

## **Executive Summary**

### **Upsurge of elephants poaching and ivory smuggling**

The elephant population of Zakouma National Park in Tchad had reduced from 3,885 elephants in 2005, to just 617 elephants in 2009, due to poaching for ivory. In Kenya, the number of elephants killed by poachers rose from 47 in 2007 to 214 in 2009. Experts alarmed that more than 38,000 African elephants were killed for ivory in 2006 alone.

### **Does Japanese ivory market need smuggled ivory?**

- 106 seizures occurred between 1998 and 2008, of which 24 seizures were for raw ivory and 83 for worked ivory (one case was both for raw and worked ivory).
- “Osaka seizure”, the largest seizure of ivory in the history of Japan (2.8 tonnes), took place in August 2006. Some evidences suggest that some part of seized ivory may have been produced in East Africa including Tanzania.
- Even after officially importing 39 tonnes of ivory from the one-off sale in October 2008, price of raw ivory has stayed high in Japan. It is directly related to price fixing by the small number of influential manufacturers who have monopolized most of the raw ivory stock in Japan. Thus, the majority of ivory manufacturers and wholesalers are driven to seek out alternative less expensive smuggled ivory.
- The raw ivory satisfying the demands of the Japanese market does not come from the official auctions in southern African countries but from illegal sources with better quality and more inexpensive price.

### **Is the law enforcement at water-edge sufficiently effective in Japan?**

- Very few ivory seizures result in a criminal charge. Only 2 out of 24 (8%) of the seizures involving raw ivory and 6 out of 83 (7%) of seizures of worked ivory resulted in any criminal charges being laid.
- In 16 / 27 (59%) of seized contraband transported by foreign mail, the seized ivory was reshipped and returned. “Reshipment and return” means that the seized ivory is returned to the black market.

### **Is the Control of internal ivory trade effective in Japan?**

- It is nearly impossible to trace the origin of each cut piece, semi-worked and worked ivory, marketing in Japanese white market. Just the origin of a registered whole tusk can be identified.
- The, internal transfer of smuggled cut pieces, semi-worked and worked ivory cannot be penalized. Therefore, the person, proved to be involved with the internal transfer, cannot be punished at all unless he is also proved to be involved in the smuggling himself.

### **Discussion**

- It may be difficult for Japan to prevent inflow of illegal ivory effectively as far as it goes.
- The official resumption of international ivory trade cannot be justified under the current situation of elephant poaching and ivory smuggling. CITES should not be indifferent to the issue of demand in consumer countries including Japan.
- Japan should oppose to resume official international trade in ivory at CITES CoP 15 and also be responsible for reducing demand for ivory in its domestic ivory market.

# *'Elephant poaching? None of our business'*

## **Influence of Japanese ivory market on illegal transboundary ivory trade**

by  
Masayuki Sakamoto  
Secretary General of the Japan Tiger and Elephant Fund (JTEF)

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### **Japan Tiger and Elephant Fund**

5F Suehiro Bld., Toranomom 2-5-4, Minato-ku, Tokyo 105-0001, Japan  
Tel: +81-3-3595-8088 Fax: +81-3-3595-8090  
E-mail: hogokikin@jtef.jp URL: <http://www.jtef.jp>

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## Introduction

Poaching of elephants for their ivory has reached serious level. In Tchad, a recent survey found the population of Zakouma National Park had reduced from 3,885 elephants in 2005, to just 617 elephants in 2009, due to poaching for ivory (CITES CoP15 Prop.6). In Kenya poaching of elephants for their ivory has reached an all time high in 2009 as well. This is the worst it has been since the ban in 1989. The number of elephants killed by poachers rose from 47 in 2007 to 214 in 2009. (<http://technology.iafrica.com/news/science/2126864.htm>).

The most recent report of “Monitoring the Illegal Killing of Elephants” (MIKE) says “The analysis further suggested an ongoing increase in the rate of illegal killing of elephants in Africa” (CoP15 Doc. 44.2).

Also, the most recent report of “Elephant Trade Information System” (ETIS) informed, “the illicit trade once again appears to be rapidly increasing. As this result directly follows the CITES-approved one-off ivory sale in November 2008 between four African producer countries and two Asian consumer countries, as well as a further iteration of the mandate in Decision 13.26 to curtail the world’s unregulated domestic ivory markets” (CoP15 Doc. 44.1 Annex) Experts alarmed “more than 38,000 African elephants were killed for ivory in 2006 alone”(Wasser et. al, 2009).

Under this crisis, Tanzania and Zambia are proposing to transfer their African elephant populations from Appendix I to II and request one-off sales of their ivory stockpiles at the 15<sup>th</sup> meeting of the Conference of the Parties to Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP15), Doha (Qatar), 13<sup>th</sup> - 25<sup>th</sup> March 2010.

One of the key questions is whether the main consumer countries can prevent inflow of huge volume of illegal ivory, marketing internationally. This report overviews the market and effectiveness of regulation in Japan.

Another key question is whether official resumption of international ivory trade can be justified under the current situation of elephant poaching and ivory smuggling.

Finally, it is discussed how Japan should make its decision to the proposals to resume international ivory trade at CITES CoP15.

# Chapter I Does Japanese ivory market need smuggled ivory?

## I.1 Continuous ivory smuggling into Japan

### Number of seizures

106 seizures occurred between 1998 and 2008 (see Annex A and B), of which 24 seizures were for raw ivory and 83 for worked ivory (one case was both for raw and worked ivory). From 1998 – 2001, the annual number of seizures was approximately 15 and thereafter, less than 10. However, in 2006, the number of raw ivory seizures shot up to the highest number for 11 years.

Table 1 Seizure of raw and worked ivory (1998 - 2006)

		1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Raw ivory	Number of case	5	3	1	2	2	2	1	1	6**	1	0	24**
	Quantity (number)	155	4	132	120	2	30	1	10	616	13	-	1,083
Worked ivory*	Number of case	11	12	12	11	5	5	4	5	5**	9	4	83**
	Quantity (number)	182	1,236	331	116	10	30	14	1,766	17,955	12***	5	21,657

\* "Medicine" is excluded from "Worked ivory" though it may contain ivory powder.

\*\* 608 raw ivory and 17928 worked ivory was seized in one case exposed in 2006.

Thus, total number of seizure including both raw and worked ivory is 106.

\*\*\*Exclude two cases indicating the quantity as in weight (2006GR for one case and 2018GR for another case).

Source: Ministry of Finance

### Important facts suggested by the major ivory smuggling cases

The major ivory smuggling cases since 2000 are summarized in Annex 2. These cases suggested the important facts as follows.

- Smuggling 500kg of raw ivory (2000)

This case suggested that Japanese ivory dealers are two-faced. A board member of Tokyo Ivory Arts and Crafts Association and a Hong Kong based broker, close to many members of the ivory association, were convicted.

- Smuggling of 1,700 ivory *hankos* \*(2005)

This case showed that considerable number of *hankos* can be transported even with trip cargo if the contraband is shared by multiple persons. It was revealed that ivory smuggling has been repeated from Taiwan to Okinawa (the south end of Japan).

\* *hankos* : A name seal stamp used for identification of the person.

