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Paper for the House Committee meeting on 17 February 2006

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

Purpose

This paper reports on the deliberations of the Bills Committee on Protection of Endangered Species of Animals and Plants Bill.

Background

2. The Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (the Ordinance) was enacted in 1976 to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)^{Note¹}. 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.

^{Note¹} CITES aims to regulate international trade in endangered species and protect wildlife from over exploitation/extinction. The import and export of the species, including their readily recognizable parts and derivatives listed in the following Appendices, are subject to control -

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 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.

The Bill

3. The main objectives of the Bill are to -
- (a) streamline and align the existing provisions under the Ordinance with CITES;
 - (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.

The Bills Committee

4. At the House Committee meeting on 20 May 2005, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon CHOY So-yuk, the Bills Committee has held nine meetings. The membership list of the Bills Committee is in **Annex I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. 14 groups have made written and/or oral representation to the Bills Committee. A list of these groups is in **Annex II**.

Deliberations of the Bills Committee

5. The Bills Committee generally supports the policy intent of the Bill because CITES is applicable to Hong Kong and thus Hong Kong has the obligation to comply with the international control regime on endangered species. Members however note with concern that some legitimate trades, such as shark fins and furs, are being misunderstood by the public and international community as breaching international conservation conventions. The Administration is urged to clarify the misunderstandings and make it clear that the need for the controls under the Ordinance or the Bill is indeed in line with international practices. In the course of examination of the Bill, members have raised questions in relation to the control regime, licensing system, enforcement, penalty, appeal mechanism, exemption orders, adaptation of Convention instruments and transitional provision etc.

Control regime under CITES

6. 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. These include banning of commercial trading of Appendix I species, requirement for an export/re-export permit for international trade in Appendix II species and an export permit/certificate of origin/re-export certification for international trade in Appendix III species. The Bill generally adopts the same controls as CITES, but contains certain controls which are stricter than CITES, such as the requirements for possession licence for Appendix I species and import/possession licence for live wild Appendix II species.

7. The Bills Committee enquires about the justifications on the need for stricter controls than CITES. The Administration's explanation is that the Ordinance has already imposed controls that are over and above the requirements as provided in CITES to tackle smuggling activities, which were rampant in the 1970's when the Ordinance was enacted. A table briefly comparing the provisions of CITES, the Ordinance and the Bill is in **Annex III**. In view of the changed 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, the Administration holds the view that some of the excessive controls under the Ordinance can be removed in order to facilitate legitimate trading in controlled species.

8. Members express concern that it may be difficult to distinguish between live animals/plants of wild origin from artificially propagated plants and captive bred animals. A person will easily commit an offence, such as illegal possession of species, since he may not know the concerned species are from wild origin. Therefore, consideration should be given to removing the differences in control of Appendix II animals and plants of wild and non-wild origins.

9. According to the Administration, clause 21 provides that possession of Appendix II species will not require a licence unless the species concerned are live animals and plants of wild origin. If the differences in control of wild and non-wild species are removed, all possession of live Appendix II species will be subject to licensing control. It has consulted the relevant trades and almost all of them are strongly opposed to such an arrangement as this would increase their operating cost. They have also pointed out that such changes will defeat one of the original purposes of the Bill to facilitate legitimate trade of species. To address members' concern, the Administration will step up educational and publicity programmes to strengthen public awareness of the protection of endangered species and help them to distinguish species that are under the control of the Bill. These programmes include broadcasting Announcements of Public Interest through television and radio; organizing exhibitions, school talks and competitions etc. The Agriculture, Fisheries and Conservation Department (AFCD) has also published different types of posters and leaflets for distribution to trade associations and shops at various locations.

Photographs of some commonly traded species are available on AFCD's homepage as well as the website of CITES. Besides, any person 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 origin.

10. Members note that under clause 21, possession of Appendix II species will not require a licence if a person can prove to the satisfaction of the Director of Agriculture, Fisheries and Conservation (the Director) that the specimen is not a live animal or plant of wild origin, and that it does not belong to a species of a population included in Appendix I. However, they have concern that the phrase "to the satisfaction of the Director" does not provide clear indication as to what the person may provide in order to fulfill the requirement as set out in clause 21. There are also circumstances that some persons may come into possession of specimen before such species are listed as endangered species under CITES and regulated by local legislation. They may not have any evidence to prove the date of possession of such species.

