

The Administration's Response to Comments and Questions raised at the Bills Committee on the Protection of Endangered Species of Animals and Plants Bill meeting held on 9 January 2006

Definition of "Commercial Purposes"

At the meeting on 9 January 2006, Members asked the Administration to consider revising the definition of "commercial purposes" in Schedule 3 of the Protection of Endangered Species of Animals and Plants Bill (the Bill) to specifically include "a purpose relating to trade or business" in the definition. We agree with Members' suggestion. In addition, we suggest that "sale" should be covered by the definition for the avoidance of doubt. The revised definition of "commercial purposes" is as follows:

“ “Commercial Purposes” means-

(a) a purpose relating to trade or business; or

(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;”.

2. Regarding Members' suggestion to move the definition of "commercial purposes" from Schedule 3 to the main text of the Bill, as explained at earlier meetings, the reason for placing the definition in Schedule 3 is to enable us to incorporate in such definition any future changes to the meaning of "commercial purposes" brought about by any resolution of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in a timely manner. Having considered Members' concern, we agree to move the definition of "commercial purposes" to the main text of the Bill.

Penalty Level for Furnishing False Information

3. At the last Bills Committee meeting, Members suggested that the penalty level for the offence of providing false information under clause

44 should be increased. We have drawn comparison to other local legislation and found that different ordinances have very different penalty levels for similar offences. Some examples of the penalty levels for similar offences are set out below:

	Ordinance	Penalty Level
1.	Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap.139L), section 10	A fine of \$10,000
2.	Dogs and Cats Ordinance (Cap.167), section 8(b)	A fine at level 3 (i.e. \$10,000)and imprisonment for 3 months
3.	Marine Fish (Marketing) By-Laws (Cap. 291B), section 24(e) and (f)	A fine of \$ 500
4.	Marine Parks and Marine Reserves Regulation (Cap.476A), sections 20 and 21(2)	A fine at level 3(i.e.\$ 10,000)
5.	Police Force Ordinance (Cap.232), section 63	A fine of \$5,000 and imprisonment for 6 months
6.	Independent Commission Against Corruption Ordinance (Cap.204),section 13B(b)	A fine of \$20,000 and imprisonment for 1 year
7.	Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap.570), section 5	A fine at level 2 (i.e.\$5,000) and imprisonment for 6 months

Different countries also impose different levels of penalties for similar offences in their protection of endangered species legislation. Some overseas examples are as follows:

	Ordinance	Penalty Level
1.	Endangered Species Act (UK)	No such offence
2.	Environment Protection and Biodiversity Conservation Act (Australia)	No such offence
3.	Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (Canada)	A fine not exceeding CAD 50,000 in the case of a corporation, and a fine not exceeding CAD 25,000 or imprisonment for a term not exceeding 6 months, or both in the case of a person
4.	Endangered Species (Import and Export) Act (Singapore)	A fine not exceeding SGD 2,000 or imprisonment for a term not exceeding 6 months or both

4. Having considered Members' views, we propose that in addition to a fine at level 6, a person who commits an offence under clause 44(1) or 44(2) is also liable to imprisonment for three months on conviction.

Guidelines for Exemptions of Scientific Institutions

5. We explained to Members that an exemption order would be made regarding the import, export and re-export of a specimen of a scheduled species which is the subject of a loan, donation or exchange arranged for non-commercial purposes between registered scientific institutions. Members requested us to provide the criteria for registration as a scientific institution. According to CITES Resolution

Conf 11.15 (Rev. CoP 12), the standards for the registration of a scientific institution 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 accessions 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.”.

6. The above standards will be adopted when the Secretary for the Environment, Transport and Works makes regulations for the registration of scientific institutions under clause 53.

Proposed Amendments to Schedule 3 to the Bill

7. At the meeting on 29 November 2005, Members suggested the Administration to review the drafting of Schedule 3 so as to avoid any

possible ambiguity in the application of Convention instruments. To address Members' concern, we have revisited Schedule 3 and clarified with CITES Secretariat on the interpretation of various CITES instruments. Having considered CITES Secretariat's clarification, we propose to make a number of amendments to Schedule 3 as set out at **Annex A** to remove any potential ambiguity.

Proposed Committee Stage Amendments

8. Taking into account Members' views expressed in the previous Bills Committee meetings, we propose to make a number of Committee Stage Amendments to the Bill as set out at **Annex B**.

