

立法會
Legislative Council

LC Paper No. CB(1)409/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/16/2

**Bills Committee on Protection of Endangered Species of Animals and
Plants (Amendment) Bill 2017**

**Minutes of fifth meeting
held on Wednesday, 29 November 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Dr Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
Hon Claudia MO
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon KWOK Wai-keung, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon KWONG Chun-yu

Member absent : Ir Dr Hon LO Wai-kwok, SBS, MH, JP

**Public Officers
attending : For item I**

Mrs Vicki KWOK, JP
Deputy Director of Environmental Protection (2)
Environmental Protection Department

Dr Samuel CHUI
Assistant Director (Nature Conservation &
Infrastructure Planning)
Environmental Protection Department

Dr SO Ping-man, JP
Deputy Director
Agriculture, Fisheries and Conservation Department

Mr Simon CHAN
Assistant Director (Conservation)
Agriculture, Fisheries and Conservation Department

Ms Phoebe SZE
Senior Endangered Species Protection Officer (Acting)
Agriculture, Fisheries and Conservation Department

Mr Peter SZE
Senior Government Counsel
Department of Justice

Mr Vincent FUNG
Government Counsel
Department of Justice

Clerk in Attendance : Miss Cindy HO
Chief Council Secretary (1)1

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Joey LO
Senior Council Secretary (1)8

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with the Administration

Matters arising from previous meeting

- (LC Paper No. CB(1)288/17-18(01) — List of follow-up actions arising from the meeting on 8 November 2017
- LC Paper No. CB(1)288/17-18(02) — Administration's response to the issues raised at the meeting on 8 November 2017
- LC Paper No. LS15/17-18 — Paper prepared by the Legal Service Division of the Legislative Council Secretariat)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)631/16-17 — The Bill
- LC Paper No. CB(1)1265/16-17(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)1393/16-17(152) — Assistant Legal Adviser's letter dated 7 August 2017 to the Administration
- LC Paper No. CB(1)11/17-18(01) — Administration's reply to Assistant Legal Adviser's letter dated 7 August 2017
- LC Paper No. CB(1)279/17-18(01) — Assistant Legal Adviser's letter dated 21 November 2017 to the Administration
- LC Paper No. CB(1)279/17-18(02) — Administration's reply to Assistant Legal Adviser's letter dated 21 November 2017

Action

(issued by the Environment Bureau in— Legislative Council Brief
June 2017)

LC Paper No. LS80/16-17 — Legal Service Division Report)

Discussion

The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Administration

Admin 2. The Administration was requested to provide supplementary information on:

- (a) the limited exemptions allowed by the French Government to outlaw the trade in ivory;
- (b) licensing control of import of ivory to Hong Kong since 1990 and statistics on the enforcement actions taken;
- (c) the measures taken by the governments of Belgium, Germany and Portugal in relation to restriction of ivory trade;
- (d) details of the exemption provisions adopted by European countries (being the world's largest exporter of pre-Convention ivory) under their respective legislation to outlaw the ivory trade; and
- (e) what constituted the exceptional circumstances which justified the approval of the Director of Agriculture, Fisheries and Conservation for an application for import licence, re-export licence or possession licence as proposed in sections 4, 6 and 10 respectively of the new Schedule 4 added by the Bill; and whether the exceptions under "scientific" and/or "educational" purposes would restrict to non-profit making or non-commercial use only.

(*Post-meeting note:* The Administration's response was issued to members vide LC Paper No. CB(1)327/17-18(02) on 8 December 2017.)

Action

Continuation of clause-by-clause examination of the Bill

3. The Bills Committee continued clause-by-clause examination of the Bill from clause 25 and examined up to Part 2 of the new Schedule 4 added by clause 26.