11. The Administration's explanation is that the wording of clause 21 aims at providing flexibility for the Director to accept different types of evidence, including but not limited to a licence, permit or certificate issued in respect of the specimen concerned by the relevant authority. As there can be many other types of evidence depending on the circumstances of each individual case, it is impracticable to list them out exhaustively. For example, an invoice or a label produced by the person may be used for the above purpose if such document provides clear indication as to the source of the specimen. To address members' concern, the Administration agrees to add a new sub-clause in clause 21 to provide some indication on the types of evidence that may be used as proofs to fulfill the requirements. It will also include in the speech to be delivered by the Secretary for the Environment, Transport and Works (SETW) at the resumption of Second Reading debate on the Bill an undertaking that cases of possession or control of pre-Convention species without the required evidence will be considered having regard to all circumstances relating to an individual case.

Licensing system

12. The Ordinance provides that, except those with exemptions, a separate licence issued by the Director is required for the import, export, possession or control of each individual species listed in the Schedules of the Ordinance, which covers the species in Appendices I, II and III to CITES. The Bill proposes to streamline the licensing system such that each import/export/possession licence will be issued on the basis of individual consignment or keeping premises rather than individual species. The number of licences required by traders and the public is expected to decrease. In addition, a new fee scheme will be introduced to simplify the existing fee structure with a view to achieving full cost recovery. As most of the existing and potential licence holders will benefit from the streamlined licensing system by the reduced number of licences required and the expanded scope of exemptions, it is anticipated that they will not be adversely affected by the new fee scheme.

13. While welcoming the proposal to streamline the licensing system, members query why importers are required to apply for a possession licence when they have already obtained an import licence for the specimens. The requirement for importers to renew a possession licence after expiry of the two-year validity period will also cause undue inconvenience to the trade. Consideration should be given to requiring importers to notify AFCD only when there is transaction of the specimens. The Administration is also urged to consider further streamlining the licensing procedures to facilitate trade.

14. According to the Administration, the control of import and possession of scheduled species are two different control mechanisms. Different information is required in the import and possession licences and different licence conditions are imposed. For example, the location of keeping premises will be specified in the possession licence but such information would not be required in the import licence. Holders of possession licences are required to report the birth of offspring of their species but such licence condition is not appropriate for an import licence. The current import and possession licence system has been implemented since 1976 when the Ordinance was first enacted. The issue of both import and possession licences are generally accepted by the trade. Merging the two mechanisms into one will not only create enforcement difficulties, but also cause unnecessary confusion to the traders as under the current system, traders usually request the seller to present a copy of the possession licence. An importer may also be unwilling to disclose information on an import licence to a buyer as it contains details of overseas suppliers. The Administration further points out that with the passage of the Bill, about 80% of the present licensees will be exempted from the possession licence requirement. A further 10% of the licensees will be benefited from the reduced number of licences required because a single licence can be used for keeping specimens of different species in the same premises. To ensure effective enforcement, a validity period for the possession licence has to be imposed in order to maintain proper control of the specimens concerned. Renewal of such licence at regular intervals allows AFCD to keep track of the specimens concerned and to update the information in relation to the specimens. The trade in general accepts the current validity period of two years. To address members' concern, the Administration agrees to extend the length of the validity period of a possession licence to five years to further reduce the burden on the licensees. The extension will not contravene CITES which only imposes a validity period of not more than 12 months on an import licence.

15. Clause 26 provides that the Director may cancel a licence, and that the Director shall return the licence to the holder if the latter lodges an appeal against the Director's decision relating to the cancellation of the licence pending the determination of the appeal by the Administrative Appeals Board (AAB). Members note from the Administration that the licence will remain valid, except for the purpose of export, during the appeal. They express concern that a third party may not be aware of whether say a licence is under appeal and is only returned to the licensee during the appeal period. To protect the innocent third party, members consider that there should be clear indication on the licence that it is being subject to appeal. The

Administration takes note of members' concern and is prepared to mark such licences as "under appeal" before they are returned to the licensee. Any third party who has doubt about the validity of a licence can also seek clarification from AFCD.

16. In response to members' enquiry on the composition, functions and modus operandi of AAB as well as the average time taken for an appeal to be handled by the Board, the Administration advises that AAB is established under the Administrative Appeals Board Ordinance (Cap. 442) (AABO). At present, one Chairman, four Deputy Chairmen and a panel of 46 members of AAB have been appointed pursuant to section 6 of AABO. The membership list is given in **Annex IV**. Section 6 of AABO provides that the Chairman and Deputy Chairman of AAB shall be persons who are qualified for appointment as District Judges under section 5 of the District Court Ordinance (Cap. 336). To lodge an appeal, an appellant should complete and forward an appeal form to the Secretary to AAB. After an appeal has been accepted by AAB, the respondent (i.e. the deciding authority whose decision has been appealed against) will be required to lodge with AAB and the appellant within 28 days a statement setting out, among others, the reasons and policy for the decision. The appellant can make representations on the statement to AAB within a specified period. AAB comprising the Chairman or the Deputy Chairman together with two panel members will normally hear the case within four months after an appeal is lodged. Parties to the appeal will be invited to make representations or be represented by a barrister or a solicitor. They may request AAB to call witnesses to give evidence if needed. Parties to the appeal will be informed of AAB's decision in writing and of the reasons of its decision.

