

**Government's Overall Responses to  
the Views Expressed by Deputations and Individuals  
at the Meeting of the Bills Committee on  
Protection of Endangered Species of Animals and Plants  
(Amendment) Bill 2017  
held on 6 September 2017 and through Written Submissions**

**Purpose**

This paper sets out the Government's overall responses to the views expressed by deputations and individuals at the meeting of the Bills Committee (the Committee) on the Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 (the Bill) held on 6 September 2017 and through written submissions.

**Need to Ban the Ivory Trade**

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). Hong Kong has adopted domestic measures stricter than the requirements of CITES in controlling the local trade in ivory since the international trade ban on ivory was introduced in 1990.

3. There is growing concern in the international communities about the poaching of elephants in Africa and the global smuggling of ivory in recent years. An increasing number of countries and places have adopted measures stricter than the requirements of CITES to control or even ban their domestic ivory trade. While there have been local opinions that the registered ivory stock in Hong Kong was legally acquired and hence the local trade in such ivory should not be relevant to the poaching of elephants in Africa or the global smuggling of ivory, it is widely reported that an increase of ivory poaching and trafficking has been observed in recent years during which Hong Kong has recorded a number of seizures of large-scale import of illegal ivory. In a control buy operation conducted by the Agriculture, Fisheries and Conservation Department (AFCD) in 2016, it was found that an illegal ivory was presented as a legal ivory for sale. The green groups, the mass media, the general public and some Members of the Legislative Council have raised serious concerns about the large retail market for ivory in Hong Kong. There are also frequent

international criticisms against Hong Kong for providing a front for illegal ivory through possible laundering with its local trade in registered ivory. A total ban of local ivory trade is considered necessary by the Government for elimination of any potential front for illegal ivory markets.

### **Compensation for the Ivory Traders**

4. We have noted some views that the Government should provide compensation to the ivory trade upon the trade ban. Having carefully considered the compensation issue from various policy and legal perspectives, we consider that no compensation should be provided to the ivory traders.

5. The Government is very concerned that provision of compensation in any form to the ivory trade may send a wrong message to lawbreakers that there is a prospect of compensation which may accelerate and/or intensify the proliferation of the poaching of elephants and stimulate smuggling of a large amount of illegal ivory into Hong Kong to launder with the legal stock for seeking compensation. It would not only significantly reduce the effectiveness of the proposed ivory ban, but also run contrary to the global efforts on conservation of elephants and severely damage the international image of Hong Kong.

6. As a matter of fact, further restricting and banning of the ivory trade is now clearly a global movement as urged by CITES. So far, we have not heard of any form of compensation provided in other countries or regions as a result of measures to tighten the control over ivory trade. We do not see any reason for the Government to deviate from the international practice and offer any form of compensation to the ivory trade.

7. Besides, according to the findings of the ivory trade survey conducted by AFCD in 2016, many ivory traders have in fact undergone business transformation or switched to trading other commodities not subject to the CITES' control. In other words, the sale of ivory in general does not constitute a substantial part of the traders' business in Hong Kong.

8. There are also some opinions that the ban of ivory trade would trigger the right to compensation protected under Article 105 of the Basic Law. The Government takes the view that the proposed ivory trade ban would not amount to any deprivation of the trader's business. In the absence of deprivation, the right to compensation protected under Article 105 of the Basic Law should not be triggered. The Government has provided a detailed legal analysis setting out our position on this issue in our written reply dated 25 August 2017 to the Committee.

9. In a nutshell, the Government considers that no compensation in any form should be provided to the ivory traders.

10. Nevertheless, we consider that the provision of a sufficiently long grace period will allow the remaining ivory traders to undergo business transformation and/ or to dispose of the ivory in their possession. For the ivory craftsmen who may be affected by the ban, AFCD is working with relevant organisations such as Employees Retraining Board (ERB) on suitable re-training courses to assist ivory craftsmen to switch to other employment. According to AFCD's discussion with ERB, there are more than 700 existing re-employment training programmes available to the ivory craftsmen. AFCD is consulting the ivory craftsmen in order to ascertain their training needs.

