

Ivory Trade in Japan: A Comparative Analysis

Ivory trade regulations of leading legal jurisdictions and recommendations to bring Japan's legal system in line with international best practices



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This document was prepared by Global Rights Compliance ('GRC') on behalf of WWF-Japan.

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The Domestic Legal Regime of the Ivory Trade in Japan: A Comparative Analysis

Review of the Government of Japan's legal measures concerning its ivory trade and conducting a comparative analysis of six legal jurisdictions to provide a list of international best practices for Japan to consider in improving its domestic legal regime.

Introduction

Japan is home to one of the world's largest ivory markets and continues to have a vibrant domestic trade. While most legal jurisdictions continue a trend towards comprehensive bans on the domestic ivory trade, Japan's markets continue to flourish.

Hanko stamps, musical instruments, chopsticks, netsukes and figurines are common commodities made from ivory in Japan, even in the face of increasingly vigorous admonitions from Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ('CITES') to rein in what appears to be systemic illegal domestic trading practices in Japan.

Japan deposited its instrument of acceptance of CITES on 6 August 1980.¹ Under CITES, most species of elephants are characterised as "Appendix I" species.² This designation prohibits international trade unless there are exceptional circumstances.³

Designating elephants as an Appendix I species has sought to ensure their survival. However, tens of thousands of elephants are still being killed every year for their ivory tusks, with the ivory later trafficked around the world.⁴ The risk of illegal trafficking in Japan, while already prevalent, is likely to increase

due to its popularity, but also in light of restricted market access due to bans, expected bans and overall tighter controls on the trade of ivory in China, Hong Kong, the United States, the United Kingdom and elsewhere.⁵

In addition to following specific legal strictures delineated in CITES regarding the general prohibition of international trade regarding ivory, Japan is also subject to the concluding recommendations reached at CITES' 17th Conference of the Parties ('CoP17') in late 2016. At CoP17, it was resolved that all CITES Parties and non-parties "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" where there is a "legal domestic market for ivory that is contributing to poaching or illegal trade".⁶

Accordingly, through this resolution CITES recommends that domestic markets should be closed when a legal domestic market:

- Contributes to poaching (ie. increased domestic demand prompts supply markets to poach more elephants for their ivory); or
- Contributes to illegal trade.

¹ Note that the entry into force date is 4 November 1980. See "List of Contracting Parties" <<https://www.cites.org/eng/disc/parties/chronolo.php>> accessed 5 December 2018.

² Appendix I includes African and Asian elephants (*Loxodonta africana*, *Elephas maximus*) except African elephants such as the populations of Botswana, Namibia, South Africa and Zimbabwe, which are included in Appendix II, <<https://www.cites.org/eng/app/appendices.php>> accessed 5 December 2018.

³ See "How CITES Works" <<https://www.cites.org/eng/disc/how.php>> accessed 5 December 2018.

⁴ See "Still Poached for Ivory" <http://wwf.panda.org/knowledge_hub/endangered_species/elephants/african_elephants/afelephants_threats/> accessed 10 February 2019.

⁵ See supra, pp. 6-24 in the section entitled 'General Legal Measures'.

⁶ CITES, Trade in elephant specimens, Resolution Conf. 10.10 (Rev. CoP17), paras 3-4 <<https://www.cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>> accessed 10 February 2019.

Subsequent to CoP17, many groups and Parties to CITES argued that Japan should close its domestic market due to the prevalence of illegal trading practices and due to a legal structure that was inadequate to protect against such practices.⁷ Further, the Elephant Trade Information System (‘ETIS’) also “highlight[ed] the problem of on-going illegal export to China, domestic illegal trade, and persistent regulatory loopholes in Japan”.⁸ This is important, as the ETIS is one of the principal tools used by CITES Contracting Parties to decide whether to recommend another Party to prepare a National Ivory Action Plan (‘NIAP’), which work to identify and protect against illegal trading practices through strengthened domestic controls on ivory trade.

Beyond concerns by interested groups and information provided via ETIS, specific CITES member-states raised concerns about Japan’s ivory trade. For example, a document submitted to CITES by Burkina Faso, Congo, Kenya and Niger requested that the CITES Standing Committee reconsider its decision not to request Japan to prepare a National Ivory Action Plan (‘NIAP’).⁹ Despite this entreaty, it was only decided that “the Standing Committee [of CITES] may wish to revisit its recent decision...[not] to include Japan within the NIAP process”.¹⁰

To date, Japan has not prepared a NIAP. However, the National Diet of Japan have taken steps to improve the regulatory enforcement of the commercial trade in ivory. For example, on 12 December 2016,¹¹ it announced the passage of amendments to the Law for the Conservation of Endangered Wild Fauna and Flora (‘LCES’), the national law protecting endangered species.

These amendments, which came into effect on 1 June 2018,¹² provide as follows:

1. Tightened Regulations on Ivory Transactions within its own Borders

With the enforcement of the newly amended law, business operators handling ivory products are now subject to registration requirements with the government, in order to engage in the business. This represents a change from just having to file a notification previously. Under the amended law, the following obligations are imposed on the registered business operators:

- All whole ivory tusks are subject to registration requirements. A registration card must be attached on whole ivory tusks that are put up for sale;
- A traceability information form must be prepared for every cut piece and every worked product of ivory that weighs over 1kg and exceeds 20cm. The form must be attached on every cut piece and every worked product of ivory that is put up for sale.
- A record must be prepared for every transaction of cut piece and worked products of ivory, indicating its source, buyer, weight, characteristics, and so on, and must be kept for five years.
- Relevant information including a registration number and the name of a business operator, and the expiration date of the registration must be indicated for cut piece and worked products of ivory that are put on display for sale as well as on their advertisements.

An operator in breach of these obligations is liable to a maximum fine of up to JPY 100 million (about USD 910,000) and/or a maximum prison sentence of up to five years, while the registration for business operations of such an operator will be nullified.

⁷ For example, see Tomomi Kitade and Ryoko Nishino, TRAFFIC Report: Ivory Towers: An Assessment of Japan’s Ivory Trade and Domestic Market, p. v <https://conservationaction.co.za/wp-content/uploads/2018/01/TRAFFICreport_IvoryTowers_web.pdf> accessed 5 December 2018.

⁸ *Ibid*, p. v.

⁹ CITES, 69th meeting of the Standing Committee Geneva (Switzerland), 27 November - 1 December 2017, Implementing Aspects of Resolution Conf. 10.10, (Rev. COP17) on the Closure of Domestic Ivory Markets, para. 14

<<https://cites.org/sites/default/files/eng/com/sc/69/E-SC69-51-02.pdf>> accessed 5 December 2018.

¹⁰ *Ibid*, paras. 11-12.

¹¹ Ministry of Economy, Trade and Industry (Japan), CITES Appendices to be amended (December 2016) <http://www.meti.go.jp/english/press/2016/1212_002.html> accessed 10 February 2019.

¹² This law was passed in May 2017, but 1 June 2018 is the date upon which the provisions of the law were given legal effect.

As stipulated by the law from before the recent amendment, the ivory items that can be sold legally in Japan are limited to the following:

- Whole ivory tusks, cut pieces of ivory and worked ivory products that had pre-existed in Japan ahead of the adoption of CITES trade ban (in 1980 for Asian elephants and 1990 for African elephant). *Japan joined CITES in 1980.
- Whole ivory tusks, cut pieces of ivory and worked ivory products which were imported to Japan with pre-convention certificates issued by exporting countries under CITES.
- Whole ivory tusks which were imported to Japan in 1999 and 2009, as exceptions approved under CITES.

2. Improved Monitoring and Tightened Control over Ivory Transactions

In response to some reported cases of foreign visitors and other buyers illegally taking out ivory products from Japan, the Government of Japan has been taking the following measures to thoroughly enforce the regulations:

- Increasing the number of officials of the Ministry of the Environment, in charge of monitoring and control on transactions of endangered species of wild fauna and flora, including ivory, from 22 to 26.
- Requiring business operators that handle ivory products to explain to buyers, including foreign visitors, legal procedures needed to export those products.
- Tightening border controls through more effective cooperation with the Chinese customs authority and CITES management authority.¹³

Whilst the Japanese decision to amend its legislative and regulatory infrastructure ought to be lauded, the endeavour of this report is to identify the reasons why this law and Japan's overall legal and practice structure remains insufficient to address the panoply of complicated legal and enforcement-related matters required to achieve compliance with Conference Resolution 10.10 (Rev. CoP 17). This report details

the current short fallings in the legal scheme and recommends that closing the market and defining very narrow legal exemptions is the only approach for the Government of Japan to fully comply with its framework obligations under CITES.

Structure and Methodology

Global Rights Compliance LLP ('GRC') will consider Japanese legal measures concerning the commercial trade in ivory and will conduct a comparative analysis of this legal regime with the following jurisdictions:

- China
- Hong Kong
- Thailand
- United States
- United Kingdom
- European Union

The results will be analysed in an effort to gauge compliance and conformity of the Japanese legal regime with best practices of other CITES state parties. Presenting the legal infrastructure of leading, well-developed jurisdictions throughout the world provides the Government of Japan with a range of solid, reliable reference points when considering changes in the Japanese system and, in particular, closure of its market and the drawing up of carefully delineated exemptions.

The Status of Domestic Trade in Ivory in Leading Legal Jurisdictions

Resolution 10.10 (Rev. CoP17)

In paragraphs 3-5 of Resolution 10.10, CITES Contracting Parties agreed to the following:

3. RECOMMEND[ING] 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 [and] regulatory...measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency;

¹³ Ministry of the Environment, Government of Japan, "Japan's Tightened Regulations on Ivory Transactions" (1 June 2018)

<<https://www.env.go.jp/en/headline/2372.html>> accessed 5 December 2018.

4. RECOGNIS[ING] that narrow exemptions to this closure for some items may be warranted; any exemptions should not contribute to poaching or illegal trade;
5. URGI[NG] those 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[...]¹⁴

Legal measures taken to prohibit or otherwise regulate the ivory trade are discussed below.

Japan

General Legal Measures

The domestic trade in ivory in Japan is regulated by the Law for Conservation of Endangered Species of Wild Fauna and Flora (‘LCES’) and its bylaws. LCES has been amended many times, most recently in June 2018 which dealt largely with strengthened measures for the control of Japan’s ivory businesses.¹⁵ Taking note of the legislative amendments now in effect, the core protections in Japan’s legal regime are detailed in this section.

First, all businesses dealing in ivory pieces and products, except whole tusks, are obligated to register with the Ministry of Economy, Trade and Industry (‘METI’) regarding their operations. This must be done every five years, with cancelation of the registration in the event of a violation of such legal requirements.

Registered businesses are obliged to record all transactions and resulting balances of stockpiles, submit these records to METI or its regional bureaus on a regular basis, and accept on-the-spot inspections.

Businesses must also abide by the requirement to confirm the legality of ivory with a seller or a buyer upon receiving ivory.

Manufacturers must also manage cut pieces or products that weigh over 1kg and exceed 20cm using specified “management documents” to keep the traceability of materials from original tusks. Product certification, ie. issuing certification when manufacturers apply with information confirming that particular products have been produced from legal stocks (i.e. registered whole tusks or cut pieces with management documents) remains voluntary.

Additional obligations for registered businesses will include registering all whole tusks in their possession and displaying the business registration number when selling or advertising ivory products. Furthermore, the government will disclose the list of registered businesses.

Regulatory Authority

The relevant Management Authority charged with overseeing the implementation of CITES-related legal measures and competent to grant permits or certificates in Japan is the Ministry of Economy, Trade and Industry (‘METI’).¹⁶ Japan designated the Ministry of the Environment (‘MOE’) and Ministry of Agriculture, Forestry, and Fisheries, as its Scientific Authorities.¹⁷

The MOE is principally responsible for LCES, while METI jointly governs the provisions related to ivory dealers under LCES.

Exemptions

As noted in Japan’s recent amendments tightening its regulations regarding ivory transactions:

As stipulated by the law from before the recent amendment, the ivory items that can be sold legally in Japan are limited to the following:

Whole ivory tusks, cut pieces of ivory and worked ivory products that had pre-existed in Japan ahead of the adoption of CITES trade

¹⁴ CITES, Trade in elephant specimens, Resolution Conf. 10.10 (Rev. CoP17), paras. 3-4 <<https://www.cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>> accessed 10 February 2019.

¹⁵ See Ministry of the Environment, Government of Japan, “Japan’s Tightened Regulations on Ivory Transactions” (1 June

2018) <<https://www.env.go.jp/en/headline/2372.html>> accessed 10 February 2019.

¹⁶ Ministry of Economy, Trade and Industry, ‘About CITES’ <http://www.meti.go.jp/english/policy/external_economy/CITES/about_cites.html> accessed 10 February 2019.

¹⁷ *Ibid.*

ban (in 1980 for Asian elephants and 1990 for African elephant)

Whole ivory tusks, cut pieces of ivory and worked ivory products which were imported to Japan with pre-convention certificates issued by exporting countries under CITES; and

Whole ivory tusks which were imported to Japan in 1999 and 2009, as exceptions approved under CITES.¹⁸

It is important to note that the business has a responsibility to check the origin of ivory; however, the seller need only ask about the source of ivory, instead of a more rigorous vetting procedure demonstrating proof of legality of the acquisition.¹⁹ This is discussed below.

China

General Legal Measures

Chinese wildlife protection is embedded in the “Wildlife Protection Law of the People’s Republic of China”.²⁰ The law “is formulated for the purpose of protecting wild animals, saving species of wildlife which are rare or near extinction, maintaining biodiversity and ecological balance, and promoting the establishment of ecological civilization”.²¹

Historically, China was one of the principal drivers for the illegal poaching of elephants in Africa and elsewhere. However, Chinese legal protections for elephants took a significant leap forward on 30 December 2016, when a near ban for all commercial ivory trade, including retail and wholesale trade, was requested.²² On this date, a Notice by the General Office of State Council on the Orderly Cessation of Processing and Sale of Ivory and Ivory Products was disseminated, indicating that “[i]n order to improve

elephant conservation and combat illegal ivory trade”, the following steps should be taken “to stop the processing and sale of ivory and ivory products”:

- A phase out of commercial processing and sale of ivory and ivory products, with a portion of registered ivory sale and processing sites stopping on 31 March 2017 and all sites by 31 December 2017;
- Encouraging the transition of ivory carving skills or artistry to assist with a transition and preserve ivory workers’ livelihoods;
- Strengthen the management of legal collection of ivory and ivory products. Prohibiting trading ivory through their display for sale in markets or transactions on the internet. Legally-sourced ivory and its products can be officially labelled for such display in museums and art galleries for non-commercial purposes or on exhibition, and can be transported, gifted and inherited. Legally-sourced ivory relics certified by professional institutions can be auctioned under strict monitoring after administrative approval; and
- Enhanced law enforcement and education should take place, which should lead to enhanced market investigations and inspections, shutting down illegal processing sites and disputing physical and online illegal ivory-trading channels.²³

Regulatory Authority

The CITES Management Authority (‘MA’) of China is entitled the “Endangered Species Import and Export Management Office of the People’s Republic of

¹⁸ See Ministry of the Environment, Government of Japan, “Japan’s Tightened Regulations on Ivory Transactions” (1 June 2018) <<https://www.env.go.jp/en/headline/2372.html>> accessed 10 February 2019.

¹⁹ See Article 33-3(1) of LCES entitled “Matters to be Observed by a Person Engaging in a Business Activity in connection with Designated Internationally Endangered Species”.

²⁰ See English translation of the Wildlife Protection Law of the People’s Republic of China (revised October 2018), p.1 <https://eia-international.org/wp-content/uploads/WPL-Final-Law_translation_July-5-2016.pdf> accessed 10 February 2019.

²¹ *Ibid.*

²² South China Morning Post, China imposes total ban on elephant ivory sales (31 December 2017) <<http://www.scmp.com/news/china/society/article/2126291/china-imposes-total-ban-elephant-ivory-sales>> accessed 10 February 2019.

²³ ‘China Announcement of Domestic Ivory Ban in 2017 - English Translation, 3 January 2017, <<https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9578/China-Announcement-of-Domestic-Ivory-Ban-in-2017--English-Translation.aspx>> accessed 10 February 2019.

China: Wildlife Conservation Department of National Forestry and Grassland Administration”²⁴

The Scientific Authority of China is the CITES Scientific Authority of China and/or the Endangered Species Scientific Committee affiliated with the Chinese Academy of Sciences.²⁵ Its role is to, *inter alia*, advise the Management Authority (MA) on the export of CITES Appendix I and II specimens as well as on the import of Appendix I specimens.²⁶

China’s CITES interagency committee is named the National Interagency CITES Enforcement Collaborative Group (‘NICECG’). Its general mandate includes facilitating the collection and exchange of intelligence, enhancing capacity building, and coordinating joint enforcement activities.²⁷ NICECG is comprised of the State Forestry Administration, the Ministry of Public Security, the General Administration of Customs, the Ministry of Agriculture and the Administration of Industry and Commerce.²⁸ The CITES Management Authority of China, hosted by the State Forestry Administration, is the coordinating body of NICECG.²⁹

Concerning domestic wildlife activities, the State Forestry and Grassland Administration (‘SFGA’) is principally in charge of wildlife issues in China. It is mainly responsible for monitoring and managing forest, grassland, wetland and desert; the development, utilisation and protection of wildlife; ecological protection, restoration, reforestation, as well as National Park management.³⁰

The National People’s Congress has established an Environment and Resources Protection Committee, whose work includes:

- To organize the formulation and examination of drafted laws related to environmental and resources protection and prepare the necessary reports;
- Exercise supervision over the enforcement of laws governing environmental and resources protection;
- Put forward motions related to the issue of environmental and resources protection; and
- Conduct exchanges with parliaments in other countries in the field of environmental and resources protection.³¹

The Environmental Protection Committee under the State Council is made up of leaders of various related ministries under the State Council. It is the State Council’s consultancy and coordination agency for environmental protection work. Its major tasks include:

- Studying and examining the principles, policies and measures relating to coordinative development of the country’s economy and environmental protection;
- Giving guidance to and coordinating efforts in tackling major environmental problems;
- Exercising supervision over and conducting checks on the implementation of the environmental protection laws and regulations by various localities and departments; and
- Promoting the development of environmental protection undertakings throughout the country.³²

Exemptions to the Ban

As noted, the 30 December 2016 Notice from the State Council enunciated, *inter alia*, the following:

- Permission for legally sourced ivory and their products to be on display in museums and art galleries for non-commercial purposes or on exhibition;

²⁴ See China’s CITES webpage <<https://www.cites.org/eng/cms/index.php/component/cp/country/CN>> accessed 10 February 2019.

²⁵ CITES, Endangered Species Scientific Commission (ESSC) <<http://www.cites.org/cn/page/english.html>> accessed 10 February 2019.

²⁶ *Ibid.*

²⁷ CITES, “CITES Secretariat praises China for major nationwide wildlife law enforcement operations: New national CITES enforcement coordinating body shows positive results” <https://www.cites.org/eng/news/pr/2012/20120509_certificate_cn.php> accessed 10 February 2019.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ State Forestry and Grassland Administration established (11 April 2018) <http://english.forestry.gov.cn/index.php?option=com_content&view=article&id=1846:state-administration-of-forestry-and-grassland-of-china-established&catid=21&Itemid=105> accessed 10 February 2019.

³¹ Environmental Protection in China <http://www.china-un.ch/eng/dbtyw/zmzg_1/jgzfbps/t176940.htm> accessed 10 February 2019.

³² *Ibid.*

- Permission for legally sourced ivory relics certified by professional institutions to be auctioned under strict monitoring after administrative approval.³³

Additionally, individuals who already own legal ivory products will be permitted to keep them, inherit or give them away as gifts.³⁴

Concerning the second exemption, a recent report by TRAFFIC in China indicates the following qualifying factors must be satisfied for legal trade to be conducted:

According to existing laws and regulations, elephant ivory items which can be legally auctioned have to meet the requirements listed below:

- They must be items of art or craft originating before 1949;
- They must come from legitimate sources;
- An application for an administrative licence for operating antique ivory trade must be submitted and obtained from the State Forestry and Grassland administration...;
- An application must be submitted to the Department of Cultural Relics Preservation of the local government for auction approval and reported to the State Administration of Cultural Heritage [] for the record; [and]
- An application must be submitted to the Wildlife Conservation Department of the local government for auction approval, and obtained and used in accordance with the provisions.³⁵

In addition, compliance with The Wild Animal Protection Law, the Cultural Relics Protection Law, the Auction Law and measures relating to Cultural Relics Auction Management should all be followed, as well as any other relevant legal measure.³⁶

Hong Kong

General Legal Measures

Hong Kong's wildlife protection law is encapsulated within the Wild Animals Protection Ordinance (Cap. 170).³⁷ The Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)³⁸ ('the Ordinance') is the territorial legislation which gives CITES legal effect domestically.

