

Protection of Endangered Species of Animals and Plants Bill

The Administration's Response to Views and Questions raised at the Bills Committee meeting on 4 October 2005

Control regime under CITES, Cap.187 and the Bill

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) imposes different export and import controls on endangered species, which have been categorized in its three Appendices according to the gravity of threats of extinction faced by such species, as follows:

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| 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. |

To comply with the requirements of CITES, Parties to CITES are required to enact local legislation regulating the trade in endangered species.

2. The Animals and Plants (Protection of Endangered Species) Ordinance (Cap.187) (the Ordinance), enacted in 1976, gives effect to CITES in Hong Kong. Given the rampant smuggling activities back in the

1970's, the Ordinance imposes controls that are over and above the requirements as provided in CITES. Taking into account all relevant circumstances including the substantial decline in illicit trade, the need to remove unnecessary impediment to the affected trades and balancing the need for the protection of endangered species, it is considered appropriate that some of the excessive controls under the Ordinance be removed in order to facilitate legitimate trading in controlled species. A table briefly comparing the provisions of CITES, the Ordinance and the Bill is at the **Annex**. Scheduled species caught or bred domestically in Hong Kong will be subject to the same applicable regulatory controls under the Bill.

Clause 29 on the requirement to provide scientific names

3. According to the requirements of CITES, all licences, certificates or other relevant documents of a scheduled species should contain its scientific name. In the case of import, export, re-export or introduction from the sea of a scheduled species, the person who is in possession of such a scheduled species should hold a relevant licence, certificate or other relevant document proving the identity and showing the scientific name of the scheduled species. Similarly, a scheduled species in transit will be accompanied with a CITES export or re-export document.

4. The purpose of clause 29 is to empower an authorized officer to require a person in possession of a suspected specimen of scheduled species to provide information that will assist in verifying compliance of the Bill. Clause 29 seeks to enable an authorized officer to require a person in possession or under his control an animal or plant (whether live or dead) to state its scientific name and common name where the officer reasonably suspects that the animal or plant is being or has been imported, introduced from the sea, is being or is to be exported or re-exported, or is in transit, and that it is a specimen of a scheduled species. Hence, it is not the purpose of the provision to require a person to state the common name and scientific name of a scheduled species for mere possession. Nor is it the purpose to require a retail trader who is trading a scheduled species on the street to provide the scientific name of that species.

5. In any event, the court will take into account all relevant factors in the circumstances of the case, including for example how that person

has come into possession of the specimen and his responsibility in relation to the specimen, to determine whether his explanation can be accepted as a reasonable excuse for his failure in providing the name of the specimen to the authorized officer.

6. There are different levels of control for species categorized in different Appendices under CITES which have been followed by the Bill in other provisions concerning the import, export, re-export, transit and introduction from the sea of any scheduled species. Further specifying the difference in Clause 29 would complicate the Bill, which will make the Bill difficult to comprehend.

Grace period

7. We intend to provide a grace period of three months after the passage of the Bill before it comes into effect. In addition, clause 55(6) of the Bill provides for a further grace period of three months after the commencement of the Bill for any specimens of Appendix I or II species, the possession of which is not subject to licensing control before the commencement of the Bill. Hence, there will be a grace period of six months in total for the trades to make arrangements to comply with the requirements, including disposing of their stock if considered necessary. Past experience of the Agriculture, Fisheries and Conservation Department (AFCD) indicates that this grace period should be sufficient for the trades to make preparation for the new requirements.

8. Moreover, upon expiry of the grace period, a holder of unsold stock could apply for a possession licence and continue to dispose of the stock legally after the grace period.

9. AFCD had a meeting with representatives of the Hong Kong Chinese Prepared Medicine Traders Association (CPMTA) on 20 October 2005. The issue on the grace period was explained to the trade in detail. We have now been advised by the representatives of CPMTA that the grace period as provided for under the Bill was acceptable.

Enforcement power under the Bill

10. Under the Ordinance, unless exempted through an Exemption Order, a licence is required for the possession of an Appendix I or II species. The licence contains a condition that the licensee must allow an authorized officer to enter his premises to inspect any specimen held. However, under the Bill, a possession licence is no longer required for specimens of Appendix II species unless live animal or plant of wild origin is involved. To enable the enforcement authority to check and ensure compliance of the Bill after its passage and commencement, we consider it necessary to provide an authorized officer with the power of inspection, which may only be exercised if the authorized officer reasonably suspects that a specimen of a scheduled species is being kept for commercial purpose in any place or premises. Further, the inspection can only be conducted within reasonable hours and the authorized officer is prohibited under clauses 31(2)(a) and (b) of the Bill to enter any premises or any part thereof that are used exclusively as a dwelling-house.

