trade without registration in 2014 (promulgation: 12th June, 2013, entire implementation: 1st June, 2014). But, the amendment of the law and regulation did not aim ivory exclusively but the entire “internationally endangered species”.

1 This part can be read as referring to hawksbill turtle.

2 This part can be read as referring to both hawksbill turtle and African elephant.

3 METI, 2006, etc.

4 Because “Japan recognizes that commercial trade may be beneficial to the conservation of species and ecosystems, and to the development of local people when carried out at levels that are not detrimental to the survival of the species in question.”

SC66 Inf.24, “VIEW OF JAPAN REGARDVIEW OF JAPAN REGARD VIEW OF JAPAN REGARDVIEW OF JAPAN”

Furthermore, in terms of “a plan of GoJ to contribute to elephant conservation in range states”, GoJ mentions “it is possible to contribute to conservation in them through economic activities once international ivory trade would be successfully resumed.”

METI Website

[http://www.meti.go.jp/committee/kenkyukai/seizou/zouge\\_torihiki/003\\_giji.html](http://www.meti.go.jp/committee/kenkyukai/seizou/zouge_torihiki/003_giji.html)

Table 7-1 History of amendment of laws and regulations for tightening internal ivory trade controls

Date of implementation of the amendment (Date of promulgation of the amendment)	Points of the amendment	Legal basis of change on internal trade controls	Background of the amendment
28 June, 1995 (29 June, 1994)	<p><u>Applying internal trade regulations and registration scheme to ivory</u></p> <ul style="list-style-type: none"> <li>It is prohibited to transfer and receive the transfer of an ivory whole tusk, and to exhibit it for a sale or distribution purpose.</li> </ul> <p><u>Introduction of supervisory scheme on business activities</u></p> <ul style="list-style-type: none"> <li>Those engaged in the business accompanied with the trade in ivory cut pieces (1kg or more in weight and 20cm or more in size) shall provide a notification of certain informations to the authorities. Then after, those notified traders shall confirm the information on their trade partners and obtain the information of the source of the ivories, and enter those information, etc. on the ledger and maintain it.</li> </ul> <p><u>Introduction of certification scheme of ivory products</u></p>	<p>Amendment of the original "Law for Conservation of Endangered Species of Wild Fauna and Flora" (LCES), 5th June 1992, Law No. 75 which had been implemented in 1st April, 1993</p> <p>Amendment of the original Cabinet Order to implement LCES, 10th February 1993, Cabinet Order No. 17</p>	<p>In light of withdrawal of the proposals by the proponent countries of Southern Africa requesting to lift the international trade ban at CITES CoP8 held in Mar. 1992, GoJ and ivory industry recognized it important to prepare a control over internal ivory trade in importing countries to achieve lifting the ban in the future, then GoJ developed a new legal system for the controls to prepare for CoP9 to be held in Nov. 1994<sup>(1)</sup>.</p>
18 March, 1999 (28 April, 1998)	<p><u>Expansion of supervisory scheme over business activities</u></p> <ul style="list-style-type: none"> <li>Business activities accompanied with the trade in any size of cut pieces are included in the scope of the supervision (removal of limitation of weight and size of the cut pieces).</li> <li>Business activities accompanied with the trade in ivory hanko are included in the scope of the supervision, which includes manufacturing, wholesaling and retailing.</li> </ul>	<p>Amendment of the Cabinet Order to implement LCES</p>	<p>Taking measure to rectify the deficiencies of the controls over internal ivory trade in Japan identified by the CITES Panel of Experts on the African Elephant in Feb. 1997<sup>(2)</sup>, which was one of the conditions CITES CoP10 held in Jun. 1997 had put on the decision to allow the one-off sales of ivory stockpile<sup>(3)</sup>.</p>
1 October, 2004 (2 July, 2004)	<p><u>Expansion of supervisory scheme over business activities</u></p> <ul style="list-style-type: none"> <li>Business activities accompanied with the trade in any ivory product are included in the scope of the supervision (removal of limitation of products), which includes manufacturing, wholesaling and retailing.</li> </ul>	<p>↑</p>	<p>Taking measure to comply with the controls over internal ivory trade in Japan mandated by CITES Resolution 10.10 (Rev.CoP12)<sup>(4)</sup>, which was one of the conditions CITES CoP12 held in Nov. 2002 had put to allow the one-off sale of ivory stockpile before the CITES Secretariat verification mission visits Japan<sup>(5)</sup>.</p>

1 Japan General Merchandise Importers' Association, 1993  
 2 CITES Decision 10.1 of the CoP  
 3 CITES SC41.4 "Measures Taken by the Government of Japan in Response to the Report of the Panel of Experts"  
 4 Amendments to Appendices I and II of the Convention adopted by the Conference of the Parties at its 12th meeting [https://www.cites.org/sites/default/files/eng/cop/12/Adopted\\_Amendments.pdf](https://www.cites.org/sites/default/files/eng/cop/12/Adopted_Amendments.pdf)  
 5 CITES SC54 Doc.26.1 (Rev.1)

Considering those points, it is anticipated that GoJ would not tighten the controls over ivory trade unless it is motivated by an incentive of resuming international ivory trade. Particularly, it is unlikely that the internal trade regulation / registration scheme would be tightened. It may be because such tightening would make procurement of ivory whole tusks within the country (required by ivory industry for manufacturing) difficult<sup>7</sup>.

### 7.1.3 Interim conclusion

The basic policy of Japan with regard to ivory trade has consistently focused on promoting procurement of material for domestic ivory industry after international trade ban. It clearly reflects the history of strengthening internal trade control of ivory. It had not taken place until a specific incentive for resuming international ivory trade was given. Furthermore, the realized strengthen-

ing just focused on the supervisory scheme over business activities, and the tightening internal trade regulation/registration scheme has been avoided because it conflicted with the promotion of material supply for ivory industry.

## 7.2 Responses of GoJ to the move of the overseas seeking closure of domestic ivory market

### 7.2.1 Backlash to the overseas attention to Japan's problem on ivory trade

EIA announced the results of the phone survey conducted with ivory traders in December 2015<sup>8</sup>. It also exposed the results of the phone survey with JWRC (which is responsible for ivory registration-related affairs) at SC 66 In January 2016<sup>9</sup>. The EIA report shows serious problems of Japan's controls over internal ivory trade. Thus, MoE was driven to the corner to serve a written warning to

7 See Note 294 of Chapter 4

8 See 4.4.3  
 9 See 4.5.3

JWRC for its inappropriate operation of registration<sup>10</sup> for the first time since the implementation of the ivory registration scheme.

GoJ has not responded specifically to the move by other countries seeking closure of domestic ivory market started since 2015 as the major target of criticism to ivory consuming was directed towards China. But, after knowing that Japan has been targeted, it set against the criticism and started a publicity to justify its ivory trade policy and effectiveness of its controls over ivory trade since around the beginning of 2016.

MoE released an article as “FAQ regarding ivory trade” on its webpage titled “Trade ivory in complying with the rules!”. The FAQ details as follows<sup>11</sup>.