- Two cases of smuggling ivory cut pieces for manufacturing billiards cues (2006)

These cases revealed that an American company "Atlas Billiard Supplies" in Illinois continually has exported semi-worked ivory to Japanese billiard workshop for manufacturing ivory cues. The American company is a division of "Atlas Fibre Company", one of the largest suppliers of specialty plastics in the plastics industry.

- "Osaka seizure" (2006) will be mentioned in detail later.

### Smuggling 2.8 tonnes of raw ivory and *hankos*, "Osaka seizure" (2006), the largest ivory seizure in Japanese history

On August 21<sup>st</sup> 2006, a 20 foot commercial container was off-loaded at Osaka South Port from a containership named "Glory Star" which had arrived from Pusan, Korea. On August 23<sup>rd</sup>, the cargo in the container was declared to the Osaka Customs as "stone". On August 28<sup>th</sup>, an X ray inspection was carried out inside the container revealing an unusual "shade" in three crates and upon opening the container, Customs officials discovered that a significant volume of ivory cut pieces and *hankos* (name-seal stamps) was concealed in the three crates (each

approx. 1m×1m×1.5m) , while approximately 10 tonnes of artificial marble was packed in the other crates set near the door of container. The Customs immediately seized the contraband (Sakamoto, 2007) .

The 608 ivory cut pieces which were seized weighed 2,409kg (4.0kg per one cut piece on average) (source: court hearing recorded by JWCS). They originate from whole tusks of approximately 130 elephants cut into two or three pieces (Yomiuri Shimbun press, 1<sup>st</sup> March, 2007). Each piece is approximately 10 cm in diameter and 40 cm in length. One of the largest pieces is 15 cm in diameter and 60 cm in length (Yomiuri Shimbun press, 1<sup>st</sup> March, 2007), while another source states that the original whole tusk would measure 18cm in diameter and 150cm in length (Personal communication). Sections of the cut pieces are varnished to prevent evaporation (Asahi Shimbun press, 8<sup>th</sup> February, 2007).

17,928 ivory *hankos* were also seized, weighing 385kg (21.5g per *hankos* on average) (Sakamoto, 2007). They are cylindrical in shape, flat at both ends, and measure 15mm in diameter. They smooth but not yet polished (Personal communication).

In Japan cylindrical *hankos* with a dome-shaped top are used for signing or authorizing important legal documents and contracts. The most popular size is 15mm in diameter and 60mm in length, and the next most popular measures 12mm x 60mm (Sakamoto, 2003). Given these dimensions, it is considered that the *hankos* found in the “Osaka seizure” were produced for Japanese use and exported in semi-finished state, requiring simply the completion of the dome-shape top and polishing.

“Osaka seizure” proved that huge demand for smuggled ivory still exists in Japan.

### Established smuggling routes

Table 2 shows the significant exporting countries and territories for ivory seizures between 1998 and 2008.

**Table 2 Significant exporting countries and territories of seized ivory in Japan (1998-2008)**

Country and territory	Number of seizure	Quantity of seized raw ivory (number)	Quantity of seized worked ivory (number)
China	19	6	357
U.S.	16	136	23*
Thailand	12	37	28
Hong Kong	10	0	1,228
Korea	9	611	17,958
Taiwan, provinve of China	6	1	1,744
Total (persenatge)	72/106 (68%)	791/1,088 (73%)	21,338/21,657 (99%)

\*Exclude two cases indicating the quantity as in weight (2006GR for one case and 2018GR for another case).

All the exporting countries are in the Asian region except for the United States. The highest number of recorded seizures (19) is from China. The second highest number is 16 of U.S. As mentioned, two cases of smuggling semi-worked ivory for manufacturing billiards cues took place. Thanks to the “Osaka seizure”, the overwhelmingly largest quantity of seized ivory recorded is from Korea. Source: Ministry of Finance

It is worth noting that all the countries listed in the table are merely distribution centers or re-exporting countries. Also, the exporting country of worked ivory does not mean the place it is produced. Korea, the exporting country of the ivory in the “Osaka seizure” is merely the final transit country.

## I.2 Price- fixing of ivory for maintaining at a high level

In the Japanese ivory market, raw ivory including whole tusks and cut pieces is traded as follows:

- A significant quantity of whole tusks has been sold by members of the public to ivory manufacturers.
- Various sizes and types of cut pieces are intensively traded between the manufacturers. METI classifies these cut pieces in 9 categories according to their form (Anon. 2006 b).

Raw ivory is manufactured as various products which are marketed as follows:

- Raw ivory manufactured into *hankos* accounts for 60 to 70 % (Milliken T. 1989) or more of the consumed stock.
- Various types of ivory products are classified by METI in 12 upper and 38 lower categories (Anon. 2006 b).

The legal sources of this ivory are mostly stock which existed prior to the ban on international commercial trade (January 1990), the one-off sale of 50 tonnes of ivory in 1999 and the one-off sale of 39 tonnes of ivory in 2009.

Price of ivory is still at a high level though new supply was generated in 2009. Why?

In 1996, 66% of the total raw ivory stock notified to the government was in the possession of Japan Ivory Association members (EA, METI, 1996).

In 1999, 14 companies, comprising 15 dealers, which were allowed to participate in the ivory auction for the one-off sale from Botswana, Namibia and Zimbabwe, were all members of the JIA (Anon. 1999 a). In 2008, only 20 companies, comprising 23 JIA members participated. (Anon. 2009).

Most of the raw ivory stock in Japan is monopolized by a small number of influential manufacturers who are the organisers of JIA, and thus, it is believed that the jump in ivory prices is not directly related to the supply-demand balance but to price fixing by the influential manufacturers. In support of this statement, a manufacturer informed that “A small number of ivory association member is controlling the price. Spending tax for resumption of ivory trade does not benefit general ivory manufacturers”. He complained that “such a high price of raw ivory is messing up my business. It is impossible to get a margin where the material costs JPY 70,000- 80,000 / kg though *hankos* can produce a considerable margin” (Sakamoto, 2007).

Under these circumstances, a significant cut in price is not guaranteed even where limitations are imposed on imports of ivory. Indeed, only a small and short-term drop in the wholesale price of *hankos* was observed in the case of last one-off sale in 1999. When the price of ivory is maintained at a high level, the majority of ivory manufacturers and wholesalers are driven to seek out inexpensive materials which are outside the control of the ivory associations.

According to the court statement of the Hong Kong broker referred to in the case described above (Annex 2), the price in 2000 of the smuggled 500kg of raw ivory was JPY 35,000-38,000 (US\$ 292-317) per kg despite its high quality (18.2kg per tusk on average) (Sakamoto, 2007). This price is approximately half the official marketing price set by JIA members (Sakamoto, 2007).

It is likely that Japan will continue to be a significant destination for smuggled ivory unless the present price control mechanism is changed.

## I.3 Relationship between quality of ivory required by the Japanese market and demand

## for smuggled ivory

The average weight of tusks in official Japanese imports of raw ivory between 1979 and 1987 was 16.82kg in 1980 and 9.70kg in 1982 (Milliken, 1989). The average weight of 6,411 whole tusks registered between 1995 and 1998 as pre-Convention stock was 15.42 kg (Anon. 2006 a).

