

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



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SUPPLEMENTAL INFORMATION ON THE CLOSURE OF DOMESTIC IVORY MARKETS

This document has been submitted by Liberia and Senegal in relation to agenda item 39 on *Closure of domestic ivory markets: Report of the Secretariat*.^{*} The purpose of this document is to assist the Standing Committee in formulating its recommendations to the 19PthP meeting of the Conference of Parties on the closure of domestic ivory markets, including interpretation, implementation, compliance, and enforcement matters. This document provides additional information to support the evaluation of SC74 Doc. 39. In particular, this document provides comments on Party responses to Decision 18.117 provided in select Annexes of this document, and comments on the Secretariat's conclusions and recommendations.

Background

1. Elephants continue to be illegally killed in Africa for their ivory to supply the demand for and trade in ivory products. Poaching remains a leading threat to both savannah and forest elephant populations, even in places where they have previously been secure.
2. Legal domestic markets create opportunities for laundering illegal ivory, make monitoring and enforcement challenging, stimulate and perpetuate demand, and undermine the international ivory ban and domestic ivory bans in other nations. Legal markets provide opportunities for traders, suppliers, and traffickers to relocate to nations with open markets and source and trade their ivory.
3. Within CITES, there is precedent for urging the closure of domestic markets to protect species from trade. CITES Parties have adopted several recommendations on domestic trade in resolutions and decisions adopted by the Conference of the Parties and recommendations of the Standing Committee. These resolutions, decisions, and recommendations demonstrate that CITES Parties have agreed that addressing domestic trade issues falls within the scope of the Convention in certain circumstances. The Conference of the Parties has called upon CITES Parties to close markets in several instances including within: Resolution Conf. 6.10, *Trade in rhinoceros products*; Resolution Conf. 11.8 (Rev. CoP17), *Conservation of and control of trade in the Tibetan antelope*; and Resolution Conf. 12.5 (Rev. CoP18), *Conservation of and trade in tigers and other Asian big cat species*.
4. At CoP17, the Parties agreed by consensus to revise Resolution Conf. 10.10 to address domestic ivory markets, including:

Paragraph 3: "RECOMMENDS that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency;"

Paragraph 4: "RECOGNIZES that narrow exemptions to this closure for some items may be warranted;

^{*} *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author*

any exemptions should not contribute to poaching or illegal trade;”

Paragraph 5: “URGES that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, and that have not closed their domestic ivory markets for commercial trade in ivory to implement the above recommendation as a matter of urgency.”

Paragraph 8 [now Paragraph 9]: “REQUESTS Parties to inform the Secretariat of the status of the legality of their domestic ivory markets and efforts to implement the provisions of this Resolution, including efforts to close those markets that contribute to poaching or illegal trade.”

5. The United States and China laid the foundation for a shift in global action by implementing domestic ivory market closures in 2016 and 2018, respectively. Since the recommendation in Resolution Conf. 10.10 (Rev. CoP18) to close domestic ivory markets “contributing to poaching or illegal trade” was adopted at CoP17 in 2016, steps have been taken in other ivory consuming nations to close their legal markets for ivory.

Comments on Party Responses to Decision 18.117

6. Overall, ten Parties submitted reports in response to Decision 18.117 (including Notifications No. 2020/026 and No. 2021/005) including: Australia; European Union (EU coordinated reply); Hong Kong Special Administrative Region (SAR) of China, Israel; Japan; New Zealand; South Africa; Thailand; the United Kingdom of Great Britain and Northern Ireland; and Zimbabwe.

7. We recognize and appreciate that these Parties submitted reports on their domestic ivory markets. Amongst them, the European Union (Annex 2P0F¹P), Hong Kong SAR of China (Annex 3) and Israel (Annex 4) have prohibited domestic ivory trade with narrow exemptions. The United Kingdom (Annex 9) adopted primary (framework) legislation in December 2018, that put in place a strict domestic ivory sales ban with limited exemptions. The UK is currently developing the detailed provisions before bringing the ban into force. The efforts made by these Parties are commendable, along with those of Singapore whose ban on domestic ivory trade came into effect in September 2021P1F²P.

8. Australia (Annex 1) announced its intention to implement a domestic ban on ivory trade; with an independent Federal government review recommending the States and Territories to establish such prohibitionP2F³P.

9. New Zealand (Annex 6) reports that it is in the review process for taking significant steps towards closing its domestic marketP3F⁴P. We note that as result of investigations undertaken by the New Zealand Department of Conservation to date, the Department has made numerous observations regarding New Zealand’s ivory trade including the possibility of illegally imported ivory being sold on the domestic market and ivory crossing the border illegallyP4F⁵P.P5FP Similar and additional observations have been made by non-government led investigations and reportsP6F⁶P,P7FP all evidence that New Zealand’s unregulated domestic ivory trade is contributing to illegal trade. Following the conclusion of a public consultation process, which received 119 submissions of which 105 supported a ban on the domestic sale of elephant ivoryP8F⁷P, New Zealand’s Cabinet Economic Development Committee made its decisions on 29 July 2020, agreeing to ban the domestic sale of elephant ivory, with an exemption for items acquired before 1975 (pre-Convention), including musical instruments, and to implement the ban through regulationsP9F⁸P.

