

The Reality of Japan's Implementation and Enforcement for CITES

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Introduction

Wild animals including orangutans (*Pongo pygmaeus*), which are listed under Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), were found illegally imported into Japan between 1998 through 1999 by a Japanese pet shop. This case has become a major social issue, having been reported nationwide and also been discussed at the Diet. But, what is most important is that this case has clearly illustrated the defects of the Japanese system for implementing and enforcing the provisions of CITES. This report points out these defects in details through the process of the case.

1. Prevention of illegal international trade on species listed under Appendices of CITES at the water's edge

This is about the case of a pet shop owner, together with several others involved, in Osaka, which is in Kansai area and the second largest city in Japan, importing and domestically selling species listed under Appendices of CITES, including orangutans. Persons involved in this illegal importation and domestic trade were the owner and the manager of the pet shop, and 3 persons referred as X, Y, Z, who had been asked to supply the animals by the owner.

X, who is a resident of Hyogo Prefecture in Kansai area, having been asked by the pet shop owner, purchased animals at the animal market in Jakarta, Indonesia. Then, X, in conspiracy with the owner and the manager of the pet shop, smuggled at least 2 javan gibbons (*Hylobates moloch*) in August, 1998 and a siamang gibbon (*Hylobates syndactylus*) and an orangutan in September of the same year.

Later, Y, who is a resident of the Island of Bali, having been asked by the pet shop owner, purchased 2 orangutans for 60,000 yen (US\$571) each and 2 siamang gibbons for 50,000 yen (US\$476) each from an animal dealer in Jakarta in December, 1998 and then smuggled them into Japan (via Kansai International Airport).

Z, who is a resident of Indonesia, having been asked to supply orangutans by the pet shop owner through Y, illegally imported two of them into Japan in April, 1999.

Of the animals that were illegally imported by those 5 persons, 3 siamang gibbons, an orangutans, a javan gibbon (another one missing), a leopard cat (*Felis bengalensis*) have died; this list includes the ones that died after having been brought into Japan.

X's method for smuggling was unknown, but Y's was as follows.

After making orangutans unconscious with sleeping drug, Y held one under each arm with a jacket covering them to go through the Customs for departure at the Denpasar Airport on the Island of Bali. And at Kansai International Airport, he hid them at the bottom of a big travelling case and put clothes, etc. on top of them to go through the Customs.

And Z's method for smuggling was as follows.

Z put 2 orangutans into a wooden box less than 3 feet square and wrapped it in a piece of a wrapping cloth, which he carried in a big travelling case.

Z claimed them as 'monkeys' at the quarantine station of Kansai International Airport. Since monkeys were exempt from quarantine then, he could go ahead to the Customs just with a piece of paper, with a stamp to certify of his being through the quarantine station, stuck to the case. And at the customs, he again claimed that they were 'monkeys' and several officials checked them with an illustrated book of animals but they let him pass.

Point to be addressed (1):

Inspection on people and cargo entering into Japan from countries, which a considerable number of wild species listed under Appendices of CITES is being transported, is insufficient.

1. Prevention of illegal international trade on species listed under Appendices of CITES at the water's edge

Indonesia is at the top of the list of exporting countries of wild species listed under Appendices of CITES to Japan (WWF-J 1999). A large number of endangered wild animals is on sale at animal markets in Indonesia (KSBK1999) and scenes of Indonesian dealers using Japanese and trying to sell those animals to Japanese have been aired by several Japanese TV stations. Thus, inspection of people and cargo entering into Japan from countries, which a considerable number of wild species is being transported, such as Indonesia, needs to be done thoroughly but it is insufficient.

Point to be addressed (2):

Inspection on domestic animal dealers, who handle species listed under Appendices of CITES, is insufficient.

With this case, the pet shop owner was involved in the actual act of smuggling in conspiracy with X, who is an animal dealer who handles species listed under Appendices of CITES. Had there been a way for the competent authority to be aware of X's occupation and had a system existed to check the accompanying luggage of persons of such occupation thoroughly, entering of those endangered species into Japan might have been avoided.

But, as it is, there is not system to obtain information concerning sales status of species listed under Appendices of CITES by domestic animal dealers and there is no way that that kind of information be provided to the Customs.

Point to be addressed (3):

There is no effective system to identify each species.

Assuming Z's statement to be truthful, the officials at the Customs were aware that he was importing some kind of primates but were not able to identify the particular species. There is no one stationed at the Custom, with specialized knowledge on identification of species listed under Appendices of CITES, or no practical manuals or data available except the manual for identification of species, which was prepared by the Secretariat of CITES. In order to increase the accuracy in identifying each species at the Customs, each official has to prepare a manual that is practical to use and develop some kind of individual checking method, which leaves all the efforts entirely on each official.

