

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

Government's Response to the List of Follow-up Actions Arising from the Discussion at the Meeting on 29 November 2017

This paper sets out the Government's response to the matters raised by Members at the meeting of the Bills Committee (the Committee) on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 (the Bill) on 29 November 2017.

(a) the limited exemptions allowed by the French Government to outlaw the trade in ivory

2. According to the information obtained from relevant authorities by the Hong Kong Economic and Trade Offices (ETOs) overseas, and that provided by the Consulate General of France in Hong Kong, the French Government adopted two orders in August 2016 and May 2017 to outlaw the ivory trade in France and all overseas French territories. In view of local circumstances, the French Government has also allowed, in a stringent manner and to a limited extent, exemptions and derogations under the ban, which include:

- i) presentation of ivory specimens for scientific or cultural purposes by museums or other institutions;
- ii) keys and pulls of ivory games of musical instruments with keyboard, as well as bows of stringed instruments;
- iii) antique ivory articles (i.e. pre-1947 articles), but those composed in whole or in part of ivory where the proportion of ivory in the article is over 20% of volume will be subject to a declaratory procedure for their trade;
- iv) articles manufactured after 2 March 1947 and before 1 July 1975 (i.e. when the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) began to regulate elephants) consisting wholly or in part of ivory, when the mass of ivory present in the article is less than 200 grams (g);
- v) worked objects manufactured after 2 March 1947 and before 1 July 1975 containing over 200 g of ivory are required to apply for derogation from the French authorities; and

- vi) restoration of objects manufactured before 18 January 1990 made with ivory originating from raw tusks or pieces of raw ivory imported into the European Union (EU) before that date and legally acquired.

3. In addition, the sale and purchase of tableware, other cutlery or smoking articles manufactured before 18 August 2016 (i.e. the publication of the first order) using ivory with seniority prior to 18 January 1990 (i.e. when CITES began to ban the international ivory trade) may continue on or before 4 February 2018 (i.e. nine months after the publication of the second order). This exemption shall cease to be in force after 4 February 2018.

4. In a nutshell, except under the limited circumstances where the above concessions or derogations are granted, the trade and commercial use of raw ivory, the manufacture of articles using ivory, the sale of ivory products manufactured after 1 July 1975 and the restoration of ivory objects manufactured after 18 January 1990 have been prohibited in France.

(b) licensing control of import of ivory to Hong Kong since 1990 and statistics on the enforcement actions taken

5. Since 18 January 1990, all elephant species have been listed in Appendix I to CITES and the international trade (i.e. import, export and re-export) in post-Convention ivory has virtually been banned. Pre-Convention ivory is exempted by CITES which allows its international trade to continue under a permit system. 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. Under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) (the Ordinance), the import of pre-Convention ivory requires a pre-Convention certificate issued by the previous place of export certifying that the ivory is pre-Convention, and is subject to satisfactory inspection by an authorised officer upon arrival of the ivory in Hong Kong.

6. From 1990 when all elephant species were listed in Appendix I to CITES to November 2017, 840 cases on alleged smuggling of ivory were investigated, of which 300 cases were prosecuted and convicted.

(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 ivory trade

7. In paragraph 9 of the paper (LC Paper No. CB(1)288/17-18(02)) submitted to the Committee's last meeting by the Bureau and the Agriculture, Fisheries and Conservation Department, it was mentioned that information on the measures taken by the governments of Belgium, Germany and Portugal in relation to restriction of ivory trade would be provided in due course. The information is set out below.

8. From our enquiries with the relevant EU offices as well as the information obtained by overseas ETOs from the authorities concerned, the governments of Belgium, Germany, Portugal and other EU countries have all adopted control measures stricter than the CITES requirements. Under the European Union Wildlife Trade Regulations, import and export of ivory to and from the EU, as well as intra-EU ivory trade, for commercial purposes are generally prohibited. Intra-EU ivory trade and re-export of ivory from the EU for commercial purposes are allowed only under the following circumstances:

- i) For pre-ban ivory imported into the EU before the listing of elephants in Appendix I to CITES (Asian elephants and African elephants on 1 July 1975 and 18 January 1990 respectively), intra-EU trade is allowed if the ivory is issued with necessary certificates. For worked ivory manufactured before 2 March 1947 (i.e. antique ivory), intra-EU trade is allowed even without certificates; and
- ii) For pre-Convention ivory obtained before the application of CITES provisions to elephants (Asian elephants and African elephants on 1 July 1975 and 26 February 1976 respectively), re-export is allowed if the ivory is issued with re-export certificates.

9. Apart from the above measures, re-export of raw ivory for commercial purposes has been prohibited by Germany since July 2014.

10. Earlier on, the European Commission adopted a guidance document requiring EU countries to stop re-export of raw ivory with effect from

1 July 2017 and ensure strict enforcement of those EU laws regulating the approval of intra-EU ivory trade and re-export of worked ivory from the EU.

(e) what constitutes the exceptional circumstances which justify 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 paragraph 4, 6 and 10 respectively of Schedule 4; and whether the exceptions under “scientific” and/or “educational” purposes would restrict to non-profit making or non-commercial use only

11. The Bill primarily aims to, inter alia, provide for more stringent control of elephant hunting trophies and ivory to conserve elephants. To this end, the import, re-export or possession of elephant hunting trophies and ivory will generally be prohibited. However, the Director of Agriculture and Fisheries (the Director) may approve a licence application if the Director is satisfied that there are exceptional circumstances justifying the approval. Such exceptional circumstances shall not contravene the principle of elephant conservation, and their examples include inheritance of ivory for non-commercial purposes, fulfillment of documentation requirements of an importing party regarding the import of ivory as personal or household effects, etc. Applicants shall provide adequate information to the satisfaction of the Director that there are exceptional circumstances. To prevent abuse of this provision by applicants, the Director will carefully consider each application on its own merits.

12. There is no express provision in the Bill requiring that the intended use for scientific or educational purposes should be on a non-commercial or non-profitable basis. The main factor for consideration is whether the intended use of the specimen is related to scientific or educational purposes.

**Environment Bureau
Agriculture, Fisheries and Conservation Department
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