10. Thailand (Annex 8), an Asian elephant range state, still allows legal sales of various ivory item; however,

¹ The regulation explained in Annex 2 was amended and domestic trade within EU is prohibited with narrow exemptions at present. https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6887

² <https://www.theonlinecitizen.com/2021/09/02/singapore-completely-bans-domestic-trade-in-ivory-and-ivory-products/>

³ See the *Final Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*. [Final report | Independent review of the EPBC Act \(environment.gov.au\)](https://www.environment.gov.au/epbc/ir/ir-report)

⁴ <https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2019/ties-act-consultation/ties-act-consultation-discussion-document.pdf>

⁵ Office of the Minister of Conservation. Cabinet Paper: “Proposed Amendments to the Trade in Endangered Species Act 1989”. 29 July 2020. (See pages 8, 30, 39). www.doc.govt.nz

⁶ *Journal of African Elephants Journal* (August 2019) “New Zealand Domestic Ivory Trade Doubles”. <https://africanelephantjournal.com/new-zealand-domestic-ivory-trade-doubles/> and International Fund for Animal Welfare (September 2016) “Under the Hammer - Are Auction Houses in Australia and New Zealand Contributing to the Demise of Elephants and Rhinos?” <https://s3.amazonaws.com/ifaw-pantheon/sites/default/files/legacy/IFAW%20Under%20the%20hammer.pdf>

⁷ Office of the Minister of Conservation. Cabinet Paper: “Proposed Amendments to the Trade in Endangered Species Act 1989”. 29 July 2020. (see Page 4 para 26). www.govt.nz

⁸ DEV-20-MIN-0157 Cabinet Economic Development Committee, *Minute of Decision*, 29 July 2020. www.doc.govt.nz

the source of them is limited to captive Asian elephants in its jurisdiction. South Africa (Annex 8) and Zimbabwe (Annex 10), both African savanna elephant range states, maintain legal domestic ivory markets.

Japan's domestic ivory market

11. Unlike other Parties that still maintain legal ivory markets, Japan (Annex 5) is unique in that it has a significant legal domestic market found in a country that does not have any wild elephants. Within Japan, there are at least 244 tonnes of ivory in the stockpile, including 178 tonnes of registered whole tusks and 66 tonnes of cut pieces reported by the registered dealers⁹. Japan's stockpile accounts for 89% of the entire ivory stockpiles in Asia (275.3 tonnes¹⁰) and 31% of the world's stockpiles (796 tonnes¹¹), as declared on 28 February 2021 in response to the annual Notification issued by the Secretariat. Besides the raw ivory, there are huge stockpiles of worked ivory including nearly 968,000 pieces of *hanko* (name seal), and 3.48 million "accessories" and "parts of accessories"¹², among other worked items.

12. There has been a steady flow of ivory purchased legally from Japan's huge stockpiles and illegally exported, mainly to China. The Elephant Trade Information System (ETIS) report recorded 148 seizures of ivory illegally exported from Japan between 2011 and 2016, including 113 seizures of approximately 2.3 tonnes of ivory destined to China¹³.

13. Out of the aforementioned 113 seizures of illegally exported ivory, 106 (94%) were made by law enforcement authorities in China while only 7 seizures (6%) were made by Japan¹⁴. An analysis by ETIS presented at CoP18 grouped countries with similar trade characteristics¹⁵ and found that Japan's law enforcement efforts at the border "individually exhibit poor performance well below the group's average". Between 2018-2020, following the implementation of China's market closure, the Environmental Investigation Agency documented 76 seizures of ivory (that had been legally purchased in Japan); 72 of these seizures were made in China, two in Vietnam, one in Taiwan and only one in Japan¹⁶.

14. Other studies indicate that Japan's legal ivory market is appealing to international travellers. A study of Chinese travellers to Japan found that 19 percent planned to purchase ivory and an estimated 12 percent actually made an ivory purchase¹⁷. A majority of those who purchased ivory exported it to China either by plane or through the mail. An additional concern is that investigations of Japanese *hanko* retailers found that many are willing to sell an ivory product knowing that it will be exported internationally despite most being aware that ivory export is illegal¹⁸. Thus, international buyers are going to Japan with the intention of buying ivory, and retailers are prepared sell ivory to those customers knowing they intend to export the ivory illegally. This illegal trade is enabled by the limitations of border control capacity suggested in the aforementioned ETIS report and the existence of a significant legal market, where huge amounts of various ivory items are available.

