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**Bills Committee on
Protection of Endangered Species of Animals and Plants Bill**

Background brief

Purpose

This paper gives a summary of discussion by the Panel on Environmental Affairs (the Panel) regarding the proposals to align the existing control regime on protection of endangered species with the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Introduction

2. The Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (the Ordinance) was enacted in 1976 to give effect to CITES in Hong Kong. Since the enactment of the Ordinance, a number of amendments have been made to take account of the changes in CITES requirements. Over time, the Ordinance has become so complicated that it is not easy to comprehend. In addition, some of the control measures required under CITES have not been set out clearly in the Ordinance. After reviewing the Ordinance, the Administration proposes to introduce the Protection of Endangered Species of Animals and Plants Bill (the Bill) to replace the Ordinance.

The Bill

3. The main objectives of the Bill are to –
- (a) streamline and align the existing provisions under the Ordinance with CITES; and
 - (b) improve the control regime by removing inconsistent treatments which are not justified on operational grounds as well as certain local controls that are over and above CITES requirements so as to minimize inconvenience and cost of compliance to the trade/users without compromising Hong Kong's obligation under CITES; and

- (c) streamline the licensing system and the fee structure such that licence for each import/introduction from the sea/export/re-export-possession will be issued on the basis of individual shipment or keeping premises rather than individual species.

Major issues raised by the Panel

4. The Panel received a briefing on the proposals pertaining to the Bill on 22 November 2004.

5. Some members raised concern about the proposed removal of certain local controls over illegal trade in endangered species which were in excess of CITES requirements lest the illegal trade would become rampant again. According to the Administration, CITES regulated the import and export of endangered species, including their readily recognizable parts and derivatives, listed in its Appendices^{Note1}, but not the possession of endangered species. To tackle the problem of illegal trade of endangered species, the Ordinance stipulated a certain degree of control over the possession of endangered species, including a licensing requirement for the import of endangered species under Appendix II, since its enactment in 1976. Measures, such as strengthening of publicity and communication with the trade as well as substantial increase in penalties, had also been put in place to deter illegal trade of endangered species. As a result, the number of contraventions had been decreased over the years. It was therefore considered appropriate to remove certain control measures to minimize inconvenience to the trade without compromising Hong Kong's obligation under CITES.

6. Question was raised on the impact of the proposed amendments to control international trade in medicines made from endangered species on the traditional Chinese medicine trade given that over 80% of Chinese medicines contained different quantities of endangered species. Some members expressed concern that traditional Chinese medicinal products with much healing effect might be banned as a result of the proposed amendments. According to the Administration, the proposed amendments were meant to reflect the latest changes in CITES listings and would not widen the scope of controlled species.

^{Note1} Appendix I – Species threatened with extinction which are or may be affected by trade.

Appendix II – Species which, although not necessarily now threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and other species which must be subject to regulation in order that trade in specimens of certain species referred to above may be brought under effective control.

Appendix III – Species which any Party to CITES identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

7. As regards the licensing system, it was noted that about 16 000 licences were issued each year and the revenue generated as a result amounted to \$3.3 million in 2002/03. With the streamlining of the licensing system and the expansion of scope for exemption, the number of licences would be reduced from 14 to 9 and about 40% to 95% of the existing or potential licence holders would be exempted. The revenue generated from licence fees would be reduced by 60% or \$2 million a year. Members noted that under the proposed arrangement, cost would be recovered based on annual percentage increases ranging from 10% to 21%, which would take about five to seven years to achieve full recovery. Given that the trades would be paying less under the streamlined licensing system, they opined that the Administration should aim at full cost recovery at one go. According to the Administration, a phased approach for fee increases was more acceptable, particularly when the fee structures had not been reviewed for a long time.

8. The relevant extracts from the minutes of the Panel meeting on 22 November 2004 are at **Appendix I**.

Council Business Division 1
Legislative Council Secretariat
23 June 2005

**Extracts from the minutes of the
Environmental Affairs Panel meeting on 22 November 2004**

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II. Review of the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187)

(LC Paper No. CB(1) 255/04-05(02) — Paper provided by the Administration)

9. The Deputy Secretary for the Environment, Transport and Works (Environment)2 (DSETW(E)2) briefed members on the proposed amendments to the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (“the Ordinance”) by highlighting the salient points in the information paper.

10. Ms Audrey EU expressed concern about the proposed removal of certain local controls over illegal trade in endangered species which were in excess of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) requirements lest the illegal trade would become rampant again. DSETW(E)2 explained that CITES, which was aimed at regulating international trade in endangered species and protecting wildlife from over exploitation/extinction, was extended to Hong Kong in 1976. The import and export of endangered species, including their readily recognisable parts and derivatives, listed in its Appendices were subject to control. Details of the Appendices were as follows -

Appendix I - Species threatened with extinction which were or might be affected by trade;

Appendix II - Species which, unless trade was controlled, could be threatened with extinction, and species that were not readily distinguishable from these species in appearance or other aspects and hence must be subject to regulation to avoid any possible loopholes in the control; and

Appendix III - Species identified by any Party to CITES for trade control within its jurisdiction with the objective of preventing or restricting exploitation that required the cooperation of other Parties.

