

Summary of views/concerns
(as at 9 November 2005)

Subject/Clause	Organization	Concern/View	Administration's response and follow-up action
General provisions	American and Canadian Ginseng Importers Trade Association (HK) Ltd	<p>Supports the early passage of the Bill as it would provide for -</p> <p>(a) Removal of the current requirement for import permits for Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendix II species but there would be a need to introduce a procedure to assist the trade in ascertaining the validity of CITES permits prior to the importation of Appendix II species;</p> <p>(b) Consolidation of scheduled items under the streamlined licensing system;</p> <p>(c) Relaxation of the requirement for travelers to hold licences to import/export/possess items under CITES Appendix II; and</p> <p>(d) Power to require production of things and to inspect premises suspected of keeping specimen of a scheduled species for commercial purpose, but issues of privacy would need to be addressed.</p>	<p>The Administration welcomes the support of the Association for the early passage of the Bill.</p> <p>Under the Protection of Endangered Species of Animals and Plants Bill (the Bill), a person who imports in compliance with clause 18 a specimen of an Appendix II species that is not a live animal or plant of wild origin will not need to apply for an import licence from the Agriculture, Fisheries and Conservation Department (AFCD). He/she will only need to hold a valid export permit issued by the relevant Authority of the exporting country or place. If an importer requires assistance in ascertaining the validity of any such export permit, he can forward a copy of the permit to AFCD for verification. The Administration trusts that this verification service provided by AFCD will address traders' concern of invalid export permits.</p> <p>Regarding the issues of privacy, AFCD will comply with all relevant Data Protection Principles under the Personal Data (Privacy) Ordinance(Cap. 486) when implementing the new control and licensing scheme after the enactment of the Bill.</p>

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General provisions	WWF Traffic East Asia	Support the Bill as it would (a) synchronize the scheduled species with CITES Appendices and fulfil Hong Kong's obligation under CITES; and (b) empower authorized officers to inspect places or premises which might have illegally imported/possessed specimens.	The Administration welcomes the support of the two organizations for the Bill.
	Po Sau Tong Ginseng and Antler Association Hong Kong Limited (PST) Chinese Medicine Merchants Association (CMMA)	Support the Bill as it would provide protection for precious natural resources	The Administration welcomes the support of the two associations for the Bill.
Control on the trading of endangered species	Hong Kong Dried Seafood and Grocery Merchants Association	Since the Bill was meant to provide for the protection of endangered species, it should not affect the trading of shark fins which did not involve endangered species of sharks.	The Government is committed to fully discharging our obligations under CITES. International trade in endangered species, including certain shark species, is strictly regulated under the current Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (the Ordinance), which will be replaced by the Bill after its enactment. The Bill, however, will not affect the trading of shark species which are not listed as endangered species under CITES.

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Sections 17(b), 18(b) and 19(b) on the import of scheduled species	Hong Kong Chinese Prepared Medicine Traders Association (HKCPMTA)	Suggests that the phrase “an authorized officer has inspected the specimen” under sections 17(b), 18(b) and 19(b) be amended to “an authorized officer should inspect or arrange to inspect the specimen”. This would facilitate logistical arrangements as importers could be able to transport the specimen to a storage area for subsequent inspection by the authorities.	In respect of the import of endangered species, the requirement of conducting the inspection upon the landing of the species in Hong Kong is intended to ensure that only the specimens specified in the export permit and/or import licence will be allowed to be imported. To allow consignees to take the goods away from the landing place and to conduct the inspection later will defeat the purpose of the inspection and may create an enforcement loophole.
Section 21 Possession of control of specimens of Appendix II species	WWF Hong Kong	As a person would not be required under section 21 to obtain a licence for possession of Appendix II species if he could prove to the satisfaction of the Director of Agriculture, Fisheries and Conservation that the specimen is not a live animal or plant of wild origin, there is a need to explicitly define the word “satisfaction”. For example, by stating that the person should provide valid and traceable invoice, certificate or other documents in which name, address and contact number of document issuers are clearly printed, to prove that his possession of Appendix II species is not coming from the wild.	Clause 21 provides flexibility by allowing different means of providing proof, such as providing the relevant certificate, previous possession licence or photographs etc. As it is not feasible to list out all the possible means of proofs, it is more appropriate to allow certain degree of flexibility in the legislation.

