Study on the Effectiveness of the EC Wildlife Trade Regulations

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NOTE ON AUTHORSHIP

This report was written under contract to the European Commission, coordinated by Rob Parry-Jones, TRAFFIC, in collaboration with IUCN. Individual research components were undertaken by, in alphabetical order, Jonathan Barnaby and Rob Parry-Jones, Capucine Chamoux, Helen Corrigan with guidance and input from Thomasina Oldfield (IUCN Species Programme), Sharelle Hart (IUCN Environmental Law Centre) and Lotte Laursen. The proceedings of the workshop held on the Isle of Vilm, November 2006, where EU Member State governments gathered to assess and discuss how the EC wildlife trade regulations might be improved, compiled by Jonathan Barnaby and Rob Parry-Jones, also contributed to this report. These research components are detailed in the methodology section of the report.

The findings of the individual research components were reviewed and edited by TRAFFIC staff, and further developed by Colman Ó Críodáin within his capacity as a consultant to TRAFFIC. Substantial additional information was also provided by Colmán Ó Críodáin based on his extensive experience and knowledge, and through consultation with EU Member State governments, the European Commission, the CITES Secretariat and other stakeholders.

This report benefits from many contributors, but authorship is credited to Colmán Ó Críodáin.

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TABLE OF ACRONYMS

CIRCA	Communication & Information Resource Centre Administrator (Online information network of the European Commission)
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoP	Conference of the Parties
EC	European Community
ECJ	European Court of Justice
EG	Enforcement Group
EU	European Union
GATT	General Agreement on Tariffs and Trade
IAS	Invasive Alien Species
IEEP	Institute for European Environment Policy
IUCN	The World Conservation Union
IUCN-ROfE	The World Conservation Union Regional Office for Europe
IUCN-SSC	The World Conservation Union Species Survival Commission
MA	Management Authority
MEA	Multilateral Environmental Agreement
NDF	Non-detriment Finding
SA	Scientific Authority
SNM	Stricter National Measure
SRG	Scientific Review Group
TAM	Traditional Asian Medicine
UNEP-WCMC	United Nations Environment Programme World Conservation Monitoring Centre
WTO	World Trade Organisation

EXECUTIVE SUMMARY

Unsustainable international wildlife trade has long been recognised as a major threat to biodiversity. On the other hand, Regulation and sustainable management of such trade can bring benefits – especially to poorer communities around the world – and can serve as an economic incentive to conserve wildlife habitats or to refrain from more environmentally destructive economic activities.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was adopted in response to this dilemma. The European Union constitutes one of the largest and most diverse markets for wildlife and wildlife products in the world. Consequently, regulation of wildlife trade at Community level has long been one of the cornerstones of EU nature conservation policy. All Member States are Parties to CITES, whose provisions are implemented in a common manner across the Community through *Council Regulation (EC) No. 338/97* and *Commission Regulation (EC) No. 865/2006*, henceforth the EC (Wildlife Trade) Regulations.

While the prevailing view of these Regulations is positive, many Member States and stakeholders have found common ground in terms of what they see as flaws and areas for improvement. Some Member States complain about the number of licenses required for specimens of species that are commonly in trade (and, in some cases, commonly captive-bred); claiming that the paper burden associated with one species over another is not always indicative of the real conservation status of those species. There is a widespread view that the Regulations are too complex, so that when a non-routine case arises, it is difficult to decide how it should be treated. Inevitably, from time to time Member States interpret the Regulations differently and this can lead to problems when specimens move from one Member State to another. This complexity could also weaken the effectiveness of the Regulations in conservation terms.

It is also felt that the guidance available on the operation of the Regulations is not sufficient. Businesses and others have frequently complained of poor consultation with regard to the decision-making process set up by the Regulations. Exporting countries argue that the legislation can operate unfairly towards them.

Given these considerations, the European Commission decided to commission a study of the effectiveness of the Regulations in order to determine whether and what legislative amendments and/or (non-legislative) actions would lead to more cohesive and effective Regulations. The study has been undertaken by a consortium consisting of TRAFFIC and IUCN with input provided by the Institute for European Environmental Policy (IEEP).

The study consisted of the following elements:

- A survey of the views of traders;
- A survey of the views of Member States and a cost-benefit analysis of resources allocated;
- A review of the compatibility of the Regulations with CITES and with other EU conservation law;
- An overview of problems of detail in the interpretation and implementation of the Regulations;
- A survey of Member States' stricter national measures;
- An examination of the effectiveness of EU import restrictions; and
- An assessment of what legislative amendments or non-legislative actions might improve the effectiveness of the Regulations, including an assessment of the associated advantages and disadvantages of such options.

The study made use of the outcomes of a workshop organized by the European Commission and Germany in Vilm, Germany in November 2006 at which most aspects of the Regulations were discussed in detail by representatives of Member States' Authorities, as well as the Commission. A visit was undertaken to the CITES Secretariat in September 2007 which also facilitated useful exchanges of views.

Based on these elements, the following issues came to the fore as warranting more detailed treatment:

- Whether or not it is legitimate to treat certain species more strictly in the Regulations than in the Appendices to the Convention (including species that are also protected under Community Directives);
- Whether or not it is appropriate for the Regulations to treat Appendix II species more strictly than is the case in the Convention – or, conversely, whether greater regulation even of internal trade in such species is required;
- Whether or not the current level of regulation of internal trade of Annex A species (which correspond for the most part to Appendix I species) is appropriate;
- Whether or not the present regime governing personal and household effects is appropriate; and
- Whether or not the Regulations are the most appropriate means of addressing the problem of invasive alien species.

The survey of traders' views indicated that, in general, they understood the aims of the Regulations and traders in most Member States were generally satisfied with implementation. However, responses varied between Member States often reflecting the national measures or procedures in place. A range of recommendations for improvement were put forward, particularly with regard to speeding up the applications process for permits/certificates, having better access to information from CITES Authorities and increasing transparency of the decision-making process.

Member States pointed to the resource requirements of the Regulations and to the amount of time taken with relatively routine permitting requirements, such as for reptile leather products. It was readily apparent that more thought must be given to focussing resources on areas where they are most needed in conservation terms.

With regard to the issue of compatibility with CITES, numerous inconsistencies were noted, the more important differences clearly being intentional: the stricter treatment of some species in the EC Annexes vis-à-vis the CITES Appendices and the requirement for import permits for Annex B/ Appendix II species. The slowness of the process for transposing amendments to the Appendices into the Annexes was also noted.

In terms of compatibility with other EU nature conservation law, it was noted that, over time, the treatment of some species in the Annexes to the Regulations no longer corresponds to their (stricter) treatment under the Birds and Habitats Directives, although it was also noted that the stricter legislation is the one which must apply.

The overview of difficulties of interpretation identified a number of areas where there is confusion and offered suggestions as to how these might be resolved. The more serious areas included the following:

- Personal and household effects, including hunting trophies;
- Marking;
- Invasive alien species;
- Sanctions;
- Intra-Community trade of Annex A species;
- Caviar;
- Entry points and transit procedures; and
- The relationship between Management and Scientific Authorities.

Options and suggestions were offered for resolution of these areas of difficulty.

With regard to Member States' stricter national measures, the study found that these were intended to serve a number of purposes including the following:

- Facilitation of gathering of information;
- Verification of legal origin of specimens;
- Protection of indigenous flora and fauna; and

- Prevention of the introduction of alien invasive species.

Among all the measures examined, those that gave rise to most discussion related to additional marking/ registration/ book-keeping requirements for Annex B species. Many Member States wished to see provisions relating to this issue incorporated into the Regulations while others were concerned about the consequential administrative burden.

With regard to the effectiveness of EU import restrictions, the study found that, in some cases, these have contributed to more sustainable exploitation in the Range States but that in other cases the trade may simply have shifted elsewhere, leaving original concerns unaddressed.

Moving to the topics that were subject to more detailed analysis, with regard to the question of **alignment of the Annexes to *Regulation 338/97* with the Appendices to the Convention**, a number of issues were identified.

1. The present situation precludes automatic transposition of CoP amendments into the Regulations and thus leads to embarrassing delays in enacting such amendments. **If the Annexes (other than Annex D) were aligned with the Appendices, then CoP amendments to Appendices I and II – and published amendments to Appendix III – could apply automatically without the requirement to publish new Annexes.**

2. The intention to list all CITES-listed species protected under **EC Directives** on **Annex A** of *Regulation 338/97* is no longer reflected in the Annexes and this can only be corrected by taking the Regulation back to Council. The options would then be:
    a. To abandon this practice and to stipulate instead in the body text of the Regulation that it **did not override stricter treatment** of any annexed species under other EC legislation; or
    b. To provide that, in future, **Annex A amendments** relating to species protected under EU law would not require recourse to Council but could be done by the **Commission** in the same way as for CoP amendments; or
3. To **amend the Directives** so that the prohibitions on commercial trade in species that they protect would not apply to specimens of such species originating outside the EU (in this regard there is widespread unwillingness to re-open these texts at the present time).
4. While the inclusion of additional **non-CITES species on Annexes A and B** – and the **stricter treatment of others** in those Annexes relative to the Appendices - contributes to the non-alignment of the Annexes with the Appendices, the Member States remain of the view that for some species this is warranted. Nevertheless, the option remains to bring forward CoP proposals for such cases.

On the question of **stricter treatment of Annex B** species relative to Appendix II – with regard to the requirement for an import permit and a second non-detriment finding, it is important to distinguish between these two requirements. The former has an enforcement objective in that it allows prior sight of the export permit for the relevant specimen so that fraudulent export permits can be detected. The scope for greater synchronisation with the Significant Trade Review process in CITES was discussed, as were measures to improve the rigour and transparency of the scientific evaluation process. The options identified were as follows:

- Maintenance of the **status quo**;
- Implementation of the present regime in a more **pro-active way**, working with exporting countries to overcome problems that have given rise to negative opinions from the Scientific Review Group;
- **Removal** of the requirement for **import permits** for Annex B species;
- **Removal** of the requirement for **import-related non-detriment findings**;
- **Alignment** of import restrictions with the **Review of Significant Trade** and other multilateral measures; or
- A **less precautionary wording** for Articles 4(1)(a)(i) and 4(2)(a) of *Regulation 338/97*.

On the other hand, many Member States are of the view that the degree **of regulation of internal trade in Annex B** species is not sufficient. They argued for certification and marking for specimens of some – if not all – species. Others felt that, with the volume of such species in trade, this would amount to over-regulation and would be too great an administrative burden. Between these opposing views, a suggested "middle ground" was that it would be sufficient to require traders to keep adequate records that would allow enforcement authorities to investigate cases where there were *prima facie* suspicions. Accordingly, the options identified – reflecting these opposing views - were a combination of some or all of the following:

- To provide for **compulsory marking and certification** of at least some Annex B species;
- To stipulate that **possession** of specimens of Annex B species is **prohibited** except in accordance with the Regulations and relevant national laws; or
- To maintain the legislative status quo but **improve guidance** and information exchange on the types of documentation that might constitute adequate proof of legal acquisition.

Many Member States and traders felt that the current level of regulation of **internal trade in Annex A species** is burdensome and the question of abandoning the certification requirement for specimens of such species was considered. Certainly, many of the certificates actually issued are for species that are easy to breed and are common in captive breeding. However, given that some Member States favour certification even for Annex B species, such a move would face opposition. A compromise would be to extend the list of species in Annex X to *Regulation 865/2006* – that is, Annex A species that do not require certification by virtue of the abundance of captive-bred specimens from within the Community. The options identified were:

- **Improved and simplified marking** regulations and protocols;
- Developing ways to **categorise applications that are referred to the Scientific Authority** so that every individual case does not need to be referred;
- **Re-considering the listing** of species that are listed in Annex A but not listed in Appendix I of the Convention;
- **Addition of more species to Annex X** of Regulation 865/2006;
- Amendment of Article 62(1) to reflect a **"positive listing"** approach whereby only species in the corresponding Annex (i.e. a "reversed" Annex X) require certificates;
- **Removal of certification requirements** for exempted specimens of Annex A species;
- For those species where certification requirements are retained, **such requirements would also apply to simple possession.**

The current regime regarding **personal and household effects** attracted some criticism. The fact that it differs from that in the Convention was noted, although it could be argued that the latter is no less complex. It was suggested that the prohibition on re-sale of such specimens is restrictive, although this was introduced in the light of the Appendix II listing of one African elephant population. Finally, concern was expressed that the present regime does not allow the Community to restrict imports of hunting trophies of Annex B species in cases where there are conservation concerns – although the same applies also to other categories of personal and household effects. Measures put forward for consideration included:

- Aligning the definition of the term "personal and household effect" with that in Resolution Conf. 13.7, with the principle effect that it would be stipulated that such specimens must be **legally acquired**;
- Aligning the rules governing import and export of personal effects with those in the Convention so that such specimens would be **exempted from the requirement for export permits or re-export certificates in certain circumstances**;
- **Removal** of some or all of the **derogations** which allow limited quantities of certain types of specimens to be imported or exported without any documentation;
- **Clarification that the re-sale** of personal and household effects is not prohibited as such; and

- Amendment or removal of provisions designed to facilitate the import of **hunting trophies** as personal effects.

With regard to **Invasive Alien Species (IAS)**, concerns were expressed about the public perception regarding such species being placed in the same Annex (Annex B) as vast numbers of species of international importance. It was noted that the criteria for listing IAS on Annex B are very restrictive while, on the other hand, the provisions are of no use in dealing with species that are indigenous to one part of Community territory but invasive in another. Nor are accidental introductions addressed. Ideally, a **separate legislative framework** should be developed for addressing all IAS issues, including the need to minimize accidental introductions, the need to alert Member States when escapes occur and the need to address species that are indigenous in one part of the Community but invasive in another. **In the meantime, Member States should be encouraged to collaborate on a voluntary basis** – including via national legislation – and the scope for greater use of the existing provisions of Regulation 338/97 – including Article 9(6) - should be explored.

Finally, the study offered various procedural options for the way forward. These are not mutually exclusive; in reality, the outcome could be a combination of some or all.

- **Amendment of Council *Regulation 338/97***: In terms of addressing all the issues identified in the study (other than those where the responsibility lies with Member States) this is the ideal option. However it would take a considerable amount of time and resources – on the part of the Commission and Member States – and could lead to he politicization of what are really technical issues.
- **Amendment of Commission *Regulation 865/2006***: Many of the issues raised could be solved – at least in part – through this option. Furthermore, the opportunity could be taken for an overhaul of the Regulation with a view to making it more comprehensible.
- **Other legislative measures**: At least in theory, some of the anomalies between the Regulations and EU nature conservation Directives could be corrected by amendment of the latter, while the issue of invasive alien species could be dealt with by way of a dedicated legal instrument.
- **Proposals to future CoPs**: Some simplification could be achieved – and the conservation objectives of the Regulation enhanced – by proposals for amendments to the Appendices or for CoP Resolutions. However, there is no guarantee that these would be passed.
- **Non-legislative measures**: Many of the issues raised in this study could be addressed - at least in the short term – by better guidance and agreement of common interpretations, reflecting the agreed outcomes of the Vilm workshop.

1. INTRODUCTION

1.1 BACKGROUND

Unsustainable international trade in wildlife is regarded as one of the major factors driving species extinction (together with habitat destruction and alien invasive species). That said, the importance of encouraging sustainable wildlife trade is not often given due recognition. Properly managed and regulated trade can provide an important income source for poor communities in many parts of the world. In doing so, it serves as an incentive to conserve flora and fauna *in situ*. In the case of species that are difficult to manage, the temptation to eradicate them completely would be overwhelming, were it not for the prospect of being able to trade them profitably.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was negotiated in 1973 and entered into force in 1975 in response to this problem. Apart from the Convention on Biological Diversity, it has the greatest number of Parties of any biodiversity-related Multilateral Environmental Agreement (MEA).

Virtually every general study of wildlife trade in the European Union (EU) begins with the statement that it constitutes one of the largest and most diverse markets for wildlife, and wildlife products, in the world. It is no surprise, therefore, that regulation of wildlife trade at Community level has been one of the cornerstones of EU nature conservation policy for over 25 years. The first Community legislation to give effect to the basic provisions of CITES, *Council Regulation (EEC) No. 3626/82*, entered into force in 1984. At the time, not all of the then Member States were Parties to the Convention. That Regulation left considerable discretion to Member States as to how they would implement the more detailed aspects of CITES – in particular, the Resolutions adopted by the Conference of the Parties (CoP).

With the abolition of internal trade controls and the adoption of more comprehensive legislation on the conservation of flora and fauna within the Community, the Commission proposed a more comprehensive Regulation in 1992. It was five more years before this new legislation entered into force. Ten years later, all Member States are Parties to CITES and its provisions are currently implemented in a common manner across the Community through *Council Regulation (EC) No. 338/97* and *Commission Regulation (EC) No. 865/2006*[1], henceforth the *EC (Wildlife Trade) Regulations*

It is all too common for discussions on the operation of a given suite of laws to focus on the negative aspects rather than the positive. Therefore, it must be said at the outset that – among the Member States and, it transpires, amongst traders – there is a considerable level of positive feeling towards the Wildlife Trade Regulations. It is felt that they lay down a comprehensive and detailed legislative framework for implementing CITES, and generally serve the aims for which they were established, namely the protection of wild fauna and flora from unsustainable levels of international trade.

Nevertheless, over the passage of time, diverging views have emerged among Member States' Authorities and other stakeholders as to how the Regulations could be improved. This divergence of views stems largely from differing philosophical perspectives as to how strict the Regulations should be.

Some feel that the Community legislation should be modelled more closely on the Convention itself, as elaborated by relevant Resolutions of the Conference of the Parties (CoP). The present legislation is much stricter in many respects – particularly with regard to species listed on Appendix II of the Convention. This is an issue that is of relevance not only to stakeholders within the EU but also to third

[1] In this report, where reference is made to "the Council Regulation" it denotes *Regulation (EC) No 338/97*, while references to "the Commission Regulation" denote *Regulation (EC) No 865/2006*.

countries and to the CITES Secretariat. The latter recognises that the Convention gives Parties the right to adopt stricter domestic measures. However, it encourages them to first see whether existing CITES multilateral processes might address a particular concern. If not, it suggests that Parties might craft their stricter domestic measures as narrowly as possible, review them periodically and withdraw them when they were no longer necessary. At the last meeting of the CoP, Parties agreed that their stricter measures should be reviewed to ensure that they were "effective in order to adhere to the objectives of the Convention" (Decision 14.28).

Exporting countries argue that the legislation can operate unfairly towards them. For example, they argue that it demands high standards of management on their part of wild populations of listed species while breeders within the EU are making money from trade in captive-bred specimens of those same species. Whilst a lack of understanding of the EC Regulations in third countries can exacerbate difficulties, greater communication between the EU and countries from where imports into the EU have been suspended, together with subsequent follow-up to address conservation issues identified, could greatly enhance the effectiveness of the EC Regulations. Some commentators go further and argue that the requirement in the Regulations for an import permit in respect of Appendix II species is an infringement of the sovereignty of exporting countries.

There is also debate about the extent to which the Annexes to the Council Regulation should diverge from the Appendices of the Convention. The stricter treatment of some species in the Annexes – and the inclusion of an entirely separate fourth annex – Annex D both give rise to debate.

Management Authorities in some Member States – as well as traders and hobbyists – also complain about the number of licenses required for species that are commonly in trade (and, in some cases, common in captive breeding). Furthermore, the paper burden associated with one species over another is not always indicative of the real conservation status of those species. An excessive paper burden generates costs for Member States' Authorities (both the Management Authorities and Customs) and also for traders, since completion of the paperwork takes time and there may be delays in getting the necessary permits or certificates back from the relevant Authorities. It also detracts from issues of greater conservation concern.

On the other hand, there are others who feel that the Regulations are not strict enough in ensuring the legal origin and traceability of specimens and listed species. Among those holding such views are Management Authority personnel in some Member States who feel that the conservation benefits justify the higher paper burden, even for the less threatened species. Some Member States see the need for regulation of internal trade even in species listed on Annex B of the Council Regulation while others believe that this is unduly burdensome and out of proportion to the conservation risk. Some would even argue that the present level of regulation of internal trade in Annex A species is excessive.

There are also concerns that the imposition of extra paperwork carries the risk of increasing costs for traders to the point where smuggling, even of less valuable species, becomes worthwhile. Once such trade goes underground, it is very difficult to persuade the players to return to compliant trading, even if the burden is subsequently lightened.

In summary, all Member States agree that different species and different types of specimens pose different conservation risks, that the degree of regulation should be commensurate with the risk and that most resources should be deployed where the risk is greatest. There is much less agreement as to how to achieve this in practice and whether or not the present Regulations achieve a good balance, go too far or do not go far enough.

Personal and household effects are a concrete example of the divergence of views among Member States. Both the Convention and the Regulations provide for lighter – but different – procedures for this category of specimens. There is recognition that such trade can often be relatively benign in conservation terms, that the volume is much lower than for bulk commercial trade and that non-compliance cases can lead to a level of distress for the holder of the specimen that is out of proportion

to the overall conservation risk. On the other hand, products of some highly endangered species are freely available in certain range States as tourist souvenirs and so some level of regulation is necessary.

There is also a divergence of views concerning the extent to which the Regulations should reflect an ethical stance on animal welfare and related issues. At present, the Regulations do include provisions regarding the appropriate housing and care of live specimens – both animals and plants. There is broad agreement that these are necessary insofar as they reduce wastage of such specimens, which could increase off-take to unsustainable levels. However, beyond this broad consensus, some stakeholders have ethical objections to the keeping of live animals in captivity or would at least like to see more stringent provisions regarding their welfare – independent of any conservation considerations.

Hunting trophies are another specimen type that can provoke strong views. Some see trophy hunting as a means to attach considerable added value to species that would otherwise be difficult and contentious to manage sustainably - and, thus, to generate conservation benefits for the species in question. Others point to instances where sustainable management of such species is not taking place. Furthermore, at least some opponents of trophy hunting are motivated by a profound distaste for the killing of animals for this purpose.

Among those Member States who believe – for one reason or another – that the Regulations should be stricter, some have taken the step of enacting stricter national measures, which is their right under the Treaties, within certain limitations. However, inevitably, these stricter measures generate confusion and added bureaucracy when specimens move from one Member State to another. Ideally, it would be preferable to reach a measure of agreement on those stricter measures that could be enacted at Community level so that the harmonisation of wildlife trade legislation in Member States would be enhanced.

Beyond these fundamental issues, there is also a widespread view that the Regulations are too complex, so that when a non-routine case arises, it is difficult to decide how it should be treated. Often the provisions that might determine the outcome are in widely scattered articles of *Regulation 338/97* and *Regulation 865/2006*. In addition, there are a number of inconsistencies or apparent inconsistencies within the texts. Inevitably, from time to time Member States interpret the Regulations differently and this can lead to problems when specimens move from one Member State to another. This complexity could also weaken the effectiveness of the Regulations in conservation terms.

Allied to this – and despite the effort invested by the Commission in providing guidelines – it is felt that the guidance available on the operation of the Regulations is not sufficient and at times is not made widely available, leading to inconsistent application in the Community.

One issue that contributes to the complexity of the Regulations is the fact that – unlike the Convention – they have the aim of regulating the import of invasive alien species (IAS) as well as endangered or vulnerable species. Whether they achieve this affectively or merely send a confused message is an issue that has been a subject of much discussion, as shall be seen.

Businesses and others have frequently complained of poor consultation with regard to the decision-making process set up by the Regulations, feeling that the Commission and Member States need to be more open in their deliberations and to improve their communication with the business community. Whilst this opinion remains true for some traders in some Member States, others felt that channels and levels of communication were reasonable. Bearing in mind that the Regulations are implemented by 27 different Member States with differing levels of experience and resources, such differences are, perhaps, to be expected.

1.2 THE PRESENT STUDY

Given the passage of nearly ten years since the entry into force of the Regulations, the European Commission decided to commission a study of the effectiveness of the Regulations in order to determine whether legislative amendments and/or (non-legislative) actions would lead to more cohesive and effective Regulations, and facilitate more efficient implementation of these measures. The study has been undertaken by a consortium consisting of TRAFFIC and IUCN, with input from the Institute for European Environmental Policy (IEEP).

The objective of this study was to evaluate the effectiveness of the EC Wildlife Trade Regulations in the context of the overall aims of CITES and of the resources available to implement the Regulations. The Commission specified three criteria for evaluation of the Regulations:

- **Efficiency** – whether the net effect of the Regulations is commensurate with the resources required to implement them effectively;
- **Simplicity** – whether or not the Regulations are over-complicated in relation to their substantive provisions; and
- **Conservation benefit** – whether or not the Regulations contribute to the conservation of listed species *in situ* and whether or not this contribution could be enhanced.

In identifying options for legislative amendments or non-legislative actions to improve the effectiveness of the Regulations, the study focused on major issues identified, detailed below under Section 4, exploring these options in the context of efficiency, simplicity and conservation benefit. In assessing these options, the study also identified the impact one action might have in other areas. For example, increasing permitting requirements might ease the burden on enforcement officers, but could result in a corresponding increase in administrative burden for Management Authorities. A formal Impact Assessment, in accordance with Commission Guidelines on Impact Assessment, was not undertaken for a number of reasons, noted in Section 2 - Methodology.

Four more main sections follow in this report.

- **Section 2, Methods,** sets out the organisation and methodology of the study.
- **Section 3, Outcomes,** summarises the findings for each component of the study, with options and recommendations for the problems encountered.
- **Section 4, Options for Major Issues of Substance,** consists of an overview of some of the more fundamental changes that were considered to the current regime. All of these have been mentioned above, specifically:
    - alignment of the annexes of the Council Regulation with the appendices of the Convention;
    - removal of the requirement for import permits for specimens of Annex B species;
    - greater regulation of internal trade in specimens of Annex B species;
    - removal of the requirement for internal trade certificates for specimens of Annex A species;
    - changes in the rules governing personal and household effects; and
    - treatment of invasive alien species.
- **Section 5, Procedural Options for the Way Forward,** summarises the broad legislative and non-legislative options available for resolution of the problems of detail encountered in the previous sections – these include:
    - Amendment of *Council Regulation (EC) No. 338/97*;
    - Amendment and/or complete redrafting of *Commission Regulation EC) No. 865/2006*;
    - Submission of proposals to the Conference of the Parties which could then be transposed into the Regulations; and/ or
    - Provision of greater guidance and clearer interpretation.

From the beginning it was recognised that the first option, amendment of the Council Regulation, would take some time, require considerable resources and could give rise to politicised debates on what

should be technical issues. However, until all the issues were examined in detail, the possibility had to be admitted that some problems could only be solved by recourse to this option. Furthermore, should this course be considered necessary, there were likely to be many less important issues which might not of themselves justify re-opening the text but which could be looked at in the event that it had to be re-opened for more fundamental reasons.

2. METHODS

The objective of this report is to bring together the various activities undertaken by the study with the aim of evaluating the effectiveness of the EC Wildlife Trade Regulations in relation to the overall aims of CITES, while balancing this against the resources available in the Commission and the Member States for implementation of the Regulations.

This project was undertaken as a consortium between TRAFFIC Europe and IUCN Regional Office for Europe (ROfE) with input provided by The Institute for European Environmental Policy (IEEP).

The research undertaken for this study consisted of eight components in the form of desk studies, legal analyses and analyses of questionnaires (to Member States Authorities, traders and range States – backed up by follow-up telephone interviews where necessary).

The study was able to make use of the outcomes of a workshop organized by the European Commission and Germany in Vilm, Germany in November 2006, at which most aspects of the Regulations were discussed in detail by representatives of Member States' Management, Scientific and enforcement Authorities, as well as the Commission, TRAFFIC, IUCN and the CITES Secretariat. The bulk of the discussions were worked out in four separate working groups as follows:

1. Scientific issues – implementation of Article 4 of the Council Regulation and related issues;
2. Import and export procedures and derogations – implementation of Articles 4, 5 and 7 of the Council Regulation;
3. Internal trade – implementation of Articles 8 and 9 of the Council Regulation and related provisions of the Commission Regulation;
4. National measures and enforcement.

This workshop provided further analysis on many of the issues raised and reached consensus conclusions on many of these (Barnaby and Parry-Jones 2006a)[2] which are incorporated into this report.

A visit was undertaken to the CITES Secretariat in September 2007 with a view to obtaining their views on legal and scientific aspects of the Regulation – relative to the aims and requirements of the Convention. This also served the purpose of elucidating the views of range States insofar as these had been communicated to the Secretariat rather than directly to TRAFFIC, the Commission or the Member States.

2.1 OPINION SURVEYS

2.1.1 SURVEY OF TRADERS' VIEWS

Questionnaires were sent to economic operators in various Member States to determine their views regarding the impact of regulatory requirements on their businesses. Attention focused on permit issuance procedures, registration of commercial production facilities, marking of specimens, fees for CITES documents, as well as views on the provision of information on matters such as negative opinions, import suspensions, etc. The results of the survey were analysed by Laursen (2007b) for incorporation into this report.[3]

[2] Barnaby, J. and Parry-Jones, R. (eds.) (2006a): *Proceedings of the Expert Workshop for EU CITES Authorities on the EC Legislation on Wildlife Trade – Experiences, Challenges and Future Perspectives.* TRAFFIC Europe report for the European Commission, Brussels, Belgium

[3] Laursen, L. (2007b): *An assessment of the impact of the Regulations on economic operators* Report to TRAFFIC.

2.1.2 OPINIONS OF MEMBER STATES' AUTHORITIES AND COST/ BENEFIT ANALYSIS

This phase of the study (Laursen 2007a)[4] consisted of:

(a) An overview of the aspects of the implementation of the Regulations which are most resource-intensive (for the EU as a whole and for individual Member States) and assessment of whether this is justified in relation to the objectives of the Regulations; and

(b) An overview, covering all Member States, of the most common cases that are dealt with by Management, Scientific and Enforcement Authorities (species, countries of origin, source, purpose, import, export, internal trade etc), including an analysis of the proportion of time spent by these authorities in dealing with such cases and the risks involved in terms of conservation.

2.2 ASSESSMENT OF LEGAL ISSUES

2.2.1 ANALYSIS OF INCONSISTENCIES

An analysis was undertaken of the compatibility of the Regulations with the text of CITES, on the one hand, and the provisions of EU biodiversity, animal welfare and animal health legislation on the other. The outcomes of this part of the study were set out in a report by Hart and Chamoux (2007)[5] which, in turn, was absorbed into a combined report for the second part of the legal analysis.

2.2.2 INTERPRETATION AND ADMINISTRATION

Questionnaires were sent to the CITES Authorities in relevant Member States, based on analysis of available information, to gather further information and rationale regarding interpretation and implementation of provisions of the Regulations. Information was gathered on differences in understanding, interpretation and implementation. On this basis, an overview was compiled by Barnaby and Parry-Jones (2006b)[6] that noted where the Regulations are open to varying interpretation, highlighting the key areas where interpretation and implementation varies between the Member States.

The results of Activities 1 & 2 above were combined (Chamoux 2007a)[7], focusing on main areas of and reasons for the differences in interpretation and implementation. The intention was to highlight differences in interpretation and implementation.

2.2.3 IMPACT OF MEMBER STATES' STRICTER MEASURES

A survey and analysis of Member States' stricter national measures (SNMs) was undertaken by Chamoux (2007b)[8]. Implementation of the EC Wildlife Trade Regulations in the Member States was assessed to highlight where stricter measures have given rise to difficulties in implementing the Regulations in the EU as a whole. Instances where stricter measures have had a positive effect on the

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[4] Laursen, L. (2007a): *Common cases dealt with by Management, Scientific and Enforcement Authorities and aspects of the Regulations which are most resource-intensive with an assessment as to whether these tasks are justified in relation to the objective of the Regulations*. Report to TRAFFIC.

[5] Hart, S. and Chamoux, C. (2007) *Analysis of inconsistencies within and between the EC Regulations on Wildlife Trade and between the EC Regulations and the Articles and Resolutions of CITES*. Draft report from the IUCN Environmental Law Centre to TRAFFIC

[6] Barnaby, J. and Parry-Jones, R. (eds) (2006b): *EC Wildlife Trade Regulations: An overview of problems identified with regard to implementation and interpretation*. TRAFFIC report to the European Commission.

[7] Chamoux, C. (2007a). *Analysis of the EC wildlife trade Regulations, examining inconsistencies with and between the Community Regulations and consistency with other EC law or policy and with the provisions of CITES*. Report to TRAFFIC.

[8] Chamoux, C. (2007b). *Impact of Member States' Stricter Measures*. Report to TRAFFIC

implementation of the Regulations in the EU as a whole were also evaluated. Input from Member States' CITES Authorities was obtained via the above-mentioned questionnaire and through conversations with Member States by phone and email.

2.3 ASSESSMENT OF CONSERVATION IMPACT

2.3.1 IMPACT ON PRIORITY SPECIES AND ISSUES

A desktop study was carried out to assess how well the Regulations enable the Community to effectively regulate/control all trade (including illegal trade) in a selection of species that are of conservation concern. Regard was had to earlier studies such as those by TRAFFIC Europe (1998)[9], UNEP-WCMC (2001)[10] and Oldfield (2003)[11].

2.3.2 IMPACT ON ASSISTANCE GIVEN TO RANGE STATES

The research for this element was undertaken by Corrigan (2007)[12]. Trade data were analysed for selected species to determine whether import suspensions and other restrictive measures have resulted in reduced, re-routed or illegal trade. Case studies were undertaken to illustrate where stricter conditions have had positive or negative effects on species conservation. Possible options were considered for ensuring that stricter import suspensions have a positive impact. Range States were also canvassed for their views. The aforementioned visit to the CITES Secretariat also contributed to this element of the study.

2.4 ANALYSIS OF GAPS AND NEEDS AND ASSESSMENT OF IMPACTS

2.4.1 NEEDS ANALYSIS AND DEVELOPMENT OF OPTIONS

This report draws together the outcomes of the research outlined above, together with the opinions and suggestions of the competent authorities in the Member States (solicited through questionnaires, phone calls and consultation workshops), as well as the proceedings of the Vilm Workshop. Relevant reports, such as that prepared by the Milieu Consortium (2007)[13], were also consulted.

2.4.2 ASSESSMENT OF IMPACTS

Once the options were identified, the advantages and disadvantages of legislative amendments and /or non-legislative actions were explored with particular emphasis on efficiency, simplicity and conservation benefit.

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[9] TRAFFIC Europe (1998): *Assessing the effectiveness of EU CITES import policies.* Report to the European Commission

[10] UNEP-WCMC (2001): *Effectiveness of past EC stricter measures on wildlife imports – A preparatory methodological study on the assessment of EC import bans.* Report to the European Commission

[11] Oldfield, S. (ed.)(2003): *The Trade in Wildlife – Regulation for Conservation.* Earthscan Publications.

[12] Corrigan, H. *An assessment of how the EC's stricter import conditions and trade suspensions can be used to assist range States in managing species sustainably.* Report to TRAFFIC.

[13] Milieu Ltd., DDH Consulting and Viskon (2007): *Study on the Enforcement of the EU Wildlife Trade Regulations in the EU-25.* Report to the European Commission

3. OUTCOMES

This section sets out the bulk of the results of the study as follows.

- **Section 3.1** details the views of traders, based on the responses received. Issues raised in this context included the complexity of the legislation, the difficulty in coping with additional stricter national measures, the need for more consultation with traders in the decision-making process, the need for better provision of information, the length of the application and inspection processes and the imposition of fees for provision of permits/certificates.
- **Section 3.2** represents the result of the surveys of Member States' Management, Scientific and Enforcement Authorities, while **Section 3.3** follows with a cost-benefit analysis of these. The issues discussed here include external trade in reptile leather products, import of hunting trophies, import of live animals and plants, tourist souvenirs and the caviar trade.
- **Section 3.4** comprises an analysis of the compatibility of the Regulations with the Convention and focuses primarily on the implementation of amendments to the Convention's Appendices, the implementation of CoP Resolutions, and the stricter measures in the Regulations – in particular, the stricter treatment of some species in the Annexes. Some of the issues arising are dealt with in more detail in Section 3.5, Section 3.8 and Section 4. The issue of compatibility with other MEAs is discussed briefly but no significant issues arise here.
- **Section 3.5** discusses the compatibility of the Regulations with other Community nature protection legislation and, indeed, other relevant Community legislation. The main issue that arises is the alignment of the Annexes to the Regulation with the species protection provisions of the Birds and Habitats Directives. This is also discussed in more detail in Section 4.
- **Section 3.6** looks at issues of detail regarding the interpretation and implementation of the Regulations that are not addressed elsewhere in the report. These include:
    - **Definitions** ("offering for sale", "Member State of destination", "primarily commercial purposes", "species", "specimen" (including derivatives), "hybrids", "transit", "worked specimens", "scientific institutions," "bred in captivity" and "artificially propagated");
    - **Personal and household effects** (addressed in more detail in Section 4);
    - **Marking**;
    - **Invasive alien species** (also addressed in more detail in Section 4);
    - **Trade in specimens of Annex A species** (also discussed further in Section 4);
    - **Sanctions;**
    - **"Animal welfare" issues;**
    - **Trade in caviar;**
    - **Source and purpose codes;**
    - **Entry points and transit procedures;**
    - **Retrospective issuance of permits;**
    - **Re-export certificates;**
    - **Laundering of specimens and registration requirements;**
    - **The role of the Management and Scientific Authorities;**
    - **The Enforcement Group;**
    - **Other issues** (namely: information at border crossings; electronic licensing; disposal of confiscated specimens; stricter treatment of Annex B species in certain circumstances; use of phytosanitary certificates; restrictions on holding or movement of specimens; simplified procedures for certain transactions; listing of additional species in the annexes; re-import issues; the utility of Annex D of the Council Regulation; dependent territories; test purchases by enforcement staff; export of wild-taken specimens of native Annex A species; and the treatment of offspring).
- **Section 3.7** looks at Member States' stricter national measures (SNMs). The issues that arise relate to additional marking, registration and book-keeping requirements under national legislation. The discussion focuses on the scope for harmonisation of such measures. The issue of marking and certification of Annex B species is considered in more detail Section 4.

- **Section 3.8** deals with the working of the Scientific Review Group (SRG). It examines the situation regarding eight taxa in detail. The criteria for SRG decisions and the transparency of those decisions are discussed. The question of the effectiveness of negative opinions and import suspensions in conservation terms is considered in more detail in Section 4.

3.1 SURVEY OF TRADERS' VIEWS

3.1.1 OUTCOME OF THE SURVEY

The survey was carried out and its results compiled by Laursen (2007b op. cit.). A total of 47 questionnaires were received from eleven countries, with Spain and Hungary as the most prolific contributors. Table 1 provides the details.

Table 1

Participating Member States

Member State	No. of questionnaires
Denmark	3
France	4
Germany	3
Greece	1
Hungary	9
Poland	1
Portugal	1
Slovakia	1
Spain	22
Sweden	1
UK	1
Total	46

The responding economic operators trade in a wide range of products and live animals and plants. Table 2 provides the details. It should be noted that some economic operators trade in more than one group of species and therefore are represented more than once in the table. Consequently, it would be misleading to add up the numbers for each group of species or, each category. The last four columns indicate origin (e.g. 7 economic operators participating in this study were trading/breeding live reptiles captive-bred in the EU). Again, however, it would be misleading to total these figures. Furthermore, traders in products were not always aware of the source of those products so the source is not indicated in that case.

Table 2

Number of respondents trading in the various groups of species and products traded

Group of species	Internal trade	External trade	Not indicated	Captive-bred or artificially propagated *outside the EU*	Captive-bred or artificially propagated *in the EU*	Wild caught (W) or farmed (F) *outside the EU*	Wild caught (W) or farmed (F) *in the EU*
Live birds (not birds of prey)	11	8	-	9	12	9	6
Live birds of prey	11	4	-	3	10	2	5
Live reptiles	9	8	2	7	9	9	6
Live amphibians	2	3	1	2	2	3	2
Live mammals	7	3	-	3	5	5	3
Live invertebrates (not marine)	1	2	1	1	1	2	-
Live corals / live rocks	3	2	-	4	1	4	-
Live giant clams	2	3	-	3	-	3	-
Live seahorses	1	1	-	-	-	1	-
Hunting trophies	-	2	-	-	-	2	-
Caviar	1	1	-	1	1	1	1
Live plants	1	2	-	2	-	-	-
Timber	1	1	-	-	-	-	-
Products (reptiles, ostrich)	-	1	-	-	-	-	-
Not indicated	1	1	-	1	1	1	1

Table 3 provides an overview of the number of permits and certificates applied for per year by the participating economic operators. The table shows that the majority of the respondents are small to midsize businesses, with a few major traders or breeders included. The large-scale facilities participating in this study are traders of live corals, live giant clams and seahorses, caviar, products from crocodiles and ostriches, and live reptiles.

Table 3

Number of applications for permits and certificates per year for the respondents

	1 – 9	10 – 49	50 – 99	100 – 199	Over 200
Import permits	10	13	3	-	3
Export permits/ Re-export certificates	13	7	3	1	2
Internal Trade Certificates	11	6	6	-	1

No single issue loomed large among the traders' concerns. Rather, traders seem to struggle with a long range of issues depending on the type and scope of the trade they participate in, and the national (stricter) measures enacted in their country to regulate trade. The Member States each have their own way of implementing and managing the EC Regulations and this leads to differences in the problems encountered by the traders and breeders. What emerged from the survey overall is that, while the traders found many aspects of the Regulations (and their implementation in the various Member States) complicated and frustrating, they welcomed the legitimacy that the process brings to their business.

The majority of the respondents understood the main objective of the Regulations was to regulate - not limit - trade in protected species. They felt that the Regulations are working well to achieve this objective but also felt there were areas with scope for improvement, such as the level of regulation for certain species. The majority also found the level of regulation to be sufficient and correct or else only slightly over regulated.

The majority of the respondents found obtaining information or advice from the relevant authorities easy, either always or most of the time. Suggested areas to improve were:

- better training of personnel at the Management Authority;
- clear information about possibilities for import permits before applying for permits; and
- fast notification about amendments to the Regulations.

The majority of the respondents had a positive attitude towards the Internet as a source of information, but many expressed concerns about not receiving direct information from the authorities as well. Many felt that the official websites place too much responsibility on the economic operators to seek the information themselves. The vast majority responded positively to the suggestion of an automated e-mail alert system and only one respondent indicated not needing such a system.

The time-consuming nature of the application process was estimated for each step of the process. The most time-consuming step for an average application is the permit issuing process at the Management Authority. Following behind, in terms of time requirement, were the time taken to obtain the export permit from the exporting countries and the procurement of the necessary documentation. The veterinary process is also regarded as rather time-consuming, whereas obtaining the application form and the completion of it normally occupies only limited time.

The respondents differed in opinion on the effectiveness of the application process; some found it slow and inefficient, whereas some found it effective and straightforward. Suggested areas to improve were:

- more effective case handling by the Scientific Authorities;
- more staff to increase the effectiveness of case handling at the Management Authorities;
- computerised application systems;
- setting maximum handling time (Some MS have target times within which they have to process a target percentage of their applications – this is one way forward); and
- more effective and less time-consuming communication between national authorities and the EU Commission (SRG) to expedite responses to or information for the traders.

Many respondents commented negatively on what they saw as a slow and inefficient document issuance process. The consequences included:

- lost contracts;
- lost business partners;
- lost customers; and
- lost pre-paid money.

Some respondents mentioned the difficulty in planning ahead, as the processing time varies significantly from application to application. Some mentioned difficulties for breeders as a long processing time leaves the animals waiting for long periods of time in the breeding facilities causing overcrowding with consequences for animal welfare and increased risk of disease, especially for delicate species. The majority of the respondents agreed on one or two weeks being the reasonable time span for issuing permits and certificates.

The majority of the respondents had not encountered difficulties in trading between different Member States. Nor had many of them encountered a case where an internal trade certificate issued in one Member State was not accepted in another Member State. The majority of the respondents who had encountered a problem with internal trade certificates were Hungarian falconers, some of whom had encountered problems getting certificates accepted by the Hungarian authorities, who require traders bringing falcons into Hungary to obtain additional documents, thus complicating the process and adding to the cost. Other traders referred to dissimilar requirements from the authorities and different interpretation of the Regulations among and between authorities, causing confusion about internal as well as external trade. Suggested areas to improve were:

- harmonisation of procedures and requirements among the various Member States; and
- reduction of stricter national measures, as far as possible, to increase transparency and harmony.

The majority of the traders who were required to pay fees thought the fees were too high, although many found the level reasonable. Data suggest that the level of fees acceptable to traders is less dependent on the amount of money charged than with the level of service provided. Many traders were negative towards fees and only few saw fees as a way to legitimise businesses. Many traders felt that high fees encourage illegal trade.

The majority of the traders and breeders were required to register their production facilities with their national or local authorities. Book-keeping was required in many cases as well and was generally regarded as relatively laborious, and time-consuming, although only described as unreasonable by a few. Suggested areas to improve were:

- computerised online registration; and
- simplification of book-keeping requirements.

The vast majority of the traders were positive regarding marking requirements, agreeing that marking facilitates and encourages legal trade and is of benefit to the conservation of the protected species. However, suggested areas to improve were:

- a uniform and standardised marking regime; and
- an equalisation of marking costs for all traders within the EU.

Eleven of the 46 respondents had been consulted/ involved in decision making, either personally or through their trade organisation, generally feeling that their input in the decision making process had some albeit quite limited influence. Fifteen had experienced import suspension of some of the species they used to trade in. The suspension led to different trading strategies. Nevertheless, most of the affected traders reported on negative effects from the import restrictions, such as loss of business partners, loss of income and loss of customers. Some of the traders noted the risk of increased illegal trade due to legal trade not meeting the demand and suspended species increasing in value.

The majority of the responding traders were reasonably satisfied with the provision of information regarding import restrictions. However many found they had to obtain the information themselves. A

number of respondents had experienced difficulties with the provision of information about import restrictions, even when seeking such information directly. The main improvement suggested was the provision of easy to read and up-to-date information about import restrictions readily available for all traders within the EU.

Very few traders were aware of the criteria considered by the SRG before placing import restrictions on certain species: about half of these felt that the SRG took such decisions without taking all relevant criteria into account. One trader appeared to argue that illegal markets can be fuelled by high demand and low supply of legal specimens. A British importer of live corals and giant clams claimed that collection areas (for corals and clams) rarely are known by scientists, who therefore never enter the key areas from where species are collected. On this basis some species are regarded as scarce; however if the correct area is found then the species is abundant. The trader found that the SRG opinions appeared not to have taken this into account.

The majority of the traders were satisfied with the Customs inspection at the borders – at least, most of the time. Some traders expressed less satisfaction mainly due to long hours of waiting for inspections and lack of experienced personnel.

Only few traders felt that animal welfare is significantly compromised due to border inspections, mainly pointing to a lack of import facilities for prolonged inspections; slow procedures at airports; and lack of 24 hour alert teams.

Many commented on the strictness of the Regulations and highlighted the need to strike a balance between control of detrimental trade and relative freedom of trade in order to compete effectively with illegally traded specimens.

The majority of the respondents found the level of penalties appropriate or else they were not familiar with the level of penalties.

The traders were requested to indicate any aspects of wildlife trade regulation in the individual Member States that worked especially well but only two traders responded to this request. A Danish falconer noted that he always receives prompt and honest answers when he contacts the wildlife authorities in Denmark and always gets help when he needs it. A French importer of hunting trophies asserted the efficiency of the French Management Authorities and Customs officers based on 30 years of experience.
The final comments brought forward a range of suggestions regarding the EC Wildlife Trade Regulations, including*:*

- harmonisation of national nature conservation regulations with the EC Regulations;
- agreement on the common implementation of the EC Regulations providing similar restrictions and possibilities for all traders within the EU;
- more influence of traders in decision-making;
- better and faster notification about changes to the Regulations to allow traders to make necessary adjustments;
- clearer and more comprehensive information to traders to make them fully understand the requirements of the EC Regulations;
- a shorter application process;
- increased focus on illegal trade and decreased focus on legal trade;
- better trained personnel amongst the authorities; and
- relaxation of the provisions that allow for import suspensions (this is discussed further in section 3.9 and in Section 4).

The introduction to this report underlines a need to strike a balance between regulation that is sufficient to further conservation and preclude illegal trade, and regulation that is not overly burdensome and

which might therefore negatively impact the economic viability of traders. In order to achieve this goal traders felt that certain issues must be addressed.

- Some traders repeatedly mentioned the difficulty of **procuring necessary information** from the Management Authorities in order to plan their business ahead. They mentioned the difficulty of receiving information about the possibility of importing particular CITES species from particular countries. They also mentioned the problem of understanding stricter national measures in their own country as well as in other Member States. Some mentioned information about amendments to the Regulations and about new import restrictions as being provided very late or not being provided at all.

- Many traders mentioned the often very **long application process** as having a negative impact on their businesses, as it makes co-operation with commercial partners, customers and networks very difficult, sometimes resulting in loss of business and money. The communication with the Scientific Authorities was furthermore regarded as very time consuming by many traders, who mentioned months and even years before the Scientific Authority reached an opinion and the case handling could proceed. These long waiting periods are not acceptable for traders whose businesses depend on a speedy application process. An online applications facility and a code of conduct that committed the MA and SA to process a stated percentage of applications within a stated period of time could address these issues.

- Some traders repeatedly mentioned **lengthy border inspections** as a problem resulting in reduced animal welfare and increased mortality. The Customs authorities must prioritise their inspections in order to control live shipments first. All authorities wishing to inspect live shipments must do so simultaneously and there must be a common agreement as to how long the animals must wait, and when this time has passed, the animals need access to import facilities, where they can be held until inspection can take place. There is a need for CITES-trained personnel to be available at all major airports. Experienced animal handlers must be present at all remaining points of entry.

- Some traders mentioned **difficulties when trading within the EU**, as there seem to be disagreements about the implementation of the EC Regulations, providing varying levels of restrictions and possibilities for traders within the EU. They argued that harmonisation of implementation and interpretation of the EC Regulations must be agreed upon and stricter national measures should be reduced in order to increase the transparency of the management of wildlife trade in the EU.

- Many traders mentioned **import restrictions** as having a significant negative impact on their businesses, as they often lose customers, business partners and income upon such restrictions. This is especially true when the import restrictions are for the EU only, providing traders outside the EU with increased benefits. At the same time traders willing to meet the demand for the restricted species on illegal terms also profit from import restrictions. The criteria for imposing an import restriction must be examined, taking into account the risk of increasing the illegal trade of that particular species.

- Many traders referred to **fees and charges** as providing incentives to illegal trade as the extra costs associated with legal trade reduce the overall profit. Reduced profits combined with increased time and resource consumption for the legal traders could therefore increase the level of illegal trade and potentially jeopardise the conservation efforts. Fees and charges should be kept to a minimum or avoided. However, if fees are aimed at significantly improving the service provided by the authorities (fast permit issuance process, provision of professional information, etc.) fees could work for the benefit of conservation.

3.1.2 POSSIBLE SOLUTIONS TO TRADERS' CONCERNS

3.1.2.1 Difficulty of access to information

With the increasing number of Member States within the EU and the resulting increase in the complexity within the Community, traders spoke of the need for a common online information site, an *EC Wildlife Regulations Reference Site*, where *all* necessary information about Annex-listed species and the individual Member States is provided. The site could contain information about stricter national measures, marking requirements and the implementation of the Regulations, as provided by the Member States themselves. The site could also contain information on all Annex-listed species with updated information on status, import restrictions, quotas and SRG opinions. Amendments to the Regulations should immediately appear on the site. The site should be regarded as a *reference site*, meaning that the information provided by the site is fully trustworthy and can be trusted as a *trade guiding tool* for traders and officials. The information must therefore be brought up to date by all stakeholders immediately after amendments, new opinions, new national measures, etc., have come into force. The traders should be able to sign up for an e-mail alert system based within the website and customized to the individual needs of the traders. This reference website should be multilingual and replace other such websites, hopefully resulting in decreased confusion and increased transparency for traders and officials alike.

Many of these functions are already performed by the Commission-sponsored site, www.eu-wildlifetrade.org maintained by TRAFFIC. This site could be expanded and linked to the website of the European Commission and to UNEP-WCMC's site at the appropriate points so that users would be able to search for negative opinions and/ or import suspensions by species and by country. Those maintaining both websites would, no doubt, welcome suggestions from traders as to how the sites could be made more "user-friendly".

3.1.2.2 Length of the application process

Given that the bulk of commercial trade is in specimens of Annex B species (which correspond broadly to species listed in Appendix II of the Convention), the primary reason for the length of the applications process is the requirement in the Regulations for import permits for such species – a stricter measure than that provided for by the Convention. As indicated in the introduction, this is one of the fundamental issues that arises in any consideration of the Regulations and is discussed in detail in Sections 3.4, 3.8 and 3.9. This present section, therefore, confines its discussion to measures that can be implemented under the present regime.

Due to the number of issues that can arise with an application (the need to consult a third country, the need to consult the SA, a possible referral to the SRG, requests for further information from the applicant, etc.) there are valid reasons why many applications cannot be processed speedily. Nevertheless, many more cases are routine and, given adequate staffing levels in the relevant authorities, could be processed in a matter of days.

Responsibility for these matters lies with the Member States and there is little that can be done at EU level to force an improvement. However, some Member States have set targets whereby staff are obliged to deal with a certain proportion of applications within a specified time-span and more Member States could consider this.

To summarise, this is the responsibility of Member States but there are measures they could consider to improve service for and offer some reassurance to traders.

3.1.2.3 Length of the inspection process

Likewise, this is an issue where responsibility lies with Member States but the traders themselves have suggested possible solutions, including adequate training of Customs and the availability of adequate

handlers. To a large extent, Member States should only designate points of entry where these facilities can be most easily provided, although larger Member States in particular will need to designate a minimum number in order to avoid the need to transport specimens of long distances.

Once again, this is a matter for Member States to resolve within the existing framework.

3.1.2.4 Difficulties of trading within the EU.

These difficulties stem partly from differences of interpretation, which are discussed in Section 3.6, and partly from Stricter National Measures, which are discussed in Section 3.7.

3.1.2.5 Import Restrictions

As already indicated, these are discussed in Sections 3.4, 3.8 and 3.9.

3.1.2.6 Fees

The questionnaire of traders revealed a certain level of dissatisfaction with the levels of fees charged in some Member States. They were generally seen as a barrier to legitimate trade, since they gave illegal traders an added competitive advantage. On the other hand, Member States participating in the Vilm workshop took the view that, unless traders carry some of the cost of processing applications, then effectively wildlife trade is being subsidised and the commodity is rendered cheaper than it really should be.

The level of fees charged varies considerably among Member States, with some not charging fees at all (because the cost of accounting for the monies is greater than the revenue that could reasonably be raised from them). The shift in trade that might be expected does not always materialize; the cost of changing the shipping route, arranging premises in another country for live specimens etc., tends to outweigh the advantage of cheaper fees or to have no benefit at all.

As with all fiscal matters, fees are a matter for the Member States and there is little that can be done at Community level to meet traders' concerns. However, there is a risk that traders could be tempted to evade the documentation requirements entirely – even for bona fide specimens. A case came to light in one Member State (where fees are imposed) whereby a trader applied for a certificate. However, he then decided to sell the bird to a trader in a neighbouring Member State before the certificate arrived, no doubt intending to save money by using the certificate for a second specimen. If traders are successful in such ruses, then they will inevitably be tempted to launder illegally obtained specimens whose trade would not have been sanctioned.

Those Member States who do impose fees will point out that they only represent a fraction of the cost of issuing documentation. The survey also noted that traders are less reluctant to pay fees if they receive a better service.

To conclude, this is not a matter of Community competence but it is in the interests of conservation not to impose fees at a level that will greatly encourage illegal trade and to demonstrate to traders that they get value for money through improved service by the authorities. Furthermore, Member States should continue to endeavour to co-ordinate an approach on this issue.

3.2 SURVEY OF MEMBER STATES' MANAGEMENT, SCIENTIFIC AND ENFORCEMENT AUTHORITIES

This section relies on Laursen (2007a op. cit.). It examines tasks undertaken by the authorities implementating and enforcing the Regulations (i.e., Management and Scientific Authorities, Customs, Police and Wildlife Inspectorates) which are perceived to be frequent and/or resource-intensive.

Table 5

Overview of returned questionnaires

	Management Authority	Scientific Authority	Customs Administration	Police/ Wildlife Inspectorate
Austria	√	√	√	√
Belgium	√	√		√
Bulgaria				
Cyprus				
Czech Republic				
Denmark	√			√
Estonia				
Finland	√	√		
France	√	√	√	√
Germany				
Greece				
Hungary	√	√	√	√√√
Ireland			√	
Italy	√	√	√	√
Latvia	√	√	√√	√
Lithuania				
Luxembourg				
Malta				
The Netherlands	√	√	√	√√
Poland	√			√
Portugal	√		√	√√
Rumania				
Slovakia	√		√	√√
Slovenia				
Spain	√	√	√	√
Sweden	√		√	√
UK	√	√		√√

3.2.1 RESOURCE-INTENSIVE ISSUES FOR MANAGEMENT AUTHORITIES

Five types of permits and certificates are frequently issued by Management Authorities:

- import permits,
- export permits,
- re-export certificates,
- internal trade certificates for commercial use and
- internal trade certificates for transport of live non-captive-bred Annex A specimens.

The remaining seven types of permits and certificates are never or rarely issued.

Import permits and **internal trade certificates** are issued very frequently by the vast majority of the Member States, whereas **re-export permits** are issued very frequently by three Member States, all with a significant trade in reptile leather products. For nine out of eleven Member States that responded,

import permits were most frequently issued for leather goods, primarily made from crocodile skins. For seven of these Member States import permits for reptile leather products constituted more than 50% of the total number of import permits issued, and over 80% for two Member States.

With regard to **live specimens**, import permits for live corals are frequently issued. Import permits for live birds[14], live reptiles, orchids and hunting trophies are regularly issued by many Member States, but rarely in large numbers. (Re)export permits are frequently issued for live birds. Internal trade certificates are very frequently issued for live birds and live reptiles (mainly parrots, birds of prey and tortoises).

Reptile leather products, **ivory** and **hunting trophies** were mentioned as particularly time and resource- intensive products to process. With regard to live animals, **reptiles** (especially tortoises), **birds** (parrots and birds of prey) and **corals** were similarly cited as being demanding in terms of time and resources, while **orchids** were mentioned as the most time and resource-intensive category of live plants.

Issuance of **internal trade certificates for commercial purposes** was emphasized as a very time and resource-intensive task by more than half of the responding Management Authorities. Other such tasks similarly emphasized by the Management Authorities included statutory obligations, such as provision of the **Annual and Biennial Reports**, and **disposal** of confiscated specimens. However, a lot of time is spent on activities that, although not obligatory in a statutory sense, are really essential, such as communication and **information** to traders and the public. Engagement in national and international **meetings**, **training**, co-operation with **police and Customs**, and co-operation with **international organisations** (including completion of questionnaires!) were tasks put forward as further time and resource-intensive tasks by Management Authorities.