Enforcement

17. Clause 27 provides that the Director may in writing authorize any public officer to exercise any powers and perform any of the duties conferred or imposed on the Director or an authorized officer by the Bill.

18. As authorized officers may include those from AFCD, members question the rationale for empowering AFCD officers to enter/inspect trading premises, dispose/forfeit things seized and arrest. They hold the view that such extensive powers should only be conferred on the disciplined force. The Administration's explanation is that 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 enforcement authority to check and ensure compliance after commencement of the new Ordinance, it is 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. However, the inspection can only be conducted within reasonable hours and the authorized officer

has no authority to enter any premises or any part of it that are used exclusively as a dwelling-house.

19. On the *power of arrest*, the Administration explains that under the Ordinance, AFCD officer needs to seek assistance from a Police officer or a Customs officer to make an arrest. Such an arrangement is sometimes ineffective because there may be cases where an AFCD officer needs to make an arrest immediately or risk losing the suspect. Besides, the power of arrest is provided to authorized officers of AFCD under other conservation-related legislation, such as the Forests and Countryside Ordinance (Cap. 96), Wild Animals Protection Ordinance (Cap. 170) and Country Parks Ordinance (Cap. 208). 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). Therefore, the proposal to provide AFCD officers with the power of arrest under the Bill is in line with these ordinances. The Administration further explains that the disposal/forfeiture provisions in the Bill are in line with CITES requirements where Parties are required to take appropriate measures, including confiscation, to enforce the Convention and to prohibit trade in specimens in violation of the Convention. Similar disposal and forfeiture provisions are also provided in the Ordinance.

20. The Bills Committee notes that under clause 38, a person who without reasonable excuse obstructs an authorized officer exercising his power to enter/inspect trading premises, dispose/forfeit things seized and arrest commits an offence. Clause 41 further stipulates that if an offence is prosecuted under clause 38, the court or magistrate may order any thing seized or any proceeds of sale of that thing to be forfeited to the Government. Even if no prosecution has been brought, an authorized officer may apply to the court or magistrate for an order to forfeit the thing seized or any proceeds of sale of that thing to the Government under clause 42. Members question the propriety of forfeiture based on the offence of obstruction.

21. According to the Administration, the Bill provides that a specimen of a scheduled species shall, without order, be forfeited to the Government if a person is convicted of an offence related 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, which will consider all circumstances of the case to decide whether the specimen should be forfeited or returned to the person/owner. It nevertheless notes members' view and agrees to delete the reference to clause 38 in clauses 41 and 42 to ensure forfeiture of things seized will not be based on the offence of obstruction.

22. On the *power to require scientific names and common names*, the Bills Committee notes that clause 29 empowers an authorized officer to require a person in possession of a suspected specimen of scheduled species to state its scientific name and common name. Members express concern that the trades may have difficulties

in providing the scientific names of the scheduled species in their possession, failing which traders shall be liable on conviction to a fine at level 5. They ask whether not knowing the scientific name amounts to reasonable excuse for non-compliance, and whether different levels of control will be considered for scheduled species (live or dead) under CITES Appendices.

23. The Administration's explanation is that according to the requirements of CITES, certificates or other relevant documents of a scheduled species should contain its scientific name. In the case of import, export, re-export, introduction from the sea or in transit 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 providing the identity and showing the scientific name of the scheduled species. 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 if the officer reasonably suspects that the animal or plant is being or has been imported, introduced from the sea, is being or 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. 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. The trades in general do not have any objection to clause 29. In light of members' concern, the Administration will hold further meetings with the trades to explain to them again the requirements under the Bill, including the provision of scientific names and common names of the specimens concerned.

24. As regards the term "in transit", the Bills Committee notes that clause 3 provides that a thing is in transit if it is brought into Hong Kong in or on a vessel, vehicle, train or aircraft from a place outside Hong Kong and is in the process of being taken to another place outside Hong Kong, that the thing remains at all times in or on the incoming carrier, and that it remains under the control of the Director or an authorized officer from the time the thing removed from the incoming carrier up to time it is taken outside Hong Kong. Members enquire about the measures which Hong Kong has taken to ensure that the content of the in-transit consignment will not be changed during transit.

25. The Administration's explanation is that under the existing mechanism of controlling specimens in transit, AFCD officers will check the particulars of the specimens against the accompanying documents at the import and export control points. In addition, AFCD officers will also escort the consignment during the transportation of the specimens which are in transit if considered necessary after

assessing the risk involved. From 2002 to October 2005, there were a total of about 2 000 cases of endangered species transiting through Hong Kong. No discrepancies of the specimens concerned between import and export control points were detected in all these cases. To address members' concern, the Administration will further improve the control mechanism by sealing consignments in transit to ensure that the content of the consignment will not be changed during transit. It also takes on board members' view that the meaning of "in transit" may not be sufficiently explicit to cover a person carrying a luggage containing controlled species on foot through the land control points and will amend the clause accordingly.