2. Prevention of illegal domestic trade of species listed under Appendices of CITES

The pet shop owner paid 600,000 yen (US\$ 5,714) each to X for the two javan gibbons, that had been purchased and then smuggled in conspiracy with X; one of them died soon after but the other was sold to a customer at 1,730,000 yen (US\$ 16,476). The two orangutans and two siamang gibbons, that Z had smuggled, were sold to the pet shop at 850,000 yen (US\$ 8,095) in total. The two orangutans, that Z had smuggled, were sold to the pet shop at 700,000 yen (US\$ 6,666). And it was found out that the pet shop was selling, besides those listed under the Appendix I, animals such as Patas monkey (*Erythrocebus patas*), Talapoir (*Miopithecus talapoir*) and etc., that are listed under Appendix II of CITES.

Domestic trade of species listed under Appendix I of CITES is restricted by "Law for the Conservation of Endangered Species of Wild Fauna and Flora" ("LCES"), which is under the authority of Environment Agency (EA).

Regarding this case, officials of EA, at the persistent requests from a non-governmental organization, allegedly conducted an on-the-spot inspection as well as giving guidance to be followed.

But no accusation was brought up.

And it was after their inspection that a siamang gibbon (January '99) and 2 orangutans (April '99) were smuggled by Z.

Later, the police searched the pet shop and arrested persons involved only as the result of a four-year-old girl's having been bitten by a serval (*Felis serval*) in the right wrist, which caused an injury that took 3 weeks to heal, at the pet shop and of her parents' having reported it to the police.

Thus, the search and the arrest by the police had nothing directly to do with any action the officials of EA took.

Point to be addressed (1):

If there is a provision in "LCES" for controlling or supervising animal dealers, who handle species listed under Appendices of CITES (except on those who handle ivory or "bekko" or the shell of hawksbill turtle), EA have a way of grasping the actual status of domestic trade of CITES listed species. However, as there is not such a provision, there is currently no effective way of finding any lead that will help to reveal illegal trade of wild species listed under "LCES", which are those listed under Appendix I of CITES.

Point to be addressed (2):

EA's system of inspection is inadequate and they seem to lack skills for enforcement. But considering the fact that EA are not authorized to conduct forcible criminal investigation for the penalties prescribed in "LCES", it would be impossible to conduct effective enforcement without further strengthening the coordination with the investigating authorities including polices and prosecutor offices.

In reviewing the development of this case, however, it does not seem as if EA and the police were indeed coordinating in their efforts.

Point to be addressed (3):

Trade restriction of "LCES" does not include species listed under Appendix II and III of CITES.

3. Temporary accommodation of confiscated live specimens of wild species

The owner and the manager of the pet shop were arrested for violation of an ordinance of Osaka Prefecture concerning handling and managing of harmful animals on May 24, 1999.

Later, in June, both were rearrested for violation of "LCES". And the other 3 who had been involved in the smuggling were arrested one by one.

Smuggled animals had been confiscated on judicial procedure at the investigation conducted prior to the arrests.

Circumstances under which a national government or a local government obtain the possession of illegally imported species listed under Appendices of CITES are as follows:

(a) When an importer has agreed to voluntarily give up the ownership of an illegally imported individual at the Customs and when the Customs confiscates and obtain the possession of an individual from a violator on judicial procedure.

Note: There is no regulation to force to give up the ownership.

(b) When the police confiscate and obtain the possession of an individual from a suspect on judicial procedure.

Note: The ownership of the confiscated individual is transferred from a suspect/accused when a court decision for confiscation of a criminal suit has been given. There are cases when a suspect/accused voluntarily gives up the ownership of an individual during the procedure of a criminal investigation.

In each case, the current procedure of providing accommodations for retained animals is as follows.

In the case of (a);

The Ministry of International Trade and Industry (MITI), upon being contacted by the Customs, contact zoos or aquaria, according to the retained species, through Japanese Association of Zoos and Aquariums (JAZA: member facilities -164) and find a facility which will accommodate the animals on commission.

The number of animals, listed under Appendices of CITES and retained at the Customs, were more than 300 annually since 1994 and totaled to 2,533 for the period of 3 years between 1996 through 1998 (Asahi Shimbun, June 23, 1999). The animals voluntarily given up at the Customs and commissioned to be accommodated in zoos from MITI through JAZA are, as of March 1999, 1,436 individuals in 78 facilities (Yamamoto June 13, 1999).

