

**立法會**  
**Legislative Council**

LC Paper No. CB(1)705/16-17(06)

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**Panel on Environmental Affairs**

**Meeting on 27 March 2017**

**Updated background brief on control of local trade in elephant ivory  
prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides updated background information on the control of local trade in elephant ivory (hereafter referred to as "ivory") in Hong Kong. It also gives a brief account of the major views and concerns expressed by Members on the Administration's proposed plan to phase out the local trade in ivory.

**Background**

Protection of endangered species

2. Hong Kong abides by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") and implements CITES through enforcement of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) ("the Ordinance"), which is the local legislation that gives effect to CITES.<sup>1</sup> The Ordinance provides that no person shall import, introduce

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<sup>1</sup> CITES is an international treaty that has been ratified by 183 countries (called Parties) since it was first entered into force in 1975. The aim of CITES is to prevent species from becoming endangered or extinct because of international trade. CITES regulates more than 35 000 animal and plant species, including their parts and products, to ensure the international trade in them does not threaten their survival. CITES regulates international trade (both commercial and non-commercial) through a system of permits and certificates in which the required permits/certificates must accompany the species in question when leaving and entering a country.

from the sea, export, re-export or possess any endangered species, whether alive, dead, its parts or derivatives, except under and in accordance with a licence issued in advance by the Agriculture, Fisheries and Conservation Department ("AFCD").

Existing regulatory system to control the import, re-export and domestic sale of ivory

3. CITES started to regulate the international trade of elephant ivory in the 1970s and has banned such trade since 1990 except the "pre-Convention ivory" which is allowed to be traded when the ivory is accompanied by a pre-Convention certificate.<sup>2</sup> Given the history of Hong Kong as a trade centre of ivory in the Asian region in the 1980s, substantial amount of ivory had been imported legally and in accordance with CITES provisions into Hong Kong before the international trade ban in 1990. Such post-Convention ivory<sup>3</sup> was registered by AFCD and is allowed to be traded locally under a Possession Licence ("PL").<sup>4</sup> Any person keeping post-Convention ivory for commercial purposes must obtain a PL for each keeping premises.

4. The maximum penalty for illegal import, export or possession of a highly endangered species, including elephants, for commercial purposes is a fine of \$5 million and imprisonment for two years. The seized specimens will be automatically forfeited upon conviction, and disposed of in the Government stockpile by incineration.<sup>5</sup>

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<sup>2</sup> Pre-Convention ivory refers to ivory products which were acquired before 1975 for Asian elephants and 1976 for African elephants. Import and re-export of pre-Convention ivory for commercial purpose are currently allowed subject to the production of a pre-Convention certificate or meeting the relevant licensing requirement. The requirement of a Licence to Possess for pre-Convention ivory, no matter for personal or commercial purposes, is currently exempted under the Ordinance.

<sup>3</sup> Post-Convention ivory was formerly referred to as "pre-ban ivory" (i.e. ivory acquired before the international trade ban in 1990) in earlier papers submitted by the Administration and background briefs prepared by the Legislative Council Secretariat.

<sup>4</sup> Currently, the validity period of a PL is five years, with the expiry date(s) of the recently renewed/issued PLs in the year of 2021.

<sup>5</sup> Before May 2014, seized ivory was mainly donated to schools, museums and overseas organizations for conservation, scientific, education and training, or enforcement and identification purposes. Since May 2014, with the support of the Endangered Species Advisory Committee, the Government has started to dispose of confiscated ivory in the Government stockpile by incineration.

5. Enforcement against smuggling and illegal trade in ivory is carried out by AFCD in cooperation with the Customs and Excise Department ("C&ED") and the Police. In recent years, there have been growing concerns over the poaching of elephants in Africa and the global smuggling of ivory. AFCD has devised a suite of new/enhanced measures to step up enforcement and strengthen collaboration of the three enforcement agencies. The new/enhanced measures are set out in **Appendix I**.