Dependence on large-size tusks is one of the significant characteristics of the Japanese ivory market as large-size tusks are necessary to produce the most widely consumed ivory products in Japan, i.e. *hankos* (Milliken, 1989). The minimum size for manufacturing *hankos* is 7-8kg (Anon. 1999 a); therefore if small tusks are used in the manufacture of *hankos* a large portion of these tusks would remain unused, reducing production efficiency. This is because the parts closer to the tusk surface have more cracks and are rough in texture and not good for *hanko* manufacturing (Sakamoto, 1999).

A lot of tusks auctioned in and imported from Botswana, Namibia and Zimbabwe in the one-off sale in 1999 were small, with cracks across the whole surface caused by broken tips, so that 40% of the total import was not suitable for *hanko* manufacturing (Anon. 1999 b, Anon. 1999 c). Indeed, the average weight of tusks registered in 1999 was 9.1kg (Sakamoto, 2007).

The quality of 60 tonnes of ivory expected to be auctioned in Botswana, Namibia and South Africa, as a result of the conditional approval in 2002, is presumed to be similar to that included in the one-off sale in 1999. Therefore, large tusks of sufficient quality to be used in the manufacture of *hankos* cannot be expected to be acquired from the official auction from Botswana, Namibia and South Africa.

The imported ivory in 2009 is reported "The quality of the ivory was uneven. It varied in size from small to large. A country had no medium size ivory which is suitable for seals' material", "China wanted ivory for art materials. It doesn't matter if the ivory was small or cracked a little. Art objects are usually made by combining small pieces of materials. On the other hand, Japan wanted it for seal materials. They wanted ivory with high-density. The ivory was carefully selected and the amount was 39 tons" (Anon. 2009).

Compared to the one-off sales, the average weight of tusks in the 492.375 kg of raw ivory smuggled in 2000 was 18.2kg, i.e. twice as much. The raw ivory seized in the "Osaka seizure" weighed 2,409kg and was considered to originate from approximately 250 whole tusks; the average weight of these tusks is therefore 9.6kg.

The apparently higher quality of smuggled tusks implies that the raw ivory satisfying the demands of the Japanese market comes not from the official auction by southern African countries but from illegal sources.



## Chapter II Is the law enforcement at water-edge sufficiently effective in Japan?

### II.1 Low level of penalties taken in ivory seizure cases

The rates of “Notified sanction” and “Criminal charge” procedures undertaken in relation to raw ivory seizures are just 17% (4/24) and 8% (2/24) respectively.

For worked ivory, the rates are 8% (7/83) and 7% (6/83) respectively (see Annex A and B). While the “Infraction case” procedure is difficult or clearly inappropriate in some cases, these low rates are still questionable. It is suspected that the Customs in Japan do not recognize the seriousness of international illicit trade in ivory and may undervalue the effects of strict sanctions against the parties concerned.

### II.2 Smuggled ivory cannot be confiscated but must be returned to the exporting countries when it is difficult to identify the offenders

Table 3 shows the number of seizures and quantity of seized ivory (by raw ivory/worked ivory) by method of transportation.

**Table 3 Number of seizures and quantity of seized ivory by method of transportation (1998-2008)**

Method of transportation	Number of seizures	Quantity of seized raw ivory (number)	Quantity of seized worked ivory (number)
Trip Cargo / Air	57	188	3,408
Foreign Mail	27	138	251
Trip Cargo / Sea	8	4	25
Commercial Cargo / Air	9	13	44
Commercial Cargo / Sea	5	740	17,929
Total	106	1,083	21,657

Source: Ministry of Finance

“Trip cargo by air” accounts for 57 / 106 (57%) of the seizures and “Foreign mail” for 27 / 106 (25%) of the seizures.

Table 4 shows the disposal of seized contraband transported by foreign mail.

**Table 4 Disposal of seized ivory transported by foreign mail (1998-2008)**

Seizure date	Disposal of seized specimen	Types of elephant specimen	Exporting Country	Quantity of raw ivory (Number)	Quantity of worked ivory (Number)	Method of transportation
1998/5/11	Return Shipment	Worked ivory (Accessories)	UK		2	Foreign mail
1998/12/2	Return Shipment	Worked ivory (ornament)	UK		1	Foreign mail
2000/3/14	Return Shipment	Worked ivory	China		155	Foreign mail
2000/3/15	Return Shipment	Worked ivory (billiards cue)	USA		1	Foreign mail
2000/7/26	Return Shipment	Worked ivory	USA		1	Foreign mail
2001/7/19	Return Shipment	Raw ivory	USA	120		Foreign mail
2001/7/23	Return Shipment	Worked ivory	China		1	Foreign mail
2002/5/27	Return Shipment	Worked ivory (statue of Buddha)	USA		1	Foreign mail
2003/5/21	Return Shipment	Worked ivory	Hongkong		5	Foreign mail
2003/5/27	Return Shipment	Worked ivory	South Africa		10	Foreign mail
2005/12/14	Return Shipment	Raw ivory	Thailand	10		Foreign mail
2006/1/27	Return Shipment	Raw ivory	China	1		Foreign mail
2006/3/28	Return Shipment	Raw ivory	China	4		Foreign mail
2007/4/10	Return Shipment	Worked ivory	USA		1	Foreign mail
2007/4/16	Return Shipment	Worked ivory	Hongkong		2	Foreign mail
2007/9/10	Return Shipment	Worked ivory	France		2	Foreign mail
2000/3/6	Voluntary Ownership Waiver	Worked ivory	Tanzania		1	Foreign mail
2000/3/15	Voluntary Ownership Waiver	Worked ivory	Thailand		4	Foreign mail
2000/10/22	Voluntary Ownership Waiver	Worked ivory	China		47	Foreign mail
2001/10/30	Voluntary Ownership Waiver	Worked ivory	China		11	Foreign mail
2002/6/6	Voluntary Ownership Waiver	Worked ivory	USA		1	Foreign mail
2005/8/16	Voluntary Ownership Waiver	Worked ivory	China		3	Foreign mail
2005/12/3	Voluntary Ownership Waiver	Raw ivory	USA	1		Foreign mail
2006/2/2	Voluntary Ownership Waiver	Raw ivory	USA	1		Foreign mail
2006/2/22	Voluntary Ownership Waiver	Worked ivory	USA		1	Foreign mail
2006/02/22	Voluntary Ownership Waiver	Raw ivory	USA	1		Foreign mail
2007/10/11	Voluntary Ownership Waiver	Worked ivory	China		1	Foreign mail

Source: Ministry of Finance

In 16 / 27 (59%) of seizures, the seized ivory was reshipped and returned. In the remaining 11 / 27 (41%) of seizure, ownership of the seized ivory was voluntarily waived (see table 4).

When it is difficult to identify an offender, an “Infraction case” cannot be established. In such a case, the true owner of seized ivory does not usually appear meaning that the Customs cannot accept a voluntary ownership waiver. The Customs is only authorized to confiscate the contraband for the purpose of investigating an “Infraction case” (Customs Law Article 121, 122 and 123). Thus, when it is found that the seizure does not meet the requirements for an “Infraction case”, the Customs Authority must release the contraband reship and return it to the exporting country.