Penalty

26. Clause 44 provides that a person commits an offence if he, on an application for a licence or extension, renewal and variation of a licence, furnishes any false information and is liable on conviction a fine at level 6.

27. Members generally hold the view that the proposed penalty cannot reflect the severity of the offence. They consider that the Administration should review the level of penalty having regard to similar provisions under existing legislation and practices in other Parties to CITES. According to the Administration, it has drawn comparison to other legislation and found that different ordinances have very different penalty levels for similar offences. Different countries also impose different penalty levels for similar offences in their protection of endangered species legislation. In light of members' concern and after consultation with the trade, the Administration proposes that in addition to a fine at level 6, a person who commits an offence under clause 44 is also liable to imprisonment for three months on conviction. Members suggest increasing the penalty level in clause 44 to imprisonment for six months to achieve the necessary deterrent effect. The Administration accepts members' suggestion.

Exemption orders

28. According to the Administration, an exemption order under clause 47 may be made regarding the import, export and re-export of a specimen of a scheduled species which is subject to a loan, donation or exchange arranged for non-commercial purposes between registered scientific institutions.

29. Some members express concern about possible abuse of exemption orders, and consider that criteria should be worked out for considering applications for exemption orders, particularly by scientific institutions. The Administration's explanation is that according to CITES, the standards for the registration of a scientific institutions are as follows -

- (a) collections of animal or plant specimens, and records ancillary to them, permanently housed and professionally curated;

- (b) specimens accessible to all qualified users, including those from other institutions;
- (c) all accessories properly recorded in a permanent catalogue;
- (d) permanent records maintained for loans and transfers to other institutions;
- (e) specimens acquired primarily for purposes of research that is to be reported in scientific publications;
- (f) specimens prepared and collections arranged in a manner that ensures their utility;
- (g) accurate data maintained on specimen labels, permanent catalogues and other records;
- (h) acquisition and possession of specimens accord with the laws of the State in which the scientific institution is located; and
- (i) all specimens of species included in Appendix I permanently and centrally housed under the direct control of the scientific institution, and managed in a manner to preclude the use of such specimens for decoration, trophies or other purposes incompatible with the principles of the Convention.

The above standards will be adopted when SETW makes regulations for the registration of scientific institutions under clause 53. So far, no institution in Hong Kong has been registered as a scientific institution.

Adaptation of Convention instruments

30. Under clause 2 of the Bill, Convention instruments means a resolution, decision or notification adopted or made by the Conference of the Parties, or issued by the Secretariat, in relation to CITES. The relevant parts of Convention instruments that have the force of law in Hong Kong are set out in Schedule 3 with or without modification. Clause 53(b) also stipulates that SETW may by regulation provide for any matter so as to enable any part of a Convention instrument to have the force of law in Hong Kong with or without modification.

31. While acknowledging that some of the provisions in Schedule 3 are technical in nature, members note that certain terms under clause 2 are defined by drawing reference to the meaning assigned to them in Schedule 3, and the change of meaning of these terms may have impact on the implementation of the provisions in the Bill. By way of illustration, a person who commits an offence under clause 5 is liable on conviction to a fine of \$100,000 and to imprisonment for one year, but if the court is

satisfied that his act was carried out for “commercial purposes” defined under Schedule 3, the person is liable to a fine of \$5,000,000 and to imprisonment for two years. Members therefore consider it more appropriate to set out provisions relating to Convention instruments which have far-reaching implications, particularly the term “commercial purposes”, in the main text of the Bill.

32. According to the Administration, CITES contains 25 articles which lay down the principles of the Convention. In addition to these articles, there are resolutions, decisions or notifications adopted or made by the Conference of the Parties, or issued by the Secretariat of CITES, which aim to complement those broad principles with interpretative guidance, and additional rules and procedures. Such resolutions, decisions or notifications are regarded as “Convention instruments” as abovementioned. While the basic framework laid down by the text proper of CITES is to be provided in the main body of the Bill, “Convention instruments”, which would have the force of law in Hong Kong are set out in Schedule 3. These instruments cover mostly guidelines that are technical in nature and will not affect the principles of CITES that are incorporated in the main body of the Bill. Under CITES, Convention instruments adopted by the Conference of the Parties shall enter into effect 90 days after the meeting at which they are adopted unless otherwise specified in the Convention instruments concerned. It is desirable for the Administration to amend the local legislation as soon as practicable to ensure compliance with the CITES requirements. As the contents of these instruments may need to be amended from time to time by the Conference of Parties to cope with the changes in the latest developments in new technology, business practices and other varying situations, it is more appropriate to set out these elaborate guidelines in Schedule 3 of the Bill which can be amended through negative vetting process by the Legislature so as to ensure timely incorporation of the relevant changes into the domestic law.

