

**For discussion on
27 June 2016**

Legislative Council Panel on Environmental Affairs

**Proposed Plan for
Phasing out the Local Trade in Elephant Ivory**

PURPOSE

This paper seeks Members' views on the Government's proposals to strengthen control of trade in elephant ivory and the phasing out of the local trade in elephant ivory.

BACKGROUND

2. The Government is committed to the protection of endangered species. Hong Kong regulates the import, re-export and domestic sale of elephant ivory and other specimens of endangered species under the Protection of Endangered Species of Animals and Plants Ordinance (Cap 586) (the Ordinance), the local legislation that gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

3. The Chief Executive (CE) announced in the 2016 Policy Address 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 enact legislation to further ban the import and export of ivory and phase out the local ivory trade, and impose heavier penalties on smuggling and illegal trading of endangered species.

4. At the Legislative Council (LegCo) Panel on Environmental Affairs meeting on 22 February 2016, we briefed Members on the existing regulatory system to control the import, re-export and domestic sale of ivory, as well as the new and enhanced enforcement measures that were being taken by various Government departments. We also presented the Government's initial thinking on the proposed strategy to ban the import and re-export of elephant hunting trophies, to ban the import and re-export of pre-Convention ivory and to phase out the local ivory trade eventually. Earlier this year, the Agriculture, Fisheries

and Conservation Department (AFCD) also consulted the relevant trades on the proposed action plan.

PROPOSED IVORY PHASE-OUT PLAN

5. We have reviewed our strategy and considered how best the initiatives set out in the CE's 2016 Policy Address should be taken forward. We now **propose** to amend the Ordinance in a **single legislative exercise** to effect a three-step plan (Plan) to phase out the local trade in ivory. We believe this is the fastest and most efficient way to achieve our purpose. Our intention is to put the bill to the LegCo in the first half of 2017.

6. The detailed considerations are presented in the paragraphs below.

LEGISLATIVE AMENDMENTS

7. The Ordinance will be amended in a single legislative exercise with different stages of implementation as follows:

Step 1: Ban the import and re-export of hunting trophies, ekipa and certain ivory carvings which are currently treated as specimens of CITES Appendix II under the "split listing" arrangement of CITES for African elephants;

Step 2: Ban the import and re-export of pre-Convention¹ ivory except "antique ivory" after an appropriate grace period and subject pre-Convention ivory in the local market to licensing control similar to the existing control of pre-ban² ivory; and

Step 3: Ban the local sale of pre-ban and pre-Convention ivory after a grace period for the traders / owners to dispose of their commercial stock and/or

¹ 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 exempted under the Ordinance.

² Pre-ban ivory refers to those acquired before Hong Kong implemented the international trade ban in 1990 and have been registered by AFCD.

undergo business transformation.

8. The effective dates of the above three steps would be different, and separately specified as per paragraph 18 below.

PENALTY REVIEW

9. Moreover, the penalties under the Ordinance, which are now under review for the purpose of providing a much stronger deterrent effect, would also be amended in the same exercise. Currently, a person who commits an offence of illegal import, introduction from the sea, export, re-export or possession of specimen of Appendix I species is liable on conviction to a fine at level 6 (i.e. \$100,000) and imprisonment of 1 year. Heavier penalties (a fine of \$5,000,000 and imprisonment of 2 years) will be imposed for offences committed for commercial purposes. In respect of specimen of Appendix II and Appendix III species, similar offences may attract a fine at level 5 (i.e. \$50,000) and imprisonment of 6 months, and heavier penalties (a fine of \$500,000 and imprisonment of 1 year) will be imposed for offences committed for commercial purposes. The burden of proof that an act is carried out for commercial purpose rests on the prosecution. Experience reveals that such burden of proof is not easy to discharge.