“Reshipment and return” means that the seized ivory is returned to the black market. It is vital to improve the legislation to enable confiscation of seized cargo when the “Infraction case” procedure and voluntary ownership waiver is not applicable.

### **II.3 Clients controlling brokers with strong connections to ivory manufacturers and not involved with smuggling activity, and recipients at final destination or ivory manufacturers, are rarely prosecuted**

It is clear that a Korean criminal network was behind the “Osaka seizure”. A Korean client asked the Japanese Yakuza to be the ‘front’ importer and arranged for a Korean affiliate to pay the import costs. Furthermore, the provision of 2.4 tonnes of raw ivory strongly suggests that receipt by specific Japanese ivory manufacturer had been pre-arranged.

The law enforcement authorities identified the clients but failed to take measures against them.

Thus, the final recipient was not even identified. Furthermore, the arrest of the 'front' importer took place in 7<sup>th</sup> Feb. 2006, five months after the seizure on 28<sup>th</sup> August 2006.

According to some media reports, the Japanese importer permanently deleted the data from the relevant computer, after the Customs conducted the search against him (Asahi Shimbun press, 8<sup>th</sup> February, 2007), meaning that the data could not be recovered. Further, the Korean client and his affiliate allegedly cancelled their cell phones and fled Japan (Asahi Shimbun press, 7<sup>th</sup> Feb., 07 and Sankei Shimbun press, 1<sup>st</sup> March, 2007).

It is regrettable that the offenders appeared to beat the law enforcement authorities with ease. The effectiveness of the coordination between the Customs authorities and the police must be questioned. In fact, Japanese law enforcement authorities have rarely succeeded in prosecuting a client or recipient of ivory. In the seizure of 1,700 ivory *hankos* in 2005 (see Annex 2) only the carriers were punished. The enforcement authority established a previous crime in which one of the carriers had been involved, and identified the recipient of the ivory in the crime. However, the authority failed to prosecute.

In relation to the seizure of raw ivory weighing 500kg in 2000 (see Annex 2), the Customs allowed the contraband to move around freely in order to attempt to identify the client and the final recipient, and then, in cooperation with the police, arrested a notorious Hong Kong broker and a Japanese ivory manufacturer who was a board member of an affiliated organization of JIA. This result was only achieved through excellent coordination between the Customs and the police. This law enforcement effort is worthy of praise, however, the law enforcement authorities could not prove that the arrested manufacturer was the recipient of the ivory as final destination, nor establish who was the final recipient of the ivory if it was not the manufacturer arrested.

The final recipients were arrested in the two cases of smuggling ivory cut pieces for manufacturing billiards cues (see Annex 2). However, those recipients carried the ivory by himself or indicated their name as importer of the camouflaged contrabands.

Ivory smuggling networks will continue with their criminal activities, and suffer no serious consequences, if law enforcement efforts continue in this manner. Close coordination between the Customs authorities and the police, intensive inspection and investigation, and strict application of penalties are imperative to address ivory smuggling cases.

On the other hand, considering ivory smuggling networks are vigilant about any investigations in relation to the final destination of the ivory, it is insufficient to utilize conventional investigation methods in tracking the route from a carrier to the final destination. From this point of view, it is important to amend the existing legislation relating to the control of internal ivory trade to ensure it enables the enforcement authorities to obtain concrete evidence to prosecute the smugglers, and to develop new investigation methods based on improved legislation (see Annex 5).

## **Chapter III**

### **Is the Control of internal ivory trade effective in Japan?**

#### **III.1 Control of internal ivory trade in Japan**

Internal ivory trade (trade of Ivory within the Japanese jurisdiction) is controlled by the *Law for the Conservation of Endangered Species of Wild Fauna and Flora* (June 5<sup>th</sup> 1992, Law no. 75, “LCES”) together with implementing Cabinet and Ministerial orders. A summary of this legislation follows (see Annex 4 in detail).

##### **Registration of whole tusks**

Transfers of whole tusks may only be conducted if they are registered with the Ministry of the Environment.

##### **Controls of businesses dealing with ivory cut pieces and products**

All those who engage in business dealing with ivory must register with METI and the Ministry of the Environment (“MoE”). A registered dealer must record specified information on his trade in a ledger, indicating date, quantity, name of both transferors and transferees, source of the received ivory etc., submit it to METI and MoE and allow spot-inspection by them.

##### **Certification of ivory products**

Manufacturers can apply for certification that their products are made of ivory satisfying the registration requirements. If certified, they receive a sticker *syohyo* to provide to consumers with the product concerned. This scheme is voluntary.

#### **III.2 Deficiencies in control of internal ivory trade in Japan**

The most notable peculiarity of Japan’s control of internal ivory trade is that, prohibition of transfer without registration exists only for the whole tusk. That means, according to the law, when a whole tusk which could be unregistered but has been divided into several cut pieces need not necessarily go through the regulation.

The present state of Japan’s control of internal ivory trade caused two serious loop holes..

a) It is nearly impossible to trace the origin of each cut piece, semi-worked and worked ivory, marketing in Japanese white market. Just the origin of a registered whole tusk can be identified.

b) The internal transfer of smuggled cut pieces, semi-worked and worked ivory cannot be penalized. Therefore, the person, proved to be involved with the internal transfer, cannot be punished at all unless he is also proved to be involved in the smuggling himself.

A smuggling case regarding semi-worked ivory for manufacturing billiards cues in Gunma (see Annex 2) clearly brought out the outrageousness situation as mention above (b).

The arrested manufacturer had sold 12 cues to 3 retailers on five different occasions. The cues in question and movement of the money paid by the retailers were identified by the police (Memorandum of Sakamoto at the court hearing).

Despite of the result, the manufacturer and the retailers were not penalized for the internal transfer because internal transfer of ivory, except for a whole tusk, is not regulated in Japan.

As far as internal trade is concerned, the conviction for the manufacturer was for not-registering his business dealing with ivory (see III.1). But, it should be noted that no one could have been convicted regarding internal transfer of smuggled ivory if the manufacturer had registered his business to the Ministry.

Needless to say, it is much more complicated and difficult for law enforcement authorities to collect thorough evidences against smuggling than against possessing or for carrying out internal transfer. The present state of Japanese legislation will make the criminal syndicates have everything their own way.

## Discussion

### Can Japan prevent inflow of huge volume of illegal ivory effectively?

Recently, elephant poaching and ivory smuggling have been increasing rapidly. The destinations of ivory derived from poached elephants are countries having domestic demand in their markets.

Japanese ivory market needs smuggled ivory as mentioned in Chapter I. It can be predicted that the criminal syndicates will continue to target Japan as one of the destination of illegal ivory.

This report discusses that Japan's water-edge control is not effective enough to prevent illegal ivory from flowing into domestic market. Furthermore, the control of internal ivory trade in Japan has serious deficiencies.

Criminals, especially organized criminal syndicates are targeting the loopholes in this weak regulation. Japanese internal control is far from the optimism that criminals would fear that it will affect them. No criminal may take it seriously. All the conviction of "Osaka seizure" and the two smuggling ivory for manufacturing cues had recognized just water edge control and nothing about internal ivory trade control.