33. As regards the term “commercial purposes”, the Administration’s explanation is that the basic principle of CITES on the protection of endangered species against over-exploitation through international trade is reflected in the clauses that impose heavier penalties on offences committed for commercial purposes. While the term is not defined in the CITES articles, the Conference of the Parties has passed a resolution giving guidelines on what kind of activities can be regarded as “commercial purposes”. The Administration considers the meaning of “commercial purposes” deriving from this resolution should be incorporated in Schedule 3 because the Conference of the Parties may revise the relevant instrument from time to time in order to keep pace with fast emergence of new commercial practices.

34. Members recognize the importance of protecting endangered species against over-exploitation through international trade, and that is why provisions relating to Convention instruments which have far-reaching implications, particularly the term “commercial purposes”, should not be set out in Schedule 3 because the amendment of which will only be in the form of an Order published in the Gazette, thereby leaving insufficient time for scrutiny by the Legislature. In light of repeated requests from members, the Administration agrees to move the term “commercial purposes” to

the main text of the Bill. It has also taken on board members' suggestion to review the drafting of Schedule 3, after consultation with the CITES Secretariat, to avoid any possible ambiguity in the application of Convention instruments.

35. On the definition of "commercial purposes", members note that there is difference between the Bill and the existing Ordinance regarding the interpretation of the term as follows -

The Bill	Section 13A(5) of the existing Ordinance
A purpose of obtaining profit or other economic benefit (whether in cash or in kind) and directed towards resale, exchange, provision of a service or other form of economic use or benefit, whether direct or indirect.	(a) any purpose relating to trade or business; (b) the buying, selling or exchange for benefit, gain, profit or reward of any scheduled species or controlled medicine, or any article or medicine which, by virtue of section 2B is deemed to be a scheduled species or a controlled medicine

They point out that the definition as drafted under the Bill may not be clear on whether an act will be construed as for "commercial purpose" if a loss is incurred in a trade or business of the scheduled species, and a benefit is obtained by a non-trading or non-business party, such as charity. Given the much higher level of penalties for offences related to "commercial purposes" in the Bill, the Administration is urged to review the scope of the definition of "commercial purposes" to ensure that it covers any act, the purpose of which is related to trade or business.

36. The Administration's explanation is that the definition of "commercial purposes" in the Bill is modelled on paragraph 2 of the CITES Resolution Conf. 5.10, and that the definition of "commercial purposes" under the Bill and the definition of "commercial purpose" in the existing Ordinance have broadly the same meaning. In light of members' concern, the Administration agrees to revise the definition of "commercial purposes" in the Bill to specifically include "a purpose relating to trade or business". It also agrees the "sale" should be covered by the definition for the avoidance of doubt.

Transitional provision

37. The Administration intends to provide a grace period of three months after the passage of the Bill before it comes into effect. In addition, clause 55(6) provides for a further grace period of three months after the commencement of the new Ordinance for any specimens of Appendix I or II species, the possession of which is not subject

to licensing control before the commencement of the new Ordinance. The grace period aims at allowing the trades to make arrangements to comply with the requirements, including disposing of their stock if considered necessary.

38. While welcoming the transitional provision, members express concern that a grace period of three months after the commencement of the new Ordinance for the possession of species currently not under the control of the Ordinance may not be sufficient as traders will require more time to acquire the required documents. According to the Administration, it has consulted the trades which have generally accepted the length of the grace period. However, in light of members' concern that some trades may still favour a longer grace period for the newly controlled species, the Administration is prepared to amend clause 55(6) to extend the further grace period from three to six months.

Committee Stage amendments

39. A set of Committee Stage amendments to be moved is in **Annex V**.

Recommendations

40. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 1 March 2006.