10. To increase the deterrent effect, we propose to impose uniform maximum penalties for both commercial and non-commercial offences. To reflect the severity of the offences, we also propose to make the offence under the Ordinance an indictable offence in line with other similar offences in Hong Kong and to increase the maximum fine and imprisonment term by drawing an analogy with other local ordinances concerning trade in controlled items, the penalties of similar offences in other jurisdictions, and international references on offences of similar nature. In addition, to reflect the seriousness of illegal ivory trade and the Government's determination, we have already started to explore with all relevant Government departments to identify the most effective and suitable means of enforcement and prosecution to achieve the necessary deterrent effect.

ENHANCED ENFORCEMENT AND COLLABORATION

11. To combat wildlife crimes including illegal trade in ivory, the Customs

and Excise Department (C&ED), AFCD and the Hong Kong Police Force (HKPF), have stepped up their enforcement actions. While AFCD will enhance regulatory measures and step up inspection to the local ivory trade, C&ED and AFCD will step up joint operations with the support of their 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 cargo at various land boundary and railway control points. As for cases where investigations indicate that there are offences of an organised and serious nature and that such falls under the Police and C&ED's purview, the two departments will conduct investigations and take enforcement actions as appropriate. AFCD's investigative capability will also be enhanced through suitable training provided by C&ED and HKPF.

12. To further strengthen the inter-departmental collaboration on combating wildlife crime, we have recently set up a "Wildlife Crime Task Force". The Task Force comprising representatives from AFCD, the Environment Bureau, C&ED and HKPF will develop strategies and protocols for enforcement operations as well as gather, analyze, exchange and review intelligence for more effective and targeted actions. The Task Force will also plan and coordinate major joint enforcement operations and co-ordinate liaison with other national and international agencies, including overseas CITES Management Authorities, Interpol, the World Customs Organisation and non-governmental organisations in relation to wildlife crimes.

COMPENSATION

13. We have considered the compensation issue from various legal and policy perspectives. Taking into account, inter alia, that a sufficiently long grace period will be given to the trade (see paragraphs 16 and 17 below), we are of the view that no compensation should be provided to the ivory trade. We consider that the proposed measures of the Plan are justifiable on the grounds that such measures aim to address the public concerns over the survival of African elephants which are under imminent threat of extinction, and are necessary in light of the latest situation of elephant poaching and ivory smuggling trend.

14. To ascertain the impacts of the proposed Plan on the traders' business, AFCD has conducted a survey to better understand the general pattern of the

ivory trade. The findings are summarised at the **Annex**. The findings show that in general the sale of ivory does not constitute any substantial part of the traders' business. Moreover, AFCD met representatives of the ivory trade in March 2016, including the major trade associations on ivory, some licensees holding large pre-ban ivory stock and some frequent importers or re-exporters of pre-Convention ivory. At the meeting, the traders expressed that many ivory traders had already undergone business transformation or switched to trade other commodities not under CITES control such as mammoth ivory.

15. As regards workers (e.g. ivory crafters) that might be affected by the ban, the Government will explore suitable assistance measures for them.

GRACE PERIOD

16. We consider that there should be a grace period to allow the ivory trade as a whole to dispose of the ivory in their possession and/or to undergo business transformation. In considering the length of the grace period, we need to take 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 the existing Possession Licences (PLs). 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. According to Section 26(1) of the Ordinance, the Director of Agriculture, Fisheries and Conservation (the Director) may only cancel a licence that is issued under Section 23 or extended, renewed or varied under Section 24 of the Ordinance, if (a) any condition of the licence is contravened; or (b) the Director is satisfied that the licence was issued, extended, renewed or varied as a result of a false representation of any fact made by the applicant or an unlawful act of the applicant. In other words, the Director has no legal power to cancel a valid PL unless the above conditions are met; and implementing the proposed ban is not one of the prescribed conditions for cancellation. Hence, the date for Step 3 (i.e. a total ban of local ivory trade) to take effect will have to fall on a date after all the existing PLs expire. To pave the way for the total ban of local ivory sale, arrangements will have to be made so that no new or renewed PLs would be issued with a validity date beyond the effective date for Step 3 of the Plan.