Date of next meeting

4. The Chairman informed members that the next meeting would be held on Monday, 11 December 2017 at 4:30 pm.

II. Any other business

5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
3 January 2018

Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017

**Proceedings of the fifth meeting
on Wednesday, 29 November 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000646 – 001811	Chairman Assistant Legal Adviser ("ALA") Mr CHAN Han-pan Administration	<p>The Chairman drew members' attention to the paper provided by the Legal Service Division ("LSD") in response to members' request for LSD's advice on whether the Administration's plan to phase out local ivory trade as proposed in the Bill without compensation to the affected parties would be consistent with Articles 6 and 105 of the Basic Law. At the invitation of the Chairman, ALA briefed members on the relevant considerations as set out in the paper provided by LSD [LC Paper No. LS15/17-18].</p> <p>At the invitation of the Chairman, the Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 8 November 2017 [LC Paper No. CB(1)288/17-18(02)].</p> <p>Mr CHAN pointed out that the Administration had been requested to respond to a number of issues raised by members at the last meeting but the Administration's written response regarding the measures taken by the governments of Belgium, Germany and Portugal in relation to restriction of ivory trade was still outstanding. The Chairman requested the Administration to provide the requisite information as soon as practicable. In response to Mr CHAN's concern, the Chairman stressed that considerable time had been spent on the discussion of the policy aspect of the Bill and that the Bills Committee would revisit those issues mentioned by Mr CHAN once further information was available.</p>	Admin (paragraph 2 (c) of the minutes refers)
001812 – 002330	Chairman Mr CHAN Han-pan Administration	<p>Mr CHAN enquired about details of the limited exemptions allowed by the French Government to tie in with the implementation of legislation to outlaw ivory trade in France.</p> <p>The Administration responded that in view of local circumstances, the French Government had allowed some limited exemptions which mainly covered antique ivory, musical instruments and tableware</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>containing ivory, but the exemption for tableware would remain valid only until early-2018.</p> <p>Mr CHAN requested the Administration to provide details of the exemption provisions adopted by the European countries (being the world's largest exporting countries of pre-Convention ivory) under their respective legislation to outlaw the ivory trade.</p>	<p>Admin (paragraphs 2 (a) and (d) of the minutes refer)</p>
<p>002331 – 002901</p>	<p>Chairman Mr WONG Ting-kwong Ms Tanya CHAN Mr CHAN Han-pan Mrs Regina IP Administration</p>	<p>Noting that a substantial amount of post-Convention ivory had been imported into Hong Kong legally before the international trade ban in 1990, the records of which were compiled by the Agriculture, Fisheries and Conservation Department ("AFCD"), Mrs IP enquired about the regulatory control of pre-Convention ivory imported to Hong Kong after 1990.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) after the international trade ban in 1990, international trade in post-Convention ivory had been virtually banned; (b) trading of pre-Convention ivory locally and internationally was still allowed to continue under a permit system; (c) every shipment of pre-Convention ivory was required under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) to be accompanied by a pre-Convention certificate issued by the issuing authority of the exporting country; (d) dedicated staff would check the quantities and descriptions of the ivory against the pre-Convention certificates in order to identify any irregularities; and (e) since 1990, 13.9 tonnes and 19 700 items of pre-Convention ivory had been imported to Hong Kong, the majority of which (10.9 tonnes and 380 items) had been re-exported to other countries. <p>Mrs IP enquired about the reasons for the huge stockpile of ivory in Hong Kong despite that the bulk of the pre-Convention ivory imported to Hong Kong had been subsequently re-exported. Pointing</p>	

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		<p>out that according to the trade, there were as much as 500 tonnes of European raw ivory materials (e.g. ivory tusks) and ivory products which had been imported to Hong Kong since 1990, Mrs IP considered that AFCD should take stringent enforcement actions against the import of illegal ivory to Hong Kong.</p> <p>The Administration responded that:</p> <p>(a) not all remaining ivory stock in Hong Kong was pre-Convention. There were also post-Convention ivory being registered by AFCD before the international trade ban. After the international trade ban in 1990, the post-Convention ivory stock remaining in Hong Kong could only be traded locally and could not be re-exported; and</p> <p>(b) AFCD had recently issued summonses against the proprietors of two shops for possession of illegal post-ban ivory. During an operation to combat illegal trade in ivory in June 2017, officers of AFCD purchased ivory chopsticks from two local shops. Samples cut from the chopsticks were confirmed in radiocarbon dating test to be made of illegal ivory acquired after 1990.</p>	
002902 – 003212	Chairman Mr SHIU Ka-fai Administration	<p>Mr SHIU was of the view that the existence of a permit system for import of pre-Convention ivory to Hong Kong had affected the local sale of post-Convention ivory and such a permit system should have been abolished for years.</p> <p>The Administration responded that a large portion of the pre-Convention ivory imported to Hong Kong after 1990 had since been re-exported, implying that Hong Kong was not the target market of such pre-Convention ivory.</p>	
003213 – 003541	Chairman Ms Tanya CHAN Administration	<p>Ms CHAN enquired about the technology used by Hong Kong and internationally in ascertaining whether an ivory item was pre-Convention or otherwise.</p> <p>The Administration responded that:</p> <p>(a) while AFCD would verify and examine the accompanying export certificate issued by the exporting country, in recent years, owing to</p>	