Environmental Protection Department
January 2006

SCHEDULE 3

[ss. 2, 4, 19 &
48(1)]

CONVENTION INSTRUMENTS

This Schedule sets out, with or without modification, the relevant parts of Convention instruments that have the force of law in Hong Kong.

PART 1

INTERPRETATION AND APPLICATION

I. “Hybrid animal” (雜交動物)

1. Hybrid animals that have in their recent lineage one or more specimens of species included in Appendix I or Appendix II shall be subject to the provisions of this Ordinance just as if they were full species, even if the hybrid concerned is not specifically included in the Appendices.
2. If at least one of the animals in the recent lineage is of a species included in Appendix I, the hybrids shall be treated as specimens of species included in Appendix I (and shall be eligible for the exemptions of Article VII of the Convention when applicable).
3. If at least one of the animals in the recent lineage is of a species included in Appendix II, and there are no specimens of an Appendix I species in such lineage, the hybrids shall be treated as specimens of species included in Appendix II.
4. The words “recent lineage” shall generally be interpreted to refer to the previous four generations of the lineage.

II. “Appropriate and acceptable destination” (適當和可接受的目的地)

Where the term “appropriate and acceptable destination” appears in an annotation to the listing of a species in Appendix II with reference to the export of or international trade in live animals, this term shall be defined to mean a destination where the relevant authority of the state of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it.

III. “Artificially propagated” (人工培植)

Regarding the definition of “artificially propagated”

1. The following definitions for terms are used –

- (a) “under controlled conditions” means in a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include but are not limited to tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding or protection from weather; and
- (b) “cultivated parental stock” means the ensemble of plants grown under controlled conditions that are used for reproduction, and which must have been, to the satisfaction of the relevant authority of the exporting country –
 - (i) established in accordance with the provisions of the Convention and relevant domestic laws and in a manner not detrimental to the survival of the species in the wild; and

- (ii) maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigour and productivity of the cultivated parental stock.

2. The term “artificially propagated” shall be interpreted to refer to plant specimens –

- (a) grown under controlled conditions; and
- (b) grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules that either are exempt or have been derived from cultivated parental stock.

3. Plants grown from cuttings or divisions ~~are~~ shall be considered to be artificially propagated only if the traded specimens do not contain any material collected from the wild.

4. An exception may be granted and specimens deemed to be artificially propagated if grown from wild-collected seeds or spores only if, for the taxon involved –

- (a) (i) establishment of a cultivated parental stock presents significant difficulties in practice because specimens take a long time to reach reproductive age, as for many tree species;
- (ii) the seeds or spores are collected from the wild and grown under controlled conditions within a range state, which must also be the country of origin of the seeds or spores;

- (iii) the relevant authority of that range state has determined that the collection of seeds or spores was legal and consistent with relevant domestic laws for the protection and conservation of the species; and
 - (iv) the relevant authority of that range state has determined that –
 - (A) collection of the seeds or spores was not detrimental to the survival of the species in the wild; and
 - (B) allowing trade in such specimens has a positive effect on the conservation of wild populations;
- (b) at a minimum, to comply with subparagraph (a)(iv)(A) and (B) above –
- (i) collection of seeds or spores for this purpose is limited in such a manner such as to allow regeneration of the wild population;
 - (ii) a portion of the plants produced under such circumstances is used to establish plantations to serve as cultivated parental stock in the future and become an additional source of seeds or spores and thus reduce or eliminate the need to collect seeds from the wild; and
 - (iii) a portion of the plants produced under such circumstances is used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated; and

- (c) in the case of operations propagating Appendix I species for commercial purposes under such conditions they are registered with the Secretariat.

Regarding grafted plants

5. Grafted plants ~~are~~ shall be recognized as artificially propagated only when both the root-stock and the graft have been taken from specimens that have been artificially propagated and grafted specimens consisting of taxa from different Appendices shall be treated as specimens of the taxon included in the more restrictive Appendix.

Regarding hybrids

6. Hybrids shall be subject to the provisions of this Ordinance even though not specifically included in the Appendices if one or both of their parents are of taxa included in the Appendices, unless the hybrids are excluded by a specific annotation in Appendix II or Appendix III.

