

Reality Check: Japan's Legal Domestic Ivory Market

Briefing Document for Delegates to the 77th Meeting of the CITES Standing Committee

Overview

- Japan's legal framework for the control of the trade in elephant ivory is designed and built to regulate and facilitate commercial ivory trade and support ivory traders.
- Japan's ivory market is open – all pre-Convention ivory and ivory imported in the two CITES-approved sales can be traded.
- Japan should be included in the analysis of ivory seizures related to domestic ivory markets under Decision 19.99.

Background

To address a resurgent poaching crisis, in 2016 CITES Parties agreed to amendments to Resolution Conf. 10.10 (Rev. CoP17) to urge the closure of domestic ivory markets that contribute to poaching or illegal trade. Since then, many countries and jurisdictions have taken steps to close their markets for ivory with the principal policy goal of ending legal domestic commercial trade in elephant ivory and eliminating most ivory from the legal market to the full extent practicable in accordance with paragraph 4 of Resolution. Conf. 10.10 (Rev. CoP19): "narrow exemptions to this closure for some items may be warranted; any exemptions should not contribute to poaching or illegal trade."

In general, there has been an evolving understanding of the interconnectedness of domestic markets and the ban on international commercial trade in ivory. Legal domestic ivory markets undermine the international trade ban, make enforcement difficult, send mixed messages to potential consumers, and undercut demand reduction initiatives. Domestic markets do not exist in isolation.

At CoP18, Parties placed the onus on countries with open ivory markets by urging them to submit reports on measures taken to ensure their markets are not contributing to poaching or illegal trade.¹ To further gather data, at CoP19 Parties agreed to Decisions to include an analysis of seizure data related to legal domestic ivory markets for SC78 and CoP20, with an assessment of the feasibility to be prepared for SC77.² In Doc 63.1, TRAFFIC and the MIKE-ETIS TAG request further clarification from the Parties on how to define "legal domestic ivory markets" to identify which markets to assess for the analysis.

Importantly, the African elephant range states of Liberia and Senegal initially called for this study at SC74 in order to review Japan's role in the international illegal ivory trade,³ and additional Parties reiterated the concerns about Japan's open market at CoP19.⁴ Burkina Faso submitted CoP19 Inf. 82 which contained information from a JTEF

¹ Decisions 18.117-18.119. <https://cites.org/eng/dec/index.php/44378>

² Decisions 19.99 to 19.101. <https://cites.org/eng/dec/index.php/44306>

³ SC74 Inf.18. Paragraphs 25-27. <https://cites.org/sites/default/files/eng/com/sc/74/Inf/E-SC74-Inf-18.pdf>

⁴ CoP19 Doc.66.3. <https://cites.org/sites/default/files/documents/E-CoP19-66-03.pdf>

study and report on 45 different court cases in China involving the illegal export of ivory from Japan into China between 2010 and 2019.⁵ EIA also documented a steady flow of ivory leaving Japan between 2018 and 2020, after China's domestic ivory trade ban went into effect, with the majority (72/76 seizures) seized in China.⁶

The ETIS report to SC77 indicates that Japan responded to the Secretariat's surveys and reported *not* to have a legal domestic ivory market.⁷ TRAFFIC categorized it in a group of 17 Parties with markets that "included exemptions on the bans or prohibitions that varied greatly allowing some forms of trade, for example, in pre-Convention ivory or antique specimens, or commercially under a registration system."⁸

Japan's Ivory Market: A Legal Framework Full of Loopholes Built to Facilitate Trade

Japan states that commercial trade in ivory is "prohibited in principle and is permitted only under specific conditions," yet also states that "it is all the more important to achieve the sustainable use of ivory by strictly regulating domestic ivory market under the scheme based on [the Act on Conservation of Endangered Species of Wild Fauna and Flora]..."⁹ Japan's statements are contradictory, but the overall message is clear – the Government of Japan supports the commercial trade in ivory and its market controls are designed to regulate and facilitate trade rather than to prevent or minimize it. The reality is that Japan's ivory market is open for business and sustained by 5,500+ government-approved ivory traders who together operate more than 8,500 facilities.¹⁰

Trade in ivory remains active in Japan as demonstrated by the change in stockpile data. The stockpiles of registered whole tusks fell from 17,312 tusks (185,002 kg) as of December 2019 to 16,512 tusks (174,309 kg) as of December 2022,¹¹ a decrease of 800 whole tusks (10,693 kg). Moreover, according to detailed information provided by the Ministry of Environment, 207 whole tusks (weighing 3,289 kg) were newly registered in that three-year time frame.¹² This means that 1,007 whole tusks (13,982 kg) were cut into pieces for production during that time. Given that the reported stockpiles of cut pieces and tips increased by 836 kg between 2019 and 2022 from 74,113 kg to 75,949 kg,¹³ it appears that more than 13.1 tonnes of raw ivory were used to produce new ivory merchandise between 2019 and 2022.

