

立法會

Legislative Council

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

Background brief

Purpose

This paper provides background information on the Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 ("the Bill"). It also summarizes the major views and concerns expressed by Members on the proposal to phase out trade in elephant ivory ("ivory") in Hong Kong.

Background

Existing regulatory regime for import, re-export and domestic sale of ivory

2. Hong Kong abides by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") and implements CITES through the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) ("the Ordinance").¹ The Ordinance provides that no person shall import, introduce from the sea, export, re-export or possess certain endangered species of animals and plants (including elephants), whether alive, dead, its parts or derivatives, except under and in accordance with a licence issued by the Director of the Agriculture, Fisheries and Conservation Department ("AFCD") or where an exemption applies.

¹ 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.

3. CITES provisions started to apply to Asian elephants in 1975 and African elephants in 1976. Ivory that was acquired hitherto is referred to as "pre-Convention ivory". International trade in pre-Convention ivory is allowed when the specimen is accompanied by a pre-Convention certificate. Ivory that was acquired after the CITES application to elephants and before the international ivory trade ban in 1990 is referred to as "post-Convention ivory".² Given the history of Hong Kong as a trade centre of ivory in the Asian region in the 1980s, a substantial amount of post-Convention ivory had been imported into Hong Kong legally before the international trade ban in 1990. Such post-Convention ivory was registered by AFCD and is allowed to be traded locally only under a Licence to Possess ("PL").³ Any person keeping post-Convention ivory for commercial purposes must obtain a PL for each keeping premises.

4. Enforcement against smuggling of and illegal trade in ivory is carried out by AFCD in cooperation with the Customs and Excise Department and the Police. Seized specimens will be automatically forfeited upon conviction, and disposed of in the Government stockpile by incineration.⁴

Three-step plan to phase out local ivory trade

5. In the 2016 Policy Address, the Chief Executive announced that the Government would kick start legislative procedures to ban the import and export of elephant hunting trophies⁵ and actively explore other appropriate measures, such as enacting legislation to phase out the local ivory trade, and imposing heavier penalties on smuggling and illegal trading of endangered species.

² Post-Convention ivory was formerly referred to as "pre-ban ivory" in papers submitted by the Administration and background briefs prepared by the Legislative Council Secretariat before December 2016.

³ 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.

⁴ 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 "Elephant hunting trophy" is defined in section 1(1) of the new Schedule 4 to be added to the Ordinance by the Bill. It means a whole elephant, or a part or derivative of an elephant (item), that (a) is raw or processed; (b) was acquired by a person through hunting; and (c) is 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.

6. In December 2016, the Executive Council approved a three-step plan to phase out the local trade in ivory 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.⁶ This step will take effect on the first commencement date of the Bill (i.e. a day to be appointed by the Secretary for the Environment by notice published in the Gazette after passage of the Bill);
- Step 2: (a) ban the import and re-export of pre-Convention ivory except antique elephant ivory ("antique ivory"),⁷ 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.

Licensing arrangements and proposed increase in penalties

7. To pave the way for the total ban on the local ivory trade on 31 December 2021, the Administration proposes that any application for a PL will not be approved for post-Convention ivory upon commencement of Step 1, and pre-Convention ivory upon commencement of Step 2, unless the ivory is covered by a valid PL issued before the commencement of the respective steps. Re-export of pre-Convention ivory currently requires a Licence to Re-export ("RL") which is valid for six months. To prepare for the ban on re-export of

⁶ According to the Administration, remaining post-Convention ivory items refer to individually marked and certified ekipa incorporated in finished jewellery of the population of Namibia, and ivory carvings of the population of Zimbabwe, when being imported, exported or re-exported for non-commercial purposes.

⁷ "Antique elephant ivory" is defined in clause 27(1) of the Bill as (a) a piece of elephant ivory that was, before 1 July 1925, (i) removed from the wild; (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) does not include an elephant hunting trophy.

pre-Convention ivory, the Administration proposes shortening the validity periods of newly issued/renewed RLs to tie in with the commencement of Step 2.

8. In order to provide a sufficiently strong deterrent against illicit wildlife trade including ivory, the Administration also proposes increasing the penalties under the Ordinance. A summary of the existing and proposed penalties is set out in **Appendix I**.

The Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017

9. The Bill was published in the Gazette on 2 June 2017 and received its First Reading at the Legislative Council ("LegCo") meeting of 14 June 2017. The Bill seeks to amend the Ordinance and its subsidiary legislation to increase the penalties for offences relating to the regulation of scheduled species, provide for the three-step stricter regulation for elephant hunting trophies and ivory (as described in paragraph 6 above), and make minor amendments.

Major views and concerns expressed by Members

10. The Panel on Environmental Affairs ("EA Panel") discussed the Administration's plan to phase out local ivory trade and enhanced enforcement measures against smuggling of ivory at the meetings on 22 February 2016, 27 June 2016, 23 January 2017 and 27 March 2017. EA Panel further received public views on the proposed trade ban at the meeting on 6 June 2017. 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.

Impacts of the total trade ban on ivory traders and craftsmen

11. Members in general agreed to the proposal of phasing out local ivory trade for enhanced protection of endangered species. However, some Members expressed concern that ivory traders, especially those who had imported pre-Convention ivory from European Union countries in recent years, might suffer significant financial loss, whereas the ivory craftsmen might not be able to make a living, as a result of the total trade ban. These Members considered that the Administration should offer compensations/assistance to affected ivory

traders and craftsmen. There was also a suggestion that the Administration might consider allowing the local trade in ivory of certain age to continue instead of imposing a total trade ban.