7. Regarding artificially propagated hybrids –

- (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 ~~the most restrictive~~ Appendix I are to apply to artificially propagated hybrids derived from such species or taxa ;
- (b) if a plant species or other taxon listed in Appendix I is annotated, an export permit or re-export certificate shall be required for trade in specimens of all artificially propagated hybrids derived from it; but
- (c) artificially propagated hybrids derived from one or more unannotated Appendix I species or other taxa shall be treated as being included in Appendix II and entitled

therefore to all exemptions applicable to artificially propagated specimens of species listed in Appendix II.

Regarding flasked seedlings of Appendix I orchids

8. Flasked seedlings of orchid species listed in Appendix I obtained *in vitro*, in solid or liquid media, and transported in sterile containers, shall not be considered as specimens of a scheduled species for the purposes ~~be interpreted as being exempt from the application~~ of this Ordinance ~~only~~ if they have been artificially propagated ~~in accordance with the definition provided above, taking into account the provisions of Article VII, paragraph 4, and Article I, paragraph (b)(iii), of the Convention and agreeing to a derogation from readily recognizable part or derivative for this exemption.~~

IV. “Bred in captivity” (圈養繁殖)

Regarding terminology

1. For specimens of animal species bred in captivity –
 - (a) “first-generation offspring (F1)” are specimens produced in a controlled environment from parents at least one of which was conceived in or taken from the wild;
 - (b) “offspring of second generation (F2) or subsequent generation (F3, F4, etc.)” are specimens produced in a controlled environment from parents that were also produced in a controlled environment;
 - (c) the “breeding stock” of an operation means the ensemble of the animals in the operation that are used for reproduction;
 - (d) “a controlled environment” is an environment that is manipulated for the purpose of producing animals of a particular species, that has boundaries designed to prevent

animals, eggs or gametes of the species from entering or leaving the controlled environment, and the general characteristics of which may include but are not limited to: artificial housing; waste removal; health care; protection from predators; and artificially supplied food.

Regarding the term “bred in captivity”

2. The definition provided below shall apply to the specimens bred in captivity of species included in the Appendices, whether or not they were bred for commercial purposes.

3. The term “bred in captivity” shall be interpreted to refer only to specimens born or otherwise produced in a controlled environment, and shall apply only if -

- (a) the parents mated or gametes were otherwise transferred in a controlled environment, if reproduction is sexual, or the parents were in a controlled environment when development of the offspring began, if reproduction is asexual; and
- (b) the breeding stock, to the satisfaction of the competent government authorities of the exporting country –
 - (i) was established in accordance with the provisions of the Convention and relevant domestic laws and in a manner not detrimental to the survival of the species in the wild;
 - (ii) is maintained without the introduction of specimens from the wild, except for the occasional addition of animals, eggs or gametes, in accordance with the provisions of the Convention and relevant domestic laws and in a

manner not detrimental to the survival of the species in the wild –

- (A) to prevent or alleviate deleterious inbreeding, with the magnitude of such addition determined by the need for new genetic material; or
 - (B) to dispose of confiscated animals; or
 - (C) exceptionally, for use as breeding stock; and
- (iii) has produced offspring of second generation (F2) or subsequent generation (F3, F4, etc.) in a controlled environment; or is managed in a manner that has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment.

Regarding the trade in specimens of Appendix I species bred in captivity

4. The trade in a specimen bred in captivity shall be permitted only if it is marked in accordance with the provisions on marking in the Resolutions adopted by the Conference of the Parties and if the type and number of the mark are indicated on the document authorizing the trade.

~~V. “Commercial purposes” (商業目的)~~

~~—The term “Commercial purposes” means 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.~~

VI. “Readily recognizable part or derivative”
(可輕易地識別的部分或衍生物)

1. The term “readily recognizable part or derivative” shall be interpreted to include any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of this Ordinance.

~~2. All products of ranching operations shall be considered to be readily recognizable.~~

~~3. Importing Parties that require that the Convention export permits or re-export certificates accompany imports of parts and derivatives will not waive that requirement when such parts and derivatives are not considered to be readily recognizable by the exporting or re-exporting Party.~~

4. Coral sand and coral fragments ~~are~~ shall not ~~be~~ considered as specimens of a scheduled species for the purposes ~~readily recognizable and are therefore not covered by the provisions~~ of this Ordinance.