“It is groundless, therefore, to point out that having lawful ivory/ivory products trade allowed within Japan is contributing to elephant poaching or ivory smuggling abroad.”

“The Japanese government does not consider that prohibiting domestic trade in ivory, including legal commercial trade, could contribute to conservation of elephants. It is because we believe that the revenues obtained from legal trade will contribute to elephant conservation in range states, and that the prevention of illegal trade and thorough legal trade control are more important.”

## 7.2.2 Launch of the “Public-Private Council for the Promotion of Appropriate Ivory Trade Measures”

In May 2016, the “Public-Private Council for the Promotion of Appropriate Ivory Trade Measures” (hereinafter referred to as the “Council”) was established, which “serves as a focal point of expertise from a wide variety of stake holders to further ensure thorough implementation of legal and administrative measures and to raise public awareness both within Japan and abroad of the various issues on ivory trade”<sup>12</sup>. The said “public awareness both within Japan and abroad” means to disseminate the existing ivory trade policy, and the efforts for and achievement of controlling

ivory trade in order to justify them<sup>13</sup>.

The allowed participants to the Council include the relevant divisions of GoJ<sup>14</sup>, “Japan Federation of Ivory Arts and Crafts Associations” (referred as “JIA” hereinafter), an industry groups of hanko retailers, an industry groups of hanko wholesalers, Internet trade businesses including Yahoo Japan Corporation, Rakuten, Inc. and DeNA Co., Ltd.<sup>15</sup>, industry groups of telecommunications and TRAFFIC. Two academic experts<sup>16</sup> who have consistently advocated Japan’s ivory policy since the international ivory ban were also invited to attend. MoE, METI, JIA and Yahoo act as the secretariat of the Council<sup>17</sup>.

The background statement by the Council paid attention to the recent international trend and mentioned that some countries are becoming critical of even legal domestic markets of ivory and ivory products, in which context making some Parties of the CITES to submit draft proposals urging total closure of domestic trade in ivory and ivory products at the Conference of the Parties (the under is put by the author)<sup>18</sup>. As seen above, the Council demonstrated a sense of caution to the movement encouraging closure of domestic ivory market.

One of the most-watched points of the outcome from the discussion at the Council was how GoJ can justify the effectiveness of Japan’s controls over ivory trade, more specifically, whether it intends to tighten the controls by an amendment of laws and regulations, or limit itself to improve the implementation effort by the concerned parties. In consequence, the secretariat of the Council proposed only “thorough implementation of the appropriate law and regulation. The details of the decisions are as follows:

- i) Thorough implementation of the whole tusk registration scheme and further public awareness raising on the registration scheme;
- ii) Thorough implementation of the rules of the supervisory scheme applied to entities intending to engage in ivory business activities; and

<sup>10</sup> See 4.6.2 1)

<sup>11</sup> See MoE website: [http://www.env.go.jp/nature/kisho/zougetorihiki/FAQ\\_on\\_ElephantIvory\\_JP.pdf](http://www.env.go.jp/nature/kisho/zougetorihiki/FAQ_on_ElephantIvory_JP.pdf)

<sup>12</sup> See METI website: [http://www.meti.go.jp/committee/kenkyukai/external\\_economy.html](http://www.meti.go.jp/committee/kenkyukai/external_economy.html)

The meeting of the Council has been held in 24th May (the 1st meeting), 25th July (the 2nd meeting) and 2nd November (the 3rd meeting) in 2016 (at the time of the end of February, 2017).

<sup>13</sup> See the measures for “Official information provision” described in the Council report (see 7.2.3)

<sup>14</sup> Ministry of the Environment (MOE), Ministry of Economy, Trade and Industry (METI), National Police Agency (NPA) and Ministry of Foreign Affairs (MOFA) .

<sup>15</sup> The controlling company of “Mobaoku”, an Internet auction site (see 2.3.2)

<sup>16</sup> Dr. Nobuo Ishii (Tokyo Woman’s Christian University) and Dr. Yohiso Kaneko (Iwate Prefectural University)

Both of them have consistently contributed to promoting pro-ivory trade policy by Japan since the ban of international ivory trade (Ishii, 2016, Kaneko, 2016).

<sup>17</sup> See Note.11

<sup>18</sup> Ibid.

iii) Ensuring appropriate ivory trade in e-commerce market.”

After some discussion as to whether consideration over internal trade regulation is necessary or not, an agreement has been reached to progress discussions on above-mentioned items, and not to discuss about tightening the regulation by amendment of the laws and regulations<sup>19</sup>.

At the second meeting, the items to be addressed by the Council were reformed as follows;

i) dissemination of the information, ii) internal trade control, iii) import / export control<sup>20</sup> and iv) internet trade<sup>21</sup>. Tightening the controls by amendment of the laws and regulations were not brought to the decision table.

### 7.2.3 Measures announced prior to CoP17 for strengthening ivory trade controls

A Council report<sup>22</sup> was prepared after two meetings and was published on September 16th, 2017 - close to CITES CoP17. It was distributed as an information document through CITES website during CoP17<sup>23</sup>.

In the press release announcing the publication of the report, GoJ commented that “an appropriate trade in ivory and their products should be secured”<sup>24</sup>, and assured Japan’s unwavering commitment to resolve or maintain Japan’s domestic ivory market. In the light of the position above, it announced that the Council will actively address the following items, etc. by both public and private sectors<sup>25</sup>.

#### Controlling domestic ivory trade

##### •No compromise to actions against illegal business operators [MOE, METI]

If, as a result of the on-site inspections, violations of LCES by the business operators are found, strict measures should be taken such as the implementation and official announcement of administrative punishments (instruc-

tions, suspension of business) as necessary.

##### •Proactive communications to secondhand dealers [MOE, METI]

LCES should be thoroughly informed to the business operators of second hand dealings, the registration of ivory and filing of business operators should be promoted, and the trade in non-registered ivory, etc. should be prevented.

##### •Lecture sessions to industry members [Japan Federation of Ivory Arts and Crafts Associations]

Lectures should be held with the staff from the authorities, etc. as lecturers, in order to increase the awareness of its members on legal compliance<sup>26</sup>.

##### •Publicity efforts on certified ivory product marks [MOE, METI]

Further efforts to promote certified ivory product marks as stipulated under LCES towards consumers.

##### •Eliminating illegal e-commerce [Platform providers, MOE, METI]

Effective measures to be taken including voluntary online patrol, elimination of illegally placed items, and banning of exhibitors that tout overseas shipping.

#### Import and export control

##### •Publicity efforts towards industry and travelers [METI, MOF]

Customs brokers, logistics operators, and relevant operators urged to thoroughly inform exporters and travelers to make sure that they fully understand the in-general ban on ivory and ivory-product exports.

##### •Cooperation with regulatory authorities of other countries such as Chinese custom authorities [METI, MOF]

Bearing this in mind, the Government of Japan should promote information sharing with the Chinese customs authorities and management authorities of CITES, and strengthen border control based on the information.

#### Official information provision

##### •Dissemination of information on regulatory regimes, status and government position on ivory trade through government webpages [MOE, METI, MOFA]

<sup>26</sup> The lecture was held by JIA co-hosted by METI and MoE in 27th January, 2017.