The majority of the Management Authorities expressed a need for re-allocation of time and resources; many pointing to the issuance of permits and certificates for species of lesser conservation concern as consuming vast amounts of time and resources. A number of Management Authorities expressed a need for a re-allocation of time and resources from day-to-day management (such as issuance of permits and certificates) to more strategic activities (such as training, education, inspections, increased co-operation with Customs and police, and special focus on species of special conservation concern). Measures taken by the individual Management Authorities for reducing time and resource consumption were mainly focused on reducing the number of applications presented to the Scientific Authority. Other measures mentioned were computerised online systems and decentralised control arrangements.

3.2.2 RESOURCE-INTENSIVE ISSUES FOR SCIENTIFIC AUTHORITIES

Different procedures for presentation of applications to the Scientific Authorities have led to variations in time and resource consumption for the authorities**.** Many Member States have dispensed with the requirement for the presentation of certain applications to the Scientific Authorities, especially for species for which the SRG already has formed an opinion or the Scientific Authority recently has given advice. These special dispositions are mainly for products of Annex B species of lesser conservation concern.

Advice on import applications was regarded as particularly time and resource-consumptive by most of the Scientific Authorities. **Hunting trophies** were also mentioned in this regard by a number of SAs, as were **reptiles** and **birds** (birds of prey); reptiles primarily when imported and birds for internal trade and export.

Other relatively time and resource-intensive tasks for the Scientific Authorities were advice on **export** applications, approval of intended **accommodation**, communication with the **SRG** and advice on **disposal** or placement of confiscated CITES specimens. Also mentioned were **international meetings**,

[14]Since October 2005, live wild birds are now subject to an EU-wide import ban on veterinary grounds.

co-operation with **international organisations**, and assessing applications for becoming a registered **scientific institution,** an **Article 60 certificate** holder or a **registered breeder.**

More than half of the Scientific Authorities would have liked to see a re-allocation of time and resources. Suggested areas for increased focus were monitoring of trade trends, applications for wild-caught specimens, research for non-detriment findings for large carnivores (hunting trophies) and corals, the illegal trade in large birds of prey, import applications for live Appendix II reptiles and marine species in general. The reduction in presentation of applications for certain products (primarily reptile leather products) was the only measure suggested for reducing time and resource-intensive procedures, except for one authority, which is developing a computerised system for processing permits for non-living specimens of Annex B species.

3.2.3 RESOURCE-INTENSIVE ISSUES FOR CUSTOMS

In seven out of twelve Customs administrations that responded, CITES is a targeted inspection itself and not just a "by-inspection" of general Customs inspections. The percentage of inspections based on CITES risk analyses were quite low (1.1 % - 6.2 %), except for one Member State (100 %).

Most Customs administrations divide time and resources evenly between intentional and unintentional violations, as well as between checking legal CITES trade and searching for illegal shipments. Estimation by Customs of a range of operations suggests that inspections of commercial shipments of products, imports and (re)exports of personal and household effects, and inspections of commercial shipments of live animals were the most frequently performed operations as well as taking the most time and resources. **Tourist souvenirs** were regarded as time consuming by the majority of Customs administrations. Stone corals were the most frequently imported tourist souvenir; mentioned by all of the ten Customs administrations answering this question. Reptile leather products, ivory and giant clams were repeatedly mentioned as well.

The Customs officers generally expressed concerns about the **general derogations** for certain personal effects provided for in the EC Regulations (up to 250 g caviar, rainsticks, seahorses, crocodile goods, and rainsticks, etc.), which they saw as a cause of confusion in the minds of the public (this is discussed further in Section 4). None of the responding officers wanted to see more of such derogations. However, some Customs administrations did find that the exceptions enabled a redirection of time and resources.

Reptile leather products for personal use and **hunting trophies** were mentioned as the products that were most demanding of time and resources, while commercial shipments of **reptiles, corals and birds** were the live animal categories that were similarly mentioned. Commercial shipments of **orchids** were the corresponding category for live plants.

The responding Customs officers were generally positive about their collective enforcement efforts and results. However, some pointed out that routine investigation of the legality of CITES permits left little time for participation in targeted operations aimed at illegal trade in wildlife.

The areas where they wished to see improvement were better **training** of Customs officers, better **education** of the public regarding CITES and increased international **co-operation**.

3.2.4 RESOURCE-INTENSIVE ISSUES FOR POLICE AND WILDLIFE INSPECTORATES

Six of the 20 responding authorities from 14 Member States reported having to assist Customs authorities with confiscations/seizures. The most frequently performed tasks were assessing/investigating trade in live animals within the EU, confiscations of live animals imported or (re)exported for commercial purposes and assessing/investigating trade in products within the EU. The

most time and resource-intensive tasks were assessing/investigating trade in **live animals** within the EU and confiscation of live animals imported or (re)exported for commercial purposes. For internal trade only, the most time and energy was put into investigating illegal trade in live animals, followed by products. Plants were rarely a target when investigating illegal internal trade. This reflects the information conveyed by some Member States' representatives at meetings of European plant specialists – that plants are a lower priority for many enforcement authorities. Additional tasks frequently performed by some or all authorities were control of pet shops, other shops, exhibitions, markets, circuses and private breeders. Shops dealing with caviar and traditional Asian medicines (TAMs) were rarely or never controlled by the majority of authorities. As was the case with those Customs Officers that responded, most police officers and wildlife inspectors regard time and resources as being evenly divided between controls based on risk analysis and random controls, as well as between intentional and unintentional violations. The majority of the police officers and wildlife inspectorates were sceptical about the derogations provided for by the EC Regulations, especially due to the risk of increased confusion about CITES.

The products taking up time and resources for the police and Wildlife Inspectorates are **tourist souvenirs** and **hunting trophies**. However, tropical **timber**, **TAMs** and **skins/furs/ornaments** traded commercially were also repeatedly mentioned. Live **birds** and **reptiles** - primarily parrots, birds of prey and tortoises - were mentioned by almost all respondents as the live animals that were particularly demanding of time and resources, while live **orchids** and **cacti** were mentioned in the same regard in respect of live plants. Marking of specimens and registration of breeders were regarded as useful or very useful measures in terms of their trade control potential by all respondents but one.

The majority of the police officers and wildlife inspectors expressed a need for re-allocation of time and resources. Many suggestions were made, including more focus on caviar, TAMs and Internet trade, as well as training and the establishment of databases for effective information exchange between enforcement, Management and Scientific Authorities.

3.3 COST-BENEFIT ANALYSIS

In order to view the current situation in the context of the overall objectives of CITES and the EC Wildlife Trade Regulations, a cost/benefit analysis of the time and resource consumption of the Member States was undertaken. However, it must be borne in mind that not all 27 Member States responded and so were not included in the analyses of the time and resource consumption of the Management, Scientific and enforcement authorities. As the cost/benefit analysis for a large part depends on the findings of these analyses, the results of the analysis should only be seen as partly representative, bearing in mind that the final conclusions might have been different, if more Member States had responded.

3.3.1 IDENTIFICATION OF TIME-CONSUMING TASKS AND CATEGORIES OF SPECIMENS

As previously discussed, a large proportion of the permits and certificates issued by the Management Authorities are import permits. Internal trade certificates are also very frequently issued, and for seven out of twelve Member States, internal trade certificates constitute more than half of the issued permits and certificates.

When analysing the groups of species imported, it becomes clear that a large proportion of import permits are issued for just one product type, namely small reptile skin products (CITES code = LPS), for the most part watch straps. For seven out of eleven Member States the percentage of import permits for reptile skin products exceeded 50 % of the total number of import permits issued in 2005. A few of the Member States have a large import of whole skins as well, primarily for further production. Other major imported groups of species are live birds, live corals, hunting trophies and orchids, the main part of which are Annex B species.

Exporting and re-exporting data show that for a number of Member States the re-export certificates of reptile skin products (again mainly watchstraps) constituted a significant part of the total number of re-export certificates issued in 2006. For one Member State, reptile skin products constituted more than 90 % of the (re)export documents issued (representing 3,016 re-export certificates) and for another Member State it constituted more than 80 % of the (re)export documents issued (representing more than 26,000 permits and certificates). Other frequently (re)exported groups of species in 2006 were live birds (primarily birds of prey), live mammals and reptiles. Ivory was frequently (re)exported by a few Member States. Internal trade certificates were mainly issued for live birds (parrots and birds of prey) and live reptiles (mainly tortoises).

However, the simple size of the trade in a group of species does not reveal anything about the actual time and resource expenditure of the authorities. This report has, therefore, previously presented an extensive overview of the various groups of species regarded by the authorities as particularly time- and resource-intensive.

Just about half of the responding Management Authorities listed reptile skin products (mainly watchstraps) as particularly time and resource-intensive, due to the large number of applications. Two of the Scientific Authorities mentioned this group as well, also on the basis of large amounts of applications. Small reptile skin products were not mentioned by any of the enforcement authorities.

Another group of products repeatedly brought forward by the Management Authorities as particularly time- and resource-intensive was hunting trophies from various countries. The Scientific Authorities, Customs officials and the police brought hunting trophies forward as well. The reasons behind the large time and resource consumption for this group of products were numerous, including:

- The need for consultation with exporting countries;
- The large number of applications;

- The need for consultation with the Scientific Authority;
- The difficulty of procuring proof of legal origin;
- The need for checking origin details;
- The need for checking quotas (unless approved by the CoP);
- The difficulty of identification of species;
- Fraudulent practices encountered with hunting trophies ;
- The need for CITES expert opinion when controlled by Customs; and
- Frequent intentional or unintentional lack of CITES documents.

The enforcement authorities repeatedly mentioned tourist souvenirs (including caviar) as particularly demanding of time and resources, due to lack of CITES permits and the difficult identification of species. Souvenirs included many different groups of species, including stone corals, reptile skin products, giant clams, conchs, "snakes in bottles", sea turtle products, ivory and caviar. When asked specifically how time-consuming the handling of souvenirs are, the vast majority of Customs officers answered "quite resource consuming". The Customs officers were requested to prepare a list of the top five souvenirs handled by Customs, and many of the souvenirs were repeatedly mentioned. Stone corals appeared on all ten lists followed by reptile skin products and ivory. Tourist souvenirs were not brought forward by the Management or Scientific Authorities as time and resource intensive, due to their status as personal effects.

Live birds and reptiles for external as well as internal trade were frequently mentioned as particularly time and resource consumptive. A long range of reasons were provided by the Management Authorities, Scientific Authorities, Customs officials and Police officers/wildlife inspectors respectively, including the large amounts of applications; need for checking legal origin; preparation of non-detriment findings; assessing the status of the breeding facility and many cases of fraud.

Tortoises dominated among the reptiles, mainly due to the large demand for these popular pets both within the Community and outside. Birds of prey and parrots also merit mention, as they are part of a large-scale trade as well. Captive-bred falcons are frequently exported due to demand from falconers in third countries.

Live corals were another group of live animals frequently quoted as time- and resource-consumptive, especially for the Management Authorities and Customs. The stated reasons were large amounts of imports, difficult validation of the export permits and many cases of fraud.

Ivory was frequently mentioned by the Management Authorities and the enforcement authorities as time- and resource-intensive, mainly due to the high level of legal as well as illegal trade and difficulties in establishing proof of legal origin.

Live plants were not mentioned quite as frequently as products and live animals, with the notable exception of orchids, for which there is a substantial external trade.

No other groups of species were mentioned frequently, even though caviar and Traditional Asian Medicines (TAMs) were cited by the enforcement authorities from a couple of Member States.

To sum up, a wide range of time- and resource-consuming tasks were identified in this report (e.g. issuance of permits and certificates, provision of advice for applications for imports, inspection of commercial shipments of products and live animals and inspection of personal and household effects), as well as time- and resource-consuming products (small leather products, hunting trophies, souvenirs, ivory, caviar, TAM), live animals (birds, reptiles, corals), and live plants (orchids). These tasks and groups of species are likely to take up a substantial amount of time and resources for many of the Management, Scientific and enforcement authorities, despite individual Member States having a unique combination of internal and external CITES trade. It is therefore important to discuss whether the time

and resources spent on these tasks and groups of species serve the overall conservation aim of CITES and the EC Regulations.

3.3.2 VIEWS OF THE MEMBER STATES

Neither national nor international management of endangered species can command unlimited resources. Therefore, it is essential to consider how best to spend the limited resources available so as to serve best the overall conservation aims.

All four authorities were requested to indicate their view on the present allocation of time and resources, and to specify for which tasks and species they would like to allocate time and resources.

Many of the respondents would have liked an **increase in budget** in order to fulfil their responsibilities. The issue of budget is a matter of national priorities – although if it is seen to impede compliance with Community law, it might reach the attention of the European Court of Justice (ECJ). There is no doubt, in any event, that an increase in time and staff resources would allow for a shift of focus from everyday duties to more strategic activities (as commented by a respondent).

Many respondents from the Management Authorities complained of too much time and too many resources being spent on issuance of permits and certificates, leaving only little time for other important tasks, such as training of enforcement personnel and public education. One respondent from the Scientific Authorities expressed a wish for re-allocation of time and resources from checks of captive breeding and registration to increased focus on wild-caught specimens. Another respondent wished for more time to do research on non-detriment findings, a suggestion supported by another respondent wishing for more time to focus on Appendix II reptiles - including assessing breeding claims and establishing fact-finding missions. One Customs officer characterised the enforcement efforts as "insufficient" - with limited time to investigate the legality of CITES permits as well as to participate in targeted operations aimed at illegal trade. He specified a need for resources to investigate suspected illegal trade, instead of just investigating detected illegal trade. A police officer requested a change in focus towards illegal Internet trade. Another wished for an increased focus on trade in caviar and TAMs.

The authorities provided a range of suggestions for improving the effectiveness of the Regulations, many pointing to the issuance of permits and certificates as the main time and resource-consuming factor.

When reviewing the present situation in the light of these comments, two stricter measures of the EC Regulations naturally come to the fore:

- **the need for import permits for commercial imports of Annex B species; and**
- **the need for internal trade certificates for commercial use of Annex A species.**

These are dealt with in greater detail in Sections 3.4, 3.6, 3.8 and in Section 4. Leaving these aside for the moment, this section contains analyses of four major time and resource consuming tasks, identifying the main issues and suggesting possible ways forward.

3.3.2.1 External trade in reptilian leather products

As discussed above a very time consuming task for many Management Authorities is the external trade in reptilian leather products (especially watchstraps made from crocodile skins), creating a need for a significant amount of import permits and re-export certificates. For many Member States more than 50% of all import and re-export applications are for watchstraps and other reptile leather products. In order to reduce the time and resource consumption for the trade in watchstraps, some Management Authorities have changed their procedure for presenting these applications to the Scientific Authority so that they are no longer refer them on an individual basis, relying instead on generic opinions. This has had the needed positive effect for the Scientific Authorities; however it has not reduced the vast

amount of applications still to be considered by the Management Authority. Some Member States do not regard watchstrap applications as particularly problematic, as the processing time for each application is very short. The question is then, if the processing time is so short because very little time is spent considering each application. If this is true, the reasons behind issuing this vast amount of import permits and re-export certificates are questionable, adding very little to the conservation of the species concerned and at the same time leaving the Management Authorities with less time to manage species and issues of more conservation concern. If, in fact, the administrative costs of issuing permits for watchstraps are higher than the conservation benefits, what can be altered to make the benefits of the management of the species higher than the costs?

One option to address this problem would be to extend the scope of Article 19 of *Regulation 865/2006*.

Article 19 of Regulation 865/2006:
1. In the case of the export or re-export of dead specimens of species, including any parts or derivatives thereof, listed in Annexes B and C to Regulation (EC) No 338/97, Member States may provide for the use of simplified procedures on the basis of pre-issued export permits or re-export certificates, provided that the following conditions are satisfied:
(a) a competent scientific authority must advise that such export or re-export will have no detrimental impact on the conservation of the species concerned;
(b) each Member State must establish and maintain a register of the persons and bodies that may benefit from simplified procedures, hereinafter 'registered persons and bodies', as well as of the species that they may trade under such procedures, and must ensure that the register is reviewed by the management authority every five years;
(c) Member States must provide registered persons and bodies with partially completed export permits and re-export certificates;
(d) Member States must authorise registered persons or bodies to enter specific information in boxes 3, 5, 8 and 9 or 10 of the permit or certificate provided that they comply with the following requirements:
(i) they sign the completed permit or certificate in box 23;
(ii) they immediately send a copy of the permit or certificate to the issuing management authority;
(iii) they maintain a record which they produce to the competent management authority on request and which contains details of the specimens sold, including the species name, the type of specimen, the source of the specimen, the dates of sale and the names and addresses of the persons to whom they were sold.
2. The export or re-export referred to in paragraph 1 shall otherwise be in accordance with Article 5(4) and (5) of Regulation (EC) No 338/97.

This article was included in the Commission Regulation for the first time in 2006 so it is probably too early to judge whether or not it has reduced administrative burdens by allowing traders to register with the authorities and receive pre-signed export permits, and/ or re-export certificates, which they can then complete as the need arises.

However, it offers a solution to the trade in bulk volumes of routine derivatives, such as watch straps, and would, thus, go some way towards addressing the concerns of Management Authorities who complain of excessive time spent on processing such documentation.

Extension of this provision to allow for pre-issued import permits is more problematic because the making of a non-detriment finding is more difficult. One option would be for the SRG to agree a list of species/ country/ product combinations for which pre-issued import permits could be allowed. Some Member States' Scientific Authorities are already giving general opinions for specific species/country combinations, limiting the involvement of the Scientific Authority significantly. The time spent on issuance of import permits is, undoubtedly, an argument for dispensing with these where they are not required by the Convention. As stated above, this possibility is examined in a general way in Sections 3.8 and 4. There would also be the possibility of amending the Council Regulation in order to delegate powers to the Commission to exclude certain categories of specimens from the requirement for import permits. However, this carries the risk of adding to the general confusion about CITES and the EC Wildlife Trade Regulations.

It has also been suggested that a centralised team be established for issuance of permits for LPS and LPL, including construction of a database for monitoring of the trade. However, this would take control away from the Member States and would also have resource implications for whatever body was assigned the work – presumably the Commission.

To conclude, the options are:

- ***Amendment of Article 19 of Regulation 865/2006 to facilitate greater use of pre-issued permits;***
- ***Amendment of Article 4 of Regulation 338/97 to exclude some or all categories of Annex B specimens from the requirement for import permits; or***
- ***Creation of centralised unit to deal with issuance of permits for these products (given that this option would have significant resource implications for the relevant body and would involve Member States ceding control, it may be the least realistic).***

3.3.2.2 External trade in live animals and plants, and the import of hunting trophies

Import permits are issued very frequently for a range of live animals and plants, mainly birds, reptiles, corals and orchids. This task is considered very time and resource intensive by the majority of the Management Authorities and the Scientific Authorities. The enforcement authorities find the control of such shipments very difficult, as it often requires experts to identify the species traded in order to verify that it corresponds to the permit.

The import of hunting trophies is regarded as time and resource intensive for many of the same reasons. However, only hunting trophies from Annex A species are time- and resource-intensive for the Management and Scientific Authorities since hunting trophies of Annex B species do not require import permits.

The live animal trade attracts considerable attention, with many non-governmental organisations (NGOs) objecting to it in principle. The same is true of the hunting trophy trade. The number of negative SRG opinions (see Section 3.8) for these categories of specimens is evidence that, at least in some cases, there are real conservation concerns. In the case of live animals, there are numerous negative opinions in respect of tortoises, lizards, birds of prey, parrots, corals, etc., from a range of countries. In the case of hunting trophies, the bulk of the negative opinions are accounted for by Wolf (*Canis lupus*) and Brown Bear (*Ursus arctos*) from a number of range States. However, it should be said that, in this case – where only Annex A species are the subject of negative opinions, some of these negative opinions arise because of failure by the relevant range State to comply with guidelines which require more than mere non-detriment detriment findings. Range States have to show evidence of an active management regime based on sound data, with adequate monitoring and feedback mechanisms, adequate enforcement and evidence of local community and conservation benefits. It is also worth noting – and this will be returned to in Section 3.8 – that both of these are Appendix II species.

Leaving aside the option of abolishing the requirement for import permits where these are not required by the Convention (an option discussed in Sections 3.4, 3.8 and 3.9) it is still necessary to look at the issuance process and the enforcement efforts in connection to importation.

Neither the Management Authorities nor the Scientific Authorities could suggest any measures to reduce time and resource allocation for processing imports of live specimens or hunting trophies. However, as was the case for reptilian leather products, one time consuming measure could be to prioritise the presentation of applications for the Scientific Authorities so that cases need not be referred to them if an opinion has already been formed by the SRG, or the Scientific Authority has provided advice recently and no significant change in circumstances has occurred. This will undoubtedly reduce the time and resource consumption for the authorities, but at the same time reduce the level of vigilance towards the species concerned.

Again, accepting for the present the requirement for import permits for most categories of Annex B specimens (and all Annex A), one of the consequential time- and resource-intensive procedures is the need for consultation with the country of origin in order to check the validity of the export permits - as well as legality of origin and compliance with quotas. Another major task for the Scientific Authorities is to make a non-detriment finding for new species/country combinations. The work-load associated

with these tasks is very difficult to diminish, as much of the information needed is invariably problematic to obtain. However, one measure could be to prepare a common website for Management and Scientific Authorities within the EU designed for information sharing, reducing the risk of two authorities spending time and resources obtaining the same kind of information. The European Commission's online information network "Communication & Information Resource Centre Administrator" (CIRCA) could be adapted to this purpose.

In order to reduce the time and resource consumption for the enforcement authorities in dealing with import of hunting trophies and live animals and plants, the establishment of a properly trained CITES-team within Customs might be a solution, as the members of this team would have the knowledge and experience to control the shipments as effectively as possible. If this is not an option due to the structure of the Customs administration or the size of the country, a general increase in the level of training and education of the enforcement authorities could still serve to improve the effectiveness of enforcement authorities when dealing with imports of live specimens and hunting trophies.

To conclude, the options are as follows:

- ***Abolish the requirement for import permits for Annex B species (discussed in Sections 3.4, 3.8 and 4.2);***
- ***Make greater use of generic opinions from Scientific Authorities for each species/ country combination rather than referring every individual case to the Scientific Authority;***
- ***Make greater use of CIRCA and adapt it as necessary; and/ or***
- ***Increase training for enforcement personnel.***

3.3.2.3 Issuance of Internal Trade Certificates for Annex A species

This is discussed in more detail in Subsection 3.6.5 and in Section 4.

3.3.2.4 Tourist souvenirs

The final time- and resource-consuming task to be touched upon in this analysis is the handling of tourist souvenirs by the Customs officers. Souvenirs were regarded as time- and resource-consuming by the vast majority of Customs officers in this study, and also by most of the police/ Wildlife Inspectorates included tourist souvenirs in their "top three" list of time- and resource-intensive CITES products that they deal with.

From time to time, the issue of tourist souvenirs is raised for further discussions in various international meetings. The reason for this is not just the conservation concern for the species involved, but also the concern for the vast number of travellers unintentionally being "criminalised" every day, adding to the work load of the Customs administration involved as well as to the public confusion and potential antipathy towards CITES.

The problem has been addressed through a range of exceptions in the EC Regulations for certain products, and it was therefore interesting to evaluate the consequences of these exceptions – as regarded by EC enforcement officers. The vast majority of the enforcement officers expressed concerns about the exceptions and only six out of 23 respondents felt that the exceptions have enabled them to redirect time and resources to more essential tasks. The main concern regarded tourists lacking knowledge and understanding of the exceptions, followed by the risk of more confusion due to further additions and exceptions to the growing sets of Regulations.

Despite the large number of souvenirs being handled by Customs every day, many of which are not covered by the exceptions in the EC Regulations, there seems to be a prevailing view amongst enforcement personnel that further exceptions to the EC Regulations should be avoided unless followed by an intensive information campaign aimed at tourists. Otherwise the benefit of the exceptions in

terms of the reduced amounts of seizures could be outweighed by the costs in terms of lost clarity and increased confusion.

Another option is to reconsider the Appendix II listing of some of the species concerned (or products thereof), without compromising the overall aim of CITES and the EC Wildlife Trade Regulations. Some Appendix II listings should be evaluated with a view to deciding whether or not the administrative burden they raise outweighs the conservation benefit. Alternatively, more use could be made of annotations or derogations, although enforcement staff oppose this, arguing that it adds to public confusion.

A third option would be to lighten the regime for personal effects in general, since a significant proportion of these are tourist souvenirs (the remainder are household goods, heirlooms etc., that may, in many cases, be antiques in any case). This option is also discussed in more detail in Section 3.6 and Section 4.

To conclude, the options are:

- ***increased public awareness;***
- ***greater use of derogations, such as those that already exist for rainsticks etc.;***
- ***removal of more species/ products from the scope of CITES; or***
- ***lightening of the regime governing personal effects in general (see Section 3.6 and Section 4).***

All of these could be achieved without having to amend the text of Regulation 338/97.

3.4 ANALYSIS OF THE EC WILDLIFE TRADE REGULATIONS: ISSUES OF COMPATIBILITY WITH THE CONVENTION

A number of specific issues and problems regarding interpretation and implementation of *Regulation 338/97* and *Regulation 865/2006* were identified (Chamoux 2007a, op. cit.). A summary of the key issues is presented below.

3.4.1 IMPLEMENTATION OF AMENDMENTS TO THE APPENDICES AND COP RESOLUTIONS

3.4.1.1 Implementation of amendments to the Appendices

The inability to give effect to amendments of Appendices I and II adopted at CoPs within the 90-day timeframe is, arguably, one the most serious deficiencies in the Regulations. Some CITES Parties avoid this problem in their implementing legislation by simply citing the Appendices and not requiring substantive amendments to their legislation whenever they are changed. Such a provision is recommended in the CITES Secretariat model law (see Annex 1[15]).

However, this is not possible in the case of the Annexes to *Regulation 338/97*, since Annexes A and B of that Regulation do not correspond exactly to Appendices I and II of the Convention but instead contain non-CITES species or treat some species more strictly. Instead, the Commission has to undertake a lengthy amendment process that, on the last two occasions, lasted more than eight months.

Only if the Community is prepared to forego the power to treat some species more strictly than the Convention can this problem be solved.

Accordingly, this issue is discussed in more detail in Section 4.1.

3.4.1.2 Implementation of relevant CoP Resolutions

The issues with regard to implementation of CoP Resolutions are slightly different from those concerning the implementation of amendments to the Appendices. On the one hand, they are "soft law" so the Member States are not in breach of the Convention by virtue of any delay in implementing them. Furthermore, the majority of such Resolutions adopted at recent CoPs provide for derogations or lighter procedures for certain categories of specimens so there is no direct conservation problem arising from their non-implementation.

That said, there are still valid reasons why Member States and the Commission should be concerned about the length of time required to give effect to relevant Resolutions in the Commission Regulation. For one thing, although it has already been said that the majority of such Resolutions tend to provide for easing of controls, this is not the case with caviar. The Community is the largest importer of caviar in the world and, with the accession of Bulgaria, has become a range State for sturgeon species. Yet it tends to lag behind in implementing Resolutions providing for tighter procedures for trade in this commodity. Furthermore, delays in implementing lighter procedures mean that resources are wasted implementing controls that are no longer required by the Convention, diverting personnel from more important tasks. During the inter-regnum period, a situation can arise whereby specimens arrive in the

[15] Comparison of this model law with the Regulations is instructive in other respects. It has been remarked (Yeater, *pers. comm.*, September 2007) that the latter are written very much from the perspective of a jurisdiction that is primarily an importing one whereas the model law is framed for use by both importing and exporting countries.

community without the documents that are required under the Regulations then in force. This means that EU traders are at a competitive disadvantage vis-à-vis their third country counterparts.

The process is much more cumbersome than that pertaining to amendment of the Annexes (see Section 4.1). Preparation of a new or amending Commission Regulation requires a considerable effort in terms of drafting on the part of the Commission, and the input of the Commission Legal Service is much more substantial – thereby taking much more time. Similarly, while the amending Annexes do not require substantive debate in Committee (rather, merely expert checking), Member States will, naturally, wish to discuss at length the operative legal text implementing CoP Resolutions. Regard must also be had to the need for consistency with existing provisions and this is by no means easy, given the complexity of the Commission implementing Regulation. Then the translations are correspondingly more complicated and Member States want to be satisfied with their accuracy. With all of these considerations in mind, the process must take several months longer than the amendment of the Annexes – at a minimum!

There is no straightforward solution to this problem. It is hard to see how any amendment of the *Regulation 338/97* could correct it; the problems lie with the need to ensure coherence in the Commission Regulation. However, there are a number of considerations that the Commission and the Member States could bear in mind in the future:

1. Some of the relevant CoP Resolutions arise as a result of proposals from EU Member States. At the Vilm workshop it was suggested that Member States who submit Resolutions for deliberation at CoPs should consider in advance - and, it could be argued, present a paper to the Committee – on how these might be implemented in amendments to the Commission Regulation.

2. By no means all relevant Resolutions arise from Member State proposals. Therefore, a similar process could be adopted by those advocating support for draft Resolutions proposed by the Secretariat or by third countries.

3. While acknowledging that lighter procedures are desirable when there is no conservation detriment, they do increase the complexity of the Regulations and the scope for confusion. For example, while the lighter procedures enacted in *Regulation 865/2006* for travelling exhibitions will undoubtedly ease the paper burden for larger mainland European countries, they also require the addition of an extra chapter and two annexes to that Regulation. For the many smaller Member States with lower levels of trade, this renders the legislation more complex and they might find it easier to continue with a simpler regime that offers fewer options and less scope for confusion. Therefore, in deciding what line to take, the Commission and the Member States should consider whether or not the benefit of proposed Resolutions is proportionate to the increased complexity of the Regulations that will result. Will such Resolutions increase the scope for confusion; will they increase the training burden for enforcement personnel; or will they create doubts about interpretation that might lead to increased illegal trade?

4. Working Group 4 at the Vilm workshop emphasised that implementation of CoP results should be limited to what is actually required, in order to speed up the process. They suggested that the Commission, in consultation with Member States, could determine this. However, given all the issues that come into play – including the need to ensure that EU traders are not placed at a competitive disadvantage - it is likely that what is deemed to be actually or urgently required will correspond closely to the full range of Resolutions adopted at the CoP that are relevant to EU legislation. Therefore, the best opportunity for intervention is before the adoption of such Resolutions.

In summary, the scope for improving the present regime rests largely on the willingness of Member States and the Commission to scrutinise CoP proposals for Resolutions in more detail and to give adequate consideration to the means of implementing them via the Commission Regulation –

including the question as to whether or not their implementation is desirable or necessary – and to take their position on these proposals accordingly at the CoP.

3.4.2 ISSUES RELATING TO EC STRICTER MEASURES

Regulation 338/97 contains stricter import conditions than those imposed by CITES including:

- stricter treatment of some taxa in the Annexes (see Section 3.4.1 and Section 4.1);
- a requirement for import permits for Annex B species, subject to the conditions of Article 4(2) (see Section 3.8 and Section 4.2);
- provision for import suspensions of Annex A and B species under Article 4(6) of *Regulation 338/97*(see also Section 3.8 and Section 4.2).
- a requirement for import notifications for Annex C species;
- a fourth annex – Annex D – that has no equivalent in CITES (see Section 3.6.16.10);
- miscellaneous other measures that are mainly enforcement-related.

3.4.3 TEXTUAL ALIGNMENT OF THE REGULATIONS WITH CORRESPONDING PROVISIONS IN THE CONVENTION AND RELEVANT RESOLUTIONS

Annex 2 lists the apparent inconsistencies between the text of the Convention and relevant CoP Resolutions on the one hand and corresponding provisions in the Regulations on the other. These will be addressed in more detail in Section 3.6, where legal, interpretation and implementation issues will be discussed.

3.4.4 COHERENCY OF THE EC WILDLIFE TRADE REGULATIONS WITH OTHER INTERNATIONAL TREATIES

Several international nature protection Conventions are linked to the issue of Wildlife Trade, and therefore to the *EC Regulations 338/97* and *865/2006*.

For example the principles of the Bern Convention on European Wildlife, to which all the 27 Member States and the EC are Parties, are aligned with the overriding goals of the EC Regulations. In particular, Article 6(e) prohibits trade in certain wild fauna and species, listed in Annex II of that Convention.

The Bonn Convention on Migratory Species (CMS) does not specifically address the issue of trade in migratory species. However, some provisions relate indirectly to trade issues. In particular Article III(5) prohibits the taking of animals belonging to species listed in CMS Appendix I, i.e. endangered migratory species, with exceptions. While not a detailed comparison between the Appendices of the CMS and the Annexes of the EC Wildlife Trade Regulations, (or the CITES Appendices), a quick examination reveals that certain species on Appendix I of the CMS are also in Annex A of *Regulation 338/97* (e.g. *Cetacea spp*.). The CMS also recognizes the need of conservation and management of migratory that which have an unfavourable conservation status .

The 1992 Convention on Biological Diversity (CBD) does not make any reference to the issue of trade in wildlife. However, Target 4.3 in Annex II to Decision VII/30 – the CBD CoP decision that lays down the goals and targets for achievement of the 2010 target to significantly reduce the rate of loss of biodiversity – includes the target that:

> *No species of wild flora or fauna should be endangered by international trade.*

As a member of the World Trade Organization (WTO), the EC has to be consistent with the general provisions relating to trade in products, established in particular by the General Agreement on Tariffs and Trade (GATT). Trade in wildlife has to be consistent with its core principles, the principle of non-discrimination (Article I and III) and the prohibition of quantitative restrictions (Article XI). The WTO

regime for trade in goods also provides for exceptions in terms of environment conservation (Article XX)[16].

This implies that stricter domestic measures or trade restrictions need to be assessed on a case-by-case basis. In turn, it means that the following principles should be applied to the decision-making process of the Scientific Review Group (SRG):

- They should be based on the conservation objectives of the Regulation;
- They should not consider information that is not to be taken into account;
- They should ensure that the relevant GATT provisions are complied with; and
- They should be based on sufficient information (recognizing that in some cases there is a lack of scientific information, but that it should be possible to demonstrate that sufficient efforts have been made to collect information that is available).

[16] The Article reads:
Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
(a) necessary to protect public morals;
(b) necessary to protect human, animal or plant life or health;
(c) relating to the importations or exportations of gold or silver;
(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
(e) relating to the products of prison labour;
(f) imposed for the protection of national treasures of artistic, historic or archaeological value;
(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
*(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;**
(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

3.5 ANALYSIS OF THE EC WILDLIFE TRADE REGULATIONS: ISSUES OF COMPATIBILITY WITH THE BIRDS AND HABITATS DIRECTIVES

This section addresses the compatibility of the Annexes to *Regulation 338/97* with the species protection provisions of:

- *Council Directive 79/409/EEC* of 2 April 1979 on the conservation of wild birds[17] (the so-called Birds Directive); and
- *Council Directive 92/43/EEC* of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora[18] (the so-called Habitats Directive).

3.5.1 ALIGNMENT OF ANNEX A WITH THE SPECIES PROTECTION PROVISIONS OF THE DIRECTIVES

This is discussed in detail in Section 4.1 but is summarised here.

The listing on Annex A of nearly all CITES-listed species that are also protected by the Birds and Habitats Directives leads to an extra burden of work in relation to these species. It means that many raptors, as well as Brown Bear, Wolf and many Cetaceans, are treated much more strictly than under the Convention, even though they might not be threatened in global terms.

The provisions of these Directives have the effect of protecting these species in the wild wherever they occur – not just in EU territory – and so, commercial use of wild-taken specimens is virtually prohibited. It is also worth noting that many of the Annex A hunting trophy import suspensions relate to these species, which are treated as Appendix II species in most non-EU range States.

If the Community wishes to continue to treat Birds and Habitats Directive Species more strictly, then it should consider amending the Council Regulation to facilitate amendments to such Annex A-listings without recourse to Council. However, the question must be asked whether or not this approach is proportionate. If not, then amendments of the Directives might be required.

At a broader level, the Community should reflect on the fact that a more formal alignment of the Annexes with the CITES Appendices might allow the Council Regulation to be amended so that CoP amendments to the Appendices apply automatically. As discussed in Section 3.4, this could be done via a twin-track approach, whereby the Commission (or Council in the case of Annex A species) would amend stricter listings that were no longer considered to be warranted and then the Community (via a contract from the Commission if necessary) could submit CoP proposals on the remainder.

3.5.2 OTHER INCONSISTENCIES OR AREAS WHERE THERE IS SCOPE FOR CONFUSION

The other main area where there are apparent inconsistencies or possibilities for confusion is with respect to derogations from the species protection provisions of the Directives. For wild birds – and for Annex IV species of the Habitats Directive - the default regime is one of strict protection, and all lethal or consumptive uses are provided for by way of derogations. A tabular comparison of the provisions relating to derogations from the trade prohibitions pertaining to Annex A species under the EC Wildlife Trade Regulation and relevant species under the Directives is attached as Annex 3.

[17] OJ L 103, 25.4.1979, p.1
[18] OJ L 206, 22.7.1992, p.7

It must be said that the apparent inconsistencies can, in general, be legitimately explained by the fact that the primary focus of the Directives is to protect wild species *in situ* and that they need to regulate the taking of such species from the wild, even when no commercial transaction is taking place. They also need to reconcile this protection with the requirement to protect aviation (from bird strikes etc.), crops, livestock, fisheries etc. and to balance the conservation needs of these species against wider species and habitat management measures. As such, the differences – most of which have the effect of further limiting the scope for use of the relevant species - should not present a major problem to enforcement authorities who, indeed, indicate that they are familiar with the provisions of all three pieces of legislation. Problems may arise when a species taken from the wild in one country moves to another – especially if the provisions in the latter are stricter. However, this does not seem to have given rise to major difficulties so far. Nevertheless, there is a need to ensure that the public are aware that the situation pertaining to these species is slightly different from that pertaining to the generality of Annex A species, which is why listing them in bold type is useful.

In summary, while it might be worthwhile to review the wording of relevant provisions in Regulation 338/97, the primary focus should be to ensure that information and training material relating to the Regulation – at Community and Member State level - should include cross-references to relevant provisions of the Directives and vice versa. At Commission level, the two relevant units in DG Environment (Units B2 and E2) should co-ordinate their approach on this matter.

3.5.3 COMPATIBILITY WITH OTHER EU LEGISLATION

Other EU legislation where compatibility issues may arise but are of less significance are:

- *Council Regulation 348/81/EEC* of 20 January 1981 on common rules for imports of whales or other cetacean products;
- *Council Regulation 3254/91/EEC* of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards;
- *Council Directive 83/129/EEC* of 28 March 1983 concerning the importation into Member States of skins of seal pups and products derived therefrom;
- *Council Directive 1999/22/EC* of 29 March 1999 relating to the keeping of wild animals in zoos (see also the discussion of the term "scientific institution" in Section 3.3.X);
- *Council Regulation 2173/2005/EC* of 20 December 2005 on the establishment of a FLEGT (Forest Law, Enforcement, Governance and Trade) licensing scheme for imports of timber into the European Community;
- *Council Regulation 2913/92/EEC* of 12 October 1992 establishing the Community Customs Code; and
- *Council Directive 92/65/EEC* of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos (the so-called Balai Directive).

These instruments are listed for completeness but it is not proposed to discuss them further in this report.

3.6 ANALYSIS OF THE EC WILDLIFE TRADE REGULATIONS: LEGAL, INTERPRETATION AND IMPLEMENTATION ISSUES

3.6.1 DEFINITION ISSUES

Activities 1 and 2, together with the Vilm workshop, identified a number of definitions that were unclear or misleading and found a need for some that were missing.

3.6.1.1 Offering for sale – Article 2(i) of *Regulation 338/97*

Article 2(i) of Regulation 338/97: 'offering for sale` shall mean offering for sale and any action that may reasonably be construed as such, including advertising or causing to be advertised for sale and invitation to treat.

The expression *'causing to advertise'* is understood to cover the person who requests that an advertisement be placed. However '*advertising'* can be interpreted as covering the medium through which an advertisement is made public. Is the intention of the wording to enable a publisher to be charged with the offence of advertising?

It emerged at the Vilm workshop that different Member States interpret this provision differently; in some Member States the publisher cannot be held liable. However, in other States, national legislation renders them liable and their only legitimate defence is that, in the particular case in question, they could not reasonably have known that the species concerned was one where commercial use was prohibited. In this regard, there would also be differences between the way a Court might interpret such provisions with regard to advertising providers like websites where the provision is automatic or semi-automatic. For example, although Irish legislation renders the advertiser liable, it is unlikely that the State would even proceed with a prosecution where it could be argued that the advertiser could not reasonably have known that he was doing wrong.

Certainly there is an onus on Member States to ensure that advertising media are reasonably informed. It is also acknowledged that a vendor who is refused by one advertiser will approach another and another so the prohibition is by no means a foolproof method of preventing illegal internal trade – especially given the ease with which advertisements can be placed on the Internet.

Nevertheless, it would be not be in keeping with the spirit of the Regulations if a periodical could, for instance, knowingly advertise a rhino horn dagger for sale without taking steps first to verify that it was introduced into the Community before Community and/ or Member State legislation prohibited this. It is submitted that this is not an issue where the Community can simply accept that practices differ and then let the matter rest.

In summary, this question should be subjected to greater legal analysis. In the event that it is determined that the present wording of the definition in Regulation 338/97 does not render the advertiser liable, the scope for amendment of that Regulation could be explored.

3.6.1.2 Member State of destination and place of destination – Articles 2(h), 2(k) and 4(1)(c) of *Regulation 338/97*

Article 2(h) of Regulation 338/97: 'Member State of destination` shall mean the Member State of destination mentioned in the document used to export or re-export a specimen; in the event of introduction from the sea, it shall mean the Member State within whose jurisdiction the place of destination of a specimen lies.

The problem here is that the 'Member State of destination' is defined as the one mentioned in the (re)export document. This is not necessarily the real Member State of destination since, once the permit

is issued, the specimen can be brought into any Member State. Furthermore, it may only stay a matter of hours at its first destination.

Article 4(1)(c) of Regulation 338/97: the competent scientific authority is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

A problem arises with Article 4(1)(c) since the Scientific Authority at the place of destination is not necessarily the Scientific Authority in the Member State of final destination.

There is confusion over the terms 'Member State of destination' and 'place of destination'.

Article 2(k) of Regulation 338/97: 'place of destination` shall mean the place at which at the time of introduction into the Community, it is intended that specimens will normally be kept; in the case of live specimens, this shall be the first place where specimens are intended to be kept following any period of quarantine or other confinement for the purposes of sanitary checks and controls.

A similar problem arises with live specimens of Annex B species, where the corresponding provision is Article 4(2)(b).

Article 4(2)(b) of Regulation 338/97: the applicant provides documentary evidence that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

Interpretation problems arise in differentiating between place of introduction and place of final destination. Specimen(s) are imported by a dealer who legitimately houses the specimens for a short period after quarantine, but will soon transfer them to a client. The first place of entry is declared on the associated permit/ certificate, but there is no declaration of how long it is going to stay in that place. Therefore, interpretation of the terms 'normally' and 'destination' require guidance.

The Vilm workshop recognized that the issue has been discussed several times in the Committee. Administrative procedures in the EU are not adapted to existing trade patterns anymore; shipments arriving in one Member State can be destined for another Member State. Questions arise over who is the issuing country and competent authority.

It is assumed that the intention of these provisions was to ensure that the first premises at which the live specimens spent a reasonable period were those that would be subject to scrutiny. However, nowadays, these are not always the first premises to which the specimens are moved after quarantine.

Already, the Commission has advised that these provisions demand that the first place of storage following quarantine be specified in advance and that the specimens be held there for an undefined period before being moved elsewhere. This precludes a dealer who, say, finds a buyer before the specimen arrives from shipping the specimen directly to that person. Except in the case of non-captive-bred Annex A specimens, it also has the effect of weakening the degree of scrutiny to which that buyer can be subjected when he or she does acquire the specimen. However, even if this provision were to be changed, it would remain necessary to have some right of scrutiny over premises where live specimens spent even a transitory period.

In summary, the options are:

- ***to maintain the status quo, accept the inconveniences that result and provide adequate guidance to Member States and traders; or***
- ***to amend Regulation 338/97.***

3.6.1.3 Primarily commercial purposes – Article 2(m) of *Regulation 338/97*

Article 2(m) of Regulation 338/97: "primarily commercial purposes` shall mean all purposes the non-commercial aspects of which do not clearly predominate.

The issuing of many permits and certificates is based upon a judgement by the Management Authority(ies) and the Scientific Authority(ies) as to whether the use of a specimen is "primarily commercial". The mix of activities to which a specimen is subject may be complex. For example a zoo may have a degree of education combined with entertainment and other commercial aspects. The definition of 'non-commercial' in this context is therefore open to considerable interpretation.

The Vilm workshop noted that Annex A specimens imported for 'primarily non-commercial purposes' are required, in some Member States, to have an Article 8(3) certificate when displayed in a scientific institution, including zoos, etc. Article 8(3) certificates are also issued in some Member States when the specimens are passed to another scientific institution.

Article 8(1) and 8(3) of Regulation 338/97:

1. The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited…
…3. In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora, exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens:
(a) were acquired in, or were introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens; or
(b) are worked specimens that were acquired more than 50 years previously; or
(c) were introduced into the Community in compliance with the provisions of this Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned; or
(d) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens; or
(e) are required under exceptional circumstances for the advancement of science or for essential biomedical purposes pursuant to Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (6) where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have been born and bred in captivity; or
(f) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned; or
(g) are intended for research or education aimed at the preservation or conservation of the species; or
(h) originate in a Member State and were taken from the wild in accordance with the legislation in force in that Member State.

Two main issues arise:

1. There is discrepancy in the way this issue is handled between the Member States. The UK requires a certificate for all transactions but some other Member States do not. This is creating confusion and disharmony.
2. Some Member States are concerned that the issuance of certificates for these specimens might contravene the purpose of the import. It was noted that the 'primary purpose' was not necessarily commercial (hence import of wild Annex A specimens was allowed) although there were commercial activities associated with the institution / zoo, and thus an internal trade certificate was required for display, etc. Concern was expressed that this could result in any zoo which charges an entrance fee being classed as commercial, with potentially large repercussions on such organizations.

With regard to the second consideration, it may be that the Vilm discussions did not take note of the distinction between Article 2(m) and Article 8(1). The former defines "primarily commercial purposes" while the latter prohibits the use of Annex A specimens for "commercial purposes" – i.e. the word "primarily" is absent. Furthermore, use of Annex A-specimens for *any* of the purposes specified in Article 8(3) requires a certificate.

It would appear that the combined purpose of Article 8(1) and Article 8(3) was to exclude *primarily* commercial uses of Annex A specimens in all circumstances unless:

- They are introduced into the Community before Annex C1 (of *Regulation 3626/82*)/ Annex A/ Appendix I applied;
- They are pre-1947 worked specimens;
- They are captive-bred/ artificially propagated; or
- They are legally taken from the wild in a Member State.

Other categories of specimens can be used for:

- Essential biomedical research;
- Breeding/ propagation for conservation purposes; or
- Research or education aimed at conservation of the species.

In the first of these cases, the body undertaking the research might be a pharmaceutical company but – as long as the conditions of Article 8(3)(e) are met, they can be granted a certificate. Conversely, the applicant in the other two cases might be a charitable zoo. However, Article 8(3) is clear. These latter benign uses still require issuance of a certificate – the difference is that in these cases there is no restriction on the source of the specimens.

In summary, a reading of Article 8(3) would indicate that even non-commercial zoos need a certificate to display an Annex A specimen.

It should be noted in passing that, in the Vilm Workshop, Member States tended to use the term "Article 10" certificates rather than "Article 8(3) certificates, even though the latter was what was really at issue. Article 10 also encompasses re-export certificates (issued under Articles 5(2)(b), 5(3) and 5(4)), and certificates for the movement of live Annex A specimens (issued under Article 9(2)(b)). It could be argued that Article 10 is redundant and, indeed, *Regulation 865/2006* – unlike its predecessors – does not make reference to it.

Therefore, in the event that Regulation 338/97 is re-opened, consideration should be given to the deletion of Article 10.

3.6.1.4 Species – Article 2(s) of *Regulation 338/97*

Article 2(s) of Regulation 338/97: 'species` shall mean a species, subspecies or population thereof.

There is a difference here with CITES. The Convention uses the term "geographically separate population thereof". The IUCN analysis undertaken as Activity 1 suggested that the definition could be made clearer by adopting the terminology used in the CITES text. However, it could equally be argued that the Community may wish to retain the flexibility implicit in the current text. For instance, can it be argued that the British Columbia Grizzly Bear population – which is the subject of an import suspension - is "geographically separate" from those of neighbouring provinces (or from the USA population)? A similar situation could arise with many African species. For example, many raptor species from Guinea are subject to import suspensions at present. To what extent can it be argued that these are geographically separate from those of neighbouring West African countries?

The options are:

- ***To maintain the status quo; or***
- ***To amend the definition in Regulation 338/97***

3.6.1.5 Specimen – Article 2(t) of *Regulation 338/97*

Article 2(t) of Regulation 338/97: 'specimen` shall mean any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes

concerned.

The CITES definition refers to any '*readily recognisable part or derivative*' whereas the EC Regulations do not make the distinction that the parts or derivatives need to be 'readily recognisable.' The EU definition is therefore more inclusive and restrictive. That said, the substantive approach adopted in the EU Regulations informed the interpretative guidance set out in Resolution Conf. 9.6 (Rev.).

Although, in the past, the question has been raised in the Committee as to whether or not the definition in the EC Regulation could impose greater obligations to regulate – say – trade in vaccines, nevertheless, the Vilm Workshop concluded that the definition in the Regulation is appropriate and that no changes are needed. It also noted that the declaration on a product saying that it contains a material which is clearly a CITES specimen is sufficient for enforcement personnel to start procedures where needed. However, this is not always enough to secure criminal convictions in national Courts. Nevertheless, the declaration can serve as a tool. The Workshop considered that issues regarding evidential proof need to be dealt with by national legislation.

Some declarations on products may be misleading for customs (i.e. tiger balm) and this can lead to inefficient use of enforcement efforts and misunderstanding among traders (i.e. does the declaration need to be specified as 'content' or 'ingredients', can it be on the label, marks, etc). The workshop considered that further guidance for enforcement personnel would be useful.

In summary, there is support for the current text but a desire for more guidance for enforcement staff.

3.6.1.6 Trade in certain derivatives – Article 2(t) of *Regulation 338/97*

The question here is whether there is any need or desire to licence trade in cell lines, faeces, urine and fossils, etc. The derivatives under consideration include products that do not contain any part of the original from which they are derived, and products for which a trader does not need to have custody of the animals to obtain them.

Parties have considered this problem at a number of CoPs but have not found a solution.

The Vilm Workshop proposed that such trade should not be regulated. This issue has already been discussed in the past in the EU and CITES. Working Group 1 of the workshop did not see the regulation of the trade in cell lines, faeces and urine as a conservation issue.

However, the Workshop noted that the EC needs to be aware that some third countries have concerns that such exemptions from CITES would undermine their efforts to protect their rights regarding genetic material derived from native species and any such a derogation would have to be carefully worded. Nevertheless such issues were regarded as beyond the scope of the Vilm Workshop.

The way forward identified by the Workshop was to continue to press for lighter procedures at CoP.

The inclusion of fossils in this derogation could be of concern regarding coral rock. The Workshop noted that the EU has addressed the issue of coral rock through unilateral adoption of a definition for coral rock and has shared this interpretation within CITES. However no final agreement has been reached in CITES, even though support for the EC definition came from other regions.

3.6.1.7 Hybrids – Article 2(t) of *Regulation 338/97*

Article 2(t) of Regulation 338/97*: a specimen will be considered to be a specimen of a species listed in Annex A to D if it is, or is part of or derived from, an animal or plant at least one of whose parents is of a species so listed(…).*

The treatment of 'hybrids' under the Regulation (EC) No. 338/97 has since been clarified in the notes on the interpretation of the Annexes, i.e. *hybrid animals that have in their previous four generations of the lineage one or more specimens of species included in Annexes A or B of the Annexes, shall be subject to the provisions of this Regulation just as if they were full species.*

The Workshop noted that the definition in the notes on the interpretation of the Annexes is essentially the same as CITES Resolution Conf.10.17, but confusion arises from the text in Article 2(t) of *Regulation 338/97*. There is inconsistency between the Article 2(t) definition and that in the introduction to the Annexes. However, in practice, according to the Workshop participants, the correct definition in the Annexes is used.

The inconsistency is not perceived by the Workshop as a significant problem. It is tolerable as the correct definition for hybrids is in the introduction to the Annexes. The issue has been clarified by the SRG. Guidance is now the way forward. If *Regulation 338/97* is amended it would make sense to amend Article 2(t) so that it is consistent with Convention.

That said, the Workshop noted that maintaining CITES controls as far as the 4th generation creates an unnecessary burden for bona fide breeders but this would have to be dealt with via a CoP proposal.

In summary, the status quo is acceptable for the present but the opportunity could be taken to fine-tune the definition in the body text of Regulation 338/97. Furthermore, consideration should be given to a CoP proposal to ease the restrictiveness of the definition in the annotations to the appendices – this could then be reflected in the Annexes via a Commission Regulation.

3.6.1.8 Transit – Article 2(v) of *Regulation 338/97*

Article 2(v) of Regulation 338/97*: 'transit' shall mean the transport of specimens between two points outside the Community through the territory of the Community which are shipped to a named consignee and during which any interruption in the movement arises only from the arrangements necessitated by this form of traffic.*

This corresponds *mutatis mutandi* with CITES Resolution Conf.9.7(a)(i) Rev. CoP 13. However, sub-paragraph (a)(ii) adds "cross-border movements of sample collections of specimens that comply with the provisions of section XV of Resolution Conf. 12.3 (Rev. CoP13) and are accompanied by an ATA carnet" to the definition. Although this resulted from an EU initiative, it will not be possible to implement it without amending the Council Regulation.

To conclude, this could be rectified if Regulation 338/97 is re-opened.

3.6.1.9 Worked specimens – Articles 2(w) and 8(3)(b) of *Regulation 338/97*

Article 2(w) of Regulation 338/97*: 'worked specimens that were acquired more than 50 years previously` shall mean specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation and that have been, to the satisfaction of the Management Authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose.*

This derogation has caused a lot of confusion down the years. Presumably the intention was to introduce an element of proportionality into the Regulations by excluding specimens that were manifestly old from internal trade controls (especially in the context where the Regulations do not recognise the concept of "pre-convention specimens" as defined in Article VII(2) of the Convention).

According to the trade, however, practically nothing would fit the derogation if a very strict approach was taken but it appears that almost everything is being allowed and that the derogation is unenforceable. The Management Authority has to be satisfied that the item comes under the worked specimen derogation, but the apparent burden of proof is on the holder. It is the trader who takes the risks to trade the artefact, and it is the trader who needs to have detailed guidance of what conditions apply.

The term 'significantly altered' is open to interpretation. For example a taxidermy specimen is crafted to look as close to the natural original specimen as possible. At the same time it is clearly significantly altered and this has been accepted in a ruling by the ECJ on this issue[19]. A tiger skin can be manufactured into a rug, or it can be used as a rug in a relatively primitive state, thereby not fitting the definition. The categories given (*jewellery, adornment, art, utility, or musical instrument)* would appear to serve little purpose since they are inclusive rather than exclusive. It is difficult to think of any specimen that would not fall into one of the mentioned categories. The Workshop noted that it is unclear how much work has to go into a specimen for it to be considered "worked" – it was very difficult to find a definition.

The restoration process could well be considered as further carving, crafting or manufacture to effect purpose. Traders who seek to restore or repair their specimens may find they no longer qualify under the general sale derogation under 8(3)(b), even where the restoration process does not involve using parts of endangered species. There is also the question of the use of one derogated specimen (antique) to be used to restore another derogated specimen and still allow the resulting restored antique to come under the derogation. It is suggested that restoration using non-CITES materials should be treated as a special case and derogated for. It could also be argued that the use of pre-1947 CITES material that does not involve alteration of such material beyond recognition could be allowed for. Some participants in the Vilm workshop expressed concern that creating protocols to allow any of the above, although facilitating trade, would also open up loopholes for illegal trade. This is a risk but on the other hand the mere existence of a technical loophole does not always mean that it will be exploited and the likelihood of that happing in this case has to be considered low.

Another key problem in this definition is that it includes a provision that the Management Authority should be satisfied that the specimens were *'acquired in such conditions'*. This results in a problem with Article 62(3) of *Regulation 865/2006* which provides a derogation from Article 8(3) of *Regulation 338/97* for *'worked specimens that were acquired more than 50 years previously as defined in Article 2(w)'*. On this issue, the ECJ has ruled that every time such a specimen changes ownership it is deemed to be acquired but that the derogation only applies if the first acquisition pre-dates 1 June 1947.

Michael Diemer[20], in his presentation during the Vilm workshop, also noted that the seller has to prove that the worked specimen pre-dates 1947 (if asked). Sweden was concerned that they would need to check all worked specimens in advance of allowing exemptions under Article 8(3)(b) e.g. would need to check auction catalogues. Correspondence from the European Commission has partly clarified the

[19] JUDGMENT OF THE COURT (Sixth Chamber) 23 October 2003 (International trade in endangered species of wild fauna and flora - CITES - Regulation (EC) No 338/97 - Articles 2(w) and 8(3) - Notion of worked specimen - Stuffed animal - Concept of specimen acquired more than 50 years previously - Manner of acquisition - Exemption - Regulation (EC) No 1808/2001 - Articles 29 and 32) In Case C-154/02, REFERENCE to the Court under Article 234 EC by Hässleholms tingsrätt (Sweden) for a preliminary ruling in the criminal proceedings pending before that court against Jan Nilsson, on the interpretation of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1), as amended by Commission Regulation (EC) No 2307/97 of 18 November 1997 (OJ 1997 L 325, p. 1), and of Commission Regulation (EC) No 1808/2001 of 30 August 2001 laying down detailed rules concerning the implementation of Regulation No 338/97 (OJ 2001 L 250, p. 1).

[20] Management Authority, Sweden.

situation, noting that a Management Authority only needs to check a specimen if doubts are raised. A seller has to show documents if asked; however it was suggested that clarification is needed in the Commission Regulations.

Apparent inconsistencies between the Council and Commission Regulations were also noted. Article 8(3)(b) of the Council Regulation allows for derogations in respect of pre-1947 worked specimens subject to the issuance of certificates but then Article 62(3) of Commission *Regulation 865/2006* exempts these specimens from the requirement for certificates. However the same approach applies in the case of captive-bred animals listed in Annex X of the latter Regulation and artificially propagated plants, and it is not seen to present any difficulty in those cases. Indeed, the Commission is mandated to make such derogations under Article 8(4) of *Regulation 338/97*.

Comments also included the point that the majority of antique specimens have been worked (restored) since 1947, and that Management Authorities don't have the resources to cover the antiques trade. The overarching question being: what is the conservation benefit of the antiques derogation if a large proportion of such antiques is not strictly covered by the derogation?