12. The Administration explained that imposing a total ban on the local ivory trade would dispense with the need to determine the age and hence the legality of ivory that would otherwise be required if the ban was only imposed on ivory of certain age. This approach was also in line with the international call for closure of domestic markets for ivory. In particular, a resolution was reached at the Seventeenth Meeting of the Conference of the Parties to CITES held in 2016 recommending that all Parties and non-Parties in whose jurisdiction a legal domestic market for ivory existed that was contributing to elephant poaching or illegal ivory trade, should take all necessary measures to close their domestic markets for commercial trade in raw and worked ivory.

13. The Administration considered that no compensation should be made to affected traders since they had already been given advance alert regarding the proposed trade ban and a grace period of five years to undergo business transformation and/or dispose of the ivory in their possession. The Administration stressed the importance of sending a strong signal to the international community, including people who were involved in illegal elephant poaching, that Hong Kong was determined to close its local ivory market in order to stop such poaching activities at source. As regards assistance to affected ivory craftsmen, the Administration would provide re-employment training to them and was carrying out a survey to ascertain their training needs.

Timetable for the trade ban

14. Some Members considered that the grace period of five years up to 30 December 2021 should be shortened or existing PLs be cancelled to advance the total ban in order to prevent laundering of ivory during the grace period. The Administration explained that under existing legislation, the Director of AFCD had no legal power to cancel a valid PL on the basis of implementing the ivory trade ban. Given that the expiry dates of the recently renewed/issued PLs were in 2021, the total ban on the local ivory trade had to take effect after all the existing PLs had expired. The Administration also pointed out that as the import and re-export of post-Convention ivory and pre-Convention ivory would be banned in Step 1 and Step 2 (which would take effect three months after Step 1) respectively, these steps would help prevent laundering of illegal ivory.

Exemption in respect of antique elephant ivory

15. Some Members expressed concern that allowing the trade in antique ivory might create a loophole for laundering of antique ivory from illegal sources, and suggested that the Administration should issue certificates for regulating the trade in antique ivory. The Administration responded 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. When setting the reference date for antique ivory, the Administration had made reference to overseas practices and considered factors including the preservation of traditional ivory crafting works and enforcement facilitation. As a person in possession of 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 issuing certificates.

Latest development

16. At the House Committee meeting on 16 June 2017, Members agreed to form a Bills Committee to study the Bill.

Relevant papers

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

Council Business Division 1
Legislative Council Secretariat
6 July 2017

Appendix I

Summary of existing and proposed penalties under the Protection of Endangered Species of Animals and Plants Ordinance

	Existing penalties		Proposed penalties	
	for non-commercial purposes	for commercial purposes	for summary offences	for indictable offences
Appendix I species *	A fine at level 6 (\$100,000) and imprisonment for 1 year	A fine of \$5,000,000 and imprisonment for 2 years	A fine of \$5,000,000 and imprisonment for 2 years	A fine of \$10,000,000 and imprisonment for 10 years
Appendix II and III species *	A fine at level 5 (\$50,000) and imprisonment for 6 months	A fine of \$500,000 and imprisonment for 1 year	A fine of \$500,000 and imprisonment for 1 year	A fine of \$1,000,000 and imprisonment for 7 years

* *Appendix I, II and III species refer to the species listed in the three appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). Appendix I species are highly endangered and threatened with extinction. Appendix II species can become threatened with extinction unless trade is controlled. Appendix III species are species identified by any Party to CITES as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.*

[Source: Adapted from Annex B to the Legislative Council Brief on the Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 issued by the Environment Bureau in June 2017.]

Appendix II

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

List of relevant papers

Date	Event	Paper
2 December 2015	Council Meeting	Motion moved by Dr Hon Elizabeth QUAT Progress report
22 February 2016	Meeting of the Panel on Environmental Affairs ("EA Panel")	Administration's paper on "Update on the protection of endangered species and biodiversity in Hong Kong" (LC Paper No. CB(1)557/15-16(04)) Minutes of meeting (LC Paper No. CB(1)857/15-16)
29 March 2016	Special meeting of EA Panel	Background brief on "Public consultation on Biodiversity Strategy and Action Plan for Hong Kong" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)712/15-16(01)) Minutes of special meeting (LC Paper No. CB(1)1113/15-16)
27 June 2016	EA Panel meeting	Administration's paper on "Proposed plan for phasing out the local trade in elephant ivory" (LC Paper No. CB(1)1054/15-16(06)) Background brief on "Protection of control of local trade in elephant ivory" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1054/15-16(07)) Minutes of meeting (LC Paper No. CB(1)1168/15-16)

Date	Event	Paper
23 January 2017	EA Panel meeting	Administration's paper on "2017 Policy Address – Policy initiatives of Environment Bureau: Environmental protection" (LC Paper No. CB(1)451/16-17(01)) Minutes of meeting (LC Paper No. CB(1)683/16-17)
27 March 2017	EA Panel meeting	Administration's paper on "Legislative proposal to phase out the local trade in ivory and progress of Government's efforts on nature conservation and marine conservation" (LC Paper No. CB(1)705/16-17(05))
6 June 2017	Special meeting of EA Panel	Background brief on "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))
14 June 2017	The Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 was introduced into the Legislative Council	The Bill Legislative Council Brief Legal Service Division Report (LC Paper No. LS80/16-17)

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 (File Ref.: EP CR 9/15/29)

Hyperlinks to relevant Council Questions:

Date	Council Question
11 February 2015	Press release on Council question (written) raised by Dr Elizabeth QUAT
25 November 2015	Press release on Council question (written) raised by Dr Kenneth CHAN