The participants were supposed to be ivory manufacturers (notified business operators or someone intending to notify the business in future). The program includes international situation about ivory trade, situation of Japan’s domestic ivory market, management of the trade in ivory/ivory products by the business operators, etc..

See METI Website:  
<http://www.meti.go.jp/press/2016/01/20170106002/20170106002.html>

<sup>19</sup> See the minutes of the 1st meeting of the Council:  
[http://www.meti.go.jp/committee/kenkyukai/external\\_economy/zouge\\_torihiki/001\\_giji.html](http://www.meti.go.jp/committee/kenkyukai/external_economy/zouge_torihiki/001_giji.html)

<sup>20</sup> The reason why import / export control which had not been included in the items to be addressed at the 1st meeting was raised at the 2nd meeting may be that GoJ tried to respond to the point raised in the ETIS report prepared by TRAFFIC (CITES CoP17 Doc.57.6 (Rev.1)) Annex, which referred to illegal export in ivory from China to Japan.)

<sup>21</sup> See the minutes of the 2nd meeting of the Council:  
[http://www.meti.go.jp/committee/kenkyukai/external\\_economy/zouge\\_torihiki/002\\_giji.html](http://www.meti.go.jp/committee/kenkyukai/external_economy/zouge_torihiki/002_giji.html)

<sup>22</sup> Council, 2016

<sup>23</sup> CITES CoP17 Inf. 57

<sup>24</sup> See METI Website:  
<http://www.meti.go.jp/press/2016/09/20160916005/20160916005.html>

<sup>25</sup> See METI Website:  
<http://www.meti.go.jp/press/2016/09/20160916005/20160916005.html>

The above clauses do not mention strengthening the laws and regulations. The result is attributed to the existing scope of the Council aiming to “further ensure thorough implementation of appropriate legal and administrative measures”.

As a matter of worse, those items demonstrated in the Council report are no more than a conventional operation which should have been executed from the very start. It cannot be called as “further measures”. Furthermore, most of the measures don’t target the right audience or convinced people, but target the people with no knowledge of the laws and regulations. Ironically, taking such measures after 20 years since implementation of the laws and regulations in 1995 suggests an admission of sloppy implementation of them so far. However, now is the time to address the problem by tackling the issue with organized traders who intend to deal with illegal ivory.

In terms of awareness work, the measures just focus on disseminating the knowledge on the existing laws and regulations, and totally ignore “supply and demand reduction”<sup>27</sup>.

#### 7.2.4 Interim conclusion

GoJ emphasizes thorough implementation of appropriate legal and administrative measures in full coordination between public and private sectors through establishment of the “Public-Private Council for the Promotion of Appropriate Ivory Trade Measures together with JIA, Yahoo! Japan, etc.

This approach intends to avoid tightening the laws and regulations as much as possible as it may hinder Japan’s existing ivory trade policy aiming to secure supply of material for ivory industry.

As seen above, GoJ had intended to tide out the storm represented by international moves toward closure of domestic ivory market - retaining the laws and regulations without tightening them.

### 7.3 Interpretation of the resolution on closure of domestic ivory market by GoJ

The 3rd meeting of the Council was held on 2nd November, 2016, about one month after CoP17<sup>28</sup>.

Ministry of Foreign Affairs, Ministry of Economy, Trade and Industry and Ministry of Environ-

ment distributed a report<sup>29</sup> at the meeting and presented an evaluation on the adoption of the resolution on closure of domestic ivory market as follows (the emphasize was put by the author).

- Recognizing that poaching of and illegal trade in African elephants are urgent issue to be addressed by the Parties, and that commercial trade not detrimental to survival of species can contribute to conservation of species and ecosystem, and development of local communities (so-called sustainable use), Japan participated in the discussion on the draft resolution in a constructive manner.
- As the result, an amendment was endorsed, which reflects the view of not only Japan but also the U.S., etc. that the domestic markets to be closed are ones that contribute to poaching or illegal trade.
- It deserves acclaim that the adopted resolution does not intend to recommend the closure of domestic ivory market of Japan, which has been strictly controlled.
- Japan intends to continue its strict control over internal ivory trade.

Incidentally, a Ministry commented about “the plan by the Government of Japan for contributing to elephant conservation in range states” as “Japan can contribute to the conservation in sustainable manner by practicing economical activities if the international trade in ivory is realized in future.”<sup>30</sup>

Thus, GoJ has been pushing the interpretation of the resolution as that Japan’s domestic ivory market is out of scope of the resolution and the result has been accepted by other countries including the U.S. in order to ensure the consistency between the existing policy (future resumption of international ivory trade) and the adoption of the resolution on closure of domestic ivory market at consensus. While it is obvious that Japan’s interpretation is an arbitrary and extremely self-serving one<sup>31</sup>, it should be noted that Japan officially announced Japan’s domestic market is not to be recommended by the resolution to close down.

27 CITES Resolution 10.10 (Rev.CoP17) Paragraph 6, d). Also see 6.6

28 See the minutes of the 3rd meeting of the Council: [http://www.meti.go.jp/committee/kenkyukai/seizou/zouge\\_torihiki/003\\_giji.html](http://www.meti.go.jp/committee/kenkyukai/seizou/zouge_torihiki/003_giji.html)

29 MoFA, METI & MoE, 2016

30 See METI Website: [http://www.meti.go.jp/committee/kenkyukai/seizou/zouge\\_torihiki/003\\_giji.html](http://www.meti.go.jp/committee/kenkyukai/seizou/zouge_torihiki/003_giji.html)

31 See 1.3, 1.4

## 7.4 Consideration for tightening internal trade controls of ivory by GoJ after adoption of the resolution on closure of domestic ivory market

### 7.4.1 Consideration for amendment of LCES

At the third meeting of the ivory council held in November 2016, MoE reported that the working group established by MoE for consideration of amendment of LCES discussed (1) strengthening criminal penalty overall, (2) publicizing the ID applied to the notified business operators, and the Ministry will prepare an amendment of LCES through the process of the “Central Environment Council” and a public comment on the report submitted by CEC<sup>32</sup>.

Incidentally, the Law for Conservation of Endangered Species of Wild Fauna and Flora (LCES) which is the legal basis of the controls of internal ivory trade in Japan<sup>33</sup> is under the 3 years-review after the implementation of the last amendments to LCES in 2013<sup>34</sup>, therefore GoJ should see real window of opportunity by chance to strengthen the trade.

On January 30th, the CEC recommended “Measures to be taken for conservation of endangered species of wild fauna and flora”<sup>35</sup> to the Minister of Environment<sup>36</sup>.

The relevant points to controls over internal ivory trade included in the recommendation are as follows;

- Show the authority of MoE and the registration organization in the statutory form to reject and extinguish a registration if it is found to have been got based on false application;
- Review the criminal penalty against getting illegal registration;
- Mandate notified ivory traders to put their notification ID on their advertisements on internet or whatever;
- Replace the notification scheme to registration scheme for the business activities accompanying by trade in the designated parts of ivory<sup>37</sup> (thus introducing an assessment of the business at the time of registration, renewal procedure of the registration, tightening the criminal penalty,

strengthening management of cut pieces, and obtaining information on the situation of whole tusks owned by the business operators.