5. For the different forms of corals, the following definition is adopted –

- (a) Coral sand – material 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. Not identifiable to the level of genus.
- (b) Coral fragments (including gravel and rubble) – unconsolidated fragments of broken finger-like dead coral

and other material between 2 and 30 mm in diameter, which is not identifiable to the level of genus.

- (c) Coral rock (also live rock and substrate) – hard consolidated material, >3 cm in diameter, formed of fragments of dead coral and which may also contain cemented sand, coralline algae and other sedimentary rocks. “Live rock” is the term given to 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. “Substrate” is the term given to 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. Coral rock is not identifiable to the level of genus but is recognizable to the level of order. The definition excludes specimens defined as dead coral.
- (d) Dead coral – pieces of coral that are dead when exported, but that may have been alive when collected, and in which the structure of corallites (the skeleton of the individual polyp) is still intact; specimens are therefore identifiable to the level of species or genus.
- (e) Live coral – pieces of live coral transported in water and that are identifiable to the level of species or genus.

PART 2

PERMITS AND CERTIFICATES

Regarding standardization of permits and certificates
issued under the Convention

1. To fulfil the requirements of Article VI of the Convention and relevant Resolutions, export and import permits, re-export and pre-Convention certificates, certificates of origin and certificates of captive breeding and artificial propagation (except where phytosanitary certificates are used for this purpose) ~~should~~shall include all the information specified in the Annex.
2. Every form ~~should~~shall be printed in one or more of the working languages of the Convention (English, Spanish, French) and in the national language if it is not one of the working languages.

Regarding export permits and re-export certificates

3. A re-export certificate shall also specify –
 - (a) the country of origin, the number of the export permit of the country of origin and its date of issue; and
 - (b) the country of last re-export, the number of the re-export certificate of that country and its date of issue,or if the case arises –
 - (c) justification for the omission of any of the aforementioned information.
4. ~~The~~Subject to paragraph 16 of this Part, the provisions of Article III, paragraph 3, Article IV, paragraph 4, Article V, paragraph 3, and Article VI, paragraph 2, of the Convention ~~should~~shall be understood to mean that an export permit or re-export certificate shall be valid for a period of no more than 6 months from the date on which it was granted and that it ~~may~~shall not be accepted to authorize export, re-export or import except during the period of validity.
- ~~5.—After the expiry of the said 6 month period of validity, an export permit or re-export certificate should be considered as void and of no legal value~~

~~whatsoever, except in the case referred to in paragraph 16 below relating to timber species.~~

6. Parties ~~should~~shall not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin.

Regarding pre-Convention certificates

7. A pre-Convention certificate shall also specify –

- (a) that the specimen covered by the certificate is pre-Convention; and
- (b) the date of acquisition of the specimen.

8. For the purposes of determining whether a specimen was acquired before the provisions of the Convention applied to the specimen (“pre-Convention”) –

- (a) the date from which the provisions of the Convention apply to a specimen shall be the date on which the species concerned was first included in the Appendices to the Convention; and
- (b) the date on which a specimen is acquired shall be considered as the date the specimen was known to be either –
 - (i) removed from the wild; or
 - (ii) born in captivity or artificially propagated in a controlled environment; or
 - (iii) if such date is unknown or cannot be proved, any subsequent and provable date on which it was first possessed by a person.

9. Parties ~~should~~shall include on all pre-Convention certificates issued either the precise date of acquisition of the specimens concerned or a certification that

the specimens were acquired before a specific date, in accordance with paragraph 8(b) above.

Regarding certificates of origin

10. Certificates of origin for export of specimens of species listed in Appendix III shall only be issued by the relevant authority if trade is from a state not a Party to the Convention, and that Parties shall not accept certificates of origin unless they are issued by such authorities.

11. The provisions of Article V, paragraph 3, of the Convention ~~should~~shall be understood to mean that a certificate of origin shall be valid for a period of not more than 12 months from the date on which it was granted, and that it ~~may~~shall not be accepted to authorize export or import except during the period of validity.

12. ~~After the expiry of the said 12-month period of validity, a certificate of origin should be considered as void and of no legal value whatsoever.~~

Regarding phytosanitary certificates

13. Any Party having considered the practices governing the issue of its phytosanitary certificates for export of artificially propagated Appendix II specimens, and having determined that such practices provide adequate assurance that the specimens are artificially propagated, may consider these documents as certificates of artificial propagation in accordance with Article VII, paragraph 5, of the Convention. Such certificates must include the scientific name of the species and the type and quantity of the specimens and bear a stamp, seal or other specific indication stating that the specimens are artificially propagated.