Advice sought

41. Members are requested to support the recommendations of the Bills Committee at paragraph 40 above.

Prepared by
Council Business Division 1
Legislative Council Secretariat
16 February 2006

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

Membership list

Chairman	Hon CHOY So-yuk, JP
Members	Hon Martin LEE Chu-ming, SC, JP Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon SIN Chung-kai, JP Hon WONG Yung-kan, JP Hon Tommy CHEUNG Yu-yan, JP Hon Albert CHAN Wai-yip Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, JP Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon WONG Ting-kwong, BBS (Total : 11 Members)
Clerk	Miss Becky YU
Legal Adviser	Miss Monna LAI
Date	1 July 2005

**List of organizations which have made
written and/or oral representations to the Subcommittee**

- (a) American and Canadian Ginseng Importers Trade Association (HK) Ltd
- (b) Kadoorie Farm & Botanic Garden
- (c) Hong Kong Chinese Medicine Merchants Association Ltd
- (d) Hong Kong Chinese Prepared Medicine Traders Association Ltd
- (e) Hong Kong Dried Sea Food & Grocery Merchants Association Ltd
- (f) Hong Kong Fur Federation
- (g) Hong Kong International Pot Plant & Gardening General Association
- (h) Hong Kong Yee Yee Tong Chinese Medicine Merchants Association Ltd
- (i) Po Sau Tong Ginseng & Antler Association Hong Kong Ltd
- (j) The Hong Kong Medicine Dealers' Guild
- (k) Sharks Fin and Marine Products Association Ltd
- (l) Sharks Fin Trade Merchants Association
- (m) Traffic East Asia
- (n) WWF Hong Kong

A Brief Comparison between Convention on International Trade in Endangered Species of Wild Fauna and Flora, Animals and Plants (Protection of Endangered Species) Ordinance and Protection of Endangered Species of Animals and Plants Bill

	Convention on International Trade in Endangered Species of Wild Fauna and Flora (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.

	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Animals and Plants (Protection of Endangered Species) Ordinance	Protection of Endangered Species of Animals and Plants Bill
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.

Membership Lists of the Administrative Appeals Board

Chairman

Mr Arthur LEONG Shiu-chung, G.B.S.

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PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment,
Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) By deleting the definition of "commercial purposes" and substituting -</p> <p>"commercial purposes" (商業目的) means -</p> <p>(a) a purpose relating to trade or business; or</p> <p>(b) a purpose of obtaining profit or other economic benefit (whether in cash or in kind) and directed towards sale, resale, exchange, provision of a service or other form of economic use or benefit, whether direct or indirect,</p> <p>and "non-commercial purposes" (非商業目的) shall be construed accordingly;"</p>

(b) In the definition of "Convention export permit", by deleting "Convention export permit" (《公約》出口准許證)" and substituting "Convention certifying document" (《公約》證明文件)".

(c) By adding -

"former licence" (前許可證) means a licence within the meaning of section 7 of the repealed Ordinance;".

3

By deleting the clause and substituting -

"3. Meaning of "in transit"

For the purposes of this Ordinance, a thing is in transit if -

- (a) it is brought into Hong Kong from a place outside Hong Kong;
- (b) it is in the process of being taken to another place outside Hong Kong; and
- (c) it remains under the control of the Director or an authorized officer from the time it is brought into Hong Kong up to the time it is taken outside

Hong Kong." .

- 5(1)(b)(ii) By deleting "Convention export permit" and substituting "Convention certifying document".
- 5(2)(b) By deleting "Convention export permit" and substituting "Convention certifying document".
- 11(1)(b)(ii) By deleting "Convention export permit" and substituting "Convention certifying document".
- 11(2)(b) By deleting "Convention export permit" and substituting "Convention certifying document".
- 17 (a) In paragraphs (a) and (b), by deleting "Convention export permit" and substituting "Convention certifying document".
- (b) In paragraph (c) -
- (i) by deleting "Convention export permit" and substituting "Convention certifying document";
- (ii) by deleting "that permit" and substituting "that document".
- 18 In paragraphs (a), (b) and (c), by deleting

"Convention export permit" and substituting
"Convention certifying document".

19(1) In paragraphs (a)(i) and (b), by deleting
"Convention export permit" and substituting
"Convention certifying document".

21 (a) By re-numbering the clause as clause 21(1).
(b) In subclause (1), by adding "by documentary
evidence or otherwise" after "the Director".
(c) By adding -

"(2) In subsection (1),
"documentary evidence" (文件證據)
includes but is not limited to a former
licence, a certificate in lieu or other
Convention certifying document."

22(1) By deleting "Convention export permit" and
substituting "Convention certifying document".

22(2) (a) In paragraph (a), by deleting "Convention
export permit" and substituting "Convention
certifying document".

(b) In paragraph (b) -
(i) by deleting "date of the expected

arrival of the vessel, vehicle,
train or aircraft in" and
substituting "intended date on";

- (ii) in subparagraph (iii), by adding
"where the animal is to be brought
into Hong Kong by a vessel,
vehicle, train or aircraft," before
"providing".

22(3) In the English text, by deleting "purpose" and
substituting "purposes".

29(1) By deleting "state" and substituting "give".

41 (a) In the heading, by deleting ", 38".

(b) By deleting ", 38".

42(1) By deleting ", 38".

44(3) By adding "and to imprisonment for 6 months" after
"level 6".