### 7.4.2 Proposed Bill for amendments to LCES in 2017

#### 1) Submission of the amendments to the Diet

Considering the recommendation by the CEC, GoJ endorsed a Bill for partially amendments to LCES<sup>38</sup> at the Cabinet<sup>39</sup> and submitted it to the Diet (the House of Representatives) on February 28th, 2017 during the 193rd ordinary session of the Diet<sup>40</sup>. The Bill was endorsed by unanimous vote at the House of Representative on 28th April, subsequently endorsed by unanimous vote at the House of Councillors on 26th May, and promulgated on 2nd June 2017<sup>41</sup> (“The Bill for amendment to LCES 2017” or “amendment to LCES 2017” hereinafter).

#### 2) Summary of the part of the amendments related to controls over internal ivory trade

As aforementioned, the controls over internal ivory trade consist of three pillars including the internal trade regulation/registration scheme, the supervisory scheme on the business activities accompanied by trade in ivory cut pieces/ivory products (“business activities in connection with a designated internationally endangered species”), and the certification scheme for ivory products<sup>42</sup>.

The focus of the Bill for amendment to LCES 2017 for substantial change is mostly limited to the supervisory scheme on the business activities.

In fact, the Bill for amendment to LCES 2017 established a new concept of the “special designated body part, etc.” assumed to be applied to the designated body part, etc. of tusks of Elephantidae (ivory cut pieces and ivory products), defined the business activities transferring or delivering it as the “business activities in connection with special designated internationally endangered species” separately from the existing

32 See the minutes of the 3rd meeting of the Council: [http://www.meti.go.jp/committee/kenkyukai/seizou/zouge\\_torihiki/003\\_giji.html](http://www.meti.go.jp/committee/kenkyukai/seizou/zouge_torihiki/003_giji.html)

33 See 4.1

34 See the Supplement to LCES (12th June, 2013, Law No. 37) Article 7

35 “Measures to be taken to conserve endangered species of wild fauna and flora: Recommendation” (MoE, 2016. O)

36 MoE Website: <http://www.env.go.jp/press/103596.html>

37 Whole tusks are to be exempted. See 4.2.1

38 The Bill for partially amendments to the Law for Conservation of Endangered Species of Wild Fauna and Flora (Law No. 75 of June 5, 1992), Cabinet Bill No. 33, The 193rd ordinary session of the Diet (20 January - 18 June 2017) (Japanese only)

39 Prime Minister of Japan and His Cabinet Website: <http://www.kantei.go.jp/jp/kakugi/2017/kakugi-2017022801.html>

40 The House of Representatives Website: [http://www.shugiin.go.jp/internet/itdb\\_gian.nsf/html/gian/keika/1DC3AF6.htm](http://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/keika/1DC3AF6.htm)

41 The House of Councillors Website: <http://www.sangiin.go.jp/japanese/joho1/kousei/gian/193/meisai/m19303193033.htm>

42 See 4.1

“business activities in connection with designated internationally endangered species”, and then strengthened the supervision over the business activities.

On the contrary, it barely makes point to change the rest two pillars consisting Japan’s internal ivory trade controls. It is particularly noteworthy that the amendment to the internal trade regulation/registration, which is the core of the entire controls, is shelved<sup>43 44</sup>. This issue will be discussed later<sup>45</sup>.

The points of the Bill for strengthening the supervisory scheme are as follows;

- (i) Applying a business registration scheme instead of the existing business notification scheme, for which non-existence of any reason for refusal of business registration is to be confirmed at the registration and the renewal of it.
- (ii) Securing that all of whole tusks possessed by business operators to have been registered at the time of their business registrations.
- (iii) Mandating registered business operators to prepare a manifest including necessary information concerning the processes, etc. by which the ivory cut piece has been legally obtained when he/she acquired a cut piece by dividing the cut piece obtained, to transfer or deliver the acquired cut piece with the manifest pertaining to it, and to preserve a copy of the manifest when the cut piece for which the manifest has been

43 But, the penalty against false registration was toughened to the same as one against transfer without registration or an imprisonment with work for not more than five years and/or a fine of not more than 5 million yen (US\$ 45,000) (the Bill for amendment to LCES Article 57-2 (a)) while the judicial person shall be punished a fine not more than 100 million yen (US\$ 90,900) (the Bill for amendment Article 65 (a)). Nevertheless, just an increase of the penalty is almost unlikely to deter the fraudulent registration practically (see 4.8.2, 5)).

44 The Bill for amendment to LCES put a refusal of registration in the case of falsehood statement regarding an important matter in the application form (Article 20 Paragraph 5) and a revocation in the case of registration through deception or other wrongful means (Article 22-2) in the statutory form. Nevertheless, those authorities have been technically admitted regardless of such provisions (MoE, 2016. O).

The Bill also prescribes the following matters regarding registration scheme, but those are supposed to be applied not to ivory but to live animals (though those can be applied to ivory if prescribed so in the Ministry Order) (MoE, 2017.a).

•Individual identification: An applicant shall contain a written description regarding the measure taken for the individual identification in the registration form, provided, however, he/she applies it for the individual, body part and product designated by the Ministry Order as one for which individual identification is particularly needed (Article 20 Paragraph 2 (d)).

•Valid period of registration: The registration shall, unless it is renewed every five years, lose its effect by the expiration of the period thereof, but only for the individual, body part and product designated by the Ministry Order as particularly necessary to regularly monitor the situation of the registered individuals, etc. (Article 20-2 Paragraph 1).

45 See 5)

prepared is transferred or delivered.

(iv) A registered business operator who violates the provisions of LCES, etc. may be imposed with a business suspension order or even the revocation of the business registration without any administrative disposition requesting improvement of the operation as a prerequisite.

(v) The penalty against unregistered business activities is seriously toughened.

### 3) Improvement of the supervisory scheme over business activities dealing with ivory cut pieces or ivory products: Details of “business activities in connection with special designated internationally endangered species”

#### Business registration scheme

A person who intends to engage in “business activities in connection with special internationally endangered species” shall receive registration from the Minister of the Environment, etc.<sup>46 47</sup>, and is to be prohibited to trade in ivory cut pieces or ivory products without business registration<sup>48</sup>. The following procedures are provisioned to introduce the business registration scheme:

- The causes for refusal of business registration including the case where the applicant has been sentenced to a fine or severer punishment for the violation of LCES, etc. are provisioned<sup>49</sup>.
- A person who applies the business registration shall attach a document to the application, proving that he has received registrations for all the whole tusks actually possessed by him have been registered<sup>50</sup>.

46 It will be provisioned in the Cabinet Order, but the Minister of Economy, Trade and Industry seems to be likely.

47 The Bill for amendment to LCES Article 33-6, Paragraph 1 The penalty is 5 years imprisonment with work for not more than five year and/or a fine of not more than 5 million yen (US\$ 45,000) (the Bill for amendment Article 57-2 (b)) while the judicial person shall be punished a fine not more than 100 million yen (US\$ 90,900) (the Bill for amendment Article 65 (a)).