#### Proposed plan for phasing out the local trade in ivory

6. In the 2016 Policy Address, the Chief Executive announced that the Government would kick start legislative procedures as soon as possible to ban the import and export of elephant hunting trophies and actively explore other appropriate measures, such as enacting legislation to further ban the import and export of ivory and phase out the local ivory trade, and imposing heavier penalties on smuggling and illegal trading of endangered species.

7. On 27 June 2016, the Administration briefed the Panel on Environmental Affairs ("EA Panel") on its proposal to amend the Ordinance in a single legislative exercise to effect a three-step plan to phase out the local trade in ivory.<sup>6</sup> The plan was approved by the Executive Council in December 2016, and the proposed implementation stages are as follows:

Step 1: ban the import and re-export of all elephant hunting trophies and remaining post-Convention ivory items, whose import, export and re-export are currently permissible under CITES.<sup>7</sup> This step will take effect on the commencement date of the amendment legislation;

Step 2: (a) ban the import and re-export of pre-Convention ivory except

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<sup>6</sup> The effective dates of the three steps will be different.

<sup>7</sup> The import, export and re-export for non-commercial purposes of elephant hunting trophies and specified elephant specimens of the populations of Botswana, Namibia, South Africa and Zimbabwe (including certain ivory carvings and ornaments from Namibia and Zimbabwe) are currently allowed under CITES.

"antique ivory",<sup>8</sup> and (b) subject the commercial possession of pre-Convention ivory except "antique ivory" in the local market to licensing control similar to the existing control on post-Convention ivory. This step will take effect three months after the ban in Step 1; and

Step 3: ban the possession for commercial purposes of all ivory (including pre-Convention ivory and post-Convention ivory) except "antique ivory" from 31 December 2021.

8. The Administration advised that in drawing up the proposed effective date for Step 3 (i.e. a total ban of local ivory trade), it has taken into account factors such as how much time is considered reasonably sufficient for the relevant traders to transform their businesses and the validity period of PLs. To prepare for the total ban of local ivory trade in Step 3, all PLs to be issued, extended, renewed or varied on or after 31 December 2016 will expire on or before 30 December 2021.

### **Major views and concerns expressed by Members**

9. On 22 February 2016, the Administration briefed EA Panel on the existing regulatory system to control the local ivory trade, as well as the new and enhanced enforcement measures taken by various government departments.<sup>9</sup> On 27 June 2016, the Panel received a briefing on the Administration's proposed plan for phasing out the local ivory trade. The Panel further discussed the proposed plan on 23 January 2017 during the policy briefing on related initiatives. At the Council Meeting of 2 December 2015, a motion on "Strengthening the combat against the crime of wildlife smuggling" moved by Dr Elizabeth QUAT and as amended by Ms Claudia MO was passed. At the Council meetings of 11 February and 25 November 2015, Dr Elizabeth QUAT and Dr Kenneth CHAN raised questions respectively on issues relating to regulation of ivory possession and trade. The major views and concerns expressed by Members are summarized in the ensuing paragraphs.

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<sup>8</sup> For the purpose of the three-step plan, "antique ivory" is defined as a piece of worked ivory that had been removed from the wild and significantly altered from its natural state for jewellery, adornment, art, utility or musical instruments before 1 July 1925 (i.e. 50 years before CITES entered into force on 1 July 1975), and has since been acquired in this condition requiring no further carving, crafting or manufacturing to effect its purpose.

<sup>9</sup> At this meeting, the Administration also presented its initial thinking on the proposed strategy to phase out the local ivory trade.

## General

10. Members expressed concerns that Hong Kong had been highlighted by the media as an important transit and consumption hub for illegal ivory, and urged the Administration to impose a total ban on all ivory sales in Hong Kong. They also requested the Administration to step up enforcement against smuggling of ivory, impose heavier penalties on wildlife crimes under the Ordinance, and strengthen publicity and education to raise awareness of consumers about protecting elephants and other endangered species.