Cost for care and management that is required for keeping those animals (feeding cost) is paid from MITI to JAZA and distributed to each zoo. The cost for care and management that was paid from MITI to JAZA in the fiscal year 1996 was about 7 million-yen (US\$ 66,666) (WWF-J 1999). Considering that the number of accommodated in zoos from MITI through JAZA is

3. Temporary accommodation of confiscated live specimens of wild species

1,197 (WWF-J 1999), as of March 1996, the average of the cost per an individual is about 5,800 yen (US\$ 55). There is no compensation for cost of management or labor.

TV programs that covered this case also showed the actual conditions of many zoos that housed animals to the maximum capacity and claimed, although this would vary depending on the species, that there was no way they could accept any more animals.

In the case of (b);

The confiscated police secure the accommodations for the animals. There is no system for arranging a facility to accommodate retained animals on commission as with (a). There is no measure for the cost for care on commission defined by the government (MITI, National Police Agency, etc.), also.

The number of animals, listed under LCES or the former law of it (Appendix I species of CITES), confiscated on judicial procedure and accommodated in the member zoos of JAZA by individual request from polices were 44 between 1988 through 1995 (WWF-J 1999).

If no accommodating facility can be found the confiscated authority will have to provide care to the animals.

This Osaka pet shop case, which smuggling of the animals had not been caught at the Customs and it was not until they were already within the domestic distribution when they were found, applied to (b).

Of confiscated animals on judicial procedure, Osaka Police, which conducted the investigation, asked a local zoo in Osaka to accommodate orangutans and were rejected, and they finally managed to have them accommodated in a zoo in Hyogo Prefecture. Later, a javan gibbon was sent to be accommodated in the same zoo. A siamang gibbon was placed in the care of an animal dealer.

Point to be addressed (a):

In the case of (a), while forcing a considerable financial burden on zoos which have accepted animals, everything regarding the ways for care and management are left to zoos to deal with, and this is far from having an appropriate system for arranging accommodations.

In the case of (b), no system of any kind exists both in name and reality.

But it is extremely important to establish an effective system to provide temporary accommodations to illegally traded individuals in order to strictly regulate illegal trade as well. Because the enforcing agency might become too conscious of the responsibility of caring and managing confiscated individuals to actively enforce regulations.

In this case, the police seem to have been forced to make extra efforts concerning the accommodating of the confiscated animals after being rejected by the local zoo.

4. The ultimate disposal of confiscated live specimens of wild species

Resolution Conf. 10.7 “Disposal of Confiscated Live Specimens of Species Included in the Appendices” was adopted at the 10th meeting of Conference of Parties of CITES. The resolution includes options and points to consider in selecting options, procedure in determining the method of disposal, and how confiscated individuals should be managed and taken care of till the ultimate disposal has been determined, and so on, in regard to the disposal of smuggled individuals in violation to CITES.

Japanese non-governmental organizations, including JWCS, have requested that the Japanese government should prepare an official action plan in accordance with the recommendations of the Resolutions so appropriate action can be taken in a swift manner. But the Japanese government is of the opinion that they should deal with each case as it occurs while referring to the guidelines from the Resolutions.

There had been cases of orangutans illegally imported into Japan from Indonesia before "LCES" was enacted in 1993 (in March, 1984 and in December, 1988)(data of MITI). In both cases the Japanese government only transferred the ownership of confiscated specimens to the Indonesian government and the Indonesian government, which was the exporting country of smuggled orangutans, re-exported them though Article 8-1 (b), 2 of CITES provides the return of smuggled specimens of wild species to the export country or the country of origin..

But it is provided in the existing "LCES"(Article 16) that the government can order either a person who is responsible for smuggling or who has been firstly given the possession of the smuggled individuals to, at his/her expense, return the smuggled individual "after designating an appropriate facility or somewhere in lieu of to provide care in either the exporting country or the country of origin". And if the ordered party fails to comply with the order and does not return the smuggled individual, the government will have the responsibility to.

The signification of this provision is that it clearly states that the government of the importing country should be ultimately responsible for forcing the person, who is responsible for illegal importation, to bear the cost of returning confiscated individuals to the country of origin and for decision-making concerning the return of the confiscated individuals and the risk involved in it.

As to the method of disposal of smuggled individuals, if it deems appropriate to return them to the wild, they can be returned to the country of origin based on this provision.

It was of great concern, as the Japanese government had decided to return the ownership of the illegally imported orangutans to Indonesian government, whether it would apply the provision of "LCES" to this case for the first time since it had been enacted 6 years before, but it did not.