48 The Bill for amendment to LCES Article 12, Paragraph 1, the main paragraph and (d)

The penalty is an imprisonment with work for not more than five years and/or a fine of not more than 5 million yen (US\$ 45,000) (the Bill for amendment Article 57-2 (a)) while the judicial person shall be punished a fine not more than 100 million yen (US\$ 90,900) (the Bill for amendment Article 65 (a)).

49 The Bill for amendment to LCES Article 33-6, Paragraph 6

One of the most important registration refusal causes is “A person who has been sentenced to a penalty not lighter than imprisonment without hard labour or sentenced to a fine or a severer punishment for the violation of this Law where five years have yet to elapse since the day on which the execution of the sentence has been completed or the sentence has become no longer applicable”.

50 The Bill for amendment to LCES Article 33-6, Paragraph 3 It is supposed to be provisioned in a Ministry Order about what kind of document is required. In any event, whether all of stocks have been registered or not is supposed to be

- The business registration shall, unless it is renewed every five years, lose its effect by the expiration of the period thereof<sup>51</sup>.
- The Ministry of the Environment, etc. may revoke the business registration when the registered business operator has fallen under the reasons for revocation including violation against LCES<sup>52 53</sup>.

### **Matters to be complied by a registered business operator**

In addition to the matters mandated to an existing notified business operator including confirming the identification of the transferor and obtaining the information on source of the cut pieces or ivory products from the transferor, and recording of the provisioned matters including the confirmed and obtained information as above in a document (ledger) to be preserved, a registered business operator is mandated to display certain matters including business registration ID<sup>54</sup> when he/she intends to display or advertise those ivory.

### **Manifest scheme**

- A registered business operator shall prepare a manifest containing necessary information concerning the processes, etc. by which the ivory cut piece has been obtained when he/she acquires a new designated body part, etc. (cut piece)<sup>55</sup> by dividing the cut piece which had been obtained legally while an existing notified business operator may prepare it

confirmed by the document. Physical inspection is not provisioned.

51 The Bill for amendment to LCES Article 33-10, Paragraph 1

52 The refusal causes are as follows (the Bill for amendment to LCES Article 33-13).

(a) When the person has violated this Law, an order based on this Law or a disposition based on this Law

(b) When the person has received registration by dishonest means

(c) When the person has fallen under any of the items of refusal causes

(d) When the person has made a manifesto containing any false fact

The violation of LCES includes one against prohibition of unregistered whole tusks (LCES Article 12, Paragraph 1, Article 17), thus the offenders are subject to rescission of business registration.

53 The Bill for amendment to LCES Article 33-13

54 The Bill for amendment to LCES Article 33-11. The matters to be displayed except for business registration ID are supposed to be provisioned in the Ministry Order.

55 In terms of the range of designated body part, etc. produced by dividing the original whole tusk or cut piece for which a manifest should be mandated to prepare is prescribed as "limited to one which falls under the requirements to be prescribed in the Cabinet Order (The Bill for amendment of LCES 2017 Article 33-23 Article 1).

While it is obvious that products should be exempted from the range above (the current LCES Article 33-6 Article 1 limits the designated body part, etc. to raw material for manufacturing products), it is also likely some cut pieces under a certain size or weight would be exempted.

when he/she transfers or delivers the cut piece obtained by dividing an obtained cut piece<sup>56</sup>.

In the case a registered business operator transfers or delivers the acquired cut piece to the third party without dividing it, new manifest should not be prepared as in the case of an existing notified business operator. He/she has to transfer or deliver it with the manifest together if it has been prepared for the piece, and do without any manifest if it has not been prepared.

- No person shall prepare a manifest unless the situation falls under any requirement of the law<sup>57</sup>.
- Where the manifest has been prepared, the cut piece shall be transferred or delivered together with said manifest<sup>58</sup>, and the manifest shall be transferred or delivered together with the cut piece to which it pertains<sup>59</sup>. While he/she is mandated to do so as in the case of an existing notified business operator, only the registered business operator is to face potential criminal penalty<sup>60</sup>.
- The business operator shall preserve a copy of the manifest when he/she transfers or delivers the cut piece for which the manifest has been prepared<sup>61</sup>.
- It is not prohibited even for a registered business operator to receive a transfer or delivery of a cut piece without preparation of a manifest for it<sup>62</sup>.

### **Supervisory measures**

- The Minister of the Environment, etc. may order a registered business operator, unlike in the case of the "instruction" given to an existing notified business operator, on not only the matters to be complied by a registered business operator but also the matters related to general compliance of the provisions of LCES ("administrative order on taking measures")<sup>63</sup>.
- The Minister of the Environment, etc. may revoke

56 The Bill for amendment to LCES Article 33-23 Paragraph 1  
The penalty is an imprisonment with work for not more than 6 months or a fine of not more than 500,000 yen (US\$4,545) (the Bill for amendment Article 59 (d)).

The same penalty is provisioned for false statement in the manifest (the Bill for amendment Article 59 (e), (f)).

57 The Bill for amendment to LCES Article 33-24  
The penalty is an imprisonment with work for not more than 6 months or a fine of not more than 500,000 yen (US\$4,545) (the Bill for amendment Article 59 (d)).

58 The Bill for amendment to LCES Article 33-23 Paragraph 3

59 The Bill for amendment to LCES Article 33-23 Paragraph 4  
The penalty is a fine of not more than 300,000 yen (US\$2,727) (the Bill for amendment Article 63 (f)).

60 The Bill for amendment to LCES Article 33-23 Paragraph 5  
The penalty is a fine of not more than 300,000 yen (US\$2,727) (the Bill for amendment Article 63 (f)).

62 The reason is mentioned in "4".  
It is supposed to be prescribed in the Ministry Order with regard to whether the business operator who intends to divide an obtained cut piece for which a manifest has not been prepared should prepare a manifest or not (The Bill for amendment to LCES Article 33-23 Paragraph 1 (iii)).

63 The Bill for amendment to LCES Article 33-12

the registration or order the suspension of all or part of the business by specifying a period no longer than six months when a registered business operator falls under any of the requirements including violation against a provision of LCES without issuing an administrative order as prerequisite<sup>64</sup> while they may merely order an existing notified business operator a business suspension for no longer than three months only when he/she has violated the precedent instruction<sup>65</sup>.

- The Minister of the Environment, etc. may conduct not only a collection of reports and an on-the-spot inspection against a registered business operator<sup>66</sup>, but also order a business partner of him/her in question to report or submit information on the said business activity or properties of him/her<sup>67</sup>.

### **Business registration organization**

If there is any recipient of registration organization from the Minister of the Environment, etc. with regard to business registration-related affairs (registration organization), the Ministers have such business registration organization carry out said affairs<sup>68 69 70</sup>.