17. It is our estimate that a period of about 5 years until 2021 should be reasonably sufficient to enable the trade to either transform their businesses or to

clear their existing stock, having regard to the result of the trade survey at **Annex** which reveals that the ivory trade is generally inactive.

TIMETABLE

18. To demonstrate Government's commitment and give advance notice to the trade, we propose the following timetable to effect the proposed ivory phase-out plan described above:

Step 1 to ban the import and re-export of hunting trophies, ekipa and certain ivory carvings: to take effect **immediately after the enactment of the Bill**;

Step 2 to ban the import and re-export of pre-Convention ivory except a few exceptions such as "antique ivory" and subject pre-Convention ivory in the local market to licensing control: to take effect **three months after the enactment of the Bill**; and

Step 3 to totally ban the local sale of pre-ban and pre-Convention ivory: to take effect when all PLs that currently exist (in 2016) expire after their five-years validity period. In other words, we estimate the total ban would be achieved by the end of 2021.

WAY FORWARD

19. Subject to the comments from Members, we will further develop the proposed legislative framework and further consult the trade on the proposed ivory phase-out plan described above, in particular, the timing for phasing out the trade. Meanwhile, various departments including AFCD, C&ED and HKPF will continue to take vigorous enforcement actions before the total ban takes effect. We aim to submit a bill to implement the Plan to the LegCo in the first half of 2017.

ADVICE SOUGHT

20. Members are invited to comment on the Government's proposals set out above in this paper.

**Environment Bureau/Agriculture, Fisheries and Conservation Department
June 2016**

Findings of Ivory Trade Survey

The Agriculture, Fisheries and Conservation Department (AFCD) conducted an ivory trade survey from February to April 2016. The findings are summarised in the following paragraphs.

2. Regarding pre-ban ivory, there were, as at January 2016, about 370 licensed stocks of pre-ban ivory and they amounted to about 77 tonnes. 54% of these stocks (200 nos.) had been covered in the survey. The majority (76%) of these 200 stocks were small stocks covering less than 100 kg of ivory. Many (67%) of these 200 stocks were kept at residential premises with remote chance for sale. Over the past five years, there were only some small-scale (i.e. less than 100 kg) commercial transactions or processing activities in a small proportion (20%) of these 200 stocks. The finding suggested that the ivory trade was generally inactive.

3. Moreover, pre-ban ivory did not seem to constitute an essential part of the licensees' business in general. Out of the 200 stock holders covered in the survey, we had conducted more detailed interviews with 88 licensees. The majority (88%) of them expressed that their businesses were not related to ivory at all. Most of these 88 licensees (74%) were just storing the stocks and would trade the ivory only when the opportunity arises. For the few licensees (9 nos.) who claimed that ivory constituted a part of their business, all of them also trade other commodities such as mammoth ivory. Only two traders claimed that they were trading ivory solely. However, the stock quantity of one of them remained unchanged for the past five years so his claim was doubtful. For the remaining trader, he had reported sale and consumption of stock in the past 5 years with an annual consumption rate of 16.5 kg on average. He had about 57 kg ivory remained and should be able to dispose of his stock in about 3.5 years from now based on the aforesaid annual consumption rate.

4. Possession of pre-Convention ivory for commercial purpose is exempted from the licensing control under the Protection of Endangered Animals and Plants Ordinance, Cap. 586. According to our record, there were about 100 companies or individuals who had imported or re-exported pre-Convention ivory in the past three years. To study the trade pattern of

pre-Convention ivory, we interviewed 28 of them. The results of our interviews showed that more than half (53%) of these importers or re-exporters were in fact not involved in the pre-Convention ivory business. For example, they imported or re-exported pre-Convention ivory for non-commercial purposes like personal collection. For the majority (61%) of those who traded pre-Convention ivory as part of their business, pre-Convention ivory constituted less than half of their business. Only one trader was fully committed in the pre-Convention ivory trade but he expressed that he was actively exploring other alternatives for business transformation irrespective of the proposed ivory phase-out plan.