

Summary

Background

In response to the ivory poaching crisis on African elephants reminiscent of the nightmare in 1980s, China, which is the greatest destination of illegal ivory and the largest ivory market in the world, declared together with the United States to close its domestic ivory market in September 2015. These progressive efforts led all countries to adopt the resolution on the worldwide closure of domestic ivory markets by consensus in October 2016 at the 17th meeting of the Conference of the Parties (CoP17) to the “Convention on International Trade in Endangered Species of Wild Fauna and Flora” (CITES). After the meeting, China announced that it will prohibit sales of all ivory by the end of December 2017. The United Kingdom, France and Hong Kong SAR are also tightening the ivory trade in accordance with the resolution, and further Singapore has declared closure of its domestic ivory market.

Unlike in the case of these other major ivory consuming countries above, Japan refuses to comply without any reluctance. Japan imported the largest amount of ivory during the 1980s when African elephants faced the most severe ivory poaching crisis of all time. The Japanese self-serving argument is that the domestic market is not subject to closure as recommended by the resolution – completely ignoring the language and revising process of the resolution.

Can we consider accepting the claim by Japan that its domestic ivory market is exempted from the market to be closed based on the recommendation of the resolution? The objective of this report is to provide a clear answer to the question above.

The language and the revising process of the resolution on closure of domestic ivory markets does not suggest “exempting” Japan

The government of Japan (GoJ) claims that the insertion of this language “that is contributing to poaching or illegal trade” which was added at the final revising stage, should lead to exempting Japan. It does not agree that its ivory market is contributing to poaching or illegal trade, and therefore makes it “not applicable” to the language of the resolution.

Simply reading the language, however, it should be natural to interpret that the resolution recommends closing any domestic ivory market which may have any cases of illegal trade having been documented there.

Furthermore, the resolution prescribes a narrow exemption for a trade in specific items while it in principle recommends closure of the markets. Seeing such provision explicitly allowing an exceptional trade in the market to be closed, it is obvious that the resolution intends to make a general reference to the markets as objects of the closure.

Even the fact emphasized by GoJ that the new phrase as “that is contributing to poaching or illegal trade” was inserted in the final draft should mean, considering the process of discussion and adoption of the revision, not to designate a special exemption but to make the supposed effect of the original draft clearer. This theory simply based on the facts that the paragraph providing the exemption of specific items mentioned above was also added along with the phrase in question. Additionally, the process that a proposed revision by GoJ for inserting the phrase “that is contributing to significant illegal trade increasing poaching” as an alternative, which was clearly intended to exclude Japan from the closure was not adopted by the other Parties suggests that they didn’t intend to designate a comprehensive exemption of a whole market of a country.

Japan’s ivory market rapidly activated with assistance of a new trade platform - online trade

Although consumers’ ivory preference should have been damaged somehow in response to the event of illegalization of ivory import (1989-1990), there is no evidence that the consumer’s ivory preference has declined since 1994, so it is considered that it has been maintained since 1994. Furthermore, Japan’s ivory market rapidly activated with assistance of a new trade platform - online trade.

The fact-finding survey on internet trade revealed the facts as follows.

• Ivory is sold in high volume through online auction sites / shopping sites in various forms of product

- ▷ 1,800 whole tusks derived from estimated 1,000 elephants were sold on Yahoo! Japan Auction within 7 years between 2009 and 2015.
- ▷ 20 tonnes of cut pieces derived from estimated 6,000 elephants were sold on Yahoo! Japan Auction within 7 years between 2009 and 2015.
- ▷ Hanko occupied the advertisement by 95% around in both number of ad and total prices of ads on the two largest shopping sites, and account to more

than 12,000 in pieces sold and more than 630 million yen (US\$ 5.1 million) as the total of two shopping sites (Rakuten Ichiba and Yahoo! Shopping).

- ▷ Furnishing goods were sold in 26,000 bids at 1,200 million yen (US\$ 9.7 million) in amount on Yahoo! Japan Auction within 7 years between 2009 and 2015.
- ▷ Accessories were sold in 23,000 bids at 200 million yen (US\$ 1.6 million) in amount on Yahoo! Japan Auction within 7 years between 2009 and 2015.

• **Trade in ivory on the Yahoo! Japan Auction Site has been rapidly activating and increased**

- ▷ Sales of products (in total) have constantly increased in number and amount since 2009 until 2015.
 - ▶ Hanko trade has constantly increased in the price per piece since 2012 until 2015.
 - ▶ *Bachi* (an accessory of a Japanese musical instrument) trade has constantly increased in number since 2009 until 2015.
- ▷ Sales of whole tusks have increased since 2012 until 2015 via the surge in 2014.
- ▷ Sales of cut pieces soared in 2011 and still remain at high levels in 2015.