On 27 June 2016, the Panel on Environmental Affairs of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China's ('LegCo') discussed a proposal from the Environment Bureau and Agriculture, Fisheries and Conservation Department ('AFCD') for a plan to phase out the domestic trade in elephant ivory.³⁹ The proposed plan was approved by Hong Kong's Chief Executive in Council on 21 December 2016.⁴⁰

On 31 January 2018, lawmakers from LegCo passed the bill into law, overwhelmingly agreeing to ban the practice by the end of 2021. According to WWF Hong Kong, the ivory ban was supported by 78 per cent of Hong Kong citizens. Further, 78.2 per cent supported heavier penalties for wildlife crime offenders with a maximum of 10 years imprisonment.⁴¹

³³ 'China Announcement of Domestic Ivory Ban in 2017 - English Translation (3 January 2017) <<https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9578/China-Announcement-of-Domestic-Ivory-Ban-in-2017--English-Translation.aspx>> accessed 10 February 2019.

³⁴ *Ibid.*

³⁵ TRAFFIC Report, China's Ivory Auction Market: A Comprehensive Analysis of Legislation, Historical Data and Market Survey Results, p. vi (September 2018) <http://d2ouvy59p0dg6k.cloudfront.net/downloads/chinas_ivory_auction_market_9_25_1.pdf> accessed 10 February 2019.

³⁶ *Ibid.*

³⁷ Hong Kong e-legislation, Wild Animals Protection Ordinance Cap. 170 <<https://www.elegislation.gov.hk/hk/cap170?pmc=1&m=1&pm=0>> accessed 10 February 2019.

³⁸ Hong Kong e-legislation, Protection of Endangered Species of Animals and Plants Ordinance Cap. 586 <

<https://www.elegislation.gov.hk/hk/cap586?pmc=1&m=1&pm=0>> accessed 10 February 2019.

³⁹ Legislative Council of Hong Kong, Legislative Council Panel on Environmental Affairs Proposed Plan for Phasing out the Local Trade in Elephant Ivory (June 2016) <<https://www.legco.gov.hk/yr15-16/english/panels/ea/papers/ea20160627cb1-1054-6-e.pdf>> accessed 10 February 2019.

⁴⁰ Lau, W., Xu, L., Guan, J. and Xiao, Y., Closing Strategy: Ending Ivory Trade in Hong Kong, TRAFFIC Report (April 2017) p.4 <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 10 February 2019.

⁴¹ 'Public Sentiment Sways for Ivory Ban 78 per cent of Hong Kongers support legislation for a total ivory trade ban' (6 September 2017) <<https://www.wwf.org.hk/en/?19440/Public-Sentiment-Sways-for-Ivory-Ban-78-per-cent-of-Hong-Kongers-support-legislation-for-a-total-ivory-trade-ban>> accessed 10 February 2019.

A three-phase process towards a complete ban includes:

- **Step 1:** A ban on the import and re-export of hunting trophies and remaining post-Convention (1976) ivory items that are currently permissible under CITES - effective immediately when the bill is enacted;
- **Step 2:** A ban on the import and re-export of pre-Convention ivory (save for antique ivory) and subjecting the commercial possession of pre-Convention ivory in the domestic market to licensing control similar to the existing control on post-Convention ivory. This is effective three months after the bill is enacted.
- **Step 3:** On 31 December 2021, ivory will be banned concerning the possession for commercial use of all ivory, including pre-Convention and post-Convention ivory. Licences to possess shall be reduced to only cases of exceptional circumstance.⁴²

In practice this means that, upon implementation of Step 3, the local trade of all ivory - other than antique ivory – will be closed down.⁴³

Regulatory Authority

The relevant Management Authority charged with overseeing the implementation of CITES-related legal measures is the AFCDC. The Endangered Species Advisory Committee is the Scientific Authority and is a permanent committee which comprises of a pool of individuals with certain expertise.⁴⁴ The size of the managerial staff is 41 and scientific staff is 15.⁴⁵ The AFCDC is also principally responsible for enforcement of the domestic ban closing the ivory market.

⁴² Legislative Council Brief, Protection of Endangered Species of Animals and Plants Ordinance (Chapter 586), ‘Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 para. 5 < https://www.legco.gov.hk/yr16-17/english/bills/brief/b201706024_brf.pdf> accessed 14 February 2019.

⁴³ *Ibid*, paras. 2-6.

⁴⁴ CITES, Hong Kong biennial report (2009-2010), p.4 <<https://cites.org/sites/default/files/reports/09-10HongKong.pdf>> accessed 10 February 2019.

Exemptions to the Ban

As mentioned, Hong Kong authorities took forward a three-step plan to enhance regulations on the commercial trade of ivory and elephant hunting trophies and to phase out the domestic ivory trade by 31 December 2021.

Under Step 1, while the import and re-export of all elephant hunting trophies and post-Convention elephant ivory items are banned, a licence can be issued in limited circumstances.

As provided by LegCo, the “import or re-export licence application relating to elephant hunting trophy would only be approved by the Director of [AFCDC] if exceptional circumstances exist. For the approval of an import or re-export licence application relating to elephant ivory, the Director must be satisfied that the specimen is pre-Convention...is intended for scientific, educational or law enforcement purposes, or there are exceptional circumstances justifying the approval”.⁴⁶

Regarding possession, these licence applications may only be approved “if the Director is satisfied that the specimen is pre-Convention, covered by a valid licence issued before the 1st Commencement Date or there are exceptional circumstances justifying the approval”.⁴⁷

Under Step 2, applications for licences “for import, re-export and possession or control of pre-Convention elephant ivory would not be approved by the Director unless the ivory is antique elephant ivory”.⁴⁸ This is defined in clause 27(1) of the Bill to mean:

(a) a piece of elephant ivory that was, before 1 July 1925:

(i) removed from the wild;

⁴⁵ *Ibid*, pp. 4-5.

⁴⁶ Legislative Council, Report of the Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017, p.4 < <https://www.legco.gov.hk/yr16-17/english/bc/bc06/reports/bc0620180131cb1-508-e.pdf>> accessed 10 February 2019.

⁴⁷ *Ibid*, p. 5.

⁴⁸ *Ibid*.

(ii) significantly altered from its natural state for jewellery, adornment, art, utility or musical instruments; and

(iii) acquired by a person after the alteration in such altered state that required no further carving, crafting or processing to effect its purpose; and

(b) not include an "elephant hunting trophy".⁴⁹

Further exemptions under Step 2 include ivory intended for scientific, educational or law enforcement purposes, or there are exceptional circumstances justifying the approval.⁵⁰

Moreover:

Applications in relation to a licence for the commercial possession of non-antique elephant ivory may only be approved if the Director is satisfied that the specimen is covered by a valid licence issued before the 1st Commencement Date (for post-Convention ivory) or the commencement date of Stage 2 (for pre-Convention ivory), or there are exceptional circumstances justifying the approval.⁵¹

Stage 3 would take effect on 31 December 2021 and from that date the "possession for commercial purposes of all elephant ivory (save for antique elephant ivory) would be banned by restricting the issue of a possession licence to cases of exceptional circumstances".⁵²

Thailand

General Legal Measures

Thai wildlife protection consists of four key Acts: (i) Wild Animal Preservation and Protection Act B.E.2535 (1992) ('WARPA'); (ii) Thailand Fisheries

Act 1947 B.E. 2490; (iii) The Elephant Ivory Act, B.E. 2558 (2015); and (iv) the Beasts of Burden Act, B.E. 2482 (1939).

The Thai government enacted WARPA in 1992 to, *inter alia*, implement its CITES obligations.⁵³ In general, the law regulates the trade of wildlife by requiring a licence to capture, trade, import, transit, and export native wildlife, and regulates the possession of animals that are protected under Thai law. Penalties for "illegal import, export, transit and possession of CITES-listed wildlife would be 3–10 years imprisonment and a fine of THB60,000–200,000 (USD \$1,727–\$5,755), or both".⁵⁴

Under amendments passed in 2014, WARPA prohibited the possession and trade of African elephant ivory and provided that those violating the Act will be criminally responsible for up to four-years imprisonment.⁵⁵ Upon passing of this amendment, which came into effect in 2015, those in possession of African ivory were required to surrender the ivory to the government within 60 days of the law's passage with no penalty.⁵⁶ No compensation was provided to those handing over the ivory.⁵⁷

In January 2015, the Elephant Ivory Act was enacted to help govern the regulation of Thailand's domestic ivory trade. Part of this law mandated a nationwide registration process for Asian elephants.⁵⁸ In the end, WWF Thailand indicated that "more than 40,000 people register[ed] 670,984 ivory products...Products registered included stocks that were held both privately and commercially".⁵⁹

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*, pp. 5–6.

⁵³ Patricia Moore, Chanokporn Prompinchompoo and Claire A. Beasall "CITES implementation in Thailand: A review of the legal regime governing the trade in great apes and gibbons and other CITES-listed species" (November 2016) TRAFFIC Report, p.1

<http://www.trafficj.org/publication/16_CITES_Implementation_in_Thailand.pdf> accessed 10 February 2019.

⁵⁴ Controls on Domestic Trade in Selected Appendix I Listed Species: Part I: Elephant Ivory, SC70 Inf.19 (Rev. 1) (25 September 2018) <<https://cites.org/sites/default/files/eng/com/sc/70/Inf/E-SC70-Inf-19-R1.pdf>> (other citations omitted).

⁵⁵ CITES Progress Report on Implementation of Thailand's National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee Meeting (September 2015), p.1 <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 10 February 2019.

⁵⁶ Conversation between Scott Martin and Ms. Janpai Ongsiriwittaya, Manager of Illegal Wildlife Trade campaign, WWF-Thailand, 12 May 2016.

⁵⁷ *Ibid.*

⁵⁸ Kanitha Krishnasamy, Tom Miliken and Chution Savini, 'In Transition: Bangkok's Ivory Market – An 18-Month Survey of Bangkok's Ivory Market' (September 2016) p. iv <<https://www.traffic.org/site/assets/files/3683/traffic-report-bangkok-ivory.pdf>> accessed 10 February 2019.

⁵⁹ *Ibid.*

A survey in 2017 conducted by WildAid on ivory demand in Thailand concluded that most Thai citizens support the reduction in the trade of ivory and ivory products in Thailand.⁶⁰ Specifically, 93% supported reducing the trade of ivory and ivory products and pledged never to buy ivory or ivory products and 62% also supported higher penalties for illegal smugglers. However, only 42% supported a ban on all ivory trading.⁶¹

Regulatory Authority

The relevant regulatory authority charged with overseeing the implementation of CITES is the Department of National Parks, Wildlife and Plant Conservation (‘DNP’)⁶² of the Ministry of Natural Resources and Environment (MoNRE). A further two departments have authority to grant permits under WARPA: (i) the Department of Agriculture Plant Varieties Protection Office; and (ii) the Fisheries Resources Management and Measures Determination Division, Department of Fisheries.⁶³ The size of the managerial authority staff is a total of 74 and 33 in the scientific authority staff (30-50% of times spent on CITES-related issues).⁶⁴

Overseeing environmental enforcement is the national Thailand-WEN Committee, which represents a multitude of government agencies, including MoNRE, Customs, Royal Thai Police, Ministry of Commerce, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Agriculture and Cooperatives, Thai Airways, Airports of Thailand, and Thailand Post. The Thailand-WEN Committee “has no formal

enforcement powers, but it ensures that there are appropriate enforcement measures in place to prevent illegal wildlife trade, supervises compliance with ASEAN-WEN [⁶⁵] and provides for other international coordination”.⁶⁶

Restrictions Regarding the Ivory Trade

As noted, under the 2014 amendments, WARPA prohibited the possession and trade of African elephant ivory.

Under the Elephant Ivory Act, domestic traders are required to apply for trade permissions. Trade, import and export of ivory without permission shall be punishable by up to 3-years imprisonment or a fine of up to Baht 6,000,000 (approx. USD\$170,000), or both. Moreover, possession of ivory whether as personal effects or commercial purposes must be registered.

United States

General Legal Measures

American wildlife protection is embedded in the Endangered Species Act of 1973 (‘ESA’)⁶⁷ and regulations in furtherance of the ESA found in Chapter 50, Part 17 of the US Code of Federal Regulations.⁶⁸ Both African and Asian elephants are protected under the ESA. Further, the Lacey Act makes it unlawful, *inter alia*, “to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce: (A) any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any state or in

⁶⁰ WildAid, Ivory Demand in Thailand (2017 Survey), p.11. <<http://wildaid.org/wp-content/uploads/2017/09/Thailand-Survey-EN.pdf>> accessed 10 May 2018.

⁶¹ *Ibid.*

⁶² Department of National Parks, Wildlife and Plant Conservation, Thailand: Division of Wildlife and Plant Conservation under CITES Convention <<http://portal.dnp.go.th/p/citesdnp>> accessed 10 February 2019.

⁶³ CITES, “Thailand” <<https://www.cites.org/eng/cms/index.php/component/cp/country/TH>> accessed 10 May 2018.

⁶⁴ CITES, Thailand biennial report (January 2013 – December 2014) pp.4-5 <<https://www.cites.org/sites/default/files/reports/13-14Thailand.pdf>> accessed 10 February 2019.

⁶⁵ Association of Southeast Asian Nations (ASEAN), The ASEAN Wildlife Enforcement Network (ASEAN-WEN)

<<http://environment.asean.org/the-asean-wildlife-enforcement-network-asean-wen/>> accessed 10 February 2019.

⁶⁶ Patricia Moore, Chanokporn Prompinchompoo and Claire A. Beastall, “CITES implementation in Thailand: A review of the legal regime governing the trade in great apes and gibbons and other CITES-listed species” (November 2016) TRAFFIC Report, p.2 <http://www.trafficj.org/publication/16_CITES_Implementation_in_Thailand.pdf> accessed 10 February 2019

⁶⁷ U.S. Fish & Wildlife Service, “Endangered Species Act of 1973” <<https://www.fws.gov/international/pdf/esa.pdf>> accessed 10 February 2019.

⁶⁸ Legal Information Institute, 50 CFR Part 17 - Endangered and Threatened Wildlife and Plants <<https://www.law.cornell.edu/cfr/text/50/part-17>> accessed 10 February 2019.

violation of any foreign law”.⁶⁹ In addition to the African Elephant Conservation Act of 1989 these legal measures are the principal measures that work to protect and regulate conservation efforts relating to endangered species, both domestically and internationally, thereby providing a framework to conserve and protect endangered and threatened species and their critical habitats.

On 11 February 2014, the Obama White House crafted a national strategy for combating wildlife trafficking, including the illegal ivory trade in the form of a near total ban on commercial trade in elephant ivory.⁷⁰ On 6 July 2016, this ban took legal effect at the national level.⁷¹

Some US states have also taken steps above and beyond the US Government’s approach to regulating the trade of commercial elephant ivory by passing state legislation to further protect elephants by restricting intrastate trade. US states are required to follow national law, but are free to enact enhanced protections for endangered species.

States that have enacted their own legislation prohibiting the intrastate trade in elephant ivory (among other endangered wildlife and wildlife products) at the time of this publication include California, New Jersey, Hawaii, Washington, New York, Oregon, Illinois, New Hampshire, and Nevada. Over the past few years, bills or ballot initiatives that would restrict intrastate trade in ivory have also been proposed in various other states, including Colorado,

Connecticut, Delaware, Iowa, Massachusetts, Michigan, Oklahoma, and Rhode Island.

A list of relevant state authorities is published by FWS and provides a starting point for finding out more information about state bans, as well as the state and territory agencies that manage fish and wildlife resources.⁷²

A description of the New York, New Jersey, California, Hawaii and Washington state bans are detailed below.

Regulatory Authority

The relevant regulatory authority charged with overseeing the implementation of CITES is the US Fish & Wildlife Service (‘FWS’) Division of Management Authority, a sub-agency within the Department of the Interior (‘DOI’).⁷³ 33 staff work in the Division of Management Authority.⁷⁴ The FWS Division of Scientific Authority is the CITES Scientific Authority in the United States. Currently, 10 staff in the Division of Scientific Authority spend 80% of their time on CITES-related matters.⁷⁵ Concerning enforcement, the Office of Law Enforcement within the FWS is responsible for CITES-related enforcement.⁷⁶

There is an interagency committee named the US Interagency CITES Coordination Committee, which meets 3-4 times per year and is composed of representatives of the following US agencies:

- US DOI - Solicitor’s General Office,⁷⁷
- DOI - International Technical Assistance Program;⁷⁸

⁶⁹ Lacey Act, 18 USC Sections 3372 <<https://www.fws.gov/le/pdf/Lacey.pdf>> accessed 10 February 2019.

⁷⁰ National Strategy for Combating Wildlife Trafficking, (February 2014) <<https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>> accessed 10 February 2019.

⁷¹ Rachel Kramer, Robin Sawyer, Sal Amato and Peter LaFontaine, ‘The US elephant ivory market: a new baseline’ (July 2017), p.1 <https://www.traffic.org/site/assets/files/1378/traffic_us_ivory_report_2017.pdf> accessed 10 February 2019.

⁷² U.S. Fish & Wildlife Service, State and Territorial Fish and Wildlife Offices <<https://www.fws.gov/offices/statelinks.html>> accessed 10 February 2019.

⁷³ CITES, US CITES Implementation Report (23 September 2015) p.9 <<https://www.cites.org/sites/default/files/reports/13-15UnitedStatesofAmerica.pdf>> accessed 10 February 2019.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, pp.10-11.

⁷⁶ *Ibid.*, p.12.

⁷⁷ U.S. Department of the Interior, Office of Solicitor <<https://www.doi.gov/solicitor>> accessed 10 February 2019. For more information on Department of the Interior - International Instruments, refer to <<https://www.doi.gov/intl/International-Instruments>> accessed 10 February 2019.

⁷⁸ U.S. Department of the Interior, DOI - International Technical Assistance Program (Our Work) <<https://www.doi.gov/itap/our-work>> accessed 10 February 2019. Also, refer to International Technical Assistance Program <<https://www.doi.gov/intl/itap>> accessed 20 February 2019. For information on work undertaken,

- US Department of Commerce ('DOC');
- National Oceanic and Atmospheric Administration;⁷⁹
- DOC - National Marine Fisheries Service;⁸⁰
- US Department of Agriculture ('DOA') - Animal and Plant Health Inspection Service;⁸¹
- DOA - Forest Service;⁸²
- DOA - Foreign Agriculture Service;⁸³
- US Department of Justice;⁸⁴
- US Department of State;⁸⁵
- Office of the US Trade Representative;⁸⁶
- US Agency for International Development;⁸⁷
- Association of Fish and Wildlife Agencies;⁸⁸
- US Department of Homeland Security - Customs and Border Protection,⁸⁹ and

- Smithsonian Institution.⁹⁰

The FWS works in partnership with many organisations and individuals. Fish and wildlife conservation requires coordinated efforts by the states and the territories, as well as private landowners, tribes, and other countries besides the United States.

Exemptions to the Ban

The FWS, in their FAQ entitled "What can I do with My Ivory?", enumerate specific exemptions to the near-total trade ban on commercial ivory, breaking down the ivory traded by its form and by virtue of whether the trade is intrastate (ie. within New York) or interstate (ie between New York and California).⁹¹

The Fish & Wildlife Service describe the following below on the webpage entitled "What can I do with my Ivory?"⁹²

refer to combating wildlife trafficking <<https://www.doi.gov/itap/our-work/CWT>> accessed 10 February 2019.

⁷⁹ National Oceanic and Atmospheric Administration (NOAA Fisheries), 'Convention on International Trade in Endangered Species of Wild Fauna and Flora' <<https://www.fisheries.noaa.gov/>> accessed 10 February 2019.

⁸⁰ NOAA, U.S. Department of Commerce, Organization, National Marine Fisheries Service <<http://www.noaa.gov/about/organization>> accessed 10 February 2019. For more information on their work under Endangered Species Act 1973, refer to Law & Policies <<https://www.fisheries.noaa.gov/topic/laws-policies#endangered-species-act>> accessed 10 February 2019.

⁸¹ U.S. Department of Agriculture, Animal and Plant Health Inspection Service, CITES <<https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/permits/plants-and-plant-products/permits/cites>> accessed 10 February 2019. For further information, see APHIS Organization Chart <https://www.aphis.usda.gov/aphis/banner/aboutaphis/sa_aphis_organization/ct_aphis_organization> accessed 10 February 2019.