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Section 21 Possession of control of specimens of Appendix II species	Traffic East Asia	While possession of non-live specimens should not necessarily require a formal permit, a certain level of control, such as documentation by appropriate authorities, is appropriate and necessary	CITES does not control the local possession of endangered species. The local control over possession of endangered species is a stricter domestic measure. As illegal trade in endangered species has reduced substantially, it is appropriate to remove certain "excessive" measures in order to minimize inconvenience to the trades concerned.

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<p>Part 6 Authorized Officers Sections 27 to 38 on the powers of authorized officers</p>	<p>PST</p>	<p>(a) Expresses concern about powers of inspection, and entry by authorized officers and requests for clarification of such powers; and</p> <p>(b) Authorized officers should not be empowered to arrest as such should only be conferred upon police officers</p>	<p>To enable the enforcement authority to check and ensure compliance of the Bill after its passage and commencement, the Administration considers 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.</p> <p>Under Cap.187, an AFCD officer needs to seek the assistance from the Police or Customs officer to make an arrest. This is ineffective from enforcement point of view. Under clause 37 of the Bill, an authorized officer (including an AFCD officer), is empowered to carry out an arrest. When an authorized officer arrests a person under such power, he shall immediately take the person to the nearest police station or hand him over to a police officer to be dealt with in accordance the Police Force Ordinance (Cap.232). Sufficient training will be provided to AFCD's authorized officers in relation to the exercise of the power of arrest.</p>

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<p>Section 29 Power to require scientific names and common names</p>	<p>CMMA</p>	<p>The trades would have difficulties in providing the scientific names of the scheduled species in their possession.</p>	<p>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.</p> <p>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 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.</p>

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<p>Section 29 Power to require scientific names and common names (cont')</p>	<p>CMMA(cont')</p>	<p>The trades would have difficulties in providing the scientific names of the scheduled species in their possession. (con't)</p>	<p>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.</p> <p>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.</p>
<p>Section 34 Power of seizure</p>	<p>CMMA</p>	<p>As there are circumstances under which dealings in scheduled species are permitted, there is a need to provide for a mechanism of control such that specimens of permitted dealings would not be subject to seizure by authorized officers.</p>	<p>Traders who have concerns on whether dealings in certain specimens are permitted could approach AFCD with the relevant documents for verification. The Administration trusts that this verification service provided by AFCD will address traders' concern.</p>

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Section 43 Disposal of forfeited things, etc	Kadoorie Farm and Botanic Garden Corporation	Reference should be made to the "World Conservation Union Guidelines for the Placement of Confiscated Animals" regarding the disposal of forfeited things. http://www.iucn.org/themes/ssc/pubs/policy/confiscated/confguidenglish.pdf	AFCD has already established guidelines for disposal of animal and plant specimens forfeited under the existing Ordinance. Such guidelines follow the guidelines of CITES. The CITES Secretariat has made reference to the World Conservation Union (IUCN)'s guidelines when drawing up its own guidelines.
Section 55 Transitional provisions	HKCPMTA	There should be a grace period of at least 18 months after the passage of the Bill to enable the trades to make preparatory arrangements to meet the requirements of the Bill. For example, some of the Chinese medicinal products containing specimen of endangered species might need to be suitably changed to avoid contravening the provisions of the Bill.	The Bill will benefit the trades by streamlining the licensing procedure. Some trades have indicated that they would like to see the Bill coming into effect as soon as possible. While sufficient time will be allowed for certain trades to adapt to the new changes, there is a need to strike a balance to ensure that the benefits of the Bill brought to the other trades could be realized as soon as possible. The past experience of AFCD indicates that a grace period of three months will be sufficient for the trades to make preparation for the new requirements.