



Superficial Reforms:
An Analysis of Recent Amendments to Japan's Ivory Control Laws
Briefing Document for Delegates to CITES Standing Committee 70

Overview

In response to international concern about major weaknesses in its domestic ivory control system and evidence of illegal ivory trade, recently the Government of Japan (GoJ) made changes to its domestic ivory control laws and associated programs and institutions. These purported improvements are outlined in Notification to the Parties No. 2018/061¹ and SC70 Doc. 49.1 Annex 2.² Unfortunately, Japan's efforts fall drastically short of the dramatic reform that is required to remedy its deeply flawed ivory control system and, in practical terms, do nothing to prevent the illegal ivory trade that is flourishing in Japan's domestic market.

In particular, fundamental problems persist with the whole tusk registration system, the core of Japan's internal ivory trade control structure. The GoJ has never required adequate evidence of legal origin and legal acquisition of tusks presented for registration. The recent regulatory and policy changes do nothing to close this major loophole. In addition, there is still no meaningful control over cut pieces of ivory, internet trade in ivory continues to flourish, and ivory of dubious legality is entering the domestic market at an alarming rate. Japan has consistently been non-compliant with key components of CITES Resolution Conf. 10.10 (Rev.CoP17) since it was adopted and remains so even under the new amendments.

It is evident that the Government of Japan does not intend to make the necessary changes to prevent domestic illegal ivory trade or illegal export to China and other Asian nations. It is disingenuous and wholly misleading for the GoJ to suggest that its ivory regulations are "on par with those of other major nations" when in fact other major ivory importing and trading countries such as the US, China and UK have recently decided to close domestic trade. Japan, on the other hand, remains intent on sustaining its ivory industry and is only willing to make superficial changes to its laws. At SC70, EIA urges Parties to: (1) call on Japan to close its domestic market pursuant to CITES Res. Conf. 10.10 (Rev.CoP17) as a matter of urgency; (2) include Japan in its list of Parties with an unregulated internal ivory market and significant levels of illegal ivory trade; (3) request Japan to prepare a National Ivory Action Plan and recommend that Japan be categorized as a 'Category A Party'; and (4) call on Japan to cease registration of all ivory tusks without meaningful documentation that the tusk was of legal origin and legally acquired.

Analysis of Regulations on Ivory Transactions within Japan's Borders

On 1 June 2018, amendments to Japan's Law for the Conservation of Endangered Species of Wild Fauna and Flora (LCES) came into effect, including changes to regulations regarding elephant ivory. The following is a brief analysis of the amendments and their significant failure to comply with CITES Res. Conf. 10.10 (Rev. CoP17):

Whole Tusk Registration: The LCES amendments require ivory businesses to register all whole ivory tusks. Previously, only tusks marked for sale had to be registered. However, even after the LCES amendments, Japanese law still does not require meaningful proof of legal acquisition and legal origin of whole tusks presented for registration. Third party statements, including those from friends or even family members, continue to be accepted as adequate documentation of legality for tusk registration despite extensive evidence of fraudulent statements being used. Additionally, the Government of Japan has no legal authority to inspect an applicant's ivory tusk at the time of registration to verify the accuracy of the application, thus the authorities have no way of knowing whether an applicant possesses additional unregistered tusks or if the registration is a fraud to launder other illegal tusks. The registration system also fails to comply with the major ivory trade control requirements of CITES Resolution Conf. 10.10 (Rev. CoP17).

In August 2017, the Government of Japan launched a two-year tusk registration campaign to encourage the registration of whole tusks in private possession. Only *after* the registration scheme ends in June 2019 will the Government of Japan consider re-examining its flawed registration system and contemplate making it stricter by requiring proof of legality.³ This mass registration of tusks combined with Japan's non-commitment to make meaningful changes to its ivory control system serves only to support its ivory industry, providing it with new tusk stockpiles to sustain the ivory trade, while confusing the public about the legal status of ivory and facilitating the large scale legalization of undocumented ivory.

¹ Notification to the Parties No. 2018/061. <https://cites.org/sites/default/files/notif/E-Notif-2018-061.pdf>.