⁸² U.S. Department of Agriculture, Forest Service, 'Laws and Regulations to Protect Endangered Plants' <https://www.fs.fed.us/wildflowers/Rare_Plants/conservation/lawsandregulations.shtml> accessed 10 February 2019.

⁸³ There does not appear to be a website on the Foreign Agricultural Service's website that explains its role on the CITES interagency committee.

⁸⁴ The U.S. Department of Justice, Environment and Natural Resources Division, 'Prosecution of Federal Wildlife Crimes' <<https://www.justice.gov/enrd/prosecution-federal-wildlife-crimes>> accessed 10 February 2019.

⁸⁵ U.S. Department of State, 'U.S. Task Force on Wildlife Trafficking: Efforts to Combat Wildlife Trafficking' <<https://www.state.gov/r/pa/prs/ps/2017/03/268182.htm>> accessed 10 February 2019.

⁸⁶ Office of the United States Trade Representative, 'Multilateral Environmental Agreements' <<https://ustr.gov/issue-areas/environment/multilateral-environmental-agreements>> accessed 10 February 2019. For more information, refer to Tradewinds - The official blog of US Trade Representative <<https://ustr.gov/about-us/policy-offices/press-office/blog/2016/april/cites-and-trade-agreements-%E2%80%93-partnering-combat>> accessed 10 February 2019.

⁸⁷ USAID, Combating Wildlife Trafficking <<https://www.usaid.gov/biodiversity/wildlife-trafficking>> accessed 10 February 2019.

⁸⁸ Association of Fish & Wildlife Agencies, CITES Technical Work Group <<https://www.fishwildlife.org/afwa-acts/afwa-committees/federalstate-cites-working-group>> accessed 10 February 2019. For further information, refer to the CITES Technical Work Group Report (2017) <https://www.fishwildlife.org/application/files/3815/1388/9412/CITES_29th_Animals_Committee_Report.pdf> accessed 10 February 2019.

⁸⁹ U.S. Customs and Border Protection, 'Endangered species, CITES, endangered wildlife, plants, ivory, exotic skins and animals' <https://help.cbp.gov/app/answers/detail/a_id/64/~/-endangered-species%2C-cites%2C-endangered-wildlife%2C-plants%2C-exotic-skins-and-animals> accessed 10 February 2019.

⁹⁰ Smithsonian Institution, Smithsonian Legal Documents - An Act [t]o provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes (Archives) <https://siarchives.si.edu/collections/siris_sic_4994> accessed 10 February 2019.

⁹¹ US Fish & Wildlife Service: International Affairs, 'What can I do with my Ivory?' <<https://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>> accessed 10 February 2019.

⁹² *Ibid.*

Import of Ivory

The commercial import of ivory is prohibited. If the purpose is non-commercial and accompanied by appropriate permits, the following items are exempt from the ban:

- Sport-hunted trophies (two per hunter per year);
- Worked and raw ivory used for law enforcement purposes and genuine scientific specimens; and
- Worked ivory that was legally acquired and removed from the wild prior to February 26, 1976 (pre-Convention specimen) for African elephant and is either:
 - Part of a household move or inheritance;
 - Part of a musical instrument; or
 - Part of a traveling exhibition.
- For Asian elephant ivory, non-commercial imports are allowed if it qualifies as an antique, or as pre-Act, or is accompanied by an ESA export permit for scientific or survival enhancement purposes.

Export of Ivory

If exporting for commercial purposes and accompanied by appropriate permits, worked ivory that meets the criteria of the ESA definition of an antique is exempt. The ESA definition of antique is defined in this section below.

If exporting for non-commercial purposes and accompanied by the appropriate permits, the following items are exempt from the ban if they meet one of the following:

- Worked ivory that meets the criteria of the ESA antiques exemption.
- Worked ivory that was legally acquired and removed from the wild prior to February 26, 1976, and is being exported as:
 - Part of a household move or inheritance;
 - Part of a musical instrument; or
 - Part of a traveling exhibition.
- Worked ivory that qualifies as pre-ESA (before the Endangered Species Act was passed into law) (see description below).
- Worked ivory as law enforcement and genuine scientific specimens.

Interstate Commerce

For African elephant ivory, the following items of interstate commerce are not subject to the ban:

- Items that meet the criteria of the ESA antiques exemption.
- Certain manufactured or handcrafted items that contain a small (*de minimis*)** amount of ivory.

For Asian elephant ivory, interstate commerce is prohibited except for items qualifying as an ESA Antique. Some states have ivory laws or bans that prohibit or restrict ivory sales.

Intrastate Commerce

Under federal law, you can sell your elephant ivory within your state if you can demonstrate that it was lawfully imported prior to the date that the African and Asian elephants were listed in CITES Appendix I (18 January 1990 for African elephant and 1 July 1975 for Asian elephant).

Note that, as discussed above, some states have ivory laws or bans that prohibit or restrict ivory sales.

Foreign Commerce

There are exemptions to the general prohibition on commercial trade in ivory for individuals subject to US jurisdiction, but otherwise transacting in another country. These situations include the following exemptions:

- Items that meet the criteria of the ESA antiques exemption.
- Certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory.

Non-Commercial Use

The possession of legally acquired ivory is allowed.

Description of Specific Exemptions

ESA Antiques Exemption

To qualify for the ESA antiques exemption, an item must meet all of the following criteria [seller/importer/exporter must demonstrate]:

- Element A: It is 100 years or older.
- Element B: It is composed in whole or in part of an ESA-listed species;
- Element C: It has not been repaired or modified with any such species after December 27, 1973; and
- Element D: It is being or was imported through an endangered species “antique port”.*

Under Director’s Order No. 210, as a matter of enforcement discretion, items imported prior to September 22, 1982, and

items created in the United States and never imported must comply with elements A, B, and C above, but not element D.

Pre-Endangered Species Act Specimens “Pre-Act”

Specimens considered **pre-Act** may be exempt from standard prohibitions on import or export. To qualify as pre-Act, a specimen must:

- Have been held in captivity or in a controlled environment prior to December 28, 1973, or prior to the date of first listing under the ESA (June 14, 1976 for the Asian elephant; May 12, 1978 for the African elephant); and
- Such holding or use and any subsequent holding or use was not in the course of a commercial activity.

De Minimis

The *de minimis* exemption applies only to items made from African elephant ivory. The African elephant 4(d) rule provides an exemption from prohibitions on selling or offering for sale in interstate and foreign commerce for certain manufactured or handcrafted items that contain a small (*de minimis*) amount of African elephant ivory.

To qualify for the *de minimis* exception, manufactured or handcrafted items must meet either (i) or (ii) and all of the criteria (iii) – (vii):

- (i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;
- (ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;
- (iii) The ivory is a fixed or integral component or components of a larger manufactured or handcrafted item and is not in its current form the primary source of the value of the item, that is,

the ivory does not account for more than 50 % of the value of the item;

- (iv) The ivory is not raw;
- (v) The manufactured or handcrafted item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50 % of the item by volume;
- (vi) The total weight of the ivory component or components is less than 200 grams; and
- (vii) The item was manufactured or handcrafted before July 6, 2016.⁹³

Certain State-Level Bans

The US law delineated above applies to all 50 states of the United States equally in relation to interstate trade (as opposed to intrastate). It is the minimum level of compliance necessary for states. Some states, as indicated above, have gone further. For purposes of this comparative report, it is useful to consider the parameters of such laws. Accordingly, five important jurisdictions are considered below.

New York

The New York statute imposes a near complete ban on trading of any ivory (elephant or mammoth) or rhinoceros horns and provides for “very minimal exceptions”.⁹⁴ Subdivision 2 of this statute provides that “[e]xcept as otherwise provided in subdivision three of this section, no person shall sell, offer for sale, purchase, trade, barter or distribute an ivory article or rhinoceros horn”.⁹⁵

There are four exceptions to the ban under New York law:

- The ivory or rhinoceros horn is part of a bona fide antique and is less than twenty percent by volume of such antique, and the antique status of such antique is established by the owner or seller thereof with historical documentation evidencing provenance and showing the antique to be not less than one hundred years old;
- The distribution or change of possession of the ivory article or rhinoceros horn is for bona fide

⁹³ *Ibid.*

⁹⁴ Jonathan Riedel, ‘Understanding Ivory Law’ (29 November 2016) <<http://fitzgibbonlaw.com/understanding-ivory-law/>> accessed 10 February 2019.

⁹⁵ Jonathan Riedel, ‘Understanding Ivory Law’ (29 November 2016) <<http://fitzgibbonlaw.com/understanding-ivory-law/>>

accessed 10 February 2019, citing New York Consolidated Laws, Environmental Conservation Law - ENV § 11-0535-a: Illegal ivory articles and rhinoceros horns <<https://codes.findlaw.com/ny/environmental-conservation-law/env-sect-11-0535-a.html>> accessed 10 February 2019.

educational or scientific purposes, or to a museum chartered by the board of regents pursuant to the education law or to a museum authorized by a special charter from the legislature [of New York];

- The distribution of the ivory article or rhinoceros horn is to a legal beneficiary of a trust or to an heir or distributee of an estate; or
- The ivory article or rhinoceros horn is part of a musical instrument, including, without limitation, string and wind instruments and pianos, and the owner or seller provides historical documentation as the department may require, demonstrating provenance and showing the item was manufactured no later than 1975.⁹⁶

This New York ivory ban law has been enforced very strictly. However, like the other states below, it “only applies to intrastate trade and is pre-empted by the ESA for other trade”.⁹⁷

New Jersey

The New Jersey law makes it “unlawful for any person to import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product”.⁹⁸

There are four exceptions to the ban under New Jersey law:

- The ivory can be passed through inheritance;
- Law enforcement activity is exempt from this law;
- Ivory can be imported when expressly authorized by a federal license or permit; and
- The Department of Environmental Protection can authorize exemption from this rule for bona fide educational or scientific purposes.⁹⁹

⁹⁶ New York Consolidated Laws, Environmental Conservation Law - ENV § 11-0535-a: Illegal ivory articles and rhinoceros horns <<https://codes.findlaw.com/ny/environmental-conservation-law/env-sect-11-0535-a.html>> accessed 10 February 2019.

⁹⁷ Jonathan Riedel, ‘Understanding Ivory Law’ (29 November 2016) <<http://fitzgibbonlaw.com/understanding-ivory-law/>> accessed 10 February 2019.

⁹⁸ CITES, ‘Implementing Aspects of Resolution Conf. 10.10 (Rev. COP17) on the Closure of Domestic Ivory Markets- Details of 5 Major Domestic Ivory Markets’, p.2, fn.5

California

The law can be found in California’s Fish and Wildlife Code, Section 2022, which “completely bans sales of ivory include marine mammal ivory”.¹⁰⁰

There are five exceptions to the ban under California law:

- Law enforcement activity;
- An activity authorized under federal law or authorized with a federal permit or license;
- A musical instrument consisting of no more than twenty percent by volume of ivory and the owner or seller has documentation showing the item was manufactured prior to 1975;
- An antique item with no more than five percent ivory by volume if the owner or seller has documentation showing the ivory is over one-hundred years old; and
- The ivory is being used for educational or scientific reasons by a bona fide scientific or educational institution if the ivory meets two additional requirements:
 - There is not a federal ban on the ivory; and
 - The ivory or rhinoceros horn was legally acquired before January 1, 1991, and was not subsequently transferred from one person to another for financial gain or profit after July 1, 2016.¹⁰¹

Washington

The law can be found in the Revised Code of Washington, Title 77, Chapter 77.15. The law makes it “unlawful for a person to sell, offer to sell, purchase, trade, barter for, or distribute any covered animal species part or product”.¹⁰²

There are six exceptions to the ban under Washington law:

<<https://cites.org/sites/default/files/eng/com/sc/69/inf/E-SC69-Inf-24.pdf>> accessed 10 February 2019, citing ‘An Act concerning the import, sale, purchase, barter, or possession of ivory or rhinoceros horn and supplementing Title 23 of the Revised Statutes’, p.1

<https://www.njleg.state.nj.us/2014/Bills/PL14/22_.PDF> accessed 10 February 2019.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, p.2, fn.8.

¹⁰¹ *Ibid.*, p.2, fn.8.

¹⁰² *Ibid.*, p.2, fn.6.

- The ivory is not less than one-hundred years old (antique), the owner has documentation proving the ivory is antique, and the ivory is not more than fifteen percent by volume of the antique item;
- The ivory is used for bona fide educational or scientific purposes;
- The ivory is part of an inheritance;
- Law enforcement activity;
- The ivory is part of a musical instrument and is not more than fifteen percent by volume of the instrument; and,
- The trade of the ivory is expressly authorized by federal law or permit.¹⁰³

Hawaii

Hawaii law makes it illegal to “sell, offer to sell, purchase, trade, or possess with intent to sell” any part or product from elephants, rhinoceroses, or other numerous animal species listed in the law.¹⁰⁴

There are five exemptions to the ban under Hawaii law:

- The ivory is not less than one-hundred years old (antique), it is not more than twenty percent by volume of the antique, and it is not the primary source of value of the antique;
- The ivory is for bona fide educational or scientific purposes;
- The ivory is part of an inheritance;
- The ivory is less than twenty percent by volume of a gun, knife, or musical instrument and the owner or seller can prove the item was not manufactured after 1975 and the ivory is not the primary source of value for the item; and,
- The trade of ivory is authorized by federal law or permit.¹⁰⁵

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid*, p.2, fn.7.

¹⁰⁵ *Ibid.*

¹⁰⁶ On 23 June 2016, the UK voted to leave the European Union. The UK is due to leave the EU on 29 March 2019, unless an extension is agreed.

¹⁰⁷ Specifically, Council Regulation (EC) No. 338/97 and Commission Regulation 865/2006.

United Kingdom

General Legal Measures

At the time of writing, the UK is a Member State of the European Union¹⁰⁶ which regulates the trade in elephant ivory through the provisions of the EU Wildlife Trade Regulations.¹⁰⁷ As described in a TRAFFIC report from 2016 “the Control of Trade in Endangered Species (COTES) enables the EU Wildlife Trade Regulations to be enforced within the UK. In addition to these regulations, the UK has stricter domestic measures regarding trade in certain species. The UK only allows the commercial use of ‘worked’ ivory specimens (either antiques or pre-Convention items)”¹⁰⁸.

It further provides that “the UK only allows the commercial use of ‘worked’ ivory specimens (either antiques or pre-Convention items). In some circumstances, the UK Management authority may also allow non-commercial use of unworked pre-Convention items (including ivory pieces or tusks), such as for cultural exchange between museums”¹⁰⁹.

Authorised trade includes:

- Pre-1947 worked ivory specimens with some form of proof that this item fulfils the antiques derogation, but without an Article 10 certificate; and
- Worked African Elephant ivory specimens acquired prior to 1990 and worked Asian Elephant ivory specimens acquired prior to 1975 with an Article 10 certificate.¹¹⁰

Between October and December 2017, the UK Government ran a public consultation seeking views on banning UK sales of ivory and seeking evidence on the effect this measure will have. More than 70,000 responses were received, with approximately 88% expressing support for the government’s proposed ban.¹¹¹ As a result, on 23 May 2018, the UK Ivory Bill

¹⁰⁸ Lau, W., Crook, V., Musing, L., Guan, J. and Xu, L., ‘A rapid survey of UK ivory markets’ (August 2016), p.5 <http://www.trafficj.org/publication/16_A_Rapid_Survey_of_UK_Ivory_Markets.pdf> accessed 14 February 2019.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ DEFRA, Banning UK sales of ivory: Summary of responses and government response (April 2018), pp.1,3 <<https://assets.publishing.service.gov.uk/government/uploads/syst>

was introduced to the House of Commons, which will ban the commercial use of ivory in the UK, with five exemptions, making it a criminal offence.¹¹²

Regulatory Authority

DEFRA is the government department responsible for environmental protection, food production and standards, agriculture, fisheries and rural communities in the UK. The following government bodies and agencies are responsible for policy making and the administration and regulation of nature conservation and wildlife protection in England, Wales and Scotland: Natural England; Scottish Natural Heritage; Natural Resources Wales; Joint Nature Conservation Committee; DEFRA; Welsh Assembly Government; Local Authorities, and Marine Management Organisation.¹¹³

The management authority charged with overseeing the implementation of CITES is DEFRA.¹¹⁴ It communicates with the CITES Secretariat, the European Commission and other stakeholders.¹¹⁵ It also “provides information to the public and trade to ensure compliance”.¹¹⁶ The Animal & Plant Health Agency (‘APHA’), an agency of DEFRA, issues

CITES permits and certificates under the terms of the EU Wildlife Trade Regulations.¹¹⁷ The APHA includes the Wildlife Licensing and Registration Service (‘WLRs’), which is “responsible for regulating the trade in endangered species. WLRs has over 70 wildlife inspectors who work countrywide undertaking compliance inspections and supporting law enforcement agencies such as the police in wildlife crime investigations.”¹¹⁸ The National Wildlife Crime Unit (‘NWCU’) is the UK’s police-led unit. It “gathers intelligence on national wildlife crime and supports the police and UK [Border Agency]”.¹¹⁹ Further, the NWCU coordinates the cooperation between the UK and international agencies that deal with wildlife crime.¹²⁰

The scientific authority is divided between the Joint Nature Conservation Committee (for fauna) and the Royal Botanic Gardens Kew (for flora).¹²¹ The size of the managerial and scientific staff is circa 36 employees combined.¹²²

Concerning Interagency Groups, the UK CITES Officers Group (‘COG’) meets three times a year and consists of representatives from the following entities:

- DEFRA;¹²³

em/uploads/attachment_data/file/696474/banning-ivory-consult-sum-resp.pdf> accessed 14 February 2019.

¹¹² Ivory Act 2018 < <https://services.parliament.uk/bills/2017-19/ivory.html>> accessed 14 February 2019.

¹¹³ ‘Regulators and Agencies’ <<http://www.environmentlaw.org.uk/rte.asp?id=206>> accessed 11 February 2019.

¹¹⁴ Government of the UK, Convention on International Trade in Endangered Species of Wild Fauna and Flora controls: import and export of protected species <<https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>> accessed 14 February 2019; For more information, refer to MOU between DEFRA and the CITES Secretariat <<https://www.cites.org/sites/default/files/common/disc/sec/CITES-UK.pdf>> accessed 11 February 2019.

¹¹⁵ Government of the UK, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) controls: import and export of protected species <<https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>> accessed 11 February 2019.

¹¹⁶ *Ibid.*

¹¹⁷ Animal and Plant Health Agency, Endangered species: imports and exports and commercial use <<https://www.gov.uk/guidance/cites-imports-and-exports>> accessed 11 February 2019; Endangered species: application for import and export permit <<https://www.gov.uk/government/publications/endangered-species-application-for-import-and-export-permit>> accessed 11 February 2019.

species-application-for-import-and-export-permit> accessed 11 February 2019.

¹¹⁸ Government of the UK, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) controls: import and export of protected species <<https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>> accessed 11 February 2019.

¹¹⁹ Government of the UK, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) controls: import and export of protected species <<https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>> accessed 11 February 2019; UK National Wildlife Crime Unit (NWCU), Convention on the International Trade in Endangered Species < <http://www.nwcu.police.uk/how-do-we-prioritise/priorities/convention-on-the-international-trade-in-endangered-species-cites/>> accessed 11 February 2019.

¹²⁰ For more information, see National Wildlife Crime Unit (NWCU) Tactical Assessment (May 2017) <<http://www.nwcu.police.uk/wp-content/uploads/2013/03/NWCU-Tactical-Assessment-May-2017-sanitised-version.pdf>> accessed 11 February 2019.

¹²¹ CITES Biennial Report, United Kingdom (January 2013-December 2014) p.8 <<https://www.cites.org/sites/default/files/reports/13-14UnitedKingdom.pdf>> accessed 11 February 2019.

¹²² *Ibid.*, pp.7-8.

