



5 June 2017

To the Honorable Tanya CHAN,
Chairman of the Legislative Council Panel on Environmental Affairs
Hong Kong Legislative Council

Madame Chair,

Trafficking and illegal trade are among the main causes of the disappearance of wild species of animals and plants. It is the fourth largest traffic in the world in terms of income after drugs, counterfeiting and human trafficking. It is a threat not only to the conservation of biodiversity but also to the economy and cultural heritage. True criminal networks, well organized and sometimes heavily armed, endanger the security and political stability of many countries. In addition, this traffic would feed terrorist groups in parts of the world.

Therefore, France is strongly committed to the fight against poaching and the illegal trade in wild species, and particularly to the fight against the elephant ivory trade. The French Government calls on all Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to ban all trading in elephant ivory.

Against this background, France welcomes the efforts undertaken by the Hong Kong SAR to ban import and export and to phase out its domestic ivory market.

As far as France is concerned, the Government has taken steps, as recently as in May 2017 again, to strengthen our legal and regulatory framework. This framework does not provide for compensation for ivory traders and owners.

We believe that the absence of a compensation scheme is necessary to achieve the objective of maintaining biodiversity and protecting animal health and life. Only prohibition measures with no compensation are likely to have an effect on the extent of poaching of elephants.

The prospect of compensation could incentivize ill-intentioned traders to grow their ivory stocks from illegal sources in the short term before the ban comes into effect, with a view to raising future compensation payments. A compensation scheme would therefore have the detrimental effect of fuelling poaching.

I attach herewith a very brief submission on French action on the issue of trade ivory. I hope that the Commission will find it of interest.

Yours sincerely,



Eric Berti, Consul general of France in Hong Kong and Macao

Banning ivory trade

France is strongly committed to the fight against poaching and the illegal trade in wild species, and particularly to the fight against the elephant ivory trade. France calls on all Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to ban all trading in elephant ivory. In that context, France welcomes the efforts undertaken by the Hong Kong SAR to phase out its domestic ivory market.

The following few pages cover a brief overview of the context and of the French action on the issue of ivory trade.

CONTEXT

Trafficking and illegal trade are among the main causes of the disappearance of wild species of animals and plants. It is the fourth largest traffic in the world in terms of income after drugs, counterfeiting and human trafficking. Its profits are estimated at between US\$ 8 billion and US\$ 20 billion a year (excluding fish and precious wood).

It is a threat not only to the conservation of biodiversity but also to the economy and cultural heritage. True criminal networks, well organized and sometimes heavily armed, endanger the security and political stability of many countries. In addition, this traffic would feed terrorist groups in parts of the world. The Hanoi Conference on Illegal Wildlife trade in November 2016 expressed again international concern over these highly damaging consequences of poaching and illegal wildlife trade.

Trafficking is rarely seen as a priority, penalties are generally low and penalties are not widely applied. The risks incurred are therefore low while the outlook for profits is high.

IVORY TRADE AND TRAFFIC

1/ Ivory trade is particularly lucrative. French customs currently estimate the price of kilo of raw ivory between 1000 and 1500 euros.

2/ Ivory trade would tend to develop, driven by an increasing demand for ivory from Asia.

As noted in a notice issued by the EU Commission (2017/C154/06) and published on May 17th 2017, East Asia - and in particular China and the Hong Kong SAR - is the main destination markets of legal re-export of ivory from the EU for example:

“Commercial re-exports of both raw and worked ivory from the EU carried out in line with Regulation (EC) No 338/97 ('legal re-exports') have considerably increased in recent years, with a pronounced upward trend in the re-exports of ivory to East Asia”. As to basic facts and figures on this trend, the Commission reports:

“Elephant tusks are the specimens which represent the largest share of the re-export of raw ivory items from the EU. While the number of tusks re-exported annually from the EU was always below 100 units between 2006 and 2012 (except for 2008 where it reached 111 items), this figure increased considerably in 2013 (reaching more than 300 items) and more markedly in 2014 and 2015 (more than 600 items each year). Nearly all elephant tusks re-exported in 2014 and 2015 from the EU were destined to China or Hong Kong SAR.

In addition to trade in tusks, the EU Member States also reported trade in raw ivory in the form of ivory pieces over the last decade. There appears to have been a general decline in re-exports of ivory pieces reported by weight, but a general increase of re-exports reported by number of specimens (with large fluctuations between years), suggesting that trade in this commodity has remained relatively constant over the last decade. The actual quantities of ivory pieces are, however, very difficult to quantify, as pieces could vary enormously in size.