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		<p>the concern that Hong Kong's legal ivory trade provided opportunities for illegal ivory to launder with the legal ivory stock, AFCD had resorted to the use of radiocarbon dating to ascertain the age of the ivory concerned; and</p> <p>(b) the use of radiocarbon dating technology was time consuming as it was not available in Hong Kong and the ivory concerned had to be tested in overseas laboratories.</p>	
003542 – 003724	Chairman Administration	The Chairman said that as the Bills Committee already had thorough discussion at previous meetings on relevant policy issues, members who were not satisfied with the Administration's response could consider moving Committee Stage amendments ("CSAs") to the relevant clauses of the Bill. He considered that the Bills Committee should continue with the clause-by-clause examination of the Bill.	
003725 – 004029	Chairman Mr CHAN Han-pan Administration	<p>Mr CHAN said that he would need to seek clarification with the Administration on various issues as the legislative proposal would deal a heavy blow to businesses related to the ivory trade.</p> <p>In response to Mr CHAN's query on the different treatment of pre-Convention ivory and post-Convention ivory in terms of licensing control, the Administration advised that ivory traders were required to maintain a transaction record of the post-Convention ivory in their possession under a possession licence ("PL") for inspection by AFCD. Pre-Convention ivory was exempted from the licensing requirement regarding possession for commercial purposes as such ivory was exempted by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") which allowed its international trade to continue under a permit system.</p>	
004030 – 004340	Chairman Mrs Regina IP Administration	<p>Mrs IP sought clarification on the licensing control of import of ivory to Hong Kong since the international ban on ivory trade in 1990, and the remaining stock of pre-Convention ivory in Hong Kong.</p> <p>The Administration responded that post-Convention ivory was not allowed to be imported to Hong Kong after the international ban on ivory. Post-Convention ivory had been seized in enforcement</p>	Admin (paragraph 2 (b) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		actions taken by the authorities in recent years. Statistics on the remaining stock of pre-Convention ivory were unavailable as pre-Convention ivory was exempted from the requirement of PL after being imported to Hong Kong.	
004341– 004625	Chairman Mr SHIU Ka-fai Administration	Mr SHIU's enquiry and the Administration's response on the definition of "specimen" under Cap. 586.	
004626 – 004806	Chairman Ms Tanya CHAN	Ms CHAN said that the Panel on Environmental Affairs ("EA Panel") had discussed the Administration's plan to phase out local ivory trade at a number of meetings since 2016. The EA Panel had also received public views on the proposed trade ban at the meeting in June 2017 before the Bills Committee received public views on the matter in September 2017. Many of the concerns and enquiries had already been raised by members before. Ms CHAN agreed with the Chairman's view that the Bills Committee should continue with the clause-by-clause examination of the Bill at this juncture.	
004807 – 004927	Chairman Mrs Regina IP Administration	<p>Noting that 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, Mrs IP suggested that the Administration should consider buying back legal ivory from local traders and use the ivory for display in museums in Hong Kong such as the future M+ Museum.</p> <p>The Administration responded that the display of ivory in museum was a viable option. As a matter of fact, a portion of the forfeited ivory stockpile had been donated to related organizations for education/training or display purposes.</p>	
004928 – 005128	Chairman Mr SHIU Ka-fai Administration	Mr SHIU considered that to facilitate scrutiny of the Bill, the Administration should make available information on the measures and exemption arrangements adopted by the European countries.	

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<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)631/16-17) [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1265/16-17(01)]</p>			
005129 – 005250	Chairman Administration	<p><u>Clause 25 — Schedule 3 amended (Convention instruments)</u></p> <p>Members raised no question.</p>	
005251 – 013222	Chairman Mrs Regina IP Mr CHAN Han-pan Ms Tanya CHAN Mr HUI Chi-fung ALA Administration	<p><u>Clause 26 — Schedule 4 added</u></p> <p><u>Part 1. Interpretation</u></p> <p><i>1. Interpretation</i></p> <p>In response to the Chairman's enquiry about the use of Latin to describe the species <i>Elephas maximus</i> or <i>Loxodonta africana</i> in the definition of "elephant", the Administration advised that Latin was commonly used in Schedule 1 to Cap. 586 to denote scheduled species as the scientific names of species were commonly denoted in Latin.</p> <p>In response to Mrs IP's enquiry about the exemption provisions adopted by European countries under their respective legislation to outlaw ivory trade, the Administration advised that such exemptions covered, inter alia, the use of ivory for scientific/educational/law enforcement purposes and antique ivory. However, if the exemptions were to be further extended, enforcement would become very difficult and the laundering of illegal ivory would continue.</p> <p>In response to Mrs IP's enquiry about the arrangement for future amendments to the subsidiary legislation of Cap. 586, the Administration advised that the negative vetting procedure would apply for future amendments to the subsidiary legislation of Cap. 586, namely the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586 sub. leg. A) ("Cap. 586A") and the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586 sub. leg. B) ("Cap. 586B"), as well as subsequent amendments to the new Schedule 4 added to Cap. 586 by the Bill.</p> <p>Mr CHAN considered that to facilitate scrutiny of the Bill, the Administration should make available</p>	Admin (paragraphs 2 (a) and (d) of the minutes refer)