¹²³ Government of UK, Convention on International Trade in Endangered Species of Wild Fauna and Flora controls: import and

- APHA;¹²⁴
- NWCUC;¹²⁵
- UK Border Force;¹²⁶
- UK scientific authorities:
- Joint Nature Conservation Committee (JNCC) and Royal Botanic Gardens Kew.¹²⁷

Further, the UK Partnership for Action Against Wildlife Crime (‘PAW UK’) “helps statutory and non-government organisations to work together to reduce wildlife crime”.¹²⁸ Its objectives are to “raise awareness of wildlife legislation and the impacts of wildlife crime, [to] help and advise on wildlife crime and regulatory issues, and [to] make sure wildlife crime is tackled effectively”.¹²⁹

The Proposed UK Ivory Bill

The proposed UK Ivory Bill “will introduce additional controls to those set out in the existing EU Wildlife Trade Regulations and CITES Convention”.¹³⁰ It will further restrict commercial trade by prohibiting the commercial use of ‘worked’ or ‘antique’ ivory items regardless of their age, with the exception of items meeting one of the following five categories:

- 1) De minimis: Items with a volume of less than 10% by volume and made before 1947;

export of protected species <<https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>> accessed 11 February 2019; Government of UK, Endangered species: imports and exports and commercial use <<https://www.gov.uk/guidance/cites-imports-and-exports>> accessed 11 February 2019. For more information refer to MOU between DEFRA and CITES Secretariat <<https://www.cites.org/sites/default/files/common/disc/sec/CITES-UK.pdf>> accessed 11 February 2019.

¹²⁴ Government of UK, Animal & Plant Health Agency <<https://www.gov.uk/government/organisations/animal-and-plant-health-agency>> accessed 11 February 2019; Animal and Plant Health Agency, Endangered species: imports and exports and commercial use <<https://www.gov.uk/guidance/cites-imports-and-exports>> accessed 11 February 2019.

¹²⁵ UK National Wildlife Crime Unit <<http://www.nwcu.police.uk/>> accessed 11 February 2019; UK National Wildlife Crime Unit, Convention on International Trade in Endangered Species of Wild Fauna and Flora <<http://www.nwcu.police.uk/how-do-we-prioritise/priorities/convention-on-the-international-trade-in-endangered-species-cites/>> accessed 11 February 2019.

¹²⁶ Government of UK, Border Force <<https://www.gov.uk/government/organisations/border-force>>

- 2) Musical instruments (such as pianos and violin bows): Musical instruments with an ivory content of less than 20% and which were made prior to 1975;
- 3) Portrait miniatures: Items produced prior to 1918;
- 4) The rarest and most important items of their type: Items that are made of, or containing, ivory produced prior to 1918 which are assessed by an independent advisory institution as of outstandingly high artistic, cultural or historical value, and are an example of the rarest and most important item of their type; and
- 5) Museums: Commercial activities which includes sales, loan and exchanges to, and between, accredited museums (i.e. the ban will not affect the display of historic, artistic and cultural items to members of the public by accredited museums).¹³¹

European Union

General Legal Measures

Due to the European Single Market and the absence of systematic border controls within the EU (thereby making customs and border controls impossible), the provisions of CITES are given legal effect largely via

accessed 11 February 2019; Government of UK, Convention on International Trade in Endangered Species of Wild Fauna and Flora controls: import and export of protected species <<https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>> accessed 11 February 2019.

¹²⁷ Joint Nature Conservation Committee (JNCC), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) <<http://jncc.defra.gov.uk/page-1367>> accessed 11 February 2019; Kew Botanical Gardens, CITES <<https://www.kew.org/science/who-we-are-and-what-we-do/policy-work/cites>> accessed 11 February 2019.

¹²⁸ Government of UK, Partnership for Action Against Wildlife Crime (PAW UK) <<https://www.gov.uk/government/groups/partnership-for-action-against-wildlife-crime>> accessed 11 February 2019.

¹²⁹ *Ibid.*

¹³⁰ Ivory Bill Factsheet, Existing Regulations and UK Ivory Ban Comparison (29 June 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721450/ivory-bill-factsheet-existing-regulations.pdf> accessed 11 February 2019.

¹³¹ Ivory Bill Factsheet – Overview (23 May 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710385/ivory-bill-factsheet-overview.pdf> accessed 14 February 2019.

EU regulation,¹³² thereby ensuring uniformity of a baseline of protection within the EU member-states. EU member-states are of course permitted to provide more protection than EU law requires, but the core protections are provided by the EU.

The EU Wildlife Trade Regulations give CITES legal effect in this regional grouping of states. The two principal regulations are:

- Council Regulation (EC) No 338/97 concerning the protection of species of wild fauna and flora by regulating trade therein (the Framework / Basic Regulation); and
- Commission Regulation (EC) No 865/2006 (as amended).¹³³

The EU regulates intra-EU trade and the re-export of ivory for commercial purposes pursuant to the following basic conditions. Intra-EU trade and the re-export of ivory for commercial purposes is generally not permitted, only authorised when the following conditions are satisfied:

- Intra-EU trade is authorised when it can be shown that the related specimens were imported into the EU before the elephant species was listed in Appendix I of CITES (18 January 1990 for African elephant and 1 July 1975 for Asian elephant).
 - The trade can only occur if a certificate has been issued to this effect by the relevant EU Member State (except for ‘worked specimens’ proven to be acquired before 3 March 1947, which can be traded in the EU without a certificate).
- Re-export of ivory is authorised for ivory worked specimens acquired before the date on which CITES became applicable to them (26 February 1976 for African elephants and

1 July 1975 for Asian elephants). A stricter regime is in place for the re-export of raw ivory from the EU to third countries, which is not possible any longer...¹³⁴

Certificates are issued on a case-by-case basis by an EU Member-State under the following conditions:

- If acquired in, or introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 [the regulation in force before Council Regulation (EC) No. 338/97 came into effect] or in Annex A [to Regulation [338/97] became applicable to the specimens; or...
- Were introduced into the Community in compliance with the provisions of this Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned;
- Are captive born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens;
- Are required under exceptional circumstances for the advancement of science or for essential biomedical purposes...;
- Are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned;
- Are intended for research or education aimed at the preservation or conservation of the species; or
- Originate in a Member State and were taken from the wild in accordance with the legislation in force in that Member State.¹³⁵

As noted above, intra-EU trade of worked specimens that were acquired more than 50 years previously [from 1947] are exempt but do not require the issuance of a certificate.¹³⁶

¹³² European Commission, The European Union and Trade in Wild Fauna and Flora <http://ec.europa.eu/environment/cites/legislation_en.htm> accessed 11 February 2019.

¹³³ *Ibid.*

¹³⁴ European Commission, Directorate-General Environment, EU reply to CITES Notification 2017/77: Closure of Domestic Ivory Markets that are Contributing to Poaching or Illegal Trade, p.3 <[http://ec.europa.eu/environment/cites/pdf/EU_reply_to_CITES](http://ec.europa.eu/environment/cites/pdf/EU_reply_to_CITES_notification_2017-77_on_domestic_ivory_markets.pdf)

[notification_2017-77_on_domestic_ivory_markets.pdf](http://ec.europa.eu/environment/cites/pdf/EU_reply_to_CITES_notification_2017-77_on_domestic_ivory_markets.pdf)> accessed 14 February 2019.

¹³⁵ Regulation (EC) No 338/97, Article 8(3) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997R0338>> accessed 14 February 2019.

¹³⁶ Regulation (EC) No 338/97, Articles 8(3), 8(4) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997R0338>> accessed 14

Re-export from the EU is authorised for worked ivory acquired before the date on which CITES became applicable to them, i.e. 26 February 1976 for African elephants and 1 July 1975 for Asian elephants. Raw ivory from the EU to 3rd countries is not possible any longer, pursuant to recommendations by the European Commission in its guidance document on ivory trade. Specifically, it noted that EU Member States should stop issuing re-export certificates for raw ivory from 1 July 2017.¹³⁷

The EU indicates that “these rules go beyond the requirements set out in CITES and are more stringent than the rules governing domestic ivory trade in many other [countries]”.¹³⁸

Regulatory Authority

While the EU has the jurisdictional remit to adopt legal measures regarding the creation of rules for the issue, use and presentation of permits and certificates granted pursuant to CITES legal strictures, quotidian management of the treaty is handled by EU member-states.¹³⁹ This includes enforcement-related matters and issues related to penalties, as these remain within the remit of the member-states based on a general understanding that pervades much of penal law of this nature in the EU.

More generally, the Directorate-General for Environment of the European Commission is responsible for “EU policy on the environment. It aims to protect, preserve and improve the environment for present and future generations,

February 2019; Regulation (EC) No. 865/2006, Article 62 <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006R0865:20080225:EN:PDF>>

¹³⁷ European Commission, Directorate-General Environment, EU reply to CITES Notification 2017/77: Closure of Domestic Ivory Markets that are Contributing to Poaching or Illegal Trade, p.3 <http://ec.europa.eu/environment/cites/pdf/EU_reply_to_CITES_notification_2017-77_on_domestic_ivory_markets.pdf> accessed 11 February 2019.

¹³⁸ *Ibid.*

¹³⁹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. The contact details of the competent Management and Scientific Authorities for each of the 27

proposing and implementing policies that ensure a high level of environmental protection and preserve the quality of life of EU citizens. It also makes sure that Member States apply EU environmental law correctly and represents the European Union in environmental matters at international meetings”.¹⁴⁰

Regulation No. 338/97 establishes different bodies at EU level, i.e. the Committee on Trade in Wild Fauna and Flora, the Scientific Review Group and the Enforcement Group all of which “consist of representatives of the Member States and are convened and chaired by the European Commission”.¹⁴¹ The Committee on Trade in Wild Fauna and Flora “determines measures to improve the implementation of the EU wildlife trade regulations. The Committee normally meets three times a year in Brussels”.¹⁴²

The Scientific Review Group (SRG) “normally meets three times a year in Brussels and examines all scientific questions related to the application of the EU wildlife trade regulations, including whether trade has a harmful effect on the conservation status of species. In cases where the SRG believes trade might have a negative impact, imports from the country of origin under question may be temporarily suspended”.¹⁴³ Finally, the Enforcement Group “meets twice a year in Brussels to examine technical questions relating to the enforcement of the EU wildlife trade regulations and to exchange information”.¹⁴⁴

European Union (EU) Member States can be found at the link provided. <

http://ec.europa.eu/environment/cites/pdf/trade_regulations/short_ref_guide.pdf> accessed 11 February 2019.

¹⁴⁰ Directorate-General for the Environment <http://ec.europa.eu/dgs/environment/index_en.htm> accessed 11 February 2019.

¹⁴¹ The European Union and Trade in Wild Fauna and Flora <http://ec.europa.eu/environment/cites/legislation_en.htm> accessed 11 February 2019.

¹⁴² European Commission, Wildlife Trade Regulations in the European Union: An Introduction to CITES and its Implementation in the European Union, p.16 <<https://www.ymparisto.fi/download/noname/%7B504DE3C6-A17E-4F33-BF4D-64E3E7A5BB9D%7D/59387>> accessed 14 February 2019.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

Restrictions on Ivory Trade

Regarding intra-EU trade, if the related specimens were imported into the EU before the elephant species was listed in Appendix I of CITES (18 January 1990 for African elephant and 1 July 1975 for Asian elephant), trade will generally be permitted if a certificate has been issued by the relevant EU Member-State. Exempt are worked specimens proven to be acquired before 3 March 1947. In such cases, they can be traded in the EU without a certificate. Such certificates are issued on a “case-by-case basis”, meaning that each potential sale is “thoroughly scrutinized before being authorised”.¹⁴⁵ Re-export of ivory is authorised for ivory worked specimens acquired before the date on which CITES became applicable to them.¹⁴⁶ A stricter regime is in place for the re-export of raw ivory from the EU to third countries, which is not possible any longer...¹⁴⁷

Regulations and Practices Regarding Legal Domestic Trade of Ivory

In paragraph 6 of Resolution 10.10, CITES Contracting Parties agreed, *inter alia*, to the following:

[CITES Member-States] FURTHER URGE[] those Parties in whose jurisdiction there is an ivory carving industry, a legal domestic trade in ivory, an unregulated market for or illegal trade in ivory, or where ivory stockpiles exist, and Parties designated as ivory importing countries, to ensure that they have put in place comprehensive internal legislative, regulatory, enforcement and other measures to:

- a) regulate the domestic trade in raw and worked ivory;
- b) register or license all importers, exporters, manufacturers, wholesalers and retailers dealing in raw or worked ivory;

¹⁴⁵ European Commission, Directorate-General Environment, EU reply to CITES Notification 2017/77: Closure of Domestic Ivory Markets that are Contributing to Poaching or Illegal Trade, p.3 <http://ec.europa.eu/environment/cites/pdf/EU_reply_to_CITES_notification_2017-77_on_domestic_ivory_markets.pdf>.

¹⁴⁶ European Commission, Directorate-General Environment, EU reply to CITES Notification 2017/77: Closure of Domestic Ivory

c) introduce recording and inspection procedures to enable the Management Authority and other appropriate government agencies to monitor the movement of ivory within the State, particularly by means of:

- i) compulsory trade controls over raw ivory; and
- ii) comprehensive and demonstrably effective stock inventory, reporting, and enforcement systems for worked ivory.

...

In the event that the Government of Japan does not close its market and introduce narrow exemptions for some warranted items that do not contribute to poaching or illegal trade, strict and comprehensive legislative, regulatory, enforcement and other measures should be introduced to regulate the domestic trade in raw and worked ivory. This includes introducing rigorous recording and inspection procedures to monitor the movement of ivory within Japan. This section canvasses such processes in a range of legal jurisdictions to improve upon such practices in Japan.

Verifying the Legal Acquisition of Ivory

Japan

There are no clear provisions requiring the demonstration that ivory was legally acquired under Japanese law. The only exception are the whole tusks where each tusk is required to be registered with MOE before they can be traded or given away.

Concerning the proof-of-legality demonstration, the Japan Wildlife Research Center (the entity charged with making the determination on behalf of the government regarding the legality of acquisition for whole tusks) notes that it accepts both:

Markets that are Contributing to Poaching or Illegal Trade, p.3 <<http://ec.europa.eu/environment/cites/pdf/EU%20reply%20to%20CITES%20notification%202017-77%20on%20domestic%20ivory%20markets.pdf>> accessed 14 February 2019.

¹⁴⁷ *Ibid.*

- A statement about acquisition written by the person who claims to have acquired the tusk in Japan or imported the tusk into the country; or
- Any other document that purports to support legal acquisition, including a statement by any third party.¹⁴⁸

The MOE in June 2018 announced the plan to introduce a tightened requirement from June 2019 onwards where only official documents and scientific evidence would be accepted for tusk registrations.¹⁴⁹

China

Exemptions enunciated in the Notice by the General Office of State Council that permit commercial trade include legally sourced ivory relics certified by professional institutions to be auctioned under strict monitoring after administrative approval.¹⁵⁰

Assessing whether ivory is “legally sourced” requires clarification by Chinese authorities. This concern was identified by TRAFFIC in a September 2018 report, where it noted that due to the nature of the exemptions and the specific requirement that ivory be a cultural relic, assessing the legality of origin is complicated because “the definition of the legality of origin in the Wild Animal Protection Law and that in the Cultural Relics Protection Law are not consistent”.¹⁵¹ Specifically, it explains that in relation to the Cultural Relic Protection Law:

The legal means of obtaining cultural relics in Article 50 of the Cultural Relics Protection Law include inheriting or accepting gifts in accordance with the law, purchasing from an antique collection shop and an auction house dealing in auction of cultural relics, exchange or transfer of cultural relics

¹⁴⁸ Environmental Investigation Agency, ‘Japan’s Illegal Ivory Trade and Fraudulent Registration of Ivory Tusks’, p.5 <https://s3.amazonaws.com/environmental-investigation-agency/assets/2015/12/Japans_Illegal_Ivory_Trade.pdf> accessed 11 February 2019.

¹⁴⁹ Tomomi Kitade and Ryoko Nishino, ‘Ivory Towers: An Assessment of Japan’s Ivory Trade and Domestic Market’ (December 2017), p.7 <https://www.traffic.org/site/assets/files/1715/traffic_report_ivory_towers_web.pdf> accessed 11 February 2019.

¹⁵⁰ ‘China Announcement of Domestic Ivory Ban in 2017 - English Translation, 3 January 2017, <[https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9578/China-Announcement-of-Domestic-](https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9578/China-Announcement-of-Domestic-Ivory-Ban-in-2017--English-Translation.aspx)

that are lawfully owned/possessed by individual citizens, and other lawful means prescribed by the state.¹⁵²

Concerning the Wild Animal Protection Law, it provides:

[T]he documents and materials eligible and acceptable to SFGA for verifying the first-class nationally protected terrestrial wildlife and its products coming from legal sources include a hunting permit, a permit for wildlife domestication and reproduction, import and export certificates, law enforcement documents for the disposal of articles, invoices for purchase and sale of and proof of individual genealogy. Moreover, before 31 December 2017 when the ban on ivory trade was imposed, SFA approved ivory retail stores were the channels for legally purchasing ivory, and the specialised label and certificate could be used as a proof of legal origin.¹⁵³

Hong Kong

The AFCD of the Hong Kong Government notes on its website, *inter alia*, that “Application for licences to import, introduce from the sea, export, re-export or possess endangered species should be made in a specified form, supported by documents such as copies of CITES export permit, import licence, possession licence and invoice to this Department”.¹⁵⁴ Page three of the Application for the License to Possess indicates that “(3) [p]hotocopies of all supporting documents (e.g. Licence to Import or Supplier’s Licence to Possess and invoices or documents showing all the transactions, etc.) should be submitted with the application”.¹⁵⁵

Ivory-Ban-in-2017--English-Translation.aspx> accessed 11 February 2019.

¹⁵¹ Hsun-Wen Chou, ‘China’s Ivory Auction Market: A Comprehensive Analysis of Legislation, Historical Data and Market Survey Results’ (September 2018), p. vi <https://d2ouvy59p0dg6k.cloudfront.net/downloads/chinas_ivory_auction_market_9_25_1.pdf> accessed 11 February 2019.

¹⁵² *Ibid*, p.9.

¹⁵³ *Ibid*, p.10.

¹⁵⁴ AFCD, ‘FAQ’ <http://www.afcd.gov.hk/english/conservation/con_end/con_end_faq/con_end_faq.html> accessed 14 February 2019.

¹⁵⁵ Applications for a Licence to Possess: Protection of Endangered Species of animals and plants ordinance, Cap. 586 <http://www.afcd.gov.hk/english/conservation/con_end/con_end

Further, new measures were in effect from February 2016 that allow the AFCD to employ radiocarbon dating to determine the legality of ivory.¹⁵⁶

Thailand

On 15 September 2015, the Government of Thailand issued a progress report on the “Implementation of Thailand’s National Ivory Action Plan (NIAP) for Submission to the 66th Standing Committee Meeting”.¹⁵⁷ In this document, it explained the process for ivory possession registration in its domestic legislation and regulations, which includes requirements on legal acquisition.

Specifically, it provided that the “ivory possessor registers ivory in their possession with relevant evidence / documents. Characteristics and photos of each ivory item is recorded thoroughly, the ivory then marked with tamper proof stickers with ID number. DNP issues receipt of the registration”.¹⁵⁸

It then continues by noting that the Department of National Parks, Wildlife and Plant Conservation conducts the proof of legal acquisition checks by taking the following action:

- Reviews documentation or providence indicating legality of ivory items for example elephant registration document, sale document, receipts from shops registered for ivory trade under the Commercial Registration Act. Since there has never has been [a] legal provision requir[ing] documentation for ivory possession, [a] witness memorandum is alternately use[d] for identifying legal acquisition of ivory.
- Audits physical characteristic, number, size, weight and others that must coincide with information and photos recorded in the registration document.
- Check the marking sticker on ivory from the date of registration, id number of sticker must

matched with the document and no sign of removal / changes to sticker must be found.

- Once DNP has inspected legality of the ivory, DNP will then issue a certificate of ivory possession. In case that reasonable suspicion is found, for example size and characteristics of ivory item do not match with reference document of acquisition, the law empowers officials to call for additional evidence...
 - If the evidence is not insufficient to support legality of the ivory, DNA test shall be further conducted.
 - In the case that possessor is unable to prove legal acquisition of ivory or result of DNA test identifies species of elephant as African elephant, the ivory will thus be confiscated and fall as state asset. The possessor of African elephant ivory shall be prosecuted by WARPA.¹⁵⁹

United States

The US Code of Federal Regulations (“CFR”) provides detailed guidance to assist in making a determination as to whether an ivory tusk has been legally acquired. Specifically, this includes Chapter 50, Sections 23.34 and 23.60 of the CFR. Section 23.34 is entitled “What Kind of Records may I use to show the origin of a specimen when I apply for a US CITES document” and Section 23.60 is entitled “[w]hat factors are considered in making a legal acquisition finding?”.

50 C.F.R. Section 23.60 lays out the purpose, types, and general approach that the US takes in making a legal acquisition finding. Most importantly, it presents the general and specific factors it considers in deciding the level of scrutiny and the amount of information it needs to make a finding of legal acquisition.¹⁶⁰

[_lc/con_end_lc_app/files/AF246e18_final_20180502.pdf](#) accessed 11 February 2019.