11. DSETW(E)2 added that while CITES aimed to control international trade, it did not control possession of endangered species. However, the current provisions in the Ordinance maintained a certain degree of control over the possession or control of endangered species, including a licensing requirement for the import of endangered species under Appendix II. The objective of these additional controls was to tackle

the problem of smuggling, which was rampant when the Ordinance was first enacted in 1976. Since then, the trades had been requesting for streamlining of the licensing system with a view to facilitating trading. In view of the decreased number of contraventions over the years (most of the illegal import cases involved offences committed unknowingly by locals and tourists bringing in elements of endangered species like rare ginseng and orchids), it was considered appropriate to remove certain control measures to minimize inconvenience to the trade without compromising the obligation under CITES. No amendments however would be made to reduce the penalty level. The Assistant Director of Agriculture, Fisheries and Conservation (Conservation) (ADAFCD(C)) supplemented that with the enhanced efforts in publicity and communication with the trade as well as the enhanced deterrents following the substantial increase in penalties in 1995, illegal trade in endangered species had been kept under control. Nevertheless, the Administration would further consult the trades on the legislative amendments.

12. The Chairman questioned the proposed exemption in respect of possession of species under Appendix II in CITES and also exemption in respect of personal effects on account of the difficulties in enforcing the control. She said that while such difficulties were indeed of international concern and had been a subject for discussion at the International Conference on Endangered Species in Bangkok, she still had reservations at such an exemption. ADAFCD(C) said that while the possession or control of certain species, other than live specimens, under Appendix II in CITES were exempted, all species under Appendix I in CITES were kept under control in line with CITES requirements.

13. Referring to the proposed amendments to the control over international trade in medicines made from endangered species which aimed to align the local control regime with the requirements in CITES, Ms Audrey EU enquired about the impact of these amendments on the trades, including the traditional Chinese medicine trade, and other organizations. Sharing similar view, Mr CHEUNG Man-kwong noted from the Administration that over 80% of Chinese medicines contained different quantities of endangered species. He expressed concern that some of the traditional Chinese medicinal products which had much healing affect would be banned as a result of the proposed amendments.

14. DSETW(E)2 advised that at present, medicinal products containing species under Appendix I were kept under control while those under Appendices II and III were not. To keep in line with the requirement of CITES, there was a need to extend control to cover medicines made from all animal and plant species listed under CITES. While the import of live specimens of endangered species under Appendix II would be controlled, possession for the purpose of museum exhibition and research would be exempted from control. ADAFCD(C) added that the trading of Chinese medicinal products containing CITES Appendix II species would not be affected subject to the production of valid documents in accordance with CITES.

15. Mr CHEUNG Man-kwong however pointed out that it would be difficult to implement the proposed control on traditional Chinese medicinal products. By way of illustration, the elements of endangered species present in a traditional Chinese potion “虎骨木瓜酒”, which was in essence tiger bones immersed in wine, could not be detected as the tiger bones were removed when the potion was sold. The same applied to many other Chinese medicinal products. Given the wide range of endangered species listed under CITES, Mr CHEUNG opined that the proposed control could only meet the requirements of CITES on paper.

16. In response, ADAFCD(C) explained that as tigers were endangered species listed under CITES Appendix I, the sale of medicinal products containing tiger bones and derivatives was already forbidden. According to an earlier study made years ago by the Environment Investigation Agency, an international environmental agency, the sale of medicinal products containing tiger bones was rampant in Hong Kong. In light of the concerns raised by the Agency, control over the trading of such products had been stepped up through increase in penalties. In its recent undercover studies conducted in Hong Kong three years ago, the Agency was only able to find three medicinal shops in Hong Kong which admitted the sale of medicinal products containing tiger bones. Of these, one had subsequently denied the sale while no evidence of the products was found in the other shops. Most of the shops being investigated had clearly explained to their clients that the sale of such products was unlawful. The Permanent Secretary for the Environment, Transport and Works (Environment)2 (PSETW(E)2) added that the Administration was well aware of the concerns about the impact of the proposed amendments on the Chinese medicinal trade but he assured members that these amendments, except regular updating to reflect the latest changes in CITES listings, would not widen the scope of controlled species.

17. Mr WONG Yung-kan was concerned that the trades might not be aware of the types of fauna and flora which were classified as endangered species. Fishermen who caught a rare kind of fish might find it difficult to determine whether it was an endangered species. He also asked whether certain kinds of blue octopus and piranha which attacked humans should be subject to control. DSETW(E)2 said that the control of these rare kinds of octopus fell under purview of the Health, Welfare and Food Bureau which was considering how control should be applied to this species of octopus under the Public Health (Animals and Birds) Ordinance (Cap. 139). He also confirmed that apart from the Chinese medicinal trade, other floral, pet and leather trade groups were consulted on the proposed amendments.

18. Dr KWOK Ka-ki opined that the trades would be paying less with the streamlining of the licensing system and the reduction in the number of licences required by traders. If so, the Administration should aim at full cost recovery at one go instead of the proposed arrangement to recover cost based on annual percentage increases ranging from 10% to 21%, which would take about five to seven years to achieve full cost recovery. He then enquired about the basis upon which the proposed fee structure was arrived at and whether agreement had been reached with

the trades. Ms Miriam LAU also agreed that the trades should be consulted on the proposed fee structures. DSETW(E)2 said that at present, about 16 000 licences were issued each year and the revenue generated as a result amounted to \$3.3 million in 2002/03. With the streamlining of the licensing system, the reduction in the number of licences from 14 to 9 and the expansion of the scope for exemption, it was anticipated that the revenue generated from licence fees would be reduced by 60% or about \$2 million a year. About 40% to 95% of the existing or potential licence holders would also be exempted as a result the proposed expansion of the scope for exemption. The trades were made aware of the Administration's intention to achieve full recovery of the licensing cost during consultation and they had no strong views on the proposed fee levels. As regard the proposal of recovering the full cost at one go, DSETW(E)2 said that this might not be feasible taking into account the impact on the trades. A phased approach for fee increases was considered more acceptable, particularly when the fee structures had not been reviewed for a long time.

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