11. Under the Ordinance, an AFCD officer needs to seek the assistance from a Police officer or a Customs officer to make an arrest. However, this arrangement is sometimes ineffective because there may be cases where an AFCD officer needs to make an arrest immediately or risk losing the suspect. For example, an immediate arrest is required when an authorized officer intercepted a suspect whose usual place of residence is not Hong Kong or it is a case of selling illegally possessed specimen and the transaction is taking place in a public place.

12. The power of arrest is provided to authorize officers of AFCD under other conservation related Ordinances, such as the Forests and Countryside Ordinance (Cap.96), Wild Animals Protection Ordinance (Cap. 170) and Country Parks Ordinance (Cap.208). Apart from conservation related Ordinances, authorized officers of AFCD are also exercising similar power under other legislation such as the Waterworks Ordinance (Cap. 102), Public Health and Municipal Services Ordinance (Cap.132) and Prevention of Cruelty to Animals Ordinance (Cap.169). As such, our proposal to provide AFCD officer with the power of arrest is in line with the arrangements in those Ordinances.

13. The disposal/forfeiture provisions in the Bill are in line with

CITES requirements since CITES requires the Parties to take appropriate measures including confiscation measures to enforce the Convention and to prohibit trade in specimens in violation of the Convention. Similar disposal and forfeiture provisions are provided in the Ordinance. The Bill stipulates that a specimen of a scheduled species shall without order, be forfeited to the Government if a person is convicted of an offence under Part 2 or 3, which relates to the regulation of Appendices I, II and III species. However, in the case where a person is acquitted or no prosecution has been brought against the person, the forfeiture of any specimen concerned has to be under the order of the court or magistrate. The court or magistrate will consider all circumstances of the case to decide whether the specimen should be forfeited or returned to the person/ owner.

14. Any person including a trader may seek advice or clarification from AFCD if he is unclear as to whether a specimen is a scheduled species or in doubt about its source. Traders may make use of this service to seek confirmation with AFCD on the sources of certain specimens if in doubt so as to avoid trading species from illegal sources.

Trading of shark fins and furs in Hong Kong

15. We have relayed Members' concern that some legitimate trade of shark fins and furs were being misunderstood by the public and international community as breaching international conservation conventions to the Economic Development and Labour Bureau (EDLB). We will monitor the situation and follow up with EDLB outside the context of the Bills Committee.

Environmental Protection Department
7 November 2005

A Brief Comparison between CITES, Animals and Plants (Protection of Endangered Species) Ordinance and Protection of Endangered Species of Animals and Plants Bill

	CITES	Animals and Plants (Protection of Endangered Species) Ordinance	Protection of Endangered Species of Animals and Plants Bill
Appendix I	<ul style="list-style-type: none"> ● Import and export are only permitted in certain specified circumstances, such as exhibition and scientific research under a valid export (or re-export) permit and import permit. ● No commercial trading is allowed. ● No requirement for possession licence. ● Control all derivatives of controlled species, including medicine. 	<ul style="list-style-type: none"> ● Same import and export control as CITES in general. ● Stricter than CITES in that possession licence is required. ● Does not control medicine made from endangered species except medicine made from Appendix I animals. 	<ul style="list-style-type: none"> ● Same control as CITES including medicine made from endangered species. ● Same import and export control as CITES. ● Stricter than CITES in that possession licence is required.

Appendix II	<ul style="list-style-type: none"> ● International trade in Appendix II species requires an export (or re-export) permit. ● No requirement for import permit. ● No requirement for possession licence. 	<ul style="list-style-type: none"> ● Stricter than CITES requirements in that unless exempted, both import and export licences are required. ● Stricter than CITES in that unless exempted, possession licence is required. 	<ul style="list-style-type: none"> ● Stricter than CITES requirements in that- <ul style="list-style-type: none"> (a) import licence is required for the import of live wild animals and plants; and (b) possession licence is required for the possession of live wild animals and plants.
Appendix III	<ul style="list-style-type: none"> ● International trade in Appendix III species requires either an export permit (for listed countries) or certificate of origin (for other countries) or re-export certificate. ● No requirement for import permit. ● No requirement for possession licence. 	<ul style="list-style-type: none"> ● Same control as CITES. 	<ul style="list-style-type: none"> ● Same control as CITES.