¹⁵⁶ Legislative Council, Panel on Environmental Affairs, Background Brief on the Legislative Proposal to Phase out the Local Trade in Elephant Ivory Prepared by the Legislative Council Secretariat, 6 June 2017, LC Paper No. CB(1)1018/16-17(01), Appendix I <<https://www.legco.gov.hk/yr16-17/english/panels/ea/papers/ea20170606cb1-1018-1-e.pdf>> accessed 11 February 2019.

¹⁵⁷ CITES Progress Report on Implementation of Thailand’s National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee Meeting (September 2015) <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 11 February 2019.

¹⁵⁸ *Ibid.*, p.37.

¹⁵⁹ *Ibid.*

¹⁶⁰ 50 C.F.R. Section 23.60(d) <<https://www.law.cornell.edu/cfr/text/50/23.60>> accessed 14 February 2019.

The most relevant factors identified in 50 C.F.R. Section 23.60 include:

- The status of the species, with the risk higher for Appendix I than Appendix III¹⁶¹.
- Origin of the species: From species native to the United States or its bordering countries of Mexico or Canada to non-native species from other countries.¹⁶²
- Volume of illegal trade: From high to low occurrence of illegal trade.¹⁶³
- Type of trade: From commercial to non-commercial.¹⁶⁴
- Trade by range countries: From range countries that do not allow commercial export, or allow only limited non-commercial export of the species, to range countries that allow commercial export in high volumes.¹⁶⁵
- Whether it was donated to a public institution in an unsolicited manner and from unknown origin;¹⁶⁶
- Whether the item was imported previously. If so, the information will be considered that was provided in the CITES document.¹⁶⁷
- Whether the wildlife or plant specimen was acquired for personal use (including consideration of (i) whether the specimen was acquired in the US and possessed for strictly personal use; (ii) the number of specimens for export is appropriate for personal use; and (iii) there is no evidence on illegal transactions involving the specimen.¹⁶⁸
- Sequential ownership. If previously possessed, the history of ownership may be considered.¹⁶⁹

¹⁶¹ *Ibid*, Section 23.60(d)(1).

¹⁶² *Ibid*, Section 23.60(d)(4).

¹⁶³ *Ibid*, Section 23.60(d)(5).

¹⁶⁴ *Ibid*, Section 23.60(d)(6).

¹⁶⁵ *Ibid*, Section 23.60(d)(7).

¹⁶⁶ *Ibid*, Section 23.60(g).

¹⁶⁷ *Ibid*, Section 23.60(h).

¹⁶⁸ *Ibid*, Section 23.60(i).

¹⁶⁹ *Ibid*, Section 23.60(j). Note that 50 C.F.R. Section 23.60(K) is not included here, as it would have to relate to wild-collected ivory

50 C.F.R. Section 23.34(a) provides further information. It notes that “[w]hen you apply for a U.S. CITES document, you will be asked to provide information on the origin of the specimen that will be covered by the CITES document”.¹⁷⁰ Less detailed information is necessary when the import, export, or re-export poses a low risk to the species, while more is required if the activity poses a risk to the species.¹⁷¹

The most relevant information to determine origin of the specimen (and thereby obtain a CITES permit) includes:

- For a previously imported specimen, an individual could bring a copy of the cancelled CITES document that accompanied the original importation.¹⁷²
- For pre-convention specimens: Bring records that show the specimen was acquired before the date the provisions of the Convention first applied to it, such as:
 - Receipt or invoice.
 - Catalogue, inventory list, photograph, or art book.
 - Statement from a qualified appraiser attesting to the age of a manufactured product.
 - CBP (formerly U.S. Customs Service) import documents.
 - Phytosanitary certificate.
 - Veterinary document or breeding or propagation logs.¹⁷³
- For specimens sequentially owned or purchased, records that specifically identify the specimen, give the name and address of the owner and show the specimen’s origin sequential ownership or purchase. It would also be useful to provide records that document the history of all transfers in ownership.¹⁷⁴
- For non-commercial items of unknown origin, the individual should provide “a complete

in the United States, which is not a relevant factor in the context of this report.

¹⁷⁰ *Ibid*, Section 23.34(a) <<https://www.law.cornell.edu/cfr/text/50/23.34>> accessed 14 February 2019.

¹⁷¹ *Ibid*, 23.34(a)(2).

¹⁷² *Ibid*, 23.34(b)(4).

¹⁷³ *Ibid*, 23.34(b)(5).

¹⁷⁴ *Ibid*, 23.34(b)(7).

description of the circumstances under which the specimen was acquired (where, when, and from whom the specimen was acquired), including efforts made to obtain information on the origin of the specimen”.¹⁷⁵

United Kingdom

The EU Wildlife Regulations, described in the European Union section directly below, largely regulates elephant ivory trade in the UK, including in relation to addressing legal acquisition.

European Union

The Commission Notice guidance document on the EU legal regime governing intra-EU trade and re-export of ivory contains an annex entitled “Evidence to Demonstrate Legal Acquisition”.¹⁷⁶ The annex explains the range of different requirements and methods that EU member-states should follow to demonstrate that they have legally acquired ivory.¹⁷⁷

It notes that the demonstration required for applications for re-export / intra-EU certificates will need to be assessed on a case-by-case basis.

Proof of legal origin will depend upon the manner of acquisition. It notes the following distinguishing situations:

- If the ivory item was imported by the applicant him/herself before entry into force of the Convention, the applicant may be required to prove that he/she lived or worked in the country of export. Old photographs, contracts, extracts from a birth certificate, extracts from the population register or a declaration of him/herself and/or other family members may be accepted as proof that the applicant lived abroad. The applicant will also need to prove that the ivory item was legally acquired/imported into the EU (see Types of evidence below).

- If the ivory item was purchased in the EU, the applicant must demonstrate that the item was legally acquired, or that the piece meets the requirements of a pre-1947 worked specimen (see Types of evidence below).¹⁷⁸

Types of evidence that should be relied upon include the following:

- Original CITES import permit issued to the applicant and endorsed by Customs or original import (e.g. Customs) documents. The document(s) should be verified, if possible, against information in relevant databases, e.g. national Customs databases, databases of issued CITES permits.
- Intra-EU trade certificate. In such a case, the issuing EU Member State should be consulted to verify the validity of the certificate concerned. Where the information provided on the intra-EU certificate is unclear, or there are doubts/concerns as to the validity of the certificate/legality of the ivory, additional information should be requested from the applicant and/or issuing authority. Additional evidence might be requested if, for example, the certificate lacks identification markers (e.g. photographs, descriptive details, information on the weight/length of the tusks) or is especially old. Member States may request any evidence providing additional details of the item and its background not already noted on the intra-EU certificate. A receipt or a deed of transfer could also be requested, especially if the certificate is transaction specific, to show that the current owner acquired the specimen directly from the certificate holder.
- Results of radiocarbon dating/isotope analysis to determine age (also origin) of the specimen,¹⁷⁹ bearing in mind that determining the age is not sufficient in itself to prove legal acquisition.

¹⁷⁵ *Ibid*, 23.34(b)(8).

¹⁷⁶ Official Journal of the European Union (17 May 2017), Commission Notice Guidance Document: EU regime governing intra-EU trade and re-export of ivory, Annex I, C154/11. <http://ec.europa.eu/environment/cites/pdf/guidance_ivory.pdf> accessed 11 February 2019.

¹⁷⁷ Official Journal of the European Union, Commission Notice Guidance Document: EU regime governing intra-EU trade and re-export of ivory (17 May 2017) Annex I <http://ec.europa.eu/environment/cites/pdf/guidance_ivory.pdf> accessed 11 February 2019.

¹⁷⁸ *Ibid*.

¹⁷⁹ The UNODC Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis provides an overview of laboratory test options available as well as guidelines on taking samples for testing, including a list of equipment and materials needed for ivory sampling. UNODC Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis <https://www.unodc.org/documents/Wildlife/Guidelines_Ivory.pdf>; Ivory Id <www.ivoryid.org> accessed 11 February 2019.

- Expert opinion, in the form of a determination of age by a recognised, independent expert, for example, an individual affiliated to a university/research institution, a consultant to court/approved by judicial process, or an approved/ recognised expert (2). Expert opinions may be considered as satisfactory evidence for both worked and unworked ivory (e.g. where forensic analysis cannot be used). For antique worked ivory, the age determination may be made based on the style of carving and crafting techniques.¹⁸⁰

It continues, noting that if the evidence above is not available, “applicants should be required to present a combination of other forms of evidence to demonstrate legal acquisition...Member States should ask the application to furnish as many different types of evidence as possible in support of their application”.¹⁸¹

It then notes that “other forms of evidence that may constitute satisfactory proof of legal acquisition include (preferably a combination of) the following:

- Original CITES export permit from the country of export or original export (e.g. Customs) document. The document(s) should be verified, if possible, against information in relevant databases.
- For ‘worked specimens’ containing ivory, a document from an approved/recognised expert.
- A receipt or invoice, a deed of gift or inheritance documents, such as a will.
- Old photographs of the ivory item (with a date, recognisable person, or at the place of origin), an old hunting permit (or other documents relating to a hunt), insurance documents, letters, or old public documents (such as newspaper articles or other original reports/publications that provide evidence of the origin of the specimens).
- Other ancillary evidence to support the explanation of legal acquisition such as proof of

work service of the person who acquired the specimen (e.g. in Africa) or copies of passport stamps.

- A witness statement/affidavit or signed declaration from the owner. Member States may consider requesting that the applicant provides an affidavit in support of the certificate issued, stating that they are aware of the consequences of a false declaration. A witness statement/affidavit should still be supported by other evidence such as photographs or receipts/invoices.
- For worked specimens or music instruments manufactured in the EU, a confirmation by the manufacturer or an expert that the instrument was produced on the territory of an EU Member State before the date of the relevant CITES listing.¹⁸²

The Annex concludes this section by noting that “[w]here, in light of evidence furnished by an applicant in support of a re-export/intra-EU certificate application, there remain doubts as to the legal acquisition of the ivory concerned, Member States should consider consulting an independent expert or requiring forensic analysis to verify the age of the specimen; the cost should be borne by the applicant”.¹⁸³

General

Regarding legal acquisition, CITES has disseminated a questionnaire that national authorities of CITES Parties should review in an effort to ensure that their national legislation contains all relevant and necessary information to facilitate an effective, protective legal regime for making legal acquisition findings.¹⁸⁴ While the document was presented as a questionnaire, such questions can also be understood as a list of best practices in making legal acquisition determinations. Core matters to include in one’s legislation includes the following:

¹⁸⁰ Official Journal of the European Union, Commission Notice Guidance Document: EU regime governing intra-EU trade and re-export of ivory, Annex I, C154/11-12 (17 May 2017) <http://ec.europa.eu/environment/cites/pdf/guidance_ivory.pdf> accessed (17 May 2017).

¹⁸¹ *Ibid*, p.12.

¹⁸² *Ibid*, p. C154/12.

¹⁸³ *Ibid*.

¹⁸⁴ CITES (2017), CITES questionnaire <<https://www.cites.org/sites/default/files/notif/E-Notif-2018-020-A.docx>> accessed 11 February 2019; see generally CITES (2018), International Workshop on CITES Legal Acquisition Findings (13-15 June 2018) <https://cites.org/sites/default/files/projects/NLP/Agenda-LAF-workshop-rev1_2018.pdf> accessed 11 February 2019.

- Noting the responsible authority in the legislation for making legal acquisition findings;
- Indication of a clear methodology and standards for individuals to comply with to demonstrate that a protected species has been legally acquired.
- Practical tools used by the national authority of your country to verify the legal acquisition of a CITES listed specimen? e.g. such as databases, Legality Assurance Systems (LAS), supply chain controls, inspections, traceability systems, apps, satellite-based monitoring systems, etc. Are there different tools used depending on the taxon?¹⁸⁵

Registration of Businesses that Sell Ivory

Japan

All businesses dealing in ivory pieces and products, except whole tusks, are obligated to register their operations with METI. This must be done every five years, with cancelation of the registration in the event of a violation of such legal requirements.¹⁸⁶

Registered businesses are obliged to record all transactions and resulting balances of stockpiles, submit these records to METI or its regional bureaus on a regular basis, and accept on-the-spot inspections.¹⁸⁷ Businesses must also “abide by the requirement to confirm the legality of ivory with a seller or a buyer upon receiving ivory”.¹⁸⁸

Manufacturers must also manage cut pieces using specified “management documents” to keep the traceability of materials from original tusks. Product certification—issuing certification when manufacturers apply with information

confirming that particular products have been produced from legal stocks (i.e. registered whole tusks or cut pieces with management documents) remains voluntary.¹⁸⁹

Additional obligations for registered businesses include registering all whole tusks in their possession and displaying the business registration number when selling or advertising ivory products. Furthermore, the government will disclose the list of registered businesses.¹⁹⁰

China

If an auction company wishes to engage in commercial trade, there is a detailed list of steps provided above that they must take to do so legally.¹⁹¹

More generally, the auction of wildlife articles should strictly abide by the provisions of the Wild Animal Protection Law, the Terrestrial Wildlife Protection Implementation Regulations and other relevant laws. If trade is prohibited by the state, it cannot be subject to auction.¹⁹²

Hong Kong

As summarised by WWF Hong Kong, “ivory possession licences were originally issued under the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) to those in possession of ivory in the early 1990s. Pre-Convention ivory for commercial and non-commercial possession was registered with AFCD, although those who owned less than 5 kilogrammes of worked ivory were exempt...”¹⁹³

¹⁸⁵ *Ibid*, pp.1-2.

¹⁸⁶ Japan’s Tightened Regulations on Ivory Transactions <<https://www.env.go.jp/en/headline/2372.html>> accessed 11 February 2019; Tomomi Kitade and Ryoko Nishino, TRAFFIC Report: Ivory Towers: An Assessment of Japan’s Ivory Trade and Domestic Market (December 2017), pp. 5-6 <https://www.wwf.or.jp/activities/data/20171220_wildlife02.pdf> accessed 11 February 2019.

¹⁸⁷ *Ibid*.

¹⁸⁸ *Ibid*.

¹⁸⁹ *Ibid*.

¹⁹⁰ *Ibid*.

¹⁹¹ See supra, p.9, in the Section entitled “Exemptions to the Ban General Legal Measures”.

¹⁹² *Ibid*.

¹⁹³ Lau, W., Xu, L., Guan, J. and Xiao, Y., ‘Closing Strategy: Ending ivory trade in Hong Kong’ (April 2017), p.7 <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 11 February 2019; see also Legislative Council, Panel on Environmental Affairs, Background Brief on the Legislative Proposal to Phase out the Local Trade in Elephant Ivory Prepared by the Legislative Council Secretariat, LC Paper No. CB(1)1018/16-17(01) (6 June 2017) <<https://www.legco.gov.hk/yr16-17/english/panels/ea/papers/ea20170606cb1-1018-1-e.pdf>> accessed 11 February 2019.

In addition to the initial registration requirements, “[a]n update of items held or modified (e.g. from raw to worked ivory) were reported to AFCD each time possession licences were renewed, and licence renewal initially occurred every two years. However, this changed after five-year licences were issued for ivory possession around the year 2000 and persisted after the licensing rules were amended with the introduction of Cap. 586. Furthermore, the amendments meant that licences were now only required for those holding ivory for commercial purposes”.¹⁹⁴ In light of the phasing out of the commercial trading in ivory by 31 December 2021, even though the validity period of a possession licence remains at five years, the expiry date of recently issued licences should not extend beyond the 31 December cut-off date (as opposed to the end of the five-year period, which occurs after 31 December 2021).

Thailand

Since the effective date of the Elephant Ivory Act, Thai authorities have instituted a range of registration and inspection requirements, including:

- Requiring existing traders (operating before the Elephant Ivory Act) to submit a request for permission from the government to continue operating their ivory business;
- Those who no longer wish to continue their ivory business have to report their ivory possession according to the Elephant Ivory Act and cancel/amend their business registration according to the Business Registration Act;
- Those who do not comply with the laws are penalised; and
- Regular supervisory authority is conducted by Thai authorities, including inspection on ivory accounts with accompanying documents and examining ivory products and their conformity with the laws.¹⁹⁵

¹⁹⁴ Lau, W., Xu, L., Guan, J. and Xiao, Y. (2017), ‘Closing Strategy ending Ivory Trade in Hong Kong’, TRAFFIC Report, p.7 <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 10 February 2019.

¹⁹⁵ CITES, Progress Report on Implementation of Thailand’s National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee Meeting, p.18 (2015)

Further, ivory traders are required to display their trade permits in “a noticeable place and issue purchasing documents to their customers as evidence for possession registration and monitoring”.¹⁹⁶

Finally, there are other responsibilities identified for all owners of ivory in the Section entitled “Private Possession of Ivory” below.¹⁹⁷

United States

There is no relevant legislation at the national level regarding the registration of businesses selling ivory. However, states may regulate in a manner it deems necessary, so long as it does not contradict the national law.

United Kingdom

While the rules will change in the near future due to the likely passage of the UK Ivory Bill, to date the UK has followed EU guidance.

European Union

The EU does not require that ivory importers, exporters, traders and manufacturers are registered or licensed or that ivory stockpiles are inventoried.¹⁹⁸

Registration of Ivory in Private Possession

Japan

Currently, there are no regulations in place that mandate the registration (or other regulatory activity) that would require any step be taken by an individual who possesses ivory for personal or non-commercial use.

The MOE in Japan launched a campaign in August 2017 that promoted the voluntary registration of

<<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 11 February 2019.

¹⁹⁶ *Ibid*, p.12.

¹⁹⁷ See *infra*, p.35, in the Section entitled ‘Thailand’.

¹⁹⁸ EU Ivory Trade: The Need for Stricter Measures (January 2017) p.9 <https://www.prowildlife.de/wp-content/uploads/2017/08/EU_IvoryTradeBrief.pdf> accessed 11 February 2019.

whole tusks in one's personal possession.¹⁹⁹ However, to date, efforts have not gone further.

China

There are no specific regulations that detail the requirement to register ivory in one's personal possession.

Hong Kong

As noted above, ivory possession licences were originally required (with *de minimis* exemptions)²⁰⁰ In 2000, the licencing requirement was dropped.²⁰¹ That remains the case today.²⁰²

Thailand

In 2014, WARPA strengthened the suppression of illegal trade of African elephant ivory. Among other steps, the law made illegal the possession and trading of African elephant ivory with up to four years imprisonment for contravening such law.

In advance of the implementation of the law, a period was established for individuals who possessed ivory to declare such ownership for continued lawful possession. Regulations provided that “[a]nyone who possesses African elephant ivory is required to register their ivory within 90 days by showing legitimate acquisition evidence”.²⁰³ The Thai Government set up 22 places for possession registration and well as mobile units upon request nationwide.²⁰⁴

If the owner of such ivory lacked legitimate acquisition evidence, such ivory was seized and became state property. Further, “[o]nly the legitimate

African elephant ivory is allowed for possession, however, trade of such ivory is prohibited”.²⁰⁵ The Thai Government indicated that such possessed ivory is transferable only by inheritance.²⁰⁶

In providing an individual the right to possess ivory, the 2015 Progress Report from the Thai Government notes that:

Ivory possession certificate[s] will be issued if the registered ivory meet[s] [the] requirement[s] of [the] verification process. In suspicious case[s], for example, large and long tusks that could be ivory from African elephant, of which provided evidence does not match with ivory product / tusk, officials may request additional evidence and possibly DNA test[s] to confirm [the] legality of [the] registered ivory ([with a] focus on risky groups including ivory in possession for commercial purpose and those with suspicious characteristics or large amounts registered to one person). The ivory shall be confiscated if lawful acquisition is unable to be proven.²⁰⁷

On 21 April 2015, the registration of possession of ivory and ivory products acquired prior to the effective date of the Elephant Ivory Act ended. More than 47,000 people registered their ivory in possession.²⁰⁸

To support the registration, the Thai Government has created a national ivory database system made of three separate sub-databases. Of note for the purposes of this section, it contains a “database of legal possession of ivory from domesticated elephants and African elephants...”²⁰⁹ The database “provides details of possessors and traders, weight, size and photos of

¹⁹⁹ See Tomomi Kitade & Ryoko Nishino (December 2017), *Ivory Towers: An Assessment of Japan's Ivory Trade and Domestic Market*, pp.7-8 <https://conservationaction.co.za/wp-content/uploads/2018/01/TRAFFICreport_IvoryTowers_web.pdf> accessed 11 February 2019.

