

Chapter 8 Final discussion, Conclusion and Recommendation

8.1 Final discussion

- As mentioned at the beginning of Chapter 1, the primary purpose of this report is to answer the question “Is Japan’s domestic ivory market to be exempted from the subject of closure?”

From the languages of the adopted resolution and the discussion on revising the draft resolution on closure of domestic ivory markets at the working group established at the meeting of CoP17, it was apparent that Japan’s domestic ivory market was considered as a subject of attention (Chapter 1). And furthermore, substantial basis for the closure was discussed from various aspects in the previous chapters.

Activated Japan’s ivory market: Will remain as the largest legal ivory market after closure of the market in China

- It was discussed on whether the demand for ivory in Japan’s ivory market is noteworthy to direct the world’s attention or not.

It is assumed that consumers’ ivory preference should have been damaged somehow in response to the event of illegalization of ivory import in 1989, but there is no evidence found that the consumer’s ivory preference has further declined since 1994 and then it is considered to remain so far (Chapter 1). The fact that GoJ went all out to get the two times of import of one-off sold ivory (1999 and 2009) should reflect the theory above.

Moreover, a new trade platform or the Internet trade emerged recently. According to the analysis of the final closing bids on Yahoo! Japan Auction, Japan’s online ivory market has expanded since 2005 has exploded since 2011 and has maintained the momentum until 2015. The final closing bids on Yahoo! Japan Auction of 5 years between 2011 and 2015 are over 105,000 in number and 2.6 billion yen (US\$ 21 million) in amount (Chapter 2).

It should be noted that the Internet trade platform like Yahoo! Japan Auction is used to purchase the ivory in Japan and to send to China(Chapter 3).

The activated ivory market also reflects on the explosion of the tusk registration record in 2011, which is required by the law to lift the prohibition of internal trade in a whole tusk.

Subsequently, more than 2,100 tusks (more than 21 tons) were registered (Chapter 4).

- Observing those recent trends in Japan’s ivory market, it is obvious that Japan will come back to the position of the most industrialized and largest legal ivory market after the one of China (including Hong Kong SAR) is closed down. There is no evidence that there is any legal ivory market that matches to the one of Japan (Chapter 1, 2 and 3). Hence, It is totally contradictory to the basic assumption of the resolution on closure of domestic ivory market to exempt Japan as the legal ivory market, which, in turn, will be the largest in the world in near future.
- Government of Japan, however, claims that Japan should be excluded from the mandated countries which are required to close their markets because its market is strictly controlled. Considering the response from GoJ, the effectiveness of Japan’s controls on ivory trade was discussed in detail in Chapter 3 and in the subsequent chapters.

Loopholes in import/export regulation: Controls on international mail service

- The import/export regulation was reviewed first. The highest attention was paid to the special provision within the Customs Law where an exemption for international mail stands as a loophole against preventing inflow and outflow of ivory over the borders. Furthermore, the circular prescribing details of implementation of the Customs Law makes crackdown of a smuggling case against the Customs Law / the Foreign Exchange and Foreign Trade Act impossible as de facto (Chapter 3).

Recent focus on ivory smuggling by using international mail service

- As seen in the recent action taken by the government of China, it is clear that international community is now aware that international mail service is abused to smuggle wildlife products including ivory as a low-risk method for international transport.

It is quite worrying that a lot of international mails with ivory enclosed have entered Japan and such attempts have not been cracked down as criminal cases. For example, 10 imports are

confirmed with ivory enclosed in EMS (the maximum weight of EMS is set at 30kg) which were sent from Nigeria or Zimbabwe between 2014 and 2016.

On the other hand, illegal exports of ivory from Japan to China have been continually cracked down recently. At least, ten cases of those exports were confirmed and international mail service was used for the illegal export in some cases of them (Chapter 3).

Significant barrier derived from the priority-setting of the customs administration confronts stricter enforcement of import/export regulation in terms of ivory, so then the role of internal ivory trade controls would heighten

• But, the most fundamental issue of the import/export regulation is the generic limitation on tightening enforcement of the regulation in the field even if they could have succeeded in closing the loopholes of laws and regulations somehow.

The customs offices of Japan under the free-trade regime cannot afford to meaningfully prioritize inspection on ivory because they are caught in a dilemma between handling international freight and passengers, and tightening inspection on the prohibited goods, such as explosives and drugs (Chapter 3).