The Commission has offered guidance on some of the questions raised with regard to this provision but there is evidently still considerable confusion. Of particular concern is the belief that most antiques do not qualify because they have been restored. While this may be a misinterpretation in some instances, it is likely to be true in many others and enforcement authorities could invest a considerable amount of time trying to combat fraud with little tangible result. On the other hand, the intention of the provision is a valid one since, otherwise, even more time could be wasted pursuing cases where there was no conservation issue.

The problem could be remedied to some extent by continuing the approach adopted to date whereby the Committee agree common interpretations of aspects of this provision. If necessary, the Commission could – in a future framework contract – undertake an examination of the operation of the antique trade in Member States that could inform the Committee's deliberations.

As already noted, the apparent inconsistency between *Regulation 338/97* and *Regulation 865/2006* is one that also applies to other categories of specimens. Nevertheless, the drafting of these provisions could be reconsidered whenever Regulation 865/ 2006 is replaced in its entirety.

Finally, if *Regulation 338/97* is re-opened, consideration could be given to a new term to cover this type of specimen. "Worked specimens that were acquired more than 50 years previously" is a potentially misleading phrase and one that will become more misleading with the passage of time. Perhaps in a future revision it could be simplified – for example: "worked specimens that were acquired prior to 1 January 1950".

To summarise, the most pressing need is for clearer guidance and agreed interpretations – informed, perhaps, by a study that would identify the real scale of the problems cited. However, there is also scope for improving the drafting of relevant provisions in both Regulation 865/2006 and Regulation 338/97, should these be re-opened.

The question of aligning the EC legislation with the Convention with regard to "pre-Convention specimens" – as defined by the latter – was never explicitly considered in the review. It may merit consideration. However, it would is a much more complicated issue than the present one, since it would extend to raw specimens as well where it might not be more difficult to establish their antiquity. Furthermore, it is not envisaged that pre-Convention specimens would be exempt from the requirement for certificates in the way that these worked specimens are.

3.6.1.10. Scientific institutions – Article 7(4) of *Regulation 338/97* and Article 60 of *Regulation 865/2006*

This term is used particularly with respect to Article 7(4) of *Regulation 338/97* with its origin in Article VII(6) of CITES. However, it is not defined in either of the EC Regulations or in the Convention itself; CITES Resolution Conf.11.15 (*Non-commercial loan, donation or exchange of museum and herbarium specimens*) deals with the subject area and offers standards for scientific institutions, but no definition. Given that this term is central to these Articles, it may be useful to have some agreed EC understanding of this term.

Article 7(4) of Regulation 338/97: The documents referred to in Articles 4, 5, 8 and 9 shall not be required in the case of non-commercial loans, donations and exchanges between scientists and scientific institutions, registered by the management authorities of the States in which they are located, of herbarium specimens and other preserved, dried or embedded museum specimens, and of live plant material, bearing a label, the model for which has been determined in accordance with the procedure laid down in Article 18 or a similar label issued or approved by a management authority of a third country.

The purpose of this provision – which has a long history in CITES is to facilitate normal transfer of dead specimens among bona fide museums and other scientific collections. However, Article 60 of *Regulation 865/2006* uses the term in a slightly different way and for a different purpose, thus broadening the scope of the concept of "scientific institution"[21].

Article 60 of Regulation 865/2006: Without prejudice to Article 9 of Regulation (EC) No 338/97 a derogation from the prohibition laid down in Article 8(1) thereof may be granted to scientific institutions, approved by a management authority in consultation with a scientific authority, by the issue of a certificate covering all specimens in their collection of species listed in Annex A to that Regulation, that are intended for either of the following:
(1) captive breeding or artificial propagation from which conservation benefits will accrue to the species concerned;
(2) research or education aimed at the preservation or conservation of the species concerned. Any sale of specimens covered by such a certificate may be made only to other scientific institutions holding such a certificate.

The Vilm Workshop identified several issues:

- The scope of scientific institutions in Article 7(4) of *Regulation 338/97* is relatively straightforward but in Article 60 of *Regulation 865/2006* it is considered to be unclear;
- Zoos and scientific institutions are not synonymous (i.e. the participants did not consider it appropriate that compliance with the Zoos Directive was sufficient for a zoo to be considered as a scientific institution).

As previously discussed, it is unclear whether zoos, museums and botanical gardens fall within the definition of scientific institutions for the purpose of this Regulation, due to the ambiguity of their status as 'commercial' or 'non-commercial' operations. The Commission has confirmed that the name "zoo" is not grounds for assuming primary non-commercial use, yet many zoos appear to be routinely given Article 60 certificates. However, since the transactions benefiting from the derogations under either provision can only take place with other registered institutions, it could be argued that this is sufficient.

Problems arise because of the overemphasis on educational value of zoos in general. Most discussions in the past on this issue have been undertaken in the Committee as opposed to in the SRG. The provision was intended for reputable zoos with a proven track record in captive breeding, research and/or educational work. However, in practice there is considerable diversity in the types of "zoos" found in the Community and there is a need for a better common understanding of the types of zoos that could qualify. It was suggested that Article 60 has been used in the past for relatively indiscriminate issuance of certificates to zoos in some Member States. It was also pointed out that there is no explicit provision in Article 60 for canceling these certificates, although it could be argued that it is implicit in the text that the relevant Management Authority can withdraw its approval of the institution and that this would render the certificate invalid.

[21] This provision was first introduced as Article 30 in Regulation 1808/2001.

1. Having a definition of 'scientific institution' may help differentiation between different institutions that do or do not qualify. This definition could probably be included in an amending or replacement Commission Regulation.

2. Article 60 of *Regulation 865/2006* should be regarded as a separate issue from Article 7(4) of *Regulation 338/97*. The Workshop considered the CITES/EC guidance available for Article 7(4) as sufficient.

3. Although the issue was considered in the Scientific Authority Guidelines, Working Group 1 of the workshop – which comprised mainly scientific personnel - was not satisfied with the manner in which Article 60 categorises zoos – either in terms of their commercial/non-commercial status or as scientific institutions. The use of the phrase 'scientific institutions' in Article 60 should be reconsidered – a different term with an accompanying definition should be used. The opportunity could be taken to clarify the powers of Management Authorities to revoke certificates granted under this provision.

The revised guidelines for Scientific Authorities adopted at SRG 35 set out considerations/ criteria for assessment of breeding/ propagation for conservation purposes and research/ education for such purposes and these should be taken into account.

In conclusion, this is an issue where amendment of the Commission Regulation is warranted but there is no need for amendment of the Council Regulation.

3.6.1.11 Bred in captivity – Article 54(4) of *Regulation 865/2006*

Article 54(4) of Regulation 865/2006: …the breeding stock has itself produced second or subsequent generation offspring (F2, F3 and so on) in a controlled environment, or is managed in a manner that has bee demonstrated to be capable of reliably producing second-generation offspring in a controlled environment

The problem seems to be here that sometimes the phrase '*managed in a manner that has been demonstrated to be capable of reliably producing 2nd generation offspring*' is difficult to interpret and implement, depending, as it does, on a judgement call regarding management of breeders that comes from experience and judgement rather than the text.

However, the Scientific Authority representatives in Working Group 1 of the workshop noted that it has never encountered a problem; the definition in *Regulation 865/2006* seems to be for all intents and purpose the same as in Resolution Conf. 10.16 Rev. One obvious way of interpreting this would be to extrapolate from other facilities where the species concerned had been bred to second generation under similar conditions: this should constitute sufficient demonstration that, in the facility under scrutiny, the breeding stock is managed in a manner capable of producing second-generation offspring in a controlled environment. In fact, Australia, among others, apply this criterion.

To the extent that there are problems in practice these can be shared and resolved through experience and guidance. If it is proposed to amend the CITES definition in the Resolution, this issue could be reconsidered. Or if Member States remain of the view that it constitutes a major problem, they could propose to revise the CITES definition through amendment to the Resolution.

In summary, this problem can be resolved through sharing of experience and expertise and guidance from the Commission. However, in the unlikely event that these measures prove insufficient, the Community could propose an amendment to Resolution Conf. 10.16 which would then be implemented via revision of the Commission Regulation.

3.6.1.12. Specimens artificially propagated - Article 56 of *Regulation 865/2006*

Article 56 of *Regulation 865/2006* lists the criteria for determining whether a specimen has been artificially propagated. There are a number of discrepancies between the criteria in Article 56 and those of CITES Resolution Conf.11.11 (except in the case of timber). The discrepancies are summarized in the table below (Chamoux 2007a op. cit.).

	Article 56 Reg. 865/2006	**CITES Resolutions**	**Comparison/ Discrepancy**
Formulation for 'artificially propagated'	Article 56(1)(a): *" the specimen is, or is derived from, plants grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules under controlled conditions;"*	Conf.11.11 (Rev. CoP13) refers 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;" "plants grown from cuttings or divisions are considered to be artificially propagated only if the traded specimens do not contain any material collected from the wild".	CITES Resolution Conf.11.11(Rev. CoP13) specifies that seeds etc can be either exempt or derived from cultivated parental stock. There is no equivalent text in the EC Regulations. This text is not reflected in the EC Regulations.
Formulation for 'cultivated parental stock'	Article 56(1)(b): *"the cultivated parental stock was established in accordance with the legal provisions applicable to it on the date of acquisition and is maintained in a manner not detrimental to the survival of the species in the wild;"* Article 56(1)(c): *" the cultivated parental stock is managed in such a way that its long-term maintenance is guaranteed;"*	Conf.11.11 (Rev. CoP13) refers to: *"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 designated CITES authorities of the exporting country: i) established in accordance with the provisions of CITES and relevant national 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*	There is no definition of "cultivated parental stock" in the EC Regulations. In CITES there is no mention of a temporal element to determine the legal provisions applicable to the establishment of the cultivated parental stock Maintenance of the cultivated parental stock: in CITES the emphasis is on the elimination of augmentation from the wild, in the EC Reg. the emphasis is on the maintenance of the stock.

		parental stock;"	
Formulation for 'artificially propagated timber'	Article 56(2) Reg. 865/2006: *"Timber taken from trees grown in monospecific plantations shall be considered to be artificially propagated in accordance with paragraph 1"*	CITES Conf.10.13 (Rev. CoP13) *"Timber taken from trees grown in monospecific plantations shall be considered to be artificially propagated in accordance with the definition contained in Resolution Conf.11.11 (Rev. CoP13)"*	In the case of timber the definitions are the same and the criteria for artificial propagation are the same in Article 56(1) Reg. 338/97 and in Resolution Conf.11.11 (Rev.CoP13).

The Workshop noted that the legal origin of parental stock is usually not verifiable and, therefore, clarification is needed as to the extent to which specimens can be regarded as artificially propagated. If a species has introduced populations in Europe or if the import of seeds was exempt at the time, verification can be difficult. The situation does not just apply to *Araucaria* but to cacti species as well.

The Workshop suggested that the Committee should consider this issue to look for a pragmatic solution.

In conclusion, this issue is best resolved through a pragmatic interpretation of existing provisions.

3.6.2 PERSONAL AND HOUSEHOLD EFFECTS

A number of Member States and others have raised issues relating to personal and household effects. These are discussed in more detail in Section 4.5 but are summarised here.

1. The fact that one Member State publishes an 8-page information document explaining the derogation regarding household effects would suggest that they are **overly complex**. They are seen as generating a large administrative burden and ineffective use of enforcement efforts and capacities.

2. Some stakeholders are concerned that the personal or household effects provisions can be **abused** to smuggle specimens (especially personal effects of travellers, rather than goods that are part of a household move).

3. On the other hand, the Enforcement Group has noted that casual imports by holidaymakers account for a high proportion of confiscations by Customs staff but that – except in the case of very high value goods of major conservation significance – they may not be the most serious "real" enforcement problem.

4. Regarding the **definition** of the term, it would appear that the definition given in CITES Resolution Conf.13.7 is much clearer than the one given in the EC Regulation.

5. The Regulations **require export permits for Annex B species** taken from third countries; the Convention requires them in some cases and waives the requirement in others. In effect, the Regulations are stricter.

6. The question remains, however, **whether or not the Regulations should be brought into line with the Convention**, so that not all Annex B specimens require export permits.

7. A number of issues have been raised with regard to the **general derogations for certain categories of personal effect that do not require documentation at all.** In the specific case

of caviar the derogation under Article 57(5) of *Regulation 865/2006* (allowance of 250 grams of caviar per person) is being abused through buses coming into the EC with passengers each holding one 250 gram tin. This derogation, however, was reduced to 125 grams at CoP14 (Res Conf. 12.7 Rev. CoP14). At a more general level, as we have seen in Section 3.2, Customs staff were unhappy about these types of **derogations in general**.

8. Finally, some Member States now take the view that the **sale restrictions** for personal or household effects may be unduly restrictive.

3.6.3 MARKING

CITES provides that Parties may mark specimens to assist in their identification.

CITES Article VI(7): Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

The EC Regulations require the marking of all live vertebrates of Annex A, in accordance with Article 66 of *Regulation 865/2006*, for the issuing of permits and certificates. Although complete harmonisation of marking and identification methods across EU Member States is difficult, wide variation is also not desirable, particularly with the increased use of Specimen Specific Certificates (SSCs). It would be beneficial for Member States to agree on marking methods for those Annex A species regularly found in trade within the EU and for which closed rings and microchips are considered not appropriate, e.g. juvenile tortoises. Member States differ even in terms of the guidelines or statutory minimum sizes below which veterinarians are precluded from inserting microchips for these species. Some Member States use photo-identification for such specimens but others do not regard this as an acceptable form of marking. This has led to certificates issued by one Member State being rejected by another.

The movement, for non-commercial purposes, within the Community of an Annex A specimen originating within the Community is not subject to any CITES documents and unless national legislation requires stricter measures, then the specimen can remain unmarked. This makes it difficult to secure convictions where the transfer is by way of a “gift” unless it can be proven that some kind of equivalent exchange has taken place.

The problem regarding the identification of specimens is an international problem and not one limited to the EU. Sharing information about rings and microchips (central register, type of numbering) would facilitate the tasks of the Management Authority and enforcement personnel.

Regarding the attitude of traders to marking, it might be expected that they would regard it as burdensome. However, this is not borne out by the results of the trade survey, which found that marking requirements are generally well perceived by the traders and breeders. A large majority of them believe that marking facilitates legal trade, and more than half of them believe that the burden created by the marking requirements is outweighed by the benefits to traders and to species conservation. Very few believe that marking requirements discourage legal trade or that marking requirements have loopholes and therefore do not discourage illegal trade.

In this context, several questions have been raised with regard to the marking issue. The advisability of marking Annex B species is discussed in Section 4.3. Other issues discussed at the Vilm workshop are detailed below.

3.6.3.1 Marking and other identification methods

Concern has been expressed over the possibility, in Article 66(4) of *Regulation 865/2006*, of allowing the issuance of permits and certificates for Annex A live vertebrates which cannot be marked or made individually identifiable by their descriptions.

Article 66(4) Regulation 865/2006: Articles 33(1), 40(1), 48(2), 59(5) and 65(4) shall not apply where the competent management authority is satisfied that, at the time of issue of the relevant certificate, the physical properties of the specimens involved do not allow the safe application of any marking method

Questions were raised during the Vilm Workshop over the term "not appropriate to be marked" and when this could be applied. Some Member States consider that issuance of such certificates should be limited only to very exceptional cases for trade in "higher interest" e.g. for the purposes according to the Articles 8(3)(c), 8(3)(e), 8(3)(f) and 8(3)(g) of *Regulation 338/97*, and when there is little possibility for laundering. Some Member States argue that limitation of these cases to transaction-specific certificates under the Article 66(4) of *Regulation 865/2006* has not removed the problem. At the same time, it was acknowledged that currently approved marking methods are not suitable for all specimens - e.g. big parrots may bite leg rings, microchips may cause harm to some specimens, etc. Therefore new marking techniques need to be investigated or current methods improved and, as far as possible, standardised. DNA is the only watertight control method but it has cost implications and, realistically, it can only be used in cases where there are strong suspicions that cannot be allayed by any other means and where the conservation risk posed by the suspected offence is high.

The Vilm Workshop emphasized the desirability of establishing common marking methods. One proposition was that the SRG should be asked to advise on a standard marking method for all specimens, whether live or dead, and make such advice prescriptive to create consistency of marking. However, while the SRG has exchanged information on marking methods in the past, differences remain over issues such as the efficacy of photographs as a marking technique and the minimum size for microchipping. With regard to the latter, different Member States establish different minima on animal welfare grounds – a matter that is seen as Member State competence. The Committee and the Enforcement Group have also discussed this issue but with no clear outcome.

Furthermore, marking of specimens is only useful if there is a corresponding record keeping system, but accurate and timely record keeping gives rise to an additional administrative burden.

In conclusion, this problem does not admit of easy solutions but the best course is for Member States to continue to exchange information on best practice via the three Committees and via CIRCA. A heavy-handed, prescriptive approach is unlikely to yield results.

3.6.3.2 The complexity of the marking requirements in *Regulation 865/2006*

Several Articles in *Regulation 865/2006* deal with the marking requirements for issuing import permits, export permits and re-export certificates (Article 20(4), 26(4), 64(1), 65(1), 65(2), 65(3), 65(4) and 66). Article 64(1) requires that certain specimens are marked for import permits in accordance with Article 66(6). There is an additional requirement in Article 20(4), with regard to import permits, that certain specimens listed in Article 64(1) be marked according to the requirements laid down in Article 66.

Article 64(1) Regulation 865/2006: "Import permits for the following items shall be issued only if the applicant has satisfied the competent management authority that the specimens have been individually marked in accordance with Article 66(6) Reg. 865/2006
a) specimens that derive from a captive breeding operation that was approved by the CoP to CITES
b) specimens that derive from a ranching operation that was approved by the CoP to CITES
c) specimens from a population of a species listed in Appendix I to the Convention for which an export quota has been approved by the CoP to CITES
d) raw tusks of African elephant and cut pieces thereof that are both 20 cm or more in length and 1 kg or more in weight
e) raw, tanned and/or finished crocodilian skins, flanks, tails, throats, feet, backstrips and other parts thereof that are exported to the Community, and entire raw, tanned, or finished crocodilian skins and flanks that are re-exported to the Community

f) live vertebrates of species listed in Annex A that belong to a travelling exhibition
g) any container of caviar of Acipenseriformes spp., including tins, jars or boxes into which such caviar is directly packed"

Article 20(4) Regulation 865/2006: "For import permits concerning the specimens referred to in Article 64(1)(a) to (f), the applicant shall satisfy the management authority that the marking requirements laid down in Article 66 have been fulfilled."

There are two differences between the two articles regarding the number of categories and reference to provisions in Article 66:

Article 64(1) lists specimens in categories from (a) to (g) – i.e. *seven* categories of specimens must be marked in accordance with *Article 66(6)*. Article 20(4) imposes marking in accordance with *Article 66* (as opposed to specifically referring to *Article 66(6)*) and does so only for specimens referred to in Article 64(1) (a) to (f) only – i.e. only *six* categories.

Article 66(6) Regulation 865/2006: In accordance with the method approved or recommended by the Conference of the Parties to the Convention for the specimens concerned and, in particular, the containers of caviar referred to in Article 64(1)(g) shall be individually marked by means of non-reusable labels affixed to each primary container

In fact this is not a mistake. By reading the provisions of Article 66, it can be seen that only paragraph (6) is relevant for the seven categories of Article 64(1), and therefore for the 6 categories of Article 20(4). However, it does not contribute to clarity. Similarly, paragraphs (1) to (5) are clearly only applicable to travelling exhibition certificates and personal ownership certificates. Paragraph (7) concerns the licensing of packaging plants for caviar, and paragraph (8) concerns the case of captive born and bred birds as well as other birds born in a controlled environment.

It is recommended that the formulation be simpler and clearer to avoid confusion. A similar approach should be adopted for the provisions relating to export permits and re-export certificates (Articles 26(4), 64 (1), 65(1), (2) and (3), and 65(4) Regulation 865/2006). All of this can be achieved through amendment of the Commission Regulation.

3.6.4 INVASIVE ALIEN SPECIES (IAS)

This issue is discussed in detail in Section 4.6 but may be summarised here as follows:

The first problem that arises with the IAS provisions of the Regulations is their inclusion in an instrument whose primary focus is species that are at risk through international trade. This means that the former category of species – when included in Annex B – can inadvertently be protected by implementing measures in Member States that are designed to protect the bulk of Annex B species. Even some of the provisions in *Regulation 338/97* suggest that the application of Annex B to IAS was overlooked when framing some provisions. For instance, Article 8(5) of *Regulation 338/97* allows for the sale of species in Annex B if they were legally acquired. This would therefore apply to species listed because they are invasive, which could create a serious problem if it were followed to the letter. At the Vilm Workshop, it was suggested that this confusion would be reduced if IAS were included in a separate annex but this would require amendment of the Council Regulation and such an amendment would not address the other problems identified with the current legislation.

The second problem is the perceived difficulty in getting an invasive species listed in the Annexes. The wording of Article 3(2)(d) places the burden of proof on the proponent of the listing and does not allow for pre-emptive listings of potential IAS except on the basis of exhaustive bioclimatic analysis, such as was done for the Painted turtle, *Chrysemys picta*. Without such analysis – which would be difficult to carry out over the entire range of potential IAS – it is very difficult to demonstrate that the terms of the provision have been met unless the species is already causing a problem in the Community – in which case the listing has less effect (although some Member States contend that, even then, it is easier – procedurally and politically – to get support for possession and internal trade controls, and eradication measures).

Furthermore, the Regulations contain an assumption that IAS can only come from outside the Community as a whole; they do not address the problem of species that are indigenous to one part of the Community (where they may even be under threat) but are IAS in another. In addition, they do not address IAS which are more likely to be introduced accidentally, rather than as tradable exotic species.

For all of these reasons, it could be argued that the Regulations are not the most appropriate mechanism for dealing with IAS. However, there is consensus that the present provisions should remain in place and continue to be used, pending the enactment of new measures.

The Commission is currently assessing how it can develop a better policy framework for invasive species, including the possibility for development of a new Directive (although the Commission has a policy of not proposing new legislative measures unless they are absolutely necessary).

The Vilm workshop participants agreed that, in the long term, the development of a specific EC legislative instrument and establishment of a European-level authority for IAS is the best solution.

3.6.5 TRADE IN ANNEX A SPECIES AND PROOF OF LEGAL ORIGIN

3.6.5.1 Internal Trade Certificates

Article (8)(3) of Regulation 338/97: In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora, exemptions from the prohibitions referred to in paragraph 1 [on commercial use of Annex A specimens] may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens…[the various grounds follow]
Article 10 of Regulation 338/97: On receiving an application, together with all the requisite supporting documents, from the person cnoncerned and provided that all the conditions governing their issuance have been fulfilled, a management authority of a Member State may issue a certificate for the purposes referred to in Article 5(2)(b), 5(3) and (4), Article 8(3) and Article 9(2)(b).

At the outset, it should be noted that, while reference is frequently made to "Article 10 certificates" to describe the certificates issued under Article 8(3) of *Regulation 338/97* (certificates for internal trade), this is not strictly correct as Article 10 refers to other types of certificates (certificates to denote legal taking from the wild, re-export certificates and certificates to allow the movement of Annex A specimens). It is questionable whether or not Article 10 is necessary at all. *Regulation 865/2006* (unlike its predecessors) does not refer to it but refers instead to the substantive provisions it lists on the basis that current drafting practices do not favour reference to "secondary" provisions such as this.

3.6.5.2 Issuance of Internal Trade Certificates

This issue is discussed in more detail in Section 4.4 but it may be summarised here as follows.

The issuance of internal trade certificates is regarded by many authorities as more demanding of time and resources than the remaining document issuance tasks. This seems partly due to vast amounts of applications and partly to the time-consuming processing requirements, including the strict marking requirements and registration touched upon above, and the difficulty in procuring proof of legal origin.

Since the requirement for internal trade certificates can be regarded as a stricter measure within the EU, it is relevant to take a look at the costs and benefits of this task.

One option to reduce the workload would be to reconsider the Annex A listing for species that are not listed on Appendix I of the Convention. This is discussed in more detail in Section 4.1, where the pros and cons are considered.

A second option would be to avail of Article 62(1) and Annex X of *Regulation 865/2006*, which allows for derogations from the certification requirements in respect of species that are commonly captive-bred.

A more radical option would be to remove entirely the requirement for individual certificates for captive-bred (and other exempted categories) of Annex A species (as matters stand it does not apply to artificially propagated plants). This approach would, however, encounter opposition. Many Member States that are also range States for Annex A species wish to have as much certainty as possible regarding the proof of legality of origin of species that are commonly in trade. Given that the bulk of such Annex A species are on that Annex by virtue of their status under EU Directives (see Section 3.5), they would probably invoke those Directives as a basis for stricter national measures - and the Directives offer considerable scope in this regard. If they did, the result would be no less burdensome than the present situation and it would lose the advantage of mutual recognition of documents. Indeed, at present, some countries require certification at national level even for some Annex B species.

In addition, there is a risk that this approach might allow people who have been holding long-lived specimens of doubtful origin for some time to launder them.

Furthermore, the Regulations do not require Registration of Appendix I animals, as set out in Resolution Conf. 12.10. Removal of the alternative safeguard of internal trade certificates could, therefore, attract criticism.

3.6.5.3 Confirmation of legality of commercially traded specimens originally certified in another Member State

Internal trade certificates are fully valid in all Member States, except where a Member State has stricter measures. It is for the receiving party (e.g. new owner of a specimen) to ensure that the purchase, acquisition or transport is not in contravention of possible stricter national measures in his country. Some Member States expressed concern that they were unable to check the validity of a certificate issued in another Member State. However, it was concluded that the problem is manageable, especially since the move was made from transaction-specific to specimen-specific certificates.

It was agreed that Management Authorities should ensure that they retain copies of certificates that they issue or have copies returned by the applicants. These could be retained as scanned copies if this is more convenient. If necessary, this could be reinforced by amendment of Article 11 of *Regulation 865/2006*.

To summarise, the problem can be solved by ensuring best practice with the possibility of reinforcing this via amendment of the Commission Regulation.

3.6.5.4 Similarity of transaction-specific and specimen-specific certificates

Article 1(7) of Regulation 865/2006: 'transaction-specific certificates' means certificates issued in accordance with Article 48 that are valid for specified transactions only within the territory of the issuing Member State.

Article 1(8) of Regulation 865/2006 'specimen-specific certificates' means certificates issued in accordance with Article 48, other than transaction-specific certificates.

Transaction-specific certificates are valid only for those transactions specified by the issuing authority – usually only one transaction. Specimen-specific certificates are valid as long as the specimen remains alive or – if it is a dead specimen, part or derivative – as long as it remains in the state it had when the certificate was issued. The two certificates are differentiated primarily by means of a tick in box 20 of the form.

The visual differences between transaction-specific certificates and specimen specific certificates could be enhanced in the model form set out in a future revision of the Commission Regulation. Increasing the visual distinction between the two certificates would reduce confusion. In order to avoid the need for yet another category of form – and, thus, another annex to the Commission Regulation – one means of doing this would be by creating a separate box in the model form set out in Annex V to that Regulation – perhaps nearer the top of the page, with two tick-boxes; one for specimen-specific and the other for transaction-specific. However, this is essentially a form design issue and the Member States themselves should have input.

To summarise, there is scope for amendment of the Commission Regulation in this regard.

3.6.5.4 Specimens located outside the EU and the related problem of Internet trade

Internal trade certificates can only be granted for specimens that are already located in a Member State because they can only be granted by the Management Authority in that Member State. Specimens of Annex A species offered by persons residing in the Community must be accompanied by valid certificates issued by the Member State in whose territory the specimen is located. There is no special provision in the Regulations which covers offers for sale within the Member State (via the Internet) if the specimen is located in a third country. Problems arise when an EC resident offers a specimen for sale that is located in a third country. Such specimens should normally be the subject of an import permit application before they are offered for sale. If not, then the EC national offering the specimen for sale is committing an offence. There have been proposals that such sales should be allowed but it is difficult to see how this could be done since there is no means for the Management and Scientific Authorities to satisfy themselves that the specimen meets the requirements of Article 4 and Article 8 of *Regulation 338/97*.

The provisions of the EC Wildlife Trade Regulations also apply to "cyber trade" in specimens of species listed in the Annexes. If the centre of operation is in the Community and the specimen is located outside the community, then such internet advertisements for Annex A specimens are not in accordance with *Regulation 338/97*. However, the level of such trade has increased because it is so convenient and difficult to regulate. NGOs have targeted this, alleging that it has led to an increase in trade. Legal traders are being affected by such campaigns, which do not distinguish adequately between legal and illegal trade. The situation is further complicated due to the nature of the Internet: it is difficult to close down a website and if one does so, that website will probably re-open elsewhere.

The issue of internet trade was discussed at CoP 14 and Decision 14.35 set up a process to examine it further. In the meantime, enforcement and interpretation problems remain.

The question here concerns the "location" of Internet trade, both from the traders' "centre of location" and the location of the advertisement. The jurisdiction of the Regulations depends primarily on the location of the specimen in question, rather than that of the trader. In this regard, it could be difficult to prove who has jurisdiction if the item is advertised on a third country website. It could be considered that doing business on the web could be similar to doing business in a third country particularly if that is where the specimen is located. The Internet trade, where there is an import from a third country (e.g. USA, eBay), is not different to a traditional import and can be legitimised by the grant of an import permit if the conditions of Article 4 and Article 6 are met. However offers for sale are covered by the prohibitions in Article 8, even if the site is outside the EC.

Anonymity is also a problem on the Internet. Internet advertisements are similar to newspaper advertisements but are more anonymous. One can simply send junk mail advertisements and it is then difficult to trace the source. Monitoring of Internet trade is very demanding of resources – especially when some companies have passport-protected pages. Enforcement problems can also arise when, for example, the trader is in the EU, the item is in a third country and it is sold to a buyer in another third

country. National courts can interpret these situations differently, although adequate awareness-raising for judiciary might enable a common understanding and a more harmonised approach across the EU.

The Vilm workshop concluded that communication between Member States on this issue needs to improve. It would be useful to have special enforcement facilities: cyber crime units and special search tools for enforcement agencies. If evidence of crime in the EC is identified, it is important to try to inform the Member State where the trader is. As always, the issue comes back to the need to raise the profile of wildlife crime. The Regulations clearly state what is illegal, when a sale is illegal and when an offer for sale is prohibited. However there is inconsistency of sanctions so it would be important to agree on a common interpretation and to bring this to the attention of national Courts. Dissemination of case-law experience, for example by way of a CITES CD-Rom on case-law, would be useful. This will not be a once-off activity as public memories fade. It will also be necessary to cooperate with Internet providers – including pop-up providers. Providers, such as Ebay, can take advertisements off the web if they are in breach of the law. CITES Management Authorities should work pro-actively with such providers.

Finally, it must be remembered that, in order for Internet trade to have an impact, physical trade must ultimately ensue and this should be dealt with by Customs and others in the normal way.

To summarise, there is no need for legislative change but there is scope for more pro-active work to combat this problem.

3.6.5.6 Special conditions for internal trade certificates

Special conditions placed on internal trade certificates can differ from one Member State to another. This has led to some certificates not being recognised by another Member State. Part of the problem lies in the fact that Box 18 on the certificate does not correspond directly with the range of exemptions set out in Article 8(3) of *Regulation 338/97*. Further confusion arises when a specimen moves to another Member State and the interpretation of the special conditions and remarks in Box 20 is not clear. The most commonly used special conditions are often worded differently by individual Member States. A numbered list of agreed wordings could reduce misinterpretation but there would still be a need for a Member State to be able to create their own remarks/ special conditions. Furthermore, for such Special Conditions to be effective, Member States should co-operate to ensure adequate enforcement. This is particularly relevant when a condition applied is specific to the issuing Member State.

To summarise, the situation could be clarified through amendment of the design of the certificate (including alignment of Box 18 to Article 8(3)). This could be done via amendment of the Commission Regulation. The development of an approved general list of most commonly used remarks and special conditions, together with protocols for the mutual recognition of certificates throughout the EC, would also help.

3.6.5.7 Validity of intra-Community trade certificates

Article 48(1) of Regulation 865/2006: A certificate for the purposes of Article 8(3) of Regulation (EC) No 338/97 shall state that specimens of species listed in Annex A thereto are exempted from one or more of the prohibitions laid down in Article 8(1) of that Regulation for any of the following reasons: (a) they were acquired in, or introduced into, the Community before the provisions relating to species listed in Annex A to Regulation (EC) No 338/97, or in Appendix I to the Convention, or in Annex C1 to Regulation (EEC) No 3626/ 82 became applicable to them; (b) they originate in a Member State and were taken from the wild in accordance with the legislation of that Member State; (c) they are, or are parts of, or are derived from animals born and bred in captivity; (d) they are authorised to be used for one of the purposes referred to in Article 8(3)(c) and (e) to (g) of Regulation (EC) No 338/97.

Article 61 of Regulation 865/2006: neither the prohibition laid down in Article 8(1) thereof of the purchase, offer of purchase, or acquisition of specimens of species listed in Annex A thereto for commercial purposes nor the provision laid down in Article 8(3) thereof, to the effect that exemptions from those prohibitions are to be granted by the issue of a certificate on a case-by-case basis, shall apply where the specimens involved meet either of the following criteria: (1) they are covered by one of the specimen-specific certificates provided for in Article 48 of this Regulation.

Article 48 of *Regulation 865/2006* appears to allow the issuing of specimen-specific certificates for most of the activities listed, including Art 8(3)c and (e) to (g) of *Regulation 338/97*, although not Article 8(3)b. However, Article 61 of *Regulation 865/2006* which refers to exemptions from Art 8(1) of *Regulation 338/97* includes '*the purchase, offer of purchase, or acquisition of specimens'* and excludes *'display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale'*.

This results in an apparent split, and confusion, in the purposes for which a specimen-specific certificate can be used within the EC. It has sometimes been interpreted as a specimen-specific certificate allowing different uses in the Member State of origin to those allowed in the receiving Member State. This, in turn, appears to conflict with the idea of an internal trade certificate being valid throughout the EC. The owner of a specimen covered by an intra- Community trade certificate issued in one Member State for certain purposes may find it not valid in other Member States and must therefore obtain an exemption (i.e. a new certificate) for similar activities from the Management Authority in the new Member State. This causes confusion among traders as to what purposes remain valid and what do not.

The best option for dealing with this problem would be to re-examine the relevant provisions in the Commission Regulation.

3.6.5.8 Proof of legal origin of Annex A specimens

Under Article 9, paragraphs (1) to (3), Annex A animals that are not captive-bred (i.e. source W, F or R) require a certificate in order to be moved. Documentary evidence is required to prove the legal origin of the specimen.

> *Article 9(1) Regulation 338/97: Any movement within the Community of a live specimen of a species listed in Annex A from the location indicated in the import permit or in any certificate issued in compliance with this Regulation shall require prior authorisation from a management authority of the Member State in which the specimen is located. In other cases of movement, the person responsible for moving the specimen must be able, where applicable, to provide proof of the legal origin of the specimen.*
> *2. Such authorization shall: (a) be granted only when the competent scientific authority of such Member State or, where the movement is to another Member State, the competent scientific authority of the latter, is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly; (b) be confirmed by issuance of a certificate; and (c) where applicable, be immediately communicated to a management authority of the Member State in which the specimen is to be located.*
> *3. However, no such authorization shall be required if a live animal must be moved for the purpose of urgent veterinary treatment and is returned directly to its authorized location.*

In the event that the specimen was imported, the holder of the specimen can present his copy of the import permit (if no certificate existed heretofore, it is reasonable to require presentation of the original rather than a photocopy). However, in the event that the holder claims that the specimen originated in the Community and was not taken from the wild under licence (e.g. it was first-generation captive born), then legality of origin is more difficult to prove or disprove. Furthermore, in the event that the holder claims the specimen was captive-bred – and if there is no clear basis for refuting this claim – then he/she does not need a certificate at all.

In these circumstances, differing national legislation can result in a variety of documents/markings that can help prove legal origin. Hungary issues EC certificates for travelling with live Annex A specimens within the EC so that the holder has some proof of legal acquisition. Some traders generate their own internal documents to demonstrate legal acquisition/possession. With no agreed standards, it can be difficult for enforcement officers to distinguish illegal from legal specimens, especially when marking of the specimens is not required. This can be confusing for receiving Member States.

The principle of mutual recognition should apply to such documents. Member States should consider developing common guidelines on the data and information that must be included as evidence of legal origin in accordance with Article 9(1) of *Regulation 338/97*.

There is the added problem that if the specimen is changing ownership by way of a gift there is no requirement for certification (if it is captive-bred or artificially propagated). This creates the possibility for illegal bartering of specimens.

One proposal made at the Vilm workshop was that certificates for commercial use under Article 8(3) of *Regulation 338/97* should be used not only as a proof of a granted exemption from the ban in commercial activities, but also as a proof of legal origin of an Annex A specimen. However, in effect, they already serve this function since they should not be issued if there are doubts about the legality of origin of the specimen. However, in the event that no commercial transaction is taking place and, especially, if the specimen is purportedly a captive-bred animal or an artificially propagated plant, there is no requirement to have a certificate or establish legality of origin. One option to address this would be to require holders of all Annex A specimens – except for worked specimens obtained more than 50 years previously - to obtain certificates. However this would be an increased administrative burden for Member States and would also require amendment of the Council Regulation.

Mandatory book-keeping – at least for specimens of species that are considered "high risk" - would be another approach. The Netherlands has a provision for this in their national legislation. Other Member States could be encouraged to adopt this approach or it could be made compulsory across the Community through amendment of the Council Regulation.

On the other hand, this runs counter to the views discussed in Subsection 3.6.5.2 to the effect that the marking and certification requirements for some Annex A species are disproportionate when those species are common in captive breeding.

An alternative amendment to the Council Regulation could stipulate that possession of Annex A (and, arguably, Annex B) species is prohibited except in accordance with the Regulation – thus reversing the burden of proof as is the case for commercial transactions.

Possible changes to the status quo are as follows (these are not necessarily all mutually exclusive):

- ***Provide for compulsory marking of all Annex A species (possibly excluding those on Annex X of Regulation 865/2006) irrespective of whether or not they are being used commercially (this may require amendment of Council Regulation);***
- ***Amend the Council Regulation to provide that possession of Annex A (and B) species is prohibited except in accordance with the Regulations and relevant national laws – with the possibility of requiring certificates to establish legality of origin of specimens of Annex A species.***

One outstanding problem relates to Article 72(2) of *Regulation 865/2006*, which allows for old documents issued under Regulation 3626/82 to remain valid.

> *Article 72(2), Regulation 865/2006: Exemptions granted from the prohibitions laid down in Article 6(1) of Regulation (EEC) No. 3636/82 shall remain valid until their last day of validity, where specified.*

These 'old' certificates do not always have an expiry date. They may be used for all the purposes they were issued for. Some of these are still in circulation and are still valid. There are now used as legal proof of legal possession but also are used for commercial transactions. The problem is that the old certificates were issued under less strict criteria than sale certificates issued under Article 8(3) of *Regulation 338/97*. Also under the old Regulations marking of Annex A specimens was not required and hence old certificates may not match the specimens presented. There is also an awareness problem for new Member States who have never seen these documents.

Management Authorities can – and sometimes do - ask holders people to return or exchange their certificates, even though it is not compulsory under the EC Regulations. So, with the expiry of certificates, the death of specimens and the gradual replacement of "old" certificates with "new", the

problem will diminish over time. On the other hand, if there were to be provision to revoke such certificates, compensation would probably have to be payable so unilateral deletion of Article 72 may not be an option.

To summarise, the options are:

- ***To amend the Council Regulation;***
- ***To encourage Member States to use national measures – such as compulsory book-keeping – under guidance from the Committee, the Enforcement Group and the Commission.***

3.6.5.9 Proof of legal origin of founder stocks

Article 54(2) of *Regulation 865/2006* stipulated that, in order for a specimen to be considered as captive-bred, the founder stock must have been legally acquired. Article 56(1)(b) lays down a similar condition with respect to artificially propagated plants.

> *Article 54(2), Regulation 865/2006: the breeding stock was established in accordance with the legal provisions applicable to it at the time of acquisition…;*
>
> *Article 56(1)(b,) Regulation 865/2006: the cultivated parental stock was established in accordance with the legal provisions applicable to it on the date of acquisition…*

Captive-born animals whose founder stock are not legally acquired must, therefore, be treated as source "F" rather than source "C".

A number of problems arise with the practical application of these provisions.

- In some cases, it can be very difficult to prove conclusively that founder stock were legally acquired – especially if they were acquired a long time ago or in countries where controls were known to be lax. A problem also occurs if a species is uplisted to Annex A and a breeder does not have the documentation to comply with the stricter requirements for that species. For example, six subspecies of Yellow-fronted Amazon, *Amazona ocrocephala*, were uplisted in 2003, the remainder staying on Annex B. The species as a whole is common in captive breeding and hybrids between Annex A and Annex B subspecies are not unusual.
- Some Member States' legislation automatically confers legal status on second and subsequent generation captive born specimens – at least in certain circumstances - irrespective of the legality of the founder stock.
- Sometimes bona fide specimens can be held in the same place as seized specimens. It is not clear how these should be treated if they become founder stock.
- There is a risk of allegations of genetic piracy if Member States are profiting from the import of founder stock whose export from the range State was prohibited from export from the source country.

Clearly, this is a sensitive issue and one where a proportionate approach is required. It would be possible to amend *Regulation 865/2006* to weaken the requirements regarding legality of origin but this would create a divergence from existing CITES rules and would send a negative signal to third countries.

The alternative is to adopt a pragmatic approach to the application of this provision in practice. It could be applied most strictly in the case of species that are difficult to breed in captivity (or propagate) and/ or occur in restricted number of range States, most or all of whom have export bans. For other species, Management Authorities could make decisions based on the *prima facie* evidence available supported – if necessary – by affidavits. In this regard, the United Kingdom has stated its approach to such cases in explicit terms (COM 35, Inf 5 refers). In the absence of CITES permits, they have recourse to the following evidence:

- capture permits (showing that the founder stock has been obtained in accordance with the relevant national laws);
- receipts, travel documents (confirming date of acquisition & type and number of specimens in the consignment);
- published records (e.g. newspaper articles, scientific journals etc);
- photographic evidence;
- signed affidavit(s) confirming date, circumstances and legality of acquisition; or
- a combination of the above.

In addition they take account of the following considerations:

1. Do the details hang together? (i.e. fit with patterns of trade at the time)
2. Was the species in legal trade at the time of alleged acquisition?
3. Are the numbers of specimens involved realistic in the context of known trade levels at that time?
4. Was the species protected in its putative country of origin at the time of alleged acquisition?
5. If the species was protected, did the legislation at the time provide for any exceptions to be made to the general prohibition?

Where the available evidence is inconclusive, a judgement call is made on the available evidence having regard to fairness, reasonableness and proportionality.

In summary, the options are:

- ***To amend the Commission Regulation to weaken the existing provisions; or***
- ***To adopt a pragmatic and differentiated approach.***

3.6.5.10 Discussion

The consideration of internal trade in Annex A animal species has encompassed many technical aspects, such as design of the forms and treatment of Internet trade, etc. However, beyond these lies the fundamental question as to whether the present regime is either too burdensome or else not sufficiently strict. This is discussed in more detail in Section 4.4.

3.6.6 SANCTIONS

Article 16(1) of Council *Regulation 338/97* places the responsibility for drawing up appropriate sanctions and penalties for CITES offences on Member States themselves. The phrasing used in Article 16 is very open and allows for differences in the interpretation and application of enforcement and compliance measures across the EU. The problem is also centred around the fact that the legislative systems of criminal law differ very much between Member States.

Article 16(1) of Regulation 338/97: Member States shall take appropriate measures to ensure the imposition of sanctions(…) (2) The measures referred to in paragraph 1 shall be appropriate to the nature and gravity of the infringement.

Several problems relating to sanctions were identified during the Vilm workshop.

- It was noted that levels of sanctions varied considerably between Member States, and that in some Member States they were too low to be effective. Some Member States treat illegal wildlife trafficking as a mere misdemeanour. The risk or potential for illegal trade will almost certainly be higher if punishments are lighter, partly because there is less risk and partly because enforcement authorities will not focus on low penalty issues.

- Penal sanctions are a deterrent and a means of dealing with the criminal minority. The imposition of appropriate sanctions for serious cases could be more effective as a deterrent to laundering of illegal specimens than setting up additional marking and certification systems. Although some suggested having a set level for sanctions across the EC, it was noted that

penal sanctions should be proportional to standard of living and therefore could not be consistent across the EC.

- It was also considered that there is a need for sanctions to be proportional to the offence to avoid certain Member States being perceived as a lower risk for launderers and smugglers and hence becoming gateways for illegal trade.

- The delegates also insisted on the ability to prosecute offences which have taken place in other Member States For example, if a German citizen smuggles a specimen through Hungary into Austria and is recognised by Austrian authorities, Austria wants to amend national law to enable prosecution in Austria. However, countries that have adopted that approach in other areas (e.g. Ireland with respect to terrorist offences in the 1970s) found it difficult to apply in practice because of difficulties regarding availability of witnesses, etc.

- Another problem is simply determining if an offence has actually been committed. For example, one Member State might issue a permit for in-laid ivory furniture in circumstances where another would not.

- It has frequently been noted that only a relatively small proportion of seizures go to full prosecution, especially in circumstances where national legislation does not oblige the authorities to give back seized specimens when a prosecution does not take place. Importers often deny responsibility and it is difficult to prove otherwise (for instance, they allege that the exporter put the specimen into the shipment without their knowledge or that it is not the one they asked for). That said, the loss of the shipment is itself often a serious punishment. Management Authorities should give consideration to the use of civil actions (e.g. injunctions) as a means of enforcing the Regulations.

The Commission is currently preparing a proposal for a Directive on environmental crime, which would cover wildlife trade offences. Minimum levels of sanctions for types of crimes could be specified at EC level, making the threshold a little higher so that there is a realistic deterrent for wildlife crime. It might not be effective to "tighten" Article 16 of Regulation 338/997 since it is the transposition into national legislation which is crucial. However, the wording of some of the paragraphs of Article 16(1) is very similar. It would provide more clarity if similar infringements could be grouped together and possibly simplified.

The participants in the Vilm Workshop also emphasised the need to use a range of measures to achieve compliance, including increasing public awareness and also using administrative sanctions instead of criminal sanctions alone. Targeting major offenders was considered a more effective use of limited resources, but it was also concluded that there is a need for 'carrots' as well as 'sticks'. Simplified procedures for well-known reputable breeders, as occurs in Belgium, were put forward as an example of an incentive.

To summarise, the way forward may involve one or more of the following:

- ***Bringing forward a Directive on environmental crime;***
- ***Use of a range of best practice measures by Member States, including targeted enforcement, public awareness campaigns, incentives etc.***
- ***"Tidying" the wording of Article 16, should the Council Regulation be re-opened.***

3.6.7 "ANIMAL WELFARE" ISSUES

Recital (12) of the preamble to *Regulation 338/97* makes reference to the need to care properly for live specimens and some of the operative provisions of the Regulations are aimed at ensuring this. They are frequently referred to as "animal welfare" provisions though, since almost all of them apply to plants as well as animals, it must be assumed that the primary objective was to prevent wastage of live specimens, which could lead to unsustainable off-take from the wild.

3.3.7.1 Specimens at risk of premature mortality in captivity – Article 4(6)(c) of *Regulation 338/97*

Article 4(6)(c)of Regulation 338/97: (…) of live specimens of species listed in Annex B which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span.

It was intended that Member States' reporting on mortality of specimens at point of import would provide data to implement the element relating to mortality in transport. In fact, such reporting has been erratic. However, the Transport Working Group of the Animals Committee has concluded that mortality in shipment is negligible if IATA Regulations are complied with and this is mandatory for import of live specimens. For this reason, the power to suspend imports of certain species on the grounds of risk of mortality in transport has never been used by the Commission. There remains, therefore, only the issue of the risk of premature mortality in captivity.

In the years immediately following the entry into force of the Regulations, the Commission suspended imports of certain tortoise species on the grounds that they were thought to be at risk of premature mortality in captivity. However, these suspensions were lifted in 2006 following advice from the SRG. The SRG gave this advice after attempting – unsuccessfully – to develop guidelines for a more systematic application of this provision. The reasons for the lack of success were as follows.

- The life expectancy of most species in the wild is unknown and existing data are predominantly based on life expectancy in captivity, with little idea on how this relates to wild populations. In practice, the rate of mortality in captivity could be significantly different – higher or lower - to that of wild populations; specimens held in captivity may live longer due to protection from predators, improved/regular diet, veterinary treatment, disease eradication etc.

- The age of imported specimens, taken from the wild, is not always known, making comparisons of captive and wild-taken specimens very difficult due to different rates of mortality at different stages of the specimens' life history (and mortality typically varies depending on the age and life stage of the specimen).

- Although trade in specimens that do not survive well in captivity could be seen as a 'wasteful use of a natural resource' this view doesn't take into account the fact that parts and derivatives and dead specimens are already traded in huge numbers. Just because a species doesn't survive well in captivity, doesn't automatically mean that trade is unsustainable. Indeed, if it was unsustainable, Articles 4(1)(a)(i) and 4(2)(a) of *Regulation 338/97* should apply in any case – i.e. an import permit should be refused on the grounds that granting it would have a detrimental effect in conservation terms.

- Part of the perception of high mortality in captivity relates to the profile of purchasers. In the past, speculative purchase of tortoises was common on the mistaken assumption that they were easier to look after than many more familiar pets. However, many of those species thrive when looked after by experienced hobbyists.

The question is, therefore, whether Article 4(6)(c) is useful. The Vilm Workshop concluded that it does not serve any useful purpose at present. However, they recognised that a proposal to delete it could be misinterpreted as lack of concern for animal welfare and thus cause political controversy.

To summarise, there is no immediate need for change but the provision could be looked at again if the Council Regulation is re-opened.

3.6.7.1 Housing requirements – Articles 9(2) and 9(4) of *Regulation 338/97*

Article 9(2) of Regulation 338/97: The Management Authority shall grant an authorization for any movement within the Community of a live specimen of a species listed in Annex A only when the competent scientific authority of such Member State or, where the movement is to another Member State, the competent scientific authority of the latter, is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly.

The way this provision is worded, it is not completely clear that it does not relate to captive-bred specimens or that it does indeed apply to Source Code "R" and "F" as well as "W" specimens (if specified on the import permit). Although Member States are in agreement that the provision should be retained, they also feel that the wording could be improved in the event that the Council Regulation is re-opened. Some Member States have also queried the information that should be used in the assessment of housing and whether or not national animal welfare legislation provisions are sufficient. Further guidance and sharing of information would be useful in this regard.

In summary, the present situation is reasonably satisfactory, subject to provision of more information on technical aspects, but the wording of this provision could be improved if the Council Regulation is re-opened.

Article 9(4) of Regulation 338/97: Where a live specimen of a species listed in Annex B is moved within the Community, the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for.

This provision is widely regarded as unenforceable, particularly since it is not cross-referenced to an appropriate sanction in Article 16. Furthermore, there is confusion regarding the applicability of this provision to captive-bred specimens. Some Member States may not be aware that captive-bred Annex A specimens are treated as Annex B (as per Article 7 of *Regulation 338/97*), and that therefore captive-bred Annex A specimens are covered by Article 9(4) of *Regulation 338/97*.

The solutions identified at the Vilm Workshop were as follows.

- If *Regulation 338/97* is re-opened, Article 9(4) could be deleted. If it is retained then it should refer explicitly to captive-bred Annex A specimens and relate to a new sanction provision in Article 16.
- In the meantime better guidance is needed; in particular, Member States should be reminded that this Article applies to captive-bred Annex A specimens.

In summary, the present situation is tolerable, subject to provision of more information on technical aspects but the wording of this provision could be improved if the Council Regulation is re-opened.

3.6.8 CAVIAR-RELATED ISSUES

Caviar is evidently being smuggled into the EC, as witnessed by the ongoing seizures of caviar throughout the EC. *CITES Resolution Conf. 12.7 (Rev. CoP14) Conservation of and trade in sturgeons and paddlefish* sets out a number of requirements designed to prevent illegal trade in caviar, including labelling of caviar containers and registration of caviar processing and re-packaging plants. These provisions are discussed in greater detail in sections 3.6.9.1 and 3.6.9.2. The last section (3.6.9.3) discusses laundering of caviar, illustrative also of methods used to launder other Annex B specimens, and possible ways to address this.

3.6.8.1 Caviar labelling

There are differences in interpretation over the requirements to label caviar containers.

Article 64 of Regulation (EC) No 865/2006: (1) Import permits for the following items shall be issued only if the applicant has satisfied the competent management authority that the specimens have been individually marked in accordance with Article 66(6): (g) any container of caviar of Acipenseriformes spp., including tins, jars or boxes into which such caviar is directly packed. (2) For the purposes of Article 8(5) of Regulation (EC) No 338/97, all containers of caviar as specified in point (g) of paragraph 1 of this Article shall be marked in accordance with Article 66(6) of this Regulation, subject to the additional requirements set out in Article 66(7) thereof.

It appears that the requirement for marking of caviar covers imports, exports and re-exports of caviar in all containers and amounts. This also includes caviar produced within the EU for use within the EU. Confusion arises because article 64(2) refers to article 64(1)(g) and article 64(1) refers to import permits. The mis-interpretation is that the labelling only applies to caviar for import (or export), and not "home" consumption.

Article 66(6) of Regulation 865/2006: The specimens referred to in Articles 64(1) and 65 shall be marked in accordance with the method approved or recommended by the Conference of the Parties to the Convention for the specimens concerned and, in particular, the containers of caviar referred to in Article 64(1)(g), 64(2) and 65(3) shall be individually marked by means of non-reusable labels affixed to each primary container.

There is variation between Member States as to how labels are issued and used for the marking of caviar. In a number of Member States, the Management Authority is having labels made and supplying these to the relevant traders. In other Member States traders are being allowed to supply their own labels. Allowing traders to make their own labels leads to a large variation in labels and a lack of control over these labels by the authorities. It is considered that some of the labels are too easy to forge. By allowing traders to make there own labels it would appear that the letter of the law is fulfilled, but not the spirit. Additional guidelines could specify specific standards for such labels such that they should be hard to peel off, and that they should contain some form of anti-forgery security. Ideally there should be a good degree of commonality between the labels in order to reduce fraud and aid enforcement. It would be useful to have a book identifying caviar labels issued by different authorities.

A second issue is that the labels should be non-reusable. Strictly speaking non-reusable does not necessarily imply sealing the container and this has caused confusion amongst CITES Parties. In the past, some Member States have interpreted 'non-reusable' as meaning that the seal of the container had to be broken when opened. However, other Member States interpreted 'non-reusable' as meaning that the label cannot be removed from the container without it being damaged, but that this does not necessarily mean that the label needs to seal the container. Some Member States, therefore, use a label on the top or bottom of the container. However, unless the labels seal the containers, in such a way that the label is broken when the seal is broken, the containers with labels can be effectively re-used.

The definition and implementation of 'non-reusable' labels was discussed at the 14th Conference of the CITES Parties (CoP14), which took place in The Hague, Netherlands, in June 2007. Resolution Conf. 12.7 was revised at CoP14 to expand the definition of 'non-reusable label' as follows:

CITES Resolution Conf. 12.7 (Rev. CoP14) Conservation of and trade in sturgeons and paddlefish: Non-reusable label: any label or mark that cannot be removed undamaged or transferred to another container, which may seal the container. If the non-reusable label does not seal the primary container, caviar should be packaged in a manner that permits visual evidence of any opening of the container.

The above revised definition and its implication in terms of implementation are not yet obligatory in the EC as decisions taken at CoP14, including the amendment to Resolution Conf. 12.7, have not yet been transferred into EC law. However, in the meantime, Member States could agree - in a Committee meeting - to follow this definition from the Resolution in a uniform manner: i.e. by sealing the container until this new definition is transferred into the EC Regulations.

Since the Vilm workshop, the Member States have been co-ordinating their approach to caviar labelling via the CITES Committee. Member States that have caviar production or repackaging plants have agreed to lodge copies of model labels with the Commission.

To conclude, the problems presented here can be resolved through co-ordination among the Member States but Regulation 865/2006 could be usefully clarified.

3.6.8.2 Registration of caviar labelling countries

Due to the expansion of the EU – notably, Bulgaria and Romania's accession, the EU will become a range territory for sturgeon/caviar. Caviar is also increasingly being farmed both inside and outside the

EU. This raises the issue of the difficulty of monitoring trade in all caviar within the EU. One suggestion is for all caviar harvesting companies (aquaculture operations) to be registered with the Management Authority. Caviar production rates should also be reported to the MA of that country to reduce the possibility of laundering of smuggled caviar through aquaculture operations. In accordance with the current provisions, registration with the Management Authority refers only to caviar (re-)packaging plants, not to caviar harvesting (producing roe of sturgeon) companies. At present there is little control over sturgeon aquaculture operations.

Article 66(7) of Regulation 865/2006: Only those (re-)packaging plants that are licensed by the management authority of a Member State shall be entitled to process and package or re-package caviar for export, re-export or intra-Community trade.

It was also pointed out that aquaculture and primary caviar production is an essentially different process from repackaging and that any future registration/ book-keeping requirements would have to take this into account. Book-keeping for both operations should be kept separate.

The Vilm workshop agreed that Article 66 of *Regulation 865/2006* would need to be expanded to explicitly cover primary producers of aquacultured or wild-taken caviar and to require adequate book-keeping for both primary production and repackaging. The issue of book-keeping is discussed in more depth in Section 4.3.

To conclude, this issue can be addressed by amendment of the Commission Regulation.

3.6.8.3 Laundering of caviar (and other Annex B specimens)

Between 2000 and 2005, at least 13 tonnes of caviar were seized in the EU and Switzerland (TRAFFIC, 2006[22]). Different methods have been used to smuggle and sell caviar illegally in the EC. In the years immediately following the Annex B listing, most seizures reported to the Enforcement Group took place at airports but more recent discussions in that forum indicate that smuggling by road is becoming more common.

One method of caviar laundering which has been uncovered, having been used several times, is as follows.

- The importer imports caviar legally into the EU, using CITES permits and all other required documents.
- The importer also imports caviar illegally into the EU - in the cases which have been uncovered, this caviar generally came from the Russian Federation and tended to be imported in small quantities (around 5-10kg).
- The illegally-imported caviar is then sold within the EU along with a photocopy of the import permit as a proof of legal importation.

These cases all took place before the CITES labelling requirements were extended to cover trade on the domestic markets and repackaging through Commission Regulation (EC) No. 865/2006 (German CITES Management Authority, *pers. comm*. to Amelie Knapp, TRAFFIC, 25 September 2007).

A similar method could be used to re-export caviar that was illegally imported into the EU in the first place. In such cases, photocopies of the import permit would be presented to the Management Authority of the EU Member State from which the caviar is to be re-exported in order to obtain a re-export permit. It can be very complicated for a Management Authority to check how much of the caviar imported with an import permit has already been re-exported, given that caviar often moves between several countries before it is consumed. If the Management Authority is not thorough in checking how much caviar has been re-exported from an import permit, it is possible for traders to re-export more caviar, using photocopies of import permits, than they originally legally imported.