55 By deleting subclause (1) and substituting -

"(1) In this section, "relevant date"

(有關日期) means the date of commencement of

this Ordinance."

- 55(6) By deleting "3" and substituting "6".
- Schedule 1,
Part 1,
section 6 By deleting "countries" and substituting "places".
- Schedule 1,
Part 2,
Appendix III By deleting "*Pelodiscus sinensis*<Chinese softshell turtle>(China)".
- Schedule 1 In paragraph 2 of the annotations set out at the end of the Appendices -
- (a) in sub-subparagraph (ii), in the Chinese text, by deleting "是";
 - (b) by deleting "state" where it twice appears and substituting "place".
- Schedule 1 In paragraph 8 of the annotations set out at the end of the Appendices -
- (a) in subparagraph (e), by deleting "country" where it twice appears and substituting "place";
 - (b) by deleting "Convention documents" and substituting "Convention certifying documents".

Schedule 3,
Part 1,
item II

By deleting "state" and substituting "place".

Schedule 3,
Part 1,
item III

- (a) In paragraph 1(b), by deleting "country" and substituting "place".
- (b) In paragraph 3, in the English text, by deleting "are" and substituting "shall be".
- (c) In paragraph 4(a)(ii), by deleting "country" and substituting "place".
- (d) In paragraph 5 -
 - (i) in the English text, by deleting "are" and substituting "shall be";
 - (ii) by adding "shall" before "be treated as".
- (e) By deleting paragraph 7(a) and substituting -
 - "(a) any plant species or other taxa listed in Appendix I shall be annotated in accordance with Article XV of the Convention if the provisions of this Ordinance relevant to Appendix I are to apply to artificially propagated hybrids derived from such species or taxa;"
- (f) In paragraph 8, by deleting everything after "containers," and substituting "shall not be

considered as specimens of a scheduled species for the purposes of this Ordinance if they have been artificially propagated."

Schedule 3,
Part 1,
item IV

(a) In paragraph 3(b), by deleting "country" and substituting "place".

(b) In the heading immediately before paragraph 4, by deleting "the trade in" and substituting "marking of".

(c) By deleting paragraph 4 and substituting -
"4. A specimen bred in captivity shall be marked in accordance with the provisions on marking in the Resolutions adopted by the Conference of the Parties and the type and number of the mark shall be indicated on any Convention certifying document issued in respect of the specimen."

Schedule 3,
Part 1

By deleting item V.

Schedule 3,
Part 1,
item VI

(a) By deleting paragraphs 2 and 3.

(b) In paragraph 4, by deleting everything after "fragments" and substituting "shall not be considered as specimens of a scheduled

species for the purposes of this Ordinance.”.

(c) By deleting paragraph 5 and substituting -

“5. In this Schedule -

- (a) “coral sand” means coral material not identifiable to the level of genus and consisting entirely or in part of finely crushed fragments of dead coral no larger than 2 mm in diameter and which may also contain, amongst other things, the remains of Foraminifera, mollusc and crustacean shell, and coralline algae;
- (b) “coral fragments” means unconsolidated fragments of broken finger-like dead coral and other coral material between 2 and 30 mm in diameter, which are not identifiable to the level of genus;
- (c) “coral rock” means hard

consolidated coral material not identifiable to the level of genus but identifiable to the level of order, larger than 3 cm in diameter, formed of fragments of dead coral and which may also contain cemented sand, coralline algae and other sedimentary rocks, and includes live rock and substrate, but does not include dead coral;

- (d) "live rock" means pieces of coral rock to which are attached live specimens of invertebrate species and coralline algae not included in the Appendices and which are transported moist, but not in water, in crates;
- (e) "substrate" means pieces of coral rock to which are

attached invertebrates (of species not included in the Appendices) and which are transported in water like live corals;

(f) "dead coral" means pieces of coral identifiable to the level of species or genus, which are dead when exported, but which may have been alive when collected, and in which the structure of corallites (the skeleton of the individual polyp) is still intact;

(g) "live coral" means pieces of coral identifiable to the level of species or genus, which are alive and transported in water."

Schedule 3,
Part 2,
paragraph 1

By deleting "should" and substituting "shall".

Schedule 3,
Part 2,

By deleting "should" and substituting "shall".

paragraph 2

Schedule 3,
Part 2,
paragraph 3

- (a) In subparagraph (a), by deleting "country" where it twice appears and substituting "place".
- (b) In subparagraph (b), by deleting "country" where it twice appears and substituting "place".

Schedule 3,
Part 2,
paragraph 4

- (a) By deleting "The" and substituting "Subject to paragraph 16 of this Part, the".
- (b) By deleting "should" and substituting "shall".
- (c) In the English text, by deleting "may" and substituting "shall".

Schedule 3,
Part 2

By deleting paragraphs 5 and 6.