### Proposal for phasing out the local ivory trade

#### *Grace period*

11. Members in general agreed on the Administration's proposal to phase out the local ivory trade, but some of them considered it too long taking five years until 2021 to impose the total ban. They were worried that the problem of laundering of ivory would become more rampant during the window period before the total ban would be in place, and suggested shortening the grace period or cancelling the existing PLs, so as to advance the total ban. Some other Members, however, opined that a longer grace period should be given for the trade to dispose of the ivory in their possession. They urged the Administration to strike a balance between combating ivory smuggling and maintaining the livelihood of local ivory traders.

12. The Administration explained that under existing legislation, the Director of AFCD had no legal power to cancel a valid PL unless certain prescribed conditions were met, and implementing the local ivory trade ban was not one of the prescribed conditions. The Administration had consulted the local ivory trade and taken into account various factors before proposing the plan to phase out local trade in ivory. Given that the expiry dates of the recently renewed/issued PLs were in 2021, the total ban of local ivory trade had to take effect after all the existing PLs had expired.

#### *Possession Licences and ivory stock*

13. Regarding whether any existing PLs would be renewed once expired, the Administration advised that renewals of PLs would continue to be granted after passage of the relevant bill to phase out the local ivory trade, but the validity dates would not fall beyond the effective date of the total ban. In other words, PLs to be renewed nearer the effective date of the total ban would be valid for a shorter duration.

14. Members asked about how the Administration would deal with unsold ivory stock kept by the trade after expiry of the grace period, and prevent the ivory from entering the black market. The Administration advised that the remaining stock would not be confiscated, nor would compensation be provided to the trade since the grace period (i.e. five years until 31 December 2021) should be sufficiently long for the traders to transform their business or dispose of their ivory stock.

#### *Exemption in respect of "antique ivory"*

15. Some Members expressed concern that allowing the trading of "antique ivory" after imposing the local trade ban might create a loophole for laundering of "antique ivory" from illegal sources. They suggested that the Administration should issue certificates for regulating the trading of "antique ivory".

16. The Administration explained that "antique ivory" was of much longer age than pre-Convention ivory or post-Convention ivory, and forensic tests could accurately identify the authenticity and legality of "antique ivory". Further, the level of craftsmanship would also be a clue for identifying "antique ivory". As the person in possession of the "antique ivory" should be able to produce proof on the authenticity when required, the Administration did not intend to regulate the sale of "antique ivory" by means of issuance of certificates.

#### Enforcement measures

17. Some Members suggested that the Administration should make public the list of PL holders in Hong Kong together with their names and addresses, so that the media and wildlife conservation groups could better assist in uncovering illegal activities of ivory traders. The Administration considered it inappropriate to make public the suggested list as it would involve disclosure of personal information and that related to the business of the licensees. Disclosure of the keeping premises of ivory (be it a shop or a storage place) might also arouse security concern from the licensees.

#### **Latest development**

18. At the meeting on 27 March 2017, the Administration will update EA Panel on its legislative proposal for phasing out the local trade in ivory.

**Relevant papers**

19. A list of relevant papers is set out in **Appendix II**.

Council Business Division 1  
Legislative Council Secretariat  
21 March 2017

**New/enhanced measures to step up enforcement against smuggling of ivory  
and to strengthen the control of local trade in ivory**

(as at February 2016)