[22] TRAFFIC (2006) Black gold: the caviar trade in western Europe http://www.eu-wildlifetrade.org/pdf/en/teur_caviar_leaflet_English_8febr07_WEB.pdf

In order to address this problem, at the request of the CITES Parties, the Caviar Trade Database is being developed by UNEP-WCMC to provide a secure online interface that will allow CITES authorities to report, via the internet and in real time, the permits they have issued for exports/re-exports of caviar. Currently, as long as Parties provide / input relevant information into the database, it will enable the shipments and volumes traded to be tracked and checked against a central register of caviar in trade, on the basis of export/re-export permit numbers.

The permit-checking tool allows the user to select an export country and year. He or she will then be provided with a list of available permits in the database for that country/year combination. Selecting a permit should provide the full history of the caviar on that permit so, for example, if an original exporting county's permit is selected then all known re-exports relating to that original permit are shown. If a re-export permit is selected, again details of the country of origin are shown plus any other re-exports, etc.

Furthermore, one may select a country/trader combination whereupon the user is provided with details of all caviar exported to, or exported by, that trader. Trader identities are coded but eligible personnel can receive details of trader identities from UNEP-WCMC subject to approval by the CITES Secretariat.

If the Caviar Trade Database is used correctly, it should put an end to the type of fraud whereby traders re-export more caviar than they legally imported, as Management Authorities can easily check how much has been re-exported from a particular import permit before issuing re-export permits. However, this tool does not track caviar which is sold and consumed within the EU and hence will not address the form of laundering described at the start of this section.

While this database may address issues pertaining to re-export of caviar, it will not solve the laundering problems happening with other species. It was noted during the Vilm workshop that similar laundering procedures are used for specimens of Ramin and luxury leather goods. TRAFFIC is also aware of this happening with live reptiles. It could also be happening with other species.

During the Vilm workshop it was suggested that there is also a need for book records kept by sellers. This is already required under national CITES legislation in certain EU Member States such as Germany. Book-keeping requires the keeping of information regarding quantities of caviar bought and sold as well as other details which enable determination of stock levels and tracing of caviar back to the original imports. If used properly, book-keeping along with the now obligatory labelling of caviar, can be an effective way to reduce illegal trade in caviar by facilitating controls and tracking of caviar movements within the EU (see **Section 3.6.13**). However, bookkeeping involves a cost to the traders and requires controls by government authorities to be most useful.

To conclude, one option to reduce the likelihood of illegal caviar re-exports from the EU is the proper use of the caviar trade database. In addition, bookkeeping by traders is likely to reduce illegal trade of caviar and other Annex B specimens within the EU.

3.6.9 CODE ISSUES

3.6.9.1 Source Codes D, F and R

ANNEX IX(2) of Regulation 865/2006. Codes for the indication in permits and certificates of the source of specimens, referred to in Article 5(6)
W Specimens taken from the wild
R Specimens originating from a ranching operation
D Annex A animals bred in captivity for commercial purposes and Annex A plants artificially propagated for commercial purposes in accordance with Chapter XIII of Regulation (EC) No 865/2006, as well as parts and derivatives thereof
A Annex A plants artificially propagated for non-commercial purposes and Annexes B and C plants artificially propagated in accordance with Chapter XIII of Regulation (EC) No 865/2006, as well as parts and derivatives thereof
C Annex A animals bred in captivity for non-commercial purposes and Annexes B and C animals bred in captivity in accordance with

Chapter XIII of Regulation (EC) No 865/2006, as well as parts and derivatives thereof
F Animals born in captivity, but for which the criteria of Chapter XIII of Regulation (EC) No 865/2006 are not met, as well as parts and derivatives thereof
I Confiscated or seized specimens (1)
O Pre-Convention (1)
U Source unknown (must be justified)

It would be simpler to dispense with Source Code D since the Regulations extend the same concessions to captive-bred specimens arising from non-commercial operations as from commercial ones. However, some third countries will only accept imports of Appendix I species from registered operations and, therefore, it must be retained so that those operations that register voluntarily can avail of it. The best solution would be to amend the definition in Annex IX so that Source Code D only refers to registered operations.

Furthermore, there is no clear guidance in the Regulations regarding Source Codes F and R; applicants have to go back to CITES Resolution Conf. 12.3 (Rev. CoP 14) for guidance. There is a mix of biological and legal factors regarding Source Code F (note: the phrase '*born in captivity*' is used regarding Source Code F but some animals can be produced asexually). There is a problem of specimens with Source Code F coming from a breeding stock for which there is no clear evidence that the stock was legally acquired. If the letter of the Regulations is followed, then even Annex B specimens in this category cannot be traded commercially (although, how this could be applied in practice is questionable unless the species was unique to one range State and that State had a long-standing export ban). There appears to be some confusion about this so more guidance is required.

There also seemed to be some doubt as to whether the import of ranched Annex A specimens for commercial purposes is allowed. Appendix I Source Code R specimens cannot be imported for commercial purposes; they should be treated like any other wild (W) Annex A specimens. This is confirmed in Resolution Conf. 11.6 (Rev. CoP 14.)

The ways forward identified in Vilm were:

- to work within the CITES process for deletion of Source Code D;
- to use source Code F for any specimen born or propagates in captivity that doesn't meet the legal definition of captive-bred/artificially propagated;
- to discuss these issues further in the Committee and SRG and agree interpretations;
- to clarify the definitions in *Regulation 865/2006* in the light of these considerations.

To conclude, these problems can be resolved through the CITES process, improved guidance and amendment of Regulation 865/2006.

3.6.9.2 Use of purpose Codes

Article 5 of Regulation 865/2006: Information and references in permits and certificates, as well as in applications for the issue of such documents, shall comply with the following requirements: (5) where required, the purpose of a transaction must be indicated using one of the codes contained in point 1 of Annex IX to this Regulation.

There appears to be considerable confusion surrounding purpose codes. Questions have been asked as to whether individual purpose codes have to be indicated on all certificates, and whether one can indicate more than one purpose code. There are various situations where there is confusion as to which purpose code to use. Much of the confusion arises because of the distinction between the organisation using the specimen and the use to which it is put. This is best illustrated by hypothetical examples. On the one hand, a mainstream commercial company might buy a rare animal to donate to a captive breeding project and this could reasonably be regarded as a non-commercial transaction, even though the company might gain positive publicity from it. On the other hand, if a conservation NGO were to buy that animal with a view to selling it at a profit, this might validly be regarded as commercial use, even if the profit was ploughed back into funding the NGO's activities. It can arise that different purpose codes are used on export and import permits respectively - e.g. a trader exports a specimen

with purpose code T (Commercial) but a zoo imports it with purpose code B (Breeding in captivity or artificial propagation).

Current guidelines on purpose codes are not very clear. It is unclear what consequences the purpose codes on an import permit will have for subsequent trade and whether or not they are legally binding. They certainly are in the case of wild-taken Annex A species (or source F or R) since these cannot be traded for commercial purposes but in the case of captive-bred/ artificially propagated Annex A or all Annex B the situation is less clear. Indeed, the question has arisen within CITES as to whether or not purpose codes are of any value with respect to Appendix II species. However, Member States inclined towards the view that they do serve a purpose and should be maintained.

It was noted that, where hunting trophies are imported for the purpose of taxidermy and then sent to their real destination, the Committee had previously agreed that the purpose was not primarily commercial; the specimen is only being modified for its ultimate destination.

The issue is currently under discussion in CITES so the EC should not take premature decisions, but should look at existing guidelines (from the Commission, January 2004).

To conclude, guidance is sufficient to address these problems for the present but the Community should engage with the wider discussions in CITES on this issue.

3.6.10 ENTRY POINTS AND TRANSIT PROCEDURES

The issue has been discussed on a number of occasions in the Committee and the Enforcement Group. Several implementation issues arise.

Article 4(7) of Regulation 338/97: Where special cases of transhipment, air transfer or rail transport occur following introduction into the Community, derogations from completion of the checks and presentations of import documents at the border customs office at the point of introduction which are referred to in paragraphs 1 to 4 shall be granted in accordance with the procedure laid down in Article 18, in order to permit such checks and presentations to be made at another customs office designated in accordance with Article 12 (1).

Article 53 of Regulation 865/2006: customs offices other than the border customs office at the point of introduction
(1) Where a shipment to be introduced into the Community arrives at a border customs office by sea, air or rail for dispatch by the same mode of transport, and without intermediate storage, to another customs office in the Community designated in accordance with Article 12(1) of Regulation (EC) No 338/97, the completion of checks and the presentation of import documents shall take place at the latter.
(2) Where a shipment has been checked at a customs office designated in accordance with Article 12(1) of Regulation (EC) No 338/97 and is dispatched to another customs office for any subsequent customs procedure, the latter shall require presentation of the 'copy for the holder' (form 2) of an import permit, completed in accordance with Article 23 of this Regulation, or the 'copy for the importer' (form 2) of an import notification, completed in accordance with Article 24 of this Regulation, and may carry out any checks it deems necessary in order to establish compliance with Regulation (EC) No 338/97 and this Regulation.

Transport by road was not included as a mode of transport in Article 53 as it was deemed too insecure; loading on trucks does not take place under Customs supervision/controls. Nor is there a derogation for road transport even if there is no intermediate storage. It is much easier to track consignments transported by air, sea and rail, and extending the process to road transport would present major logistical problems. There are conflicting interests between those who think allowing transfer to road transport under the derogation would cause severe problems for enforcement, and those whose workload would be much reduced by allowing it.

3.6.10.1 Transfer of shipment to another form of transport

The Regulation provisions lead to confusion over which Customs office is responsible for the clearance of goods upon introduction to the Community.

If a shipment is transferred from one form of transport to another, the consignments have to be fully checked at the point of *introduction* even without intermediate storage. This places an additional burden on the Member State where the point of introduction is located – especially if it is not the

Member State of ultimate destination for the specimens involved (i.e. the Member State specified on the export permit). Problems arise with shipments that arrive in EC and are then split up into different consignments; Customs clearance should take place before the shipment is split.

The problem is specific to dead specimens, and parts and derivatives. The EC Regulations require that shipments are checked at first point of introduction but some shipments enter EC and move immediately to another EC country so that there is no time to make CITES checks.

Luxembourg illustrates this problem. A large number of shipments arrive by air and are transferred to lorries for transport by road to different Member States of ultimate destination. Due to the change of transport they have to be fully checked in Luxembourg.

Regulation 865/2006 could be amended to allow the change of transport mode (e.g. from plane to train) but then CITES checks should be done by the Customs office in the final destination. However, there are concerns that if a change in mode of transport is allowed by *Regulation 865/2006* between the first point of introduction and the final place of destination, then parts of the shipment can get "lost", even if it is under transit custom controls (T1 procedure).

It has been questioned whether *'by the same mode of transport'* in Article 53 of *Regulation 865/2006* means that the container stays on the same train, boat or plane or that the container can move from one train to another train – it would appear, however, that the latter is the case.

The options identified at the Vilm workshop were:

- *Regulation 865/2006* could be amended so that the derogation should also apply even if there is a change of mode of transport, for example from plane to train (with the exception of live specimens that need to be cleared at the first point of entry where veterinary controls have to take place anyway); or
- The wording could be amended to say 'may' instead of 'shall' in Article 53 of *Regulation 865/2006*; or
- Greater clarification could be provided on what "by the same mode of transport" means; or
- The Commission could undertake a study to look into the risks arising from the inclusion of road transport into Article 53 of *Regulation 865/2006*.

In summary, if Member States conclude that the present situation is unsatisfactory and cannot be resolved by clarification and guidance, then it can be resolved through amendment of the Commission Regulation.

3.6.10.2 Presentation of documents at point of entry

> *Article 22 of Regulation 865/2006: Documents to be surrendered by the importer to the customs office:*
> *Without prejudice to Article 53, the importer or his authorised representative shall surrender all the following documents to the border customs office at the point of introduction into the Community, designated in accordance with Article 12(1) of Regulation (EC) No 338/97: (1) the original import permit (form 1); (2) the 'copy for the holder' (form 2);(3) where specified in the import permit, any documentation from the country of export or re-export.*

According to the Regulations, the original import permit has always to be shown and surrendered at the point of *introduction* into the Community. However, where that point is located in a Member State other than the Member State of destination (i.e. the Member State on the export permit), then if this is done the importer will not have the document to present at the point of destination where the checks are completed.

There appears also to be a contradiction in that Article 53(2) requires presentation of 'copy for the holder' and Article 22 of *Regulation 865/2006* requires the *original* import permit. The Customs office at the point of entry should forward the original import document and any relevant export documents to the Management Authority of *their* Member State. However, the import documents issued by the

Management Authority of the Member State of *destination* may still be in transit or with the Management Authority of the Member State. In that case, problems arise when the shipment arrives at the Customs office at the country of destination because neither the importer nor the relevant Management Authority in the destination country have the original import or export documents.

In this regard, Article 45 of *Regulation 865/2006* allows for the possibility to accept a confirmation of the import permit by email. However, despite this provision, there have been problems with some Member States asking to see the original.

The confusion caused by this process has led to many Member States creating their own adaptive procedures such as:

- allowing the original import documents to travel with the shipment on to the destination State; or final destination States; or
- accepting an endorsed holder's copy of the import permit (and the absence of an export permit).

In some cases differences in procedures still lead to problems at Customs offices at final destinations and specimens being confiscated.

The suggested ways forward include the re-wording and re-organisation of *Regulation 338/97* to allow import permits (and export documents) to travel with the shipments. Guidance could be useful to ensure similar procedures are followed throughout the EC to reduce confiscation due to logistical problems.

To conclude, any necessary adjustments will only require amendment of the Commission Regulation and/ or provision of guidance.

3.6.10.3 Mortality in shipment

On arrival at the point of entry into the Community the Customs officer who clears the specimens must enter the number of animals dead on arrival in Box 27 of the import permit. Yet where the point of entry is not the final point of destination there is potential for additional mortality before the shipment arrives at the Member State of destination. The figure in Box 27 therefore does not give an accurate representation of the mortality associated with the import to its Member State of destination.

This problem could be corrected of it was stipulated that Box 27 could be completed at the Customs office where the completion of checks is carried out.

This could be done via amendment of the Commission Regulation.

In any case, Member States are erratic in their observance of this provision.

3.6.11 RESTROSPECTIVE PERMITS

Article 15(1) of Regulation 865/2006: By way of derogation from Article 13(1) and Article 14 of this Regulation, and provided that the importer or (re-)exporter informs the competent Management Authority on arrival or before departure of the shipment of the reasons why the required documents are not available, documents for specimens of species listed in Annex B or C to Regulation (EC) No 338/97, as well as for specimens of species listed in Annex A to that Regulation and referred to in Article 4(5) thereof, may exceptionally be issued retrospectively.

Currently permits and certificates may only be issued retrospectively if the relevant Management Authority has been notified, before departure or upon arrival of the shipment, of the reasons why the relevant documents are not available. There is a demand for more flexibility to be built in to allow Member States to be more lenient, particularly with respect to Annex B imports, to allow discretion to issue permits where innocent mistakes, minor errors or oversights have occurred, without creating a loophole that could be exploited by unscrupulous traders. The problem is of much greater magnitude in the Community because of the requirement for import permits for Annex B specimens.

Some Member States took the view that certain cases might need facilitation. Fore example, some trade is so rapid that traders do not have time to apply for an import permit. On other occasions, mistakes are made through ignorance and the consequences are out of proportion to the magnitude of the mistake. This has caused problems in some Member States that take a strict interpretation of Article 15(1). Others issue retrospective permits quite commonly, although this may not be in conformity with Article 15.

The point of time of introduction into the Community is not completely clear to all Member States. It would be helpful if the Committee could agree on the most apparent interpretation, namely that it corresponds to the time when goods are normally first presented for Customs clearance but precedes any lodgement of the specimens in Customs-controlled (bonded) storage facilities. The Committee should also agree on one common interpretation of Article 15 that clarifies this for all Member States.

In some respects, the provisions in the Regulations concerning issuance of retrospective permits do not comply with those of CITES Resolutions. For example, Article 15(1) allows the exceptional retrospective issue of documents for specimens of species listed in Annex A and referred to in Article 4(5) of *Regulation 338/97* (i.e. specimens previously legally introduced into or acquired in the EC and reintroduced into the EC, modified or not; and worked specimens acquired more than 50 years previously). On the other hand, CITES Resolution Conf.12.3, Section XIII, provides that:

- a Management Authority of an exporting or re-exporting country should not issue CITES permits and certificates retrospectively;
- Moreover, a Management Authority of an importing country, or of a country of transit or transhipment, should not accept permits or certificates that were issued retrospectively; and
- Exceptions from the recommendations under a) and b) should not be made with regard to Appendix I specimens.

Another problem relates to the retrospective issuance and submission of export or re-export documents in the case of specimens in transit through the Community.

> *Article 7(2)(c) of Regulation 338/97: If the document referred to in (b) [= valid export or re-export document provided for by CITES, necessary for an Annex A specimen to enter the EC territory for transit] has not been issued before export or re-export, the specimen must be seized and may, where applicable, be confiscated unless the document is submitted retrospectively in compliance with the conditions specified by the Commission in accordance with the procedure laid down in Article 18*

Article 16 Reg. 865/2006 states that Article 15 shall apply *mutatis mutandis* to specimens in transit. However, that article deals only with retrospective issuance of documents, not their retrospective submission. No other provision has been made in *Regulation 865/2006* concerning specimens in transit. There should be provisions in *Regulation 865/2006* concerning the retrospective submission of documents. At present, it appears that Member States – if they apply Article 16 at all – consider that it implicitly allows for retrospective issuance and submission of documents but this could usefully be clarified.

To conclude, there are apparent inconsistencies and there is scope for confusion but it could be rectified through agreed interpretations and through amendment of the Commission Regulation. With regard to the latter, Member States may wish to reflect upon the amount of latitude they wish to allow with respect to Annex A specimens.

3.6.12 RE-EXPORT CERTIFICATES

Regulation 865/2006 provides for **common procedural requirements** for issuance of export permits and re-export certificates with regard to forms (Article 2(1) and Article 5), validity of permits and certificates (Article 10) and the application process (Article 26). However in addition, in the *Regulation 865/2006* there is reference in some Articles for **specific requirements** concerning *'the certificates provided for in Articles 5(2)(b), 5(3), 5(4), 8(3) and 9(2)(b) of Regulation 338/97'* (e.g. Article 2(5),

Article 46, Article 50(1)). These additional references also cover requirements for re-export certificates which are referred to in Articles 5(3) and 5(4) of *Regulation 338/97*. As a consequence the re-export certificates are subject to two sets of rules, which might be a source of confusion. The provisions for re-export certificates should either be collated or re-considered to determine if there are errors.

In conclusion, there is scope for clarification in a future amendment of the Commission Regulation.

Article 2 of *Regulation 865/2006* sets out the prescribed layout for forms.

> Article 2(1) of *Regulation 865/2006*: *The forms on which import permits, export permits, re-export certificates, personal ownership certificates and applications for such documents are drawn up shall conform, except as regards spaces reserved for national use, to the model set out in Annex I.*

However, this is inconsistent with the provisions of Article 2(5).

> *Article 2(5) of Regulation 865/2006 : The forms on which the certificates provided for in Articles 5 (2)(b), 5(3), 5(4), 8(3) and 9(2)(b) of Regulation (EC) No 338/97 and applications for such certificates are drawn up shall conform, except as regards spaces reserved for national use, to the model set out in Annex V to this Regulation.*

Clearly, the reference to Articles 5(3) and 5(4) of *Regulation 338/97* is a mistake in the latter paragraph, since that paragraph deals with certificates for internal movement and trade only – not for external trade.

There will be consequential amendments to be made to Article 6(2) and (4), Article 50(1) and Article 26(1).

> *Article 6(2) of Regulation 865/2006: Where the forms referred to in Article 2(1) are used for more than one species in a shipment, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species in the shipment, reproduce boxes 8 to 22 of the form concerned as well as the spaces contained in box 27 thereof for 'quantity/net mass actually imported or (re-)exported' and, where appropriate, 'number of animals dead on arrival'.*

> *Article 6(4) of Regulation 865/2006: Where the forms referred to in Article 2(5) are used for more than one species, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species, reproduce boxes 4 to 18 of the form concerned.*

> *Article 50(1) of Regulation 865/2006: The applicant for the certificates provided for in Articles 5(2) (b), 5(3), 5(4), 8(3) and 9(2)(b) of Regulation (EC) No 338/97 shall, where appropriate, complete boxes 1, 2 and 4 to 19 of the application form and boxes 1 and 4 to 18 of the original and all copies.*
> *Member States may, however, provide that only an application form is to be completed, in which case such an application may be for more than one certificate.*

> *Article 26(1) of Regulation 865/2006: The applicant for an export permit or re-export certificate shall, where appropriate, complete boxes 1, 3, 4, 5 and 8 to 23 of the application form and boxes 1, 3, 4 and 5 and 8 to 22 of the original and all copies.*
> *Member States may, however, provide that only an application form is to be completed, in which case such an application may relate to more than one shipment.*

Regulation 865/2006 should be amended to correct this confusion.

3.6.13 ILLEGAL TRADE AND REGISTRATION

3.6.13.1 Illegal trade

The problem of laundering of illegal specimens, as discussed in Section 3.6.8.3, is only one facet of the wider problem of illegal trade. The latter exists in relation both to specimens smuggled through external EU borders as well as to specimens taken from the wild within the EU. In both cases, specimens of illegal origin are passed off as legal using fake/ copied/ false paperwork as well as fraudulent marking.

To combat laundering it is necessary to use a range of tools and methods, including marking, bookkeeping and/or registration. It is essential to co-ordinate licensing and enforcement, since licensing which enables trade in illegal specimens makes enforcement much more difficult. It is also essential that controls that generate an extra paper burden – either for Management Authorities or bona fide traders – are warranted by the scale of the conservation risk.

With regard to enforcement at external EU borders, the Risk list developed by TRAFFIC could be used to prioritise species for attention by border control officers. The general view is that Member States need to work together if using national risk lists, as otherwise traders will go to another Member State where trade in specimens of the species is not targeted by enforcement officers.

There is also a need to consider the Enforcement working group as a forum for sharing experiences on trade and to further develop the use of the risk list etc. There is a perceived lack of communication and co-ordination between Management Authorities, Scientific Authorities and Enforcement Agencies at both the national and EU-wide level. One problem is the prioritisation of issues with respect to enforcement agencies which are handicapped by differing availability of resources. The need for the sharing of information between enforcement officers and a specific focus within the Enforcement Group on investigative techniques for enforcement officers only merits further consideration.

These issues should be given to the Enforcement Group to take forward.

3.6.13.2 Registration of breeding operations

The issue here is whether the requirements of CITES Resolution Conf.12.10 (Rev.CoP13) for registration and monitoring of operations that breed Appendix I species for commercial purposes should be included in EC law.

CITES Resolution Conf.12.10 (Rev CoP13): The Conference of the Parties agreed that "the exemption of Article VII, paragraph 4, of the Convention should be implemented through the registration by the Secretariat of operations that breed specimens of Appendix I species for commercial purposes". The Conference of the Parties also agreed on the procedure to be followed to register captive-breeding operations.
CITES Article VII(4): "Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II."
The CITES Resolution Conf.12.10 (Rev.CoP13) specifies that "the first and major responsibility for approving captive-breeding operations [rests] with the Management Authority of each Party", which "provide the Secretariat with appropriate information to obtain and maintain the registration of each captive-breeding operation".
Moreover, the Resolution states that the "registered captive-breeding operations shall ensure that an appropriate and secure marking system is used to clearly identify all breeding stock and specimens in trade, and shall undertake to adopt superior marking and identification methods as these become available".
"The Management Authority, in collaboration with the Scientific Authority, shall monitor the management of each registered captive-breeding operation under its jurisdiction and advise the Secretariat in the event of any major change in the nature of an operation or in the type(s) of products being produced for export, in which case the Animal Committee shall review the operation to determine whether it should remain registered".
"Any Party within whose jurisdiction an operation is registered may unilaterally request the removal of that operation form the Register without reference to other Parties by so notifying the Secretariat, and in this case, the operation shall be removed immediately".

The main argument in favour of this course is the perception that the lack of registration of breeders allows for the laundering of specimens. However, the prevailing view among the Member States is against compulsory registration according to the provisions of Resolution Conf. 12.10 (Rev. CoP13). It is seen as being administratively burdensome. If even one Party objects, the registration is held up until the next CoP. Therefore, it is an undue burden on *bona fide* breeders and undermines captive breeding as a means of reducing pressure on the use of wild populations.

Revisions could be considered in the future if different schemes were proposed, in particular if a simpler system is in place for animals as exists for plants, where the procedures are less burdensome.

To conclude, no action is necessary for the present but the Community should continue to press for lighter procedures for animals at future CoPs.

3.6.14 MANAGEMENT AUTHORITIES AND SCIENTIFIC AUTHORITIES

Several problems have been identified regarding the structure and the role of Management Authorities (MAs) and Scientific Authorities (SAs).

Just as a strong Management Authority and enforcement regime are essential, a strong, competent and independent Scientific Authority is also a prerequisite for effective implementation of the Regulations. This requires adequate resources and could be particularly problematic to some Member States, including some of the newer ones.

Article 13 of Regulation 338/97: Management and scientific authorities and other competent authorities 1. (a) Each Member State shall designate a management authority with primary responsibility for implementation of this Regulation and for communication with the Commission. (b) Each Member State may also designate additional management authorities and other competent authorities to assist in implementation, in which case the primary management authority shall be responsible for providing the additional authorities with all the information required for correct application of this Regulation.
2. Each Member State shall designate one or more scientific authorities with appropriate qualifications whose duties shall be separate from those of any designated management authority.

3.6.14.1 Opinion of Scientific Authorities on Introduction into the Community

Condition for issuance of an import permit for specimens of the species listed in Annex A:
Article 4(1)(a) of Regulation 338/97: the competent scientific authority, after considering any opinion by the Scientific Review Group, has advised that the introduction into the Community: (i) would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species; (ii) is taking place: – for one of the purposes referred to in Article 8(3)(e), (f) and (g), or – for other purposes which are not detrimental to the survival of the species concerned.
Condition for issuance of an import permit for specimens of the species listed in Annex B:
Article 4(2)(a) of Regulation 338/97: the competent scientific authority, after examining available data and considering any opinion from the Scientific Review Group, is of the opinion that the introduction into the Community would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade. This opinion shall be valid for subsequent imports as long as the abovementioned aspects have not changed significantly.

The wording of Article 4(2)(a) provides some scope and is deliberately flexible, as it is not always necessary for the SA to see all of the applications. However, during the Vilm workshop, concern was expressed that not many Member States are routinely consulting their SA on a case-by-case basis and that SAs are not seeing all permit and certificate applications that they should. The wording of Article 4(2)(a) suggests that the opinion of the SA 'shall be valid for subsequent imports as long as the abovementioned aspects have not changed significantly' but it then does not explicitly state whether the MA or SA is mandated with determining whether a situation has changed significantly. The term 'in consultation' leaves some flexibility for the Member States to make their own arrangements according to their requirements.

There was general agreement that the discretion on this question should rest with the SA in the first instance and that it is up to that body to determine the criteria as to which applications should be referred to the SA by the MA on a routine basis. The system needs to be flexible to allow changes over time as new information arises (both negative and positive regarding trade). If SAs become aware that the circumstances have changed for a species, then this situation should be brought to the attention of the MA.

The above considerations apply to other requirements in the Regulations for consultation with SAs besides Article 4(2)(a), such as verification of captive-bred/ artificially propagated status and issuance of intra-community trade certificates. Again, there appear to be differences in practice.

Member States were anxious not to overstate the magnitude of this problem. It is not regarded as a problem with the legislation. However, further guidance could be provided regarding the process, especially for new Member States.

The Annual Reports of EU countries have always been discussed in Committee but could also be discussed in the SRG if an accompanying analysis by UNEP-WCMC were presented. It would also be possible – in a future monitoring contract – to create a simple spreadsheet of how SAs deal with the various consultation obligations in different Member States as an initial scoping study. This could form the basis for a decision as to whether or not it would be useful to have a thorough review in terms of how SAs operate in different Member States (as the Commission has already done with respect to enforcement, sharing good practices).

Of course, it should be borne in mind that the Convention requires the seeking of advice for exports of Appendix I and II species and for imports of the former.

To conclude, this problem can be solved through provision of better guidance and sharing of best practices.

3.6.14.2 Separation of duties

Despite the intention that the duties of the SA and MA should be separated, this is not followed through in Article 4(1). On the one hand, in Article 4(1)(c), the suitability of the intended accommodation is to be regulated by the SA. However, on the other hand, in Article 4(1)(f), the suitability of the shipping is to be regulated by the Management Authority. The same anomaly is found in the corresponding Convention text (Articles III-3-b and III-5-b respectively). According to Wjnstekers (2005)[23] this is simply an error that has never been removed. If that is the case, then it should be corrected in the Regulation should the opportunity arise. In that event, it might be simpler to group all of the tasks of the SA into one point and all those of the MA into another.

To conclude, this problem can be addressed through amendment of the Council Regulation, should the text be re-opened.

3.6.15 ENFORCEMENT GROUP

The Enforcement Working Group – or, simply, the Enforcement Group, as it is referred to in *Regulation 338/97* - consists of representatives of each of the Member States' authorities that have responsibility for monitoring compliance with the Regulations. According to Article 14 of the Regulation, the task of the group is to examine any technical question relating to the enforcement of the Regulations. Opinions of the Enforcement Group are conveyed to the Committee by the Commission.

Compared to the Committee and the SRG, the Enforcement Group is seen as suffering from a lack of structure to its deliberations, which tends to drift rather than being pulled towards a conclusion. The issue is how to bring the group forward and maximise its contribution to the Community's collective enforcement effort.

The Commission itself has tried to improve the functioning of the group. Meetings are now held twice yearly. The Commission has experimented with one and a half-day meetings but some felt that this just led to lengthier debate, although others saw this as an opportunity to have focused discussion on selected issues, such as caviar trade and enforcement. It is not clear whether more meetings per year would have an impact on enforcement – in any case, the current staffing levels in the Commission and the availability of meeting rooms would probably be a limiting factor. The length of the agenda is another factor. Some feel that it is too long and too wide a subject area to achieve good results. It might be useful to have small focus groups to discuss and then report back. It has also been suggested that the terms of reference need to be fine-tuned.

[23] Willem Wijnstekers (2005) *The Evolution of CITES* Version 1.0
http://www.cites.org/eng/resources/publications.shtml

Differences in understanding of the term 'enforcement' need to be addressed through common understanding; some see this as the realm of enforcement officers only, whereas others believe there is a clear role for management and permitting officers to be involved. Care should be taken not to downgrade the community-wide education aspect towards specific operational measures. The 'bringing together' aspect is important for the enforcement community, in particular for people who are isolated in what they are doing and who can learn from one other. The Enforcement Group should also be more directly involved in preparation for CoPs.

As with the Committee and the SRG, some Member States and/ or personalities tend to dominate the discussion. While this often reflects greater experience due to higher levels of trade, it does not encourage the smaller Member States and the less experienced attendees to speak and raise questions. The size of the group – around 40 people - is too big for intensive discussion of concrete points, but with 27 Member States it is difficult to see how the size of the group could be significantly reduced, unless through break-out sessions.

Some consistency in who attends the meetings would help the discussion through continuity. Above all, the attendees should, as far as possible, be personnel who are actively engaged in enforcement "on the ground" and not senior Management Authority staff. Some delegates attend the meetings as training. They want to learn how to implement in a uniform manner, not just concerning illegal cases, also on the main points. They are looking for advice and guidance. Enforcement also means uniform handling of the issues.

There is insufficient flow from the Enforcement Group to the Committee. There is little structure on the feedback to the Committee. On one occasion, the Commission organized a back to back meeting of the Group with the Committee. However, this only increased the tendency of senior Management Authority staff to attend the meeting in place of front-line enforcement personnel. If the meetings are back to back then the same people will/may attend both meetings, which is not the best scenario. There is a tendency to stray into MA issues. The MAs should sit in the background and not be the spokespersons for their country.

On the positive side, improved operation of the group may be facilitated by the recently adopted *Commission Recommendation of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein* (Official Journal of the European Union L 159/45). This set of commonly agreed actions and targets may provide greater focus for the group.

It would also help if there was better dissemination of information regarding what is discussed at the Enforcement Group. Information is disseminated, but without conclusions. More focused outputs - e.g. action plans – would be preferable. However, it remains to be seen how the aforementioned Commission Recommendation may focus discussion and outputs.

To conclude, these are organizational issues whose solution lies primarily with Member States (in terms of the personnel they send to the meetings) but also with the Commission. The Commission Recommendation regarding a set of actions may provide greater focus in discussion and outputs; time will tell. In the event that the Council Regulation is re-opened, consideration could be given to strengthening the terms of reference of the Group or the tasks assigned to it, in line with the Commission Recommendation. The 2005 workshop on timber issues in Perugia also suggested that the Commission CITES team should include a Seconded National Expert with an enforcement background.

3.6.16 OTHER ISSUES

This section gathers elements that were not considered by Chamoux (op. cit.) to need as much development as the previous issues.

3.6.16.1 Information at border crossings

Article 12(5) of Regulation 338/97: Member States shall ensure that at border crossing-points the public are informed of the implementing provisions of this Regulation.

There are problems with respect to the practical implementation of this provision. Firstly, it should be at the exit point, rather than the entry point, where it is being provided too late. However, this is often not the case. It is also easy to allow the information to go out of date.

The provision makes sense for air traffic, but is of little value in the case of road traffic, since often vehicles only stop for long enough to be checked by Customs/ police – if they stop at all. Even in the case of air traffic, in-flight films and information given with the air ticket are a valuable supplement to airport stands but not all Member States provide these. The information should be relevant and easy to understand – it should be presented in a way that invites reading and explain why compliance is "a good thing".

At the Vilm workshop, Member States agreed that the best approach was for them to share information on what they are doing via the Committee. It was noted that similar campaigns run on veterinary issues are very effective and should be examined.

In the event that the Council Regulation is amended, the words "border crossings" should be deleted and a more flexible formulation should be used.

To conclude, the problems here are best solved by information sharing – perhaps stimulated by a survey by the Commission under a future monitoring contract. There is scope for amendment of the Council Regulation should the opportunity arise.

3.3.16.2 Electronic licensing and Customs declarations

In Member States and some third countries there is a move towards electronic licensing and Customs declarations. EU Customs law is removing paper handling by Customs. Although sometimes paper documents are inevitable there is a need to align EU CITES procedures with Customs law. This both reduces paper handling, and provides the trader with a single contact point, improving both efficiency and effectiveness.

Although this is still "work in progress", there is scope for facilitating it in future legislation. *Regulation 865/2006* could be amended so that it does not preclude the use of electronic information transmission, e-application and permitting. However, the details of the amendment will require some thought as the security requirements of the system would have to be specified.

On this issue, the way forward is amendment of the Commission Regulation, possibly following a short study undertaken by the Commission.

3.6.16.3 Disposal of confiscated specimens

Member States differ in their practices with regard to confiscated specimens. Some see no difficulty in selling Annex B specimens or even captive-bred/ artificially propagated Annex A material. However,

there is scope for more clarification/sharing experience. Member States also felt that, if *Regulation 338/97* is amended, Article 16 should provide for a fine in place of confiscation, depending on the gravity of the offence.

The problems here can be addressed by sharing experience and guidance but there is scope for amendment of the Council Regulation in the future.

3.6.16.4 Stricter treatment of Annex B in certain circumstances

Prohibitions on Annex B specimens can in certain circumstances be tougher than if the species was up-listed to Annex A.

> *Article 8(5)"The prohibitions referred to in paragraph 1 shall also apply to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora."*

For Annex B specimens it has to be proved to the competent authority that the specimens were acquired *in accordance with the legislation in force for the conservation of wild fauna and flora.* If it cannot be proved that an Annex B specimen has been legally acquired, under Article 8(5) of *Regulation 338/97*, in theory it cannot be used for commercial purposes.

With regard to Annex A specimens, on the other hand, Article 8(3)(a) of *Regulation 338/97* allows exemption for specimens *"acquired in, or introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens"*.

Therefore, if an Annex B species is subsequently uplisted to Annex A, the exemption in Article 8(3)(a) is applicable. As Article 8(3)(a) does not require the specimens to be 'legally acquired', whereas this is required for Annex B, controls for Annex A would appear less strict than for Annex B.

However, it should be remembered that Article 8(5) is essentially an enabling clause that allows enforcement authorities to pursue manifestly dubious trade in Annex B specimens by reversing the burden of proof. It is doubtful if Member States apply it more strictly than Article 8(1) and 8(3) in practice. That said, in the event that the Council Regulation is re-opened, the requirement that specimens should be 'legally acquired' should be added for Annex A specimens.

To conclude, this should not be regarded as a pressing concern but amendment of the Council Regulation would rectify the apparent anomaly.

3.6.16.5 Use of phytosanitary certificates as export permits

> *Article 7(1)(b) of Regulation 338/97: In the case of artificially propagated plants of the species listed in Annexes B and C to Regulation (EC) No 338/97 and of artificially propagated hybrids produced from the unannotated species listed in Annex A thereto, the following shall apply: (a) Member States may decide that a phytosanitary certificate is to be issued instead of an export permit; (b) phytosanitary certificates issued by third countries shall be accepted instead of an export permit.*

Phytosanitary certificates can be used as CITES export permits. The provisions governing their use in Article 17 of *Regulation 865/2006* are slightly less strict than those in Resolution Conf. 12.3 in that artificially propagated orchids and cacti are not required to be identified to species level.

However, due to the waiving of the requirement for such certificates for trade in plants with some non-EU European countries, there is a trend away from their use as substitutes for export permits.

To conclude, Member States may wish to reflect whether or not it is worthwhile to bring Article 17 more in line with CITES. Otherwise, the implementation of this provision is at the discretion of Member States.

3.6.16.6 Restrictions on holding and movement of sensitive species

Article 9(6) of Regulation 338/97: Under the procedure laid down in Article 18, the Commission may establish restrictions on the holding or movement of live specimens of species in relation to which restrictions on introduction into the Community have been established in accordance with Article 4 (6).

Although it has been suggested that this provision be used for alien invasives, to date it has not been used at all. However, Member States do not see this as a major issue. If it were to be used in respect of invasive species, care would have to be taken to ensure that this did not provoke releases of those species.

Article 8(2) of Regulation 338/97: Member States may prohibit the holding of specimens, in particular live animals of the species listed in Annex A.

No real problems were identified with this provision, which is not widely used. However it is important to be aware of the potential of the legislation.

No action is required.

3.6.16.7 Simplified procedures

Article 18(1) of Regulation 965/2006: In the case of trade that will have no impact on the conservation of the species concerned or only a negligible impact, simplified procedures on the basis of pre-issued permits and certificates may be used for biological samples of the type and size specified in Annex XI, where those samples are urgently required to be used in the manner specified in that Annex and provided that the following conditions are satisfied (…)

This provision at present only covers dead or captive-bred Annex B specimens. There have been calls to extend it to Medicinal leeches, *Hirudo medicinalis*, and netsuke ivory carvings.

Article 63(2) of *Regulation 865/2006*: '*For the purposes of Article 8(3)(d) and (h) of Regulation (EC) No 338/97, a Member State may make pre-issued certificates available to persons who have been approved by a Management Authority to sell on the basis of such certificates dead captive-bred specimens and/or small numbers of dead specimens legally taken from the wild within the Community, provided that any such person meets the following requirements'*

Article 63 of *Regulation 865/2006* allows pre-issued certificates for dead captive-bred specimens but does not mention parts and derivatives. It has been suggested that it Article 63 should be broadened to allow simplified procedures for parts and derivatives (i.e. feathers) also.

To conclude, there is scope for amendment of the Commission Regulation concerning these issues.

3.6.16.8 Listing of additional species in the annexes

At the Vilm Workshop, some Member States noted what they regarded as slowness in adding non-CITES species to the Annexes. However it was not perceived as a major problem and the prevailing view favoured having less such species rather than more.

No action is required.

3.6.16.9 Re-import issues

According to Article 4(5) of *Regulation 338/97*, there is no need to make a non-detriment finding or to verify the purpose of the import in the case of specimens of Annex A or Annex B species, legally exported, and then re-imported.

It is assumed that this does not remove the right of Customs to check such shipments; nor, in the case of Annex A specimens, does it supersede the provisions of Article 8(3) which govern the use of the specimen.

The re-import of artificially propagated plants of Annex A or B into the Community, e.g. plants exported to fairs and shows, is another issue. Such shipments also need an import permit, which is an unnecessary administrative burden and additional bureaucracy for the traders. Traders have sought simplified procedures.

These issues can be dealt with by guidance and clarification, and, if necessary, amendment of the Commission Regulation to broaden the scope for lighter procedures.

3.6.16.10 Annex D

Doubts have been expressed concerning the usefulness of Annex D, because experience has shown that it is not being effectively implemented. At a meeting in Budapest prior to the Vilm workshop, some Member States proposed that it should be deleted. However, the prevailing view among Member States at the workshop was that it should be retained, noting the fact that it has been considerably shortened of late and that the SRG have developed criteria for listing of species on the Annex. It was agreed that species should not be listed when there are alternative sources of data available. It was also suggested that the form for the import notification could be amended, deleting the requirement for a purpose code.

To conclude, the status quo should be maintained, with the form being amended on the next occasion the Commission Regulation is revised.

3.6.16.11 Dependent territories

The dependent territories and overseas provinces which were or were not covered by the scope of the Regulations were agreed at the time of adoption but, with the passage of time, uncertainty has arisen in this regard.

The Commission needs to re-publish the list of dependent territories and their status under the Regulations, and, possibly, post it on the web.

3.6.16.12 Test purchases

Some Member States have expressed the wish to include an exemption in the Regulations which will allow enforcement agencies to take part in investigations that may involve the offering to sell or offering to buy, or purchase of CITES species. Without such purchases it is sometimes difficult to prove if someone is carrying out illegal activities as one cannot test the price, quality and nature of the specimens.

In many Member States test purchases are not permitted in any area of enforcement. Where they are allowed – as with drugs in some countries – they are usually intended only to test a market or a product, not to prosecute. Some courts would see test purchases as a form of entrapment.

This would probably require amendment of the Council Regulation. The Commission would have to be satisfied that such an exemption would be widely used before they could consider proposing it.

3.6.16.13 Export of native wild Annex A

Internal trade, under derogation, is allowed in some native wild-taken species listed under the Habitats and Birds Directives. However, there is a perception that export is only allowed if they are not listed in Appendix II of CITES. Nothing was found to support this perception but it merits clarification.

Clarification is sufficient here.

3.6.16.14 Offspring

Parental stock originally in Annex B can be sold legally provided they were imported legally in the first place. However, if the species is up-listed to Annex A, then, since the F1 offspring are Source code 'F', they may not meet the definition of captive-bred specimens (Article 54 of *Regulation 865/2006*) unless it has been demonstrated that the species is capable of reliably producing second generation (F2) offspring in a controlled environment. According to Article (8)(3)(d) of *Regulation 338/97*, they cannot be traded unless they meet this definition. However, the next generation (F2) will always meet the definition.

The participants at the Vilm workshop tended to the view that it should be possible to trade offspring as a general rule. It might be possible to rectify this situation by seeking an amendment to Resolution Conf. 12.10 (Rev. CoP 13) that would explicitly allow for the sale of offspring in such circumstances. The wording of such an amendment could then be incorporated into the Commission Regulation. However, it would be difficult to get sufficient support at a CoP for any amendment that could be seen as facilitating wider trade. In any case, the EU would be in a difficult position in proposing such an amendment when it does not implement the substantive part of that Resolution concerning the requirement to register breeding facilities for Appendix I species. Therefore, if this is regarded as a major problem, it might be best solved by proceeding directly to an amendment of the Commission Regulation.

Clarification of the present regime via amendment of the Commission Regulation is the best way forward.

3.7 IMPACT OF MEMBER STATES' STRICTER MEASURES

3.7.1 BACKGROUND

Under the provisions of the Treaty establishing the European Community (EC Treaty) and of the Council *Regulation 338/97*, the Member States of the European Community (EC) have the legal possibility to enact 'stricter national measures'. However, this legal authority is strictly regulated, and subject to conditions. The stricter national measures that can be adopted by the Member States cannot be quantitative restrictions on imports (or on exports) or measures having equivalent effect, except if they are justified for the protection of health and life of humans, animals or plants. Even in this case such stricter national measures must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. The European Court of Justice (ECJ) has ruled[24] very clearly that a Member State can adopt a stricter national measure restricting trade (the case that came before the court concerned a prohibition of the commercial use of specimens of species listed in Annex B to *Regulation 338/97*) "only to the extent that it is necessary for effectively achieving the objective of the protection of the health and life of animals". Such a measure cannot be adopted where "the health and life of animals can be protected just as effectively by measures that are less restrictive of intra-Community trade".

Article XIV(1) of CITES also allows the State Parties to enact stricter domestic measures. However, in Resolution Conf.6.7 the CoP recognized the "concern of some Parties that stricter domestic measures taken pursuant to Article XIV(1) may have an adverse impact on the conservation status of the species concerned in their countries of origin". The Conference of the Parties therefore recommended that "each Party intending to take such stricter domestic measures regarding trade in specimens of non-indigenous species included in the Appendices may make every reasonable effort to notify the range States of the species concerned at as early stage as possible prior to the adoption of such measures, and consult with those range States that express a wish to confer on the matter".

Stricter domestic measures adopted under CITES may be subject to challenge under the rules adopted in the framework of the WTO. The GATT contains provisions relating to trade in goods similar to the EC Treaty provisions. Under WTO law, the prohibitions or restrictions to trade in goods for human, animal or plant life or health are called sanitary and phytosanitary measures.

3.7.2 OVERVIEW OF STRICTER NATIONAL MEASURES AND REASONS FOR THEIR ADOPTION

The Member States adopt stricter national measures for several different reasons:

- to improve the control on trade in protected species;
- to gather information on this trade;

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[24] JUDGMENT OF THE COURT (Sixth Chamber) 23 October 2001 (Wild fauna and flora - Endangered species - Application in the Community of the Washington Convention) In Case C-510/99, REFERENCE to the Court under Article 234 EC by the Tribunal de grande instance de Grenoble (France) for a preliminary ruling in the criminal proceedings before that court against **Xavier Tridon**, third parties: **Fédération départementale des chasseurs de l'Isère** and **Fédération Rhône-Alpes de protection de la nature (Frapna), section Isère,** on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC), Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora (OJ 1982 L 384, p. 1), in particular Articles 6 and 15, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1) and the Convention on international trade in endangered species of wild fauna and flora concluded in Washington on 3 March 1973, in particular Articles VII and XIV.

- to facilitate the proof of the legal origin of the specimens;
- to improve the protection of indigenous endangered species;
- to control the spread of Invasive and Alien Species (IAS); and
- to protect the public from "dangerous" species.

The debate on stricter national measures is polarized, especially where it concerns the issue of registration of Annex B specimens (see below).

3.7.2.1. Tools to improve the control of trade

Some Member States have introduced – or plan to introduce – stricter national measures and perceive them as very useful tools to control trade in specimens of endangered species.

For example, in Slovakia the legislation requires the registration of all specimens (dead or alive, parts and derivatives) listed in Annexes A to D (with some exceptions[25]), and the marking of live vertebrates listed in Annex A and B which fall under the registration requirement. A certificate of origin is issued for each specimen. Those requirements are deemed absolutely necessary by the Slovakian CITES Authorities to control trade in the specimens concerned (Kmecova, Ministry of the Environment of the Slovak Republic, *in litt.*, 5 March 2007).

In the Czech Republic, the *Act on Trade in Endangered Species* (Act No. 100/2004) requires the obligatory registration and marking (with general exemptions for certain owners and certain species particularly protected[26]) of all live specimens of mammals, birds, and reptiles species listed in Annex A (with the exception of a few commonly kept species[27]), and of a limited number of selected mammals,

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[25] Fischer's Lovebird; Black-masked Lovebird; Peach-faced Lovebird; Australian King-Parrot; Red-winged Parrot; Black-billed Wood-Duck; Celestial Parrotlet *Forpus coelestis;* Spectacled Parrotlet *Forpus conspicillatus;* Blue-rumped Parrotlet *Forpus cyanopygius;* Green-rumped Parrotlet *Forpus passerinus;* Grey-breasted Parakeet *Myiopsitta monachus;* Black-headed Conure; Elegant Grass-Parakeet *Neophema elegans; Neophema chrysostoma;* Turquoise Grass-Parakeet; Scarlet-chested Parrot; Bourke's Parrot; Bluebonnet *Northiella haematogaster;* Java Sparrow *Padda oryzivora;* Adelaide Parakeet; Mealy Rosella; Green Rosella; Crimson Rosella; Eastern Rosella; Yellow Rosella; Stanley Parakeet; Australian Ringneck *Platycercus zonarius;* Alexandra's Parrot; Regent Parrot; Barrabant Parakeet; Red-rumped Parrot; Many-coloured Parakeet; Moustached Parakeet; Plum-headed Parakeet; Alexandrine Parakeet; Ring-necked Parakeet; Pileated Parakeet; African Mourning Dove *Streptopelia decipiens;* African Collared-Dove *Streptopelia roseogrisea;* Red-eyed Dove *Streptopelia semitorquata;* Laughing Dove *Streptopelia senegalensis;* Vinaceous Dove *Streptopelia vinacea;* Boa Constrictor; Veiled Chameleon*;* Striped Trinket Snake Elaphe taeniura; Madagascar Day Gecko Phelsuma madagascariensis; Asiatic Rock Python.

[26] Specimen of an owner or a long-term holder with a seat or permanent residence outside the territory of the Czech Republic (in specific circumstances), confiscated specimens, species of animals and plants which are particularly protected according to the general legal regulation on nature conservation and plant protection (Act No. 114/1992, as amended), species of wild fauna and flora native in nature in the Czech Republic, species or specimens for which a general derogation has been set out by the European Commission and which are specified in the legislation of the EC on the protection of endangered species.

[27] Crested Porcupine Hystrix cristata; Chinchilla spp.; Laysan Duck Anas laysanensis; Red-breasted Goose Branta ruficollis;
Hawaiian Goose Branta sandvicensis; Red Siskin Carduelis cucullata; Cheer Pheasant Catreus wallichii; Bobwhite Quail
Colinus virginianus; Common Pigeon Columba livia; White Eared-Pheasant Crossoptilon crossoptilon; Tibetan Eared-Pheasant Crossoptilon harmani; Brown Eared-Pheasant Crossoptilon mantchuricum; Yellow-crowned Parakeet Cyanoramphus auriceps; New Zealand Parakeet Cyanoramphus novaezelandiae; Himalayan Monal Lophophorus impejanus; Edwards's Pheasant Lophura edwardsi; Swinhoe's Pheasant Lophura swinhoii; Snowy Owl Nyctea scandiaca; White-headed Duck Oxyura leucocephala; Napoleon's Peacock-Pheasant Polyplectron emphanum; Hooded Parrot Psephotus dissimilis; Ostrich Struthio camelus; Chinese Barred-backed Pheasant Syrmaticus ellioti; Hume's Bar-tailed Pheasant Syrmaticus humiae; Mikado Pheasant Syrmaticus mikado; Cabot's Tragopan Tragopan caboti; Duméril's Boa Acrantophis dumerili; Common Chameleon Chamaeleo chamaeleon; Lacertidae spp.; Round Island Day Gecko

bird and reptile species listed in Annex B[28]. The Annex B-listed specimens concerned have to be registered and marked because there are considerable enforcement problems with illegal trade in them in the Czech Republic (Kučera, Ministry of the Environment of the Czech Republic, *in litt.*, 16 February 2007).

In Hungary, Decree No. 271/2002 requires obligatory marking and registration, as well as the issuance of an official document (certificate of origin), for all Annex A vertebrates - whether alive or dead - and of all live mammal, bird and tortoise specimens of species listed in Annex B (with the exemption of certain listed very common and easy-to-breed bird species[29]). In the case of those Annex B specimens where marking and registration are required, the reason is that they are species in ongoing trade. For this reason, the Hungarian authorities consider that their approach should be followed throughout the EU, from one owner to another, in order to be able to distinguish legal from illegal trade. Indeed, the Management Authority can only distinguish legal from illegal trade if the legally acquired specimens are marked and registered in its system (Prager, Ministry of Environment and Water of Hungary, *in litt.*, 20 March 2007).

In Poland, at present the marking regime is in accordance with *Regulation 865/2006*. However, marking of live CITES animals is considered by the Polish authorities as the key issue for enforcement and effective control of trade and sale. Therefore the Polish authorities wish to include new marking requirements for CITES-listed animals in the national legislation in the future (Wolnicki, Ministry of

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Phelsuma guentheri; Indian Python Python molurus molurus (List in the Annex 3 to Decree No. 227/2004 Coll.)

[28] Elephantidae spp.; Felidae spp.; Primates spp.; *Amazona* spp. (all species with the exception of the species *Amazona aestiva* Blue Fronted Amazon); *Ara* spp.; Gang-gang Cockatoo *Callocephalon fimbriatum; Calyptorhynchus* spp.; Hawk-headed Parrot *Deroptyus accipitrinus;* Blue-bellied Parrot *Triclaria malachitacea;* Grey Parrot *Psittacus erithacus;* Girdled Lizard *Cordylus* spp.*;* Crocodylia spp.; *Dracaena* spp.; Coast Horned Lizard *Phrynosoma coronatum; Pseudocordylus* spp.; Testudinidae spp.; *Tupinambis* spp.; *Uromastyx* spp.; *Varanus* spp. (List in the Annex 4 to Decree No. 227/2004 Coll.).

[29] Those bird species have assumingly no or very low illegal trade from the wild going on: Baikal Teal *Anas formosa;* Coscoroba Swan *Coscoroba coscoroba;* Black-necked Swan *Cygnus melanocorypha;* Black-billed Wood-Duck *Dendrocygna arborea;* Comb Duck; Knob-billed Goose *Sarkidiornis melanotos;* Chestnut-breasted Tree-Partridge *Arborophila charltoni;* Bar-backed Partridge *Arborophila orientalis;* Argus Pheasant *Argusianus argus;* Grey Junglefowl *Gallus sonnerati;* Blood Pheasant *Ithaginis cruentus;* Bulwer's Pheasant *Lophura bulweri;* Diard's Fireback *Lophura diardi;* Crestless Fireback *Lophura erythrophthalma; Lophura haitiensis;* Crested Fireback *Lophura ignite;* Salvadori's Pheasant *Lophura inornata;* Kalij Pheasant *Lophura leucomelanos;* Green Peafowl *Pavo muticus;* Common Peacock-Pheasant *Polyplectron bicalcaratum;* Germain's Peacock-Pheasant *Polyplectron germaini;* Crested Peacock-Pheasant *Polyplectron malacense;* Bornean Peacock-Pheasant *Polyplectron schleiermacheri;* Grey-headed Lovebird *Agapornis canus;* Fischer's Lovebird*Agapornis fischeri;* Black-masked Lovebird *Agapornis personatus;* Peach-faced Lovebird *Agapornis roseicollis;* Australian King- Parrot *Alisterus scapularis;* Red-winged Parrot *Aprosmictus erythropterus; Aratinga* spp.; Barnard's Parakeet *Barnardius barnardi barnardi; Barnardius barnardi macgillivrayi; Barnardius zonarius semitorquatus; Barnardius zonarius zonarius;* Barred Parakeet *Bolborhynchus lineola;* Golden-winged Parakeet *Brotogeris chrysopterus;* Canary-winged Parakeet *Brotogeris versicolurus;* Burrowing Parakeet *Cyanoliseus patagonus;* Yellow-crowned Parakeet *Cyanoramphus auriceps auriceps;* Galah *Eolophus roseicapillus; Forpus* spp.; Swift Parrot *Lathamus discolour; Myopsitta monachus;* Black-headed Conure *Nandayusnenday;* Blue-winged Grass-Parakeet *Neophema chrysostoma;* Elegant Grass-Parakeet *Neophema elegans;* Rock Parrot *Neophema petrophila;* Turquoise Grass-Parakeet *Neophema pulchella;* Scarlet-chested Parrot *Neophema splendida;* Bourke's Parrot *Neopsephotus bourkii; Pionites* spp.; *Pionus* spp.; Adelaide Parakeet *Platycercus adelaidae;* Mealy Rosella *Platycercus adscitus;* Green Rosella *Platycercus caledonicus;* Crimson Rosella *Platycercus elegans;* Eastern Rosella *Platycercus eximius*; Yellow Rosella *Platycercus flaveolus;* Stanley Parakeet *Platycercus icterotis;* Northern Rosella *Platycercus venustus;* Senegal Parrot *Poicephalus senegalus;* Alexandra's Parrot *Polytelis alexandrae;* Regent Parrot *Polytelis anthopeplus;* BarrabandParakeet *Polytelis swainsonii; Psephotus haematogaster;* Red-rumped Parrot *Psephotus haematonotus;* Many-coloured Parakeet *Psephotus varius;* Moustached Parakeet *Psittacula alexandri;* Plum-headed Parakeet *Psittacula cyanocephala;* Derbyan Parakeet *Psittacula derbiana;* Alexandrine Parakeet *Psittacula eupatria;* Pileated Parakeet *Purpureicephalus spurious; Pyrrhura* spp.; Green-naped Lorikeet *Trichoglossus haematodus;* Yellow-faced Siskin *Carduelis yarrellii;* Hwamei *Garrulax canorus;* Common Hill Myna *Gracula religiosa;* Silver-eared Mesia *Leiothrix argentauris;* Red-billed Leiothrix *Leiothrix lutea; Padda oriyvora;* Yellow-billed Cardinal *Paroaria capitata;* Red-crested Cardinal *Paroaria coronata;* Southern Black-throated Finch *Poephila cincta cincta.*

the Environment of Poland, *in litt.*, 1 March 2007). Similarly, while at present the Polish wildlife trade provisions do not set obligations concerning the registration of facilities which breed animals of CITES-listed species, for the future amendment of the *National Act on nature Conservation* the Polish authorities are considering introducing obligations to register nurseries artificially propagating specimens of Appendix I species (reference to CITES Resolution Conf.9.19 (Rev.CoP13)) and operations that breed Appendix I animal species for commercial purposes (reference to CITES Resolution Conf.12.10 (Rev.CoP13)). Inclusion of those new obligations would - according to the Polish authorities - help to monitor and control trade and commercial activities related to CITES species (Wolnicki, Ministry of the Environment of Poland, *in litt.*, 1st March 2007).

3.7.2.2. Means to gather information

While the EC Wildlife Trade Regulations do not contain requirements in terms of book-keeping or reporting[30], some Member States implement such requirements. For example in Germany reporting and book-keeping obligations are considered to be useful tools to garner important information (Müller-Boge, Bundesamt für Naturschutz, *in litt.*, 9 March 2007).