Schedule 3,
Part 2,
paragraph 9

By deleting everything before "either" and substituting -

"9. All pre-Convention certificates shall include".

Schedule 3,
Part 2

By deleting paragraph 10.

Schedule 3,
Part 2,

- (a) By deleting "should" and substituting

paragraph 11

"shall".

- (b) In the English text, by deleting "may" and substituting "shall".

Schedule 3,
Part 2

By deleting paragraph 12.

Schedule 3,
Part 2

By deleting paragraph 13 and substituting -

"13. A phytosanitary certificate used as a certificate of artificial propagation in accordance with Article VII, paragraph 5, of the Convention for the purpose of the export of an artificially propagated specimen of an Appendix II species shall include the scientific name of the species and the type and quantity of the specimens covered by the certificate, and bear a stamp, seal or other specific indication stating that the specimens are artificially propagated."

Schedule 3,
Part 2,
paragraph 15

By deleting everything after "trade in specimens" and substituting "of coral rock, where the genus cannot be readily determined, the scientific name for the specimens shall be *Scleractinia*".

Schedule 3,
Part 2,
paragraph 16

- (a) In subparagraph (a), by deleting "the port of

final destination" and substituting "a place of import".

(b) In subparagraph (c) -

(i) by deleting everything before "and the new date" and substituting -

"(c) the appropriate enforcement personnel of the place of import who extended the validity of the permit or certificate has included the date of arrival in that place";

(ii) by deleting "export permit or re-export certificate" and substituting "permit or certificate".

(c) In subparagraph (d), by deleting everything before "before" and substituting -

"(d) the shipment is to be imported into another place for consumption from the place of import".

(d) In subparagraph (e) -

(i) by deleting "export permit or re-export certificate" and

substituting "permit or
certificate";

(ii) by deleting "country" and
substituting "place".

Schedule 3,
Part 2

By deleting paragraph 17 and substituting -
"17. A permit or certificate issued
retrospectively shall not be accepted unless
it was issued in accordance with the
requirements concerning the retrospective
issue of documents under the Convention or
any Convention instrument."

Schedule 3,
Part 2

By deleting paragraphs 18, 19 and 20.

Schedule 3,
Part 2,
paragraph 21

(a) By deleting everything before "been altered"
and substituting -

"21. Where a permit or certificate has".

(b) By deleting "unless".

(c) By deleting "has been authenticated" and
substituting "shall be authenticated".

Schedule 3,
Part 2

By deleting paragraph 22 and substituting -
"22. Where a security stamp is affixed to a
permit or certificate, the security stamp

shall be cancelled by the stamp or seal and signature of the relevant authority issuing the document.".

Schedule 3,
Part 2

By deleting paragraph 23.

Schedule 3,
Part 2,
paragraph 24

(a) By deleting "that do not" and substituting "shall".

(b) By deleting "shall not be accepted".

Schedule 3,
Part 2,
paragraph 26

(a) By deleting "sample collections be" and substituting "sample collections shall be".

(b) In subparagraph (a), by deleting everything before ", on which" and substituting -

"(a) a sample collection shall be covered by an ATA carnet and be accompanied by a document".

(c) In subparagraph (b) -

(i) by deleting "permit issued under the Convention" and substituting "document";

(ii) by deleting "should" and substituting "shall".

(d) In subparagraph (c) -

(i) by deleting "permit issued under

the Convention" and substituting
"document";

(ii) by deleting "countries" and
substituting "places".

(e) In subparagraph (d), in the Chinese text, by
deleting "等".

Schedule 3,
Part 2,
paragraph 28

By deleting everything after "lost," and
substituting "the owner of the collection shall
inform the relevant authority issuing the document
and the relevant authority of the place in which
that matter occurred as soon as practicable.".

Schedule 3,
Part 2,
paragraph 29

(a) By deleting "not be accepted by Parties
unless they".

(b) In subparagraph (c), by deleting "country"
and substituting "place".

(c) In subparagraph (d) -

(i) by deleting "should" and
substituting "shall";

(ii) by deleting "state" and
substituting "place".

(d) In subparagraph (e), by deleting "country"
and substituting "place".

Schedule 3,
Annex to Part
2

- (a) In the cross-heading, by deleting "**should**" and substituting "**shall**".
- (b) In paragraph (g), by deleting "The" and substituting "In the case of an export permit, the".
- (c) In paragraph (l), by deleting "handwritten".
- (d) By deleting everything after paragraph (m) and substituting -
 - "(n) In the case of a certificate of origin, a statement that the specimens originate in the place that issued the certificate."

Schedule 3,
Part 3

- (a) By deleting "should" and substituting "shall".
- (b) In paragraph (b), by adding ", frozen museum specimens, duplicate herbarium specimens" after "embedded museum specimens".