• **Various types of businesses utilizing the Internet to get new business opportunities for selling ivory goods and strengthening the ties with China's market help Japan's domestic ivory market rapidly expand, activate and achieve new development.**

Continuous attempts for exporting ivory enclosed in EMS from African countries, etc. to Japan

Illegal ivory import into Japan has continued with changes of the transportation mode from large-scaled marine container to small-packaged shipment.

In August 2014, the customs office opened and searched an EMS exported from the military base in Lagos, Nigeria as "sample of cassia wood" and found a lot of ivory cut pieces. Since the event, the customs exposed 10 cases on exporting ivory packaged in EMS from Nigeria and Zimbabwe into Japan until October 2016.

Illegal ivory export to China

In recent years, illegal export has taken place next by next. As far as confirmed between 2009 and 2016 by the author, 10 cases were cracked down in China or Japan.

Three of the 10 cases were imposed with administrative dispositions against illegal exports of ivory in 2009, 2014 and 2015 each by the Japanese Customs. All of the other 7 cases since 2014 were cracked down in China.

In one case of the 7, one Chinese couple was found guilty and sentenced to 15 years imprisonment at the Chinese court for exporting more than 3.2 tonnes of raw and worked ivory from Japan to China over an 18-month period of time between November 2010 and April 2012. The ivory exported in the above case was bought at Yahoo! Japan Auction.

In the other case with a seizure of 804.4 kg of ivory, online trade and parcel service (a mail or a courier) were utilized for the illegal trade. Similarly, in the case with a seizure of 18 whole tusks cracked down in Tsingtao, those tusks were packaged into seven EMSs and exported.

In reality, online trade as the measure for purchasing ivory, and international mail and courier services as the measure of transportation have been used. Additionally, a cross-border online bidding/shopping agent business is suspected to be involved with the series of actions from purchase to transportation of ivory.

The special provision on exemption for international mail makes a loophole of the Customs Law

As seen in the enforcement efforts by China, the international community is focusing on international mail service as a low-risk measure of transportation to smuggle wildlife contrabands including ivory.

Nevertheless, some international mails are exempted under specific conditions from the mandate of import/export declaration and permission as a "special provision" in Japan. As the result, international mails have been relegated to a lower priority of inspection as a matter of practice. Therefore it is a valid concern that illegal import/export would be attempted by using international mail services e.g. EMS which has been actually used in the case of the aforementioned imports from Nigeria and Zimbabwe into Japan, and the exports from Japan to China.

Therefore, the illegal cases discovered in Japan should be seen as just the tip of the iceberg (no crack-down has been recorded on export mail containing ivory from Japan).

The circular issued by the Ministry of Finance would make the crackdown of a violation of the Customs Law / Foreign Exchange and Foreign Trade Law impossible de facto

When a customs official finds an ivory inside the international mail, he/she is uniformly mandated by a circular established by Ministry of Finance to inform the addressee / addresser the fact of finding by mail. Consequently, an illegal importer/exporter can prepare for pretending to know nothing about the mail in question, so it would become impossible de facto to crack down the violation of the Customs Law / the Foreign Exchange and Foreign Trade Law. Furthermore the mail would be returned to the said addressor finally.

It is realistically impossible to tighten inspection for ivory for the customs offices which find themselves in the middle of swift customs clearance and careful inspection of prohibited goods

The most underlying problem of the import/export regulation is an undeniable limit of law enforcement efforts for preventing illegal ivory from entering into the domestic market even though the loopholes of the regulation were closed.

Under the free trade regime, the customs officers find themselves in the middle of conducting swift and efficient customs clearance of international freights and international passengers, and careful inspection on so-called prohibited goods including drugs & explosives, so they realistically can't afford to prioritize inspections for ivory.

Therefore, internal trade controls "to exclude smuggled ivory from domestic market" should assume heavy responsibility.

Illegal internal ivory trade

In 2010s, the violation of internal trade regulation drew attention of the police.

Beginning by the case of receiving 58 unregistered ivory tusks by "Takaichi," the largest ivory manufacturing company, illegal trades in unregistered tusks through Yahoo! Japan Auction and face-to-face purchase by antiquaries have been cracked down by the police one after another. As many as 12 cases have been confirmed as far as the author knows, and 7 cases out of them have occurred in 2016 and beyond.