As a general rule, according to the German legislation those who acquire, handle, process or circulate animals or plants of specially protected species (all Annexes A and B species) for commercial purposes - i.e. with the aim of financial gain - are required to keep records of their actions (paragraph 6 of the Federal Ordinance on the Conservation of Species). The following information must be recorded:

- serial number,
- date of receipt,
- source code,
- legal basis for acquisition,
- description,
- mark, name and precise address of supplier or other source of acquisition,
- date of disposal,
- name and precise address of recipient (importer, consignee - however only required when the retail price is over EUR250 which will not be reached for small ivory pieces) - or specify other type of disposal.

In individual cases, exemptions may be granted by the competent authority provided that adequate monitoring is ensured by some other means. In addition, the obligation does not apply for artificially propagated plants, antiques and live specimens of *Acipenseriformes spp*. Moreover, anyone who keeps live vertebrates of specially protected species (all Annexes A and B species) is required to notify the same information to the competent Länder Authority (paragraph 7(2) of the Federal Ordinance on the Conservation of Species). This does not include the species listed in Annex 5 of the Federal Ordinance[31], which are usually only found in trade as specimens bred in captivity. Finally the Federal

[30] Except for the facilities (or plants) that process, package or repackage caviar, which must maintain adequate records of the quantities of caviar imported, exported, re-exported, produced *in situ* or stored, that must be available for inspection by the Management Authority in the relevant Member State (See Article 66(7) of Regulation 865/2006).

[31] Aves: *Agapornis fischeri* Pfirsichköpfchen, *Agapornis nigrigenis* Rußköpfchen, *Agapornis personatus* Schwarzköpfchen, *Agapornis roseicollis* Rosenköpfchen, *Agapornis taranta* Tarant-Unzertrennlicher, *Alisterus scapularis* Australischer Königssittich, *Anas formosa* Baikal-Ente, *Anas laysanensis* Laysan-Stockente, *Anas querquedula* Knäkente, *Aprosmictus erythropterus* Rotflügelsittich, *Aythya nyroca* Moorente, *Barnardius barnardi* Barnardsittich, *Barnardius zonarius semitorquatus* Kragensittich, *Barnardius zonarius zonarius* Bauers-Ringsittich, *Bolborhynchus lineola* Katharina-Sittich, *Branta ruficollis* Rothalsgans, *Branta sandvicensis* Hawaiigans, *Carduelis cucullata* Kapuzenzeisig, *Catreus wallichi* Wallich-Fasan, *Colinus virginianus ridgwayi* Ridgways Virginiawachtel, *Columba livia* Felsentaube, *Coturnix coturnix* Wachtel, *Crossoptilon crossoptilon* Weißer Ohrfasan, *Crossoptilon mantchuricum* Brauner Ohrfasan, *Cyanoramphus forbesi* Forbes Springsittich, *Cyanoramphus novaezelandiae* Ziegensittich, *Dendrocygna arborea* Kuba-Pfeifgans, Kuba-Baumente, *Forpus coelestis* Blaugenick-Sperlingspapagei, *Forpus crassirostris* Blauflügel-Sperlingspapagei, *Forpus conspicillatus* Augenring-Sperlingspapagei, *Forpus passerinus* Grünbürzel-Sperlingspapagei, *Forpus xanthops* Gelbgesicht-

Game Protection Ordinance makes a reference to the reporting obligation for the native birds of prey listed in Annex A to the Ordinance. Whereas the book-keeping obligation is applied for commercial activities (e.g. for traders, taxidermists, caviar enterprises), the reporting obligation is broader as it is also applied for non-commercial activities (breeders).

In the Czech Republic, Section 23 of the *Act on Trade in Endangered Species No. 100/2004* provides only for obligatory reporting on registered specimens where circumstances of ownership, etc., have changed (death, loss or destruction, loan, renting, sale, purchase, donation or another transfer of the specimen, subsequent marking of the specimen, arrivals or permanent export from the Czech Republic). There is no requirement for regular (e.g. annual) reporting or book-keeping. However, the Czech authorities are now preparing amendments of both the *Nature Protection Act No. 114/1992* and the *Act on Trade in Endangered Species No. 100/2004* which, if approved, would provide for obligatory regular reporting and book-keeping by keepers of protected animals and plants (Kucera, Minstry of the Environment of the Czech Republic, *in litt.*, 16 February 2007).

In Poland, according to the *National Act on Nature Conservation of 16 April 2004* (Article 64), all live specimens of mammals, birds, reptiles and amphibians listed in Annexes A to D must be registered by the local authorities (i. e. more than 300 self-governing bodies). This registration requirement is considered as an essential step to find out what kind of CITES specimens are kept and bred, and is useful to 'monitor' the possession of animals of endangered species, on the local level (Wolnicki, Ministry of the Environment of Poland, *in litt.*, 1st March 2007).

3.7.2.3. Means to prove the legal acquisition of Annex B specimens

Article 8(5) of *Regulation 338/97* allows commercial use of Annex B specimens subject to the condition that it '*can be proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside of the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora*.'

Since there are no specific requirements in the EC Wildlife Trade Regulations as regards the means of proof of legal acquisition of an Annex B specimen, some Member States have developed their own stricter national measures.

The main problem is that once a specimen has entered the EC territory, there is no specific requirement for a document proving the legal acquisition. An example of this problem is the illegal traffic of birds from South America (especially Brazil) into Portugal and the EC. Cases have involved illegal export

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Sperlingspapagei, *Lathamus discolor* Schwalbensittich, *Lophophorus impejanus* Himalaya- oder Gelbschwanzglanzfasan, *Lophura edwardsi* Edward-Fasan, *Lophura erythropthalma* Gelbschwanz-Fasan, *Lophura ignita* Hauben-Feuerrückenfasan, *Lophura swinhoii* Swinhoe-Fasan, *Marmaronetta angustirostris* Marmelente, *Myiopsitta monachus* Mönchssittich, *Neophema chrysostoma* Feinsittich, *Neophema elegans* Schmucksittich, *Neophema pulchella* Schönsittich, *Neophema splendida* Glanzsittich, *Neopsephotus bourkii* Bourkesittich, *Northiella haematogaster* Blutbauchsittich, *Platycercus adscitus* Blaßkopfrosella, *Platycercus caledonicus* Gelbbauchsittich, *Platycercus elegans* Pennantsittich, *Platycercus eximius* Rosellasittich, Prachtrosella, *Platycercus flaveolus* Strohsittich, *Platycercus icterotis* Stanleysittich, *Platycercus venustus* Brownssittich, *Poephila cincta cincta* Schwarzkehl-Gürtelgrasfink, *Polytelis alexandrae* Princess-of-Wales-Sittich, *Polytelis anthopeplus* Bergsittich, *Polytelis swainsonii* Schild- oder Barrabandsittich, *Psephotus dissimilis* Hooded-Sittich, *Psephotus haematonotus* Singsittich, *Psephotus varius* Vielfarbensittich, *Psittacula eupatria* Großer Alexandersittich, *Purpureicephalus spurius* Rotkappensittich, Sarkidiornis melanotos Höckerente, Glanzente, Höckerglanzente, Syrmaticus ellioti Elliot-Fasan, Syrmaticus humiae Hume-Fasan, Syrmaticus mikado Mikado-Fasan, Tadorna ferruginea Rostgans, Tympanuchus cupido attwateri Präriehuhn; Reptilia Kriechtiere: *Iguana iguana* Grüner Leguan, *Python regius* Königspython, *Boa constrictor constrictor* Abgottschlange, *Boa constrictor imperator* Abgottschlange, *Phelsuma madagascariensis* Madagascar-Taggecko, *Phelsuma laticauda, Trachemys scripta elegans* Rotwangenschmuckschildkröte; Amphibia Lurche: *Ambystoma mexicanum* Axolotl, *Bombina orientalis* Chinesische Rotbauchunke, *Dendrobates auratus* Goldbaumsteiger, *Dendrobates azureus* Blauer Pfeilgiftfrosch; Pisces: *Acipenseriformes spp.* Störartige.

from Brazil, subsequent illegal imports into Portugal and then the movement of the specimens into other Member States to be "laundered".

In Bulgaria the Biodiversity Act 2005 provides for the compulsory registration and marking for all CITES Appendix I and II (soon to be Annex A and B) live vertebrates owned by private owners (with exceptions[32]). The requirement for marking of Annex B live vertebrates is intended to prove the origin of the specimens, which is particularly difficult for Annex B specimens as there is no need of an internal trade certificate. If a live vertebrate listed in Annex B is not marked according to the EC Regulations before its entry in the Bulgarian territory, the marking has to be done by the owner. Otherwise the specimen is confiscated. Although the registration and marking requirements for Annex B specimens are difficult to implement, the system will probably not change under the new legislation to be soon adopted (Biodiversity Act 2005 to be modified in 2007) (Georgiev, Ministry of the Environment of Bulgaria, *pers. comm.*, 27 February 2007).

In the Czech Republic, the legislation contains more detailed conditions and requirements for proving the legal origin of protected fauna and flora than those in Regulation No. 338/97. According to the *Nature Protection Act* (Act No. 114/1992 Coll. on the Protection of Nature and the Landscape, section 54.1), anybody who keeps, breeds, grows, transports, sells, exchanges, offers for the purpose of sale or exchange, or processes a specially protected plant, specially protected animal, or a plant or animal protected according to international conventions or according to a separate legal regulation on import and export of endangered species, shall be obliged to prove their legal origin – through a permit to import, a permit to take from the wild or growing in culture, a permit to breed from founder stock whose origin has been proven in accordance with this provision, etc.(Kučera, J., Vilímková, V., 2005.)

3.7.2.4. Bans on taking, possession and trade of native species

Several countries have stricter measures relating to trade, possession, taking of native species. National restrictions in this regard vary from one Member State to another. Even though these may have sound scientific grounds, they create problems relating to the free movement of specimens in the EU.

In Portugal for example, trade, taking, possession and transport are prohibited for any indigenous species taken from the wild, while in Hungary all native CITES-listed species are protected or strictly protected under nature conservation legislation. Those species are not allowed to be kept, displayed or utilized except for nature conservation or other public interest purposes.

In France the Environment Code (Art. L 411-1.I.) prohibits the transport, peddling, use, possession, offer for sale, sale or purchase of listed non-domestic animals, whether alive or dead, and listed non-cultivated plant specimens taken from their natural environment. However, there is nothing to prevent ownership of these listed specimens. These prohibitions exist in the broader framework of species protection (prohibition of destruction, capture, mutilations, cutting, etc.). They have been implemented in the 80s, in order to avoid smuggling, especially in French Guyana. The specimens concerned were, until recently, those occurring in the territory, not only those native to the territory. Due to their non-conformity with the principle of free movement of goods, these measures have been rolled back considerably: animals born in captivity, antiques specimens and specimens legally introduced from third countries or other Member States of the EC are not covered anymore. Today the prohibitions concern only indigenous specimens (Guillaume, Ministère de l'écologie, *pers. comm.*, 27 March 2007).

In the Czech Republic, most of the species listed in the *Regulation 338/97* which are indigenous to the country are especially protected under the *Nature Protection Act* (Kučera, J., Vilímková, V., 2005).

[32] Specimens which cannot be marked properly, food products derived from CITES species, species covered by the *Hunting and Game Protection Act* (with the exception of native hunting species such as Wolf and the exception has to be approved by the Ministry of Environment) and due to the latest amendment of the legislation, also invertebrates, coloured mutations of birds (e.g. albinos), small leather products and specimens from the species that are regarded as personal and household effects.

The list of specially protected fauna and flora is established by a Decree of the Ministry of Environment. Generally, taking from the wild, trade and possession of live animals and plants are prohibited. Exemptions and derogations are admitted under strict conditions, e.g. for animals born in captivity or artificially protected plants[33].

Latvia requires the Scientific Authority to be consulted where permits are sought for indigenous species on their endangered species list that are also listed in the Annexes to the Council Regulation.

In Hungary all CITES listed species native to Hungary are protected or strictly protected under the nature conservation legislation. Those species are not allowed to be kept, displayed or utilized except for nature conservation or other public interest purposes. Thus CITES native species are not allowed to be imported/exported, except for these purposes. All the CITES listed animal species native to Hungary are registered in the national registration system.

In the United Kingdom the taking and sale of some native species is also strictly regulated under license under UK conservation legislation (Affre and Parry-Jones, 2007).

Certain bird species are particularly protected in some Member States. For example bans on keeping are enacted in Denmark and Germany. Keeping of birds of prey and owls is prohibited in Denmark (Munk, Denmark MA, *Reply to Questionnaire*, 2007). In Germany there is a basic ban on keeping indigenous birds of prey of those species listed in Annex 4 to the *Federal Game Conservation Ordinance*, with an exemption applicable to traditional falconry: holders of a falconry license may keep up to two specimens of goshawk, golden eagle and peregrine falcon. Anyone wishing to keep more than two specimens of these species or any specimens of other species (fish eagles, sea eagle, black kite, red kite, marsh harrier, hen harrier, sparrowhawk, common buzzard, rough-legged buzzard, kestrel, red-footed falson, hobby and merlin) requires a special permit issued by the competent Länder Authority (Müller Boge, Bundesamt für Naturschutz, *in litt.*, 9 March 2007). In the United Kingdom an additional requirement is in place for certain bird specimens: the Wildlife and Countryside Act requires registration of certain captive live birds[34], to give an extra tier of protection to species thought to be vulnerable to illegal taking from the wild. This requirement was introduced to act as a deterrent against

[33] An exemption from the ban to keep animals taken from the wild can be granted in cases where another public interest overrides the nature protection interest. The exemption must be issued in written form by the proper regional authority. Animals legally born in captivity are not subject to the ban if they are unmistakably marked or identified by an irremovable ring or microchip or other unmistakable way and registered with the State Authority. Thus all live animals of specially protected species must be reported to the regional authority either for the exemption from the ban or as an animal born in captivity. As for specially protected plants, there must be an official exemption from the ban to keep live specimens from the wild – with the same conditions as for specially protected animals. However, the ban does not apply to plants in several cases: 1) if they grow naturally within other plants cultures and if they are destroyed, damaged or disturbed in natural development in connection with the usual cultivation of these plants cultures; 2) if they are grown in cultures obtained in a legal manner; 3) if they come from import and are not subject to protection according to international Conventions (Kučera, J., Vilímková, V., 2005).

[34] Birds listed in Schedule 4 to the Act: Osprey (*Pandion haliaetus*); Eagles: Adalbert's Eagle (*Aquila adalberti*), Golden Eagle (*Aquila chrysaetos*), Great Philippine Eagle (*Pithecophaga Jeffery*), Imperial Eagle (*Aquila heliaca*), New Guinea Eagle (*Harpyopsis* novaeguineae), White-Tailed Eagle (*Haliaeetus albicilla*), Andaman Serpent-Eagle (*Spilornis elgini*), Madagascar Serpent-Eagle (*Eutriorchis astur*), Mountain Serpent-Eagle (*Spilornis kinabaluensis*), Madagascar Fish-Eagle (*Haliaeetus vociferoides*), Pallas' Sea-Eagle (*Haliaeetus leucoryphus*), Steller's Sea- Eagle (*Haliaeetus pelagicus*); Hawks: Goshawk (*Accipiter gentiles*), Hen Harrier (*Circus cyaneus*), Marsh Harrier (*Circus aeruginosus*), Montagu's Harrier (*Circus pygargus*), Galapagos Hawk (*Buteo galapagoensis*), Grey Backed Hawk (*Leucopternis occidentalis*), Hawaiian Hawk (*Buteo solitarius*), Ridgway's Hawk (*Buteo ridgwayi*), White-necked Hawk (*Leucopternis lacernulata*), Wallace's Hawk-Eagle (*Spizaetus nanus*), Black Honey-Buzzard (*Henicopernis infuscate*), Honey Buzzard (*Pernis apivorus*), Red Kite (*Milvus milvus*), New Britain Sparrowhawk (*Accipiter brachyurus*), Gundlach's Sparrowhawk (*Accipiter gundlachii*), Imitator Sparrowhawk (*Accipiter imitator*), Small Sparrowhawk (*Accipiter nanus*), Falcons: Barbary Falcon (*Falco pelegrinoides*), Gyr Falcon (*Falco rusticolus*), Peregrine Falcon (*Falco peregrinus*), Hobby (*Falco subbuteo*), Lesser Kestrel (*Falco naumanni*), Mauritius Kestrel (*Falco punctatus*), Merlin (*Falco culumbarius*), Plumbeous Forest-Falcon (*Micrastur plumbeus*).

illegal taking by creating a system whereby the enforcement authorities could check the legality of birds in captivity (control of birds in captivity for the protection of wild birds). More recently, its value as a tool to further the conservation of globally threatened bird species and United Kingdom's international obligations has also been recognised (Defra, 2006).

Non-native species which are particularly threatened by trade are also specifically protected in some Member States. For example, the United Kingdom applies stricter measures to the commercial use of ivory, primates, rhinoceros and tiger parts, and derivatives. The impact of these measures on the time and use of resources of the MA is deemed minimal by the UK MA (Thrift, UK MA, *Reply to Questionnaire*, 2007), and the UK SA considers that conservation benefits derived from the mentioned stricter national measures outweigh any negative impacts on time and use of resources (Littlewood, UK SA, *Reply to questionnaire*, 2007). In the Netherlands there is a stricter measure concerning the holding of live primates and big cats. This measure has had a perceived positive effect as it has reduced the number of primates held as pets (Schürmann, Netherlands SA, *Reply to Questionnaire*, 2007). In Austria there is no prohibition on keeping animals, but all 'wild' species kept as pets must be registered, according to new animal welfare legislation (Ranner, Austria SA, *Reply to Questionnaire*, 2007).

3.7.2.5. Public safety reasons

Responses to the questionnaires showed that some Member States have enacted stricter measures to prohibit or restrict the holding of certain species by private keepers for public safety and sanitary reasons.

For example, in Portugal there is a prohibition of keeping of certain species, such as carnivores, primates, crocodylia, large and venomous snakes (Critical Analysis of the Biennal Reports, *Overview of stricter domestic measures*) for sanitary reasons and people's safety. The Portuguese MA recognizes that problems arise sometimes for specimens that are allowed to be kept and traded in other EU countries but not in Portugal (Loureiro, Portugal MA, *Reply to Questionnaire*, 2007). In Italy, according to a National Decree of 1996, dangerous animals (live crocodiles, apes, monkeys, etc.) cannot be kept by private citizens. Some species, considered as harmful for public health, are included on a list; applications for live animals listed are rejected, and the facilities for those live animals are registered (Valentini, Della Corte, Italy MA, *Reply to Questionnaire*, 2007). In the Czech Republic, the Veterinary legislation on animal welfare (Act No. 246/1992 Coll. on protection of animals against cruelty) requires that a 'dangerous animal species' may not be kept by a person under the age of 18. Keeping animals or groups of animals of a 'dangerous species' requires the licence of the State Veterinary Authority. Some CITES species are on the list of dangerous animals, like primates (with the exception of the small ones like Cheinogaleinae, Galagidae, Tarsiidae and Callithricidae), wild species of Carnivora, Falconiformes, Strigiformes and big parrots, etc. The licence is issued only if the Veterinary Authority is satisfied that the keeper guarantees both welfare of the animal and safety.

3.7.2.6. Control of Invasive Alien Species

Another example of stricter national measures adopted by some Member States concerns invasive alien species (IAS). Several countries prohibit trade and/or possession of species that are or may be invasive in their country.

Stricter measures relating to invasive species have been adopted in several Member States, such as Estonia, Romania, Slovakia, Latvia, Ireland and France. They are often adopted in the framework of the general prohibition of introduction of non-native species into the wild.

In Estonia the release into the wild of living specimens of non-native species and the planting and sowing of non-native plant species is prohibited. Moreover, the import of living specimens of non-native species endangering the natural balance is prohibited. The list of specimens concerned is established by the Minister of Environment. Growing of a specimen of a non-native species

endangering the natural balance is also prohibited, except in scientifically justified cases on the basis of permits delivered by the Minister of Environment. For example, the American mink and raccoon dog can be farmed only in farms with respective permits, and specimens of those species can be imported into Estonia only in accordance with permits issued by the Minister of the Environment, for the purpose of infusion of fresh blood (but not more than 20 percent of the breeding stock in the farm once in two years) (Alasi, Ministry of the Environment of Estonia, *in litt.*, 29 March 2007).

In Romania the issue of invasive alien species is also considered in the broader framework of the introduction of non-native species. An import can be refused if the Scientific Authority considers that it may have a negative impact on native species. The Environment Ministry has prepared a Government Emergency Ordinance, soon to be approved. It states that in order to preserve the natural habitats and native species, introduction of alien species should be regulated by the Central Environment Authority by ministerial order (Frim, Ministry of Environment and Water Management of Romania, *in litt.*, 2 April 2007).

In Slovakia the possession/keeping of non-native species of Falconiformes, Strigiformes and *Trachemys scripta elegans* is completely prohibited, as their introduction into the environment presents an ecological threat to wild indigenous species of fauna and flora (Kmecova, Ministry of the Environement of the Slovak Republic, *in litt.*, 4 April 2007).

In Latvia both Ministries of Agriculture and Environment are in charge of the IAS issue. Discussions have been undertaken to take into account the issue of IAS in the wildlife trade legislation, with no results so far. However there is a Programme for limiting extension of Hogweed *Heracleum sosnowskyi*; the regulations issued by the Cabinet lay down financial support for decimating these plants (Rudzite, Nature Protection Board of Latvia, *in litt.*, 14 April 2007).

Irish Wildlife legislation (The Wildlife Act 2000) imposes a general prohibition on release of non-native species into the wild. It also provides for Ministerial orders prohibiting the sale and possession of listed species, although none have been issued so far.

In France the Environment Code prohibits the introduction into the natural environment, either voluntarily or through negligence or recklessness, of certain specimens of animal species non-indigenous and non-domestic, and of certain specimens of plant species non-indigenous and non-cultivated (Article L. 411-3). The goal is to avoid any prejudice to the natural environment, either Through inappropriate use of such specimens or through damage to wild fauna and flora. The lists of the species concerned are set by joint Ministry rulings (Ministry for Nature Protection and Ministry of Agriculture or Fisheries). Some species may however be authorized by the administrative authority for agricultural, fish farming or forestry purposes, or for wider public interest, once the consequences have been assessed. The circulation (transport, peddle, use, put in sale, sell or purchase) of certain animal and plant species – also listed through joint Ministry rulings – is also prohibited, for the protection of biological heritage, natural environments and associated uses. The application Ministry rulings establishing the lists of species concerned are not yet prepared or published yet. There may be positive lists of species authorised, or negative lists of species prohibited, depending on the territory concerned. They may take into consideration the legislation on IAS in other Member States (Guillaume, Ministère de l'écologie, *pers. comm.*, 27 March 2007).

Several issues arise regarding the stricter measures applicable to invasive species in different Member States. Trade in invasive species might be prohibited in some countries, but those species may not be invasive in other countries, and there may be an issue of restricting trade. For example, in Portugal the keeping of certain alien invasive species is prohibited, which creates problems where keeping of these specimens is allowed in other Member States, where they may not be considered as invasive (Loureiro, Portugal MA, *Reply to Questionnaire*, 2007). The situation is even more complex as several Member States include overseas territories.

3.7.3 ASSESSMENT OF THE NATURE AND IMPACT OF STRICTER NATIONAL MEASURES

3.7.3.1. Obligatory registration coupled with marking of certain specimens

Some Member States' legislation requires the compulsory registration and marking of selected specimens; for example the Czech Republic, Hungary and Slovakia. Despite the administrative burden, this is required for species that are considered to be particularly at risk in the country where the registration takes place.

According to the Hungarian CITES Authorities, there is demand from breeders and keepers for registration provisions on the grounds that it makes it easier to trace illegal specimens in trade. They see it as being in their interest and they expect the Management Authority to clamp down on illegal trade so that it does not impact on *bona fide* trade (Prager, Ministry of Environment and Water, *in litt.*, 20 March 2007). The stricter measures enacted in Slovakia in terms of registration and marking of specimens, have enabled the Slovakian authorities to discover several specimens which were illegally traded in other Member States just after they were introduced into Slovakia. No negative feedback on these measures has been experienced by the Slovakian Management Authority (Kmecova, Ministry of the Environment of the Slovak Republic, *in litt.*, 5 March 2007). Traders who want to trade legally in endangered species understand these measures. Registration and marking are perceived as allowing an easy distinction between legal and illegal specimens in trade. Moreover, the stricter national measures implemented in Slovakia spare time and resources when a permit or certificate application is submitted to the MA (Kmecova, Ministry of the Environment of the Slovak Republic, *in litt.*, 5 March 2007).

The requirement to register and mark a large number of specimens can, however, have negative impacts – as, for example, in the Czech Republic where the scope of those measures has subsequently been reduced due to the heavy workload involved in their implementation. In the Czech Republic, the major negative impact of the obligatory registration and marking of all live specimens of Annex A-listed mammals, bird and reptile species and of a limited number of selected Annex B-listed mammals, bird and reptile species is considered to be the subsequent big bureaucracy which requires considerable resources from the State authorities (Kučera, *in litt.*, 16 February 2007). Between 1996 and 2004 (before accession to the EU), the scope of registered-and-marked specimens in the Czech Republic was much higher and comprised almost all live CITES I and II Appendices specimens, and also some dead specimens. However, such a wide scope was found by the CZ CITES Authorities to be unmanageable. One problem was the limited resources available to CITES Authorities implementing the registration scheme; another serious problem was that even if a specimen could not be individually marked, registration was still required but in that case, rather than strengthening the system, this created opportunities for laundering of illegal specimens, particularly amphibians and other lower vertebrates, invertebrates and dead specimens which could not be marked. As a result, the scope of the registration requirement was limited to focus on specimens of higher conservation concern and where marking is possible (Kučera, *in litt.*, 16 February 2007). It is also regarded as a big nuisance by a part of the public (Kučera, *in litt.*, 16 February 2007), and may cause a negative perception of the CITES and the state nature conservancy by the public.

3.7.3.2. Registration of certain specimens

The compulsory registration of certain specimens (independent from the marking obligation) is, for example, required in Hungary, and will be in the near future in Estonia. Nevertheless, this obligation leads or has led to negative effects and difficulties in its implementation and enforcement in some Member States, such as Bulgaria, Poland and the United Kingdom.

In Hungary all Annex A vertebrates, whether alive or dead, and all live mammals, birds and tortoise species listed in Annex B, have to be registered. The Hungarian CITES Authorities consider that even

if maintaining a register takes time, time is gained when an application for an internal trade certificate or export/(re-)export document is presented, or when any questionable situation occurs: thanks to the registration obligation the data are promptly accessible (Prager, Ministry of Environment and Water, *in litt.*, 20 March 2007).

In Estonia, a new Regulation of the Ministry of Environment will soon require the registration (and marking) of Annex A listed live mammals, birds and reptiles – which are the most problematic and most common groups in Estonia (Alasi, Ministry of Environment of Estonia, *in litt.*, 22 February 2007). This new Regulation has passed the coordination processes in the different ministries and is now in the final phase of the adoption process.

In Bulgaria there are problems in the implementation of the registration requirements. A large number of specimens have to be registered by private owners with the Regional Environment Inspectorates (all specimens of any species of CITES Appendix I and II, with some exceptions) and any specimen not registered can theoretically be confiscated. Nevertheless, as there are still large numbers of unregistered specimens (Kecse-Nagy K., et al., 2006), the Management Authority and the Regional Environmental Inspectorates face problems regarding the appropriate disposal of confiscated specimens due to a lack of suitable accommodation at existing rescue centers (Kecse-Nagy K., et al., 2006).

In Poland as well, the implementation of the compulsory registration requirement is problematic. All live specimens of mammals, birds, reptiles and amphibians listed in Annexes A to D of *Regulation 338/97* must be registered with the local authorities. The registration obligation refers only to private keepers but not to zoos, companies or shops which specialize in the trade of live animals those are however obliged to own and present an original or a copy of a document stating the legal origin of an animal along with the animal itself: CITES permit for import of the animal into the country, permit for capture in environment, in case of birth in captivity – a document issued by district veterinary surgeon, confirming animal birth in captivity, other document confirming legality of origin of the animal). The registration application must contain documents referring to the legal origin of the specimen concerned. While registration is perceived as a way to prove or at least to establish the legal origin of the specimen (Wolnicki, Ministry of the Environment of Poland, *in litt.*, 1 March 2007), it sometimes causes difficulties for both the holder and the authority in charge of the registration, when the applicant, for legitimate reasons, does not have any or insufficient documents referring to the legal origin of the animal. The difficulty is to determine what sort of document should be regarded as sufficient or insufficient to conduct the registration process. In the next forthcoming amendment of the National Act on Nature Conservation, the Polish Authorities are considering the exclusion of some CITES species from the registration obligation (Wolnicki, Ministry of the Environment of Poland, *in litt.*, 1 March 2007).

In the United Kingdom, many keepers of birds which have to be registered according to the Wildlife and Countryside Act 1981[35], belong to falconry clubs. The Department of Environment, Food and

[35] Birds listed in Schedule 4 to the Act: Osprey (*Pandion haliaetus*); Eagles: Adalbert's Eagle (*Aquila adalberti*), Golden Eagle (*Aquila chrysaetos*), Great Philippine Eagle (*Pithecophaga Jeffery*), Imperial Eagle (*Aquila heliaca*), New Guinea Eagle (*Harpyopsis* novaeguineae), White-Tailed Eagle (*Haliaeetus albicilla*), Andaman Serpent-Eagle (*Spilornis elgini*), Madagascar Serpent-Eagle (*Eutriorchis astur*), Mountain Serpent-Eagle (*Spilornis kinabaluensis*), Madagascar Fish-Eagle (*Haliaeetus vociferoides*), Pallas' Sea-Eagle (*Haliaeetus leucoryphus*), Steller's Sea- Eagle (*Haliaeetus pelagicus*); Hawks: Goshawk (*Accipiter gentiles*), Hen Harrier (*Circus cyaneus*), Marsh Harrier (*Circus aeruginosus*), Montagu's Harrier (*Circus pygargus*), Galapagos Hawk (*Buteo galapagoensis*), Grey Backed Hawk (*Leucopternis occidentalis*), Hawaiian Hawk (*Buteo solitarius*), Ridgway's Hawk (*Buteo ridgwayi*), White-necked Hawk (*Leucopternis lacernulata*), Wallace's Hawk-Eagle (*Spizaetus nanus*), Black Honey-Buzzard (*Henicopernis infuscate*), Honey Buzzard (*Pernis apivorus*), Red Kite (*Milvus milvus*), New Britain Sparrowhawk (*Accipiter brachyurus*), Gundlach's Sparrowhawk (*Accipiter gundlachii*), Imitator Sparrowhawk (*Accipiter imitator*), Small Sparrowhawk (*Accipiter nanus*), Falcons: Barbary Falcon (*Falco pelegrinoides*), Gyr Falcon (*Falco rusticolus*), Peregrine Falcon (*Falco peregrinus*), Hobby (*Falco subbuteo*), Lesser Kestrel (*Falco naumanni*), Mauritius Kestrel (*Falco punctatus*), Merlin (*Falco culumbarius*), Plumbeous Forest-Falcon (*Micrastur plumbeus*).

Rural Affairs (Defra) officially acknowledges these clubs as 'recognised clubs' and members may be eligible for reduced registration fees, based on the fact that they are believed to maintain better record keeping standards (Defra, 2006). This measure, originally taken to reduce the administrative burden, has had negative impacts. In practice, Defra believes that this distinction between 'recognised clubs' and other clubs creates an administrative burden and, in the next review of fees, may abolish this system (Hounslow, Defra, *in litt.*, 20 February 2007).

3.7.3.3. Central and electronic registration databases of specimens

Where they are established, centralised electronic databases of specimens are useful tools to monitor trade in wildlife and facilitate the exchange of information among different authorities. Different systems, based on the registration or marking of the specimens, have been adopted in different Member States.

In Hungary, a computerized central database has been developed for registration, which is now fully operational. It contains all known data on all keepers and all registered specimens – marking and document types being the most important information. The goal of this database, according to the Hungarian Authorities, is to hold the data pertaining to registered specimens, to follow them in the territory of Hungary and to be able to trace them when traded (Prager, Ministry of Environment and Water of Hungary, *in litt.*, 20 March 2007). The server that stores the data about the keepers, breeders, specimens and their marks is located at the CITES Management Authority (Ministry of Environment and Water). The Inspectorates, as regional authorities responsible for registration, provide the data to the system.

In Slovakia, there is a central database at the Scientific Authority. It gathers information about registered keepers and specimens. Copies of records of mammals, birds and reptiles (listed in Annexes A to D) are sent by the keeper to the central database through the Environment District Offices (Kmecova, Ministry of the Environment of the Slovak Republic, *in litt.*, 5 March 2007).

Since 2007, the Czech Republic has been using an electronic information system which consists of a web application for on-line issuing of CITES documents and registration papers, as well as a database for information on issued documents and registered specimens. The system is managed centrally by the Ministry of the Environment in Prague and enables on-line connection of all national Management, Scientific and Enforcement Authorities. Regional Management Authorities responsible for registration of specimens and EC certificates for intra-Community trade (14 State Regional Authorities, the Administrations of four National Parks and 24 Protected Landscape Areas) are using the system as well. The database is currently being filled also retrospectively with data covering the period from 2004 (CZ accession into EU) and it contained around 53 000 records on 26 Sep. 2007 (Kučera and Klouček, Ministry of the Environment, *in litt.*, 27 Sep. 2007).

In Slovenia, the database gathers data on marked specimens. The marker issues a marking certificate after each marking and enters it in the electronic database. The database is access-secured: it is fully accessible to officials of the Management Authority, while other users, such as markers and suppliers of marks, have limited access only (Kecse-Nagy, K., et al. 2006).

Poland and Bulgaria are examples of Member States where there is no central database of registered specimens, keepers and breeders. In Bulgaria, information on registered specimens is stored electronically by the regional environmental inspectorates, and the format of the databases may vary from office to office (Kecse-Nagy., K., et al., 2006). In Poland, data is also available at the district level. According to the Polish Authorities a central database of registered animals and their holders would be very useful (Wolnicki, Ministry of the Environment of Poland, *in litt.*, 1st March 2007). There is no registration requirement in Germany, but there are reporting obligations for anyone who keeps Annex A and B species for commercial and non-commercial purposes. Those keepers are required to notify information to the more than 200 competent Länder Authority. In this case as well there is no central registration database. According to the German Authorities, branched information could be

collated to have an excellent overview of which species are kept and have produced offspring. (Müller-Boge, Bundesamt für Naturschutz, *in litt.*, 9 March 2007).

3.7.3.4. Issuance of internal documents

Some Member States have enacted stricter national measures requiring the issuance of national documents, such as certificates of origin or registration documents. Although documents issued under the EC Regulations must be recognised by other Member States, national documents issued under a stricter national measure only have legal authority in the country they are issued, unless another Member State chooses to recognise it.

In Slovakia, the keepers of the specimens are obliged to prove the origin of their specimens. The keepers of live mammals, birds and reptiles of Annexes A to D must have a certificate of origin confirmed by the Environment District Office. Issuance of such certificates gives legal certainty to holders. For parts and derivatives, the owner should prove their legal origin and keep records of them. The Slovakian authorities do not accept an invoice for a specimen as a document proving legal origin (the specimen could be smuggled into the EC and later sold with an invoice). Photocopies of import permits are also not accepted as documents proving legal origin: an import permit for 50 specimens, for example, can be copied several times and used for hundreds of specimens if they are not marked (Kmecova, Ministry of the Environment of the Slovak Republic, *in litt.*, 5 March 2007). The Slovakian authorities accept that specimens obtained in other EC Member States have other documents as certificates of origin (e.g. in the case where the Member State of origin has no registration requirement). This exception is not allowed for Annex A species, which must have internal trade certificates (according to Article 8 of *Regulation 338/97*).

In Hungary, the Environmental, Conservation and Water Management Inspectorates also issue certificates of origin for live specimens of Annex B mammals, birds and tortoise species, which must be registered. Since there is no computerized registration in the EU and among Hungarian enforcement bodies, the Hungarian Authorities believe that documents have to be issued to enable enforcement officers – whether in Hungary or in another Member State – to determine the legality of a specimen on the spot. Without such a document, the Hungarian Authorities maintain that the legality of the specimen cannot be proven. According to the Hungarian authorities, breeders and keepers are well informed of the requirements and usually obey the rules. Keepers who do their business legally appreciate being registered and are happy to be able to prove this legality with a document. The Inspectorates are also in charge of issuing breeding certificates for animals born at a Hungarian breeder. Those animals have to be marked and registered. Breeding, selling, and acquisition of such animals have to be declared.

In Poland the registration document issued for registered specimens refers to some extent to the origin of the specimen (registration applications must contain documents referring to the legal origin of the specimen concerned, those documents are considered as essential to carry on the registration procedure).

The situation is different in the Czech Republic and the United Kingdom. Registration documents are issued, but they do not serve as proof of origin for the specimens in respect of which they are issued, as explained below.

In the Czech Republic, the certificate of registration, issued for each registered specimen, does not officially endorse the legal origin of the specimen. It is valid for the Czech Republic only. The registration authorities issue internal trade certificates for exemption from the prohibition of commercial activities with Annex A specimens according to Article 8(1) and (3) of *Regulation 338/97* as well. Thus there might be specimens with both the certificate of registration and the internal trade certificate but there cannot be a legitimised specimen without a certificate of registration. The certificate of registration is necessary in order to sell or offer for sale (or transfer in another way) a specimen subject to the registration obligation. The transfer of the specimen is otherwise invalid

(Kucera, Ministry of the Environment of the Czech Republic, *in litt.*, 16 February 2007). Similarly in the United Kingdom a registration document is issued to the keeper of a bird species that is subject to the registration requirement. This document does not confer any right of ownership on any person and is no proof that any bird has been obtained or is legally held.

3.7.3.5 Registration of breeding facilities

Contrary to Resolutions Conf. 9.19 (Rev. CoP 13) and 12.10 (Rev. CoP 13), there is no requirement in the Wildlife Trade Regulations providing for the registration of commercial captive breeding operations. However, such requirements are enacted in several Member States. Several others plan to adopt such measures in the future. This issue was discussed during the Vilm Workhop in November 2006.

The type of facilities concerned by the registration requirements vary from one Member State to another. Some Member States require the registration of all breeders – Portugal, for example (Loureiro, Portugal MA, *Reply to Questionnaire*, 2007). In Slovenia, anyone who wishes to keep animals of indigenous or non-indigenous species in captivity for the purpose of public exhibition or breeding must obtain a permit form the Ministry of the Environment and Physical Planning. By obtaining a permit, the commercial breeding facility is also registered by the MA. In the case of nurseries, the MA registers a commercial producer of plants listed in Annexes B and C and hybrids of species listed in Annex A without annotation (Kecse-Nagy, K., et al. 2006). The scope is reduced in France where the legislation requires the registration of all captive breeding operations concerning Annex A species and a list of other species, including some species listed in Annex B, as well as species occurring in France and protected by the French Regulations. The Management Authorities are not in charge of this registration, but they have to check that the applicant has the requested licence (Guillaume, France MA, *Reply to Questionnaire*, 2007). In Austria, the legislation requires 'only' the registration of all breeders of specimens of species listed in Annex A of *Regulation 338/97* (Ranner, Austria SA, *Reply to Questionnaire*, 2007).

Several Member States are considering including requirements for the registration of breeding facilities in their legislation. For example in Bulgaria, the main problem concerns fisheries/aquaculture: as it is not possible to register (and mark) each fish, the Bulgarian Authorities consider that it would be easier to register the facilities. This could be integrated in the future new legislation (Georgiev, Ministry of the Environment of Bulgaria, *pers. comm.*, 27 February 2007). In Estonia, also, well there is no regulation of breeding operations at the moment (the legislation does not provide for it), but this issue has been under discussion and the Estonian authorities are planning to include such provisions in the *Nature Conservation Law* in the future (Alasi, Ministry of Environment of Estonia, *in litt.*, 22 February 2007). In Poland, the CITES Authorities are considering introducing registration of facilities requirements in line with the provision of CITES (registration of captive breeding facilities and artificial propagation nurseries of Appendix I species). For the moment breeding operations are only considered under the Veterinary Law (Wolnicki, Ministry of the Environment of Poland, *in litt.*, 1 March 2007).

3.7.3.6. Bookkeeping and reporting obligations

The EC Wildlife Trade Regulations do not contain requirements in terms of bookkeeping and reporting (except for the facilities – or plants – that process, package or repackage caviar) However, some Member States implement such requirements as a means to gather information and to improve control on trade in wildlife.

Bookkeeping and reporting obligations are particularly developed in Germany, with positive and negative effects (see section 3.7.2.2. for details on the measures adopted).

Bookkeeping and reporting obligations are useful tools to receive important information, and may be used as starting points for monitoring. They also enable the Management Authorities to respond to

queries by other Member States authorities about legal acquisition. Such queries increased considerably since the enlargement in May 2004, particularly from new Member States (Müller-Boge, Bundesamt für Naturschutz, *in litt.*, 9 March 2007).

Bookkeeping and reporting obligations are used to determine whether a breeding stock has been legally acquired. They should give the opportunity to monitor breeding at a very early stage (existing breeding stock, mating season, eggs, hatching, probably establishment of ancestry through the analysis of blood and other tissues). The bookkeeping and reporting obligations can also be used to help prevent laundering of specimens illegally taken from the wild as records can be traced back to determine if external (illegal) have been introduced into the system. Because documentary evidence is not required by the EC Wildlife Trade Regulations for Annex-B species in intra-community trade, bookkeeping requirements in Germany also facilitate the monitoring and regulation of trade in specimens originating from or traded within Germany (Müller-Boge, Bundesamt für Naturschutz, *in litt.*, 9 March 2007).

However, efficient implementation and oversight of the bookkeeping and reporting obligations are considered to be dependent upon having sufficient resources, skills and expertise of the personnel in the local Länder Authorities. In some respects, investing in building up the sufficient resources can be seen as an unnecessary administrative burden. Keepers associations have shown interest in reducing the obligations to strictly protected species only (Müller-Boge, Bundesamt für Naturschutz, *in litt.*, 9 March 2007). It may also be considered that the storage of information only, i.e. without subsequent controls, has no effect. Over 200 competent authorities control the reporting obligations: there is frequent rotation of responsible personnel; often they are not responsible for wildlife trade legislation only; or they may not be well trained.

The Netherlands also requires traders of most Annex A and B species to keep records (Eggink, European Commission, *pers. comm*, August 2007.). They are not obliged to report to the Management Authorities on a regular basis but their books are open to inspection.

Bookkeeping and reporting obligations are also included in Slovakian legislation. The holders of live specimens of mammals, birds and reptiles of Annexes A to D have to keep records about the 'status' of their specimens and inform the Environment District Offices (local authorities) of changes; they, in turn, send copies of records to the Scientific Authority, where the central database is held. Records of other species (amphibians, fish and invertebrates) must be kept by the keepers who are obliged to submit them to the enforcement authorities during a check (Kmecova, Ministry of the Environment of the Slovak Republic, *in litt.*, 5 March 2007).

Whereas there is no requirement for regular reporting in the Czech Republic legislation, the CITES Authorities are now preparing amendments which, if approved, would provide for obligatory regular reporting and bookkeeping by keepers of protected species (Kucera, Ministry of the Environment fo the Czech Republic, *in litt.*, 16 February 2007).

No book-keeping and reporting requirements are laid down in Hungary, except as requirements for companies dealing with caviar packaging and/or re-packaging. Such requirements are considered by the Hungarian Authorities as unnecessary, since every specimen and transaction are registered by the Management Authority (Prager, Ministry of Environment and Water of Hungary, *in litt.*, 20 March 2007).

3.7.4 DISCUSSION

It has been noted throughout the report that the stricter measures adopted vary from one Member State to another. Such discrepancies in national wildlife trade legislation within the EU and the resulting confusion between Member States, and loopholes created for illegal traders, hinder effective implementation of the EC Regulations in the EU as a whole. It would be desirable to harmonise

measures as far as possible, since the adoption of measures in one country but not in another is often counter-productive in that trade is simply diverted.

3.7.4.1 Harmonisation of measures in the whole Community

In principle, permits and certificates issued by one Member State in accordance with the EC Wildlife Trade Regulations shall be valid throughout the Community (Article 11(1) of *Regulation 338/97*). However, this may not be the case where a Member State has stricter measures in place with regard to the specimens concerned. The Member States will receive imports from other Member States where no or different stricter measures are in place. This may result in either the Member State that enacted stricter national measures taking on an additional burden (for example marking / registering specimens from Member States where such measures are not required) or else the measures having no impact (trade going to a country where marking/registration is not required). A lack of uniformity in measures required and implementation thereof creates a confusing situation for traders and for CITES Authorities.

Lack of uniformity in the stricter measures enacted and their implementation can have adverse impacts throughout the Community. They can result in a shift in trade routes and can make traders move to more 'convenient' countries. For example the Spanish authorities consider that their workload is increased as some breeders move from other Member States to Spain, because of supposed prohibitions of captive breeding in their country for certain species and their hybrids (MA Spain, *Reply to Questionnaire*, 2007).

The problematic issue here is similar to the issue of penalties: the differences between Member States in the scale of penalties may influence trade routes for illegal trade and therefore have an impact on trade dynamics in the wider Community.

The Vilm workshop discussed this issue. The main outcome was a re-emphasis of the need to exchange information and ensure that Member States are aware of each others' stricter measures. The traders' website set up by the Commission includes information on Member States' legislation and this could be used to inform the public. Member States' Authorities could use CIRCA for more detailed information exchange. Given that national legislation is always prepared only in the language(s) of the relevant country, Member States would probably have to agree to prepare summaries of the legislation in English.

However, it remains desirable that there should be greater harmonisation of wildlife trade controls and the best means of doing this is for the Commission to actively explore the possibility of incorporating some Member States' stricter measures into the Regulations while the Member States, at the same time, should reflect on the need for those stricter measures where there is not broad support for their incorporation into the Regulations.

To summarise, structured information exchange is the best short-term way to address the problems that exist here, given that the right of Member States to enact SNMs (within certain limits) must be respected. In the longer term, it would be desirable if the nature of these SNMs could be taken into account in any future revisions of the Regulations. At the same time Member States should reflect on the need for SNMs.

3.7.4.2 Registration and marking of Annex B species

This is discussed in Section 4.3 but is also summarised here.

The Member States adopt stricter national measures mainly to improve the control on trade in protected species and to gather information on this trade. As far as the registration and/or marking of Annex B-listed specimens is concerned, these types of stricter national measures are seen by the Member States that adopt them as a means to prove the legal origin of the specimens. Proponents of such measures cite

Article 8(5) of *Regulation 338/97*, which allows trade in Annex B specimens only when they have been legally acquired.

This seems to imply that the burden of proof lies with the holder (the Commission has given this advice in the past) but, in at least some Member States, Courts will not accept this without at least some corroborating evidence that the specimen was, in fact, illegal.

Even if an import permit is presented, there is no way of knowing that it relates to the specimen under scrutiny because specimens are not required to be marked. In addition, if the holder of the specimen is not the original importer, he or she may not have the permit (or may have been told by the vendor that the specimen was captive-bred or artificially propagated).

As a consequence of this, some Member States require the registration with the CITES Management Authority of some Annex B-listed specimens, whilst others require registers to be kept by the keepers/traders him/herself which can then be checked by enforcement agencies when required. Some Member States require the issuance of their own national documents

Yet other Member States simply look for additional proof in cases where they have suspicions. In some cases, their national legislation includes a provision similar to Article 8(5) of the Council Regulation stipulating that trade in Annex A and B (and even C and D in some countries) is illegal by default.

When there is a need for additional proof, however, many keepers must resort to using breeder's declarations, unofficial registration, sales declaration or confirmation documents, 'home-made' or photocopied documents etc. Many of these are not official and have not been approved or signed by competent authorities.

The diversity of documents makes the verification of the validity of the documents, and therefore the proof of legal acquisition or of legal import, hard to determine both in, and particularly between, Member States.

Against this background, proponents of stricter marking and book-keeping measures argue that they contribute to ease of enforcement controls because documents have to accompany specimens. Thus, it is argued, they facilitate subsequent issuance of permits/ certificates and allow detection of illegal specimens where not detected in other Member States. They also provide legal certainty for the holder.

On the other hand, "sceptics" argue that such provisions represent a considerable administrative burden, tying down scarce resources. In a situation where there is no uniformity at EU level, they argue, such a burden is further increased. Some argue that, in practice, specimens of dubious origin have been registered and thus have been effectively "laundered".

Suggested solutions included:

- The development of a unified documentation system for proof of legal origin of Annex B specimens or guidance regarding the type of documents that are acceptable as proof of legal origin;
- Creation of a list of selected species in Annex B, which should have marking requirements and certificates. (The 'Risk List' developed by TRAFFIC with the Enforcement Group was proposed as the means of determining which species in Annex B should be treated more strictly. However, it was noted by other members of the group that the Enforcement Group's list was not developed for this purpose, that development of an appropriate list would be extremely difficult and could complicate rather than simplify the Regulations, as well as increasing the burden placed on national CITES Authorities).

Member States would have to decide to what extent inclusion of a species on Annex B – as against Annex A – implies a lower conservation risk and, if so, whether or not an equivalent administrative burden is warranted.

At the Vilm Workshop, some Member States also argued for registration/ book-keeping requirements at EU level – at least for some Annex B species. It was suggested that the administrative burden could be transferred to keepers of specimens via a book-keeping requirement; responsible traders already keep records. In the end, the participants concluded that the best way would be to incorporate such requirements into national legislation, where this has not already been done.

Nevertheless, despite practical objections and concerns raised, the fact remains that some Member States are managing to implement a registration scheme for some or all Annex B animals and will insist on continuing to do so.

3.8 FUNCTION OF THE SCIENTIFIC REVIEW GROUP

The need for the SRG derives from the provisions of Articles 4(1)(a)(i) and 4(2)(a) of the Council Regulation.

Condition for issuance of an import permit for specimens of the species listed in Annex A:
Article 4(1)(a) of Regulation 338/97: the competent scientific authority, after considering any opinion by the Scientific Review Group, has advised that the introduction into the Community: (i) would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species; (ii) is taking place: – for one of the purposes referred to in Article 8(3)(e), (f) and (g), or – for other purposes which are not detrimental to the survival of the species concerned.

Condition for issuance of an import permit for specimens of the species listed in Annex B:
Article 4(2)(a) of Regulation 338/97: the competent scientific authority, after examining available data and considering any opinion from the Scientific Review Group, is of the opinion that the introduction into the Community would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade. This opinion shall be valid for subsequent imports as long as the abovementioned aspects have not changed significantly.

Most far-reachingly of all, Article 4(2)(a) requires the making of a second non-detriment finding for all Annex B species, which includes all Appendix II species that are not already on Annex A, as well as a few Appendix III or non-CITES species.

Supporters of this provision will contend that, due to weak governance, lack of resources and the pressure from traders to maximise the short-term gain from Appendix II specimens, many exporting countries fail to make adequate non-detriment findings in many cases – if they make any at all. Nevertheless, these provisions do generate considerable work for Member States' Authorities. They also cause ill feeling among many exporting countries, who would normally expect their exports of Appendix II species to be free of any further restrictions once export permits have been issued.

3.8.1 IMPACT OF SRG DECISIONS ON KEY SPECIES

Trade in specimens of species from countries under a negative opinion / import suspension were examined to determine whether these stricter measures are in fact having a positive impact through limiting trade and catalysing positive conservation actions in the range States, or whether they are causing specimens to be traded to other countries, re-routed through other countries to the EC, or being illegally traded to the EC.

The case studies [*Ursus arctos*, *Amazona aestiva*, *Psittacus erithacus*, *Caiman yacare*, *Pericopsis elata* and *Cyclamen* (from Turkey)] were chosen based on the following criteria:

a) Species to cover both plants and animals;
b) Case studies to include species considered by the public – rightly or wrongly - to be endangered (e.g. *Ursus arctos*);
c) Species for which stricter regulations have been imposed through SRG negative opinions or import suspensions for some or all range States (All species);
d) Species where some range States have had stricter import regulations removed to show the positive achievements to ensure sustainable management of the species through this process (All species);
e) Species where stricter regulations remain in place (some *Cyclamen* spp.);
f) Species to illustrate a range of trade purposes (pet and horticultural trade, timber, leather - skin and trophy trade). This covered a range of product types with varying degrees of flexibility in demand and likelihood that supply would be sought elsewhere;
g) Species where range States cover a range of geographical areas (Central and West Africa, South America, Europe and North America); and
h) Where possible, species were chosen so that there had been sufficient time since import restrictions were put in place to analyse the impact on exports from range States. In some cases

opinions or suspensions have been lifted shortly after they were imposed either because new information became available, because of positive achievements, or because of a synergy with decisions made by multilateral CITES processes (e.g. *Pericopsis elata* Cameroon).

Information was taken from a number of reports, and where appropriate, national Management and Scientific Authorities, and experts from the IUCN Specialist Groups and the TRAFFIC Network were contacted for information. CITES trade data were used to analyse reported international trade.

3.8.1.1 Brown Bear, *Ursus arctos*

This species is perceived by the public to be threatened. However, it was assessed as lower risk/ least concern on the 1996 IUCN Red List (now out of date[36]). It has a vast range, occurring in Northern America and Eurasia. Harvest of this species is mainly for hunting trophies and therefore has a lower impact on populations than commercial harvesting for skins, for example. The species was considered endangered in the twelve Member States that constituted the EU when the Habitats Directive was adopted – it is also protected by the Bern Convention, which was initially formulated before the Eastern European countries with larger bear populations became Parties. Consequently, the species was included on Annex IV of the Habitats Directive. On this basis, it was listed on Annex A of *Regulation 338/97*, despite only being on Appendix II of the Convention.

Species Information

Class :	MAMMALIA
Order :	CARNIVORA
Family :	URSIDAE
Common name:	**English** - Brown Bear; Grizzly Bear ; **French** - Ours brun (France); Ours grizzly ; **Spanish** - Oso pardo (Spain)
Distribution CITES Appendix I	Afghanistan, Bhutan, China, India, Kazakhstan, Kyrgyzstan, Mexico, Mongolia, Nepal, Pakistan, Tajikistan, Uzbekistan
Distribution CITES Appendix II	Albania, Armenia, Austria (**ex**), Azerbaijan, Belarus, Belgium (**ex**), Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Estonia, Finland, France, Georgia, Germany (**ex**), Greece, Hungary, India, Iran (Islamic Republic of), Iraq, Israel (**ex**), Italy, Japan, Jordan (**ex**), Kazakhstan, Kyrgyzstan, Latvia, Lebanon (**ex**), Liechtenstein (**ex**), Lithuania (**ex**), Netherlands (**ex**), Norway, Poland, Portugal (**ex**), Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland (**ex**), Syrian Arab Republic (**ex**), Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, United Kingdom (**ex**), United States, Uzbekistan
IUCN Red List Category	Lower Risk/least concern [ver 2.3 (1994)] (assessed 1996; out of date)
EC Annex	A
CITES listing	Selected populations and subspecies included in Appendices I and II between 1975 and 1990; Remaining populations included with the Ursidae spp. listing in Appendix II in 1992.

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007; IUCN 2007. 2007 IUCN Red List of Threatened Species. <www.iucnredlist.org>. Downloaded on 15 September 2007.

[36] IUCN Red List assessments automatically expire after ten years. The 2007 Red List flags assessments which are now considered to be out of date, such as for *Ursus arctos*.

***Current SRG Opinions*[37]**

Country/ Territory	SRG Opinion	Date	Notes
Bulgaria	+ Removed	01/01/2007	Upon accession to the EU
British Columbia, Canada	-	*15/01/2004*	*Hunting trophies (W) – subject to formal import suspension w.e.f. 18/2/2005*
Yukon, Canada	+	09/03/2006	Hunting trophies (W)
Croatia	+	13/12/2004	Hunting trophies (W)
Estonia	+ Removed	01/05/2004	Upon accession to the EU
Romania	+ Removed	01/01/2007	Upon accession to the EU
Russian Federation	+	09/03/2006	Hunting trophies (W)
Slovakia	+ Removed	01/05/2004	Upon accession to the EU
Slovenia	*- Removed*	*01/05/2004*	*Upon accession to the EU*
United States of America	+	11/11/1997	Hunting trophies (W)

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007; Downloaded on 09 February 2007.

When the SRG gave a Negative Opinion for Brown Bear trophies from British Columbia (B.C), this was the first case of an SRG decision being taken for a region or province rather than a country. Compared to other countries reviewed, British Columbia had some of the most detailed information on management and harvest planning. According to Knapp (2006[38]), B.C. responded positively to the majority of the SRG's requests and conditions. However, the SRG was reluctant to signal a positive opinion against a background of continued decline and habitat loss, in the absence of sufficient Grizzly Bear Management Areas being set aside and lack of implementation of management plans. In fact, while the British Columbian Authorities were assiduous is providing information on their survey methodology and calculation of off-take rates, they were largely silent on the issue of Grizzly Bear Management Areas.

In 2006, the SRG gave a positive opinion for Brown Bear trophies from the Yukon in Canada based on what appeared to be very little information when compared to the case of the B.C. No details were available on the management of the Brown Bear in the province of Yukon apart from some general aspects mentioned in a letter of the Canadian Scientific Authority. No information was available on methods used for population estimates, hunting quotas set, monitoring and feed-back to harvest level, conservation benefits for the species, and benefits and co-operation with people sharing the area with the species. There remains a lack of clarity and transparency regarding the reasons behind the positive decision adopted by the SRG for Brown Bears in Yukon vis-à-vis the negative opinion remaining for British Columbia.

A general problem when comparing SRG decisions for different range States is the difference in the amount and quality of information provided by the various countries regarding population size, trends,

[37] A **positive opinion** (denoted by the symbol "+") means that the species is in trade or is likely to be in trade, but that introduction to the Community from the country of origin at current or anticipated levels of trade is **not likely** to have a harmful effect on the conservation status of the species or the extent of the territory occupied by the species. A **negative opinion** (denoted by the symbol "-") means that the species is in trade or is likely to be in trade, but that introduction to the Community from the country of origin at current or anticipated levels of trade **is likely** to have a harmful effect on the conservation status of the species or the extent of the territory occupied by the species. The SRG can also refrain from forming an opinion on the basis that that the species **is not in trade and is unlikely to be in trade**, and that the situation can be re-examined in the event of trade (re)commencing.

[38] Knapp, A. (2006). *Bear Necessities. An Analysis of Brown Bear Management and Trade in Selected Range States and the European Union's Role in the Trophy Trade.* A TRAFFIC Europe report for the European Commission, Brussels, Belgium.

status and management, and the rigor with which these were obtained. In some cases, countries that provide detailed information may find themselves undergoing further scrutiny of population monitoring techniques or level of implementation whereas countries with no management plan and with little information available about population status and management are given a Positive Opinion. This appears to be the case with Bulgaria (1997), Estonia (1997), the Russian Federation (1997) Slovakia (1998), and Yukon in Canada (2006) which did not provided as comprehensive information on Brown Bear management as the other countries reviewed, yet have all had Positive Opinions issued and have not been discussed extensively in SRG meetings.