### **Regulation of Pre-Convention Ivory**

11. We have noted some opinions that the import of pre-Convention ivory has affected the local consumption of post-Convention ivory. We would like to point out that CITES allows the international trade in pre-Convention ivory to continue under a permit system after the introduction of the ivory international trade ban in 1990. Hong Kong implements the provisions of CITES and therefore has continued to allow the import and re-export of pre-Convention ivory after 1990. In other words, the import and re-export of pre-Convention ivory after 1990 have existed internationally and are not limited to Hong Kong. According to the import and re-export records of AFCD, some 13.9 tonnes plus some 19,700 pieces of pre-Convention ivory have been imported into Hong Kong since 1990. A large portion of the pre-Convention ivory (amounting to some 10.9 tonnes plus some 380 pieces) has been re-exported after being imported into Hong Kong, implying that Hong Kong is not the target market of such pre-Convention ivory.

12. As far as the import control of pre-Convention ivory is concerned, under the existing legislation, a piece of such ivory should be accompanied by a pre-Convention certificate issued by the exporting country certifying that the ivory was acquired pre-Convention. AFCD will check, upon the ivory's arrival in Hong Kong, whether the relevant quantity, description and other details tally with the information set out in the accompanying certificate. If any irregularity is uncovered, the ivory will be subject to seizure for further investigation. AFCD will, as necessary, verify the certificate with the exporting country or CITES Secretariat and/or conduct carbon dating of the ivory.

13. To further prevent possible laundering of illegal ivory with

pre-Convention ivory, we have proposed in the Bill to ban the import and re-export of pre-Convention ivory three months after commencement of the amended legislation. This will greatly facilitate the enforcement agencies to carry out enforcement actions, as there will no longer be a need to ascertain whether the ivory belongs to the pre-Convention or post-Convention categories. This will also send a clear message to the international and local communities that Hong Kong is committed to the conservation of elephants.

14. There are also some views that the Government should initiate the local ban of ivory as soon as possible instead of after a grace period of five years. We consider that a grace period of around five years from late December 2016 when the proposed three-step plan leading to a total ivory trade ban was announced, is reasonably sufficient to enable local traders to undergo business transformation and / or dispose of the ivory in their possession. In addition, the current validity period of a Licence to Possess (licence) is five years. It is reasonable for the total ban of local ivory trade to take effect on a date after all existing and prospective licences expire, i.e. 31 December 2021 (which is around five years from the aforementioned announcement).

### **Protection of Cultural Relics**

15. There are some opinions that ivory crafting and antique ivory items are cultural relics and should be protected. We consider that crafting may be done with wood or other materials instead of ivory. In parallel, having regard to the situation in Hong Kong, an exemption has been proposed in the Bill to allow the trade in antique ivory to continue in order to protect cultural relics. Possession of antique ivory for commercial purposes will not require a possession licence provided that the ivory can be proven an antique item<sup>1</sup>.

### **Enhanced Enforcement**

16. There are some views that the enforcement against illegal trade in ivory should be stepped up as soon as possible. AFCD has already reviewed the regulatory regime and introduced a suite of enhanced measures to step up enforcement against smuggling of ivory and to strengthen the control of local trade in ivory in cooperation with the Customs and Excise Department (C&ED) and the Hong Kong Police Force (HKPF). These measures include a comprehensive stocktaking of registered ivory, using tamper-proof holograms to mark ivory, increasing the frequency of surprise inspections of licensed shops

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<sup>1</sup> “Antique ivory” is defined in the Amendment Bill 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).

selling ivory, using radiocarbon dating to determine the legality of ivory, deploying sniffer dogs at borders to detect smuggled ivory, strengthening collaboration and co-ordination of efforts of the enforcement agencies, enhancing intelligence gathering and information exchange with relevant overseas and international bodies, as well as strengthening liaison and cooperation with relevant non-governmental organisations.

17. In addition to the proposed ivory ban, in order to provide a sufficiently strong deterrent against illicit wildlife trade, and to send a clear message to the international and local communities that the Government is committed to the protection of endangered species and to combating wildlife trafficking, we have proposed in the Bill new set of penalties for offences convicted on indictment and increased penalties under the Ordinance. The proposed maximum penalty for indictable offences concerning Appendix I species is a fine of \$10,000,000 and imprisonment for ten years; and that for indictable offences concerning Appendices II and III species, a fine of \$1,000,000 and imprisonment for seven years. We are of the view that the proposed penalties are severe enough to provide a strong deterrent against illicit wildlife trade and to demonstrate that the Government is very serious about deterring these crimes.

18. Meanwhile, various departments including AFCD, C&ED and HKPF will continue to take vigorous enforcement actions against smuggling and illegal trade in ivory.

**Environment Bureau**  
**Agriculture, Fisheries and Conservation Department**  
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