In fact, significant changes can be found in the stockpiles of various ivory products according to official government data, as can be seen in the table below.¹⁴ Stockpiles of some items including name seals (*hanko*) and musical instruments, for which demand is continually high among Japanese consumers, have decreased significantly – meaning that they were purchased and that commercial trade in those items is thriving. Meanwhile, stockpiles of other items including "accessories including parts" and "Buddhist altar articles including parts" significantly

⁵ CoP19 Inf.82. <https://cites.org/sites/default/files/documents/E-CoP19-Inf-82.pdf>

⁶ EIA. Japan's Illegal Ivory Exports. <https://us.eia.org/campaigns/wildlife/elephants/japan-ivory/>

⁷ SC77 Doc 63.1 Annex 2 paragraph 73

⁸ Ibid.

⁹ Ministry of Environment/Government of Japan Website that SC77 Doc.63.1 (Rev.1) Annex 3 "Japan's report pursuant to Decision 18.117 (Rev.CoP19)" quoted. <https://www.env.go.jp/nature/kisho/kisei/en/conservation/ivory/index.html>

¹⁰ Data compiled by JTEF from the business registration registry (in Japanese). February 2023. <http://www.jwrc.or.jp/service/jigyousha/files/tourokubo.pdf>

¹¹ SC74 Doc. 39 Annex 5 <https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-39.pdf>; SC77 Doc. 63.1 (Rev. 1) Annex 3

¹² Ministry of Environment. 2023. Written response on February 13, 2023 to Sakamoto M./JTEF, Wildlife Division, Nature Conservation Bureau Ministry of Environment (in Japanese)

¹³ SC77 Doc. 63.1 (Rev. 1) Annex 3

¹⁴ Ibid.; SC74 Doc. 39 Annex 5 <https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-39.pdf>

increased, indicating continuous production and stockpiling of those items despite less demand inside Japan. This raises serious concern that those items could end up being illegally exported abroad, where demand for these types of products may be higher.

Table: Changes in Japan's stockpile of ivory products

Type of specimen	Total as of March 2019	Total as of March 2022	Change
Sign seals (<i>hanko</i>)	951,456	829,025	-122,431
Accessories including parts*	1,540,575	3,495,230	+1,954,655
Furnishing goods including parts	80,061	39,029	-41,032
Stationeries including parts	150	496	+346
Smoking supplies including parts	4,151	5,806	+1,655
Buddhist altar articles including parts	21,620	42,707	+21,087
Musical instruments including parts	91,100	62,161	-28,939
Tableware including parts	16,026	16,239	+213
Tea utensils including parts	11,572	23,328	+11,756
Indoor recreational equipment including parts	3,581	2,270	-1,311
Convenience goods including parts	47,193	52,309	+5,116
Others	20,861	42,921	+22,060

*Accessories and parts of accessories were differentiated in the data included in SC77 Doc.63.1 (Rev.1) as "545,029" and "2,950,201" each. SC74 Doc. 39 Annex 5 <https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-39.pdf>
SC77 Doc. 63.1 (Rev. 1) https://cites.org/sites/default/files/documents/E-SC77-63-01-R1_0.pdf

Japan, with its extensive commercial ivory trade in ivory, cannot be categorized together with other countries that have implemented near-total bans on the domestic ivory trade. For instance, China prohibits essentially all domestic ivory trade, and the United Kingdom and the United States have very limited exemptions for antiques, musical instrument parts, and *de minimis* items. While the Government of Japan may try to claim its domestic trade is limited, in reality the mile-wide statutory exemptions make the "prohibition in principle" effectively meaningless.

Assessment of Japan's Ivory Trade Controls

Japan's regulatory framework allows the sale of pre-Convention ivory as well as ivory purchased in the two CITES-approved sales, except for unregistered whole tusks. Japan has not enacted any new legislative or regulatory measures to address illegal ivory trade since it implemented amended domestic legislation in June 2018.