The SRG gave a negative opinion for Slovenia for Brown Bear hunting trophies in 2003. This was removed when Slovenia acceded to the EU in 2004. CITES trade between EC Member States is no longer reported as part of the EC CITES Annual Report. Therefore, the monitoring of trade between EC member states of EC Annex A-D species is problematic, as could be the case for Brown Bear trophies from Slovenia.

Overall, the SRG's Negative Opinions have had some positive outcomes, for example, earlier negative opinions in respect of Croatia and Romania may have facilitated the development of Brown Bear management plans in those countries.

During the period when the negative opinions for those countries were formed and then reversed, the SRG had access to a carnivore specialist within the Commission, who subsequently left. It would be useful in the future if the SRG invited expert opinions such as the IUCN/SSC Bear Specialist Group in cases where the SRG receives widely conflicting reports regarding the status or management of bear populations in a certain country, as in the case of Romania or British Columbia.

Given that Brown Bear is listed on Appendix II of the Convention and is listed on Annex A solely because of its status under the Habitats Directive, it is also worth considering whether or not the SRG should take a less rigorous approach to those trophy species that are listed on Annex A by virtue of their status under that Directive. As previously stated, in making opinions regarding the import of hunting trophies of Annex A species, the SRG has regard to guidelines it has developed that require the trophy hunt to be part of a management regime that includes adequate population data, monitoring, feedback measures, good enforcement, and provision of benefits to local communities and/ or conservation efforts. When the question of refusing imports of Wild Cat (*Felis sylvestris*) hunting trophies from Namibia was considered, the SRG decided that it would be disproportionate to apply these guidelines, since the species was only listed on Annex A because of its European status and was very common in Namibia. However, it has not taken the same approach to Brown Bear-, or wolf-hunting trophy imports. It is worth noting that the bulk of the hunting trophy cases that come before the SRG concern one or other of these species.

3.8.1.2 Blue-fronted Amazon, *Amazona aestiva*

This species was heavily traded for the pet trade from 1981 up to 1992 (378,802 birds in total were exported).However, trade dropped in 1992 with the US wild bird import ban, after which Europe and Japan became the primary importers. The SRG gave a positive opinion for this species from Argentina in 2002 following information provided on the successful management of the bird. This case study analyses the trade and looks at possible increased exports from Argentina following the negative opinion given for Paraguay in 2003, which has not been reversed.

Species Information

Class :	AVES
Order :	PSITTACIFORMES
Family :	PSITTACIDAE
Common name:	**English** – Blue-fronted Amazon; Blue-fronted Parrot; Turquoise-fronted Parrot;

	French – Amazone à front bleu; **Spanish** – Amazona frentiazul; Loro hablador
Synonym :	*Psittacus aestivus* (non EU)
Distribution	Argentina (br), Bolivia (br), Brazil (br), Paraguay (br)
IUCN Red List Category	Least Concern [ver 3.1 (2001)] (assessed 2004)
EC Annex	B
CITES listing	Appendix II in 1981 under PSITTACIFORMES spp.

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007

Current SRG Opinions

Country/ Territory	SRG Opinion	Date	Notes
Argenina	+	15/05/2002	
Paraguay	-	*11/04/2003*	*Wild*

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007

A negative decision in April 2002 for *Amazona aestiva* from Argentina was quickly reversed in May 2002 at the 23rd meeting of the SRG on receipt of information on the successes of a sustainable use project in Argentina involving the species. The Government of Argentina was able to provide considerable information on the management plan for the species, which had been developed over a two-year period. The SRG Chairman said that lessons should be drawn from this case, i.e. information on projects and programmes should be brought to the attention of the SRG and the Commission as soon as possible. Therefore, it may be useful for the EC to contact CITES Members either directly or via the CITES Secretariat to ask about sustainable use projects and programmes for species of conservation concern that are in existence.

The negative opinion for Paraguay followed a decision by the CITES Standing Committee to send a technical mission to Paraguay to assess the sustainability of trade and to provide technical assistance to implement the Convention. It also followed the issue of Notification to the Parties No. 2003/058 to impose a voluntary suspension of trade with Paraguay. The moratorium was intended to provide the Government of Paraguay with an opportunity to work with the Secretariat and other sources of support to enhance Paraguay's implementation of the Convention and to combat illicit trade.

There was an increase in the number of birds exported from Argentina in 2004, the year after the negative opinion was agreed by the SRG for Paraguay. It is not clear whether this represented a shift in trade routes as a result of the negative opinion for Paraguay or whether it was the result of the successful sustainable management programme for the *Amazona aestiva* in Argentina. The increase in exports from Argentina in 2004 was followed by a drop in exports in 2005 and this is likely to have been the result of the EC banning imports of pet and captive birds as a measure to prevent the spread of disease.

The EC ban on captive bird and pet bird imports on October 2005, extended to 31st March 2007, became an indefinite ban as of 1 July 2007. This ban does not relate to issues of the trade's harmful effect on the conservation status of species but rather relates to measures to prevent the spread of a disease. This was done outside the realms of the EC CITES Committee and SRG without reference to *Regulation 338/97* but rather under directives and regulations relating to animal health requirements. However, some believe that the suspension of all wild bird imports into the EC is likely to risk undermining the impoverished communities who depend on the environmentally sustainable trade in birds and removing their economic incentives for protecting bird habitats (Press Release, CITES Secretariat, 11th January 2007).

Considering the EC is the main destination for the majority of *Amazona aestiva* from Argentina, it will be difficult for the sustainable use project to find alternative markets for the birds. It remains to be seen whether this in turn, has a negative impact on the local communities harvesting these birds, with longer term consequences on the conservation of the species and its habitat.

There could be scope for the EC assisting in an exercise of sharing of information between Argentina and Paraguay on the conservation management and sustainable use of *Amazona aestiva* but this is dependant on the availability of markets for the species.

3.8.1.3 African Grey Parrot, *Psittacus erithacus*

The African Grey Parrot, *Psittacus erithacus,* is one of the most popular avian pets in Europe, the United States of America and the Middle East. In recent years, the vast majority (67%) of reported exports go to Europe (it is not known to what extent the market is supplemented by captive bred specimens produced within the EU but the species is relatively amenable to captive breeding).

Trade in *Psittacus erithacus*, has been subject to three CITES Significant Trade Reviews. The first, which took place prior to the establishment of a formalized review process, determined that trade in the species was a "possible problem" (Inskipp et al. 1988). The second was completed in 1992 under Phase I of the process established via Resolution Conf. 8.9, and concluded that "the impact of current levels of trade and/or the conservation status of the species was insufficiently known (CITES Animals Committee document AC22 Doc. 10.2 Annex 1, 2006). At the 20th meeting of the CITES Animals Committee in 2004, *Psittacus erithacus* was again selected for review on the basis of trade data supplied by UNEP-WCMC, pursuant to paragraphs a) and b) of CITES Resolution Conf. 12.8.

Some range States have long-term EC trade suspensions, with others having had stricter measures removed. In this case study the CITES and SRG processes were compared to look for synergies and differences.

Species Information

Class :	AVES
Order :	PSITTACIFORMES
Family :	PSITTACIDAE
Common name:	**English** - Grey Parrot ; **French** - Jacko; Jacquot; Perroquet gris; Perroquet jaco ; **Spanish** - Loro yaco; Yaco
Distribution	Angola (br), Benin (br), Burundi (br), Cameroon (br), Central African Republic (br), Congo (br), Côt' d'Ivoire (br), Democratic Republic of the Congo (br), Equatorial Guinea (br), Gabon (br), Ghana (br), Guinea (br), Guinea-Bissau (br), Kenya (br), Liberia (br), Mali (br), Nigeria (br), Rwanda (br), São Tomé and Principe (br), Sierra Leone (br), Togo (br?), Uganda (br), United Republic of Tanzania (br)
IUCN Red List Category	Near Threatened (IUCN, 2007)
EC Annex	B
CITES Listing	*P.e. princeps* was listed in Appendix I in 1975; then Appendix II under PSITTACIFORMES spp. in 1981

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007; *IUCN 2007. 2007 IUCN Red List of Threatened Species. <www.iucnredlist.org>. Downloaded on 15 September 2007.*

Table 7: Status and trade information for* Psittacus erithacus *and* P. e. timneh *range States under consideration as part of the CITES Significant Trade Review (STR)

Range State	Current SRG opinion/Import suspension under Article 4(6)(b)	Imports reported by Importers 1997-2005	Exports reported by range State '97-'05	STR - Urgent, possible or least concern	Comments
Angola	+	144	0	Least concern	Low levels of trade reported
Benin	*Suspension*	*2*	*12*	*Least concern*	*Low levels of trade reported*
Burundi	*Suspension*	*16*	*17*	*Least concern*	*Low levels of trade reported*
Cameroon	+	98337	103392	Urgent concern	Little recent population information, however indications of localised declines and range contraction; export quotas may be high relative to sustainable off-take; suspected illegal trade a concern
Central African Republic	+	2993	111	Least concern	Low levels of trade reported
Congo	+	42,621	24,211	Possible concern	Exports increasing in recent years; quotas regularly exceeded; little recent population information, scientific basis for quotas and non-detrimental nature of exports not clear
Côte d'Ivoire	+	23911	17074	Urgent concern	Exports increasing in recent years; quotas regularly exceeded; little recent population information but habitat disappearing; scientific basis for quotas and non-detrimental nature of exports not clear; suspected illegal trade a concern.
Democratic Republic of Congo	+	99460	91987	Possible concern	Little recent population information; scientific basis for quotas and non-detrimental nature of exports not clear; suspected illegal trade a concern
Equatorial Guinea	+	802	1239	Possible concern	Recent increase in exports; scientific basis for quotas and non-detrimental nature of exports not clear
Guinea	*Suspension*	*6,470*	*3,569*	*Urgent concern*	*Population believed to have declined significantly with concern that permitted exports may not be within sustainable levels; suspected illegal trade a concern*
Guinea-Bissau	*Suspension*	*20*	*3*	*Least concern*	*Low levels of trade reported*

Range State	Current SRG opinion/Import suspension under Article 4(6)(b)	Imports reported by Importers 1997-2005	Exports reported by range State '97-'05	STR - Urgent, possible or least concern	Comments
Liberia	*Suspension*	*12222*	*6200*	*Urgent concern*	*Species regarded as depleted, export levels likely not to be sustainable; suspected illegal trade a concern*
Mali	*Suspension*	*20*	*0*	*Least concern*	*Low levels of trade reported*
Nigeria	*Suspension*	*885*	*27*	*Least concern*	*Authorized international trade at low levels; high national demand; illegal exports, and possibly imports, believed to be substantial and require attention.*
Rwanda		1	0	Least concern	No reported exports
Sierra Leone	+	5927	6900	Urgent concern	Preliminary calculations suggest current exports are unsustainable
Togo	*Suspension*	*15*	*55*	*Least concern*	*No viable population; low level of exports reported likely to have originated elsewhere; the origin of any further exports requires confirmation*
United Republic of Tanzania	+	51	3	-	Low levels of trade reported

Source: Corrigan (2007b, op. cit.)

Psittacus erithacus and *Psittacus erithacus timneh* were examined by TRAFFIC Europe (1998, op. cit.) in a report assessing the effectiveness of EU CITES import policies. Concerns for the sustainability of trade led to trade restrictions for several range States such as Ghana, which subsequently led to a change in trade routes, and an eventual drop in trade levels during the 1990s. TRAFFIC reported an overall drop in world trade levels by 40%, from an average annual level of 55,773 during the period 1984-1992 to 32,378 for the period 1993-1996.

Globally, a total of 369,764 live *Psittacus erithacus* were traded between 1997 and 2005, with an average annual level of 33,615, close to levels for the period 1993-1996. Overall global imports of the birds have been steadily increasing since 1997, as shown in Figure 5. Exports of wild-sourced birds declined in 2002 and 2003 - in all probability as a result of the CITES trade suspension in 2002 and the SRG negative opinion in 2003 for the Democratic Republic of Congo. There were increases of captive-bred bird exports in 2002 and 2003, mainly (73%) exported by South Africa. South Africa imports thousands of wild-sourced birds each year mainly from the Democratic Republic of Congo (40%), the Congo (23%) and Cameroon (14%).

Sixty-seven per cent of the global exports in *Psittacus erithacus* are imported into the EC. Imports to the EC of *Psittacus erithacus* decreased in 2002, the result of a CITES trade suspension for the Democratic Republic of Congo. At the same time as that trade suspension, Cameroon and Côte d'Ivoire reported increases in the numbers of *Psittacus erithacus* exported to the EC. This is most probably

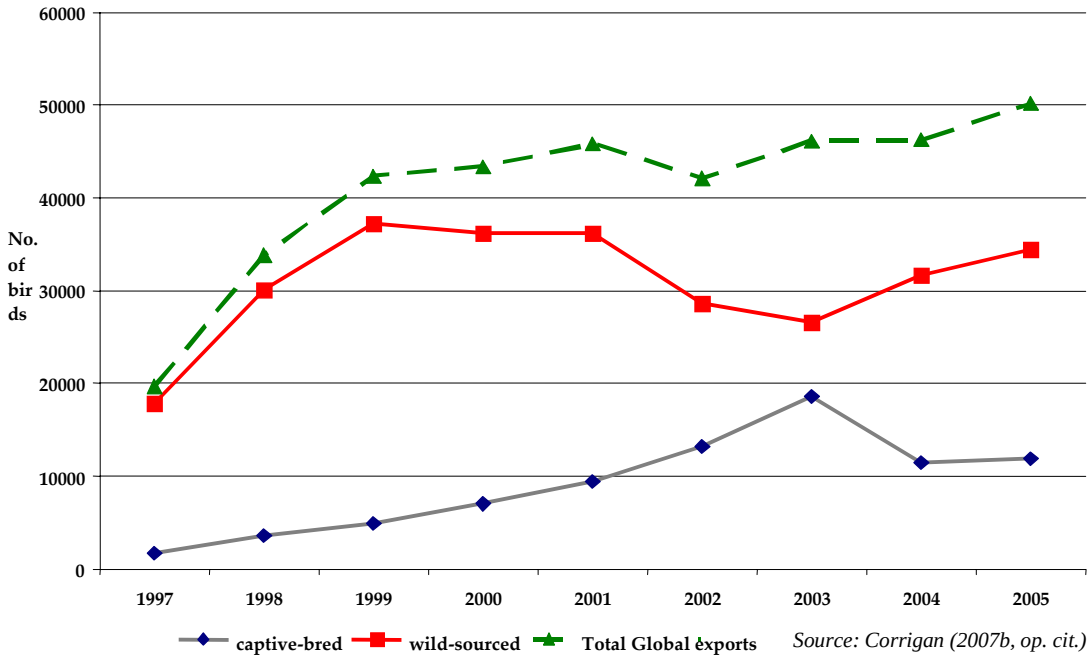
because of the trade ban imposed on the Democratic Republic of Congo, and shows a shift in trade routes. In 2003, when exports of *Psittacus erithacus* from the Democratic Republic of Congo resumed exports from Cameroon dropped although exports from Côte d'Ivoire continued to increase.

The majority of the EC imports of captive-bred *Psittacus erithacus* are exported by South Africa. There was an increase in exports from South Africa in 2002 to the EC following the CITES trade suspension for the Democratic Republic of Congo. Although not found in the same volumes and level of change as found by TRAFFIC in the 1998 study, this recent analysis determined that there appeared to have been some degree of shift in trade routes as a result of the trade ban and EC stricter measures imposed on the Democratic Republic of Congo.

Following the SRG negative opinion for the Democratic Republic of Congo in 2003, there was an increase in exports from Côte d'Ivoire, Congo and Sierra Leone. However, this is more difficult to ascertain given that the Democratic Republic of Congo exported birds prior the negative opinion in 2003 and exported again after the positive opinion in 2004.

Between 2002 and 2004 there was an increase in the number of wild-sourced birds imported by South Africa from the Congo, Cameroon and Côte d'Ivoire in 2002, and from the Democratic Republic of Congo in 2003 and 2004.

Global exports of *Psittacus erithacus* and *P. e. timneh*, 1997-2005



Source: Corrigan (2007b, op. cit.)

In general there is synergy between CITES decisions and recommendations, and the opinions and decisions of the SRG with regard to *Psittacus erithacus*. There is good synergy between the findings from the recent CITES Significant Trade Review (CITES Animals Committee document AC22 Doc. 10.2 Annex 1, 2006) and the SRG decisions and opinions for Angola, Central African Republic, Guinea and Liberia. The CITES Significant Trade Review states that the Congo and the Democratic Republic of Congo are of possible concern for *Psittacus erithacus* and the SRG have been monitoring the trade with both range States. The Significant Trade Review determined trade from Cameroon and Côte d'Ivoire to be of urgent concern whereas the SRG has given positive decisions. However, the SRG has maintained vigilance through continued monitoring of the trade and of annual quotas for both these countries.

Decisions on Benin and Burundi differ from the findings of the latest CITES Significant Trade Review which notes that they should be considered of Least Concern whereas they are listed on the EC's suspension regulation. However, the species is reported as rare in Benin and the EC's decision to list Burundi on the suspension regulation is in line with that of Burundi's policy for the species. In 1992, Burundi, in order to protect its endangered population of *Psittacus erithacus* and to contribute to the protection of the species in neighbouring countries, suspended issuance of export permits and re-export certificates (CITES Notification 1992/681). So, in fact, there is synergy between the SRG and the Significant Trade Review process: the finding of "least concern" by the Significant Trade Review can be attributed to the absence of trade, following the EU import suspension and the subsequent export ban.

Other decisions where there does not appear to be synergy are for Equatorial Guinea, Guinea-Bissau, Nigeria, Sierra Leone and Togo. Also, there is some debate as to whether *Psittacus erithacus* occurs in Mali and the United Republic of Tanzania. Mali is listed on the EC's suspension regulation and there was a positive opinion given for the United Republic of Tanzania.

The SRG and EC generally respond to calls for CITES for the suspension or closer monitoring of trade. Decisions taken by the EC in the late 1980s and early 1990s assisted in reducing the unsustainable trade in *Psittacus erithacus*. There appears to have been shifts in trade routes following CITES and SRG decisions to suspend trade. However, any call for continued vigilance of the trade in *Psittacus erithacus* has been superseded by the EC ban on wild and captive bird imports first implemented in October 2005, extended to 31st March 2007, which became a permanent ban as of 1 July 2007. This ban does not relate to issues of the trade's harmful effect on the conservation status of species but relates to measures to prevent the spread of a disease.

3.8.1.4 Yacare Caiman, *Caiman yacare*

Europe imports a significant proportion of the global trade in *Caiman yacare*. Processed products e.g. shoes and other leather products are also re-exported. Some range States have been subject to EC restrictions, whereas others have not. Given that the species is used primarily in the leather trade – an important European industry – it is possible that import suspensions against some range States have simply shifted the trade to others, since the demand remains. In turn, this could result in greater pressure on populations in other range States whilst also leaving unaddressed the original concerns identified through the SRG review.

Species Information

Class :	REPTILIA
Order :	CROCODYLIA
Family :	ALLIGATORIDAE
Common name:	**English** - Yacare Caiman ; **French** - Caïman yacare ; **Spanish** - Yacaré
Synonyms :	*Caiman crocodilus matogrossiensis* , (non EU) *Caiman crocodilus paraguaiensis* , (non EU) *Caiman crocodilus yacare* , (non EU) *Crocodilus yacare* , (non EU) *Champsa vallifrons* , (non EU) *Jacare longiscutata* , (non EU) *Jacare multiscutata* , (non EU) *Jacare ocellata* , (non EU) *Jacaretinga crocodilus jacare* (non EU)
Distribution	Argentina, Bolivia, Brazil, Paraguay, Uruguay
IUCN Red List Category	Lower Risk / Least Concern - assessed 1996, now out of date (IUCN, 2007), refer to footnote [34]
EC Annex	B

CITES Listing	Included in Appendix II in 1975; and included with CROCODYLIA spp. listing in Appendix II in 1977

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007; IUCN 2007. 2007 IUCN Red List of Threatened Species. <www.iucnredlist.org>. Downloaded on 15 September 2007.

Current SRG Opinions

Country/ Territory	SRG Opinion	Date	Notes
Argenina	No opinion	22/02/2000	Opinion applicable subsequent to removal of import suspension, 23/10/2000
Bolivia	+	12/06/2006	
Paraguay	-	*22/05/2003*	*Wild*

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007

The European Community is a significant producer of leather goods manufactured from imported skins of CITES-listed reptile and mammal species. Over 270,000 *Caiman yacare* skins were imported by the EC between 1997 and 2005, the majority from wild-sourced skins from Bolivia (77%) and Paraguay (10%), and skins from captive-bred *Caiman yacare* from Brazil (12%).

Following the moratorium adopted by the CITES Management Authority in Paraguay in 2003, imports to the EC from Bolivia increased in 2003 and 2004; this may show a shift in trade routes from another range State. There was an increase in the volume exported globally in 2003 and 2004 rather than a reduction in overall trade as a result of the trade moratorium with Paraguay. This was the result of increased exports from both Bolivia and Brazil in 2003, and increased exports from Bolivia in 2004. It should be noted, however, that skin exports from Bolivia have been increasing fairly steadily since 2000 and the increase in 2003 and 2004 may just be the result of a natural growth in their trade rather than a shift in trade routes. In 2005 imports of skins to the EC did decrease.

3.8.1.5 African Teak, *Pericopsis elata*

This is a timber species from Central and West Africa. In this case study, the continued evaluation was examined to determine whether it reflected continued vigilance on behalf of the SRG and EC. The EC funded a study, undertaken by Flora and Fauna International in 2005 (Dickson *et al*, 2005), to assess the distribution, abundance and conservation status of *Pericopsis elata* in Cameroon, Congo and the Democratic Republic of Congo, and to carry out a re-evaluation of the IUCN Global Red List assessment for the species.

Species Information

Order :	FABALES
Family :	LEGUMINOSAE
Common name:	**English** - African teak ; **French** - assamela; Tec' d'Afrique ; **Spanish** - afrormosia; tepproachana
Synonym :	*Afrormosia elata* (non EU)
Distribution	Cameroon, Congo, Côt' d'Ivoire, Democratic Republic of the Congo, Ghana, Nigeria
IUCN Red List Category	EN A1cd ver 2.3 (1994) – assessed 1998.
EC Annex	B

CITES Listing	Included in Appendix II in 1992

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007; IUCN 2007. 2007 IUCN Red List of Threatened Species. <www.iucnredlist.org>. Downloaded on 15 September 2007.

Current SRG Opinions

Country/ Territory	SRG Opinion	Date	Notes
Cameroon	+	09/03/2006	Confirmation of earlier positive opinions going back to 2002. Negative opinion 2001-2
Central African Republic	No opinion	18/12/2006	Negative opinion removed following Standing Committee Recommendation
Congo-Brazzaville	No opinion	18/12/2006	Negative opinion removed following Standing Committee Recommendation

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007

Pericopsis elata has been the subject of considerable interest and action by international and regional bodies concerned with the conservation status of the species. The species was assessed as 'Endangered' in 1998, based on the IUCN Red List Categories and Criteria version 2.3. A CITES Review of Significant Trade was undertaken for the species in 2003. The report was presented to the Fourteenth Meeting of the CITES Plants Committee in February 2004, which endorsed a set of recommendations to be presented to Cameroon, Central African Republic, Congo and the Democratic Republic of Congo. The European Union has suspended imports of *Pericopsis elata* from Cameroon and Congo at different times because it was concerned about the sustainability of the trade (Dickson *et al*., 2005).

Four of the ten decisions/opinions taken by the EC with regard to *Pericopsis elata*, in terms of stricter measures, were in synergy with and in response to the CITES Significant Trade Review process. There has been continued vigilance with regard to *Pericopsis elata* from Cameroon and Congo. However, it could be argued that there has been less vigilance with regard to the other range States. The Democratic Republic of Congo, for example, highlighted by the Significant Trade process as 'possible concern', has not been considered for review by the SRG. Eighty-four per cent of all exports of *Pericopsis elata* timber from the Democratic Republic of Congo are destined for EC Member States.

It appears also that the earlier import ban on unprocessed wood from Cameroon (since only unprocessed wood is covered by the listing) resulted in a growth of processing in that country, mainly as parquet flooring (Dickson *et al*., 2005[39]). This is always a risk with timber import bans where the annotation does not cover finished products.

Dickson *et al* (2005), noted in the EC-commissioned study that there was a need to improve the implementation of the CITES Appendix II listing for *Pericopsis elata*. Given the Democratic Republic of Congo's willingness to collaborate with the Significant Trade Review process, together with the large stocks of *Pericopsis elata* within the country, the European Union could support the Democratic Republic of Congo in improving its CITES implementation, and in management of the species.

[39] Dickson, B., Mathew, P., Mickleburgh, S., Oldfield, S., Pouakouyou, D. & Suter, J. (2005). *An assessment of the conservation status, management and regulation of the trade in* Pericopsis elata. Fauna & Flora International, Cambridge, UK. (Doc. SRG34/4/2)

3.8.1.6 Cyclamen (*Cyclamen* spp.) from Turkey

Europe is a major importer of cyclamen species. Import restrictions have been given for six species but only lifted for two of these. This case study highlighted where positive progress has been made, historically, by Turkey in partnership with the EC and the European CITES region, and for the two species where import restrictions have been lifted. It also looked at whether further assistance could be given to move towards lifting suspensions for the other species.

Species Information

Order :	PRIMULALES
Family :	PRIMULACEAE
Taxon :	***Cyclamen*** *intaminatum; C. mirabile; C. parviflorum; C. persicum; C. pseudibericum; C. trochopteranthum*
Distribution	Turkey; *C. persicum*: Algeria, Cyprus, Greece, Israel, Jordan, Lebanon, Syrian Arab Republic, Tunisia, Turkey
IUCN Red List Category	-
EC Annex	B
CITES Listing	The genus was included in Appendix II in 1975

Source: UNEP-WCMC Species Database, www.unep-wcmc.org, February 2007

The status of the six species of cyclamen subject to the EC import suspension is as follows:

Cyclamen intaminatum	vulnerable (Doc. SRG22/4/9, 2002; Institute of Ecology, 2005[40])
Cyclamen mirabile	endangered (Institute of Ecology, 2005); vulnerable (Doc. SRG22/4/9, 2002)
Cyclamen parviflorum	not threatened (Doc. SRG22/4/9, 2002; Institute of Ecology, 2005)
Cyclamen persicum	not threatened and abundant in parts of Turkey (Doc. SRG22/4/9, 2002; Institute of Ecology, 2005)
Cyclamen pseudibericum	endangered (Institute of Ecology, 2005); indeterminate (Doc. SRG22/4/9, 2002)
Cyclamen trochopteranthum	low risk (Institute of Ecology, 2005); vulnerable (Doc. SRG22/4/9, 2002)

[40] Institute of Applied Ecology. 2005. *A study of species which are subject to import restrictions according to the article 4.6 of Regulation 338/97*. Istituto di Ecologia Applicata, Italy.

Current SRG Opinions/ Import suspensions for Turkey

Taxon	SRG Opinion/ Import Suspension	Date	Note
Cyclamen intaminatum	Suspension	22/12/1997	Suspension remains in force in subsequent Regulations – applies to wild specimens
Cyclamen mirabile	Suspension	22/12/1997	Suspension remains in force in subsequent Regulations – applies to wild specimens
Cyclamen parviflorum	No opinion	02/04/2002	Suspension subsequently lifted 01/03/2003 due to absence of trade
Cyclamen persicum	No opinion	02/04/2002	Suspension subsequently lifted 01/03/2003 due to absence of trade
Cyclamen pseudibericum	Suspension	22/12/1997	Suspension remains in force in subsequent Regulations – applies to wild specimens
Cyclamen trochopteranthum	Suspension	22/12/1997	Suspension remains in force in subsequent Regulations – applies to wild specimens

Source: UNEP-WCMC database, www.unep-wcmc.org, February 2007

In 1985, in response to the need for improved export documentation from Turkey, the EEC temporarily banned all imports of Cyclamen from Turkey. The ban was later replaced by a yearly EEC import quota of one million wild-collected Cyclamen bulbs, which was exceeded in both 1986 and 1987. In 1988, a team of scientists went to Turkey to meet Turkish scientists, officials, and growers to establish lines of communication and to assess the overall situation. The report of these scientists to the EU Scientific Working Group on CITES and CITES Committee on 2 May 1988 included the recommendation to restrict cyclamen import to the EC to *Cyclamen hederifolium*, *Cyclamen coum*, *Cyclamen cilicium*, and *Cyclamen parviflorum* (TRAFFIC 1998 op. cit.).

Turkey´s response to international concern on the levels of trade was very positive; legislation was put in place, and reviews were conducted by scientific committees, aimed at phasing out the unsustainable collection of bulbs from the wild. There were no controls for the export of Cyclamen bulbs before 1989. Since then, and long before Turkey joined CITES in 1996, a very strict and well-prepared statute had been implemented. The trade in bulbs had been controlled by the Ministry of Agriculture and Rural Affairs regulation since 1989, there being three lists: bulbs for which export is permitted for propagation, bulbs exported under a quota system, and bulbs prohibited from trade (Valaoras, 1998).

In 1992, a second EC mission to Turkey was undertaken to assess the situation and to identify problems in the implementation of national regulations, following findings by Flora and Fauna International (FFI) in 1991. Since 1992, Turkish legislation has prohibited the collection of Cyclamen from the area of Isparta, Mugla, but allows *C. coum*, *C. cilicium* and *C. hederifolium* to be collected there in accordance with established quotas. Collection of *Cyclamen mirabile* is prohibited in Turkey. In 1993, collection for export was prohibited for all Cyclamen species, with the exception of *C. cilicium*, *C. coum*, and *C. hederifolium*. Ministry supervision and quotas controlled the cultivation and collection of these species (TRAFFIC 1998 op. cit.).

The Association of Growers and Exporters of Botanical Flower-Bulbs was established in 1989 and a management and scientific structure was put in place to license and advise on the export of these species. The long-term conservation of Cyclamen is dependent on the management of the wild, cultivated, and artificially propagated plants (TRAFFIC 1998 op. cit.).

Prior to the adoption of *Council Regulation (EC) 338/97*, the EC suspended imports from Turkey of *Cyclamen intaminatum*, *C. mirabile*, *C. parviflorum*, *C. persicum*, *C. pseudibericum*, *C. trochopteranthum*. This decision was transferred to the new EC legislation suspending imports and was enforced with *Council Regulation (EC) 338/97*.

Cyclamen trade from Turkey illustrates a number of successful actions which drove the regulation of trade in wild species towards a sustainable basis in the past. In 1985, the EC imposed an overall temporary ban on imports until further scientific information became available. In 1988 and 1992 the EC dispatched scientific missions to Turkey. These missions were complemented by efforts to control the trade on the part of non-governmental organisations and trade associations. Turkey made serious efforts to set up a regulatory mechanism for the collection, transplantation and cultivation of the species, in order to encourage sustainable use. There were partnerships between non-governmental organisations, such as Flora and Fauna International (FFI), TRAFFIC and WWF, professional trade associations (in the Netherlands and in Turkey), and government agencies, which ensured the transition from unregulated trade towards the sustainable harvesting and the evolution to artificial propagation.

It still remains unclear why the six Cyclamen species were listed on the pre-1997 suspension regulation, which was then transferred to the revised regulations following the Council Regulation (EC) 338/97. Turkish national legislation prohibited the collection of all Cyclamen species with the exception of *C. coum, C. cilicium* and *C. hederifolium*. There has been very little reported trade in wild-collected specimens of the six species, which is not surprising given the prohibition on export.

However, there is a large demand from Europe for cyclamen bulbs and Turkey exports some 17 million bulbs to the EC annually. The majority of the bulbs exported are wild-sourced specimens of the three above-mentioned species, *C. coum, C. cilicium* and *C. hederifolium.* All three are subject to export quotas that were originally established with EC assistance following an initial EC suspension of the trade. The two other species for which the import suspensions have since been lifted are not considered to be threatened; however, export is still prohibited under Turkish legislation and trade has not resumed. The four species of cyclamen remaining on the suspension regulation are rare or in danger of being collected for international trade.

3.8.2 CRITERIA FOR SRG OPINIONS

It is reasonable to infer from these cases that, when the SRG has concerns about trade in a particular taxon from a particular range State, these concerns turn out – more often than not – to be well-founded. There is a fair degree of correspondence between the conclusions of the SRG and those of the Review of Significant Trade, bearing in mind that the former addresses only species where EU markets are an important contributing factor.

What is less clear is whether or not – in the case of Brown Bear, for example – there is internal consistency in SRG decisions. Nor is there much evidence, that negative opinions have spurred positive conservation efforts on the ground. Sometimes a range State responds to consultation with assurances that must be taken at their face value and so a negative opinion is lifted. However, there is rarely an opportunity to verify at first hand that there has been a real improvement in the situation.

In the case of Cyclamens in Turkey and Brown Bear in Romania and Croatia, there has been evidence of a real improvement in the situation following the forming of a negative opinion. One other "success story" concerned imports of purportedly artificially propagated *Tillandsia xerographica* from Guatemala. When the SRG issued a negative opinion, that country responded with improved regulation of the trade. However, this was facilitated by the presence of a progressive trade organisation and a visit by a Dutch expert. Very few range States that are the subject of negative opinions for traded species have been visited by EU experts subsequently. Where they take place, it is usually due to the

good will of the authorities in a Member State. It is suggested that the Commission could be more pro-active in stimulating such missions. However, this would have resource implications – in terms of staff time as well as travel costs. Funding of studies in range States has also proved useful, on the rare occasions when this has been done.

There has been criticism from a number of points of view regarding the criteria that the SRG use for forming opinions. The guidelines agreed by the Commission, and available upon request, are based closely on an early version of the IUCN guidelines for the making of non-detriment findings. However, in practice, there is rarely sufficient information available to apply all the criteria in the guidelines. In the case of a species new to trade or not traded for some time, the SA in the Member State of destination may consult a known expert if it is aware of one who has recent first-hand knowledge. Otherwise, export trends, the IUCN listing of the species and its place in the ecosystem (whether or not it is adaptable to agricultural habitats, whether or not it is high in the food chain etc.) are the most important criteria.

Some argue that these criteria are too strict and place too much of a burden on exporting countries. For instance, it has been suggested that they should take socio-economic factors into account. In considering this issue at the Vilm workshop, Working Group 1 took the view that this would represent a major policy shift and that neither Article IV of the Convention nor the Significant Trade Review take such factors into account.

It is also argued, on occasions, that the resulting import restrictions may not have the intended effect in conservation terms. It may be that international trade is only a minor contributory factor to the decline of the species – as against domestic consumption or habitat loss – and that restricting imports only weakens further the incentives to manage the species sustainably. It is also argued that, in many cases, markets simply shift elsewhere or a substitute is found that gives rise to similar conservation issues. In theory, Article 4(1)(a)(i) and 4(2)(a) do not allow Scientific Authorities or the SRG to take such factors into account. However, at least in the case of article 4(2)(a) some regard is had to such factors in practice, depending on the nature of the species, its natural resilience (or lack of it) and its role in the ecosystem.

It has also been remarked by some members of the SRG that, sometimes, countries that respond to the SRG with detailed information only find that this "trips them up" while other countries that supply less information are treated more lightly. Indonesia, for instance, has argued that the fact that they have established quotas for corals has drawn attention to their exports, while neighbouring countries that do not establish them are treated more leniently. However, an increasing number of countries are coming under scrutiny with regard to coral exports so this may be less true than it once was.

Similarly, the review of trade in Brown Bear hunting trophies undertaken as part of this study contrasted the treatment of the very detailed response from British Columbia – which failed to overturn a negative opinion – with the relatively scant information available for Yukon province, where a positive opinion was formed. However, it must be pointed out that, in the former case, a large volume of counterbalancing information was provided by NGOs and others and that the SRG failed to obtain what it considered to be an adequate response on the issue of designation of adequate Grizzly Bear Management Areas. It is equally apparent that, in the case of Croatia and Romania, the responses of the exporting countries led to a dialogue with the SRG and that, ultimately, the negative opinions were reversed. Nevertheless, it would be useful if the SRG invited expert opinions such as the IUCN/SSC Specialist Groups or the TRAFFIC Network, in cases where the SRG receives widely conflicting reports regarding the status or management of species populations in a certain country.

It was also noted that one negative opinion – for Slovenia – lapsed upon that country's accession to the EU. In this regard, trade in EC Annex A-D-listed species between EC Member States is no longer required as part of the EC CITES Annual Report. However, the monitoring of this trade may be useful in such cases.

The negative opinion for *Amazona aestiva* from Paraguay followed a decision to impose a voluntary suspension of trade with the country. This was intended to provide the Government of Paraguay with an opportunity to work with the CITES community to improve implementation of the Convention.

TRAFFIC (1998, op.cit.) noted that the monitoring of trade from re-exporting countries, such as Senegal and South Africa in the case of the African Grey Parrot has proven difficult, and that the trade restrictions imposed by the EU led to the trade switching to other destination countries, and the "laundering" of specimens through intermediate countries to reach the same EU market. This has also been shown to some extent in the case of the trade in *Psittacus erithacus* between 1997 and 2005. A CITES trade suspension for the Democratic Republic of Congo in 2002 lead to increased exports of wild-sourced birds from Cameroon and Côte d'Ivoire, and increased captive-bred birds from South Africa. South Africa imports thousands of wild-collected *Psittacus erithacus* annually, and in 2002 there were increased imports of the birds from Congo, Cameroon and Côte d'Ivoire. Following the SRG negative opinion for the Democratic Republic of Congo in 2003 there was an increase in exports from Côte d'Ivoire, Congo and Sierra Leone. However, the trade route shift is more difficult to ascertain given that the Democratic Republic of Congo exported birds prior the negative opinion in 2003 and again after the positive opinion in 2004.

Following the moratorium adopted by the CITES Management Authority in Paraguay in 2003, imports to the EC of *Caiman yacare* skins from Bolivia increased in 2003 and 2004. This may be a possible shift of trade routes from another range State. There was an increase in the volume exported globally in 2003 and 2004 rather than a reduction in overall trade as a result of the trade moratorium with Paraguay. This was the result of increased exports from both Bolivia and Brazil in 2003, and increased exports from Bolivia in 2004. It should be noted, however, that skin exports from Bolivia have been increasing fairly steadily since 2000 and the increase in 2003 and 2004 may just be the result of a natural growth in their trade rather than a shift in trade routes. In 2005 imports of skins to the EC did decrease.

In general there was synergy shown between CITES decisions and recommendations, and the opinions and decisions of the SRG with regard to *Psittacus erithacus* and *Pericopsis elata*. A number of decisions/opinions taken by the EC, in terms of stricter measures, were in synergy with and in response to the CITES Significant Trade Review process. There has also been continued vigilance with regards to *Pericopsis elata* from Cameroon and Congo. However, it could be argued that there has been less vigilance with regards to the other range States. The Democratic Republic of Congo, for example, highlighted by the Significant Trade process as being of 'possible concern', has not been considered for review by the SRG. Eighty-four per cent of all exports of *Pericopsis elata* timber from the Democratic Republic of Congo are destined for EC Member States. Both of these cases highlight the merit of the SRG considering regional plans for species that occur across a range of countries.

With regard to the suspension of trade resulting in possible shifts in trade routes, it is not clear what can be done without perhaps imposing a cap or quota on the total annual volume of imports into the EC for a particular species. This cap or quota would then ensure an overall reduction in the trade. However, monitoring this cap/quota across the 27 Member States would be the challenge and would require immediate response internet technology. Furthermore, this could be seen as a quantitative restriction on commerce with countries managing their trade sustainably, and therefore subject to challenge under the rules adopted in the framework of the WTO.

Cyclamen trade from Turkey illustrates a number of successful actions that promoted the regulation of trade in wild species towards a sustainable basis in the past. In 1985, EC imposed an overall temporary ban on imports until further scientific information became available. In 1988 and 1992 the EC dispatched scientific missions to Turkey. These missions were complemented by efforts to control the trade on the part of non-governmental organisations and trade associations. Thus, quotas were established for the most common species that are exported by Turkey, and six species that are rarely found in trade were listed on the EC's suspension regulation prior to 1997, in line with Turkey's

national legislation prohibiting export. Two of the species listed in the EC's suspension regulation were subsequently removed because they were not threatened in the wild and were not traded internationally.

Recommendations arising from the review, conducted for this study, of selected species recognised the difficulty in obtaining responses from range States during such reviews, including the Significant Trade Review process, recommended that the SRG should encourage range States to provide the most recent data available so that the SRG can make a justified judgement based on the amount and objectivity of the data provided. It also recommended that the SRG seek information from CITES Parties about the existence of sustainable use species programmes to assist with decision making. It is true that more could be done in this regard, although it is uncertain how much such efforts would yield.

On the other hand, it is sometimes argued that the SRG's criteria are not strict enough. It is suggested that they rely too much on trade data in reaching their decisions and, therefore, that they can miss other considerations. For instance, in the case of live specimens, it may be that there is significant wastage due to mortality prior to shipment and that the export figures mask a much higher off-take. This was a factor when the SRG formed a negative opinion for the Grey Parrot from Cameroon in 1997, when a study highlighted significant wastage in the harvest. The negative opinion was lifted within a matter of months on the basis of reassurances from Cameroon. However, such field studies are rarely available. The dependence on trade data poses other risks. For example, insufficient account may be taken of parallel illegal trade. Furthermore, a decline in exports may not necessarily reflect conscious efforts to regulate them – it may simply be that population decline is making the species more difficult to find.

Some conservationists go further and argue that exports of live specimens – live birds in particular – should only be allowed when there is evidence of a formal management plan for the species in the relevant range State. Although the SRG does demand this in the case of hunting trophies of Annex A species, the Vilm workshop took the view that such an approach would be excessively strict in the case of Annex B species, unless the species shows particularly low resilience or is highly threatened in the relevant country.

Both the Vilm workshop and the review of selected individual species undertaken as part of this study did, however, acknowledged that the range of information available is insufficient in most cases. This can lead to incorrect decisions, and the precautionary wording of the provisions means that such decisions will tend to err on the side of strictness. A conclusion put forward by the review conducted for this study was that the SRG should decide on the minimum set of population and management data needed in order to review a case to form an Opinion. However, the danger is that, in the absence of such data, the terms of Articles 4(1)(a) and 4(2) will demand a negative opinion which may not always be beneficial to the conservation status of that species.

It is further acknowledged that, in the relatively few cases where *in situ* studies have been undertaken, the available information is of much higher quality and decisions are made with more confidence. It was agreed that more funding should be available for such studies. It was also agreed that more financial assistance and provision of expertise to range States would improve their management of these species and their capacity to respond meaningfully in cases where the EC had raised concerns.

The use of conditional import suspensions is something that could be considered as a tool in this process – for example, the current import suspensions for wild specimens of some coral species that do not apply to mariculture coral - coral fixed to an artificial substrate which is technically still source W. This can be an incentive for good management and such mechanisms could be applied in consultation with exporting countries.

Following on, consideration could be given to voluntary certification schemes to separate trade between that which is considered sustainable and that which is considered unsustainable. There could be compliance problems but it is an option to consider on a case-by-case basis.

The review of selected individual species also recommended that both positive and negative opinions, and import suspensions, should be reviewed periodically (perhaps every 5 years) to determine whether the opinion was still valid. Whilst such periodic reviews might generate new information, they would need to be prioritised against other species to ensure effort was directed where it was most needed; conducting a new review of a species previously considered by the SRG would not influence decisions of the SRG if no new evidence came to light. The Commission should, however, ensure that range States are clear that new information may be submitted at any time for consideration by the SRG with a view to reversing a negative opinion or import suspension.

The results of the analysis of SRG processes and impacts of EC stricter measures in range States concur with the general conclusions of the Vilm workshop to the effect that there are positive conservation outcomes generated by the SRG process and so the wording of Articles 4(1)(a)(i) and 4(2)(a) are best left intact. However, more effort is needed to improve implementation and follow up on negative opinions / import suspensions with the range State(s) concerned, in particular providing advice and guidance on what remedial measures are required.

3.8.3 TRANSPARENCY OF SRG DECISIONS

It has also been suggested that both the public (the trade Community in particular) and the authorities in range States are entitled to more transparency as regards how the SRG arrive at their decisions.

The public have access to a short version of the meeting reports that simply state whether a negative, a positive or no opinion was formed for the species/ country combinations under discussion. They are not systematically kept informed of the outcome of cases that are decided by written procedure. All opinions, both positive and negative, are listed on the UNEP-WCMC website but it is not clear to what extent the public are aware of this. The reasons for the opinions are not normally given. This is an area where it can be argued that there is scope for improvement. It would have resource implications for the small Commission CITES team but both traders and range States would argue that, since they suffer in economic terms from SRG decisions, it is not unreasonable to expect the Commission to provide more resources to its CITES team if this can reduce the economic impacts and improve the service offered. That said, the Commission and Member States would have to reflect on the extent to which they publicise comments about third countries that those countries might regard as unfair or untrue. One solution would be to ask the relevant countries, when consulting them, if they have any objection to the correspondence being made public.

With regard to transparency vis-à-vis the exporting countries that are the subject of negative opinions, the situation is different – both in terms of the information that can be given and that which actually is given. Those countries normally receive a standard letter with copies of the documentation on which the SRG made its decision (usually in their preferred CITES language). At the Vilm workshop, however, it was suggested that they could be given more guidance as to how to respond to the SRG's concerns, for instance, which remedial measures should be taken to address the SRG's concerns. The CITES Secretariat also suggested that, instead of receiving a standard letter with documentation that outlines a suite of problems, it should be explained to them in clear terms the measures that they need to undertake in order to reverse the negative opinion. Where such an approach has been undertaken, it has resulted in positive conservation outcomes in the past, for example, the reversal of Croatia's negative opinion being dependent upon the development and implementation of a Brown Bear management plan. Such guidance would be helpful to other range States concerned, with subsequent conservation benefits. Once again, it would have resource implications for the Commission staff as it would require much more time and effort to prepare material for range States in this way. However, if provision of such resources can improve the implementation of the Regulations then this should be considered.

The Vilm Workshop also agreed that the EU should be more pro-active in explaining to concerned parties the general principles on which the SRG operates. Some effort is made at relevant workshops and training courses but the situation is not always clearly understood in the range States either through

lack of communication from the EU or from a lack of internal communication within the range State. Other aspects concerning information being provided to and understood in the range States are discussed in the next section.

To conclude, there is scope for more transparency in the process but this would have resource implications for the Commission.

3.8.4 IMPLEMENTATION OF SRG DECISIONS

There is confusion as to whether or not SRG opinions are binding. It is not explicitly stated in the Regulations and there is a perception that negative opinions aren't necessarily followed until they become import suspensions. It is difficult to determine the extent to which this happens. It would be useful if the Member States could detail the dates of permits that have been issued in their Annual Reports and then UNEP-WCMC data analysis could determine whether import permits are being issued after a negative opinion has been imposed. UNEP-WCMC has asked for this repeatedly but some Member States still fail to do so.

Regulation 338/97 stipulates that imports of Annex A and B species should not be allowed until the applications are assessed by the relevant SA and, furthermore, that the opinions of the SRG are to be considered. The term 'considered' is potentially unclear. However, the Commission has always given advice at SRG meetings that the Member States are expected to follow them once formed. If new evidence comes to light that merits re-examination of the situation the matter should be brought back to the SRG.

There is also dissatisfaction at the slowness of the process of updating the suspensions Regulations in line with SRG decisions, particularly when it comes to lifting suspensions that are no longer warranted. *Regulation 338/97* stipulates that new suspensions Regulations should be published on a quarterly basis; however, due to the time-consuming process outlined earlier, there have never been more than two in a given year. From a conservation perspective this is not an issue as a negative opinion results in a *de facto* import suspension until further information has been reviewed and a decision is made by the SRG. However if the SRG recommends the lifting of a trade suspension but there is a delay in updating the suspension Regulation, permits cannot be issued. The only feasible way to address this would be to amend Articles 4(1)(a)(i) and 4(2)(a) to make SRG opinions explicitly binding while removing the requirement for publication of suspensions. This would also take an administrative burden away from the Commission. In that case, traders and the public would have to rely on the UNEP-WCMC website to keep informed of suspensions but this is already the case for negative opinions that have not been formalised.

It could be argued further that the list of species in the suspensions Regulation is over-long and contributes to the "draconian" image of the EU in range States. Many species are listed because of their IUCN threat status – even though there is virtually no trade in them.

In this regard, the question arises as to whether or not negative opinions should be binding until the relevant third country is advised that a negative opinion has been formed. The fact that a negative opinion can be formed without the relevant country even being aware that the case was under consideration is provocative – even more so when one reflects that, due to the limited staff resources in the Commission, the country may discover the news via a refusal of an import before they receive an official letter from the Commission. However, there are concerns that this proposed modification could lead to a 'rush of imports' to "beat" the trade suspension, a point which has been raised in relation to the Significant Trade Review process (see Section 4.2, below). It would go against the ethos of the Regulations for Member States to be forced to accept imports that were the subject of a negative opinion pending the issuance of a letter by the Commission. The volume of work for the Commission CITES team in following up SRG meetings is already considerable and, with the present resources, issuance of such letters could take several days, during which imports would continue – in conflict with Article 4(1)(a)(i) or 4(2)(a). Significantly greater resources would be required in the CITES team to

avoid this scenario. However, range States – insofar as they tolerate these stricter measures at all – would argue that it behooves the EU – including the Commission – to resource their implementation adequately. They would, no doubt, contend that, if the Community – including the Commission – see fit to impose this regime on exporting countries, then the additional resources required in the Commission to ensure fair and timely notice should not be an issue.

It has also been suggested that minimum import quotas could be used in the interim period. However, usually there is not sufficient information to set such a quota and then the process would become bogged down in a discussion of quotas. Furthermore, it is questionable whether or not this would be acceptable from a WTO point of view.

Other measures that could be considered to improve the transparency and perception of the decision-making process include the following:

- Availing of the forthcoming workshop in Mexico in 2008 on the making of non-detriment findings to put across the EU approach and to solicit views;
- Convening another meeting of the EU with the mega-biodiverse countries, similar to the one held in 2001; and
- Facilitating exchanges/ internships between range State Scientific Authorities and those in EU Member States; and
- Greater synchronicity with multilateral CITES process, such as the Review of Significant Trade (see Section 4.2).

It would appear that doubt remains in many minds concerning the legal status of SRG opinions. However, a reading of Articles 4(1)(a)(I) and 4(2)(a) of the Council Regulation would suggest that, in* de facto *terms, imports can not be granted in the light of negative opinions. The system could be clarified for the benefit of third countries but it could require amendment of the Council Regulation and would certainly require greater staff resources in the Commission. One amendment that would save time and ease confusion would be to make negative opinions explicitly binding and dispense with suspensions Regulations but the legal implications of this would require further analysis.

3.8.5 CONCLUSION

Although the above subsections might lead one to the conclusion that the current level of effectiveness of the SRG is the best that can be realistically expected, it is clearly not perfect. With this in mind, the question arises as to whether or not it is worth maintaining the requirement for an import permit for Annex B species – or at least the requirement for a second non-detriment finding. This issue is taken up in Section 4.2.

With regard to the former aspect, there seems to be a prevailing view, as already stated, that the requirement for import permits shifts a work burden from Customs staff to the Scientific and Management Authority staff, who can carry it out more effectively because they are not left with the responsibility of storing specimens while making a determination on the validity of the export permit. Furthermore, if there is any merit in greater internal regulation of trade in Annex B species (an issue that is discussed in the preceding section), such regulation would require the issuance of import permits as a starting point.

However, there is no reason why such a requirement for import permits must be coupled with a requirement for a second non-detriment finding, unless the Member States and the Commission believe that such a provision is making a significant contribution to conservation of the species *in situ*.

On the negative side, we have seen that the current system is not popular with range States. It also generates considerable work both for the Commission and for the Member States. Without it, the SRG could be dispensed with or its workload greatly reduced, while the duties of the Member States'

Scientific Authorities would be reduced to commenting on Annex A imports, exports of indigenous wild CITES species and advice on the status of captive breeding / artificial propagation, etc. While the available evidence tends to suggest that the SRG usually acts correctly where it forms negative opinions, it is less clear whether or not it is forming negative opinions in all cases where they might be warranted. Nor is it always clear that these negative opinions always lead to an improvement of the management of the relevant species in the relevant range State.

On the other hand, the argument that the absence of a requirement for a second non-detriment finding could undermine efforts within range States to manage trade sustainably remains. In the case of mahogany in Peru, the trade lobby is putting strong pressure on the Government to maximize the short-term yield and the twin threat of an EU negative opinion and/ or a CITES trade suspension is the only "brake" that is preventing the Government from yielding to such pressure.

Furthermore, while the present regime greatly increases the workload for Member States Scientific Authorities, there has never been any significant demand from Member States for an easing of this burden. Indeed, some Member States were applying a similar regime under national law before the first Regulations were adopted at Community level.

With regard to the argument that the SRG may be failing to make negative opinions that are sometimes warranted, it is difficult to see how this can be addressed in legislative terms. The only way would be to impose outright bans on many forms of wildlife trade. This would be unfair on range States that are managing their resources properly, it would not offer any incentive to those who are not and, insofar as it might affect commodities of high economic value (leather, timber etc.) it would have economic impacts in the EU and in the range States concerned. It is best addressed through greater investment in field studies in the range States.

4. OPTIONS FOR MAJOR ISSUES OF SUBSTANCE

The foregoing analysis has identified many areas where there is broad agreement about the intention of the legislation and the policy behind it, but where streamlining or clarification would be of benefit. Essentially, these are technical issues and in many cases an articulation of the problem is itself a significant step towards its resolution. Examples are the treatment of antique worked specimens, the interpretation of the phrase "primarily commercial purposes", the interpretation of the definition of captive-bred and the procedure for amendment of the Annexes, etc.

Beyond these issues, there are six more significant ones where both the Commission and the Member States will have to take policy decisions that will depend on their respective views about the aims of the Regulations and the Convention, as well as the resources they are prepared to commit to its operation. These decisions will also determine whether or not, for instance, the Council Regulation will be re-opened, since most of the other technical problems – even if they require such re-opening for their fully satisfactory resolution – are not of sufficient magnitude in themselves to prompt such a decision.

The six more significant issues are as follows:

- The treatment of CITES-listed species that are also protected by the Birds and Habitats Directives and the alignment of the Annexes with the CITES Appendices;
- The requirement for import permits and/ or second non-detriment findings for Annex B species;
- The merits of intra-Community regulation of trade in Annex B species;
- The regulation of intra-Community trade in Annex A species;
- The regime for personal and household effects; and
- Invasive alien species (IAS).

4.1 ALIGNMENT OF THE ANNEXES TO THE REGULATION WITH THE APPENDICES TO THE CONVENTION

Leaving aside Annex D, which has no equivalent in CITES, the Annexes to the Council Regulation correspond loosely to the Appendices to CITES but there are important differences. The *Vulpes* and *Mustela* fur-bearing species on Appendix III of the Convention for which the Member States have entered a reservation - and which are listed on Annex D – are a special case. All of the other discrepancies relate to taxa that are treated more strictly on the Annexes than on the Appendices. These break down into two categories:

- species that are treated more strictly because of their status in the Birds and Habitats Directives (see Section 3.5 and below);
- Other species where the Community has decided that stricter listings are warranted on conservation grounds, for example:
    - the stricter treatment of *Procolobus pennantii* referred to in Section 3.4.1.1, whereby the entire species is listed on Annex A, whereas only the subspecies *P. pennantii kirkii* is listed on Appendix I;
    - the Ethiopian Wolf, *Canis simensis*, a non-CITES species, which is listed on Annex A;
    - the Walrus, *Odobenus rosmarus*, which is listed on Annex B but is listed on Appendix III; and
    - the Timor sparrow, *Padda fuscata*, a non-CITES species which is listed on Annex B.

4.1.1 SPECIES LISTED ON ANNEX A BY REASON OF THEIR STATUS ON THE BIRDS AND HABITATS DIRECTIVES

When *Regulation 338/97* was proposed, it was the Commission's intention to align it with the existing nature conservation Directives. Accordingly, since the Birds Directive protects *all* European wild birds, it was proposed that all of those that were listed on any CITES Appendix would be placed on Annex A. Similarly, all species listed on Annex IV of the Habitats Directive that were listed on any CITES Appendix automatically qualified for Annex A listing (examples included the wolf, *Canis lupus* and the European lady's slipper orchid, *Cyprepedium calceolus*). The legal justification for this was set out in Article 3(1)(b)(i), which does not refer to the Directives explicitly but allows for Annex A listing of any species "…*which is, or may be, in demand for utilization in the Community or for international trade and which is either threatened with extinction or so rare that any level of trade would imperil the survival of the species*". Many of these taxa would not even remotely meet the criteria for an Appendix I listing on the basis of their status worldwide.[41] However, a number of factors have resulted in a situation whereby this alignment is no longer comprehensive.

- At the time of adoption of *Regulation 338/97*, Council decided that the Annex A listing should not apply to a number of bird species that were only vagrants in Europe and were common in parts of their home range. However, since then the Commission has received legal advice that vagrant birds are not excluded from the protection provisions of the Birds Directive. Consequently, the distinction that Council made between these birds and others – while it may make sense in scientific terms – no longer applies in legal terms.
- The accessions that took place since 1997 have resulted in additions to the list of protected birds and to Annex IV of the Habitats Directive and these are not aligned with Annex A of *Regulation 338/97*.

[41] The listing of the wolf has given rise to an anomaly which could create negative perceptions with third countries. The Annex A listing does not apply to populations of Spain north of the Douro or those of Greece north of the 39th parallel, which are excluded from the scope of Annex IV of the Habitats Directive. It does, however, apply to all non-European populations, even though only those of Bhutan, India, Nepal and Pakistan are listed on Appendix I.

- The Mediterranean Date Mussel, *Lithophaga lithophaga*, was added to Appendix II at CoP 13. This species is listed on Annex IV of the Habitats Directive but is currently only listed on Annex B of the Regulation.
- A number of species included on Appendix III at the behest of Ghana but placed on Appendix A for reasons of consistency have now been removed by Ghana from Appendix III and, therefore, could now be removed from Annex A.

The reason why these apparent anomalies have not been corrected is that Article 19(3) precludes any amendments to Annex A via a Commission Regulation unless they result from CoP decisions. Consequently, amendment of Annex A to reflect these changes would require Council approval. If the Commission decided to open *Regulation 338/97* for other reasons, it could take the opportunity to correct these anomalies. In that event, the operative text of Article 3(1) of the Regulation should also be amended to create an explicit cross-reference with the Directives and to include amendments relating to this within the scope of amendments that can be made by a Commission Regulation.

An alternative approach – which would also require recourse to Council – would be to abandon the approach of listing any such species on Annex A and simply stipulating what is, in fact, the legal situation in any case – namely, that the status of species in the Annexes does not override any prohibitions on their commercial use consequent to their status under relevant EU or national laws. This would facilitate greater alignment of the Annexes with the Appendices. It would also correct the present situation whereby even internal trade in CITES-listed species that are protected under EU law requires issuance of certificates under the Regulation, whereas non-CITES species that are so protected do not require such documentation. However, such an approach may be seen as being less clear in legal terms.