14. Phytosanitary certificates shall be used exclusively for the purpose of export from the place of artificial propagation of the specimens concerned.

Regarding permits and certificates for coral specimens

15. On permits and certificates for trade in specimens ~~of that are readily recognizable as~~ coral rock, where the genus cannot be readily determined, the scientific name for the specimens ~~should~~ shall be “*Scleractinia*”.

Regarding permits and certificates for timber species included in Appendix II and Appendix III with the annotation “Designates logs, sawn wood and veneer sheets”

16. The validity of the export permit or re-export certificate may be extended beyond the normal maximum of 6 months after the date of issue, on the condition that –

- (a) the shipment has arrived in the port of final destination before the date of expiration indicated on the permit or certificate and is being held in Customs bond (i.e. is not considered as imported);
- (b) the time extension does not exceed 6 months from the date of expiration of the permit or certificate and no previous extension has been granted;
- (c) the appropriate enforcement personnel has included the date of arrival and the new date of expiration in the box relating to special conditions, or an equivalent place, on the export permit or re-export certificate, certifying the modification with an official stamp or seal and signature;
- (d) the shipment is imported for consumption from the port where it was located when the extension was approved and before the new date of expiration; and
- (e) a copy of the export permit or re-export certificate as amended in accordance with subparagraph (c) above is

sent to the relevant authority of the country of export or re-export, allowing it to amend its annual report, and to the Secretariat.

Regarding retrospective issue of permits and certificates

17. The relevant authority of an exporting or re-exporting country shall –
- (a) not issue permits and certificates under the Convention retrospectively;
 - (b) not provide exporters, re-exporters and/or consignees in importing countries with declarations about the legality of exports or re-exports of specimens having left its place of export or re-export without documents required by the Convention; and
 - (c) not provide exporters, re-exporters and/or consignees in importing countries with declarations about the legality of permits or certificates which at the time of export, re-export or import did not meet the requirements of the Convention.
18. The relevant authority of an importing country, or of a country of transit or transshipment, shall not accept permits or certificates that were issued retrospectively.
19. Exceptions to paragraph 17 or 18 above shall not be made with regard to Appendix I specimens, and shall be made with regard to Appendix II and Appendix III specimens only where the relevant authority of both the exporting (or re-exporting) and the importing countries are, after a prompt and thorough investigation in both countries and in close consultation with each other, satisfied –

- (a) that the irregularities that have occurred are not attributable to the exporter (or re-exporter) or the importer; or, in the case of specimens imported, exported or re-exported as personal or household effects including live pets travelling with their owner, the relevant authority, in consultation with the relevant enforcement authority, is satisfied that there is evidence that a genuine error has been made, and that there was no attempt to deceive; and
- (b) that the export (or re-export) and import of the specimens concerned are otherwise in compliance with the Convention and with the relevant legislation of the countries of export (or re-export) and import.

20. Whenever exceptions are made –

- (a) the permit or certificate shall clearly indicate that it is issued retrospectively; and
- (b) the reasons for the relaxation, which ~~should~~shall come within the purview of paragraph 19 above, ~~are~~shall be specified on the permit or certificate and a copy sent to the Secretariat.

Regarding acceptance and clearance of documents and security measures

21. Permits and certificates shall not be accepted if they have been altered (by rubbing out, scratching out, etc.), modified or crossed out, unless the alteration, modification or crossing-out has been authenticated by the stamp and signature of the relevant authority issuing the document.

22. When a security stamp is affixed to a permit or certificate, the Parties shall refuse the document if the security stamp is not cancelled by a signature and a stamp or seal.

23. Any permit or certificate that is invalid, including authentic documents that do not contain all the required information as specified in this Part or that contain information that brings into question the validity of the permit or certificate, shall not be accepted.

24. Permits and certificates that do not indicate the scientific name of the species concerned (including subspecies when appropriate) shall not be accepted, except in the case where –

- (a) the Conference of the Parties has agreed that the use of higher taxon names is acceptable;
- (b) the relevant authority issuing the permit or certificate can show it is well justified and has communicated the justification to the Secretariat;
- (c) certain manufactured products contain pre-Convention specimens that cannot be identified to the species level; or
- (d) worked skins or pieces thereof of *Tupinambis* species that were imported before 1 August 2000 are being re-exported, in which case it is sufficient to use the indication *Tupinambis* spp.