EIA and JTEF have analyzed and critiqued Japan's statements, policies, and regulations in the past, and the same criticisms hold true today.¹⁵ Japan's regulatory framework is full of loopholes that enable the trade in illegal ivory and facilitate illegal exports. For instance:

- The registration and registration renewal of ivory businesses, outsourced to a private organization, is perfunctory.¹⁶ Businesses are registered with little oversight and traders are not prohibited from being registered even if there is a history of illegal trade.¹⁷
- Business operators were required to register all tusks in their possession in 2018; however, data indicate that

¹⁵ EIA/JTEF. (2022) Ripe for Abuse. <https://us.eia.org/report/ripe-for-abuse-japans-ivory-market/>; EIA/JTEF.; EIA/JTEF. (2018) Superficial Reforms. <https://us.eia.org/report/japan-lces-amendments-analysis-sc70/>

¹⁶ JTEF. (2022) Japan's Tireless Ivory Market: A Trader's Haven Free of Strict Controls. Available at: https://www.jtef.jp/en/wp-content/uploads/2022/02/IvoryReport2022_E_m.pdf

¹⁷ EIA/JTEF. (2022) Last But Not Least. https://us.eia.org/wp-content/uploads/2022/03/Last-But-Not-Least_EIA-JTEF_March-2022.pdf

traders evaded this requirement by cutting tusks into pieces and processing them into worked products (e.g., *hanko*), which are not required to be registered.¹⁸

- Business operators must prepare and keep inventory data (since 1995) and require the use of “traceability information forms” that include transaction records as of June 2018 for cut pieces of ivory; however, these systems are separate from the whole tusk registration system, the only point at which legal origin and acquisition are ostensibly confirmed. Additionally, most ivory items in Japan, notably *hanko*, are small and do not meet the requirements for the “traceability information forms”: over 1 kg in weight and 20 cm in length.¹⁹
- Strengthened penalties have not been applied to convicted offenders and there is a persistent avoidance of strict punishment and prosecution for illegal wildlife trade cases.²⁰

Conclusion and Recommendations

The information provided by the Japanese government makes it clear that the market is open, government-registered traders are abundant, the stockpile available for trade is massive, and the extremely broad exemptions to prohibitions on trade are designed to facilitate and enable the trade in ivory. As a result, significant illegal ivory exports have originated from Japan’s domestic ivory market. Japan must be a priority in the TRAFFIC/MIKE-ETIS TAG analysis of ivory seizures pursuant to Decision 19.99.

Japan will undertake a statutory review process of its domestic law beginning no later than spring 2024, which will consider the resolutions adopted by the House of Representatives and House of Councilors for the 2017 amendments to the law: “consider a fundamental review with regard to the species listed in the CITES Appendices, in view of the international circumstances, which are an irreplaceable part of the earth's natural systems from the perspective that international cooperation is essential for their conservation.”²¹ Japan now has the opportunity to truly close its market and eliminate the broad exemptions enabling the extensive commercial ivory trade. By recognizing that any open market contributes to poaching and the illegal trade and taking steps to end the domestic commercial ivory trade to the fullest extent possible, Japan can chart a new course aimed at protecting elephants.

Recommendations to SC77

- Direct TRAFFIC and the MIKE-ETIS TAG to include Japan in the analysis of seizure data related to legal domestic ivory markets described in Decision 19.99.
- Support criteria for the analysis that would include all markets that facilitate substantial legal commercial trade in ivory even if the regulatory framework includes some provisions to limit commercial trade.
- Direct TRAFFIC and the MIKE-ETIS TAG to include the following details in their analysis of ETIS data to achieve research goals: role of Party in the illegal trade chain (import, export, re-export, transit), ivory seizures made both domestically and at points of entry and exit, information on enforcement including prosecutions and convictions, and information on stockpile size and management.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ JTEF (2019) Compelled to Close: Top 5 Reasons for Closing Japan’s Domestic Ivory Market. Available at: https://www.jtef.jp/en/wp-content/uploads/2019/06/IvoryReport2019_en.pdf

²¹ Ministry of Environment. 2023. Review of the measures to be taken for conservation of endangered species of wild fauna and flora (distributed at the 32nd meeting of Wildlife sub working group of the Central Environment Council held on October 4, 2023, in Japanese). <https://www.env.go.jp/council/content/12nature05/000162760.pdf>