The only other course would be to amend the Directives so that the ban on commercial use of Annex-listed species would not extend to specimens that originated outside the EU. However, some conservationists might be concerned that this would weaken the enforcement of the Directives.

In summary, the options are:

- ***To update Annex A in line with the existing approach and to amend the text of the Regulation so that it is easier to update Annex A in future in this respect;***
- ***To abandon the approach of treating such species more strictly in the Annexes but to balance this with a "disclaimer" in the text; or***
- ***To amend the Birds and Habitats Directives.***

4.1.2 OTHER SPECIES TREATED MORE STRICTLY ON THE ANNEXES THAN ON THE APPENDICES

In 2005, the SRG reassessed the status of non-CITES Annex B species and decided to recommend the deletion or relegation to Annex D of many of them. This recommendation is in the process of being implemented in the context of updating the Annexes after CITES CoP14. However, the SRG reaffirmed the necessity to retain the remainder on Annex B, despite the fact that they are not on Appendix II. Furthermore, most of the Appendix III species that are listed on Annex B have not been assessed.

In the questionnaire that was circulated to Member States prior to the Vilm workshop – and at the workshop itself - some Member States expressed the view that more species should be listed on Annex B. However, the prevailing view was that the Annexes should be brought more into line with the Appendices to free more resources to deal with core CITES concerns. This would also facilitate automatic updating of the Annexes after each CoP. If there were species where the Community felt that stricter treatment was warranted, proposals could be brought forward to the CoP to list such species in the Appendices. However, to date, Member States have not shown any willingness to bring forward such proposals – which would, in any case, require sensitive discussion with range States. It would seem that if this approach is considered worthwhile, the Commission will have to lead by contracting

appropriate experts to draw up such proposals and to engage with the relevant range States on the Commission's behalf. Of course, there is no guarantee that these proposals would be successful. In that event, the Community would have to be prepared to forego the stricter listings if the policy favoured alignment of the Annexes with the Appendices.

Despite these advantages being acknowledged at the time, the climate has changed in the light of CoP 14. There the EU tabled a number of proposals for fish and timber species, only one of which was successful (the European Eel, *Anguilla anguilla*). In the aftermath, serious consideration is being given to the listing of the two shark species proposed – the Spurdog, *Squalus acanthias*, and the Porbeagle, *Lamna nasus* – on Annex B. One Member State had suggested that taxa proposed by the EU for Appendix II listing may be considered to meet the criteria for Annex B and should, therefore, be listed on Annex B as a matter of course.

In summary, there are considerable advantages in bringing the Annexes more into line with the Appendices but this would require a concerted initiative on the part of the Commission, consisting of proposals to delete or "demote" some species and to bring forward CoP proposals for the remainder. However, as CoP 14 has shown, listing proposals are not always successful and the treatment of species that are the subject of unsuccessful proposals is still a matter for debate.

4.1.3 IMPLICATIONS OF NON-ALIGNMENT FOR ADOPTION OF CoP AMENDMENTS TO THE APPENDICES

The inability to give effect to amendments of Appendices I and II adopted at CoPs within the 90-day timeframe stipulated by the Convention is, arguably, one the most serious deficiencies in the Regulations, seen from a purely legal standpoint. On the last two occasions the process took over eight months.

Some CITES Parties avoid this problem in their implementing legislation by simply citing the Appendices and not requiring substantive amendments to their legislation whenever they are changed. For example, in the USA, amendments to the CITES Appendices do not require immediate amendments to the Endangered Species Act but can be published in the Federal Register via a regulatory procedure. The Bahamas is another example of a Party that has an automatic amendment provision. Such a provision is recommended in the CITES Secretariat model law (see Annex 1).

However, this is not possible in the case of the Annexes to *Regulation 338/97*, since Annexes A and B of that Regulation do not correspond exactly to Appendices I and II of the Convention. Instead, the Commission has to undertake a lengthy process consisting of the following steps.

1. In consultation with UNEP-WCMC and the CITES Secretariat, the Commission prepares draft Annexes that give effect to all the substantive changes – including changes in nomenclature - but that must also take account of the different treatment of certain species and the need to adapt annotations to refer to the relevant Annexes of the Regulation, rather than the Appendices of the Convention. This process takes a number of weeks – given other time commitments of the relevant personnel it would be difficult to complete it in less than two weeks.

2. The draft amending Regulation that results is circulated informally among Member States for comment in an effort to ensure that errors of a technical nature do not emerge later. Member States need to be given several weeks to complete this process – three at a minimum. In parallel with this process, the draft can be cleared through the hierarchy in DG Environment, including the Environment Commissioner's Cabinet.

3. The draft can then proceed for consultation with the other Commission services. Normally they have a deadline of three weeks for a reply.

4. Having cleared this stage, the draft – which is still only in English – is sent to the Commission Translation Service. With twenty-three Official Community languages now in existence, this process can take a considerable length of time – at least four weeks, depending on the volume and urgency of other work – even though the substantive amendments to the previous Regulation might be quite small.

5. The Regulation must then go to the Committee convened under *Regulation 338/97* for a formal opinion. As things stand, Member States have a procedural right to a four-week consultation period at this stage. They may choose to waive this right but, given the need for them to check the translations in detail, they are unlikely to do so.

6. Having – hopefully – received a positive opinion from the Member States, the Regulation must be sent to the European Parliament for a minimum of 30 days – a period that is likely to increase in the future. The Parliament does not have any power to amend the substance of the text but it is entitled to verify that, in making the Regulation, the Commission has not exceeded its delegated powers under *Regulation 338/97*.

7. Having been cleared by Parliament, the Regulation must be formally adopted by the College of Commissioners. This is usually done by written procedure – a process that takes ten days.

8. Once the Regulation has been cleared by the College it can proceed to publication in the Official Journal but, depending on backlogs etc., this may not happen at once.

It is clear that there is scope for reducing the eight-month period which has typified the process on the last two occasions. However, with the best will in the world – and in the complete absence of mishaps - it is impossible for the Commission to adopt the necessary amending Regulation within the 90-day timeframe.

Some of the worst consequences of this *inter-regnum* can be avoided by proper application of the Regulations as they stand. For example, Member States could legitimately refuse import permits for commercial imports of Annex B species that have been uplisted to Appendix I on the grounds that they are unable to make a positive non-detriment finding, as required by Article 4(2)(a) *of Regulation 338/97*. Nevertheless, a number of embarrassing and potentially serious scenarios can still occur, including the following:

- Member States are unable to regulate imports of species that have been listed on Appendix II for the first time, even though such species might have been listed on the basis of an EC proposal;

- Where annotations have been amended to remove the requirement for export permits for certain categories of specimens (as happened with orchid hybrids at CoPs 12 and 13), Member States are still obliged to issue import permits that, in turn, require prior sight of export permits – even though the exporting country is no longer obliged to issue these.

During the Vilm workshop, the Commission indicated that they are constrained in their procedures – especially as regards consultation with the Parliament – and that, while they can make every effort to be as efficient as possible, a gap between the entry into effect of the amended Appendices and the corresponding Annexes is inevitable as matters stand.

Even if the Council Regulation were to be amended, it would not be straightforward to come up with a mechanism for addressing this problem. The Vilm workshop suggested that it might be possible for an amended Council Regulation to incorporate some more formal cross-referencing with Appendix I but this is fraught with presentational difficulties that could create considerable scope for confusion in the minds of the public. The taxa that are subject to stricter listings under EC mechanisms are interspersed with those whose listing corresponds to that under the Convention. Only species that are listed on Annex A on the basis of their status under the Birds or Habitats Directives stand out by virtue of the

fact that their names are listed in bold type. In some instances, the stricter listing takes the form of listing an entire higher taxon on Annex A when only some of the lower taxa are listed on Appendix I. For example, the Eastern Red Colobus, *Procolobus pennantii*, is listed on Annex A, whereas only the subspecies *Procolobus pennantii kirkii* is listed on Appendix I. It would be very complicated with such taxa to present the Appendix I species separately from the related Annex A taxa.

Only if the Community is prepared to forego the power to treat some species more strictly than the Convention can this problem be solved. Perhaps, if the stricter listings were retained only for species governed by the Birds and Habitats Directive, such species could be retained in an "Annex A.1". But to go further than this in terms of stricter listings - in a situation where any amendment to Appendix I or II applied automatically to the Regulation without a requirement to publish – would be a recipe for chaos. It should also be pointed out that this discussion has not even considered how reservations in respect of Appendix I or II listings would be treated in such circumstances (although the nature of the decision-making process under the Regulations makes it unlikely that this scenario will ever arise).

Arising from this analysis, the options for a way forward are as follows:

- ***Amend the Council Regulation, bringing the Annexes more in line with the corresponding Appendices and providing that amended Appendices shall apply* mutatis mutandi *without a requirement to publish updated versions; or***
- ***Accept the inevitability of an* inter-regnum *period between the entry into force of new Appendices and new Annexes with the stipulation that the Commission should do everything possible to minimise the length of that period.***

4.1.4 GENERAL CONCLUSIONS

Viewed in terms of the three criteria given at the outset to this report – namely, efficiency, simplicity and conservation benefit, the merits of alignment of Annexes A, B and C with Appendices I, II and III may be regarded as follows.

Efficiency: such an alignment would greatly increase efficiency as it would allow for automatic adoption of CoP amendments to Appendices I and II.

Simplicity: The alignment of the Annexes with the corresponding Appendices would render them much clearer for traders, the European public and range States. However, it could create confusion regarding species protected under EU law that are listed on Annexes B or C in that it would give the impression that commercial trade in wild specimens of such species is permissible. There are three ways of addressing the issue.

- One would be to amend the relevant Directives to exempt specimens of European bird species and species listed on Annex IV of the Habitats Directive that originate from outside the EU from the protection provisions of the Directives. However, this would weaken the Directives in conservation and enforcement terms. Furthermore, the possibility of re-opening of the Directives is one that has recently been rejected by the Commission and the Member States.
- Alternatively, a general stipulation could be inserted in Regulation 338/97 that, where there was a conflict between the provisions of the Directives and those of the Regulations, the stricter rules prevailed in all cases. However, this would be less clear than explicit listing.
- The third option would be to retain the species in Annex A in bold type and allow amendments in respect of such species to be carried out by the Commission.

Conservation implications: Any measure that might weaken the Birds and Habitats Directives or might create confusion regarding the status of the species they protect would have conservation and enforcement implications. There would also be conservation implications in removing other non-CITES species from the Annexes or in transferring them to a lower Annex to correspond with their CITES listing. The Community could always bring forward CoP proposals in respect of such species but this would have resource implications and there is no guarantee that such proposals would be successful.

4.2 IMPORT PERMITS AND/ OR SECOND NON-DETRIMENT FINDINGS FOR ANNEX B SPECIES

Of all the EC's stricter measures, the one that attracts the most attention is set out in Articles 4(1)(a)(i), 4(2)(a) and 4(6).

Condition for issuance of an import permit for specimens of the species listed in Annex A:
Article 4(1)(a) of Regulation 338/97: the competent scientific authority, after considering any opinion by the Scientific Review Group, has advised that the introduction into the Community: (i) would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species; (ii) is taking place: – for one of the purposes referred to in Article 8(3)(e), (f) and (g), or – for other purposes which are not detrimental to the survival of the species concerned.

Condition for issuance of an import permit for specimens of the species listed in Annex B:
Article 4(2)(a) of Regulation 338/97: the competent scientific authority, after examining available data and considering any opinion from the Scientific Review Group, is of the opinion that the introduction into the Community would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade. This opinion shall be valid for subsequent imports as long as the abovementioned aspects have not changed significantly.

Formal import suspensions:
6. In consultation with the countries of origin concerned, in accordance with the procedure laid down in Article 18 and taking account of any opinion from the Scientific Review Group, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community:(a) on the basis of the conditions referred to in paragraph 1(a)(i) or (e), of specimens of species listed in Annex A;(b) on the basis of the conditions referred to in paragraph 1(e) or paragraph 2(a), of specimens of species listed in Annex B; and (c) of live specimens of species listed in Annex B which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span; or (d) of live specimens of species for which it has been established that their introduction into the natural environment of the Community presents an ecological threat to wild species of fauna and flora indigenous to the Community. The Commission shall on a quarterly basis publish a list of such restrictions, if any, in the Official Journal of the European Communities.

These provisions were developed to make sure that the provisions of CITES relating to non-detriment findings (NDF) are met on imports to the EU. Insofar as they relate to Appendix I species, they are similar to the provisions of the Convention itself. However, because Annex A also contains a number of high profile Appendix II species, such as Wolf, *Canis lupus*, and Brown Bear, *Ursus arctos*, these are also affected by Article 4(1)(a)(i) and require second non-detriment findings. Most importantly and far-reachingly of all, Article 4(2)(a) requires the making of a second non-detriment finding for all Annex B species, which includes all Appendix II species that are not already on Annex A, as well as a few Appendix III or non-CITES species.

It is important to separate the requirement for an import permit for Annex B species from that for a second non-detriment finding. The former could exist without the latter (though not vice versa). Enforcement officers find that the former affords prior sight of the export permit. Thus it facilitates checking for fraudulent export permits (the vast bulk of document fraud is associated with export permits from third countries rather than with import permits from Member States). Without this facility, such checking would fall back entirely on Customs staff at the point of entry, who would be left with the responsibility of storing specimens while making a determination on the validity of the export permit. Furthermore, if there is any merit in greater internal regulation of trade in Annex B species (an issue that is discussed in the preceding section), such regulation would require the issuance of import permits as a starting point.

Supporters of the latter aspect of Article 4(2) – the requirement for a second non-detriment finding – argue that, with the level of demand for wildlife goods in the EU, there might otherwise be pressures on even the best-intentioned exporting countries to override their own scientists' conservation concerns. They also point out that, due to weak governance, poverty and the pressure to maximise the short-term gain from Appendix II specimens, many exporting countries fail to make adequate non-detriment findings in many cases – if they make any at all. Nevertheless, these provisions do generate

considerable work for Member States' Authorities in relation to relatively innocuous types of trade like reptile leather products.

They also cause ill feeling among many exporting countries, who would normally expect their exports of Appendix II species to be free of any further restrictions once export permits have been issued. According to CITES Secretariat staff, EU import restrictions contribute to the perception that trade in wild-taken specimens is bad *per se*. Range States do not distinguish between import suspensions made under the Regulations – which relate to individual species/ country combinations – and broader measures like the current bird import ban. Accordingly, they question the *bona fides* of the former and they see both types of measure as being commercially motivated. All that said, it is also true that some staff in range States CITES authorities acknowledge that the threat of import suspensions lends weight to their efforts to restrain Management Authorities from over-exploiting their wildlife resources for the sake of short term gain. In the case of mahogany in Peru, the trade lobby is putting strong pressure on the Government to maximize the short-term yield; the twin threat of an EU negative opinion and/ or a CITES trade ban is the only "brake" that is preventing the Government from yielding to such pressure.

It is pointed out, in defence of the provisions, that they require consultation with the relevant exporting country before negative SRG opinions are published as formal import suspensions. However, the counter arguments are that the negative opinion has immediate effect pending the outcome of the consultation and that relatively few negative opinions are reversed following such a consultation.

In addition to being unpopular with range States, the current system – as we have seen - generates considerable work both for the Commission and for the Member States and would require even greater resources if it was to be implemented in an optimal manner. Without these provisions, the SRG could be dispensed with or its workload greatly reduced, while the duties of the Member States' Scientific Authorities would be reduced to commenting on Annex A imports, exports of indigenous wild CITES species, advice on the status of captive breeding/ artificial propagation, etc. All that said, there has never been any significant demand from Member States for an easing of this burden, except in relation to bulk trade in relatively innocuous products like reptile leather ones.

Even if these provisions are retained, Section 3.8.3 points out that much could be done to improve their implementation in terms of rigour, transparency and courtesy to range States. This would have resource implications for the Commission in particular but would undoubtedly improve the effectiveness and credibility of the Regulations.

Furthermore, if outright removal of the requirement for an import-related non-detriment finding is not favoured, the CITES Secretariat suggested that the EU might look again at the wording of Article 4(1(a)(i) and 4(2)(a) and consider whether it could be applied in an alternative manner consistent with Resolution Conf. 2.11, on trade in hunting trophies.

CITES Resolution 2.11: The Conference of the Parties to the Convention recommends that…(b) in order to achieve the envisaged complementary control of trade in Appendix-I species by the importing and exporting countries in the most effective and comprehensive manner, the Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species, unless there are scientific or management data to indicate otherwise

This wording provides that the exporting country's ruling is accepted unless there is evidence to the contrary. It is less precautionary than the present approach.

It has also been suggested that there should be more synchronicity with the Significant Trade Process. However, one of the crucial differences between the two processes is that, in the case of SRG decisions, *de facto* import restrictions come into effect as soon as a negative opinion is formed - and before consultation with the relevant country - whereas in the Significant Trade Process they represent the end of the process, following a lengthy dialogue with the range States. This precautionary approach in the SRG procedures is designed to forestall a situation whereby 'forewarning' of a negative opinion

might cause additional pressure on populations in the interim; there would be a risk in allowing imports to continue while the decision process to determine whether or not the trade is sustainable is still underway. In addition, the Significant Trade Process is seen by some experts as being too slow to deal with cases of urgent concern. These experts would also argue that, increasingly, it is becoming politicised (for example the resistance to the inclusion of mahogany in the process at the 22nd meeting of the Plants Committee). Nevertheless, in some cases the SRG has refrained from forming a negative opinion because the species was under review in the Significant Trade Process.

In order to further the use of existing multilateral measures such as the Review of Significant Trade process, the CITES Secretariat recommended that the EU bring to the attention of the Animals and the Plants Committees cases where the SRG analysis has indicated potentially inadequate non-detriment findings. For example, there are a number of negative opinions against Guinea in respect of birds of prey. It is suggested that, if the SRG considers these justified, then it should submit them to the Significant Trade Review. In this connection, more country-based Reviews of Significant Trade might be a promising way forward should the holistic review undertaken in Madagascar prove worthwhile. Should that national review process reach a useful conclusion and should more countries be looked at, the reviews prepared for the SRG by UNEP-WCMC (available on the Commission website) would be an extremely useful resource.

The CITES Secretariat also suggested that other CoP Resolutions might be amended to provide a multilateral basis for the SRG's approach in respect of certain species. For example, Resolution Conf. 10.8 (Rev. CoP14) on trade in bears focuses almost entirely on illegal trade. However, it could be amended to encourage the preparation of management plans for bear populations subject to hunting quotas. Equally, Resolution Conf. 14.4 on CITES and the International Tropical Timber Organisation could be expanded to provide guidance on the making of non-detriment findings for timber species.

The options are relatively straightforward:

- ***Maintenance of the status quo;***
- ***Implementation of the present regime in a more pro-active way, taking a more facilitative approach to exporting countries***
- ***Removal of the requirement for import permits for Annex B species;***
- ***Removal of the requirement for import-related non-detriment findings;***
- ***Alignment of import restrictions with the Review of Significant Trade and other multilateral measures; or***
- ***A less precautionary wording for Articles 4(1)(a)(i) and 4(2)(a).***

All but the first two would require amendment of the Council Regulation.

Clearly, the favoured option in terms of **simplicity** – especially for range States – would be to align the requirements for Annex B with those of Appendix II. Insofar as this would greatly reduce the burden for Management and Scientific Authorities, this would be more **efficient** – however it would place an extra load on Customs staff with regard to checking of export documents. The greater risk of fraud would imply that at least the requirement for import permits should be retained in the interest of **conservation effectiveness**. Most EU Scientific Authority staff would go further and favour the status quo – i.e. retention of the requirement for an import-related non-detriment finding. As the use of electronic permitting grows, however, the need for import permits as an anti-fraud measure may decline because it would be easier to access the original export permit in question.

4.3 CONTROL OF INTERNAL TRADE IN ANNEX B SPECIES

The Member States adopt stricter national measures mainly to improve the control on trade in protected species and to gather information on this trade. As far as the registration and/or marking of Annex B-listed specimens is concerned, these types of stricter national measures are seen by the Member States that adopt them as a means to prove the legal origin of the specimens. However, they constitute the SNMs that have generated the most comment – both positive and negative.

Proponents of such measures cite Article 8(5) of *Regulation 338/97*, which allows trade in Annex B specimens only when they have been legally acquired.

> *Article 8(5), Regulation 338/97: The prohibitions referred to in paragraph 1 [regarding commercial use of specimens of Annex A species] shall also apply to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside of the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora*

Interpretation of Article 8(5) of Regulation 388/97 varies between the Member States. It seems to imply that the burden of proof lies with the holder (the Commission has given this advice in the past) but, in at least some Member States, Courts will not accept this without at least some corroborating evidence that the specimen was, in fact, illegal, in other words, that the burden of proof lies with the prosecuting authority.

Even if an import permit is presented, there is no way of knowing that it relates to the specimen under scrutiny because Annex B specimens (with the exception of caviar) are not required to be marked. In addition, if the holder of the specimen is not the original importer, he or she may not have the permit (or may have been told by the vendor that the specimen was captive-bred or artificially propagated).

A concrete example of this problem can be found in the case of birds exported illegally from South America (especially Brazil) into Portugal and the EC: once the birds are in the EC there is no specified format for documents proving legal acquisition. Cases have involved illegal export from Brazil, subsequent illegal import into Portugal and then the movement of the specimens into EC countries to be "laundered". Portugal is moving towards strengthening capacity of CITES staff and training prosecutors and judges in an effort to combat the problem.

As a consequence of this, some Member States require the registration with the CITES Management Authority of some Annex B-listed specimens, whilst others require registers to be kept by the keepers/traders him/herself which can then be checked by enforcement agencies when required. Some Member States require the issuance of their own national documents.

Yet other Member States simply look for additional proof in cases where they have suspicions. In some cases, their national legislation includes a provision similar to Article 8(5) of the Council Regulation stipulating that trade in Annex A and B (and even C and D in some countries) is illegal by default (the Netherlands is an example). This is based on the principle that there are varying degrees of risk: for instance, while certain Chameleon species are very rare and at high risk of mortality, others are quite common across Africa, occurring even in private gardens. Equally, many species – including Dendrobatid frogs – are easy to breed in captivity and can be produced in large numbers but others are endemic to a single range State where they are subject to an export ban so there is a high probability that the founder stock were imported illegally. Accordingly, it is argued by some Member States that a uniform level of control and supplementary documentation requirements are not justified. They do not seek to verify the validity of transactions where the balance of probability favours legality, but they are legally entitled to presume the worst where there are *prima facie* grounds for suspicion.

When there is a need for additional proof, however, many keepers must resort to using breeder's declarations, unofficial registration, sales declaration or confirmation documents, 'home-made' or photocopied documents, etc. Many of these are not official and have not been approved or signed by competent authorities. The diversity of documents makes the verification of the validity of the documents, and therefore the proof of legal acquisition or of legal import, hard to determine both in, and particularly between, Member States.

Against this background, proponents of stricter marking and book-keeping measures argue that they contribute to ease of enforcement controls because documents have to accompany specimens. Thus, it is argued, they facilitate subsequent issuance of permits/ certificates and allow detection of illegal specimens where not detected in other Member States. They also provide legal certainty for the holder. On the other hand, "sceptics" argue that such provisions represent a considerable administrative burden, tying down scarce resources. In a situation where there is no uniformity at EU level, they argue, such a burden is further increased. Some argue that, in practice, specimens of dubious origin have been registered and thus have been effectively "laundered". It has been argued that they represent a barrier to free trade and that breeders simply move to Member States where the legislation is more amenable. Furthermore, as Section 3.1 has shown, such provisions are perceived negatively by traders. They argue further that strengthening of border controls to prevent the illegal import of Annex B species in the first place would be more appropriate and, indeed, this approach is being taken by Portugal at present.

At the Vilm workshop, those Member States with SNMs relating to registration/ marking of Annex B species argued for some kind of uniform system across the Community. It was widely acknowledged that the marking of Annex B specimens would have advantages. However, the problem lies with the implications of marking of the many hundreds of thousands of captive-bred reptiles (such as iguanas), frogs, birds, corals, etc. Nor has consideration been given to the question as to whether or not there would be a corresponding need to mark Annex B plants (at present, artificially propagated Annex A plants do not require marking or certification).

Suggested solutions included:

- The development of a unified documentation system for proof of legal origin of Annex B specimens or guidance regarding the type of documents that are acceptable as proof of legal origin;
- Creation of a list of selected species in Annex B, which should have marking requirements and certificates. (The 'Risk List' developed under contract to the Commission by TRAFFIC in collaboration with the Enforcement Group was proposed as the means of determining which species in Annex B should be treated more strictly. However, it was noted by other members of the group in Vilm that the Enforcement Group's list was not developed for this purpose, that development of an appropriate list would be extremely difficult and could complicate rather than simplify the Regulations, as well as increasing the burden placed on national CITES Authorities).

Member States would have to decide to what extent inclusion of a species on Annex B – as against Annex A – implies a lower conservation risk and, if so, whether or not an equivalent administrative burden is warranted. Opponents of registration and marking of Annex B argue that such a measure is simply disproportionate; that the costs to both Member States Authorities and traders outweigh the conservation risk.

At the Vilm Workshop, some Member States also argued for registration/ book-keeping requirements at EU level – at least for some Annex B species. It was suggested that the administrative burden could be transferred to keepers of specimens via a book-keeping requirement; responsible traders already keep records. In the end, the participants concluded that the best way would be to incorporate such requirements into national legislation, where this has not already been done. Even if it were to be incorporated into the EC Regulations, it was felt that, in practice, implementation would vary considerably from one Member State to another. Furthermore, it could upset systems that are already working in some countries.

It has already been noted that the implementation of the current requirements for Annex A specimens is already a considerable burden for Management Authorities. Given that there are many more species on Annex B and that the volume of specimens in trade is also much greater, any EU-wide internal trade regime will be challenging to implement. Even if the regime is confined to a subset of Annex B species (and leaving aside the added complexity generated by this "fifth annex"), there is likely to be considerable debate over which species should be included in this subset – especially since the level of risk varies hugely from one range State to another.

Nevertheless, despite all these concerns and practical objections, the fact remains that some Member States are managing to implement a registration scheme for some or all Annex B animals and will insist on continuing to do so.

It might be worthwhile, therefore, to undertake an analysis – perhaps as part of a future monitoring contract - to establish the real conservation risk posed by the challenge of determining legal provenance of Annex B specimens. Given that Annex B species are less threatened than Annex A in the first place, it would be important to establish proportionality with regard to this problem before devising a system which could be a massive administrative burden.

As already stated, an alternative or supporting measure to enforce legality of origin for Annex B species would be to amend *Regulation 338/97* to ensure that their possession is prohibited except where it is in accordance with the Regulations and with relevant national laws.

In summary, the options are a combination of some or all of the following:

- ***Provide for compulsory marking and certification of at least some Annex B species – this would require amendment of the Council Regulation;***
- ***Prohibit possession of specimens of Annex B species except in accordance with the Regulations and relevant national laws; or***
- ***Maintain the legislative status quo but improve guidance and information exchange on the types of documentation that might constitute adequate proof of legal acquisition.***

The discussions in the Vilm workshop and the concrete examples presented indicated that the current level of internal regulation of trade in Annex B species does allow at least some traders to evade the law. However, whether the scale of such evasion impedes achievement of the real **conservation objectives** of the Regulations is less clear. In terms of **simplicity**, a regime that distinguishes between some Annex B species and others is the least preferable. However, because the conservation risks are unclear at present, it is not yet evident that **efficiency** is best served by requiring certification for any Annex B species as a matter of course.

4.4 INTRA-COMMUNITY TRADE IN ANNEX A SPECIES

As we have seen in Section 3.2, the issuance of internal trade certificates is regarded by many authorities as more demanding of time and resources than the remaining document issuance tasks. This seems partly due to vast amounts of applications and partly to the time-consuming processing requirements.

The procedure for issuance of internal trade certificates consists of many components, including the requirement for marking (live specimens) and the procuring of proof of legal origin. For commercial trade in live species, the registration of breeders is a further component. These components have the inherent consequence of adding to the combined time and resource consumption for the issuance of internal trade certificates and, therefore, are frequently mentioned as reasons for the vast time and resource consumption for the regulation of internal trade in live reptiles and birds.

Therefore, it is necessary to investigate the costs and benefits of these "extra" components for the overall conservation aims of the Regulations. All respondents from enforcement authorities found the marking requirements "very useful" or "useful" in terms of wildlife trade control, and all but one found the registration of breeders "very useful" or "useful". Nevertheless, the requirements for marking and registration undoubtedly add to the complexity of issuing internal trade certificates and an increased administrative burden for authorities responsible for marking and registration.

It is not easy to think of measures for reducing the time and resource consumption for these tasks and only a few of the authorities mentioned such measures. One Member State used to present all applications for internal trade certificates to the Scientific Authority, but abolished that practice in 2006. Since then, the Member State has experienced a slight reduction in the time and resources spent on issuing internal trade certificates. Another Member State has attempted to increase the use of microchip transponders for the marking of reptiles in order to increase the amount of specimen-specific certificates. Yet another Member State has national legislation specifying marking requirements for national documents of legal origin. These marking requirements follow the requirements for Annex A specimens as specified in the EC Regulations, easing the issuance process for internal trade certificates as all information is contained in the legal origin documents attached to the application.

One option to reduce the workload would be to reconsider the Annex A listing for species that are not listed on Appendix I of the Convention. Section 4.1 highlights the fact that the bulk of such species are those listed on other CITES Appendices whose status under EU nature protection legislation was considered – at the time of adoption of Regulation 338/97 – to warrant their inclusion on Annex A.

It has also been pointed out that difficulties arise with specimens for parts and derivatives because there is no specified standard for marking these. Certainly, for some materials commonly in use, such as ivory and the wood of *Dalbergia nigra* (which is used in guitars), Member States should explore means for standardising marking regimes so that specimen-specific certificates could be used to a greater extent.

A more radical option would be to remove entirely the requirement for individual certificates for captive-bred (and other exempted categories) of Annex A species (as matters stand it does not apply to artificially propagated plants). This approach would, however, encounter opposition. Many Member States that are also range States for Annex A species (e.g. the Saker Falcon, *Falco cherrug*) wish to have as much certainty as possible regarding the proof of legality of origin of species that are commonly in trade – even if, as in this case, the species is, in fact, easy to breed in captivity. In fact, they even distrust the validity of certificates issued for these species by other Member States. Given that the bulk of such Annex A species are on that Annex by virtue of their status under EU Directives (see Section 3.5), they would probably invoke those Directives as a basis for stricter national measures and the Directives offer considerable scope in this regard. If they did, the result would be no less

burdensome than the present situation and it would lose the advantage of mutual recognition of documents. In addition, some Annex A species – tortoises, in particular – are very long-lived. There is a risk that this approach might allow people who have been holding specimens of doubtful origin for some time to launder them. Some Member States point out that, at present, certificates are not required simply for the possession of specimens. They argue that this should be the case so that when purportedly captive-bred specimens are passed on as "gifts", the Management Authority does not have to prove that some form of barter is, in fact taking place. Implicit in this approach would be the retention of certification requirements for Annex A species.

A political problem arises in terms of the fact that the Regulations do not require Registration of Appendix I animals, as set out in Resolution Conf. 12.10. The EU has attracted some criticism from third countries and NGOs in this regard but, until now, it has been able to argue that the requirement for certification of individual specimens compensates for this to some extent. It is likely that such criticism would intensify if this requirement was abandoned.

Furthermore, some Member States want to extend the current marking and certification provisions to at least some Annex B species. It is unlikely that such Member States would agree to the removal of the requirement for certificates in respect of Annex A species.

A compromise option would be to avail of Article 62(1) and Annex X of *Regulation 865/2006*, which allows for derogations from the certification requirements in respect of species that are commonly captive-bred. Some Member States raised this possibility prior to the Vilm workshop, although it does not appear to have been pursued. It was noted that there are many Annex A parrot species, including Scarlet Macaw (*Ara macao*), Military Macaw (*Ara militaris*) and Yellow-headed Amazon subspecies (*Amazona ocrocephala*) among others that are so common in captive breeding that the requirement for certificates could be regarded as onerous.

Another option would be to reverse the logic of Article 62(1) and Regulation 865/2006 so that only sensitive Annex A species that were not common in captive breeding required a certificate. However, there is the risk that such a list would have to be very long if it were to command a broad level of support among the Member States so, once again, the advantage of simplicity would be lost.

In summary, potential ways forward include:

- ***Improved and simplified marking regulations and protocols;***
- ***Developing ways to categorise applications that are referred to the Scientific Authority so that every individual case does not need to be referred;***
- ***Re-considering the Annex A listing of those species that are treated more strictly in the Regulations;***
- ***Addition of more species to Annex X of Regulation 865/2006;***
- ***Amendment of Article 62(1) to reflect a "positive listing" approach whereby only species in the corresponding Annex require certificates;***
- ***Removal of certification requirements for exempted specimens of Annex A species;***
- ***For those species where certification requirements are retained, such requirements would also apply to simple possession.***

Those arguing for a lighter regime point out that the bulk of trade in specimens of Annex A animals is in species that are easy to breed in captivity, that the certification process consumes vast amounts of time, that the marking process is fraught with practical problems and that the requirements concerning proof of legal origin of founder stock (which are less of an issue in practice with Annex B species because they do not have to be individually certified) are unrealistic.

The contrary view is that, even with many species that are easy to breed in captivity, there is ample scope for laundering of specimens taken illegally from the wild and that, ideally, all holders of Annex A animals should be required to obtain certification so that legality of origin could be determined once

and for all. This would also close off the loophole of "gifts" that are, in fact, a form of illegal bartering. While it is true that transfer of source W, F or R specimens – even as gifts – requires issuance of certificates under Article 9 of the Council Regulation, there still remains the possibility of evading the prohibition on commercial exchange of such specimens.

These are both radical options and they both have merits as well as pitfalls. The Commission and the Member States should not rule them out. However, if the preference is for a "middle ground", then that is likely to centre around Article 62(1) and Annex X of *Regulation 865/2006.*

In terms of **simplicity**, the abolition or scaling back of the requirement for internal trade certificates has obvious attractions. However, when it comes to balancing **efficiency** and **conservation effectiveness**, it is difficult to see how the requirement can be avoided entirely for species that are not common in captive breeding.

4.5 PERSONAL AND HOUSEHOLD EFFECTS

A number of Member States and others have raised issues relating to personal and household effects. The provisions are set out in detail below but they may be summarised here as follows:

- Article 2(j) of *Regulation 338/97* defines the term;
- Article 7(3) of that Regulation provides for derogations concerning them and mandates the Commission to make Regulations setting these out in detail; and
- Chapter XIV (Articles 57 and 58) of *Regulation 865/2006* sets out the current version of the detail of the derogations - under this provision, import permits are always required for Annex A specimens except in the case of someone returning from prolonged residence abroad but, in the case of Annex B specimens only, there is no requirement for an import permit.

Article 2(j) Regulation 338/97: 'personal or household effects` shall mean dead specimens, parts and derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels.

Article 7(3) Regulation 338/97: By way of derogation from Articles 4 and 5, the provisions therein shall not apply to dead specimens, parts and derivatives of species listed in Annexes A to D which are personal or household effects being introduced into the Community, or exported or re-exported therefrom, in compliance with provisions that shall be specified by the Commission in accordance with the procedure laid down in Article 18.

Article 57 of Regulation 865/2006

1. The derogation from Article 4 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale.
That derogation shall only apply to specimens, including hunting trophies, if they meet one of the following conditions:
(a) they are contained in the personal luggage of travellers coming from a third country;
(b) they are contained in the personal property of a natural person transferring his normal place of residence from a third country to the Community;
(c) they are hunting trophies taken by a traveller and imported at a later date.
2. The derogation from Article 4 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens of species listed in Annex A thereto where they are introduced into the Community for the first time by a person normally residing in, or taking up residence in, the Community.
3. The first introduction into the Community of personal or household effects, including hunting trophies, by a person normally residing in the Community and involving specimens of species listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that the original of a (re-)export document and a copy thereof are presented.
Customs shall forward the original in accordance with Article 45 of this Regulation and return the stamped copy to the holder.
4. The reintroduction into the Community, by a person normally residing in the Community, of personal or household effects, including hunting trophies, that are specimens of species listed in Annex A or B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that one of the following is presented:
(a) the customs-endorsed "copy for the holder" (form 2) of a previously used Community import or export permit;
(b) the copy of the (re-)export document referred to in paragraph 3;
(c) proof that the specimens were acquired within the Community.
5. By way of derogation from paragraphs 3 and 4, the introduction or re-introduction into the Community of the following items listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation of a (re-)export document or an import permit:
(a) caviar of sturgeon species (Acipenseriformes spp.), up to a maximum of 250 grams per person;
(b) rainsticks of Cactaceae spp., up to three per person;
(c) dead worked specimens of Crocodylia spp., excluding meat and hunting trophies, up to four per person;
(d) shells of Strombus gigas, up to three per person.

Article 58

1. The derogation from Article 5 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale.
That derogation shall apply to specimens only if they meet one of the following conditions:
(a) they are contained in the personal luggage of travellers going to a third country;
(b) they are contained in the personal property of a natural person transferring his normal place of residence from the Community to a third country.
2. In the case of export, the derogation from Article 5 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens of species listed in Annexes A or B to that Regulation.
3. The re-export, by a person normally residing in the Community, of personal or household effects, including personal hunting trophies, that are specimens of species listed in Annexes A or B to Regulation (EC) No 338/97 shall not require the presentation to customs of a re-export certificate, provided that one of the following is presented:

(a) the customs-endorsed "copy for the holder" (form 2) of a previously used Community import or export permit;
(b) the copy of the (re-)export document referred to in Article 57(3) of this Regulation;
(c) proof that the specimens were acquired within the Community.
4. By way of derogation from paragraphs 2 and 3, the export or re-export of the items listed in points (a) to (d) of Article 57(5) shall not require the presentation of a (re-)export document.

The provisions in the Convention are different.

Article VII-3-b:
'The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where: (…)
(b) in the case of specimens of species included in Appendix II:
(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;
(ii) they are being imported into the owner's State of usual residence; and
(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;
unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.'

CITES Resolution 13.7: The Conference of the Parties to the Convention decides that the term 'personal or household effects' contained in Article VII, paragraph 3, means specimens that are: a) personally owned or possessed for non-commercial purposes; b) legally acquired; and c) at the time of import, export or re-export either: i) worn, carried or included in personal baggage; or ii) part of a household move.
The Conference of the Parties to the convention decides also that, for the purpose of this Resolution, the term 'tourist souvenir specimen' shall apply only to personal and household effects acquired outside the owner's state of usual residence and not be applied to live specimens.

In accordance with the provisions of CITES, in the case of import, under Article VII-3, the provision of Article IV shall not apply to specimens that are personal or household effects, meaning that the import of a specimen of Appendix II which is a personal or household effect does not require prior presentation of the export permit or re-export certificate (Article IV-4).

An exception to this exemption is provided for in Article VII-3(b) which outlines when the exemption does not apply. In these circumstances, Article IV-4 applies (i.e. prior presentation of export permit or re-export certificate is required for the import of Appendix II specimens that are personal or household effects). However if the Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens, the exemption provided for in Article VII-3 of CITES applies and there is no need of the prior presentation of export or re-export documents for the import of Appendix II specimens that are personal or household effects.

The derogations are complex: the fact that one Member State publishes an 8 page information document explaining the derogation regarding household effects would suggest that they are indeed overly complex. They are seen as generating a large administrative burden and ineffective use of enforcement efforts and capacities.

Some stakeholders are concerned that the personal or household effects provisions can be abused to smuggle specimens (especially personal effects of travellers, rather than goods that are part of a household move). This is most likely to arise with specimens of Annex A species, which tend to be very valuable in relation to their bulk. However, as matters stand, these require an import permit. Nevertheless, there are circumstances, even with Annex B species, where there are valid conservation concerns – hunting trophies of Lion (*Panthera leo*) from Ethiopia or tusks and carvings of Narwhal (*Monodon monoceros*), for example. In both these instances, the SRG has formed negative opinions but these have no impact on the personal effects trade because there is no requirement for import permits.

On the other hand, the Enforcement Group has noted that casual imports by holidaymakers account for a high proportion of confiscations by Customs staff but that – except in the case of very high value goods of major conservation significance – they may not be the most serious "real" enforcement problem. Holidaymakers are a "soft target" for enforcement staff, whereas really determined and

organised criminals smuggling goods in commercial quantity can be more difficult to catch. In some cases – for example, shells of Giant Clam, (*Tridacna gigas*) or Queen Conch (*Strombus gigas*), the souvenir is merely a by-product of the valued commodity (the meat). A disproportionate amount of distress can be caused by seizing objects that are bought in ignorance but in good faith and that have little detriment to the conservation status of the species.

4.5.1 DEFINITION OF PERSONAL AND HOUSEHOLD EFFECTS

Article 2(j) Regulation 338/97: 'personal or household effects` shall mean dead specimens, parts and derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels.

The definition of personal and household effects is open to wide interpretation. It causes some problems in day-to-day work for Customs and Management Authorities as to whether or not an item is considered as being a personal or household effect. The concerns relate specifically to the clarification of what constitutes 'intended to form' and 'normal goods and chattels'. There seems also to be confusion between 'personal or household effects' and tourist souvenirs.

It would appear that the definition given in CITES Resolution Conf.13.7 is much clearer than the one given in the EC Regulation.

CITES Resolution 13.7: The Conference of the Parties to the Convention decides that the term 'personal or household effects' contained in Article VII, paragraph 3, means specimens that are: a) personally owned or possessed for non-commercial purposes; b) legally acquired; and c) at the time of import, export or re-export either: i) worn, carried or included in personal baggage; or ii) part of a household move.
The Conference of the Parties to the convention decides also that, for the purpose of this Resolution, the term 'tourist souvenir specimen' shall apply only to personal and household effects acquired outside the owner's state of usual residence and not be applied to live specimens

Resolution Conf.13.7 mentions a condition that is not mentioned explicitly under *Regulation 338/97*: namely that, according to the CITES Resolution, personal or household effects must be legally acquired.

The definition in *Regulation 338/97* does not necessarily need to be changed (although this could be done if the Regulation is re-opened). It would be sufficient to clarify it via a common interpretation by the Committee that the CITES definition and criteria apply also in the EU.

4.5.2 RESIDENCY IN THE COMMUNITY FOR THE PURPOSES OF THE DEROGATIONS APPLICABLE TO PERSONAL AND HOUSEHOLD EFFECTS

Although questions had been raised about the definition of residency for the purposes of the Regulations, the Vilm Workshop noted however that this issue had already been qualified through Article 1(5) of *Regulation 865/2006*. It was concluded that the definition given was acceptable and sufficient.

Art 1(5) of Regulation 865/2006: 'a person normally residing in the Community' means a person who lives in the Community for at least 185 days in each calendar year because of occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

4.5.3 ARTICLES 57(3) AND 57(4) OF REGULATION 865/2006

Article 57(3) Regulation 865/2006: The first introduction into the Community of personal or household effects, including hunting trophies, by a person normally residing in the Community and involving specimens of species listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that the original of a (re-) export document and a copy

thereof are presented.

Article 57(4) Regulation 865/2006: The reintroduction into the Community, by a person normally residing in the Community, of personal or household effects, including hunting trophies, that are specimens of species listed in Annex A or B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that one of the following is presented:
(a) the customs-endorsed 'copy for the holder' (form 2) of a previously used Community import or export permit;
(b) the copy of the (re-)export document referred to in paragraph 3;
(c) proof that the specimens were acquired within the Community.

According to those provisions, the first introduction and the reintroduction into the Community, by a person normally residing in the Community, of Annex B specimens that are personal and household effects, including hunting trophies, do not require the presentation of an import permit if:

- the original of a (re-)export document and a copy thereof is presented (in the case of a first introduction) or
- a valid copy of an import, export or re-export document, or proof that the specimens were acquired within the Community, is presented (in the case of a reintroduction).

The provisions of CITES concerning the import of Appendix II specimens that are personal or household effects are different. Under Article VII(3) the provision of Article IV shall not apply to specimens that are personal or household effects, meaning in the case of import that the import of a specimen of Appendix II which is a personal or household effect does not require prior presentation of the export permit or re-export certificate (Article IV(4)). However, an exception to this exemption is provided for in Article VII(3)(b) which outlines when the exemption does not apply.

Article VII(3)(b) CITES: The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where: (…)
(b) in the case of specimens of species included in Appendix II:
(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;
(ii) they are being imported into the owner's State of usual residence; and
(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;
unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.'

In effect, the Regulations require export permits for Annex B species taken from third countries; the Convention requires them in some cases and waives the requirement in others. Therefore,, the Regulations are stricter.

The question remains, however, whether or not the Regulations should be brought into line with the Convention, so that not all Annex B specimens require export permits. This would reduce the burden for Customs personnel. However, it faces the same problem that those personnel raised with regard to the more general derogations discussed in the next subsection – namely, that it would increase the scope for public confusion. Indeed, it could be argued that the provisions in the Convention, although less strict, are more complicated and more difficult to understand or apply. On the other hand, it has also been argued that adoption of the regime laid down in the Convention would at least mean that the same rules would apply wherever the tourist travelled and he/ she would be at less reisk of receiving advice in the country of destination that conflicted with EU rules.

The options are:

- ***To maintain the status quo; or***
- ***To amend the regime governing import of personal effects to bring it into line with the Convention (this could be done through amendment of the Commission Regulation).***
  In addition, the definition could be simplified, ideally through amendment of the Council Regulation.

4.5.4 ARTICLES 57(5) AND 58(4) OF REGULATION 865/2006

Article 57(5) Regulation 865/2006: By way of derogation from paragraphs 3 and 4, the introduction or re-introduction into the Community of the following items listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation of a (re-)export document or an import permit:
(a) caviar of sturgeon species (Acipenseriformes spp.), up to a maximum of 250 grams per person;
(b) rainsticks of Cactaceae spp., up to three per person;
(c) dead worked specimens of Crocodylia spp., excluding meat and hunting trophies, up to four per person;
(d) shells of Strombus gigas, up to three per person.

Article 58(4) Regulation 865/2006: By way of derogation from paragraphs 2 and 3, the export or re-export of the items listed in points (a) to (d) of Article 57(5) shall not require the presentation of a (re-)export document.

Resolution Conf.13.7 differs slightly.

Resolution Conf. 13.7: …Parties shall:…(b) not require export permits or re-export certificates, for personal or household effects which are dead specimens, parts or derivatives of Appendix-II species except:…(ii) for the following, where the quantity exceeds the specified limits:
- caviar of sturgeon species (Acipenseriformes spp.) – up to a maximum of 250 grams per person (subsequently amended to 125 grams at CoP14);
- rainsticks of Cactaceae spp. – up to three specimens per person;
- specimens of crocodilian species – up to four specimens per person;
- queen conch (Strombus gigas) shells – up to three specimens per person;
- seahorses (Hippocampus spp.) – up to four specimens per person; and
- giant clam (Tridacnidae spp.) shells – up to three specimens, each of which may be one intact shell or two matching halves, not exceeding 3 kg per person;

When the Commission proposal for what became *Regulation 865/2006* was under discussion in the Committee, Member States expressed a preference for a more limited form of the derogation for crocodilian specimens. The derogations for seahorses and clams – which were agreed only at CoP 13 – will be incorporated into an amending Regulation.

No action is required here except for the amendment process to take its course.

During the Vilm workshop, Working Group 2 suggested that in the specific case of caviar the derogation under Article 57(5) of *Regulation 865/2006* (allowance of 250 grams of caviar per person) is being abused through buses coming into the EC with passengers each holding one 250 gram tin. This allowance was subsequently revised at CoP14 to 125 grams.

To conclude, the options are:

- ***to maintain the status quo, and see whether the reduced allowance resolves the abuse of the derogation; or***
- ***to remove the derogation for caviar, via amendment of Regulation 865/2006.***

At a more general level, as we have seen in Section 3.2, Customs staff were unhappy about these derogations in general. Although they were intended to minimise technical offences and facilitate benign trade in personal effects, some felt that they added to the complexity of the Regulations and increased the scope for public confusion. On the other hand, as has been pointed out, at least in the case of shells and rainsticks, these are by-products and regulation of these categories of souvenirs could be seen as excessive.

Therefore, a further option would be to remove these derogations entirely.

4.5.5 ARTICLE 58(2) OF REGULATION 865/2006

Article 58(2) Regulation 865/2006: In the case of export, the derogation from Article 5 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens of species listed in Annexes A or B to that Regulation.

CITES Article VII(3) and Resolution Conf.13.7 do not seem to exclude exports from the derogation from the normal requirements for export and re-export of Appendix I and Appendix II specimens which are personal or household effects. However, given the small number of Annex A and B specimens in the Community – and the fact that most of the Annex A species are protected by European law – it is understandable that the Regulations take a stricter approach.

No action is required here.

4.5.6 RE-SALE OF PERSONAL AND HOUSEHOLD EFFECTS

The first Commission implementing Regulation – Regulation 939/97 – was amended after CoP 10 to explicitly preclude resale of personal effects. This was done because of fears on the part of some Member States that the CoP decision to allow export of worked ivory from Zimbabwe for non-commercial purposes could be abused if tourists bought pieces which they then sold on after their return to the EU. However, some Member States now take the view that the sale restrictions for personal or household effects may be unduly restrictive.

Working Group 3 at the Vilm workshop also noted that different Member States interpret and implement this prohibition differently; some never allow sale, but some would allow sale later on. Moreover, Some Member States work on the principle that the prohibition of commercial use for personal or household effects only applies so long as the specimens remain under the possession and control of the original importer or (re)exporter - not, for example, when they are given away or inherited.

The provision that is now Article 57(1) of Regulation 865/2006 was first formulated in response to the concerns about Zimbabwean ivory referred to above. This was done in order to prevent such ivory from being re-sold. However, ten years on, it is quite clear that some Member States do not interpret it in this manner and it would be appropriate, even on these grounds, to re-consider its value.

Supporters of these provisions are concerned that the commercial use of specimens might increase demand in the range State (which was essentially the argument advanced with respect to ivory from Zimbabwe). They argue that, in return for allowing lighter procedures in this area, the Regulations are entitled to impose reciprocal restrictions. Those favouring a more liberal approach would argue that these lighter procedures are not so much a concession to the holders of such specimens as a measure to free up administrative resources from controlling a type of trade that carries a lower risk (albeit with exceptions).

On the other hand, Working Group 2 took the view that the current provisions lead to unnecessary burden on trade that is of little conservation concern. This Working Group described three scenarios which need to be considered in relation to personal effects:

- people who bring personal or household effects in to the EC and keep them;
- people who intend initially to keep them but decide later to sell them for various reasons (e.g. moving to a smaller residence after retirement); and
- people who bring them fraudulently, in order to sell them.

The issuing of a transferable Personal Effects Certificate was one suggested solution here. However the WG2 considered that such certificates would not be needed because the issue could be dealt with under

Article 8 and with internal trade certificates. Therefore no change would be needed in the EC Regulations.

Working Group 2 considered that Article 57(1) *Regulation 865/2006* is not appropriate as it stands; that it should allow the sale of former personal or household effects under certain circumstances. The Working Group also noted that Annex A specimens brought in to the EU as personal effects, and offered for sale, may be less of an issue as enforcement officers can more easily detect these transactions. Sales of Annex B specimens are however less easy to detect.

In summary, the options are:

- ***to maintain the status quo; or***
- ***to clarify the position in the Commission Regulation regarding the re-sale of personal and household effects.***

4.5.7 RETROSPECTIVE ISSUANCE OF DOCUMENTS FOR PERSONAL AND HOUSEHOLD EFFECTS

CITES Resolution Conf.12.3 (Rev. CoP 13) provides for issuance of retrospective permits for personal and household effects in certain circumstances and subject to certain conditions. Similar provisions are missing from *Regulation 865/2006*. However, they are among the CoP 13 measures that will feature in an amended Regulation.

No action is required here except for the amendment process to take its course.

4.5.8 HUNTING TROPHIES

> *Article 57(1)(c), Regulation 865/2006:*
> *1. The derogation from Article 4 of Regulation (EC) No 338/97for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale. That derogation shall only apply to specimens, including hunting trophies, if they meet one of the following conditions:…*
> *(c) they are hunting trophies taken by a traveller and imported at a later date.*

This provision was first inserted into *Regulation 1808/2001*. The prevailing view at the time was that hunting trophies should be regarded as personal effects. The purpose of this provision was to make an exception to the requirement that personal effects must be part of the traveller's luggage, since hunters often have to leave their trophy behind to be cured before it can be imported into the Community.

Since then, the provision has attracted concerns over its possible conservation impact. Some NGOs sought its deletion from the draft Regulation that became *Regulation 865/2006* but neither the Commission nor the Member States agreed. The concern arises because it can happen that the SRG forms a negative opinion on scientific grounds but the main type of specimens in trade can still be freely imported as personal effects. For example, the current negative opinion for African Lion, *Panthera leo*, from Ethiopia cannot be enforced. In the light of this, some Member States re-stated the proposal to delete this provision in the lead-up to the Vilm workshop. Some, who are opposed to trophy hunting on principle would favour exclusion of such specimens from the scope of the personal effects derogation entirely.

However, it should be noted that the problem of Appendix II species that are the subject of negative SRG opinions entering the Community as personal effects is not confined to hunting trophies. For example, when the SRG formed a negative opinion in respect of Narwhal, *Monodon monceros*, from Greenland, the traders there indicated that they were not unduly concerned because the bulk of the trade was in tourist souvenirs, which would not be affected by the measure. In any case, the removal of

Article 57(1)(c) would not automatically prevent the import of all hunting trophies if they could be prepared for the traveller in time for his or her departure.

Of course, one solution would be to delete the personal effects derogations entirely in respect of tourist souvenirs (household effects are a different matter). Some might see this as disproportionate but removal of this derogation – if it is coupled with an expanded list of specimen types that do not need any documentation at all – might have the merit of simplicity.

One other possible solution – which could be implemented via the Commission Regulation – would be to make a provision excluding species of conservation concern from the derogation. It might not be possible to do this for species that are merely the subject of negative SRG opinions but it should be possible to do it for species/ countries that are the subjects of formal import suspensions and, indeed, it would be against the spirit of such suspensions if personal effects could continue to be imported. However, it would place an extra burden on Customs because they would be obliged to check whether or not the specimen was one that was covered by a suspension. In addition, it should be borne in mind that some species that are the subject of derogations that remove the need for any documentation are also the subject of import suspensions from some range States; Giant Clams for example. Either these broader derogations would have to be dropped or else the Community would have to tolerate the unimpeded entry of these specimens. However, in the latter case, given that the specimens concerned are by-products of a more lucrative trade, this need not be a serious concern. A more pressing practical problem could arise in the case of Ramin (*Gonostylus* spp.), for example. This timber has been the subject of negative opinions, all finished products are covered by the Appendix II listing and it is popular for carvers so there is a likelihood that tourist souvenir imports would be affected if the approach suggested here were to be adopted. The derogation in respect of caviar – if it is retained - could also be affected by such an amendment.

The options, therefore, are as follows:

- ***Exclude hunting trophies from the personal effects derogation;***
- ***Delete the provision whereby hunting trophies may be imported after the traveller has returned;***
- ***Removal of the personal effects derogations – at least for tourist souvenirs;***
- ***maintain the status quo; or***
- ***amend the Commission Regulation so that the derogations for personal effects do not apply to species/ countries that are the subjects of formal import suspensions.***

4.5.9 DISCUSSION

The issue of personal effects has several facets. Some of these are technical and can be easily resolved. Forthcoming amendments to Regulation 865/2006 will also address some. However, beyond these, there are more serious issues about which opinion is more deeply divided. Among the provisions affected by these divisions are:

- The possibility of easing the regime to bring it more into line with that set out in the Convention;
- The specimen types that are the subject of broader derogations so that they do not need any documentation at all; and
- The treatment of hunting trophies and other types of personal effects where there are demonstrable conservation concerns.

On the one hand, some stakeholders remain nervous about the extent to which even the existing regime – as well as any further relaxation of the provisions - could facilitate detrimental trade. Customs officials are also concerned that the present regime is confusing for tourists and could lead to offences that are committed through ignorance. They would prefer a regime that errs on the side of strictness but also has the merit of simplicity.

On the other hand, many Management Authorities are aware that tourists are a "soft target" in enforcement terms, that many of the goods they bring in are of marginal conservation significance and

that they can easily divert enforcement resources away from more determined and more ruthless smugglers. They are also concerned that the Regulations should not be seen to operate in a manner that is petty or causes undue distress to the public.

Therefore, the issue of personal and household effects – and, in practice, most of the concerns relate to personal effects in travellers' luggage – is one of those where the Community is at a crossroads and must reflect on how it can best go forward.

In terms of the criteria of **efficiency and simplicity**, it can be argued that the present regime which treats personal effects derived from Annex A and B species in a uniform manner is the correct one – the provisions in the Convention would require more checking by enforcement staff since they take into account country of origin and whether or not the specimens pre-date the entry into force of the Convention in that country. The derogations contribute to efficiency – at least in principle – since most of them relate to types of specimens of low conservation concern. The prohibition on re-sale is not warranted by reference to these criteria. Furthermore, the fact that all Annex B specimens are treated the same way and that authorities do not need to check if the relevant species is subject to an import suspension is, arguably, simpler and more efficient. Nor do these criteria justify the treatment of hunting trophies differently from other personal effects.

On the other hand, it could be argued that the **conservation objectives** of the Regulation could be better achieved by reducing the number of derogations (for caviar, for example) or eliminating them entirely and by taking into account the opinions of the SRG regarding Annex B specimens, as reflected in import suspensions. The prohibition on resale could be argued as justified, since its absence might (theoretically) encourage more trade in "tourist souvenirs". On the other hand, these measures would create more work for licensing and enforcement staff and divert resources from what are, perhaps, more pressing issues.

4.6 INVASIVE ALIEN SPECIES

In addition to their primary function of regulating trade in endangered or "at risk" wild fauna and flora, the Regulations are also intended to address the issue of IAS.

Article 3(2)(d) Regulation 338/97 provides for the inclusion in Annex B of: species in relation to which it has been established that the introduction of live specimens into the natural habitat of the Community would constitute an ecological threat to wild species of fauna and flora indigenous to the Community[42].

Article 4(6)(d) Regulation 338/97: In consultation with the countries of origin concerned, in accordance with the procedure laid down in Article 18 and taking account of any opinion from the Scientific Review Group, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community: of live specimens of species for which it has been established that their introduction into the natural environment of the Community presents an ecological threat to wild species of fauna and flora indigenous to the Community.

Article 9(6) of Regulation 338/97: Under the procedure laid down in Article 18, the Commission may establish restrictions on the holding or movement of live specimens of species in relation to which restrictions on introduction into the Community have been established in accordance with Article 4(6).