²⁰⁰ Lau, W., Xu, L., Guan, J. and Xiao, Y. (2017), ‘Closing Strategy ending Ivory Trade in Hong Kong’, TRAFFIC Report, pp. 7-8 <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 11 February 2019.

²⁰¹ *Ibid.*

²⁰² The Government of Hong Kong SAR, LCQ13: Handling of ivory covered by Licences to Possess upon phasing out of local ivory trade, <<http://www.info.gov.hk/gia/general/201706/14/P2017061400452.htm>> accessed 11 February 2019.

²⁰³ CITES Progress Report on Implementation of Thailand's National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee Meeting (2015) p.10 <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 11 February 2019.

²⁰⁴ *Ibid.*, p.12.

²⁰⁵ *Ibid.*, p.10.

²⁰⁶ *Ibid.*, p.11.

²⁰⁷ CITES, Progress Report on Implementation of Thailand's National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee Meeting, p.2 (2015) <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 12 June 2018.

²⁰⁸ *Ibid.*, p.3.

²⁰⁹ *Ibid.*, pp.1-2.

each individual ivory item” which are essential for further inspection and enforcement.²¹⁰

Details on the ivory possession database also include:

The ivory possession database system...is designed to support importing a large amount of information on ivory possession, location of possession, ivory items, volumes, sizes, photos as well as the monitoring part of ivory transaction /transfer/ transformation. For African elephant ivory, only legally-acquired ivories are allowed for possession; trade is fully prohibited. The system is designed to support monitoring of change on possession’s location and inheritance transfer. It is also linked to trade database. Moreover, the system is being developed to support basic analysis in order to monitor [*sic*] possessors who may sensitively link with illegal activities.²¹¹

United States

The FWS of the US Department of Interior does not require the registration of ivory kept in private possession. It provides:

Federal wildlife laws and regulations such as CITES, the [Endangered Species Act], and the [African Elephant Conservation Act] do not prohibit possessing or display of ivory, provided it was lawfully acquired. There is no certification requirement or process to register ivory items and you do not need a permit from the Service to possess or display ivory for non-commercial purposes. We recommend that you maintain any records or documentation you have that demonstrates the origin and chain of ownership of the item. We recommend that you provide all documentation to any future recipient of your elephant ivory item. Check to make sure that [any person possessing ivory] are also in compliance with local and state laws. Contact the [US] state to check on their requirements.²¹²

Accordingly, there is no requirement to register ivory that is kept in a person’s private possession.

²¹⁰ *Ibid.*

²¹¹ *Ibid.*, p.14.

²¹² Revisions to the Endangered Species Act (ESA) Special Rule for the African Elephant: Questions and Answers, p.6 <<https://www.fws.gov/international/pdf/questions-and-answers-african-elephant-4d-final-rule.pdf>> accessed 14 February 2019.

United Kingdom

For purposes of the registration of ivory in one’s personal possession, the UK relies upon EU Wildlife Trade Regulations.

European Union

Paragraph 1.6.6 of the EU Report entitled “[d]ocuments needed for wildlife trade into, from and inside the EU” provides, in relevant part, the following:

Personal ownership certificates, (Arts. 37 to 44 of Commission Regulation (EC) No 865/2006), are used only for live animals listed in Annexes A, B or C of the EU Wildlife Trade Regulations that are held for personal non-commercial purposes. Personal ownership certificates are not issued for plants or dead animals, their parts or derivatives.²¹³

As previously noted, further elucidation of such requirements can be found in Articles 37-44 of Commission Regulation (EC) No. 865/2006.

Traceability of Ivory

There have long been concerns with CITES member-states with the traceability of ivory after an initial legal acquisition finding is made. Failure to conduct adequate, consistent and effective tracing of ivory can lead to imprecision and ambiguity in the overall amount of ivory in a particular state. This can directly lead to a gap which can permit illegally traded activities to enter the ivory stream inside a country.

Japan

As noted in the Introduction, Japan’s newly minted law from 1 June 2018 contains traceability requirements, providing that a “traceability information form must be prepared for every cut piece and every worked product of ivory that weighs over 1kg and exceeds 20cm. The form must be attached on every cut piece and every worked product of ivory that is put up for sale”.²¹⁴ Further, it notes that a record

²¹³ “Permits, Certificates and Notifications” <http://ec.europa.eu/environment/cites/info_permits_en.htm - _Toc223858316> accessed 11 February 2019 (emphasis added).

²¹⁴ Japan’s Tightened Regulations on Ivory Transactions <<https://www.env.go.jp/en/headline/2372.html>> accessed 11 February 2019.

“must be prepared for every transaction of cut piece and worked products of ivory, indicating its source, buyer, weight, characteristics etc., and must be kept for five years.”²¹⁵

However, it is important to note that in practice, this traceability requirement exempts any piece that was (or is claimed to have been) produced prior to the regulation entering into effect in June 2018, which essentially means the traceability requirement is not a compulsory element regulating all trade in ivory items falling under the specified size category. In sum, it still falls short of the Resolution Conf. 10.10 regarding the requirement for “compulsory trade controls over raw ivory”).

China

To date, there is no registration system available for tracing ivory ownership (for new and old pieces).

Hong Kong

As stated above, when possession licences are renewed, an update of items held or modified is reported to AFCD, thereby enhancing traceability.²¹⁶

Additionally, “it is a requirement for all transactions of ivory products in Hong Kong to be recorded on a Records Sheet that is provided by AFCD to licencees. The record must be made within three days of a transaction, and these records can be requested for inspection by AFCD at any time. Surprise inspections are typically done when AFCD is alerted of suspicious activity at licensed premises. The number and weight of ivory stockpile pieces are recorded: tusks, cut pieces, worked ivory and scrap are treated separately. Small discrepancies in the total weight of ivory stockpiles is allowed given the loss generated through processing, e.g. residue from cutting tusks and carving worked items”.²¹⁷

As of February 2016, new measures are in place to improve traceability concerns regarding elephant

ivory trading. From that date, the Panel on Environmental Affairs of the Hong Kong Legislative Council noted that “[c]omprehensive stocktaking of registered ivory is being conducted to prevent potential laundering of licensed ivory by ivory from illegal sources. It includes checking the quantity, marking (if any) and the transaction records of ivory. In addition, a new marking system with unique tamper-proof holograms and photographic records for ivory has been introduced”.²¹⁸

Thailand

In a 2013 report entitled “Report on Domestic Trade in Ivory and Protection of Elephants”, the Government of Thailand’s report on how it tracks the movement of ivory in-country to the 63rd meeting of the Standing Committee of CITES. It provided:

Trade and movement of raw ivory are controlled by under the Animal Epidemic [*sic*] Act 1956 and its revision [in] 1999. Traders require trade permit from the Department of Livestock Development. Any transportation of raw ivories across provinces requires movement permit from the place of origin. Transport of such ivories must be checked through the designated checkpoints along the route of transportation and be finally checked by the officers at the place of destination.

Under the Draught Animal Act 1939, all individual domesticated live elephants are registered and given details in the elephant identification book (or passbook). This book is comparable to “ID card of human” which is carefully checked and issued by the Department of Provincial Administration (DPA) in each province and given to the owner of such elephants. All marks as well as cut ivory must be written in this identification book. This information can be linked to the source of raw ivories in the domestic ivory

²¹⁵ *Ibid.*

²¹⁶ Lau, W., Xu, L., Guan, J. and Xiao, Y., ‘Closing Strategy ending Ivory Trade in Hong Kong’, p.8 (April 2017) <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 11 February 2019.

²¹⁷ *Ibid.*

²¹⁸ Legislative Council, Panel on Environmental Affairs, Background Brief on the Legislative Proposal to Phase out the Local Trade in Elephant Ivory Prepared by the Legislative Council Secretariat, LC Paper No. CB(1)1018/16-17(01), Appendix I (6 June 2017) <<https://www.legco.gov.hk/yr16-17/english/panels/ea/papers/ea20170606cb1-1018-1-e.pdf>> accessed 11 February 2019.

trade. For better practices regarding individual identification book, DPA is revising appropriate material and information system and management.²¹⁹

United States

On July 6, 2016, a near-total ban on commercial trade in African elephant ivory went into effect in the United States. There are no further details on the traceability of remaining ivory.

United Kingdom

The EU Wildlife Trade Regulations, described below, regulate trade in the UK.

As noted above, on 23 May 2018, the UK Ivory Bill was introduced to the House of Commons, which will ban the dealing of elephant ivory (with five exceptions) making it a criminal offence. While EU Regulations set a minimum standard for each Member State to adhere to, including the UK, they are able to set stricter domestic regulation. Therefore, if the UK Ivory Bill is passed through UK Parliament, EU law will still be applicable, but the new stricter national regulation will supersede EU law.

European Union

The most important EU document in relation to ivory trade is the EU's guidance document governing intra-EU trade and re-export of ivory (2017/C 154/06). Annex II of the document addresses marking, registration and other requirements for the issuance of certificates for ivory. Its utility is highly instructive for the creation of a Japanese marking model; accordingly, it is repeated nearly verbatim.

Annex II²²⁰

Annex II begins by noting that "CITES Resolution 10.10 (Rev. CoP 17) encourages the marking of 'whole tusks of any size, and cut pieces of ivory that

are both 20 cm or more in length and one kilogram or more in weight'.²²¹

It continues by noting that "[i]n that context, it is recommended that Member States consider permanently marking:

- Whole tusks of any size; and
- Cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight.

The EU Guidance notes that "[m]arking allows a certificate to be connected to the ivory items concerned and improves traceability in the system".²²²

It further states that "[i]t is recognised that different Parties have different systems for marking and may apply different practices for specifying the serial number and the year (which may be the year of registration or recovery, for example), but that all systems must result in a unique number for each piece of marked ivory. This number should be placed at the "lip mark", in the case of whole tusks, and highlighted with a flash of colour".²²³

The EU Guidance further notes that "[m]arking should indicate the country of origin; if this country is not known when an EU Member State operates the marking, the ISO code indicated should be the one of the country of marking".²²⁴

It continues: "[o]nce the item has been permanently marked, the code should be entered into an electronic database to facilitate future verification together with the certificate number and all relevant information such as length, weight and pre-Convention status. Information should be recorded at the national level, where possible. If information is recorded at the regional/ local level, there should be some mechanism for information sharing with/oversight by the central (national) CITES authority. After marking, it is also

²¹⁹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Interpretation and implementation of the Convention: Species trade and conservation: Elephants: Elephant Conservation, Illegal Killing and Ivory trade, SC63, Doc. 18, p.12 < <https://cites.org/sites/default/files/eng/com/sc/63/E-SC63-18.pdf>> accessed 14 February 2019.

²²⁰ Commission Notice Guidance Document EU regime governing intra-EU trade and re-export of ivory (2017/C 154/06),

Annex II (17 May 2017) < http://ec.europa.eu/environment/cites/pdf/guidance_ivory.pdf> accessed 11 February 2019.

²²¹ *Ibid.*, p. C154/13.

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ *Ibid.*

advised that the items be photo-documented and the records and photographs maintained together”²²⁵.

Finally, it notes: that EU member states “have reported problems in verifying the validity of intra-EU certificates, which make it difficult to confirm the identity of the specimen concerned (for raw

tusks). To address these issues, Member States are advised to:

- Require photo documentation of the ivory specimens (especially raw whole tusks) and, where permitted by national systems, to ensure that the photographs are affixed/appended to the intra-EU certificate concerned. The photographs should be scanned and kept with the records of the certificate issued. Features that could be documented (and which would assist in identification) include characteristic colouration, cracks or other damage; curvature of the tusk; and the base (e.g. cleanly cut or frayed). Photographs of the entire tusk and of the base would be useful. Should the tusk contain an engraving, a photograph that shows details and position on the tusk should also be included.
- Include details on the certificate of how the weight and length of the ivory item were measured, as well as the circumference at the base. Regarding the weight, relevant information includes when the weight was determined (was the item weighed at the time of issuing the certificate, or has older information on weight been used?) and whether the weight includes any attachments to the tusk (such as a cap over the base or an attachment to fix the tusk to a wall) which may have been removed for subsequent weighing. Regarding the length, relevant information includes whether the length specified is the outer or inner length, and whether this is from tip to base (or some other measurement).

- Record both the number of items concerned and the quantity in weight (kg) (as sizes of items vary considerably).²²⁶

Regulation of the Online Trade in Ivory

Japan

There is no specific legislation regulating the trade of ivory online, other than that in place for all other types of transactions.

China

China has a near-total ban on the commercial sale of ivory products. However, before the ban, the Wildlife Protection Law provided for a ban on the publication of advertisements offering illegal wildlife for sale, ivory or otherwise. It notes that “[t]he provision of online trading platforms exchange markets, or other online trading space for the illegal sale, purchase or utilization of wildlife and products thereof or prohibited hunting equipment”.²²⁷

In the Chinese private sector, online retailer Taobao has delisted ivory goods, and is blocking search terms for ivory. Further, anyone searching for ivory on Baidu, China’s most popular search engine, gets a cautionary reminder of the “comprehensive ban on the trade in ivory”.²²⁸

Hong Kong

There is no prohibition on the sale of ivory online, so long as it conforms to all the other rules set forth by Hong Kong regulatory authorities. However, there is a lack of clarity and certainty that other rules are followed, such as “whether the ivory items advertised are from licensed premises, as there are no requirements for this information to be shared or for retail licences to be displayed with such [online] advertisements”.²²⁹

²²⁵ *Ibid.*

²²⁶ *Ibid.*, p. C154/13-14.

²²⁷ Yu Xiao, Jing Guan and Ling Xu, ‘Wildlife Cybercrime in China: E-commerce and social media monitoring in 2016’, p.1 (May 2017), referencing the Wildlife Protection Law of the People’s Republic of China, Article 32 <https://www.traffic.org/site/assets/files/2108/briefing-online_wildlife_trade-2016.pdf> accessed 14 February 2019.

²²⁸ China Dialogue, ‘China’s Ivory Sales Ban shows needs for Asia-Wide Strategy’ (24 April 2018) <<https://www.chinadialogue.net/article/show/single/en/10603-China-s-ivory-sales-ban-shows-need-for-Asia-wide-strategy>> accessed 11 February 2019.

²²⁹ TRAFFIC Report, ‘Closing Strategy: Ending Ivory Trade in Hong Kong’, p. 8 (April 2017) <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 11 February 2019.

Thailand

In Thailand's NIAP, it notes that future steps include "Going Beyond" the NIAP, in part through suppressing internet trade. However, it provides no further proposals or solutions.²³⁰

United States

There are no wildlife-specific regulations concerning regulating online trade.

United Kingdom

A 2015 policy document entitled "Consultation on Proposed Changes to the Control of Trade in Endangered Species Regulations" provided a list of "Additional Measures Specifically Focused on Trade via the Internet" that should be considered for internet trade in endangered species.²³¹

It notes that the law should be amended to require a CITES certificate number be included "in any and all advertising for sale. Any advert not displaying this information could potentially be assumed to be trading a CITES specimen or product illegally. The aim would be to assist enforcement authorities and others to quickly identify the legal provenance of an item being sold".²³²

In paragraph 4.4 of the same policy document, it notes that "[f]ollowing on from this we are aware of calls for further specific provisions to address the internet trade. For example, 'pop-up' warnings, outlining the requirements of CITES and penalties for illegal trading, should be mandated when searches for certain products are conducted. To date we are not convinced that there is a sufficiently strong case to justify a legislative solution at the current time".²³³

While the UK Government has not yet adopted such practices, including these considerations are useful in the context of this comparative study.

European Union

There are no wildlife-specific regulations regulating online trade. However, the EU Action Plan Against Wildlife Trafficking 2016-2020²³⁴ lays down certain objectives in order to regulate e-commerce. Objective 1.3 concerns increasing business sector engagement in efforts to combat wildlife trafficking and encouraging the sustainable sourcing of wildlife products. The Objective helps to raise awareness of business sectors trading in wildlife products within/from the EU or facilitating such trade. This objective would be achieved through sessions of the EU Wildlife Trade Enforcement Group organised with business players to discuss specific issues (e.g. traditional Chinese medicine, exotic pets, luxury industry, hunting tourism, transport, courier companies, and online trade).²³⁵

Furthermore, Objective 2.3 of the Action Plan addresses the need to fight organised wildlife crime more effectively by boosting capacity of relevant experts to tackle the links of wildlife trafficking with organised crime, including cybercrime and related illicit financial flows. This includes capacity building to tackle online wildlife trafficking within competent units and ensure that channels exist to trigger assistance from units specialised in cybercrime in specific cases (e.g. darkweb investigations, abuse of virtual currencies, etc).²³⁶

Additionally, MEPs (Members of the European Parliament) have also called on EU leaders to engage with the operators of social media platforms, search engines and e-commerce platforms and step up checks

²³⁰ CITES, Progress Report on Implementation of Thailand's National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee Meeting, p.4 (2015) <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 11 February 2019.

²³¹ DEFRA, 'Consultation on proposed changes to the Control of Trade in Endangered Species Regulations, Additional measures specifically focused on trade via the Internet', p.16 (February 2015) <<https://consult.defra.gov.uk/biodiversity/changing-cotes->

[regulations/supporting_documents/COTES%20Review%20%20Consultation%20Document.pdf](https://consult.defra.gov.uk/biodiversity/changing-cotes-regulations/supporting_documents/COTES%20Review%20%20Consultation%20Document.pdf)> accessed 11 February 2019.

²³² *Ibid*, para. 4.3.

²³³ *Ibid*, para. 4.4.

²³⁴ European Commission (2016), EU Action Plan against Wildlife Trafficking 2016-2020 <http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF> accessed 11 February 2019.

²³⁵ *Ibid*, p. 16.

²³⁶ *Ibid*, p. 20.

to stop illegal internet trade in wildlife.²³⁷ The European Commission is currently reviewing its policies on ivory, including policies on e-commerce.²³⁸

Worldwide

A group of tech companies and non-governmental organisations are partnering to enhance reform efforts relating to the illegal sale of ivory online. On 7 March 2018, 21 tech companies from North America, Asia, Europe and Africa came together as the first-ever Global Coalition to End Wildlife Trafficking Online. The Global Coalition's goal is to reduce wildlife trafficking online by 80% by 2020.²³⁹

On the Global Coalition's website is TRAFFIC's Wildlife Friendly Online Trade Policy. They introduce a standard template that serves as the basic policy that can be used by tech companies, online marketplaces and others as the basic protections they provide against illegal wildlife trade.²⁴⁰ Further, best practices were recommended by TRAFFIC for online companies as follows:

- Share information between companies and law enforcement on persistent offenders selling ivory against site policy, and potentially illegally.²⁴¹
- Regularly consult with wildlife trafficking experts in government agencies and civil society to update filters with the latest keyword and workaround trends used by sellers to advertise real elephant ivory online.²⁴²
- Consult with other e-commerce and social media companies to share best practices in detecting elephant ivory.²⁴³

- Assess the feasibility of technological solutions, such as data mining and machine learning, to automatically, rather than manually, detect elephant ivory advertisements online.²⁴⁴
- Establish an online campaign by companies to raise awareness and have suspect advertisements reported by users, which are then checked and removed by the companies if counter to the site policy.
- Dedicate additional staffing and resources to cybercrime investigations.²⁴⁵
- Establishing and maintaining protocols with online companies for investigation of persistent offenders with potentially illegal ivory items offered on their platforms.²⁴⁶

²³⁷ European Parliament, MEPs call for ivory trade ban, penalties against wildlife trafficking (2106) <<http://www.europarl.europa.eu/news/en/press-room/20161117IPR51554/meps-call-for-ivory-trade-ban-penalties-against-wildlife-trafficking>> accessed 11 February 2019; Using EU trade tools to combat wildlife trafficking <<http://www.europarl.europa.eu/news/en/press-room/20170228IPR64299/using-eu-trade-tools-to-combat-wildlife-trafficking>> accessed 11 February 2019.

²³⁸ See also IFAW, 'Over 1.2 million people call on Commissioner Vella to close the ivory trade across the EU' (March 2018) <<https://www.ifaw.org/european-union/news/over>> accessed 11 February 2019.

²³⁹ World Wildlife Fund (WWF), 'Coalition to End Wildlife Trafficking Online' <<https://www.worldwildlife.org/pages/global-coalition-to-end-wildlife-trafficking-online>> accessed 11 February 2019.

²⁴⁰ IFAW - TRAFFIC - WWF Wildlife Friendly Policy, Wildlife-Friendly Online Trade: Harmonized Wildlife Trade Policy Framework for e-Commerce & Social Media Companies (2017) <https://c402277.ssl.cf1.rackcdn.com/publications/924/files/original/WWF_TRAFFIC_and_IFAW_Wildlife_Friendly_Policy_2017.pdf?1510328189> accessed 11 February 2019.