Time marker	Speaker	Subject(s)	Action required
		<p>information on the limited exemptions allowed by the French Government to outlaw ivory trade, and details of the exemption provisions adopted by the European countries under their respective legislation to outlaw ivory trade. The Chairman reiterated that the Bills Committee would revisit those issues once the requested information was available and the Bills Committee would continue with the clause-by-clause examination of the Bill. Moreover, members could propose CSAs to the Bill after the Bills Committee had completed scrutiny of the Bill. Mr HUI agreed that the Bills Committee should resume clause-by-clause examination of the Bill.</p> <p>ALA drew members' attention to section 1(1) of the new Schedule 4 (definitions of "elephant hunting trophy" and "elephant ivory"). ALA advised that in the section, the proposed definitions of "elephant hunting trophy" and "elephant ivory" were not drafted with sufficient clarity that the ivory of an elephant might be caught by the proposed definition of "elephant hunting trophy" if other conditions under paragraphs (a) to (c) of the proposed definition of "elephant hunting trophy" were satisfied. As such, the application of various provisions under the Bill relating to different regulatory control on "elephant hunting trophy" and elephant ivory" in different steps of the proposed ivory ban would be rendered unclear and thus might cause confusion in enforcement. ALA had suggested that "elephant ivory" should be expressly excluded from the definition of "elephant hunting trophy" for clarity sake.</p> <p>The Administration advised that it was not necessary to exclude "elephant ivory" from the definition of "elephant hunting trophy" because the regulation for elephant hunting trophy was stricter than that for elephant ivory. If a piece of ivory was also an elephant hunting trophy, the stricter regulation for elephant hunting trophy would apply to that specimen. The Administration considered that there was no ambiguity or contradictions in terms of the applicable regulatory regime.</p> <p>ALA also noted that as the proposed definition of "antique elephant ivory" would exclude "elephant hunting trophy", it appeared that "antique elephant ivory" and "elephant hunting trophy" were mutually exclusive. ALA considered that, in order to reflect the policy intent, the definition of "elephant hunting</p>	

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		<p>trophy" should exclude "antique elephant ivory" as the latter would still be allowed to be traded in stages 2 and 3 of the ban, whereas trade in "elephant hunting trophy" would be banned with effect from stage 1.</p> <p>The Administration advised that the definition of "antique elephant ivory" excluded "elephant hunting trophy" because if an item was "antique elephant ivory", the item would be subject to lesser control, and it was the policy that such lesser control should not be available for an "elephant hunting trophy" even if it was also "antique elephant ivory". However, the definition of "elephant hunting trophy" should not exclude "elephant ivory" because the policy was that all target exemptions would no longer be available for an "elephant hunting trophy" even if it was also elephant ivory.</p> <p>ALA sought further clarification on how the definitions of "antique elephant ivory" and "elephant hunting trophy" would not be mutually exclusive. The Administration explained that the stricter regulation on "elephant hunting trophy" would come in the form of dis-applying certain existing exemptions available under Cap. 586 or its subsidiary legislation. Such dis-applications would be cumulative rather than mutually exclusive.</p> <p>The Administration advised that the concept of "elephant hunting trophy" would be relevant in the context of import and re-export only because, by definition, "elephant hunting trophy" was a whole elephant, or part or derivative of an elephant, ("item") that was raw or processed; was acquired by a person through hunting; and was being imported, exported or re-exported by or on behalf of the person as part of the transfer of the item from its place of origin to the person's usual place of residence. In other words, if an item fell within the definition of "elephant hunting trophy" when it was being imported into or re-exported from Hong Kong, such import or re-export would be subject to the stricter regulation under Parts 2 and 3 of the Bill. For example, certain exemptions dispensing with the need for a licence for the import or re-export would no longer be available. On the other hand, the concept of "antique elephant ivory" would be relevant in the context of licence application. Therefore, starting from step 2 of the ban, a piece of "antique elephant ivory" (which should not be an</p>	