The number of worked ivory items re-exported from the EU has increased in recent years, with data reported by EU Member States showing a marked increase since 2012. The highest quantities were reported in 2015 as far as trade in individual specimens (10 000 ivory items re-exported in 2015) is concerned. In addition to trade in individual items, trade has also been reported in mass (kg). Re-exports of ivory reported by Member States in mass have been fluctuating considerably, reaching their highest levels in 2012 (ca. 600 kg, in addition to 7 000 individual items) and ca. 200 kg in 2015.”

3/ In view of the stocks of ivory of illegal origin seized in 2012 and 2013, experts agree that there has been an increase in African elephant poaching in recent years (estimated between 20 000 and 30 000) and that this hecatomb is no longer offset by births, jeopardizing the recovery of the species observed between 1990 and mid-2000’s. As a result, there appears to be a decline in the African elephant population, which is accelerating, particularly in some areas.

4/ Along with this significant increase in the level of poaching of African Elephants, the illicit trade in ivory has escalated. According to the Elephant Trade Information System (ETIS) set up by CITES Resolution Conf.10.10, between 2010 and 2015 approximately 39 tons of raw ivory were seized per annum and seizures of worked ivory have steadily increased over the years, averaging ca. 5,6 tons per annum. The movement of such large scale ivory consignments reflects the fact that transnational organized criminal networks have been getting increasingly involved in illegal trade in ivory.

According to the EU Commission, the increasing demand for ivory from Asia, in particular China and the Hong Kong SAR, is regarded as one of the most important drivers for the current high levels of elephants poaching and ivory trafficking.

INTERNATIONAL RESPONSE

5/ In response to this surge in elephant ivory poaching and ivory trafficking, a CITES Resolution adopted in October 2016 (Res.10.10 CoP17) on trade in elephant specimens urged Parties to the CITES to put in place comprehensive internal legislative, regulatory, enforcement and other measures for ivory trade/domestic markets. This Resolution also recommended *‘that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency’* and recognized that *‘narrow exemptions to this closure for some items may be warranted; any exemptions should not contribute to poaching or illegal trade’*. (underlined by us)

6/ The EU has adopted new guidelines in May 2017 to contribute to reduce the demand for ivory items and to support the efforts made by important destination markets for ivory, such as China which adopted in 2016 specific measures to restrict the import of ivory items in its territory and has announced that it will phase out its domestic ivory market by the end of 2017, or such as the Hong Kong SAR of which the Government is now introducing a draft legislation to phase out its domestic ivory market.

The new guidance recommends that EU Member States (i) suspend the (re)export of raw ivory items

and (ii) ensure a strict interpretation of the provisions in EU law authorizing the (re)export of worked ivory.

It also sets guidance for increased EU coordination with third countries, in order to contribute, as far as the EU is concerned, to efforts to ensure compliance with the implementation of strict measures by the countries of destination. With this objective, it recommends that *“additional restrictions/controls may apply in relation to re-export to certain countries/territories that have introduced stricter domestic measures in relation to trade in ivory, such as mainland China, Hong Kong SAR and the United States of America (USA). Before issuing a re-export certificates for ivory, the Member State concerned should inform the CITES authorities of the country of destination so that the country of destination can verify that the importation of that specimen is in line with existing regulations.”*

ACTION FROM FRANCE

1/ The French legal and regulatory framework has been continuously strengthened from 2015 to 2017.

I. In January 2015, Minister Ségolène Royal decided to suspend exports of raw elephant ivory and instructed to tighten the conditions for the issue of ivory certificates.

II. The Law for the Recovery of Biodiversity, Nature and Landscapes, adopted in July 2016, provides for:

- a 10-fold increase in fines for illegal trade in fauna and flora, raising the incurred fine in case of basic offense from 15,000 to 150,000 euros and, in case of organized trafficking, from 150,000 to 750,000 euros and imprisonment to 2 or 7 years respectively;
- extension of powers of judicial police officers;
- increased use of specialized inter-regional jurisdictions;
- enhanced coordination of services and ministries responsible for the implementation of the Convention on International Trade in Endangered Species (CITES).