15. In its report (Annex 5), Japan lists "Legislation on ivory control" and "Strengthened management measures on domestic ivory transactions" among measures taken so that Japan's domestic ivory market is not contributing to poaching or illegal trade. The effectiveness of these measures; however, is in question. A recent study suggests that the ivory businesses are being registered via a token examination with a lack of scrutiny by the competent authorities, while the 100%-registration-mandate for whole tusks imposed on the registered dealers was successfully evaded by cutting tusks into pieces and then processing them into *hanko*. In addition, the study finds that the mandate for keeping inventory data for cut pieces is unlikely to show meaningful impacts on securing traceability since there is no verification on the legality of the source and acquisition at the point of production to trace the trade in these cut pieces and products¹⁹. Moreover, the new mandate on submission of a carbon-dating result was not applied to the huge amount of stockpiled ivory already registered with "third-party affidavits"²⁰, but is only applied to new applications for whole

⁹ 2021 report included in Annex 5 of SC74 Doc.39

¹⁰ CITES website https://cites.org/eng/prog/terrestrial_fauna/elephants

¹¹ Ibid.

¹² 2021 report included in Annex 5 of SC74 Doc.39

¹³ Kitade, T. and Nishino, R., 2017, Ivory Towers: An assessment of Japan's ivory trade and domestic market. TRAFFIC. Tokyo, JAPAN

¹⁴ Ibid.

¹⁵ CoP18 Doc. 69.3 (Rev. 1) Annex 1

¹⁶ Environmental Investigation Agency. (December 2020) Japan's Illegal Ivory Exports. <https://eia-global.org/japansillegalivoryexports>

¹⁷ GlobeScan Incorporated / WWF. (October 2020) Beyond the Ivory Ban: Research on Chinese Travelers While Abroad. <https://wwf.panda.org/?968516/Ivory-Consumption-Chinese-Travelers>

¹⁸ EIA and JTEF (2020) Willing to Sell: Snapshot Investigations of Ivory Hanko Retailers in Japan. <https://eia-global.org/reports/20201217-willing-to-sell-report>

¹⁹ Sakamoto, M. 2022. *Japan's Tireless Ivory Market: A Trader's Haven Free of Strict Controls*. Japan Tiger and Elephant Fund <https://www.jtef.jp/en/>

²⁰ Section 1 (2) of 2021 report included in Annex 5 of SC74 Doc.39

tusk registration^{P22F²¹P}. Another study concluded that despite the tightening statutory penalties, the actual penalties imposed on offenders were quite low, and that there is persistent avoidance of strict punishment and prosecution of illegal wildlife trade cases, regardless of tightening statutory penalties^{P23F²²P}.

16. But, most importantly, measures highlighted by Japan mainly focus on preventing smuggled ivory from entering the market; they do not prevent the illegal export of ivory. TRAFFIC has cited concerns about ongoing illegal exports, particularly to China. In December 2020, TRAFFIC Japan reiterated its appeal for the Japanese Government to “develop an action plan that will decisively close its ivory markets (with narrow exemptions)”^{P24F²³P}, among other recommendations.

Comments on the Secretariat’s Conclusions in SC74 Doc. 39

17. We agree with the Secretariat’s conclusion in Doc. 39 paragraph 23 that, regarding the actions taken to address legal domestic markets, “the development, review and implementation of legislative provisions are the focus since it underpins all other activities, such as enforcement, including inspections, as well as public awareness campaigns.” Legislative provisions are the very foundation of domestic market controls. Any existing flaws or loopholes in legislation undermine effectiveness – if legal provisions are ineffective in preventing or controlling illegal trade, they are pointless. Enforcement is simpler when the legal framework is robust and clear. Awareness campaigns on supply and demand reduction and existing or new ivory regulations are supplemental to legislation and enforcement^{P25F²⁴P}. Public awareness campaigns that attempt to reduce demand are more impactful when the consumer items in question are strictly regulated.

18. We are concerned about paragraphs 25, 26 and 27 regarding the extent of Parties’ reporting on the status of domestic ivory markets and efforts to implement provisions of the Resolution.

19. In Paragraph 25, the CITES Secretariat indicates its view that it may not be necessary to have any additional separate reporting on the status of the legality of Parties’ domestic ivory markets and efforts to implement the provisions of Resolution Conf.10.10 (Rev. CoP18).

20. While we understand the desire to limit reporting; we think specific reporting on this matter remains necessary in the context of the closure of domestic ivory markets. In fact, the Secretariat has noted (in Doc. 39 paragraph 21) the limited number of responses submitted by Parties relating to the closure of domestic ivory markets.