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		<p>"elephant hunting trophy" by definition) could still be imported into or re-exported from Hong Kong through applying for a relevant licence from the Director of Agriculture, Fisheries and Conservation ("the Director").</p> <p>The Administration further advised that the concept of "elephant hunting trophy" would no longer be relevant after an item was imported into Hong Kong and was not intended to be re-exported. Such concept would no longer be relevant if the item would stay in Hong Kong.</p>	
013223 – 013337	Chairman Administration	<p><u>Part 2 – Import</u></p> <p>2. <i>Import of pre-Convention specimens</i></p> <p>3. <i>Import of specimens of Appendix II species</i></p> <p>Members raised no query.</p>	
013338 – 020242	Chairman Mrs Regina IP Mr CHAN Han-pan Ms Tanya CHAN Deputy Chairman ALA Mr SHIU Ka-fai Administration	<p><u>Part 2 – Import</u></p> <p>4. <i>Issue, extension, renewal and variation of licences for import</i></p> <p>The Administration's explanation that Part 2 provided that certain exemptions regarding import did not apply to the import of target specimens (i.e. elephant hunting trophies and elephant ivory). The issue, renewal, etc. of a licence for the import of target specimens were also restricted to limited circumstances.</p> <p>In response to Mrs IP's enquiry about what constituted the exceptional circumstances which justified the approval of the Director for an application for import licence, the Administration advised that the room for approval to be justified by exceptional circumstances would be very limited to prevent abuse. With the provision of adequate information to the satisfaction of the Director, examples of such exceptional circumstances included inheritance of ivory for non-commercial purposes. Moreover, applications submitted before the ban which was still under processing when the ban took effect would continue to be processed.</p> <p>In response to Mr CHAN's enquiry about the appeal mechanism for a person whose application for a licence had been rejected by the Director, the Administration advised that under section 46 of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Cap. 586, such a person might appeal to the Administrative Appeals Board against the Director's decision.</p> <p>In response to Mr CHAN Han-pan and Ms Tanya CHAN's enquiry on whether exemption(s) would apply if a Hong Kong resident might bring an ivory gift item out of Hong Kong, the Administration advised that section 5 of Cap. 586A and Cap. 586B respectively would provide exemptions for personal and household effects. Under all three steps of the ban, the current exceptions permitted under CITES which were limited to specific and stringent circumstances including scientific studies, education, law enforcement and personal or household effects (except for tourist souvenirs) would continue to be in force. The meaning of personal or household effects was defined in section 4 of Cap. 586A and Cap. 586B respectively. The specimen should be personally owned or possessed by the person for non-commercial purposes only.</p> <p>The Deputy Chairman enquired how one might prove that ivory specimens in his/her possession were personal or household effects when he/she emigrated to another country. Mrs Regina IP expressed concern that licences issued by the Director might not be recognized by overseas customs authorities.</p> <p>The Administration advised that carrying an ivory item as a personal property in times of emigration was generally allowed under section 5 of Cap. 586A and 586B respectively, but might be subject to the licensing requirements of the country of destination. Each case would be considered on its own merits.</p> <p>The Chairman requested the Administration to provide supplementary information on the exceptional circumstances justifying the approval of the Director as proposed in sections 4, 6 and 10 of the new Schedule 4.</p> <p>In response to ALA's enquiry, the Administration advised that there was no express provision in the Bill requiring that the intended use for "scientific" and/or "educational" purposes should be on a non-commercial or non-profit making basis. The main factor for consideration was whether the intended use of the specimen was related to scientific or education purposes.</p>	<p>Admin (paragraph 2 (e) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Mrs IP's enquiry and the Administration's response on how Hong Kong would inform the CITES Secretariat of the related legislative amendments relating to the three-stage ivory ban.</p> <p>The Chairman directed that the meeting be extended for 15 minutes.</p>	
020243 – 020345	Chairman Administration	<p><i>Part 2 — Import</i></p> <p><i>5. Import of specimens of Appendix II species as personal or household effects</i></p> <p>Members raised no query.</p>	
<i>Agenda Item II – Any other business</i>			
020346 – 020502	Chairman Mrs Regina IP Administration	<p>Date of next meeting</p> <p>Mrs IP reiterated her request for the Administration's provision of supplementary information on exemptions adopted by the French Government and European countries; and the licensing control of import of ivory to Hong Kong since 1990 and statistics on the enforcement actions taken.</p>	Admin (paragraphs 2 (a), (b) and (d) of the minutes refer)