### **4) Effectiveness of the Bill for amendment to LCES 2017 strengthening supervision on ivory traders**

The amendment to LCES 2017 ignores revision of the internal trade regulation/registration scheme, of which loopholes have encouraged the serious laundering of ivory tusks with unknown acquisition in Japan's domestic ivory market. Thus, the effect of the Bill is not more than strengthening supervision on ivory traders as is

64 The causes for business suspension are identical with ones for registration revocation. Thus, a special designated business operator who has violated against prohibition of trade in unregistered whole tusks (LCES Article 12 Paragraph 1, Article 17), unlike an existing notified business operator, shall be the subject of business suspension order.

65 The Bill for amendment to LCES Article 33-13

66 The Bill for amendment to LCES Article 33-14 Paragraph 1

67 The Bill for amendment to LCES Article 33-14 Paragraph 2

68 The Bill for amendment to LCES Article 33-15 Paragraph 1

The structure of the business registration organization is mostly similar to the existing registration organization for registering individuals, etc. including ivory tusks (LCES Article 23 Paragraph 1).

69 It is unknown if JWRC will be the business registration organization, and if so, if JWRC will be play the role exclusively until the Bill is implemented. The affairs on existing notification of business activities in connection with designated body part, etc. is controlled by MoE and METI (mainly by the latter) as ever (see 5.3).

70 The applicant shall pay, in addition to 90,000 yen (US\$ 818) of the registration license tax, a fee specified by the Cabinet Order in light of the actual cost to the business registration organization (The Bill for amendment to LCES Article 33-21 Paragraph 1). A fee paid to a business registration organization shall be treated as income of the organization (Article 33-21 Paragraph 2).

the case with the two precedent development of LCES implementation (amendment of the Cabinet Order)<sup>71</sup>.

As aforementioned, the points of the amendment to LCES 2017 are: (i) Applying a business registration scheme instead of the existing business notification scheme, for which non-existence of any reason for refusal of business registration is to be confirmed at the registration and the renewal of it; (ii) Securing that all of whole tusks possessed by business operators to have been registered at the time of their business registrations; (iii) Mandating registered business operators to prepare a manifest including necessary information concerning the processes, etc. by which the ivory cut piece has been legally obtained when he/she acquired a cut piece by dividing the cut piece obtained, to transfer or deliver the acquired cut piece with the manifest pertaining to it, and to preserve a copy of the manifest when the cut piece for which the manifest has been prepared is transferred or delivered; (iv) A registered business operator who violates the provisions of LCES, etc. may be imposed with a business suspension order or even the revocation of the business registration without any administrative disposition requesting improvement of the operation as a prerequisite; and (v) The penalty against unregistered business activities is seriously toughened.

It is true that the amendment to LCES 2017 attempts to respond to the points of the necessary reform as far as the supervisory scheme on ivory traders is concerned<sup>72</sup>, in particular, to tightening the penalty against the violation by traders is significant. However, due to halfway duty to the ivory traders and authorities for supervision introduced by the amendment, it leads to no difference in the insufficiency as ever of securing traceability on division of tusks and trade in the produced pieces, and supervising the process, which are crucial preconditions for revealing a violation. Consequently, successful exclusion of ivory cut pieces and ivory products with unknown acquisition from inter-trading among ivory business operators would still highly depend on voluntary efforts by traders for achieving the aim.

The details will be discussed below.

71 See Table 7-1

72 Sakamoto, 2002, Sakamoto, 2007, Sakamoto, 2013

### **No effect of screening appropriate ivory traders would occur over a short time frame**

Under business registration scheme to be introduced, unlike in the existing notification scheme, an ivory trader cannot receive the business registration needed for conduct the business activities unless it is confirmed that no cause for refusal of business registration has been found. Thus, GoJ expects that qualified ivory traders dealing with cut pieces and ivory products for complying with the controls would be screened.

However, according to the provision of the Supplement to the Bill, any person who has notified his/her business activities which falls under one in connection with special designated internationally endangered species, etc. shall be deemed to “receive the (business) registration” at the date of implementation of the Bill for amendment to LCES 2017<sup>73</sup>. Thus, approximately 300 notified manufacturers, 500 notified wholesalers and 8,200 notified retailers<sup>74</sup> can automatically transit to the registered business operators without checking the existence of a cause for refusal of the business registration. It means that the existing notified ivory traders will not be confirmed if they would fall under any cause for refusal of business registration until the first renewal of the registration<sup>75</sup>, and that those who would be checked if they would fall under a cause for refusal of the business registration are limited to the persons who would newly start the business activities after the implementation of the Bill, however, those people would make last-minute notification of their business activities by the date of implementation provisioned to be within one year<sup>76</sup> after the promulgation. In fact, seeing the number of notification in 2016 (1,038) which is twice of the number in 2015 (520), it is considered such last-minute notification has already started<sup>77</sup>.

73 The Supplement to the Bill for amendment to LCES Article 6 Paragraph 1

74 CITES SC66 Doc 29 Annex 20

75 The first renewal of the business registration shall be within one year and half from the date of implementation of the Bill, provided the business operator (manufacturers) has notified his/her business before the date of implementation of LCES amendment 1998 (18th March, 1998. See Table 7-1) while the other operators shall renew their business registration within three years from the date of implementation of the Bill (The Supplement to the Bill for amendment to LCES Article 6 Paragraph 2).

76 The Bill shall be implemented within one year from the date of promulgation (The Supplement to the Bill for amendment to LCES Article 1).

77 MoE, 2017.e

The number of notification includes one for business activities dealing with bekko or tortoiseshell, however no reason can be found for significant increase in business operators

Thus, no effect of screening appropriate ivory traders by introducing the business registration scheme would occur over a short time frame.

### **The scheme for securing all of whole tusks possessed by registered business operators to have been registered is not only ineffective but also leading to the government’s blessing of “unregistered whole tusks owned by ivory business exist no more” without objective proof**

Under the situation that business operators can legally possess unregistered whole tusks, it is easy for the tusks with illegal origin to slip into their stock and be traded easily<sup>78</sup>. The Bill for amendment to LCES 2017 provides a scheme for securing all of whole tusks possessed by registered business operators to have been registered.

But, in reality, the scheme does not mandates an applicant of business registration to register whole tusks possessed by him/her but merely mandate them to attach “a document proving that he/she has obtained registrations for all the whole tusks actually possessed by him/her has been registered” to his/her application form.

It is true that deliberate business registration or renewal of it with unregistered whole tusks kept hidden should fall under the cause for revocation of business registration as receiving business registration/renewal by illicit means<sup>79</sup>, and may be further accused in business registration of deception<sup>80</sup>, the scheme looks like being effective somehow.

However, the problem is how such cover-up can be detected by the administrations.

In the first place, what kind of documents can prove that a person does not possess any unregistered whole tusk apart from the reported whole tusks already registered? Considering the administrations have no power to inspect the whole tusk stock possessed by an applicant for business registration at the time of the registration, no one can prove the fact. Thus, such document as objective evidence should be unlikely. In light of these arguments, it is likely that a self-statement report and/or a certificate written by a third party other than public institutions could be adopted as “a document proving that he/she has obtained registrations for all the whole tusks actually possessed by him/her has been registered”. But, if so,

dealing with bekko recently.