Furthermore, these numerous cases probably only represent a tip of the iceberg of the pathological phenomenon of Japan's domestic ivory market. That is to say because most ivory items are allowed to be freely traded, there are very limited regulation which suffers from serious loopholes that could easily allow illegal ivory to enter the domestic market.

Only the whole tusk is regulated

It should be noted that; first, the subject of regulation is limited only to a whole tusk, so all cut pieces and processed or carved ivory products are freely traded without any regulation. Therefore, there is no measure in the internal trade controls in preparation for eliminating illegal ivory from the domestic market, which has run through the water edge in divided or in the form of products.

Although there is a supervisory scheme over the traders dealing ivory cut pieces and ivory products, it does very little for meaningful control or oversight. The administrators do neither pursue to obtain the individual trade records from the business operators *in a timely manner*; nor are the belatedly received records stored electronically. Therefore it is totally impossible for them to supervise the real transfer of cut pieces and ivory products effectively.

Regulation of a whole tusk is so full of loopholes which lead to a cascade of laundering

A whole tusk is prohibited to be traded without registration to be given when the specific requirements meet, however, under the existing laws and regulations to obtain a registration, it is not mandatory to provide objective proof or evidence proving the registration requirements. So, it is easy for the ivory, no matter the source, to be registered falsely. This could encourage a kind of "official laundering" to prevail. The ivory manufacturers have exploited the loophole by establishing an ivory whole tusk laundering system which has now firmly taken root in Japan's domestic ivory market. More specifically, nationwide antiquary networks would collect ivory whole tusks, launder them by using the fraudulent registration, and sell the registered tusks to the ivory manufacturers.

Furthermore, any physical inspection of the applied whole tusk is not required by the existing laws and regulations. Accordingly, because authenticating the so-

applied “ivory tusk” would not take place, it is easy to falsely create a registration and then use the provided registration card for a smuggled whole tusk. Identifying and marking the ivory tusks to be registered tusks cannot be done simply because it is impossible to do it without a physical inspection. Consequently, the registration process is highly unlikely to be able to monitor the dividing (carving) tusks and distribution of the registered tusk effectively. It means that it is easy to use the registration card for a smuggled ivory tusk, which was issued for the whole tusk already consumed.

Easy false registration and easy use or diversion of registration cards suggest that a cascade of laundering would have emerged.

Results of phone survey to ivory buyers

In 2015, a phone survey of ivory buyers was conducted to understand the reality of illegal trade in the ivory whole tusks in Japan’s domestic market.

• Legality of the responses

Responses suggesting illegal purchasing of unregistered whole tusks and/or instructing a way based on specific false facts to get the registration reached to 30 out of 37 buyers (81%). On the other hand, legal responses reached to only 7 out of 37 (19%).

• Intention to launder illegal tusks into the legal market

The number of ivory buyers who intended to supply the laundered whole tusks into the legal market by using fraud registration reached to 26 out of 37 (70%).

• Usage of purchased whole tusks

The number of the buyers who intended to resale whole tusks to Japanese manufacturers of hanko, etc. and one of the buyers to do so to Chinese traders were equally matched.

• Relationship between the price to buy the ivory and its intended use after purchase

Ivory buyers who intend to resale the purchased tusks to domestic manufacturers offered a purchasing price higher and less in variation than one offered by the buyers who intend to resale the tusks to Chinese. Accordingly, domestic ivory manufactures seem to successfully secure whole tusk stocks more reliably and competitively than Chinese buyers recently.

• Modus operandi for false registration application

▷ Disguising title of the application

▶ “The only way to play it safe completely would be

for me is to make up each story and get the registration based on that. That way, you the customer, are completely innocent.”

▶ “We often use a ‘pre-determined route’ for registration using the name of someone who owns lots of ivory.”

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

▷ Misrepresenting the date of acquisition

The ivory buyers recommended to “create a story and most of them are pretty predictable, common stories”, “lie on these official statements”, “just make up a story”, “talk yourself into acquiring the ivory in the year” though “It is prohibited”, and a “cunning way”, etc. in order to make up the year of acquisition in the Showa era (until 7th January 1989) which precedes the deadline (before 18th January, 1990) set by the laws and regulations as the registration requirement.

• Use of websites for disguising a law-abiding trade

The ivory buyers who were willing to launder ivory whole tusks by using fraudulent registrations are more likely to display on their websites specific explanations on the registration scheme. It is likely that they wanted to disseminate misleading information for disguising their non-compliance with the law and regulations.

Results of door-to-door survey with ivory sellers

In 2015, a door-to-door survey to ivory sellers was conducted to understand the reality of illegal ivory export from Japan to China.