4. The ultimate disposal of confiscated live specimens of wild species

The only action taken by the Japanese government was to transfer the ownership of the orangutans to the Indonesian government, just as they had done with the cases before "LCES" was enacted.

Point to be addressed (1):

Swift and appropriate action is required to determine the ultimate disposal of specimens once they have been retained by the national government or a local government. In order to ensure this, preparation of domestic action plan in accordance with the recommendations of Resolutions, Conf.10.7 is essential or appropriate action in a swift manner cannot be taken, as dealing with each case will be temporizing.

Determining whether the country of origin is properly equipped enough to provide rehabilitation program for the individuals to make it possible to return confiscated individuals to be released in the wild requires thorough evaluation.

In this case, the Japanese government transferred the ownership to the Indonesian government and avoided the responsibility of deciding on the ultimate disposal of the orangutans. One of the main reasons of this can be attributed to the non-existence of standard or of procedure for decision-making.

Point to be addressed (2):

The provision on order of return of smuggled individuals has never been applied since "LCES" was enacted more than 6 years ago. Taking legislative measure in compliance with the provisions of CITES is meaningless in itself if it is not applied to practice.

Point to be addressed (3):

The application of return order for confiscated smuggled specimens of wild species is limited to the species listed under Appendix I of CITES.

Recommendations

1. Measures for preventing illegal international trade on species listed under Appendices of CITES at the water ' s edge

1.1 Intensify inspections on daily basis on incoming people and cargo from countries where many CITES listed species have been brought in and increase the number of special inspection months.

1.2 Substantiate a system to identify each species

a. Compile manuals and other relevant materials, which are practical to use at the customs.

b. Prepare an effectual communication system with experts; especially set up database for information on identifying each species as well as an online system, which enables customs officials to ask for experts ' advice in a timely manner.

c. Station specially trained agents for identifying species listed under Appendices of CITES as well as enhancing the education on customs officials.

1-3 Regulate animal dealing business, of which dealers handle species under Appendices of CITES

a. Add provisions concerning the regulation of dealers, including import dealers, handling CITES listed species in LCES.

And / or add the obligation to notify the information to the authority as to the kinds, the number, the record of import and etc. of species listed under Appendices of CITES in the provision of Law Concerning the Protection and Control of Animals (animal protection law).

b. Relevant authorities including the customs, the National Police Agency, Environment Agency, and Ministry of International Trade and Industry, will coordinate their efforts and collect, pigeonhole, and draw up a list of data on dealers, who handle the species listed under Appendices of CITES.

1-4 Prepare provisions concerning confiscation of illegally imported specimens, which violates Foreign Exchange Control Law

1-5 Inflict strict administrative acts and accusation against the violation of the Customs Law.

2. Measures for preventing illegal domestic trade on CITES listed species

2-1 Include species listed under Appendix II and III of CITES to the provision on restriction of trade in LCES.

2-2 Strengthen the law enforcement by substantial coordination between the relevant authority or EA and the criminal investigating authorities and Customs.

2-3 See 1-3.

Recommendations

3. Regarding concrete ways of handling illegally traded live specimens of wild species

- 3-1 Prepare an official action plan including 4 points (3-2 - 3-5) listed below in accordance with recommendations of CITES Resolutions, Conf. 10.7 (Beginning in January 2000, imported monkeys will be subject to be quarantined. Live specimens that have been denied importation during this process should be included in this plan)
- 3-2 Prepare procedures for making a decision in an appropriate and swift manner as to the ultimate disposal of confiscated live specimens of wild species, including application of return order (in accordance with CITES Resolutions, Conf.10.7, Annex 1-CITES Guidelines for the disposal of confiscated live Animals, and Annex 2-CITES Guidelines for the disposal of confiscated live plants)
- 3-3 Establish a system for providing appropriate care to confiscated live specimens of wild species while the decision is being made on the ultimate disposal method.
 - a. Set up a network of available facilities including zoos and ensure the best reception setup possible.
 - b. Make the aforementioned system applicable not only to cases when specimens of wild species are abandoned voluntarily at the custom but also to all cases when the authorities confiscate the possession of illegally traded live specimens listed under Appendices of CITES (when specimens are voluntarily abandoned as the result of banning of importation at the quarantine, when the police confiscate them as the result of forcible investigations, and etc).
- 3-4 Examine the ways of supporting countries, which illegally traded live specimens of wild species, inhabit, including monitoring methods of returned specimens (various methods including Official Development Assistance to such countries should also be examined).
- 3-5 The return order for smuggled specimens of wild species prescribed in LCES should be applied for wild species listed under Appendix II and III of CITES.

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