78 See 4.8.4. In particular, see Chapter 4 Note 291 with regard to collecting information of and controls over the stock of unregistered whole tusks.

79 The Bill for amendment to LCES Article 33-13 (b)

80 The Bill for amendment to LCES Article 57-2 (b)

the real source of unregistered whole tusks stock possessed by ivory traders will not be brought to light forever<sup>81</sup>.

Otherwise, can the authorities verify the stock of whole tusks thoroughly by the on-the-spot inspections after the business registration is received? As aforementioned, the amendment to LCES 2017 mandates an applicant for the business registration just to attach “a document proving that he/she has obtained registrations for all the whole tusks **actually possessed** by him/her has been registered” to the application form. Therefore, the scope of the power to conduct on-the-spot inspections on the stock of whole tusks owned by a registered business operator is considered to be limited to **the whole tusks existed at the time of application for the business registration**. More specifically, it is assumed to be conducted as a routine during the first on-the-spot inspections on the stock of whole tusks owned by a registered business operator that the authorities request him/her to show the whole tusks recorded in the document attached to the business registration application form (some of them may have been divided since the registration), and at most, they might question him/her if there was any other whole tusk than the listed in the document **at the time of application for business registration**. It means that the whole tusks received after the business registration should be out of the scope of the inspection, so any inspection on the stock of them cannot be forced. Consequently, even if an unregistered whole tusk is stored with the stock of those tusks (supposed to have been registered), it is unlikely that it would be detected.

Under the constraints of the power of the authorities to verify an actual stock of whole tusks at or after the business registration, it is very difficult to eliminate a stock of unregistered whole tusks possessed by ivory traders.

After all, the scheme for securing all of whole tusks possessed by ivory traders to have been registered is rather leading to the government’s blessing of “unregistered whole tusks owned by ivory business exist no more” without objective proof. It’s a kind of official laundering<sup>82</sup>.

81 It should be noted that provided all the traders were sincerely to register all of their whole tusk stock, any objective evidence proving the registration requirement at the time of registration is still not required (see 4.8.2).

82 The quintessential points for preventing the worst situation are; firstly, application of stricter process of ivory tusk registration; and secondly the disposal of the tusks which are not confirmed as satisfying the registration requirement

### **Mandating preparation of the manifest alone cannot secure traceability of ivory cut pieces**

The Bill for amendment to LCES 2017 mandates a registered business operators to prepare a manifest including necessary information concerning the processes, etc. by which the ivory cut piece has been legally obtained when he/she acquired a cut piece by dividing the cut piece obtained, to transfer or deliver the acquired cut piece with the manifest pertaining to it, and to preserve a copy of the manifest when the cut piece for which the manifest has been prepared is transferred or delivered. The intent is considered to secure the traceability with regard to the process on division and trade of cut pieces up to the products.

But, the mechanism of the amendment is too incomplete to ensure the traceability and monitor the process. The reasons are as follows;

Firstly, the measure for identifying each cut piece is not prescribed in the Bill though it is crucial for securing traceability of individual cut piece.

It is assumed that weight, major features, etc. would be described in each manifest<sup>83</sup>, but, needless to say, it is impossible to identify each cut piece in its own terms. Accordingly, it cannot be expected that a contradiction between the actual movement of an ivory piece and the transaction suggested by the ownership of the relevant manifests would possibly could come to light.

Secondly, the Bill for amendment does not prohibit receiving a cut piece without a manifest if it has never been prepared, and allows such trade for an indefinite period. The reason may come from the consideration about the existing stock of cut pieces for which a manifest has never been prepared as the result of the existing voluntary scheme on manifest. However, It will leave a serious loophole in the law, which can make illegal cut pieces slip into the legal trade.

Thirdly, securing traceability and monitoring of it always require collection of information about the movement of the target and analysis of the information in timely manner<sup>84</sup>, however, it is al-

due to the stricter process. If possession of those tusks could be simply allowed to continue, the introduced registration confirmation scheme would be meaningless. Thus, the administrations should monitor the condition of such ivory tusks continually whether the owners would continue to possess them or destroy them.

83 See 5.1.3

84 GoJ (METI) once attempted to establish a database for tracking division of cut pieces, and trade in it and products as one of the measures for strengthening internal ivory trade controls in order to be designated as an importing country

most impossible under the Bill for amendment to LCES 2017.

GoJ seems to expect it under the amendment that traceability of cut pieces by mandating registered business operators to prepare a manifest for a cut piece at the time of acquiring it by dividing the sourced ivory piece and preserve the copy of the transferred manifest together with the relevant cut piece. But, the problem is that, all the processes including preparation, transfer and preservation of a copy of manifests are to be done by the ivory traders, thus the process is not visualized to the authorities. There is not a single mechanism for mandating the registered business operators neither to report the process each time nor to provide reports regularly on short-term basis<sup>85</sup>. Under the amendment, the authorities have to request all the registered business operators individually to submit the copies of manifests, compare them and analyse the consistency of the division and movement of each cut piece. There is an existing practice that the authorities would request the notified ivory manufacturers to submit the copies of ledgers in routine basis, but the frequency of the request is only once every year<sup>86</sup>. It should be said that it is impossible to collect the information to secure the traceability information in timely manner by such existing practice above.

### **Strengthening administrative disposition is likely to exist only on paper**

Under the Bill for amendment, the existing “instruction” is upgraded to “administrative order on taking measures”, the causes for issuing business suspension order is expanded, the limit of term of the order is extended to 6 months, and furthermore the procedure of registration revocation is introduced.

But, what are the odds that the authorities actually impose such hard administrative dispositions to a registered business operator?

of the second one-off sold ivory (Sakamoto, 2007). It was supposed to enter the information mandated to record in ledger into the database, which includes the process of dividing and trade, and the number of manifest if prepared, etc. (ibid.). But, METI gave up the plan considering it unrealistic due to enormous and burdensome practices are needed, thus the information entered in the existing database system of METI is limited to the stocks of the designated parts at the end of each FY only (see 5.3.5).

85 There is an example of regular reporting in the existing LCES built in the “advance registration scheme” though the scheme itself has not been applied to any species over 20 years since the implementation of the scheme. Every three months, a recipient of advance registration shall report necessary information to the registration organization (LCES Article 20-3 Paragraph 2).

86 See 5.5.3

In this context, it should be referred that the actual example of the existing “instruction” which has weaker legal binding than the new “administrative order on taking measures” had not been imposed until 21 years passed after implementation of the provision in 1995.

The business operator who received the first “instruction” in September 2016<sup>87</sup> was “Nippon Ivory” who is one of the major members of Japan Federation of Ivory Arts and Crafts Association (JIA).

But, this first “instruction” was a special event based on the background that under the pressure by EIA’s exposure of suspicion on ivory traders including “Nippon Ivory”<sup>88</sup>, who were likely to conduct illegal ivory trade, METI and MoE were driven to the corner to conduct on-the-spot inspection against some traders including Nippon Ivory and another member of JIA, and they found significant illegality in the business activities of Nippon Ivory. This history and process show how an administrative disposition against ivory traders is rare<sup>89</sup>.