² SC70 Doc. 49.1 Annex 2. <https://cites.org/sites/default/files/eng/com/sc/70/E-SC70-49-01-A2.pdf>.

³ SC70 Doc. 49.1 Annex 2. <https://cites.org/sites/default/files/eng/com/sc/70/E-SC70-49-01-A2.pdf>.

Even large cut pieces of ivory are not checked for legality at all despite being a key requirement of CITES Resolution Conf. 10.10 (Rev. CoP17). They are simply logged into an internal ledger by ivory dealers and then sold down the supply chain. Thus to escape even minimal evidentiary scrutiny, all an unscrupulous ivory trader has to do is smuggle large cut pieces of raw ivory rather than whole tusks.

Traceability of Cut Pieces and Worked Ivory: The GoJ's "traceability information form" for cut pieces of ivory cannot be considered a traceability scheme at all and is doomed to fail. Traceability implies the tracking of ivory from acquisition to final disposition, yet Japan's control scheme for cut and finished ivory is disjointed and wholly disconnected from the tusk registration scheme. As a result, it is impossible to track the disposition of an ivory tusk from its entry into the market after registration to its wholesale distribution to processing and then retail. Such gaps in supply chain regulation are ripe for abuse.

For example, oversight and recordkeeping for raw cut pieces of ivory and finished pieces is by the Ministry of Economy, Trade and Industry (METI) whereas oversight and record keeping for whole tusk registration is by the Japan Wildlife Research Centre. The two systems are not linked nor do they collect compatible types of information making traceability impossible.

Moreover, the scheme for cut pieces and worked ivory lacks real-time oversight functionality. Ivory dealers are required to prepare a traceability identification form and attach it to every piece of cut and worked ivory for sale that weighs over 1kg and exceeds 20cm. Businesses must keep a copy of this form and a sales record for each piece for five years after a transaction. The responsibility for tracking the distribution and movement of cut pieces merely falls on the ivory traders with no regular reporting requirements whatsoever. Instead, METI authorities must request each individual business operator to submit their paperwork/ledgers if they wish to inspect them. The system makes it impossible to track cut and worked ivory in a manner that is conducive to meaningful compliance and enforcement. In addition, it is impossible to confidently identify specific individual ivory pieces using the traceability identification forms. The recent amendments do not even prohibit buying or otherwise receiving a cut or worked piece of ivory without the appropriate paperwork, leaving a further serious loophole for illegal ivory to enter the legal trade.

Even more important is that the traceability scheme *still* does not bring Japan into compliance with provisions of CITES Resolution Conf. 10.10 (Rev. CoP17), which calls for cut pieces of qualifying length and weight, as well as whole tusks, to be permanently physically marked with the country of origin two letter code, the last two digits of the year, and the weight in kilograms.⁴ For 21 years, Japan has ignored this recommendation to track and control tusks and cut pieces and continues to do so even under the new LCES amendments.

Business Registration: For years, watchdog groups in Japan have pointed out that mandating ivory businesses to "notify" the government of their activities, rather than require them to "register" is a serious flaw because the legal recourse for companies that failed to notify is significantly less punitive than failure to register. Under Japanese law, a company that is required to register with the government for whatever purpose and fails to do so is subject to termination of the offending business, whereas a company that is required to notify and fails to do so faces little legal recourse. Therefore, the recent changes to the LCES that now requires all types of ivory businesses to register with the ministry is an improvement. However, major exemptions allowed for any person or business that previously notified the government of ivory trade activities before the date the amendments came into force to automatically receive registration status without having to update the government on the status of their ivory stocks. Approximately 16,862 ivory businesses (468 manufacturers, 6,464 wholesalers and 9,930 retailers) benefited from this carryover provision. Furthermore, manufacturers that qualified for the notification-to-registration carryover are not required to submit copies of registration cards and photos for whole tusks until the renewal of their business registration in five years.

Additional Shortcomings: Analysis of Monitoring and Control over Ivory Transactions

- An increase of four staff in the Ministry of Environment is hardly notable in such a vast market with complex, multilayered and scattered recordkeeping, particularly when the identified persons employed as fixed-term appointments for one year have neither enforcement experience nor practical knowledge.
- Efforts to eliminate illegal e-commerce by ivory retailers are narrowly focused on having all online sellers register with the government, but do nothing to address the purchase of ivory on internet sites by foreign customers or for illegal export.