In conclusion, it may be difficult for Japan to prevent inflow of illegal ivory effectively. Japanese government should at least prioritize the inspection of wildlife products at water-edge and penalize the violator more strictly. Furthermore, serious amendment to the law on control of internal ivory trade must be done urgently (see Annex 5).

### Can the official resumption of international ivory trade be justified under the current situation of elephant poaching and ivory smuggling?

It has been continually debated at the meeting of CoP to CITES, whether official resumption of international ivory trade should be resumed.

It is noted that the recent MIKE report describes, "The analysis further suggested an ongoing increase in the rate of illegal killing of elephants in Africa, but no relationship was apparent between trends in rates of illegal killing and CITES decisions regarding elephants." (CoP15 Doc.44.2)

In that case, will it be appropriate to discuss the resumption of official ivory trade separately from the prevention of elephant poaching unless the relation between CITES decisions and trend of poaching is scientifically proved?

The first reasoning is that, it is not scientifically proved that the CITES CoP decisions are irrelevant to ivory poaching.

The second reasoning is that, preventing expansion of "legal" ivory trade is an effective measure to reduce the demand for ivory.

The second reason above is to be elaborated. The two essential measures against elephant poaching should be noted as follows;

1. Strengthening anti-poaching activity in the Range states, and law enforcement against illegal ivory trade in Range states and importing countries.
2. Reducing demand for ivory in consuming countries.

The only measure for reducing the demand is to scale down the market in consuming countries. Expansion of legal trade in order to give them a new supply will discourage implementation of the measure.

Recent debate at CITES meetings has concentrated on the first measure and not taken the second measure seriously. This is partly because the Parties prioritizing short-term economic benefit than long-term impact to the elephant population has been more influential than the other Parties. At the same time, it should be noted that lack of awareness regarding poaching and smuggling was prevailing during the debate at the CITES meetings in the past. However, once CITES Parties acknowledged the ongoing upsurge of poaching and smuggling, they should not be indifferent to the issue of demand in consumer countries any more.

### **How should Japan make the decision to the proposals to resume international ivory trade at CITES CoP15?**

Japan, as one of the major ivory consuming countries, should take responsibility to reduce its demand for ivory together with the others including China and U.S.

From the point of view, Japan should oppose to resume official international trade in ivory.

However, it is worth worrying that Japan would support Tanzanian proposal at least in order to look after the interest of Japanese ivory business.

- Following the “Osaka seizure”, the Japanese law enforcement agency sent samples of the seized ivory to a researcher to identify their source. DNA and collagen analysis suggested that the ivory may originate from countries on the eastern side of the African continent (Asahi Shimbun press, 8<sup>th</sup> February, 2007). Furthermore, the markings observed on some of the cut pieces were Swahili, used in East Africa. This strongly suggests that some part of seized ivory may have been produced in East Africa including Tanzania or collected in that region before being shipped to Asia (Sakamoto, 2007).
- On the other hand, the Federation of Japan Ivory Arts and Crafts Association (JIA) gives an arms-open welcome to the Tanzanian proposal. A prominent *hankos* business journal reported, “*a recent investigation revealed that Tanzania, Zambia and Mozambique had some ivory. Of these countries, expectations can get high on Tanzania, as some members of the youth group of JIA actually visited there and saw some of the ivory that the country has stocked. In future, if these countries who have some ivory, put their hands up for temporary export, there might be a possibility that Japan can import some of it in regular intervals of one or two years. We will have to keep an eye on ivory issues in the coming years.*” (Anon. 2009)
- Recently, a study of elephant’s DNA fingerprinting has been developing as a tool for tracing the origin of seized tusks (Wasser et. al, 2007, Wasser et. al, 2009). The research group requested the Ministry of Economy, Trade and Industry (METI) of Japan to provide a sample of ivory seized at “Osaka seizure” in October 2007. However, METI incinerated the ivory in May 26<sup>th</sup>. 2008 (Asahi Shimbun press, 4<sup>th</sup> April 2008) after the conviction was finally settled. METI retained only a collection of about 100 small pieces (Wasser, 2009) out of 608 cut pieces and 17,928 *hankos* though the research group had requested the sample from each tusk in a size of cube 4 cm on a side (Furuta, 2009). The research group still requested to provide the collection but METI delayed the permission for export under the reason due to an error in the application form. For example, METI required the researcher to correct genus African elephant (*Loxodonta*) to family elephant or *Elephantidae* because “There is no evidence showing that the ivory is derived from African elephants”, though the seized ivory had been identified as of African elephant by Japanese researcher who was requested by the Police at the beginning of 2006 (see I.1). Until last reported (Feb,2010) METI has not provided the sample yet to the researcher (Furuta, 2010).

Observing the background of the above situation, it can be supposed that METI has intended to delay the permission to provide the sample because the vote-getting for Tanzanian proposal

at CoP15 may be baldly influenced if the origin of seized ivory is revealed as of Tanzania.

Japanese government should not make a decision just looking after the interest of specific domestic industry. It should oppose to resume official international trade in ivory and also be responsible for reducing demand for ivory in consuming countries including Japan.



## **Annex 1: Trends in ivory seizure and law enforcement**

### **Number of seizures**

Annex A shows details of ivory seizures at the water's edge and actions taken in relation to these seizures ("Notified sanction" or "Criminal charge"). Annex B shows a seizure and action in relation to marketing contraband after customs clearance.

Based on the data included in Annexes A and B, Table 1 gives details of all seizures and quantities of seized raw and worked ivory from 1998 - 2008. Goods other than ivory like hide-products, bone, blood plasma etc. are excluded from the table and figure. "Medicine" containing ivory powder is also excluded because of the small amounts ivory involved.

106 seizures occurred between 1998 and 2008, of which 24 seizures were for raw ivory and 83 for worked ivory (one case was both for raw and worked ivory). From 1998 – 2001, the annual number of seizures was approximately 15 and thereafter, less than 10. However, in 2006, the number of raw ivory seizures shot up to the highest number for 11 years.

### **Quantity of seized ivory**

In the 11 years between 1998 and 2008, a total of 1,083 raw ivory pieces/tusks were seized. In four of the years over 100 raw pieces / tusks were seized. Between 1998 and 2008, a total of 21,657 worked ivory items were seized. In three of the years, over 1,000 worked ivory items were seized.

"Osaka seizure", the largest seizure in the history of Japan of both raw and worked ivory occurred in 2006.

### **Significant exporting countries and territories**

Table 2 shows the significant exporting countries and territories for ivory seizures between 1998 and 2008.

All the exporting countries are in the Asian region except for the United States. The highest number of recorded seizures (19) is from China. The second highest number is 16 of U.S. As mentioned, two cases of smuggling semi-worked ivory for manufacturing billiards cues took place. Thanks to the "Osaka seizure", the overwhelmingly largest quantity of seized ivory recorded is from Korea.

It is worth noting that all the countries listed in the table are merely distribution centers or re-exporting countries. Also, the exporting country of worked ivory does not mean the place it is produced. Korea, the exporting country of the ivory in the "Osaka seizure" is merely the final transit country.

### **Method of transportation**

Table 3 shows the number of seizures and quantity of seized ivory (by raw ivory/worked ivory) by method of transportation.