- (a) Comprehensive 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.
- (b) Frequency of surprise inspections to licensed shops selling ivory has been increased. Those shops located in business districts and/or holding large quantity of ivory will be inspected more frequently. Inspections of other art and crafts shops will also be carried out to check if there is any illegal selling of ivory.
- (c) The Agricultural and Fisheries Department ("AFCD") will employ radiocarbon dating to determine the legality of ivory and hence to assist enforcement.
- (d) To strengthen enforcement against, and gather intelligence on, smuggling and illegal trade in ivory, a range of enhancement measures will be taken by AFCD, the Customs and Excise Department ("C&ED") and Police. These include strengthening collaboration and co-ordination of efforts of the three enforcement agencies, enhancing intelligence gathering and information exchange with relevant overseas and international bodies (e.g. International Criminal Police Organization, World Customs Organization, and the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora), and strengthening liaison and cooperation with relevant non-governmental organizations.
- (e) AFCD and C&ED will step up joint operations with the support of ivory sniffer dogs to target air parcels and passengers from high risk ports at the Hong Kong International Airport, as well as north-bound passengers, vehicles and cargoes at various land boundary and railway control points. As for cases that involve organized and serious crimes under the Police and C&ED's purview, the two departments will conduct investigation and take enforcement actions as appropriate.



- (f) In order to provide a higher deterrent effect against the smuggling of endangered species and to demonstrate the commitment of Hong Kong in tackling these criminal activities, AFCD will work with the Department of Justice on how to establish and submit evidence to satisfy the courts that the offence was committed for commercial purposes so that higher penalties would be imposed.
- (g) The Administration will also review the maximum penalties to reflect the seriousness of such offence with reference to the penalties stipulated in other local legislation governing the import, export or possession of controlled items as well as the penalties imposed by other jurisdictions on the smuggling and illegal trade of endangered species.

[Source: Adapted from Annex B to the Administration's paper provided to the Panel on Environmental Affairs for the meeting held on 22 February 2016 (LC Paper No. CB(1)557/15-16(04)).]

Control of local trade in elephant ivory

List of relevant papers

Date of meeting	Event	Paper
2 December 2015	Council Meeting	<p><a href="#">Motion moved by Dr Hon Elizabeth QUAT</a></p> <p><a href="#">Progress report</a></p>
22 February 2016	Meeting of the Panel on Environmental Affairs ("EA Panel")	<p>Administration's paper on "Update on the protection of endangered species and biodiversity in Hong Kong" (LC Paper No. <a href="#">CB(1)557/15-16(04)</a>)</p> <p>Background brief on "Protection of endangered species and biodiversity in Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)557/15-16(05)</a>)</p> <p>Minutes of meeting (LC Paper No. <a href="#">CB(1)857/15-16</a>)</p>
29 March 2016	Special meeting of EA Panel	<p>Administration's paper on "Update on the protection of endangered species and biodiversity in Hong Kong" (LC Paper No. <a href="#">CB(1)557/15-16(04)</a>)</p> <p>Background brief on "Public consultation on Biodiversity Strategy and Action Plan for Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)712/15-16(01)</a>)</p> <p>Minutes of special meeting (LC Paper No. <a href="#">CB(1)1113/15-16</a>)</p>

Date of meeting	Event	Paper
27 June 2016	Meeting of EA Panel	<p>Administration's paper on "Proposed plan for phasing out the local trade in elephant ivory" (LC Paper No. <a href="#">CB(1)1054/15-16(06)</a>)</p> <p>Background brief on "Protection of control of local trade in elephant ivory" prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)1054/15-16(07)</a>)</p> <p>Minutes of meeting (LC Paper No. <a href="#">CB(1)1168/15-16</a>)</p>
23 January 2017	Meeting of EA Panel	Administration's paper on "2017 Policy Address – Policy initiatives of Environment Bureau: Environmental protection" (LC Paper No. <a href="#">CB(1)451/16-17(01)</a> )

**Hyperlink to relevant document:**

Government bureau/department	Document
Environment Bureau, Environmental Protection Department, and Agriculture, Fisheries and Conservation Department	Legislative Council Brief on The Plan For Phasing Out The Local Trade in Elephant Ivory ( <a href="#">File Ref.: EP CR 9/15/29</a> )

**Hyperlinks to relevant Council Questions:**

Date	Council Questions
11 February 2015	<a href="#">Press release</a> on Council question (written) raised by Dr Elizabeth QUAT
25 November 2015	<a href="#">Press release</a> on Council question (written) raised by Dr Kenneth CHAN