²⁴¹ Rachel Kramer; Robin Sawyer; Sal Amato and Peter La Fontaine, The US Elephant Ivory Market: A New Baseline, July 2017, p.86 <https://c402277.ssl.cf1.rackcdn.com/publications/1081/files/original/TRAFFIC_US_Ivory_Report_2017.pdf?1501007952> accessed 10 February 2019.

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*, p.85.

²⁴⁶ *Ibid.*

The Identification and Management of Ivory Stockpiles

CITES Resolution Conf. 10.10 (Rev. CoP16) includes a provision urging CITES member-states to:

maintain an inventory of government-held stockpiles of ivory and, where possible, of significant privately held stockpiles of ivory within their territory, and inform the Secretariat of the level of this stock each year before 28 February, indicating: the number of pieces and their weight per type of ivory (raw or worked); for relevant pieces, and if marked, their markings in accordance with the provisions of this Resolution; the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year.

There are three types of inventory in a state in accounting for the overall “stockpile”:

- Government-held ivory, as a result of seizures and confiscations;
- Privately-held ivory for sale by ivory traders; and
- Privately-held ivory for personal possession.

During COP 16, amendments to Resolution Conference 10.10 were adopted by the Parties. Among other recommended actions agreed upon by CITES members was a reporting requirement for an annual declaration of ivory stocks. In paragraph e), under ‘Regarding Trade in Elephant Specimens’, the Parties were requested to:

maintain an inventory of government-held stockpiles of ivory and, where possible, of significant privately held stockpiles of ivory

within their territory, and inform the Secretariat of the level of this stock each year before 28 February, *inter alia*, to be made available to the programme Monitoring the Illegal Killing of Elephants (MIKE) and the Elephant Trade Information System (ETIS) for their analyses, indicating the number of pieces and their weight per type of ivory (raw or worked); for relevant pieces, and if marked, their markings in accordance with the provisions of this Resolution; the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year.²⁴⁷

The Parties have now had four occasions to report their ivory stocks to the CITES Secretariat since CoP16. As reported by TRAFFIC, in 2014 only Ethiopia, Gabon, Germany, Japan, Malawi, Malaysia, New Zealand, Philippines, Slovakia, Thailand, Uganda, and Zambia submitted ivory stock reports with inventory figures.²⁴⁸

Further, TRAFFIC noted that Greece and Malta indicated that they held no ivory stockpiles and Belgium, Democratic Republic of Congo, and Tanzania indicated that they had ivory stockpiles, but provided no data on the status of such inventories.²⁴⁹ In 2015, Chad, Congo, Namibia, Thailand, and Zimbabwe submitted ivory stock reports with inventory figures and Germany and Zambia provided information on private-owned stocks.²⁵⁰

Japan’s Ivory Stockpile

Like many other countries, Japan did not submit any reports in 2014 or 2015 regarding their ivory stockpile. In late 2017, the Government of Japan provided the CITES Secretariat with information on its stockpiles, noting simply that “its stockpiles were stable”.²⁵¹

²⁴⁷ CITES, Conf. 10.10 (Rev. CoP17), Trade in Elephant Specimens, para 6(e) <<https://cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>> accessed 11 February 2019.

²⁴⁸ Conservation Action Trust, ‘The Elephant Trade Information System and the Illicit Trade in Ivory: A Report to the 17th Meeting of the Conference of the Parties’ (27 May 2016)

<<https://conservationaction.co.za/resources/reports/elephant-trade-information-system-etis-illicit-trade-ivory-report-17th-meeting-conference-parties-cites>> accessed 11 February 2019.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ Sixty-ninth meeting of the Standing Committee Geneva (Switzerland), p.3 (27 November-1 December 2017)

In assessing whether its stockpiles are stable, the closest we can get to understanding the credibility of such a comment is by looking at ivory in-country between the year after Japan joined CITES (1981) and the year when the international commercial trade in ivory was banned (1989), as well as ‘one-off’ sales of ivory approved in 1999 and 2009. This will provide us a reasonably accurate gauge on the actual number of ivory tusks.

Between 1981-1989, the Japanese Government reported that 2,006 tonnes of ivory are known to have existed legally in Japan.²⁵² Further, 89 tonnes were approved during the ‘one-off’ sales of ivory to Japan in 1999 and 2009.²⁵³ This makes a total of 2,095 tonnes.

These 2,095 tonnes vary from the total weight of whole ivory tusks registered since 1995 - the beginning of the registration system in Japan - and the end of 2016 (presumably the date where data was available). Japan reported about 321 tonnes registered during this time period.²⁵⁴

While it does not directly address whether the stockpiles are ‘stable’ or not, it does indicate that Japan cannot account for at least 85% of its stockpile.

The Japanese Government acknowledges that the number of registered ivory tusks is below the 2,095 tonnes and further acknowledges that there are whole ivory tusks that remain unregistered in Japan.²⁵⁵ They note further that the registration of whole ivory tusks continues till today but stopped short of acknowledging that this is a result of illegal importation; instead, they note that “[s]ince there is no evidence that a large amount of whole ivory tusks are illegally brought into Japan, it is conceivable that this

solely reflect the increase in the registration of whole ivory tusks brought into Japan legally in the past”.²⁵⁶

Comparison of Stockpile Management

Japan

In the LCES, there is no mention of how the Government of Japan ought to identify and manage its ivory stockpile as a result of the seizure and confiscation of ivory. Regarding efforts for Japan to manage privately-held ivory for sale by ivory traders or through private possession, various steps have been noted throughout this report to keep track of these stockpiles.

China

As of January 2017, China held around 40 tons of stockpiled ivory, worth approximately \$150 million.²⁵⁷ In the past, China has supported the practice of publicly destroying ivory it had seized and confiscated. It has done so on two different occasions in recent history. On 6 January 2014, it publicly destroyed 6.1 tonnes in South China’s Guangdong Province.²⁵⁸ On 29 May 2015, 662 kilograms of confiscated ivory was publicly destroyed in Beijing.²⁵⁹ Based on this recent past practice, it appears that much (if not all) of the Chinese confiscated stockpile will be treated similarly.

Concerning ivory dealers, other than the refusal of the government to purchase or otherwise remunerate ivory dealers for their stock of ivory, there has not been much explanation of what they should do with their banned commodity. As noted by TRAFFIC, as of August 2017, and in advance of the impending closing of the Chinese market, government policy was not clear concerning future ivory stockpile

<<https://cites.org/sites/default/files/eng/com/sc/69/inf/E-SC69-Inf-24.pdf>> accessed 11 February 2019.

²⁵² Follow-up Report of the Public-Private Council for the Promotion of Appropriate Ivory Trade Measures”, Minister of Environment, Japan, p.3 (November 2017)

<http://www.meti.go.jp/english/press/2017/pdf/1122_001b.pdf> accessed 11 February 2019.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid*, p. 4.

²⁵⁷ Adam Minter, The Japan Times, ‘China shouldn’t burn its 40-ton ivory stockpile’ (9 January 2017) <<https://www.japantimes.co.jp/opinion/2017/01/09/commentary/world-commentary/china-shouldnt-burn-40-ton-ivory-stockpile/#.WzH7lhX5imw>> accessed 11 February 2019.

²⁵⁸ CITES, ‘CITES SC66 National Ivory Action Plan Progress Report’, SC66 Doc. 29, p.4 (May 2014 - August 2015) <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex3.pdf>> accessed 11 February 2019.

²⁵⁹ *Ibid*, p. 4.

management, whether privately or publicly held. Specifically, TRAFFIC noted that:

it is not clear if privately-owned ivory stocks will be required to be inventoried and declared to government, marked, held securely and subject to periodical audits to prevent leakage into existing illegal markets or not. The lack of clarity in terms of what happens next with regard to unsold ivory stocks is a serious issue which needs to be addressed.²⁶⁰

Hong Kong

TRAFFIC's report in Hong Kong provides as follows:

In 2014, the Hong Kong Government announced plans to incinerate its ivory stockpiles that had been confiscated between 2003 and 2014. Since mid-2016, all of the planned 28 tonnes from 30 tonnes of confiscated ivory has been completely incinerated, with the balance used for educational purposes. While this effort represented an important policy shift at the time, it is nevertheless unclear how future confiscated ivory—from border and market seizures—will be dealt with. Hence, Hong Kong's policy around ivory stockpile management needs to be clarified. Furthermore, issues concerning electronic record-keeping of confiscated ivory, their safe storage and the periodic auditing of such stocks should be reviewed.²⁶¹

Regarding the stock of ivory dealers, there is no accurate count or overall policy established to date.²⁶² Concerning the personal possession of ivory, as stated above there is no territory-wide registration scheme in place to obtain an accurate count.

²⁶⁰ Traffic, 'Revisiting China's Ivory Markets in 2017', p.18 (August 2017) <https://www.traffic.org/site/assets/files/1933/briefing-revisiting_chinas_ivory_markets_in_2017_final.pdf> accessed 11 February 2019.

²⁶¹ Lau, W., Xu, L., Guan, J. and Xiao, Y., 'Closing Strategy ending Ivory Trade in Hong Kong', TRAFFIC Report, p.29 (April 2017) <http://www.trafficj.org/publication/17_Closing_Strategy_HK.pdf> accessed 11 February 2019.

²⁶² AFCD does publish an annual list of stockpile for ivory dealers holding a Licence to Possess ivory. <https://www.afcd.gov.hk/english/conservation/con_end/con_end_info/files/ivry_stock_17.pdf> accessed 11 February 2019. However, this count refers to post-Convention stocks only, as pre-Convention ivory stocks are not included in the Licence to

Thailand

Concerning publicly-held ivory stocks, the Government of Thailand has established a registration system for confiscated ivory. Specifically, according to the Thai Progress Report on Implementation of Thailand's National Ivory Action Plan,²⁶³ confiscated ivories are kept in the facilities of the Department of National Parks, Wildlife and Plant Conservation ('DNP'), and Customs Department with information compiled in digital files "including details of seizures, details and marking of ivory, photo, etc".²⁶⁴

This registration system is designed to "strengthen effectiveness of law enforcement including case progress, final judgement, disposal of confiscated items, etc. This system enables officials to manage the confiscated ivory appropriately".²⁶⁵ As of 2 September 2015, 17,362.69 kilogrammes had been recorded.

Concerning safekeeping, the DNP and Customs Departments "have installed and maintained CCTVs and security system to keep a regular watch on the stockpile and ensure safekeeping in most effective manner. There are inspections of the responsive committee".²⁶⁶ DNP also assigns auditors for checking volume, marking, keeping in container and closing. All activities must be done in open area with 24-hour security guards.²⁶⁷

Moreover, on 27 March 2015, the Cabinet approved disposal of confiscated ivory, after giving "a reasonable amount of ivory to relevant agencies for

Possess, and are necessarily excluded from the count. See The Government of Hong Kong Special Administrative Region, Press Releases, "LQ13 Handling of ivory covered by Licences to Possess upon Phasing out of Local Ivory Trade" <<https://www.info.gov.hk/gia/general/201706/14/P2017061400452.htm>> accessed 11 February 2019.

²⁶³ Department of National Parks, Wildlife and Plant Conservation, 'Progress Report on Implementation of Thailand's National Ivory Action Plan (NIAP) for submission to the 66th Standing Committee' (2015) <<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-29-Annex8.pdf>> accessed 11 February 2019.

²⁶⁴ *Ibid*, p.13.

²⁶⁵ *Ibid*, p.15.

²⁶⁶ *Ibid*, p.22.

²⁶⁷ *Ibid*, p.22.

and establish bans on commercial imports, exports, and domestic sales of ivory to help fight the killing of rhinos, elephants, and other animals for profit.²⁷⁷ Its non-binding nature limited its efficacy, but it still serves as a powerful political statement from democratically elected leaders concerning their views on protecting elephants.

Regarding EU ivory dealers, their ivory stock is unclear, as the EU does not “require ivory importers, exporters, traders and manufacturers to be registered or licensed, nor does it require ivory stockpiles to be inventoried”.²⁷⁸ Accordingly, there is a less-than-ideal amount of information available for assessment and analysis.

Concerning ivory stock that is personally possessed or otherwise used for non-commercial purposes, there is no EU-wide registration scheme to rely upon for counting purposes

Penalties for Contravening National Legislation Regulating Ivory Trade

Japan

The maximum penalties for contravening the LCES were raised in an earlier reform of the LCES in 2013 to a fine of JPY100 million (USD 906,000) for a corporation, and five years imprisonment and/or JPY5 million (USD 45,300) for individuals in violation of the trade ban of whole tusks without government registrations. Violation of the advertisement ban incurs a maximum fine of JPY20 million (USD 181,200) for a corporation and up to one year imprisonment and/or a fine of JPY1 million (USD 9,090) for an individual.

The maximum penalties for contravening the LCES provisions for ivory businesses regarding registrations were raised by the 2017 revisions from a fine of JPY500,000 (USD 4,530) to five-years imprisonment and/or JPY5 million (USD 45,300) for an individual and JPY100 million (USD 906,000) for a corporation.

²⁷⁷ Live Science, 'EU States Urged to Destroy Their Illegal Ivory' (2014) <<https://www.livescience.com/42603-eu-resolution-destroy-illegal-ivory.html>> accessed 11 February 2019.

²⁷⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Implementing Aspects of Resolution Conf.

China

Under Article 73 of the Cultural Relics Protection Law:

If an auction house auctions off unlicensed cultural relics, it may...result in the illegally auctioned items and illegal income being confiscated by the Administrative Department for Industry and Commerce. If the amount of income from illegal business operations exceeds CNY50,000 (USD7,691)[], the auction house must pay a fine of more than one time to less than three times the amount of the illegal income. If the amount of income from illegal business operations is less than CNY50,000 (USD7,691), the auction house must pay a fine of between CNY5,000 (USD769) and CNY50,000 (USD7,691). If the circumstances are serious, the licence of the auction house shall be revoked by the original issuing authority.

Articles 35 and 36 of the Wild Animal Protection Law provide:

Article 35 If anyone, in violation of the provisions of this Law, sells, purchases, transports or carries wildlife under special state or local protection or the products thereof, such wildlife and products and his unlawful income shall be confiscated by the administrative authority for industry and commerce and he may concurrently be fined. If anyone, in violation of the provisions of this Law, sells or purchases wildlife under special state protection or the products thereof, and if the circumstances are serious enough to constitute a crime of speculation or smuggling, he shall be prosecuted for criminal responsibility according to the relevant provisions of the Criminal Law. The wildlife or the products thereof thus confiscated shall, in accordance with the relevant provisions, be disposed of by the relevant department of wildlife administration or by a unit authorized by the same department.

Article 36 If anyone illegally imports or exports wildlife or the products thereof, he shall be

10.10 (Rev. COP17) on the Closure of Domestic Ivory Markets – Details of 5 Major Domestic Ivory Markets, SC69 Inf. 24, para. 19 < <https://cites.org/sites/default/files/eng/com/sc/69/inf/E-SC69-Inf-24.pdf>> accessed 11 February 2019.

punished by the Customs according to the Customs Law; if the circumstances are serious enough to constitute a crime, he shall be prosecuted for criminal responsibility in accordance with the provisions of the Criminal Law on the crimes of smuggling.

Hong Kong

If an individual fails to observe import or export restrictions relating to ivory or fails to observe restrictions relating to possession or control ivory, they face the following criminal sanctions:

- For a summary conviction: A maximum fine of \$5,000,000 and to imprisonment for not more than 2 years; or
- For a conviction on indictment—to a maximum fine of \$10,000,000 and to imprisonment for not more than 10 years.

Thailand

On 30 September 2018, the Ministry of Natural Resources and Environment proposed amendments to WARPA, Thailand’s domestic endangered species law in relation to, *inter alia*, penalties for contravening the law. According to the report entitled “Report on Implementation in Accordance with the National Ivory Action Plan of Thailand submitted to the 70th Standing Committee”, the amended law will “further punish violations against CITES-protected species by increasing the severity of the penalties of imprisonment and fines. By increasing maximum imprisonment to 10 years and maximum fine to 200,000 baht / USD \$6,176.40”,²⁷⁹ the proposed penalty will be higher than the current WARPA.²⁸⁰

²⁷⁹ Report on Implementation in Accordance with the National Ivory Action plan of Thailand submitted to the 70th Standing Committee Meeting, Annex 21, pp 5-6 <[https://cites.org/sites/default/files/common/prog/niaps/Thailand E-SC70-27-04-A21.pdf](https://cites.org/sites/default/files/common/prog/niaps/Thailand-E-SC70-27-04-A21.pdf)> accessed 11 February 2019.

²⁸⁰ *Ibid.*

²⁸¹ Environmental Investigation Agency, ‘Taking Stock: An Assessment of Progress under the National Ivory Action Plan Process’, p.42 (10 September 2018) <<https://eia-international.org/wp-content/uploads/EIA-report-NIAP-2018.pdf>> accessed 11 February 2019.

²⁸² U.S. Fish & Wildlife Service, Endangered Species Act <<https://www.fws.gov/endangered/laws-policies/section-11.html>> accessed 11 February 2019.

Since 2010, Thailand reported making at least 36 ivory seizures, including eight large-scale seizures amounting to a total of at least 17,873kgs, which is roughly equivalent to ivory sourced from approximately 2,667 elephants. In addition, Thailand has been linked to at least 15 ivory seizures in other countries. Based on publicly available information, it appears there have been no convictions for any ivory offences in relation to large-scale seizures within Thailand.²⁸¹

United States

Section 11 of the ESA 1973 provide for civil or criminal sanctions for violation of the Act. Civil penalties for an individual who contravenes the provisions of the ESA or regulations implemented in an attempt to further regulate the trade may be assessed a civil penalty between USD\$500 and USD\$25,000.²⁸²

Criminal sanctions for violating ESA provisions can lead to a fine of not more than \$50,000 or imprisoned for not more than one year, or both.

Chapter 16, Section 3373 of the U.S. Code provides the civil and criminal penalties for violation of the Lacey Act. In general, regarding civil penalties,²⁸³ violation of the Lacey occasions a civil penalty of “not more than \$10,000 for each such violation”²⁸⁴

The same Section provides criminal penalties for violation of the Lacey Act. In general, it provides that if: (i) a person knowingly imports or exports any prohibited fish, wildlife, or plant (‘prohibited item’); (ii) knowingly engages in conduct that involves the sale, purchase, offer of sale or purchase of, or the intent to sell or purchase a prohibited item that has a

²⁸³ There are certain exceptions to the above. *See eg.* 16 U.S.C. Section 3373(a)(1), which punishes prohibited items with a market value of less than \$350 and involving only the transport, acquisition, or receipt of the prohibited item less severely. Specifically, the penalty assessed is the lesser amount of the penalty provided for in the legal measure violated (the law, treaty, regulation, any tribal law, and foreign law, or any law or regulation of any individual US State) or \$10,000.

²⁸⁴ *See* 16 U.S.C. Section 3373(a)(1) <<https://www.law.cornell.edu/uscode/text/16/3373>> accessed 11 February 2019.

market value of more than USD \$350; and (iii) knows that the prohibited item was taken, possessed, transported or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, then the fine shall be no more than USD \$20,000 or face a term of imprisonment of no more than 5 years, or both.²⁸⁵

United Kingdom

Articles 4 and 6 of COTES provides that if a person: (i) knowingly falsifies or alters any permit or certificate; (ii) knowingly uses a permit, certificate or import notification for any specimen other than for which it was issued; (iii) knowingly uses a specimen of a species listed in Annex A otherwise than in accordance with the authorisation given at the time of issue of the import permit; or (iv) knowingly contravenes any condition or requirement of a permit or certificate issued in accordance with the “Principal Regulation or Subsidiary Regulation”, they shall be guilty of an offence and liable:

- For a summary conviction: To a fine not exceeding level 5 (GBP 5,000 / USD 6,607) on the standard scale or to a term of imprisonment not exceeding three months, or both;
- For a conviction on indictment: To imprisonment for a term not exceeding two years or to a fine or to both.²⁸⁶

European Union

EU wildlife regulations, specifically Article 16 of EU Reg. 338/97, notes that EU Member States “shall take appropriate measures to ensure the imposition of sanctions” for at least the following infringements:

- Introduction into, or export or re-export from the EU without the appropriate permit or certificate or one altered without authorisation by the issuing authority;

²⁸⁵ There are lesser financial and punitive penalties for crimes committed when an individual knowingly engaged in conduct prohibited by the Lacey Act, but acted negligently in relation to knowing whether or not the prohibited item was taken, possessed, transported or sold in violation of the law (as opposed to intent). See 16 U.S.C. Section 3373(d)(2) <<https://www.law.cornell.edu/uscode/text/16/3373>> accessed 11 February 2019.