21. The Secretariat also recognised that some Parties may not report on this specific matter because they are unaware or have not recognized that their legal domestic ivory market is contributing to poaching or illegal trade (see paragraph 21 of Doc. 39). If this is the case, then even if the Secretariat annually issues a notification reminding Parties to report, in practice it will not have a significant effect to promote the implementation of the Resolution. Thus, a specific decision directed at those Parties is necessary to effectively implement paragraph 9 of the Resolution.

22. In paragraph 27, the Secretariat recommends that information shared by Parties related to their domestic ivory markets should be included in reports submitted to the Standing Committee as per paragraph 10 c) of Resolution Conf. 10.10 (Rev.CoP18). While we do not oppose the recommendation, in our view it is inadequate to ensure focus remains on this important issue. Implementation of paragraph 3 of the Resolution (which recommends all Parties and non-Parties with a legal domestic market for ivory that is contributing to poaching or illegal trade close their markets for commercial trade in raw and worked ivory as a matter of urgency) needs to be independently assessed through the renewal of Decisions 18.117-18.119 until the issue is fully resolved.

23. We are concerned by the comments of the Secretariat in Doc. 39 paragraph 28, in which the Secretariat concludes: “It may be advisable to limit recommendations on legal ivory domestic markets within the scope of the Convention.” As noted in paragraph 3 of this document, several recommendations and decisions on domestic trade in different species have been adopted recommending or urging the closure of domestic markets. This precedent, dating back to 1987, demonstrates that CITES Parties have agreed that addressing domestic trade issues falls within the scope of the Convention in certain circumstances, in particular when the source of a specimen or product is not the Party trading in it. In this case the domestic market in the non-range

²¹ Sakamoto.M. 2022

²² Sakamoto M. 2019. Compelled to Close: Top 5 Reasons for Closing Japan’s Domestic Ivory Market. Japan Tiger and Elephant Fund https://www.jtef.jp/en/wp-content/uploads/2019/06/IvoryReport2019_en.pdf

²³ TRAFFIC Japan. (December 2020) Teetering on the Brink. Available at: https://www.traffic.org/site/assets/files/13414/teetering-on-the-brink_en.pdf.

²⁴ Paragraph 7 (b) of Resolution Conf.10.10 (Rev.CoP18) and Paragraph 3 of Resolution Conf.17.4.

state of a species is dependent on international trade for future supply, and therefore some intervention by the Convention is justified.

Conclusions

24. The recommendations made by the Secretariat (as set out in Doc. 39 paragraph 30) are insufficient to ensure implementation of paragraph 3 of Resolution Conf. 10.10 (Rev. CoP18). Additional separate reporting by Parties that have not closed their domestic markets for commercial trade in raw and worked ivory (as per Decisions 18.117 – 18.119) needs to be maintained and Decisions 18.117 – 18.119 renewed at CoP19.

25. Since CoP18 in 2019, notable progress has been made towards closing domestic ivory markets as reports submitted by the European Union, Hong Kong SAR of China, Israel and the United Kingdom in response to Decision 18.117 (and action taken by Singapore) indicate. Among the ten Parties that submitted reports, those who have not committed, agreed to, or yet legislated the closure of their domestic ivory markets are Australia, Japan, New Zealand, South Africa, Thailand and Zimbabwe. Amongst them, Australia, Japan and New Zealand are not elephant range states; their legal markets are maintained by imported ivory for consumption within their jurisdiction. The Standing Committee may therefore wish to give special attention to these Parties when considering the reports and making recommendations to CoP19 in accordance with Decision 18.119.

26. While Australia and New Zealand, which have taken steps towards market closure, are encouraged to legislate and implement their closures more swiftly, the case of Japan is different. Although its ivory stockpile is overwhelmingly large and evidence is available of illegal trade and export, Japan does not consider its domestic ivory market contributes to poaching or illegal trade, and is not considering market closure. Therefore, the Standing Committee may wish to examine the evidence on illegal ivory trade related to Japan more closely and encourage Japan to indicate a political commitment at CoP19 towards closing its domestic market for commercial trade in raw and worked ivory in accordance with paragraph 3 of Resolution Conf. 10.10 (Rev. CoP18).

27. As the seizures recorded by ETIS of ivory illegally exported from Japan between 2011 and 2016 (referred to in paragraphs 12 and 13) indicate, the trend and characteristics of individual seizure cases related to a specific country, which are reported to ETIS, can assist the Standing Committee with examining more closely whether a Party is taking effective measures to ensure that their domestic ivory market is not contributing to poaching or illegal trade. The Standing Committee may therefore wish to consider consulting with the MIKE and ETIS Technical Advisory Group (TAG) and ask it to provide an analysis and interpretation of the detailed data on seizure cases related to Japan to support the Standing Committee's report and recommendations to CoP19.