⁴ CITES Res. Conf. 10.10 (Rev.CoP17). Page 3, "Regarding marketing." <https://cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>.

- The voluntary labeling program for ivory *hanko* (name seals) is simply “greenwashing” as any retailer who keeps the government-required records may receive a label despite the fact that these records do nothing additional to ensure that the ivory was legally procured.
- Increased cooperation between the CITES enforcement authorities of Japan and China to tighten border controls is encouraging and will be increasingly important due to the new influx of registered ivory tusks and the persistent system loopholes in Japan’s laws. The need for major new CITES enforcement measures from Japan to disrupt illegal export of ivory to China is vital so that China’s market closure is not undermined by Japan’s uncontrolled market.
- Awareness raising campaigns directed at the ivory industry may produce a small deterrent effect, but criminals and those looking to “game the system” are unlikely to be discouraged when such campaigns are not accompanied by the implementation and rigorous enforcement of CITES required ivory controls that are needed to keep illegal ivory off the market to begin with.
- Ivory industry efforts to explain legal procedures regarding ivory exports to ivory buyers remains voluntary with no legal mandate. This may help prevent the unintentional illegal export of ivory, but will do nothing to prevent criminals from taking advantage of the legal loopholes that exist in Japan and the ready availability of ivory across the country.

Japan’s Domestic Ivory Market Contributes to Illegal Trade

In response to the global poaching crisis that is plaguing Africa’s elephants, the international community came together in 2016 at the 17th CITES Conference of the Parties (CoP17) and agreed by consensus that domestic ivory markets that contribute to poaching or illegal trade should be closed as a matter of urgency.

The Government of Japan claims that it is exempt from the resolution because its market is shrinking and it does not have illegal imports. This is an erroneous interpretation of the language of the resolution, which plainly states that Parties with domestic ivory markets that contribute to poaching or illegal trade should be urgently closed. It is also a misleading representation of the situation in Japan, where in fact there are literally thousands of ivory manufacturers and retailers, little to no border enforcement effort and many examples of illegal ivory trade, particularly to China. In fact, between 2011 and 2016 2.4 tons of illegal Japanese ivory exports were seized primarily in China, and as recently as August of this year Chinese enforcement authorities seized a tusk from Japan that it detected in inbound mail. In international law, the burden of proof for an exception or exemption is on the Party seeking the exemption. Japan has utterly failed to meet its burden.

Conclusion

Japan’s legalized ivory market is the world’s largest and thus plays an important role in the global arena. Since 1995, when Japan began registering large amounts of ivory tusks without proof of legality, Japan has repeatedly made superficial attempts to regulate its ivory trade without making any meaningful reforms that are capable of preventing the laundering of illegal ivory onto the domestic market. The new amendments to the LCES continue this trend, ignoring recommendations for effective traceability from whole tusk to finished product, and do little to tighten controls on Japan’s domestic ivory trade. Instead, they serve only to perpetuate Japan’s façade of control at a time when countries like China, the United States and the United Kingdom are taking real steps to close down their domestic ivory markets consistent with Resolution Conf. 10.10 (Rev. CoP17) by implementing nearly complete bans with very limited exemptions for qualifying items. Japan’s new regulations are misleading and are far from being on par with the steps major countries have taken to nearly eliminate their ivory markets. It is clear that Japan’s regulations are meant to keep its porous legal domestic market intact.

Recommendations to the 70th Standing Committee

- Urge Japan to close its domestic ivory market pursuant to paragraphs 3, 4 and 5 of Res. Conf. 10.10 (Rev. CoP17).
- Direct the Secretariat to implement paragraph 9 of Resolution Conf. 10.10 (Rev. CoP17) on an urgent basis and to include Japan in its list of Parties with an unregulated internal ivory market and significant levels of illegal ivory trade pursuant to subparagraph (a).
- Request Japan to prepare a National Ivory Action Plan and recommend that Japan be categorized as a Category A Party.
- Call on Japan to cease registration of all ivory tusks without independent documentation that the tusk was of legal origin and legally acquired.