• Resale destination

The resale destination supposed by the ivory sellers includes both Japanese and Chinese.

Many of the sellers have a waiting list of their customers for ivory tusks. They are making such deals as securing the buyers on the list first and purchasing ivory tusks depending on the situation of the list.

• Illegal export of ivory to China

▷ All of them were willing to sell their ivory to the investigator, recognizing that the buyer (investigator) is supposed to tranship it to those countries.

▷ A seller explained a system of using a transportation agency providing a paid service to carry ivory to China, and advised the buyer (investigator) to use it.

▷ A seller explained that a trade partner based in Hong Kong has transported the ivory purchased in

Japan to Vietnam or Macao by container, and then carried it into China; in the case the piece was too large, the trade partner would divide the tusk into pieces; and the tusk imported from Japan would be processed in HK, then be carried into China.

▷A seller advised that an easy way for bringing the ivory back to China is buying it on an online auction site like Yahoo! Japan Auction through a bidding service agent.

Results of phone survey to the registration organisation (Japan Wildlife Research Centre)

In 2015, a phone survey to the registration organization was conducted to understand the reality of the registration process, particularly the extent of strictness for confirming registration requirements.

• The documents received by the registration organisation (JWRC) as the proof for the acquisition of the ivory suggested in the applicant’s self-statement

JWRC claims to require an official document to prove legal requirement for the ivory being registered on its website. However, the investigation revealed that a JWRC official directly stated that he would accept a written statement made by a person other than the applicant (a “certificate written by a third party”) in place of an official document.

• Who qualifies as a ‘Third party’ for writing a statement on the acquisition

If the applicant insists he cannot find any third party to write the certificate of acquisition, JWRC accepts without any hesitation a written statement by blood relatives as a third party.

• Description about the date of acquisition: coaching a false description

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

• Coaching tactics for selling unregistered whole tusks

The JWRC official gave advice (violating the laws and regulations) that the owner can sell their ivory

without registration by discretion of him/her even if the tusk is supposed to be legally subject for registration. Furthermore, he abetted the applicant (investigator) when defending herself, to claim lack of criminal intent in case charged with attempted transfer of the unregistered whole tusk as follows:

▷“You should stick to your argument. If you decide you don’t get it (the registration), then, you can just state flatly that the tusk is not in ‘whole shape’. No matter who like buyers on internet or even police, it is making the claim that you need a registration, you should argue ‘it’s not in whole shape’ and ‘is there a problem?’ ”

▷“Just stand your ground. Just say ‘It is so carved up and it has ‘not maintained its whole shape’ and for this reason it doesn’t need a registration and is there a problem with that?’ ”

Time allotted by registration organization per application

According to official documents clarifying the estimation of actual expenses for tusk registration, it is written how much time should be spent on confirming the registration per application. It states that no operation of registration-related duty of JWRC for confirming acquisition background of the ivory tusk is required, other than the phone calls within 20 minutes in total.

The Finances behind the registration fees

JWRC designates an independent special account for registration affairs, and its income is composed of just the registration fee. The fee income on ivory registration has increased to 8.4 times since FY 2010 to FY 2014 and then during the same period its share in total fee income has increased from 4% to 22% or 5 times that of the former rate in FY 2014. It can be said that a significant portion of the financial structure of the registration organization has come to financially depend on the registration fee of ivory tusks. Under such a situation, JWRC is therefore continually forced to continue registering new ivory tusks to collect the fee, and as a result the registration process itself would lose substance more than ever, and the “official laundering” would be encouraged further.

Results of information disclosed by GoJ on the preparer of the “certificate written by a third party”

The total number of applications for registration was 360 ivory tusks from January to April, 2016, and the type of registration requirements applied to the cases was ‘pre-convention acquisition’ without one exception. In each case, a certificate written by a third party was accepted as the confirmation of the proof of legal requirement. Not a single case was found where a document made by public agencies was received. In 99% (356/358) of the cases, the document was written by a general third party other than the transferor of the tusk in question. Furthermore, the ‘third parties’ were a family member of the applicants in half the cases of these (170/358).

Rampant laundering revealed in the “Raftel case”

On 20th June, 2017, 27 persons including an anti-quary company named “Raftel” illegally traded in un-registered ivory tusks were cracked down on.

Raftel started purchasing ivory tusks around 2012 and is suspected to have bought about 400-500 tusks (100 tusks per year) from the customers. 80% of them are alleged to be unregistered.

The case revealed the reality of Japan’s domestic ivory market as follows.