Thus, the role of internal trade controls for excluding smuggled ivory from the domestic market would become more important (Chapter 4).

The design concept of Japanese way of internal ivory trade control (“Narrowing the scope of trade regulation for giving sanctuary to the traders, instead guiding them to make an effort for conducting legal trade.”) is providing room for illegal trade

• However, a key aspect of Japan’s internal ivory trade controls is prioritizing procurement of raw material inside Japan by the ivory businesses over tightening the trade regulation leading to a broader intervention by the police. That’s why GoJ would put more focus on a paternalistic supervision over the traders by the administrations than a stricter trade regulation (Chapter 7). In consequence of such concept, the trade regulation would suffer with full loopholes within the levels of laws and regulations, and their implementation (Chapter 4, 5).

Just a whole tusk is regulated

• Looking into the specific problems of the internal ivory trade, it should be noted that; first, the subject of regulation is limited to a whole tusk, so all cut pieces and ivory products are freely traded. Second, there is no measure in the internal trade controls in preparation for eliminating intrusion of illegal ivory in divided or in the form of worked ivory from the domestic market (Chapter 4).

Regulation of a whole tusk with full of loopholes leads to a cascade of laundering

• A whole tusk is prohibited to trade without registration given the specific requirements would be satisfied, however, under the existing laws and regulations, an objective evidence proving the registration requirements is not mandatory. So, it is easy for the ivory from whatever source to be registered falsely. This could encourage, a kind of ‘official laundering’ to prevail (Chapter 4).

• The ivory manufacturers have exploited the loophole by establishing an ivory whole tusk laundering system which is now firmly taken root in Japan’s domestic ivory market. The trick has been developed to have the nationwide antiquary network collect ivory whole tusks, launder them by using the fraudulent registration by themselves, and sell the registered to the manufacturers.

• Under the existing laws and regulations, physical inspection of the applied whole tusk is not necessary. Accordingly, authenticating the so-applied “ivory tusk” would not take place, so it is easy to register fake stuff falsely and divert the received registration card for a smuggled whole tusk.

Furthermore, neither identifying nor marking the ivory tusk to be registered is to be made because it is impossible to do it without a physical inspection. It means, it is unlikely to monitor the possession and division of the registered tusk effectively. Consequently, that it is easy to use the registration card for a smuggled ivory tusk, which was issued for the whole tusk already divided.

• Easy false registration and easy use or diversion of registration card may suggest a cascade of laundering would have occurred.

The Japanese way of internal ivory trade controls highly depending on voluntary efforts by business operators have collapsed as seen in the recent crackdowns of major members of the ivory association which has played coordinating role in the ivory business over the years

- “Nippon Ivory”, cracked down for purchasing 5 unregistered whole tusks in 2016 (Case No.15 on Table 8-2), is an ivory manufacturer who bought the ivory at both the one-off sales (Chapter 5 NOTE 22 and 23). Moreover, this trader, as a major member of the “Japan Federation of Ivory Arts and Crafts Association” (JIA) which engages in the joint-secretariat of the “Public-Private Council for the Promotion of Appropriate Ivory Trade Measures” together with the Ministry of Environment, the Ministry of Economy, Trade and Industry, and Yahoo! Japan, has actively demonstrated the policy of JIA.

This “Nippon Ivory” case, subsequent to the “Takaichi” case in 2011, which was cracked down for purchasing 58 unregistered whole tusks revealed again that JIA which has played coordinating role in the ivory business over the years has neither intention nor ability to ensure to stop ivory business operators conducting illegal ivory trade.

In addition to the case above, the fact that multiple members of the ivory association have coached a general owner of ivory tusks to make a fraudulent registration (Chapter 4), suggests the basis of the concept of “narrowing the regulation, instead guiding the industry to make efforts to secure legal trade” had already collapsed.

The measures taken in the Bill for amendment to LCES 2017 is still based on the unique concept of the controls developed by Japan, which has already collapsed

- GoJ attempted to change the internal ivory trade controls at the chance of an amendment to the Law for Conservation of Endangered Species of Wild Fauna and Flora (LCES) in 2017. However, the measures taken by the amendment remained as an extension of the existing approach.