Regarding documents for sample collection covered by ATA (which means “temporary admission”) carnets

25. For the purpose of the procedure described in paragraphs below, the term “sample collection” refer to collections of legally acquired dead specimens, parts and derivatives of species included in Appendix II or Appendix III and of Appendix I species bred in captivity or artificially propagated, which are treated as Appendix II specimens, which are not entitled to be sold or otherwise transferred, and that will cross borders for presentation purposes before returning to the place from which such movement was first authorized.

26. Such sample collections shall be considered as “in transit” and entitled to the special provisions stipulated in Article VII, paragraph 1, of the Convention on the following conditions –

- (a) a sample collection~~s~~ shall be covered by an ATA carnet~~s~~ and be accompanied by a ~~standard-permit~~Convention certifying document ~~issued under the Convention~~, on which it shall be indicated that the document is a permit or certificate either for “export” or “re-export”, as appropriate, and/or “other” and, in addition, it shall be clearly specified that the document is issued for a “sample collection”;
- (b) it shall be specified in an appropriate place of the document ~~permit issued under the Convention~~ that “This document covers a sample collection and is invalid unless accompanied by a valid ATA carnet. The specimen(s) covered by this certificate may not be sold or otherwise transferred whilst outside the territory of the place that issued this document.” The number of the accompanying ATA carnet ~~should~~ shall be recorded;
- (c) the name and address (including the country) of the importer and the exporter or re-exporter shall be identical, and in an appropriate place of the document ~~permit issued under the Convention~~ the names of the countries to be visited shall be indicated;
- (d) the date of expiry of such a document shall not be later than that of the ATA carnet accompanying it and the period of validity shall not be more than 6 months from the date on which it was granted.

27. Such a permit or certificate shall not be transferable and when, during a stay in a place, it is lost, stolen or accidentally destroyed, only the relevant authority that issued it may issue a duplicate. This duplicate will bear the same number, if possible, and the same date of validity as the original document, and contain the following statement: “This document is a true copy of the original” or state that it replaces the original bearing the number XX.

28. If specimens in the collection are stolen, destroyed or lost, [the owner of the collection shall inform](#) the relevant authority issuing the document ~~shall be immediately informed as well as~~ [and](#) the relevant authority of the country in which that [matter](#) occurred [as soon as practicable](#).

Regarding permits and certificates issued by the state not party to the Convention

29. Permits and certificates issued by states not party to the Convention shall not be accepted by Parties unless they contain –

- (a) the name, stamp and signature of a competent issuing authority;
- (b) sufficient identification of the species concerned for the purposes of the Convention;
- (c) certification of the origin of the specimen concerned including the export permit number from the country of origin, or justification for omitting such certification;
- (d) in the case of export of specimens of a species included in Appendix I or II, certification to the effect that the competent scientific institution has advised that the export will not be detrimental to the survival of the species (in case of doubt a copy of such advice ~~should~~ [shall](#) be required) and that the specimens were not obtained in contravention of the laws of the state of export;

- (e) in the case of re-export, certification to the effect that the competent authority of the country of origin has issued an export document that substantially meets the requirements of Article VI of the Convention;
- (f) in the case of export or re-export of live specimens, certification to the effect that they will be transported in a manner that will minimize the risk of injury, damage to health or cruel treatment.

30. Documentation from states not party to the Convention shall only be accepted if details of the competent authorities and scientific institutions of such states are included in the most recent updated list of the Secretariat or after consultation with the Secretariat.