It should be noted that authorities fails to recognise serious violations, such as those caused by Nippon Ivory, until their business facility is checked. The said violation by Nippon Ivory was negligence of recording necessary information on the ledger between 2011 and 2016<sup>90</sup>. But, the authorities received the report of copies of ledgers recorded by all of the notified ivory manufacturers every year<sup>91</sup>. It means that the authorities had missed the violation as many as 5 times<sup>92</sup> of the

87 METI, 2016.d

Also, refer to Chapter 5, Note 22, 23.

88 Newspaper article on *Asahi Shimbun* dated 9th June, 2016, etc.

89 Afterwards, the second “instruction” was filed in 17th March, 2017 (MoE, 2017.b).

The instructed was a traditional ivory craft man as a sole proprietorship. Those craft men would be supplied with ivory material from manufacturers who owns ivory stock, carve the provided material on demand for them, and deliver the completed products to them (Martin, 1985).

The cause of the instruction against him was negligence of recording necessary information on the ledger for 5 years (The violation had probably continued for more years. See NOTE 92). It is assumed that many of such small ivory craft men have not complied with the duty imposed to notified business operators, however, the manufacturers as employers of them should be more focused as the main target of supervision.

Subsequently, the third “instruction” was filed against a musical instrument retailer in 25th August, 2017 (METI, 2017). The instructed had been purchased ivory parts/accessories for musical instruments (*kotoji* or bridge for *koto*, *koma* or bridge for *shamisen*, *itomaki* or screw for *shamisen*, *kotozume* or plectrum for *koto* and *bachi* or plectrum for *shamisen*) and sold them to general consumers. In a similar way to the precedents, it had neglected to record necessary information on the ledger for 5 years.

90 See NOTE 22 in Chapter 5.

91 See 5.3.3

92 It is assumed that the authorities limit the period subject to the violation to 5 years because LCES mandates a notified

opportunities to check the records on the ledgers though they could have easily recognized the violation only if they actually had a glance at the description on the copies of ledgers submitted by the trader.

Under such circumstances, it is quite questionable the purpose of seeking a report. Furthermore, it sounds skeptical when the authorities (particularly METI which is protecting and promoting domestic ivory industry) hesitates to enforce an administrative disposition on ivory traders who are the major members of the ivory associations and closed its eyes on the violation by Nippon Ivory.

Considering the inherent standing of protecting and promoting domestic ivory industry prevalent in the authorities, there is no reason to believe that the strengthened administrative disposition, which could pose fatal impact to the traders, can be actually executed.

## 5) Interim conclusion

The Bill for amendment to LCES 2017 cannot meet to the demand for tightening controls over internal ivory trade now expected to Japan. The reason can be summarized as below.

Firstly, no sweeping review with regard to the regulation on internal ivory trade / registration scheme is assumed in the amendment.

Needless to say, the core mechanism of Japan's controls of internal ivory trade is the internal trade regulation which prohibits trading ivory without registration and would pose serious criminal punishment against the violation. The existing LCES, however has many loopholes with regard to internal ivory trade / registration scheme, including (i) limiting the scope of the regulation / registration scheme to whole tusks, (ii) not requiring an objective evidence proving the registration requirement at the time of registration which would drop the prohibition, and (iii) neither authenticating the applied "ivory tusk" for registration, identifying nor marking the ivory tusk at the time of registration<sup>93</sup>.

Nonetheless, the Bill for amendment to LCES 2017 arbitrarily picked up strengthening supervisory scheme over business activities while it avoids solving the most fundamental problems.

Secondly, it is considered that implementation

---

business operator to preserve the ledger for 5 years (Ministry Order on Notification Article2). If so, the actual violation had been likely more than the period.

93 See 4.8

of strengthened supervisory scheme on ivory business would be almost empty of power to the reality of trade in ivory cut pieces and ivory products.

It would depend on voluntary realization of law-abiding spirit by ivory traders as ever whether controls over trade in ivory cut pieces and ivory products will be improved or not, because the duty imposed to the traders and the authority given to the Ministries are halfway.

In fact, it is hard to imagine that a fatally damaging administrative disposition would be enforced against a business operator even if a violation could have been found, considering the prevailing "culture" spoiling the ivory industry as seen in the situation that the authorities had not executed even weaker administrative disposition for more than 20 years.

Thus, implementation of the amendment would not change the reality of trade in ivory cut pieces and ivory products so greatly.

## 7.5 Conclusion

In light of the discussion above, it can be concluded that GoJ would not drastically strengthen the controls over ivory trade near future.

The conclusion is obvious on the ground that GoJ has been dead set against the closure of its domestic ivory market by establishing the Public-Private Council since the CITES draft resolutions on the issue was proposed, that GoJ has declared in go-it-alone mentality that the adopted CITES resolution does not recommend Japan to close its market because it is strictly controlled, and that the recently proposed Bill for amendment to LCES 2017 avoids the most important points for reforming controls of internal ivory trade, and remains just a PR, as in the case of the Public-Private Council report<sup>94</sup>, that the "protected" industry makes its intention clear to enhance legal trade and the authorities as "patrons" will request more to the industry to comply with the laws and regulations.

The reasons why GoJ has avoided radical reform of ivory trade control, and the problems behind them can be summarized as follows.

The first reason is that Japan's internal ivory trade controls is grounded in a concept that the authorities are supposed to supervise and protect the business activities of qualified ivory traders

---

94 See 7.2.3

in paternalistic manner while the scope of trade regulation are deliberately narrowed (it means intervention by the police is to be limited), based on a consideration to the industry which cannot survive without securing raw material ivory for manufacturing by intervention of the authorities.

The concept is running through the Bill for amendment to LCES 2017 as is the case with the two times of previous amendment of the controls prepared for securing each import of one-off sold ivory.

The concept as “minimizing the regulation and guiding the industry to make efforts to secure legal trade” is, however, too lax in the light of the serious crisis of African elephants. Furthermore, the basis of the concept had collapsed as seen in the cases that the leaders of ivory industry including Takaichi in 2011 and Nippon Ivory in 2016 have been faced criminal charges over internal trade in unregistered whole tusks.

The second reason is that the most important subject of the controls or tightening internal trade regulation/registration scheme would make it virtually impossible to obtain whole tusks as pre-ban stock and to trade in cut pieces freely. It is obvious that resumption of international ivory trade is moving away, when looking at the debate on “decision-making mechanism” (DMM) closed at CoP17<sup>95</sup>. Cutting off the domestic supply of raw material ivory including whole tusks and cut pieces under such situation is contradict to the national policy on securing supply of raw material for domestic ivory industry.

But, keeping supply of ivory for the needs of the industry at the cost of effective prevention of illegal ivory slipping into domestic market should be a preposterous idea.

Thus, it is almost hopeless that GoJ would voluntarily strengthen the ivory trade controls drastically. It is obvious that strong pressure from international society is required to let Japan comply with the CITES resolution on closure of domestic ivory market.

---

95 CoP17 Com. II Rec. 3 (Rev.1)