"Trip cargo by air" accounts for 57 / 106 (54%) of the seizures and "Foreign mail" for 27 / 106 (25%) of the seizures.

In relation to the quantity of seized ivory, "Commercial cargo by sea" suitable for large-scale shipment, including the "Osaka seizure", outnumbers other categories.

## **Disposal of seized contraband**

Table 4 shows the disposal of seized contraband transported by foreign mail.

In 16 / 27 (59%) of seizures, the seized ivory was reshipped and returned. In the remaining 11 / 27 (41%) of seizure, ownership of the seized ivory was voluntarily waived.

When it is difficult to identify an offender, an “Infraction case” cannot be established. In such a case, the true owner of seized ivory does not usually appear meaning that the Customs cannot accept a voluntary ownership waiver. The Customs is only authorized to confiscate the contraband for the purpose of investigating an “Infraction case” (Customs Law Article 121, 122 and 123). Thus, when it is found that the seizure does not meet the requirements for an “Infraction case”, the Customs Authority must release the contraband reship and return it to the exporting country.

“Reshipment and return” means that the seized ivory is returned to the black market. It is vital to improve the legislation to enable confiscation of seized cargo when the “Infraction case” procedure and voluntary ownership waiver is not applicable.

## **Law enforcement**

The “Infraction case” procedure undertaken by the Head of Customs is outlined above (see Annex 3). In brief, where the sanction for the offence is a fine, the offender is notified of the requirement to pay the amount corresponding to the fine plus the goods themselves or the value of them instead (“Notified sanction”) and where the sanction is imprisonment, the offender is criminally charged and handed over to the prosecutors.

The level of ivory seizures can be observed from Annexes A and B. However, the majority of cases do not lead to a criminal charge and prosecution, or even “Notified sanction”.

The rates of “Notified sanction” and “Criminal charge” procedures undertaken in relation to raw ivory seizures are just 17% (4/24) and 8% (2/24) respectively.

For worked ivory, the rates are 8% (7/83) and 7% (6/83) respectively. While the “Infraction case” procedure is difficult or clearly inappropriate in some cases, these low rates are still questionable. It is suspected that the Customs in Japan do not recognize the seriousness of international illicit trade in ivory and may undervalue the effects of strict sanctions against the parties concerned.

## Annex 2: The recent major cases of smuggling ivory in Japan

<b>Case 1 : Smuggling 500kg of raw ivory (2000)</b>	
Products and Quantity	132 cut pieces (492.375Kg)
Date of smuggling	April 14 <sup>th</sup> 2000
Port of importation	Kobe Port (sea)
Port of exportation	Singapore
Identity of person involved	A) A broker residing Hong Kong (British National). Involved in business in close relationship with many Japanese ivory manufacturers since 1982. B) A board member of “Tokyo Ivory Arts and Crafts Association” at that time, who had bid for the one-off sale of ivory from Botswana, Namibia and Zimbabwe in 1999.
Penalty	A) One and half years in prison with a stay of execution for four years B) A fine of JPY 300,000 (\$3,000)
Note	The third largest case of ivory smuggling in Japanese history. The ivory is derived from forest elephants in West or Central Africa.

<b>Case 2 : Smuggling of 1,700 ivory <i>hankos</i> (2005)</b>	
Products and Quantity	1.738 <i>hankos</i>
Date of smuggling	January 14 <sup>th</sup> 2005
Port of importation	Naha Airport (Okinawa)
Port of exportation	Taiwan
Identity of person involved	A) Taiwanese B) Taiwanese
Penalty	A) One year in prison with a stay of execution for three years B) A fine under “Notified sanction” by the Customs (the price is unknown.)
Note	An investigation by the police of “A” or the principal person’s other crimes identified a case of ivory smuggling conducted in September 2004, with a Japanese national as the final destination for the ivory, but the case was not brought to a conclusion.

<b>Case 3 : Smuggling 2.8 tonnes of ivory: "Osaka seizure" (2006)</b>	
Products and Quantity	608 cut pieces (2,409Kg) 17,928 hankos (385Kg)
Date of smuggling	August 21 <sup>st</sup> 2006
Port of importation	Osaka Port (sea)
Port of exportation	Malaysia (via Korea)
Identity of person involved	A) A Japanese involved with <i>Yakuza</i> or Japanese mafia B) A Korean C) A Korean
Penalty	A) Two years in prison with a stay of execution for three years and a fine of JPY 800,000 (\$ 8,000) B) and C) They were sought internationally by the police, through ICPO Interpol, in April 2007, but not arrested yet.
Note	Some tusks have markings in Swahili, used in East Africa. This strongly suggests that some part of seized ivory may have been produced in East Africa including Tanzania or collected in that region before being shipped to Asia.

<b>Case 4 : Smuggling worked ivory for manufacturing billiards cues in Okayama (2006)</b>	
Products and Quantity	16 worked ivory
Date of smuggling	September 14 <sup>th</sup> 2006 and October 17 <sup>th</sup> 2006
Port of importation	Kansai Airport (Osaka)
Port of exportation	United States
Identity of person involved	A) A company making production and distribution of billiard goods in Okayama, not registered with METI its business dealing with ivory at that time. B) The de facto manager of the company C) The president of the company and the father of "B".
Penalty	A) A fine of JPY 800,000 (\$ 8,000) B) Two years in prison with a stay of execution for three years and a fine of JPY 800,000 (\$ 8,000) C) Two years in prison with a stay of execution for three years and a fine of JPY 800,000 (\$ 8,000)
Note	They had continually imported semi-worked ivory as a material for manufacturing billiard cues from American company "Atlas Billiard Supplies", a division of "Atlas Fibre Company" in Illinois.

<b>Case 5 : Smuggling worked ivory for manufacturing billiards cues in Gunma (2006)</b>	
Products and Quantity	4,224G of worked ivory
Date of smuggling	Spring 11 <sup>th</sup> 2006 and September 3 <sup>rd</sup> 2006
Port of importation	Narita Airport and Tokyo Port (sea)
Port of exportation	United States
Identity of person involved	A) A company making production and distribution of billiard goods in Gunma, not registered with METI its business dealing with ivory at that time. B) The president of the company
Penalty	A) A fine of JPY 2,000,000 (\$ 20,000) B) One and half years in prison with a stay of execution for three years and a fine of JPY 1,500,000 (\$ 15,000)
Note	This case was exposed during the investigation of “Case 4”. This case revealed that registration of business dealing with ivory had not been noticed in billiard businesses at that time. The company imported the worked ivory from “Atlas Billiard Supplies”, a division of “Atlas Fibre Company”



### **Annex 3: National implementation and enforcement of CITES**

In Japan, the permits required by CITES for import and export of ivory are issued by the Ministry of Economy, Trade and Industry (“METI”), in compliance with the Law for Foreign Exchange and International Trade (“Foreign Exchange Law”). Customs authorities are in charge of checking import and export permits and overseeing cargo in accordance with the Customs Law. Customs authorities are authorized to seize imported shipments based on the Customs Law unless they are certified as permitted under the Foreign Exchange Law (Article 70).