ANNEX TO PART 2

PERMITS AND CERTIFICATES

Information that ~~should~~ shall be included in permits and certificates issued under the Convention

- (a) The full name and the logo of the Convention
- (b) The complete name and address of the relevant authority issuing the permit
- (c) A unique control number
- (d) The complete names and addresses of the exporter and importer
- (e) The scientific name of the species to which the specimens belong (or the subspecies when it is relevant in order to determine in which Appendix the taxon concerned is included) in accordance with the adopted standard nomenclature
- (f) The description of the specimens, in one of the Convention's 3 working languages, using the nomenclature of specimens distributed by the Secretariat

- (g) ~~The~~ In the case of an export permit, the numbers of the marks appearing on the specimens if they are marked or if the Conference of the Parties prescribes marking (specimens from ranches, subject to quotas approved by the Conference of the Parties, originating from operations which breed animals included in Appendix I in captivity for commercial purposes, etc.)
- (h) The Appendix in which the species or subspecies or population is listed
- (i) The source of the specimens
- (j) The quantity of specimens and, if appropriate, the unit of measure used
- (k) The date of issue and the date of expiry
- (l) The name of the signatory and his or her ~~handwritten~~ signature
- (m) The embossed seal or ink stamp of the relevant authority
- (n) In the case of a certificate of origin, a statement that the specimens originate in the place that issued the certificate.

~~(n) A statement that the permit, if it covers live animals, is only valid if the transport conditions comply with the Guidelines of the Convention for Transport of Live Animals or, in case of air transport, with the Live Animals Regulations issued by the International Air Transport Association~~

~~(o) The registration number of the operation, attributed by the Secretariat, when the permit involves specimens of a species included in Appendix I that originate from an operation practising breeding in captivity or artificial propagation for commercial purposes (Article VII, paragraph 4, of the Convention), and the name of the operation when it is not the exporter~~

~~(p) The actual quantity of specimens exported, certified by the stamp or seal and signature of the authority that carried out the inspection at the time of the exportation~~

~~(q) When specimens are marked with microchip transponders, all microchip codes, together with the trade mark of the transponder manufacturer, and, where possible, the location of the microchip in the specimen~~

~~To be included in certificates of origin only~~

~~(r) A statement that the specimens originate in the place that issued the certificate.~~

PART 3

REQUIREMENTS RELATING TO EXEMPTION FOR NON-COMMERCIAL LOAN, DONATION OR EXCHANGE OF MUSEUM AND HERBARIUM SPECIMENS

For the purposes of implementing the exemption for scientific exchange in Article VII, paragraph 6, of the Convention, the requirement that herbarium specimens, preserved, dried or embedded museum specimens, frozen museum specimens, duplicate herbarium specimens or live plant material or the container used to transport such specimens carry a label issued or approved by a relevant authority ~~should~~ shall be met if the label –

- (a) bears the acronym “CITES”;
- (b) identifies the contents as herbarium specimens, preserved, dried or embedded museum specimens, frozen museum specimens, duplicate herbarium specimens or live plant material for scientific study; and
- (c) sets out the name and address of the sending institution and the codes of the exporting and importing institutions over the signature of a responsible officer of that registered scientific institution.

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> <ul style="list-style-type: none">(a) a purpose relating to trade or business; or(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>and "non-commercial purposes" (非商業目的) shall be construed</p>

accordingly;".

(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 3 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 2,
Appendix III By deleting "*Pelodiscus sinensis*<Chinese softshell
turtle>(China)".

Schedule 1 In paragraph 8 of the annotations set out at the
end of the Appendices, by deleting "Convention
documents" and substituting "Convention certifying
documents".

Schedule 3,
Part 1,
item III (a) In paragraph 3, in the English text, by
deleting "are" and substituting "shall be".

(b) In paragraph 5 -

(i) in the English text, by deleting "are"
and substituting "shall be";

(ii) by adding "shall" before "be treated
as".

(c) 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;".

- (d) 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

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."

Schedule 3,
Part 2,
paragraph 1

By deleting "should" and substituting "shall".

Schedule 3,
Part 2,
paragraph 2

By deleting "should" and substituting "shall".

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 paragraph 5.

Schedule 3,
Part 2,
paragraph 6

By deleting "should" and substituting "shall".

Schedule 3,
Part 2,
paragraph 9

By deleting "should" and substituting "shall".

Schedule 3,
Part 2,
paragraph 11

(a) By deleting "should" and substituting "shall".

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

Schedule 3,
Part 2

By deleting paragraph 12.

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
20(b)

- (a) By deleting "should" and substituting "shall".
- (b) In the English text, by deleting "are" and substituting "shall be".

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 Convention certifying 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), by deleting "permit issued under the Convention" and substituting "document".

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 country in which that matter occurred as soon as practicable."

Schedule 3,
Part 2,
paragraph
29(d)

By deleting "should" and substituting "shall".

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".