In fact, the trade regulation with full of loopholes were retained as status quo and just the supervision over the traders by the administrations was strengthened mostly through tightening the penalty against the violation.

But, that amendment cannot be praised primarily because no sweeping review with regard to the regulation on internal ivory trade / registration

scheme was made in the amendment, and secondly because it fails to strengthen supervisory scheme on ivory business so that traceability of ivory cut pieces and ivory products are secured.

Consequently, the amendment to LCES 2017 remained just a PR publishing “the business operators as ‘protected’ makes its intention clear to enhance legal trade more and the administrations as ‘patrons’ will request more to the business operators to comply with the laws and regulations more carefully”, and won’t lead to a meaningful reform on internal ivory trade controls.

Non-compliance of the CITES resolution over 20 years

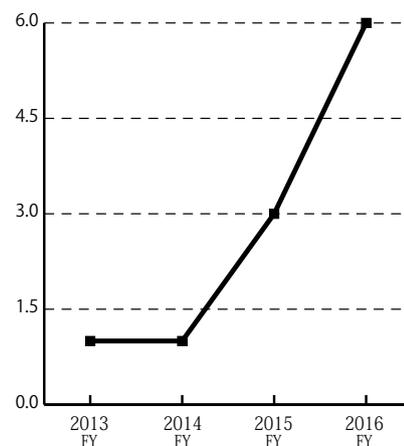
- It is logically impossible to comply with CITES Resolution Conf. 10.10 under the controls of ivory trade with serious loopholes.

It is particularly serious problem that Japan has not complied with the sentence “c)” in the Paragraph 6 of the resolution over 10 years, which is the heart of specific measures for controls on internal ivory trade and has not been substantially changed since the launch of the resolution.

Illegal ivory trade cracked down in Japan

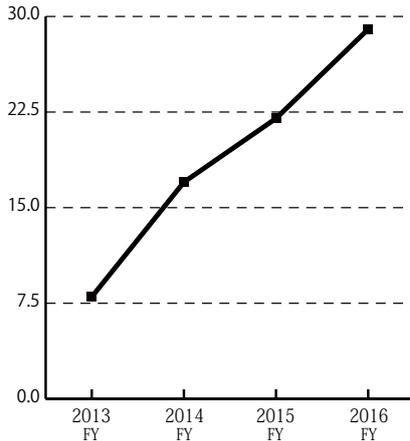
- Whether import/export or internal trade, it’s a matter of course that the ivory market in the country with considerable number of illegal activities found should be regarded as “contributing poaching or illegal trade”. Then, the situation of Japan is discussed.

Figure 8-1 Number of the cases in violation of Law for Conservation of Endangered Species (ivory only)



Source : The answer by the Director of Nature Conservation Bureau, Ministry of Environment at the House of Representatives of the 193rd Diet on 21st April, 2017

Figure 8-2 Number of the cases in violation of Law for Conservation of Endangered Species (total items)



Source : The answer by the Director of Nature Conservation Bureau, Ministry of Environment at the House of Representatives of the 193rd Diet on 21st April, 2017

The number of the cases cracked down by the police as violation of LCES since 2013 FY (April-March) until 2016 FY as to ivory-related cases (Figure 8-1) and the total cases (Figure 8-2) is shown. It is obvious that the number of ivory-related cases has increased more rapidly.

The criminal cases related to ivory since 2000 is shown in table 8-1 as far as the information has been obtained (more details of the cases and references are shown in ANNEX 4). According to the list, a particular trend can be found as follows.

Table 8-1 Criminal cases on illegal ivory trade cracked down by the Police (2000-2017)

· This list is comprised of the cases of which information has been obtained by JTEF at the time of 22nd September 2017. It does not necessarily list entire cases.
· The year in bracket shows the year when the case concerned was sent to the prosecutor. The prefectures in bracket shows the jurisdiction area of the police.