In a seizure under the Customs Law which qualifies for a penalty, the Head of the Customs Authority pursues the offence as an “Infraction case”. The “Infraction case” procedure applies to seizures at “the water’s edge” and actions in relation to marketing contraband after customs clearance. Under this procedure the Head of Customs will notify the offender of the requirement to make a payment of an amount corresponding to the fine plus the goods themselves or the value of them instead (“Notified sanction”).

When an “Infraction case” is considered serious enough to justify imprisonment, the Head of Customs immediately charges the offender and the case is handed over to prosecutors (“Criminal charge”). In such a case, the “Infraction case” will also be treated as a criminal case (Customs Law Article 140 Paragraph 1).

## **Annex 4: Legislation on control of internal trade in ivory**

Control of internal trade in ivory in Japan is achieved through the Law for the Conservation of Endangered Species of Wild Fauna and Flora (June 5<sup>th</sup> 1992, Law no. 75, “LCES” hereinafter), and Cabinet and Ministerial orders to implement the law.

### **Registration of whole tusks**

- The transfers, delivery or receiving (“transfers etc.” hereinafter) of whole tusks shall not be conducted unless they are registered to the organization registered to the Minister of Environment or Japan Wildlife Research Center (“JWRC” hereinafter) (LCES Article 12 Paragraph 1 Section 5, Article 20 and 23). The requisite for registration of them is to be acquired or imported prior to the application of CITES (18<sup>th</sup> Jan. 1990 with regard to *Loxodonta africana*) (LCES Article 20 Paragraph 1 and Cabinet Order Article 4).
- The transfers etc. of the registered whole tusks shall be conducted with the registration cards (LCES Article 21 Paragraph 2).
  - The transferees of the whole tusks shall make a report on the transfers to JWRC (LCES Article 21 Paragraph 4).
  - The registration cards shall be returned to JWRC within thirty days in the case the owners cease to own the whole tusks (, which include cutting the tusks) (LCES Article 22 Paragraph 1 Section 1).
  - Those having violated the provisions in regard to prohibition of transfers etc. without registration shall be imprisoned for a term not exceeding one year or fined an amount not exceeding one million JPY (Article 58 Section 1). Those having made the registration by a falsehood or other illegal means shall be imprisoned for a term not exceeding six months or fined an amount not exceeding JPY 500,000 (LCES Article 59 Section 3).

### **Controls of businesses dealing with ivory cut pieces and products**

- Those to be engaged in businesses of transfers or deliveries of ivory cut pieces and products shall notify in advance the Minister of Environment and the Minister of Economy, Trade and Industry of the names and addresses, quantity of stock (weight for cut pieces and number for products), characters of them and etc. (LCES Article 33-2 Paragraph 1 and METI Order Article 1 Paragraph 1).
- Those having been engaged in the businesses dealing with ivory cut pieces and products without the notification or those having made false notification shall be fined an amount not exceeding JPY 500,000 (LCES Article 62 Section 2).
- Regulations are adhered to those engaged in the businesses as follows.
  - ✓ They shall, when they receive ivory cut pieces and products, confirm the names and addresses of the transferors of the ivory and they shall, when the management cards are not attached to the ivory, obtain information from the transferors on the sources of the ivory (LCES Article 33-3 Paragraph 1).
  - ✓ They shall enter the matters they have confirmed or obtained information on and other matters in regard to the transfers, as transferred quantity (weight for cut pieces and number for products), characters of them, quantity of the rest of stock after the transfers and etc. in documents, and shall preserve them (LCES Article 33-3 Paragraph 2 and METI Order Article 2).



- Those engaged in the businesses dealing with ivory may make management cards in which necessary matters as for the processes of receiving the ivory, etc. are entered (LCES Article 33-6). When the management cards are attached to the ivory, the mandate obtaining information from the transferors may be exempted (LCES Article 33-3 Paragraph 1).
- The Ministers may, where those engaged in the businesses dealing with the ivory have violated the regulations adhered to them (LCES Article 33-3), may issue instructions for the said parties to take necessary actions so that their adherence may be assured (LCES Article 33-4 Paragraph 1). The Ministers may order them to suspend the whole or a part of their transferor or delivery businesses of the ivory for a period not exceeding 3 months in the cases where they have violated the instructions issued (LCES Article 33-4 Paragraph 2).
- The Ministers may seek reports from those engaged in the businesses dealing with the ivory or may have their personnel enter the facilities where the businesses dealing with the ivory are to be conducted to have them inspect documents and other articles or to make inquiries into the parties concerned (LCES Article 33-5 and 33 Paragraph 1). Those having failed to submit the reports or having submitted false reports, or those having refused, obstructed or evaded the on-the-spot inspections or those having failed to make statements to the inquiries or having made false statements shall be fined an amount not exceeding JPY 300,000 (LCES Article 63 Section 7).

### **Certification of ivory products relating to legally-obtained materials**

- The organization registered to the Minister of Environment (JWRC) may, based on applications of manufacturers made of the ivory products, certify that their products are made of the ivory satisfying the requisites to the registration (LCES Article 33-7 Paragraph 1, 33-8 and Cabinet Order Article 5-5).
- JWRC shall, when the certification is made, issue to the applicants, the marks indicating to that effect for each product item concerned that the products have been certified (LCES Article 33-7 Paragraph 3). Those having obtained certification by a falsehood or other illegal means shall be fined an amount not exceeding JPY 300,000 (LCES Article 63 Section 8).
- It is voluntary for the seller if they show that their products have been certified and if they attach the marks on their products, however the marks shall not be attached to anything other than the products certified with regard to the mark (LCES Article 33-7 Paragraph 4). Those having violated the article above shall be fined an amount not exceeding JPY 300,000 (LCES Article 63 Section 9).

## **Annex 5: Amendment of Japan's current internal trade control of ivory to be proposed**

### **Mandatory registration of possession of raw ivory including whole tusks and cut pieces over a certain size**

In order to promote registration of whole tusks legally acquired by members of public, it is essential to make such registration mandatory.

Awareness-raising about the current legislation through the "Register when you trade" scheme does nothing to motivate people who do not intend to trade their ivory in the near future. Furthermore, the registration should include cut pieces over a certain size, in order to prevent those who possess an unregistered whole tusk from circumventing the regulation by cutting it. The cut pieces should be of the size equal to or less than that defined in the provisions contained in Resolution Conf. 10.10 (Rev. CoP14) (section on "Regarding marking"), i.e. 10 cm or more in length and 1kg or more in weight.

As mentioned above, registration of cut pieces is not mandatory under the current legislation. However, 10,072 cut pieces, weighing 91,809.4kg, were registered in 1995 (Anon. 2006 a). It is assumed that these cut pieces were voluntarily registered on the advice of the then administration (Environment Agency (EA), now MoE) when registered dealers notified their stock of cut pieces to METI and the EA. This demonstrates that targeting cut pieces for registration is possible.