²⁸⁶ The Control of Trade in Endangered Species (Enforcement) Regulation 1997 <

- Failing to comply with stipulations specified in a permit, certificate, etc;
- Making a false declaration or knowingly providing false information to obtain a permit or certificate;
- Using a false, falsified or invalid permit, certificate or one altered without authorisation as a basis for obtaining a EU Community permit or for any other official purpose;
- Making no import notification or a false one;
- Shipping a live specimen not properly prepared;
- Using an Annex A species other than in a way which had been authorised;
- Trading in artificially propagated plants contrary to provisions laid out in the law;
- Shipping specimens into or out of or in transition through the territory of the EU community
- Shipping specimens into or out of or in transit through EU territory without the appropriate permit or certificate and, when looking at export or re-export from a third country party to CITES, without satisfactory proof of the existence of relevant permits or certificates
- Purchasing, offering to purchase, acquiring for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale specimens in contravention of Article 8;
- Using a permit or certificate for an unauthorised reason
- Falsifying or altering any permit or certificate issued in accordance with the regulations; or
- Failing to disclose rejection of an application for a Community import, export, or re-export permit or certificate in accordance with Article 6(3).²⁸⁷

Recommendations for Japan and its Ivory Trading Regime

The Government of Japan should follow the path tread by global leaders such as China, Hong Kong, the United States and others and close its ivory market,

<http://www.legislation.gov.uk/uksi/1997/1372/made?view=plain> > accessed 11 February 2019. Other penalties can be found in this referenced legislation.

²⁸⁷ EU Wildlife Trade Regulations, Article 16 < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01997R0338-20170204&qid=1484753427128&from=EN>> accessed 14 February 2019.

drawing up limited exemptions to market closure. Not only would this bring Japan’s practices in line with the trending global spirit to protect a declining elephant population, but it will ensure conformity with the object and purpose CITES Resolution 10.10.

Should Japan seek to continue its domestic market for ivory, it should accept that the illegal trade practices appear prevalent within its legal jurisdiction and, accordingly, accept the creation of a National Ivory Action Plan to work against such illegal forces. If that is rejected by the Japanese Government, it should accept that, due to such illegal trade, it must take significant steps to ensure that its market is not contributing, facilitating, or in any way responsible for the actions of such criminal wrongdoers. These steps include the formulation of strict and comprehensive legislative, regulatory, enforcement and other measures to regulate the domestic trade in raw and worked ivory.

This section begins with a discussion of narrow exemptions that should be drawn up in the event that Japan closes its ivory market. After this, it considers a range of other steps that it should take – whether as part of NIAP or otherwise – to ensure that illegal ivory trade does not take place within its domestic jurisdiction.

Limited Exemptions to Closure of the Ivory Market

As noted, Japan should close its market due to the prevalence of illegal ivory trade taking place within its borders. Doing so will help fight against illegal trading practices (as identified by a range of governmental and non-governmental actors)²⁸⁸ as well as conforming its actions to the global community.

Exemptions that will not lead to more illegal trading practices are discussed below. They should be

interpreted with the strictest of scrutiny to avoid further circumvention of the ivory ban. Note that these exemptions relate only to the currently existing stock of worked ivory, while new product manufacturing should be banned to ensure against future illegal trading practices.

- Ivory used for display in museums, art galleries, schools, universities and for other educational purposes to increase awareness about endangered species:
 - The ivory must be legally sourced, in line with the “Legal Acquisition of Ivory” section below.
 - The ivory should be registered as ivory for non-commercial purposes, it should be tracked by the government and returned to a safe storage space owned by the government or another authorised person / entity when not in use.
- Ivory used for scientific purposes
- Ivory used for law enforcement purposes
- Antique ivory
 - Age limit: 70-100 years old
 - An application for an administrative licence for operating antique ivory trade must be submitted and obtained from the relevant state authority.
- Musical instruments (pianos, violins, etc)
 - The instrument should only have a small percentage of ivory
 - Should be an older instrument, but not necessarily as old to qualify as an ‘antique’.
- Certain manufactured or handcrafted items that contain a *de minimis* amount of ivory
 - The ivory should be worked, not raw, ivory

²⁸⁸ CITES, Implementing Aspects of Resolution Conf. 10.10 (REV. COP17), SC69 Doc 51.2, para. 14 <<https://cites.org/sites/default/files/eng/com/sc/69/E-SC69-51-02.pdf>> accessed 11 February 2019; TRAFFIC, TRAFFIC surveys find thousands of ivory items sold weekly online in Japan (August 2017) <<http://www.traffic.org/home/2017/8/traffic-surveys-find-thousands-of-ivory-items-sold-weekly-on.html>> accessed 11 February 2019; Environmental Investigation Agency,

“The Dirty Secrets of Japan’s Illegal Ivory Trade”, p.8 (13 June 2016) <https://eia-global.org/reports/dirty_secrets_of_japans_illegal_ivory_trade-report>, Legal ivory sale drove dramatic increase in elephant poaching, study shows <<https://www.theguardian.com/environment/2016/jun/13/legal-ivory-sale-drove-dramatic-increase-in-elephant-poaching-study-shows>> accessed 11 February 2019.

- The ivory is a component of a larger item and accounts for an insignificant percentage of the overall value of the item
- The item was manufactured before the date that the Government of Japan decides upon market closure
- There is a weight limitation of the ivory as part of the larger object.

Additional requirements include:

- Upon registration, there should be no prohibition on the private possession of ivory.
- To qualify for any exemption, one must obtain government permission (ie. get a licence, etc)
- There should be a limit on the overall number, weight or other threshold of ivory objects that one can possess. Gifting and inheriting ivory is permitted.
- In the event that Japan did close its market, it should provide educational and other assistance to assist ivory dealers, carvers, artists and others transition into a new livelihood.

Legal Acquisition of Ivory

As noted, in June 2018, the MOE announced the plan to introduce a tightened requirement (from June 2019 onwards) where only official documents and scientific evidence would be accepted for tusk registration.²⁸⁹

The determination of whether ivory was legally acquired should be decided pursuant to a clear methodology and on a case-by-case basis. Such an enquiry should be required for whole tusks of any size and cut pieces of ivory that are both 20 centimetres or more in length and more than one kilogram in weight (or a similar size and weight limitation).

The examination should be conducted by an examiner with sufficient expertise, qualifications and training to conduct such an enquiry. This person shall consider

the evidence indicated below against the physical characteristics of the ivory item itself (weight, length, etc). Due to the prevalence of illegal ivory trade throughout the world over the past few decades, as well as the endangered status of the elephant, the official considering the legality of the ivory shall apply the strictest scrutiny to her determination of whether the ivory was legally procured, requiring a clear, unambiguous demonstration that the ivory was legally acquired. Particular scrutiny should be reserved for those wanting to demonstrate the legality of ivory for later commercial use.

Those seeking a proof of legality determination should be encouraged to bring as many items of evidence to support their application as possible. More is better should be their guiding mantra.

In the event that the reviewing official finds that the documents presented are insufficient, she shall be empowered to request additional evidence for her future consideration. Alternatively, Japan should allow for a DNA test to be conducted to confirm the legality of the ivory.

In the event that an individual is unable to prove the legality of ivory, and after relevant due process rights are accorded the individual, the ivory should be confiscated from the individual and become property of the state.

Below are documents accepted in other leading jurisdictions that need to be provided to demonstrate that ivory was legally sourced.

Legal / official documents

- Original CITES import permit (endorsed by the customs authority) or original CITES export permit from the country of export or original customs document.
 - Official documents should be verified through consultation with the official entity issuing the document in question.
- Official deed of transfer;
- An inheritance document;

²⁸⁹ Tomomi Kitade and Ryoko Nishino, TRAFFIC Report: Ivory Towers: An Assessment of Japan's Ivory Trade and Domestic Market (December 2017), p.7

<https://www.traffic.org/site/assets/files/1715/traffic_report_ivory_towers_web.pdf> accessed 11 February 2019.

- Phytosanitary certificates;
- The original hunting permit;
- Insurance documents.

Scientific documents

- Results of radiocarbon dating / isotope analysis to determine the age and origin of the ivory

The following documents should be used as corroborative evidence to support official documents and scientific evidence.

Corroborative Evidence

Personal documents

- Catalog, inventory lists, photographs (with a date if possible or other document), or art books linking the ivory to a particular date that validates the individual's ownership claim;
- Records that document the history of all transfers in ownership;
- Evidence that a person lived in the country of export and imported ivory before the entry into force of the Convention. This could include old photos, contracts, extracts from a birth certificate, population register, passport stamps, proof of work service, or a declaration of a person or a member of their family that they lived in the country of export.

Sales documents

- Receipts or invoices of the original purchase, such as one from a shop that is registered for ivory trade under relevant domestic legislation

Personal statements

- An affidavit or signed declaration from the owner (this should be issued in every case to understand that lying can bring about criminal charges).
- Statement from a qualified appraiser who is qualified to attest to the age of the manufactured product. The individual

should be recognised and independent (typically from academia, research institutions, scientific institutions, or a consultant to a court or otherwise approved by the judicial process)

- A complete narrative description of the circumstances under which the specimen was acquired (where, when, and from whom the specimen was acquired), including efforts made to obtain information on the origin of the specimen.

Antiques

- For antiques, the style of carving and the crafting techniques.

Registration of Business

As noted, in June 2018, Japan took a number of steps to improve its regulations concerning the registration of businesses that sell ivory. While these steps contribute to the Government of Japan's efforts to counter illegal trade practices, further steps must be taken.

Several of these have been identified in TRAFFIC's "Ivory Towers" report. This includes:

Upon 2018 enactment of amended LCES, the METI should conduct screening of notified businesses before granting registrations, especially for antiques dealers, and:

- Decline registration for businesses that are found to have incomplete trade records; [and]
- Scrutinize the trade records of those who have been alleged to have conducted illegal trading of unregistered tusks or a violation of mandatory business requirements to check for any possible links to illegal international trade.

Further steps that should be taken by Japan include:

- Considering a shorter period of time between registration renewals (less than the five years currently in force);
- Ensuring that online 'businesses' are also aware of their requirement to register as a business if they intend to sell ivory;

- Require businesses who stop operations to notify the government of such decision;
- Mandate the issuance of purchasing documents to purchasers of ivory, with relevant registration number of the business; and
- Increase in the number of inspections, both on-site and relating to document review.

Please note that registration regarding those holding ivory for non-commercial purposes is covered in the next section.

Registration of Ivory in Private Possession

As previously noted, Japan has the largest domestic ivory market in the world. It also has many identified instances of fraud, deception and other crimes perpetrated by ivory dealers throughout the country.²⁹⁰ While the Government of Japan maintains that it is compliant with Resolution 10.10 and that it should not have to close its market due to illegal trading practices, it is hard to know how this position can be taken without actually knowing the actual ivory stockpile it has in-country.

Having an accurate assessment of this position on the level of illegal trade is not possible without knowing the total amount of ivory in-country. While knowledge of Japan's in-country stockpile will improve with the new legal measures passed in June 2018 regarding the registration of businesses (which will lead to greater, albeit still incomplete, transparency regarding commercial stock), ivory held for the purpose of non-commercial, private possession remains unknown.

To comply with Resolution 10.10, it is therefore incumbent upon the Government of Japan to tally not only the ivory inventory with commercial traders, but also those privately possessing ivory for non-commercial purposes. Failure to do this should bring about closure of the Japanese market, as Japan cannot

accurately reflect upon whether illegal trade exists in its country.

Japan took a step towards achieving this ambition in 2017 by encouraging voluntary registration of whole tusks in private possession. While this is a solid first step, it is insufficient to obtain an overall number of ivory in-country.

Japan should enact legal measures that mandate the registration of all ivory that is being held for non-commercial use, including that held by citizens. While there should be an exemption for *de minimis* possession, there should otherwise be a registration drive launched that will be accompanied by the following provisions:

- *Time limits.* Establishing a limited time frame for registration (ie. 90 days), whereafter all unregistered ivory is considered illegal;
- *Legal acquisition.* Requiring legal acquisition be demonstrated in a manner that satisfies the legal acquisition requirements explained in the section entitled “Legal Acquisition of Ivory” above.²⁹¹
- *Creation of a database.* Creating a database to facilitate law enforcement inspections and to give relevant enforcement officers an accurate tally of validly registered ivory. Make sure that the database is reflective of the actual item that a person possesses (weight, size, photos and all other distinguishing characteristics of ivory are included).
- *Limit on transferability.* Prohibiting or limiting the right of transferability of the ivory without notification to Japanese authorities;
- *Amnesty.* Considering a legal amnesty for individuals who did not acquire the ivory

²⁹⁰ See examples of illegal ivory trade at TRAFFIC, TRAFFIC surveys find thousands of ivory items sold weekly online in Japan (August 2017) <<http://www.traffic.org/home/2017/8/8/traffic-surveys-find-thousands-of-ivory-items-sold-weekly-on.html>> accessed 11 February 2019; Environmental Investigation Agency, “The Dirty Secrets of Japan’s Illegal Ivory Trade”, p.8 <

https://content.eia-global.org/posts/documents/000/000/525/original/Japans_Dirty_Secret_English.pdf?1475526291> accessed 11 February 2019.
²⁹¹ See supra, pp. 52-54, in the Section entitled “Legal Acquisition of Ivory”.

legally, so long as registration is done and the ivory is handed over to the authorities.²⁹²

Tracing and Marking of Tusks

In its June 2018 amendments, Japan took steps to enhance traceability concerns with its ivory legal regime.²⁹³ While the progress is positive and ought to be recognised, it remains unsatisfactory. The following additional steps should be taken to promote a legal regime that traces its ivory in conformity with the requirements of Resolution 10.10, thereby ensuring that illegal trading practices are identified and enforcement for transgressing the law takes place.

- Require the new traceability information form to be prepared for all ivory in-country, including ivory produced before the regulation entered into effect (with *de minimis* exemptions).
- *Marking requirements for ivory.* Mark (with punch-dies or other form of permanent marking) all whole tusks and cut pieces of ivory (>20 cm in length and >1 kg) using a uniform formula for marking (ie. JP / 75 / 1004 / 20).²⁹⁴ Placement of the mark should be on the lip mark of a whole tusk and a standardised placement for cut pieces.
- *Issuance of permits.* Do not issue import permits or re-export certificates if ivory products are not marked accordingly.
- *Establishment of an ivory database to trace.* Establish an ivory database to track and trace ivory tusks that have been cut. Provide a mobile application to relevant law enforcement officials (as well as other interested individuals) to ensure transparent, comprehensive and timely dissemination of information on the tracing of ivory.
- *Use of blockchain technology to fight corruption.* Use blockchain technology to ensure that the information is not subject to

corrupt impulses of law enforcement and border control officials.

- *Recording of characteristics.* Once the item has been permanently marked, the code should be entered into the electronic database to facilitate future verification together with the certificate number and all relevant information such as length, weight and pre-Convention status. Information should be recorded at the national level, where possible. If information is recorded at the regional/ local level, there should be some mechanism for information sharing with/oversight by the central (national) CITES authority. After marking, it is also advised that the items be photo-documented and the records and photographs maintained together.
- *Identification requirements.* Ensure that the information contains photographic documentation. Notation should be made for unique attributes of the ivory, engravings, and other similar individual characteristics.²⁹⁵
- *Recordkeeping requirements.* Ensure that ivory traders maintain adequate records on records sheets (created and then provided by the Government of Japan) of the above (tusks, cut pieces, marking, etc), including quantity of ivory imported, exported re-exported and inventoried and ensure that all ivory is subject to regular, unannounced inspections by Japanese government inspectors. *De minimis* weight differences should be permitted upon inspection.
- *Time limit on documentation.* A time limit should be placed on the necessity of creating records.
- *Ivory passports.* The traceability forms should be contained in an “ivory passport”,

²⁹² While controversial, failure to do so may lead to a material number of individuals not registering their ivory.

²⁹³ See supra, pp.37-38 in the section entitled “Japan” above.

²⁹⁴ The letters and number correspond to the Japan ISO Code (“JP”), the last two digits of the year (“75” for 1975) / the serial number for the year / and the weight in kilograms.

²⁹⁵ This should be required because the time spent to add to the database is limited and, combined with the permanent marking indicated above added to the database, will make it very difficult to change fraudulently.

where all movement, physical characteristic and other historical and identification matters are carefully documented.

Regulating of the Online Trade in Ivory

As noted above, there is no specific legislation regarding the regulation of the online trade in ivory. While prohibiting the online trade of ivory altogether may be the only way to ensure against illegal trade (due to the difficulty in enforcement), the following recommendations endeavour to guide the Government of Japan should it find that continued trade is allowable.

- Educate online communities, particularly individuals interested in buying wildlife online, of the dangers of purchasing illegal wildlife products.
 - Increase engagement with online retailers and marketplaces and pressure each to ban the trade or enhance its regulation and oversight of the trade of wildlife on its online marketplaces.
 - Tabao (a Chinese marketplace) banned CITES species in 2008; eBay (worldwide) banned in January 2009; Alibaba (worldwide) banned all online posting of elephant ivory in September 2009; Etsy (USA) in July 2013; Tencent in May 2015; and many others. Encourage similar actions.
 - Promote the adoption of strong policies against wildlife traffickers by online retailers and marketplaces and prohibit those marketplaces that take no steps to address the problem.
 - Groups like Yahoo Auctions should be reminded that, in general, it is illegal to knowingly allow illegal traffickers of any product to operate without sufficient safeguards being put in place. With the knowledge of the illegal activity detected via TRAFFIC's report, groups such as Yahoo Auctions are required to take steps to regulate their online marketplace to avoid potential civil and criminal liability.
- Online retailers should have 'pop-up' warnings, outlining the requirements of CITES and penalties for illegal trading, whenever opening a link that contains the sale of ivory.
 - Engage civil society organisations and 'citizen advocates' to search, identify, and report on the illegal sale of ivory on online marketplaces.
 - Work to enhance cross-company, sector-wide communication and collaboration
 - Create a general database (or another relevant approach) for companies to share information about known, regular wildlife traffickers.
 - Encourage all major online companies (such as Yahoo!) to join the Global Coalition to End Wildlife Trafficking
 - Strengthen national legal measures regarding the sale of wildlife online
 - Create legislation that contains "presumption of illegality" protections for online wildlife trade. In short, this type of legislation, places the legal burden of proof on the seller to demonstrate that s/he is acting in conformity with CITES and other relevant wildlife protection laws, instead of the 'presumption of legality', which would require less of the online seller of ivory or any other wildlife product.
 - Ensure that Japanese legislation provides relevant enforcers with the authority to carry out investigations and prosecutions into online crimes.
 - Improve enforcement of national legal measures
 - Improve law enforcement measures by providing increased training in identifying illegal wildlife trade and increase resources to conducting investigations and prosecutions into illegal sale of wildlife online.

- Regularly consult with wildlife trafficking experts to update filters and keywords used by illegal wildlife sellers to advertise elephant ivory online.

others with clear identification, inventoried, marked and traced.

Managing Ivory Stockpiles

Recommendations for managing the commercial, privately-held stockpile of ivory traders and the non-commercial privately-held stockpile of individuals are covered in the sections above. This section is concerned with ivory that has been confiscated or seized by the Government of Japan.

- Use an application to manage ivory stockpile.
 - Stop Ivory (independent non-government organisation) has created an application named “Tools for Inventory of Ivory Stockpiles: Inventory protocol and the stockpile management system”.²⁹⁶ Alternatively, an application entitled “Stockpile Management System” could be used.
- Establish an ivory destruction protocol. This should include the following features:
 - Destroy all illegal ivory which is surplus to bona fide scientific, educational, enforcement or identification purposes and done after taking forensic samples to determine its origin.
 - Technique: Crush, then burn.
 - Burning is necessary avoid dust remnants, as it contains value in Asian medicine.
 - The pieces to be destroyed must be clearly identified to keep a clear inventory and documentation,
 - Destruction must be supervised by a range of individuals: an authorised government member, and authorised person representing CITES, NGO representatives
- Ivory pieces not destroyed should be sent to museums, education organizations and

²⁹⁶ Stop Ivory, 'Tools for Inventory of Ivory Stockpiles: Inventory protocol and the stockpile management system' (26 July 2017) <<http://stopivory.org/download/tools-for-inventory-of-ivory->

[stockpiles-inventory-protocol-and-the-stockpile-management-system/](http://stopivory.org/download/tools-for-inventory-of-ivory-stockpiles-inventory-protocol-and-the-stockpile-management-system/)> accessed on 11 February 2019.