- ▷ A laundering system for ivory tusks is deeply rooted in Japan’s domestic ivory market;
- ▷ As one of the methods of purchasing ivory tusks an escrow type agent service was provided, which essentially comprised of (i) receiving delivery of un-registered tusks and (ii) false registration;
- ▷ JWRC turned a blind eye to Raftel’s illegal agent services and proceeded to register a lot of ivory in a conniving manner ; and
- ▷ The oversight of Ministry of Environment to the registration organization is failing.

The rising volume of tusk registration due to the proliferation of loopholes in internal trade controls

In Japan, the volume of registered whole tusks showed an increase in 2005, further exploded in 2011, and has soared until 2015. The total volume of the registered tusks between 2011 and June, 2017 (during 6.5 years) was approx.10,000 in number and 99 tons in weight, which corresponds to 5,500 elephants worth of ivory. In 2015, it reached to as much as 2,100 in num-

ber and 21 tons in weight.

The alarming fact that such a huge number of ivory tusks have been registered suggests the serious effect of the legal loopholes and how firmly the ivory laundering system has been rooted in Japan’s domestic ivory market.

Non-compliance of the CITES resolution over 20 years

Logically, it is impossible to comply with CITES Resolution 10.10 under the controls of ivory trade with these many serious loopholes

It is a serious problem in particular that Japan has not complied with the sentence “c)” in Paragraph 6 of the resolution over 10 years time, which is the heart of the measures for controls on internal ivory trade of the Parties with a domestic ivory market located in the jurisdiction, and has not been substantially changed since the launch of the original resolution.

Updated amendments to LCES 2017 are superficial extensions of an already broken trade control system

The key aspect of Japan’s internal ivory trade controls is to tighten the scope of the trade regulation and leading to less intervention by the police, and supervise the ivory businesses by the hands of the competent administrative bodies instead, based on the consideration to the domestic ivory manufacturers who cannot legally obtain the raw material from overseas by their own efforts. In fact, the existing laws and regulations put a protective supervision over the traders and prevent the law enforcement authority from stepping into the deals made by the traders. Such approach is epitomized by the response of GoJ emphasizing full coordination between public and private sectors through the establishment of the “Public-Private Council for the Promotion of Appropriate Ivory Trade Measures” together, with the Japan Ivory Association (JIA), Yahoo! Japan, etc.. Nevertheless, placing minimal legal restrictions on ivory traders with an administrative blanket of protection may leave too much opportunity for illegal items to enter the market. In fact, continuous crackdowns of major members of the ivory association (JIA) including Takaichi in 2011 and Nippon Ivory in 2016 demonstrate that such an approach is already dysfunctional.

However, GoJ has made no attempt to free itself from this traditional paradigm. Though GoJ had a chance to reform the internal ivory trade controls through the amendment to the Law for Conservation of Endangered Species of Wild Fauna and Flora (LCES) in 2017, the measures taken by the amendment only offered an extension of the status quo of the dysfunctional system.

In fact, the amendment cannot be praised primarily because no sweeping review with regard to the trade regulation / registration scheme which is the heart of the internal ivory trade controls in Japan was made, and secondly because it fails to strengthen supervisory scheme over ivory business meaningfully so that traceability of ivory cut pieces and ivory products are secured.

Consequently, the amendment to LCES 2017 remains just as a PR effort to demonstrate that the competent administrations are willing to force the businesses to comply with the laws and regulations, but in truth it won't lead to meaningful reform of the internal ivory trade controls.

Compounding the problem, GoJ launched a campaign in 2017 to register more 'legal' ivory which encourages more laundering

GoJ launched a nationwide campaign on August 31st, 2017 to promote the registration of whole tusks over the next 2 years. It is distributing posters and urging local governments to promptly publicize the campaign under the guise as "it is needed to get the picture of ivory whole tusks stockpiled in Japan".

Even more surprisingly, tightening of the defective registration process is to be considered 2 years after the period of the registration promotion campaign is over.

It is obvious that GoJ is actively attempting to inject more whole tusks into the ivory market and stipulate the demand for ivory though it should have recognized the reality that falsely registered ivory tusks have been flowing into the market due to the defects of the registration process.

Conclusion

Although Japan's ivory market has been significantly vitalized by the Internet trade, illegal international/internal trade has continued, and in particular the illegal

internal trade has significantly increased, the Government of Japan is determined to oppose the resolution of closure of domestic ivory market, and has taken steps on the contrary, to avoid closing the serious legal loopholes in the internal trade controls and is consistently vitalizing ivory supplies into the market and increasing the demand for 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).

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 prepare and launch necessary legislation and administrative measures towards closure.

The CITES Secretariat is recommended 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.

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.