	Summary of the case
Case 1 (2000)	Illegal import in 500 kg of cut pieces (raw ivory) into Kobe Port (Saitama)
Case 2 (2005)	Illegal import in 1,700 pieces of ivory hanko into Naha Airport (Okinawa)
Case 3 (2007)	Illegal import in 2.4 tons of cut pieces (raw ivory) and 0.4 tons of ivory hanko into Osaka Port (Osaka)
Case 4 (2007)	Illegal import in 16 cut pieces (raw ivory) weighing 2.4kg as for material of billiard cue sticks (Osaka)
Case 5 (2007)	Illegal import in 2kg of cut pieces (raw ivory) into Narita Airport and in 2.2kg of worked ivory into Tokyo Port, as for material of billiard cue sticks (Gunma)
Case 6 (2011)	Illegal internal trade in 58 unregistered whole tusks (Tokyo)
Case 7 (2011)	Illegal internal trade in 1 unregistered whole tusk (Tokyo)
Case 8 (2011)	Illegal internal trade in 2 unregistered whole tusks and fraudulent registration of them (kagawa)
Case 9 (2013)	Illegal internal trade in 2 unregistered whole tusks (Chiba)
Case10(2014)	Illegal internal trade in 1 unregistered whole tusk (Tokyo)
Case11(2016)	Illegal advertisement of 2 unregistered whole tusks (Osaka)
Case12(2016)	Illegal internal trade in 1 unregistered whole tusk (Tokyo)
Case13(2016)	Illegal internal trade in 1 unregistered whole tusk (Kanagawa)
Case14(2016)	Illegal internal trade in 2 unregistered whole tusks (Tokyo)
Case15(2016)	Illegal internal trade in 5 unregistered whole tusks (Shizuoka)
Case16(2017)	Illegal internal trade in 18 unregistered whole tusk (Tokyo)
Case17(2017)	Illegal internal trade in 9 unregistered whole tusk (Tokyo)

- The ivory smuggling case in 2000 (Case No.1) is that a Hong Kong broker having close relationship with Japanese ivory business operators imported 500kg of raw ivory into Kobe port and transported it to the address of a board member of “Tokyo Ivory Arts and Crafts Cooperative Association”. The ivory smuggling case in 2006 (Case No.3) is that Korean criminal syndicate arranged import of 2.8 tons of raw ivory and blank ivory hanko loaded in Malaysia and destined to Osaka port, and a Japanese Yakuza imported it. The Korean suspects were put on the international wanted list but have not been arrested.

- In 2010s, the violation of internal trade regulation drew attention of the police. “Takaichi” (Case No.6), the largest ivory manufacturing company, was suspected to have bought estimated 572 – 1622 unregistered whole tusks between 2005 and 2010 besides the seized 58 tusks.

After “Takaichi” case, trades in unregistered tusks through Yahoo! Japan Auction or face-to-face purchase by antiquaries have been cracked down by the police next by next. 5 cases are accounted in just one year of 2016.

- In 2017, “Raftel” (Case No.16) and “Flawless” (Case No.17), both are an antiquary, were cracked down for receiving 18 unregistered whole tusks and 9 of them each. Those cases exposed the reality that a laundering system using false registration rooted in Japan’s domestic ivory market, Japan Wildlife Research Centre has been ineligible as a registration organization, and that supervision of the Ministry of Environment on JWRC has malfunctioned.

- On the other hand, any criminal case on ivory smuggling has not been cracked down recently. But, ivory smuggling has never lost but continued to be divided in the way of break-bulk e.g. by using international mail services (Chapter 3).

- As aforementioned, smuggled ivory has continually entered into Japan’s domestic ivory market, and at the same time, it has been flowed out from it to overseas. Furthermore, illegal trade is rampant inside the market under the ineffective controls. Such market should be judged as one “contributing to poaching or illegal trade”, which is urged to close down by the CITES resolution as a matter of course.

GoJ has left the loopholes of internal ivory trade controls alone, which cause rampant laundering of ivory whole tusks by business operators and illicit operation of registration service by the registration organization, and furthermore it intends to accelerate supply of ivory whole tusks into domestic ivory market by initiating an ivory registration promotion campaign

• Under the situation that Japan's ivory trade controls are suffering serious defects, it was discussed as to whether GoJ would intend to meaningfully tighten the controls in the near future or not (Chapter7).

Japan's policy was not influenced by the proposal of draft resolution on closure of domestic ivory markets in April, 2016 and even by the adoption of the resolution in October, 2016. GoJ is still demonstrating the existing policy to maintain its ivory market.