III. Finally, two orders adopted by the Minister of the Environment in August 2016 and May 2017 outlawed the trade in ivory and rhino horn in France and all overseas French territories, except in the case of an exceptional derogation. More specifically, the French regulation sets that:

1. The transport for commercial purposes, the peddling, the commercial use, the offering for sale, the sale or purchase of :

- raw tusks and pieces of raw ivory;
- articles manufactured after March 2, 1947 composed wholly or in part of elephant ivory;

are prohibited throughout the national territory and at any time.

2. There is a strictly limited number of exceptions to the prohibitions, namely articles manufactured after 2 March 1947 and before 1 July 1975 consisting wholly or in part of ivory or horn, when the mass of ivory or horn present in the article is less than 200 grams; keys and pulls of ivory games of musical instruments with keyboard; bows of stringed instruments; the commercial use of ivory or horn specimens when their sole purpose is their presentation to the public for scientific or cultural purposes by museums or other scientific or cultural research or information institutions; for the sale and purchase, within nine months of the date of

publication of the Order, of new tableware, other cutlery or smoking articles manufactured before 18 August 2016 Using ivory with seniority prior to January 18, 1990.

3. Derogations from the prohibitions are possible but again in a limited number of cases:

- trade of worked objects containing more than 200 grams of ivory, which are established to have been manufactured after 2 March 1947 and before 1 July 1975 (whereas the sale of ivory articles manufactured after 1 July 1975 is prohibited in all cases, even if the owner of the object is able to establish the legality of his purchase).

- 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 before that date and legally acquired.

These derogations do not exempt the issue of the documents provided for in Regulation No 338/97 of 9 December 1996 of the EU (intra-EU trade certificates).

4. Trade in antiques (pre-1947 objects), currently free of CITES documents, is subject to a declaratory procedure if they are composed in whole or in part of elephant ivory, where the proportion of ivory in the article is more than 20% of volume.

5. For the application of the provisions of the regulations, the seniority of the specimens shall be established by the holder of the specimens by any means of appraisal and, where necessary, by radio-dating.

6. It follows from the above mentioned rules that the trade and commercial use of raw ivory and tusks are prohibited, irrespective of the age of the ivory. The manufacture of articles using ivory is prohibited as well, irrespective of the age of the ivory used.

7. This regulation does not change the regime of the private detention of ivory and horn, the detention of which remains free.

2/ The French regulation does not provide for a compensation scheme.

I/ Under French legislation, no compensation is to be provided for ivory traders and owners. France is far from being an isolated case in that regard. China for example has announced that it will outlaw all ivory trade and processing activities without compensation by the end of 2017, which is most welcomed. Other countries have not provided for a compensation mechanism.

II/ We believe that the absence of a compensation scheme is necessary to effectively achieve the objective of maintaining biodiversity and protecting elephant health and life. Only prohibition measures with no compensation are likely to have an effect on the extent of poaching of elephants. From our perspective, this measure appears necessary and proportionate to the protection objective pursued.

The prospect of compensation could incite ill-intentioned traders in Hong Kong to grow their ivory stocks from illegal sources in the short term before the ban comes into effect, with a view to raising future compensation payments. A compensation scheme would therefore have the detrimental effect of fuelling poaching.

There are other arguments that there should be no compensation scheme for the prohibition of ivory trade:

- Most traders do not only depend on ivory as their source of income. Most of them have already reoriented their business.
- Traders have been aware of a plan to outlaw ivory trade for a long time and they have had sufficient time to prepare. In the case of Hong Kong, the proposed ban was announced 15 months ago. Moreover, the draft law suggests, from what we understand, that the ban should not be effective before December 2021, granting the traders a further “grace period” of 5 years.

3/ Implementation of the ban

I/ In France, the Directorate General for Planning, Housing and Nature (DGALN) of the Ministry for the Environment, which is the CITES management authority, and the services of the Regional Directorates for the Environment, Planning and Housing (DREAL) are responsible for processing and issuing import, export and re-export authorizations. The DGALN and the Directorate General of Customs and Excise (DGDDI) of the Ministry for Finance and Public Accounts are responsible for monitoring the implementation of this text and the various implementing provisions by carrying out controls of freight and items transported by travelers.

Pre-Convention ivory exports from France were down from 3,078 kilos in 2014 to just 170 kilos in 2015. French customs seized 448 kilos of ivory and 365 objects in 2015. All existing stocks of illegal ivory (3,5 tons) were destroyed in 2014.

II/ More generally, the Secretariat of the CITES Convention has developed practical guidance for the management of legal and illegal ivory stockpiles, including their disposal, based on an analysis of the best practices./.