### **Registration of raw ivory should be classified as "Tradable" or "Possession only"**

Since the one-off sale of 50 tonnes of ivory in 1999, 691 whole tusks, weighing 11,585.26kg, have been registered. 252 whole tusks, weighing 3,877.07kg, were registered in 2005. As pointed out above, the total stock of whole tusks has increased every year since ivory became subject to registration. According to data recorded between January 2005 and January 2006, 246 out of 279 tusks (88%) were newly registered by members of public as opposed to registered ivory dealers (Anon. 2006 m),

It seems odd that so many tusks in the possession of members of the public were registered 15 years after the trade ban and that the stocks held by dealers been increasing annually. One possible reason for this is that: "Members of public own a lot of unregistered whole tusks" (Anon. 2005 b). Indeed, it is reported that in the early 1970s, ivory dealers boosted demand for polished tusks, and the price of tusks skyrocketed in 1970 and 1971 (Martin, 1985). However, it is also reported that, after the oil crisis in 1974, collectors lost their interest in ivory and some asked ivory vendors to buy back tusks (ibid.). Given that more than 30 years have passed since this period, it is possible that not many tusks are left in possession of members of the public, which renders this hypothesis rather doubtful.

It is risky to promote mandatory registration of whole tusks by members of the public without adequate consideration, otherwise it may promote laundering of ivory from illegal sources given the inadequacies of the existing registration procedure. On the other hand, it is vital to ascertain how much raw ivory stock is possessed by members of the public.

It is proposed, therefore, that an amendment to existing legislation be considered such that registration of raw ivory is classified as "Tradable" and "Possession only" with different requirements and procedures being applied to each category. Under this scheme, raw ivory owned by members of the public, determined as legally imported but where there is insufficient evidence to prove a legal source, can be registered as "Possession only".

## **Improvement of examination procedures for registration requirements**

### **a) Specification of the documents proving pre-Convention stock**

Current legislation requires applicants for registration of whole tusks to submit proof accounting for the acquisition and import process prior to the application of CITES (18<sup>th</sup> Jan. 1990 with regard to *Loxodonta africana*). The problem is that current legislation does not specify requirements for this documentation so that the determination as to the validity of documentation submitted is left to JWRC.

One problem with this situation is that, as JWRC explained, “documents not made by public agencies” can be easily drafted by the applicant alone or with a limited assistance and it is difficult to prove their falsehood once the documents have been accepted (JWRC 2001). Where an applicant has difficulty in submitting a document by a public agency, JWRC asks the applicant to explain the process of acquisition or import of the specimen and if no specific issue can be raised, then requests submission of a relevant paper as satisfactory proof (ibid.). This must take the form of testimony by a third party, who is not a relative of the applicant, testifying that the tusk was acquired prior to the application of CITES to the specimen (Anon. 2003 b). When the Diet (Japanese parliament) challenged that it is not possible to eliminate the chance of false testimony in such a case, MoE’s inadequate response was “any circumstantial evidence like date of newspaper wrapping the ivory will be referred” (Anon. 2003 b).

Indeed, it is suggested that the lack of specification in relation to documentation of proof under the current legislation renders the registration process a matter of ceremony (Anon. 2003 c). A manufacturer explained the reality, *“Buying a tusk from a stranger, unaware of the true source of it, is not prohibited. Thus, it will be no problem if you pretend that the tusk has been kept in your warehouse.”* (Sakamoto, 2007)

The only measure ensuring effective due registration process would be to require under law that an applicant must submit a specified document drafted by a public agency, proving imported item and date of import (in the case of “Tradable” registration. See the above).

The document to be prescribed should be limited to a copy of CITES export permit or pre-Convention certificate, and the copy of permitted import declaration by the Customs.

### **b) Mandating the registration organization to carry out a physical examination on the actual tusk and to interrogate the concerned parties if necessary**

Under the current legislation, applications for whole tusk registration need only be examined by the registration organization on paper and through photos. Even in a case when it is difficult to confirm identification of the whole tusks with photos attached to the application form, there is no legal procedure enabling physical examination the tusk itself. It is also not possible, under the current legislation, to interrogate a person who is presumed to have transferred the raw ivory to the applicant prior to the application of CITES.

The registration organization should be mandated to carry out a physical examination of the tusk itself and interrogation of the parties concerned.

### **c) Providing for a system of marking in accordance with Resolution Conf. 10.10 (Rev. CoP14) in the registration procedure**

The current legislation does not mandate the registration organization to carry out any marking procedure. Any marking on the tusk made in the exporting country is not considered within the registration procedure and tusks without markings can be registered

with no trouble. The lack of a marking system makes it difficult to avoid multiple registrations of individual pieces of raw ivory, allowing for extra registration cards to be acquired and used for other ivory. Furthermore, the lack of a marking procedure may make the monitoring of raw ivory to prohibit re-export ineffective.

Therefore, a marking procedure for raw ivory (whole tusks and cut pieces) should be legislated for in the registration procedure in accordance with Resolution Conf. 10.10 (Rev.CoP14).

### **Imposing mandatory systems of management cards and certification of ivory products (currently voluntary) with penalties for violation, and coordinating these systems with the raw ivory registration system**

The current legislated control scheme that applies once whole tusks have been cut is designed not for monitoring each transaction and specifically tracking the source of traded ivory by a relevant administration, but for motivating appropriate self- management by ivory dealers through ledger reporting. It is crucial to change the current control scheme in order to comply with Resolution Conf. 10.10 (Rev. CoP14).

As a practical measure, mandatory management cards and certification of ivory products (see Annex 4), which are currently voluntary, should be imposed. Penalties should be imposed for violation of this requirement. These mandatory systems must be closely coordinated with the raw ivory registration system, including cut pieces over a certain size (see the above). Through the amendment of current legislation required to achieve this, a control scheme would need to be established to monitor each transaction of a whole tusk to products and specifically track the source of transferred ivory, so that smuggling can be prevented more effectively.

The amendment could be elaborated as follows:

- Whole tusks and cut pieces over a certain size should be monitored through a registration procedure by a sole organization.
- A registered manufacturer should make two original copies of one management card whenever it produces one cut piece under the size for which registration is required, and submit one of the original copies to the registration organization within 30 days. When the dealer transfers a cut piece with the management card attached, without manufacturing, the recipient concerned shall notify the registration organization (Note 1).
- A registered manufacturer shall apply the certification whenever it produces an ivory product. The registration organization will certify the product concerned in accordance with the information on the registration card or the management card concerned, and issue a certification sticker (Note 2).
- All of the above process shall be secured by a criminal penalty so that the enforcement authority can intervene in any infraction (Note 3).

(Note 1) This recommendation intends to make the current voluntary management cards system mandatory.

(Note 2) The registration organization shall be granted the authority and mandate for the implementation of both certification and registration clearances.

(Note 3) In the control scheme under the current legislation, it is difficult for the enforcement authority to intervene in event of an infraction because compliance with the current control scheme is mostly secured by monitoring and advice or instruction by the relevant administrations. Application of a criminal penalty is

quite limited.

In detail, the relevant administrations may receive the submission of ledgers from registered dealers, enter a part of the information in the ledgers into a database, may conduct a inspection using the entered information, may advise the targeted dealers to improve their management and may order them to suspend all or a part of their dealing with ivory for a period not exceeding three months.

The criminal penalty is only fine and only applied to operating without registration, false statements in response to inquiries, obstructing inspection and etc.

The relevant administrations could hand over a suspected smuggling incident to the enforcement authorities. However, it is doubtful if the officials of the administrations who are not trained for criminal investigation can collect enough evidence to do so.

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