In fact, the amendment to LCES promulgated in June, 2017 is pursuing the policy to maintain the ivory market as ever, avoid restricting manufacturing and sale of ivory, and just remains to provide a feeling of tension to the business operators.

On the other hand, no revision with regard to the internal ivory trade / registration scheme was placed in the amendment.

The "Raftel" case (Chapter 4) was announced by the police just after the amendment to LCES 2017 was promulgated. The investigation of the case had been kicked off with the information provided by MoE in 2016, and Japan Wildlife Research Center as the single registration organization for internationally endangered species including ivory whole tusks was searched in its office in connection with the investigation on "Raftel" in April or in the middle of discussion of the Bill for amendment to LCES at the Diet.

The process suggests that MoE dared to exclude tightening internal trade regulation/registration scheme from the list of amendment though it recognized that the loopholes of them had been contributing to illegal trade in the domestic ivory market and illicit operation on registration affairs by the registration organization.

However, even more surprising, GoJ launched a nationwide campaign to promote the registration of whole tusks for 2 years in order to supply them in the ivory market and stipulate the demand for ivory even though it recognizes the situation that falsely registered whole tusks have entered into the domestic market. That attempt

demonstrates an open resistance by GoJ against the CITES resolution and the global tides.

8.2 Conclusion

Although illegal internal trade, import and export have continued, and the illegal internal trade has significantly increased in particular, GoJ is determined in opposition to follow the resolution of closure of domestic ivory trade, and far from it, is avoiding closing the serious loopholes in its controls on ivory trade and is consistently vitalizing ivory supply into the market and demand for ivory.

In these situations, it is gravely concerned that traffickers would launder illegally-traded ivory through the market of legally-traded ivory.

There is no question that Japan's domestic ivory market should be urgently closed down in accordance with CITES Resolution 10.10 (Rev. CoP17).

8.3 Recommendation

The government of Japan is urged to urgently express a clear message of its policy change to close down its domestic ivory market in accordance with CITES resolution, and urgently launch to prepare necessary legislation and administrative measures for the closure.

In particular, the following items should be addressed as the matters of priority.

- 1) **Suspend the registration of an ivory whole tusk urgently¹;**
- 2) **Expand the subject of internal trade regulation based on LCES to all ivory and prohibit the trade in them in principle²;**
- 3) **Strictly screen the items narrow exemption of the trade prohibition is to be applied to under the condition of mandating registration based on LCES;**
- 4) **Define the registration requirements for each exempted item;**
- 5) **Authenticate the "ivory" applied for regis-**

¹ More specifically, Moe should order the registration organization to suspend any new registration of a whole tusk as the necessary measure to improve the registration-related affairs where the registration organization has not implemented the registration-related affairs fairly and in accordance with the method specified by Ordinance of the Ministry of the Environment (LCES Article 24 Paragraph 2 and Article 26 Paragraph 2).

² More specifically, the internal trade regulation shall be applied to all ivory and then registration of them shall be suspended in principle.

tration, verify the ivory if it would meet with the registration requirements based on objectively and officially credible evidence, and if it meets them, identify the ivory and mark both of the ivory and the registration card pertaining to it with a common identification data at the time of registration;

6) Apply the supervisory scheme for the “special designated internationally endangered species business activities” based on LCES to the business operators dealing with the items exceptionally allowed to be traded as in 3) after the internal trade ban recommended at 2) is set in place, and to authorize the administrations to monitor the process of division, process and repair on those items separately;

7) Change the circular on import/export declaration and permit, and the operation based on it to make it possible for the customs officials to conduct an investigation on the international mail in question as an infraction case against the Customs Law; and

8) Not allow any import/export of raw ivory including even the item not prohibited by CITES;

Not allow any import of worked ivory for commercial purposes; and

Not allow any export of worked ivory for commercial purposes except for antiques which are 100 years old or older.

The CITES Secretariat is recommended to undertake in situ verification missions and identify to understand the problem of Japan’s domestic ivory market and the controls on it for the purpose of reporting its findings to the Standing Committee which may consider recommendations to support the implementation of the resolution on closure of domestic ivory market.

The CITES Standing Committee is recommended to recommend the government of Japan to implement the resolution of closure of domestic ivory market while keeping an eye on the measures in accordance with Resolution Conf. 14.3 on CITES compliance measures.