The first problem that arises with these provisions is their inclusion in a Regulation whose primary focus is species that are at risk through international trade. This means that the former category of species – when included in Annex B – can inadvertently be protected by implementing measures in Member States that are designed to protect the bulk of Annex B species. Even some of the provisions in *Regulation 338/97* suggest that the application of Annex B to IAS was overlooked when framing some provisions. For instance, Article 8(5) of *Regulation 338/97* allows for the sale of species in Annex B if they were legally acquired. This would therefore apply to species listed because they are invasive, which could create a serious problem if it were followed to the letter. At the Vilm Workshop, it was suggested that this confusion would be reduced if IAS were included in a separate annex but this would require amendment of the Council Regulation and such an amendment would not address the other problems identified with the current legislation.

The second problem is the perceived difficulty in getting an invasive species listed in the Annexes. The wording of Article 3(2)(d) places the burden of proof on the proponent of the listing and does not allow for pre-emptive listings of potential IAS except on the basis of exhaustive bioclimatic analysis, such as was done for the Painted turtle, *Chrysemys picta*, where Adrados and Griggs (2002)[43] compared its distribution within its native North American range with that of the related Red-eared slider, *Trachemys scripta elegans*, which had already been listed on Annex B as an IAS for some time. Without such analysis – which would be difficult to carry out over the entire range of potential IAS - it is very difficult to demonstrate that the terms of the provision have been met unless the species is already causing a problem in the Community – in which case the listing has less effect (although some Member States contend that, even then, it is easier – procedurally and politically – to get support for possession and internal trade controls, and eradication measures).

Furthermore, the Regulations contain an assumption that IAS can only come from outside the Community as a whole; they do not address the problem of species that are indigenous to one part of the Community (where they may even be under threat) but are IAS in another. In addition, it does not address IAS which are more likely to be introduced accidentally, rather than as tradable exotic species.

[42] Species listed are: the Red-eared Slider (*Trachemys scripta elegans*); the American Bullfrog (*Rana catesbeiana*); the Painted Turtle (*Chrysemys picta*); and the American Ruddy Duck (*Oxyura jamaicensis*).

[43] Adradros, L.C., and L. Griggs (eds) (2002) Study of application of EU wildlife trade regulations in relation to species which form an ecological threat to EU fauna and flora, with case studies of American Bullfrog (*Rana catesbeiana*) and Red-eared Slider (*Trachemys scripta elegans*). Study report to the European Commission. AmphiConsult, Denmark.

For all of these reasons, Adrodos and Griggs concluded that the Regulations were not the most appropriate mechanism for dealing with IAS and went on to suggest other mechanisms, based on an examination of the situations in Australia and New Zealand, where there are significant problems with IAS. However, they did acknowledge that the present provisions should remain in place and continue to be used, pending the enactment of such measures.

The Commission is currently assessing how it can develop a better policy framework for invasive species, including the possibility for development of a new Directive (although the Commission has a policy of not proposing new legislative measures unless they are absolutely necessary). In June 2006 a scoping study[44] carried out by the Institute for European Environmental Policy (IEEP) was submitted regarding future options. The scoping study provides a comprehensive review of current legislative tools regarding invasive species. The report of the study serves as a background document for development of an EU strategy on invasive alien species as called for in the Biodiversity Communication. The main issues identified in the IEEP Study relating to the current report are:

- Article 4(6) of *Regulation 338/97* has been demonstrated to be inadequate to deal with the ecological impacts of two of the species listed.
- Article 9(6) of *Regulation 338/97*, which provides the possibility of establishing restrictions on the holding or movement of live specimens of species listed under Article 4(6), has not been implemented (however, the Vilm Workshop noted that this would be of limited use in the case of species that are indigenous in one part of the Community and invasive in another).
- Where species are known to be invasive in one Member State, there are no European-level restrictions on further sale or distribution within the Community. In the case of the four species that are banned from import into Community territory under Article 4(6) no measures have been applied to restrict movement or trade of specimens already within the Community, which means that further spread of these known IAS may continue unchecked.

The IEEP report suggested, *inter alia*, that a review of species lists under the wildlife trade Regulations should be carried out as a priority on the grounds that the Regulations could be made more effective through inclusion of key risk species under Article 4(6). However, as has already been pointed out, the number of species that could be included on Annex B on this basis – and where the listing would have any real effect – would be small. The report also suggested making use of Article 9(6) of *Regulation 338/97* in order to have controls on holding and movement of high risk species with a view to reducing further their spread or establishment in the Community.

Some Member States proposed that there could be different regimes across the EC depending on whether a species is considered to be high risk or not for specific Member States. However it was concluded that this was not advisable in terms of simplicity, practicality and effectiveness.

In the long term, both the IEEP report and the Adrados and Griggs study – as well as the conclusions of the Vilm Workshop - argue for the development of a specific EC legislative instrument and establishment of a European-level authority for IAS. However, bringing forward such legislation and subsequent servicing of such an authority would have resource implications for Member States.

Accordingly, the options are as follows:

- ***Ideally, a separate legislative framework should be developed for addressing all IAS issues, including the need to minimize accidental introductions, the need to alert Member States when escapes occur and the need to address species that are indigenous in one part of the Community but invasive in another.***
- ***In the meantime, Member States should be encouraged to collaborate on a voluntary basis – including via national legislation – and the scope for greater use of the existing provisions of Regulation 338/97 – including Article 9(6) - should be explored.***

[44] Miller, C., Kettunen, M., Shine, C., *Scope Options for EU Action on Invasive Alien Species (IAS)*, Final Report for the European Commission, Institute for European Environmental Policy (IEEP), Brussesl, Belgium, June 2006.

When assessed by reference to the criterion of **efficiency**, the present regime is clearly unsatisfactory in that it is difficult to list species on a precautionary basis and many potential listings would not be effective as the species concerned are already indigenous in some part of the Community or are more likely to be spread by accident than by design. On the other hand, the creation of a Europe-wide authority for this issue will have resource implications. If this is seen as an issue, consideration could be given to adapting the remit of the Habitats and Ornis Committees convened under the Habitats and Birds Directives respectively.

While there is a superficial **simplicity** implicit in not adding to the number of EU conservation laws, the addressing of IAS in a legislative instrument whose primary focus is "at risk" species is confusing and complicates implementation in the Member States.

In terms of **conservation effectiveness**, a dedicated legal instrument is undoubtedly the clearest, most flexible and most comprehensive way of addressing the issue in a context where internal border controls do not apply.

4.7 DISCUSSION

The factors that will ultimately determine the Community's response to these issues may be summarised as follows:

- The amount of work and resources required for the various legislative and non-legislative options;
- The increase or decrease in workload that would result both for the Commission and for Member States;
- The economic impact of such measures – as against the general public's desire to be seen to "do the right thing" in terms of the protection of charismatic species; and
- The conservation benefits or risks.

Of these, perhaps the last is the least certain. As already stated, much of the pressure for stricter regulation arises from the perception that the existence of a loophole means that the loophole will always be exploited and that the result will inevitably be detrimental in conservation terms. Neither of these assumptions is automatically true. Therefore, the Commission should reflect on the real risks and benefits of any radical changes to the present regime – either by way of lightening it or making it stricter.

While some protagonists in the debate may not consider it appropriate to take into account the economic impacts on range States, they would, no doubt, concede that any changes should not impose additional hardship unless there is a commensurate conservation benefit. Indeed, to the extent that the existing regime may cause hardship, it is open to reconsideration unless the conservation benefits are manifest.

Such is the reality of conservation. There is no such thing as a perfect system; compromises will always be made and illegal trade will probably never be eliminated entirely. The important thing therefore is not to aim for maximum protection of all species, but to decide where the balance exists between acceptable risks and the broader conservation objectives and available resources. This balance constantly shifts, necessitating many future discussions about the costs and benefits of the management regime for wildlife trade.

The Community must also take account of the fact that the trade Regulations do not exist in a vacuum. They are part of a legislative framework that includes internal Community conservation legislation as well as external veterinary measures, such as the wild bird ban. The latter is beyond the scope of the study but we have seen that there are circumstances where the objective of encouraging *bona fide* sustainable trade can be impeded by such measures, which prevent imports taking place even when the conditions of the wildlife trade Regulations have been met.

5. PROCEDURAL OPTIONS FOR THE WAY FORWARD

In legislative or procedural terms, there are five options for the way ahead, though these are not mutually exclusive.

The first four of these are legislative options, two of which involve re-opening of sensitive texts both in Parliament and the Council of Ministers. At present, the political climate does not favour any major new legislative measures at Community level in the environmental sphere. Nor does anyone wish to see what are sensitive and complicated issues becoming the subjects of divisive or simplistic debates.

For many of the problems identified in this study, the most definitive solution would involve recourse to Council and Parliament – a process which would be demanding of resources in both the Commission and the Member States. However, to quote a proverb, "the best should not be enemy of the good". Member States and the Commission need to consider to what extent they can achieve their goals either through non-legislative measures or else measures that can be carried out through the Commitology procedure (i.e. amendment of the Commission Regulation or agreement of proposals for the CoP).

5.1 AMENDMENT OF THE COUNCIL REGULATION (*REGULATION 338/97*)

There are a number of issues which, if they are to be addressed at all, will require amendment of the Council Regulation. They include the following;

- *Changing the way in which amendments to Appendices I and II of the Convention are adopted into the Regulations*: In this regard, any of the options considered that would deviate from the status quo – e.g. a stipulation that the new Appendices should apply post-CoP pending adoption of new Annexes – would require amendment of the Council Regulation;
- *Effecting full compatibility between Annex A, on the one hand, and the Birds and Habitats Directives, on the other:* Amendments to update Annex A and/ or a provision to allow that Annex to be updated by the Commission following on amendments to the Birds and Habitats Directives – would require amendment of the Council Regulation;
- *Alignment of Annex A with Appendix I* – going in the opposite direction to the previous option, deletion of Annex A species where inclusion was not the result of an amendment to Appendix I would require Council approval;
- *Removal of the requirement for certification of Annex A specimens:* Removal of this requirement would probably require amendment of the Council Regulation but extension of the number of species that would be exempt from certification could be achieved through amendment of the Commission Regulation;
- *Removal of the requirement for an import permit and/ or a second non-detriment finding for Annex B species* – this would require amendment of Article 4(2);
- *Clarifying that SRG negative opinions are explicitly legally binding without the need to publish formal import suspensions* – this would require amendment of Article 4(1), Article 4(2) and Article 4(6);
- *Implementation of new CoP Resolutions:* Some of these – e.g. the derogations for specimens accompanied by ATA carnets – could only be given full effect through amendment of the Council Regulation but most can be implemented via the Commission Regulation. If the former were re-opened, it should be scrutinized to see if more scope could be afforded in the future for implementation of CoP Resolutions without recourse to Council;
- *Make advertising media liable*: Subject to further legal analysis, if it is determined that they are not already liable, then options for amending the definition of "offering for sale" could be explored and, if necessary, an accompanying sanction could be specified in Article 16;

- *Easing the definition of "place of destination* – to facilitate the current situation whereby live specimens only spend a short time at their initial "post-quarantine" destination;
- *Amending the definition of "species"* – of the current wording regarding "populations" as against "geographically separate populations" is considered inappropriate;
- *Amending the definition of "specimen"* – to reflect the situation set out in the Annexes regarding hybrids;
- *Simplifying the term for antique worked specimens* – e.g. using the term "worked specimens acquired after 1 January 1950";
- *Strengthening Article 8 to deal with illegal possession of specimen*: This encompasses a number of significant issues discussed above. Article 8(3) could be amended to stipulate that any holders of an Annex A specimen (possibly excluding plants and/ or worked antiques) would require a certificate. In addition or as an alternative, Article 8(5) could be amended to stipulate that holding of Annex A or B species was unlawful except where they were acquired in accordance with the Regulation and relevant national laws;
- *Simplification of the list of infractions that should incur sanctions* – any redrafting of Article 16 would require recourse to Council;
- *Deletion of premature mortality and mortality in transport as grounds for import suspension* – this would require amendment of Article 4(6);
- *Deletion of any stipulation regarding the care requirements for Annex B species* – this would require amendment of Article 9;
- *Updating of the wording regarding provision of information at border crossings* – presently in Article 12;
- *Insertion of terms of reference for the Enforcement Group* – in Article 14.

There may be other minor inconsistencies or confusing aspects that could be clarified in the event that the text was re-opened.

The difficulty is that this process will take several years – involving, as it will, the European Parliament as well as the Council of Ministers. It will be demanding of resources both at Member State and Commission level. In the light of these considerations, Member States and the Commission need to reflect on the added value of this course and the extent to which they can tolerate any flaws that are not amenable to correction in any other way.

On the other hand, in the event that the Gaborone Amendment enters into force (and the number of ratifications outstanding is now less than 10), this may increase the impetus for amendment of the Council Regulation. To what extent amendments arising from Gaborone would be necessary has not been decided but there would be scope for setting out a procedure for the Community as a block to enter a reservation to a listing, as well as formalizing the procedures for preparing CoP mandates.

5.2 AMENDMENT OF THE COMMISSION REGULATION (*REGULATION 865/2006*)

Amendments to this Regulation are already at an advanced stage to give effect to the decisions of CoP 13. A similar approach is likely to give effect to CoP 14 decisions.

In addition, a number of the issues raised in the preceding section are amenable to resolution or improvement through amendment of this Regulation - including the following;

- *Increasing the scope for pre-issuance of permits and certificates* – these issues are dealt with in the Commission Regulation;
- *Enhancing the visual differences between specimen-specific and transaction-specific certificates* – the design of the forms is set out in the Annexes to the Commission Regulation;
- *Provision for issuance of electronic permits and certificates* – since this is essentially a matter of specifying the form of permit/ certificate, it can be dealt with via amendment of this Regulation.
- *Clarification of the wording regarding worked antique specimens*;

- *"Replacement of the term "scientific institution" in Article 60* – it was felt that this created confusion with Article 7(4) of the Council Regulation and is not appropriate to all the institutions that benefit from Article 60 certificates;
- *Amendments to the definitions of "bred in captivity" and "artificially propagated"* – this would include amendments to bring the plants definition more in line with Resolution Conf. 11.11 (Rev. CoP 13) and removal of the requirement to verify the legal origin of pre-Convention founder stock.
- *Confining of "captive-bred" status, in the case of Appendix I specimens, to registered operations* – amendment of the definition of "captive-bred" status could address this point, if desired;
- *Amendments to the regime governing personal and household effects* – the operational aspects are enshrined entirely in the Commission Regulation so only it requires amendment;
- *Marking issues* – once again, these are enshrined in the Commission Regulation;
- *Caviar issues* – these are also set out in the Commission Regulation;
- *Amendments/ clarifications of source and purpose codes and/ or deletion of purpose codes for Annex B, C or D species* – these are set out in the Annexes to the Commission Regulation;
- *Changes to transit procedures* – for example, lightening the regime governing changes in the mode of transport and those governing the presentation of documents at the points of entry or the final destination.

There may be other minor improvements that could be made or anomalies that could be corrected. Furthermore, there is widespread feeling that the present version is still quite difficult to understand and is amenable to more fundamental re-drafting. Accordingly, it is recommended that, as one outcome of this effectiveness review, the Commission should prepare a complete replacement for *Regulation 865/2006* in due course. Consideration should be given to changing the layout of its provisions. Options would include:

- Following more closely the layout of the Council Regulation, so that provisions regarding, say, the appearance of forms, would be spread among the articles governing import permits, export permits, certificates etc; or
- Taking the approach of starting with a holder of a specimen and then leading him or her through all the options available and the steps required.

5.3 OTHER LEGISLATIVE MEASURES

It is suggested that amendment of the Habitats and Birds Directives would facilitate what might be regarded as a more proportionate approach to species that are protected under these Directives but that are more common in some third countries. Specifically, the prohibition on commercial use of species could be clarified so that it only applies to species taken in EU territory. However, the implementation of these Directives to date has proved controversial and has given rise to considerable litigation in the ECJ. At present, the indications are that neither Member States nor the Commission are eager to consider re-opening the texts.

On the other hand, this study concurs with others in the view that invasive alien species are best dealt with via a dedicated piece of Community legislation and that would allow this difficult issue to be taken out of the Wildlife Trade Regulations. Nevertheless, as has been noted the current political climate does not favour new Community Environmental legislation and it remains to be seen whether or not the Member States and the Commission regard IAS as a valid exception.

5.4 CoP PROPOSALS LEADING TO CHANGES TO CORRESPONDING PROVISIONS IN THE REGULATIONS

A few of the issues raised in the preceding sections are amenable to resolution in this way, including greater use of electronic licensing, simplification of the registration process for captive breeders and compatibility of Appendix II with Annex B in relation to species on the latter that are not on the former. Of course, there is no guarantee that sufficient votes could be secured for a CoP to adopt these measures but it remains an option for those issues where unilateral action is not possible or not

appropriate. All of the resulting measures could be implemented via amendment of the Commission Regulation or the Annexes to the Council Regulation – i.e. without recourse to Council.

5.5 NON-LEGISLATIVE MEASURES

Many of the issues raised above can be dealt with in this way. The measures suggested include:

- Provision of better guidance to Member States and traders on certain issues;
- Agreement by the Committee on a common interpretation of certain provisions in the Regulations (even if a consensus is not achievable, recording of the prevailing view would be useful):
- Discussions in the Committee on ways to reduce disparities in stricter national measures;
- More in-depth analysis of certain issues through the Commission's monitoring contracts or through study contacts from the Commission;
- Organisational changes, such as selection by some Member States of more relevant personnel to attend the Enforcement Working Group;
- Faster processing of applications by Member States – including the setting of target time spans for processing the greater proportion of applications;
- Streamlining of inspections of live specimens.

Many of these would have resource implications but no more so than the legislative measures alluded to above (in some cases considerably less so). These measures could be implemented relatively quickly and informally.

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ANNEX 1

MODEL LAW on International Trade in Wild Fauna and Flora

CITES SECRETARIAT

Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES –

Introduction

In a country based on the rule of law, it is law that empowers government officials to act, places limits on human actions and articulates policy in relation to international wildlife trade. International agreements like CITES are generally not self-executing, so legislation is needed to give effect to them at the national level.

Creating and adopting effective and enforceable legislation is not an easy task. Effective legislation is not just a piece of paper but the practical solution to a problem. Enforceable legislation is that which is realistic in terms of what can be achieved within a country's particular context and its human or financial resources.

The Parties have some guidance on what to include in their legislation. Articles III to VII of the Convention set forth the conditions under which trade should take place. Article IX requires that Parties designate a Management Authority and a Scientific Authority. Article VIII requires that Parties prohibit trade in specimens in violation of the Convention, and penalize such trade and allow for confiscation of specimens illegally traded or possessed. Resolution Conf. 8.4 urges all Parties that have not adopted the appropriate measures to fully implement the Convention to do so, and the Resolution directs the Secretariat to identify Parties that do not have the necessary measures in place, and to provide technical assistance where required. The National Legislation Project initiated through this Resolution has been the Convention's primary mechanism for maintaining attention on this important subject, and for encouraging Parties' legislative efforts.

The legislative provisions for implementing CITES in each Party are similar, though Parties may have different legal structures, national policies, culture, species in trade, or types of trade. All Parties, however, should have a solid legal foundation for regulating international wildlife trade. It is only through legislation that is adequate, up to date and efficiently enforced that CITES can really work.

Nature of the Model Law

As its name suggests, the Model Law is only a template. It is the prerogative of each Party to decide how it incorporates CITES obligations into national legislation, taking into account its needs and legal practice. In very broad terms, the National Legislation Project has identified three main options:

a) amend existing provisions in various legislative texts related to wildlife, natural resources, Customs, import/export and environment;

b) include a CITES chapter or CITES provisions in comprehensive wildlife, biodiversity or environment legislation; or

c) enact CITES-specific legislation.

All of these options involve one or more legally-binding and enforceable instruments – Constitution, parliamentary laws and subsidiary legislation in the form of implementing regulations, decrees, orders, norms or codes – through which governments comply with the requirements of the Convention.

The form of national legislation and the terminology used will vary according to legal traditions, administrative and governmental structures and other factors. Nevertheless, as far as possible, efforts have been made to propose model provisions that can be incorporated into national legislation with minimal adjustment.

The Model Law is one document in a set of legislative guidance materials prepared by the Secretariat to assist Parties in the development of effective and enforceable legislation (see also legislative checklist, annotated legislative checklist, drafters' questionnaire, legislative analysis format, etc.). Such materials constitute informal tools which have not been formally adopted or made mandatory by the Parties. A draft version of the Model Law was written in 1990s and experience gained in its application has now been used to update and refine various provisions. The resulting text is reproduced below.

Legislative analysis process

It is hoped that the following explanatory paragraphs will assist Parties in analysing their own legislation and working with the Secretariat to ensure that they have adequate and enforceable legal authority for implementing the Convention.

The four minimum requirements for adequate CITES-implementing legislation are stated in a general way in Resolution Conf. 8.4, but the practical implementation of each requirement actually involves considering and addressing several components. These components clarify what is meant by each requirement and serve as a set of criteria for determining whether the requirement is met by particular legislation.

a) Designation of national CITES authorities

In analysing the first requirement, the NLP looks at the legislative designation of both a Management Authority and a Scientific Authority responsible for the implementation of CITES in accordance with Article IX, paragraph 1 of the Convention. This is different from the simple administrative decision communicated by the Parties when they deposit their instruments of ratification, acceptance, approval or accession in pursuance of Article IX, paragraph 2. The analysis considers the legal instrument (law, regulation, decree) that authorizes designation of both CITES authorities or expressly designates those authorities. For example, the legislation of some Parties makes no provision for the designation of a Scientific Authority. The analysis further considers whether legislation clearly and precisely gives CITES authorities the necessary powers to carry out their responsibilities (power to grant permits and certificates, power to establish export quotas, etc.), separates the functions of each authority and provides mechanisms for coordination and communication between these bodies as well as with other government agencies with relevant competence (e.g. Customs, police, ministry responsible for foreign trade, etc.).

b) Prohibition of trade in violation of the Convention

The second requirement encompasses a set of components laid down in Articles II, III, IV, V, VI and VII of the Convention and constitutes the core of the CITES trade regime. The analysis considers whether the legislation covers all specimens of all species (animals and plants, live and dead, and parts and derivatives) included in the three Appendices of the Convention and whether it provides for any annexes or schedules to be amended as necessary. It further considers whether all types of transactions are covered, including exports, imports, re-exports, introduction from the sea, and transit and transhipment between Parties and non Parties. The analysis determines whether there are conditions relating to: the granting of permits and certificates for all types of transactions in all CITES-listed species, or at least an express provision that subordinates the issuance of permits and certificates to the provisions of the Convention; the standardized form and validity of permits and certificates; and exemptions or special procedures allowed by the Convention. The analysis further determines whether there is a general clause prohibiting any transactions without a valid permit.

c) Penalization of illegal trade

The legal basis for the third requirement is stated in Article VIII, paragraph 1 (a), which includes also the possession of CITES specimens acquired in violation of the Convention. The analysis verifies that domestic legislation clearly lists the activities that are prohibited and specifies that the breach of any prohibition constitutes an offence. These include at a minimum the import or export of CITES specimens without a permit, the use of invalid or forged permits and the possession of and trade in specimens that were illegally imported or otherwise acquired. It also considers the nature and level of penalties which may be imposed for violation of CITES provisions and the procedures that must be followed.

The analysis verifies also that the departments and agents responsible for enforcing the Convention are clearly designated by the legislation and that enforcement agents are appointed and given the necessary powers to carry out their tasks. Such powers typically include powers to search persons, baggage and other property and vehicles; powers to search premises or, where the law requires the prior grant of a search warrant by a magistrate, to apply for such a warrant; powers to request information, to inspect documents and to take samples of specimens for identification purposes; powers of arrest; and powers to seize specimens when there are grounds to believe that they are being or have been illegally imported or otherwise obtained.

Finally, given that illegal trade in CITES specimens may be sanctioned by different laws, in particular the penal code, Customs legislation or foreign trade laws, it is important to specify which specific legal provisions apply to CITES-related offences and penalties.

d) Authorization to confiscate specimens illegally traded or possessed

The legal basis for the fourth requirement is given in Article VIII, paragraph 1(b). The analysis verifies that domestic legislation provides for the confiscation or return of specimens illegally traded or possessed. Other aspects taken into consideration are: which authorities may confiscate; the extent of their confiscation powers (e.g. specimens, containers, equipment and

vehicles involved in an offence); the procedures that must be followed; and the final disposal of confiscated specimens. These matters are closely connected with constitutional or general criminal law requirements, which vary from one country to another. Again, it is important to specify which specific legal provisions apply to the confiscation of specimens of CITES-listed species.

Legal drafting

The drafting of CITES-implementing legislation calls for special skills to convert the basic obligations under the Convention into practicable, effective and clear legal provisions that use appropriate CITES concepts and terminology, and follow the prevailing drafting standards as to legislative structure, form and style. This is properly the task of legal drafters.

Without early and regular input from legal drafters, efforts to develop adequate legislation may result in drafts that: are incompatible with the provisions of the Convention or other legislation; use inappropriate language; and draw heavily upon legislative precedents from other countries, with little consideration for their suitability under local conditions. It is only after the draft has been made law that the shortcomings become evident. The Secretariat encourages Parties to involve legal drafters throughout the legislative development process and to consult with the Secretariat before the enactment of CITES-implementing legislation. Parties also are encouraged to adopt plain-language legislative texts that are easily understandable to the regulated community and the public.

Linking wildlife trade policy development and legislation

CITES-implementing legislation should not be seen as a burdensome and stand-alone obligation but rather as the necessary framework for defining and implementing national wildlife trade policies for the conservation of and non-detrimental trade in all CITES-listed species. Legislation sets forth what citizens and enterprises are allowed to do in relation to the international trade in such species, that is, what behaviour is legal or illegal in the context of CITES.

Wildlife policy development is an essential precursor to drafting adequate legislation. A clear policy basis facilitates the introduction of procedures and practices to ensure:

a) coherence and predictability of the legislation;

b) transparency of legal rights and obligations;

c) consistency, fairness and due process in legislative application; and

d) efficiency of management and ease of implementation.

The choice of a wildlife policy, of course, is the prerogative of each Party. What is important is for this policy choice to be made thoughtfully, in consultation with stakeholders, and to be reflected fully and accurately in legislation. Policies that discourage trade in all wild-taken specimens of animals and plants or that encourage trade in captive-bred animals or artificially propagated plants may not necessarily benefit the conservation of biodiversity. The CITES Secretariat is gathering information on different wildlife trade policies with a view to providing assistance in the development and implementation of policies that support conservation efforts effectively.

[Parties' experience in the development of strengthened CITES implementing legislation has shown the importance of: simultaneous preparation of enabling and implementing legislation; complementary legislation governing the legal acquisition of and domestic trade in CITES specimens; policy coherence in relation to national wildlife trade policy, other biodiversity-related conventions, natural resource management, and development policy; timely updating of legislation to incorporate amendments to the CITES Appendices and provision for offences related to the violation of permit or certificate conditions as well as the absence of a valid permit or certificate.

National legislation as a whole should regulate all aspects of international wildlife trade, including harvesting or production, keeping, modification, sale, transport, use and disposal.

The format for biennial reports provides Parties with a means to report more regularly, easily and consistently on legislative development as well as the results of any assessments undertaken on the effectiveness of legislation.

[National legislation provides CITES authorities with the authority they need to ensure adequate implementation of the Convention within their jurisdiction. Accordingly, they should: be fully familiar with its provisions; assess its effectiveness on a regular basis; and assist in identifying and correcting any gaps or weaknesses.]

Sources: CITES World #15; document CoP12 Doc. 28

Act Number XX of 200X

International Trade in Wild Fauna and Flora Act

An Act to implement the detailed provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with a view to ensure that no species of wild fauna and flora becomes or remains subject to unsustainable exploitation because of international trade.

PART 1
Preliminary

1. This Act may be cited as the **International Trade in Wild Fauna and Flora Act.**

2. (1) *Definitions*. In this Act:

“Appendices”: The species covered by CITES are listed in three Appendices, according to the degree of protection they need. Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival. Appendix III contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade. Changes to Appendix III follow a distinct procedure from changes to Appendices I and II, as each Party’s is entitled to make unilateral amendments to it.

"Artificially propagated": refers only to plants grown under controlled conditions 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;

"Bred in captivity": refers only to offspring, including eggs, born or otherwise produced in a controlled environment of parents that mated or otherwise transmitted their gametes in a controlled environment, as defined in Resolutions of the Conference of the Parties;

"Certificate of origin": These documents allow the export of specimens of species listed in Appendix III when the specimens originated in a non-listing country.

“CITES”: is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, concluded in Washington, D.C. on 3rd March 1973, as amended in Bonn on 22 June 1979.

"CITES Secretariat”: the Secretariat of CITES as referred to in Article XII of CITES;

"Conference of the Parties": the Conference of the Parties as referred to in Article XI of CITES;

“Controlled environment”: 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;

"Country of origin": the country in which a specimen has been taken in the wild or born or bred in captivity or artificially propagated, or introduced from the sea;

"Court": means the Magistrate Court or Summary Jurisdiction;

"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 designated CITES authorities of the exporting country established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild and 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;

''Derivative''; in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;

"Domestic trade": any commercial activity, including, but not limited to, sale, purchase and manufacture, within territory under the jurisdiction of (name of the country)

"Enforcement Officer": means a police officer, or customs officer or any person appointed by the Minister with authorization to enforce this Act;

"Export": means the act of taking any specimen out of any place under the jurisdiction of (name of the country);

"Hunting trophy": means any horn, ivory, tooth, tusk, claw, hoof, hide, skin, hair, feather, egg or other durable portion whatsoever of any animal, whether processed or not, which is recognizable as a durable portion of such animal;

"Import": means to land on or attempt to land on, bring into or introduce into, any place subject to the jurisdiction of (name of the country) other than transit and transhipment any specimen of species included in the Appendices of CITES;

"Introduction from the sea" means transportation into (name of the country) of specimens of any species which were taken from the marine environment not under the jurisdiction of any State, including the air space above the sea and the sea-bed and subsoil beneath the sea;

"International trade": any export, re-export, or import covered by the Customs regulations and introduction from the sea;

"Invasive alien species": species introduced deliberately or unintentionally outside their natural habitats where they have the ability to establish themselves, invade, outcompete natives and take over the new environments;

"**Label":** piece of paper, card, or other material bearing the acronym 'CITES' and issued or approved by a Management Authority for the identification of contents as

herbarium specimens, preserved, dried or embedded museum specimens or live plant material for scientific study. They shall include 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;

“Legal acquisition finding”: A finding by the Management Authority of the State of export determining whether specimens were acquired consistent with national laws. The applicant is responsible for providing sufficient information to show that specimen was legally acquired.

"Management Authority": a national administrative body designated in accordance with Article IX, paragraph 1(a), of CITES;

“Non-detriment finding”: A finding by the Scientific Authority advising that a proposed export or introduction from the sea of Appendix I or II specimens will not be detrimental to the survival of the species and that a proposed import of an Appendix I specimen is not for purposes that would be detrimental to the survival of the species;

"Offering for sale": offering for sale or any action that may reasonably be interpreted as such, including advertising or causing to be advertised for sale and invitation to negotiate;

"Permit or Certificate": the official document used to authorize import, export, re-export, or introduction from the sea of specimens of species listed in any of the Appendices of CITES. It shall conform to the requirements of CITES and Resolutions of the Conference of the Parties or otherwise shall be considered invalid;

"Personal or household effects": dead specimens, parts and derivatives that are the belongings of a private individual and that form or are intended to form part of his normal possessions;

"Pre-convention Certificate": The pre-convention date for a specimen may vary depending on when a Party joined CITES or on a country's stricter national legislation.

"Primarily commercial purposes": means all purposes whose non-commercial aspects do not clearly predominate;

“Quota”: Prescribed number or quantity of specimens that can be harvested, exported or otherwise used over a specific period of time ;

“Readily recognizable part or derivative” 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 the Convention;

"Re-export": the export of any specimen that has previously been imported;

"Rescue Centre": a centre as defined in Article VIII, paragraph 5, of CITES;

"Sale": any form of sale. For the purposes of this Act, hire, barter or exchange shall be regarded as sale; related expressions shall be similarly interpreted;

"Scientific Authority": a national scientific body designated in accordance with Article IX of CITES;

"Species": includes any species, subspecies, or geographically separate population thereof;

"Specimen":
(i) any animal or plant, whether alive or dead of specimens of a species included in Appendices I, II and III of CITES.

(ii) Any part or derivative 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 species included in the in Appendices I, II and III, unless such part or derivative is specifically exempted from the provisions of CITES.

“Tags”: Piece of material for the identification of raw, tanned, and/or finished crocodilian skins entering international trade from the countries of origin;

"Transit": the transit procedures as defined by the customs regulations of (name of the country);

"Transhipment": the transhipment procedures as defined by the Customsregulations of (name of the country);

“The Minister”: the Minister responsible for matters relating to wild fauna and flora;

“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

3. The export, re-export, import, introduction from the sea, transit and transhipment of specimens of species listed in the Schedules of this Act, other than in accordance with the provisions of CITES and this Act is prohibited.

4. Recommendations included in Resolutions and Decisions of the Conference of the Parties to CITES shall serve as source of interpretation of the provisions of the Convention and this Act.

5. The burden of proof of the legal possession of any specimen of a species included in the CITES appendices attached to this Act lies with the possessor of that specimen.

PART 2
Field of Application

6. This Act applies to all animal and plant species listed in the Appendices of CITES.

7. (1) Option 1: The following Schedules are attached to this Act:

(a) Schedule 1, which lists all species included in Appendix I of CITES;
(b) Schedule 2, which lists all species included in Appendix II of CITES;
(c) Schedule 3, which lists all species included in Appendix III of CITES;

7. (1) Option 2: The following Schedule is attached to this Act:

(a) Schedule 1, which lists all species included in Appendices I, II and III of CITES;

Option 3: The Minister shall by order publish the Schedules to this Act.

(2) Schedule (s) to this Act are automatically amended when amendments to Appendices I,II or III of CITES enter into force. These amendments shall be published in the Gazette as soon as possible after their adoption by the Conference of the Parties. The official website of the Convention is the official reference for the Appendices.

Note*: In order to be legally binding, the lists of species covered by CITES must usually be published in the Government Gazette or equivalent official publication of the Party concerned. Because the CITES Appendices are regularly amended, however, Parties should develop a procedure to ensure that subsequent amendments are formally published. Countries might add other schedules with native species at the condition they make the difference with the CITES documents*.

(3) The Management Authority has the right to add or delete any species from Appendix III when the species occurs within the national jurisdiction of the country.

PART 3
Authorities

8. (1) Option A: The [name of the agency] is designated as the CITES Management Authority for [name of the country].

Option B: The Minister shall by order designate a CITES Management Authority.

Note: *More than one Management Authority may be designated, in which case a lead Management Authority should be identified.*

(2) The specific duties of the Management Authority shall include, but are not limited to the following:

a) to grant permits and certificates in accordance with the provisions of CITES and to attach to any permit or certificate any condition that it may judge necessary;

b) to communicate with the Secretariat and other countries on scientific, administrative, enforcement and other issues related to implementation of the Convention;

c) to maintain records of international trade in specimens and prepare an annual report concerning such trade, and submit this report to the CITES Secretariat by 31 October of the year following the year to which the report refers;

d) to prepare a biennial report on legislative, regulatory and administrative measures taken to enforce the Convention, and to submit this report to the CITES Secretariat by 31 October of the year following the two-year period to which the report refers;

e) to coordinate national implementation and enforcement of the Convention and this Act and to co-operate with other relevant authorities in this regard;

f) to consult with the Scientific Authority on the issuance and acceptance of CITES documents, the nature and level of trade in CITES-listed species, the setting and management of quotas, the registration of traders and production operations, the establishment of Rescue Centres and the preparation of proposals to amend the CITES Appendices;

g) to represent [name of the country] at national and international meetings related to CITES;

h) to provide awareness-raising, training, education and information related to the Convention;

i) to advise the Minister on action to be taken for the implementation and enforcement of CITES;

j) to designate one or more Rescue Centres for seized and confiscated living specimens

k) to intervene in litigation before a court in any matter under this Act.

9. (1) Option A: The [name of the agency] is designated as the CITES Scientific Authority for [name of the country].

Option B: The Minister shall by order designate a CITES Scientific Authority.

Note: *More than one Scientific Authority may be designated, in which case a lead Scientific Authority should be identified.*

(2) The specific duties of the Scientific Authority shall include, but are not limited to the following:

a) advise the Management Authority on whether or not a proposed export of a specimen of species listed in Appendix I or II will be detrimental to the survival of the species involved;

b) in the case of a proposed import of a specimen of a species in Appendix I, advise the Management Authority on whether or not the purposes of the import are detrimental to the survival of the species involved;

c) in the case of a proposed import of a live specimen of a species listed in Appendix I, advise the Management Authority whether or not it is satisfied that the proposed recipient of the specimen is suitably equipped to house and care for it;

d) monitor the export permits granted for specimens of species listed in Appendix II, as well as the actual exports of such specimens, and advise the Management Authority of suitable measures to be taken to limit the issue of export permits when the population status of a species so requires;

e) advise the Management Authority on the disposal of confiscated or forfeited specimens;

f) advise the Management Authority on any matter the Scientific Authority considers relevant in the sphere of species protection;

g) perform any tasks foreseen in the Resolutions of the Conference of the Parties to CITES.

10. (1) Option A: The [name of the agency] is designated as the agency with authorization to enforce this Act.

Option B: The Minister shall by order designate the agency authorized to enforce this act.

Note: *More than one Enforcement Agency may be designated, in which case a lead Enforcement Agency should be identified. The functions and powers of the Enforcement Agencies are stipulated in the Part regarding Infractions and Penalties.*

(2) It shall be the duty of all public authorities to co-operate fully with the Management Authority in enforcing the provisions of this Act.

PART 4
Conditions for international trade

As far as possible, the Management Authority and enforcement authorities shall ensure that specimens of CITES-listed species pass through any formalities required for trade with a minimum of delay. To facilitate such passage, the Management Authority may designate ports of entry and ports of exit at which specimens must be presented for clearance.

The Management Authority shall ensure that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

Export

11. The export of any specimen of species included in Appendices I and II requires the prior grant and presentation of an export permit.

The export of any specimen of species included in Appendix III requires the prior grant and presentation of an export permit, if [name of country or dependent territory] listed the species in Appendix III, or a certificate of origin.

An export permit shall only be granted if the following conditions are met:

(a) the Management Authority must be satisfied that the specimen concerned has been legally acquired;

(b) the Management Authority is satisfied that any living specimen will be prepared and shipped in accordance with the most recent edition of the Live Animals Regulations of the International Air Transport Association, regardless of the mode of transport, so as to minimize the risk of injury, damage to health or cruel treatment;

(c) in the case of a specimen of a species listed in Appendices I and II, the Scientific Authority has made a non-detriment finding and advised the Management Authority accordingly.

Note: *Non-detriment findings should generally be made on a shipment-by-shipment basis, unless the Scientific Authority has set an annual export quota for a particular species which is based on a broader non-detriment finding.*

(d) in the case of specimens of species listed in Appendix I, an import permit has been granted by the competent authority of the country of destination

Import

12. The import of any specimen of species included in Appendix I requires the prior grant and presentation of an import permit and either an export permit or a re-export certificate.

An import permit should only be granted if the following conditions are met:

(a) the Scientific Authority has advised that the import will be for purposes which are not detrimental to the survival of the species and is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it;

(b) the Management Authority is satisfied that the specimen concerned is not to be used primarily for commercial purposes;

(c) the import of any specimen of species included in Appendix II requires the prior presentation of either an export permit or a re-export certificate.

(d) the import of any specimen of species included in Appendix III requires the prior presentation of a certificate of origin or an export permit, where the import is from a State which has included the species in Appendix III or a certificate granted by the State of re-export that the specimen was processed or is being re-exported to.

Re-export

13. The re-export of any specimen of species included in Appendices I and II requires the prior grant and presentation of a re-export certificate.

A re-export certificate shall only be granted when the following conditions are met:

(a) the Management Authority is satisfied that any specimen to be re-exported was imported in accordance with the provisions of this Act and of CITES;

(b) the Management Authority is satisfied that any living specimen will be prepared and shipped in conformity with the most recent edition of the Live Animals Regulations of the International Air Transport Association, regardless of the mode of transport, so as to minimize the risk of injury, damage to health or cruel treatment;

(c) in the case of any living specimen of species listed in Appendix I, the Management Authority is satisfied that an import permit has been granted

Introduction from the sea

14. The introduction from the sea of a specimen of a species included in Appendices I and II requires the prior grant and presentation of a certificate of introduction from the sea.

A certificate of introduction from the sea shall only be granted when the following conditions have been met:

(a) the Scientific Authority advises that the introduction of any specimen will not be detrimental to the survival of the species;

(b) the Management Authority is satisfied that any specimen of a species listed in Appendix I is not to be used for primarily commercial purposes and that the proposed recipient of any living specimen is suitably equipped to house and care for it;

c) the Management Authority is satisfied that any living specimen of a species listed in Appendix II will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

Permits and certificates

15. To be valid, all permits and certificates must be in a form prescribed by the Management Authority and which is in conformity with the provisions of CITES and Resolutions of the Conference of the Parties to CITES. A sample permit/certificate format is attached as Schedule 4.

(a) Export permits and re-export certificates are valid for a period of six months from their date of issue.

(b) Import permits for specimens of species included in Appendix I are valid for a period of twelve months from their date of issue.

(c) A separate permit or certificate is required for each consignment of specimens.

(d) The Management Authority shall cancel and retain used export permits and re-export certificates issued by authorities of foreign States and any corresponding import permits.

(e) Permits and certificates may not be transferred to a person other than the one named on the document.

(f) The Management Authority may require applicants for permits or certificates to provide any additional information that it may need to decide whether to issue a permit or certificate.

(g) The Management Authority may, at its discretion, grant or refuse to grant a permit or certificate, or grant a permit or certificate subject to certain conditions.

(h) The Management Authority may at any time revoke or modify any permit or certificate it has issued if it deems it necessary to do so, and shall do so when the permit or certificate has been issued as the result of false or misleading statements by the applicant.

(i) Only valid export permits, re-export certificates and certificates of origin from exporting countries shall be accepted to authorize the import of specimens of species included in Appendices I, II and III.

16. (1) A permit or a certificate issued in violation of the law of a foreign country or in violation of the Convention or contrary to the Resolutions of the Conference of the Parties to CITES shall be considered invalid.

(2) If any condition attached to a permit or certificate has not been complied with, it shall be considered as invalid.

PART 5
Registration and Marking

17. (1) All persons wishing to trade in specimens of any species listed in Appendix I must be registered with the Management Authority. *[Countries should register traders in specimens of species listed in Appendix II and III if it is recommended under a Resolution (e.g. sturgeon specimens). Otherwise, countries may choose whether to require such registration.]*

Note: *If deemed necessary, legislation may also require the registration of traders and production operations dealing in specimens of Appendix II and III listed species. The potential administrative burden of such registration, however, should be carefully considered*.

(2) All persons wishing to produce captive-bred animals and artificially propagated plants for commercial trade purposes of any species listed in Appendix I must be registered with the Management Authority. *[Countries should require the registration of producers of species listed in Appendices II and III if it is recommended under a Resolution. Otherwise, countries may choose whether to require such registration.]*

(3) All persons registered with the Management Authority for captive breeding of animals or artificial propagation of plants must keep records of their stocks and of any transactions. The Management Authority may inspect the premises and records of persons registered with the Management Authority at any time.

[addressed in enforcement section]

18. (1) The Minister shall determine by Order:

a. the Appendix II or III-listed species that are subject to special registration [e.g. sturgeon]
   a. the format of the application for registration foreseen in section 17;
   b. the conditions that shall be met in order to be registered;
   c. the format and contents of the registers that contain the records foreseen in section 17.

(2) If the conditions for registration are not complied with, the registration must be withdrawn.

(3) Specimens of animal species listed in Appendix I that have been bred in captivity may not be traded unless they originate from a breeding operation registered by the Management Authority, and have been individually and permanently marked in a manner so as to render alteration or modification by unauthorized persons as difficult as possible. The conditions for registration are determined by the Management Authority.

[Additional text on marking (e.g. crocodile tagging and universal sturgeon label) should be added here.]

Note: *Registration may be required for the possession, trade, production and/or processing of species that are commercially valuable and subject to illegal trade (e.g. ivory, caviar and other sturgeon products, queen conch, etc.) Management plans may also be required. Some countries require the possession of all specimens of Appendix I-listed species, or all pre-Convention specimens, to be registered*.

PART 6
Exemptions and Special Procedures

19. (1) *Transit and transhipment. W*here a specimen is in transit or transshipment through (name of the country), no additional CITES permits and certificates shall be required. In all cases, the transit or transshipment must be in accordance with the conditions of transport lay down in this act and the custom laws of (name of the country). Enforcement authorities shall have the power to inspect a specimen in transit or transhipment to ensure that it is accompanied by the appropriate CITES documents and to seize such a specimen if that is not the case.

(2) *Pre-Convention*. Where the Management Authority is satisfied that a specimen of a CITES-listed species was acquired before the provisions of the Convention became applicable to that species, it shall issue a pre-Convention certificate upon request. No other CITES document is required to trade in the specimen.

(3) *Personal and household effects.* Provisions foreseen in Part 4 shall not apply to dead specimens, parts and derivatives of species listed in Schedules 1 to 2 which are personal or household effects being introduced into the (name of the country), or exported or re-exported therefrom, in compliance with rules specified by the Management Authority in accordance with the text of the Convention and the Resolutions of the Conference of the Parties. [need to align this with Resolution Conf. 13.7 and to explain some more about tourist specimens, hunting trophies and personal pets.]

*(4) Specimens born and bred in captivity or artificially propagated. S*pecimens of species listed in schedule 1 that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Schedule 2. [need to mention ranching and other production systems]

(5) *Scientific exchange.* The documents referred in Part 4 of this act, shall not be required in the case of non-commercial loans, donations and exchanges between scientific institutions, registered by the Management Authority, of herbarium specimens, other preserved or dried or embedded museum specimens, and live plant material which carry a label issued or approved by the Management Authority.

(6) *Travelling exhibitions.* The Management Authority may waive the requirement of an import or export permit or re-export certificate and allow the movement of specimens which form part of a traveling zoo, circus, menagerie, plant exhibition or other traveling exhibition, provided that the exporter or importer registers full details of such specimens with the Management Authority, the specimens are covered by a pre-Convention certificate or a certificate showing that they were bred in captivity or artificially propagated and the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury,

damage to health or cruel treatment. [check this against Resolution Conf. 12.3 (Rev. CoP13)]

Note: *Countries may provide for simplified procedures to issue permits and certificates pursuant to Part XII of Resolution Conf. 12.3 (Rev. CoP13) and Annex 4. There are also more flexible procedures for trading coral and timber and certain plants covered by a phytosanitary certificate.*

PART 7
Offences and Penalties

The offences below do not contain any intent requirement, but this may need further consideration in some jurisdictions if criminal penalties are involved. In general, such offences can result in administrative, civil or criminal liability and punishment. 'Person' could be defined somewhere in the Act to include both natural and legal persons.]

20. (1) It is an offence under this Act to import, export, re-export, or introduce from the sea, or attempt to import, export, re-export or introduce from the sea, any specimen of a species listed in the Schedules without a valid permit or certificate.

Note: *This should cover circumstances involving a forged or invalid document or one that has been modified by anyone other than the Management Authority. Separate offencescould be provided for misuse of a document or failure to comply with the conditions of a permit or certificate. There could also be offences for shipments in violation of IATA live animal regulations.*

(2) A person who is found guilty of the offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding [a multiple of the value of the specimens or a monthly or daily salary level] and to imprisonment for a term not exceeding.five years?... months (years).

21. (1) It is an offence under this Act for any person to have in his or her possession or under his or her control, or to offer or expose for sale or display to the public, any specimen of a species listed in the Appendices which was not legally acquired.

(2) A person who without reasonable excuse fails to comply with the requirements of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

22. (1) It is an offence under this Act to make or attempt to make either oral or written false or misleading statements in, or in connection with, an application for a permit or certificate or registration. [Note: There may also be a general criminal offence for false statement. Additional general crimes that could be considered in prosecution include fraud, conspiracy, smuggling, money laundering and racketeering or organized crime,]

(2) A person who is found guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

23. (1) It is an offence under this Act to obstruct or otherwise hinder an Officer in the performance of his or her duties.

(2) A person who is found guilty of the offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

[It is an offence under this Act for an enforcement officer to accept any unauthorized personal payment or other form of personal compensation in order to see to the furtherance of any provisions under this Act.]

24. (1) It is an offence under this Act for any unauthorised person to alter, deface or erase a mark used by the Management Authority to individually and permanently identify specimens.

(2) A person who is found guilty of the offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

25. The maximum fine and duration of imprisonment are doubled in the case of offence involving species included in Appendix I .

26. The maximum fine and duration of imprisonment are doubled for subsequent offences specified in sections 24,25,26,27,28

27. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. [fine levels for corporate offenders should generally be higher]

(2) In this section “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

28. A person convicted of an offence under this Act, or any regulations promulgated under this Act, for which no penalty is expressly provided is liable to a fine not exceeding $ ____or to imprisonment for a term not exceeding _____ months.

29. Expenses incurred as a result of seizure, including custody costs, the costs of transporting and disposing of specimens or of maintaining live animals and plants during the time of seizure shall be recoverable from the offender if known.

[In addition to any other penalty imposed, a court may require compensation from a convicted offender or bar a convicted offender from possessing certain species or trading in or producing such species for a certain period of time.]

[A provision could be added on calculating the value of certain species or the amount of environmental harm done.]

Enforcement Powers

[This section should provide for entry, evidence collection, interview/interrogation, search, sampling, seizure, arrest and confiscation – generally in that order.]

30. (1) If an Officer is satisfied that there is reasonable evidence of an offence, he or she may detain the person suspected and seize any items related to the suspected offence.

(2) An Officer may:

(a) Seize anything which he or she reasonably suspects is the object of or evidence of an offence.
(b) Enter premises or a vehicle he or she reasonably suspects detain a specimen in violation of the provisions of this Act [includes seaports, airports and free ports – should be possible at any time and not just during daylight hours];
(c) Examine what he reasonably suspects to be a specimen transported, acquired or traded in violation of the provisions of this Act;
(d) Examine any records held apparently relating to specimens referred to in paragraphs (a)
and (b) of this subsection.
(e) Take photos or samples

31. (1) In all cases, the specimens that are the subject of an offence shall be confiscated. [Note: Some countries provide for administrative as well as judicial confiscation. Not all countries allow mandatory confiscation. Some countries provide a process under which an individual may seek the return of a specimen or item.]

(2) When a person is convicted of an offence against this Act, any cage, container, boat, aeroplane, vehicle, or other article and equipment in respect of or by means of which the offence was committed is forfeited to the State. Such forfeiture may be in addition to any other penalty to which such contravention applies.

(3) If a person prosecuted for an offence is acquitted, the court may nonetheless order the specimens concerned to be confiscated.

32. The specimens confiscated according to the provisions of this Act, remain the property of the Management Authority, which in consultation with the Scientific Authority, will decide upon their final disposal.

[Note: The term ‘seizure’ generally refers to the temporary taking of a specimen by a law enforcement officer whereas the terms ‘confiscation’ and ‘forfeiture’ generally reger to the permanent taking of a specimen pursuant to a court order.]

Disposal of confiscated specimens

[This section needs elaboration. Rescue centers could be mentioned here.]

PART 8
Incentives and Financial Provisions

33. (1) Any expenses incurred by any Government department in connection with this Act shall be defrayed out of money provided by Parliament.

(2) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums so payable under any other Act.

34. The Management Authority may charge a fee, at a rate set by the Government, for the processing of applications for permits and certificates and for the issue of permits and certificates.

35. The Minister shall establish a special fund to be used only for the conservation of wildlife and the implementation and enforcement of CITES and of this Act, including the establishment and management of Rescue Centres referred to in section 8 (e). Any fee charged under Part 4, as well as any voluntary contribution by individuals or organizations, shall be paid to the fund.

PART 9
General

36. Nothing in the present Act shall restrict the provisions of any other Act. [but its effect on other legislation (e.g. amendment or repeal) should be indicated.]

37. (1)This Act is applicable within the claimed jurisdiction of the courts of (name of the country)

(2) Anyone may take appropriate action in the courts to enforce the provisions of this Act. [is this a citizen suit provision?]

38. The Minister may by Statutory Instrument make additional orders or regulations to provide for improved application of the provisions of this Act.

SCHEDULE 1

Schedule 1 shall list all animal and plant species listed in Appendix I of CITES.

SCHEDULE 2

Schedule 2 shall list all animal and plant species listed in Appendix II of CITES.

SCHEDULE 3

Schedule 3 shall list all animal and plant species listed in Appendix III of CITES.

SCHEDULE 4

Sample permit format and instructions

SCHEDULE 5

Fee schedule for permits/certificates, registration and other administrative tasks

ANNEX 2

Inconsistencies between the *EC Regulations* 338/97, 865/2006 and CITES

(taken from Hart and Chamoux (2007 op. Cit.))

MA = Management Authority
SA = Scientific Authority
MS = Member State of the European Community
SRG = Scientific Review Group
EC = European Community

NB: In the column 'Requirements in EC Wildlife Trade Regulations' the elements in italics are comments relating only to the EC Regulations, and not to the comparison between the provisions of the Regulations and CITES. The Articles have been put in sequential order for easier integration with issues of interpretation.

Key factors for analysis	Requirements in EC Wildlife Trade Regulations	CITES provisions (Articles + Resolutions)
REGULATION 338/97		
Article 2(b) Reg. 338/98 Minor error/grammatical change	The acronym referring to the Convention is Cites, the standard way of referring to the Convention uses capital letters ie CITES.	
Article 2(j) Reg. 338/97 Definition of personal or household effects	Dead specimens, parts or derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels	CITES Conf.13.7 adds that personal or household effects are specimens legally acquired *See note 1*
Article 2(m) Reg. 338/97 Definition of primarily commercial purposes	All purposes the non-commercial aspects of which do not clearly predominate.	Interpretation of the term given in CITES Conf.5.10.
Article 2(q) Reg. 338/97 Minor error/grammatical change	The Article referring to scientific authorities is Article 13(2) not 13(1)(b) which refers to 'additional Management Authorities.'	
Article 2(s) Reg. 338/97 Definition of species	A species, subspecies or population thereof.	The CITES definition uses the term 'geographically separate population thereof.'
Article 2(t) Reg. 338/97 Definition of specimen	The EC Regulations do not make the distinction that the parts or derivatives need to be 'readily recognisable.'	The CITES definition refers to any 'readily recognisable part or derivative'
Article 2(v) Reg. 338/97 Definition of transit	Transport of specimens between two points outside the Community through the territory of the Community which are shipped to a named consignee and during which any interruption of the movement arises only from the arrangements necessitated by this form of traffic.	CITES Conf.9.7-a(ii) seems to add the case of sample collections in the definition of transit.

Article 3(3)(b) Reg. 338/97	Annex C shall contain the species listed in Appendix II to the Convention for which a reservation has been entered.	Seems stricter than CITES Article XXIII-3: when a Party enters a specific reservation, it shall be treated as a State not a Party to the CITES with respect to trade in the particular species specified in such reservation. *But in line with CITES Article XIV-1-a: the Parties have the right to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species includes in appendices I, II or III, or the complete prohibition thereof.*
Article 3(4)(b) Reg. 338/97	Annex D shall contain the species listed in Appendix III to the Convention for which a reservation has been entered.	Seems stricter than CITES Article XXIII-3: when a Party enters a specific reservation, it shall be treated as a State not a Party to the CITES with respect to trade in the particular species specified in such reservation. *But in line with CITES Article XIV-1-a: the Parties have the right to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species includes in appendices I, II or III, or the complete prohibition thereof.*

Article 4 Reg. 338/97 General remarks	1. Would it be simpler to group all of the tasks of the Scientific Authority (SA) into one point and all those of the Management Authority (MA) into another eg 4(1)(c) incorporated into 4(1)(a) and 4(1)(d)-(f) incorporated into one paragraph? 2. For consistency Article 4(1)(b)(ii) could be changed to be in line with the text in 11(4). Perhaps the text could be changed from '*pending presentation of the export permit or re-export certificate*' to '*pending presentation of the original of the valid export permit or re-export certificate*.' 3. Check 4(1)(c) and 4(1)(f) re CITES requirements for live specimens. Why does (f) only refer 'introduction from the sea' and is regulated by the MA and not the SA? 4. Is more clarity needed regarding the quality and quantity of evidence required to satisfy the MA and SAs in 4(1)(b)-(f) and 4(2)(b)? Are such standards consistently applied across the EC? For example, in 4(1)(b)(i) (re)export permits are required from a third country for specimens listed in the Appendices of the Convention but what documentary evidence is required for those species on the EC Annexes which are not listed in the CITES Appendices to demonstrate that the specimens have been obtained in accordance with the legislation on the protection of the species? 5. Article 4(2)(c)-why does it not include reference to 1(c) regarding live specimens, see Article 6(c) which requires information on live Annex B specimens.	
Article 4(1) Reg. 338/97 Introduction into the Community of Annex A specimens	Requires the presentation of an import permit	For the introduction from the sea of Appendix I specimens CITES Article III-5 requires a certificate.
Article 4(1)(f) Reg. 338/97 Specific case of introduction from the sea	The MA must be satisfied that any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.	This condition does not appear as such in CITES, but in CITES Conf.10.21? *See note 2* – About introduction from the sea *see note 3*

Article 4(2) Reg. 338/97 Introduction into the Community of Annex B specimens	Requires the presentation of an import permit.	CITES Article IV-4 does not require an import permit for the import of a species included in Appendix II. However, CITES Article IV-6 requires a certificate for the introduction from the sea of Appendix II species, except where Article XIV-4 CITES applies. *See note 3*
Article 4(2)(c) Reg. 338/97, referring to Article 4(1)(b)(i) Reg. 338/97 Introduction into the Community of Annex B specimens	The applicant must provide documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned which, in the case of a species listed in the Appendices to the Convention, shall be an export permit or re-export certificate, or copy thereof, issued in accordance with the Convention by a competent authority of the country of export or re-export.	No such requirement in CITES Article IV-6 to issue a certificate for introduction from the sea for Appendix II specimens.
Article 4(3) Reg. 338/97 Introduction into the Community of Annex C specimens	Requires the presentation of an import notification, and - (a) in the case of export from a country mentioned in relation to the species concerned in Annex C, the applicant shall provide documentary evidence, by means of an export permit issued in accordance with the CITES by an authority of that country competent for the purpose, that the specimens have been obtained in accordance with the national legislation on the conservation of the species concerned; or - (b) in the case of export from a country not mentioned in relation to the species concerned in Annex C, the applicant shall present an export permit, a re-export certificate or a certificate of origin issued in accordance with the Convention by an authority of the exporting country competent for the purpose. - (b) In the case of re-export from any country, the applicant shall present an export permit, a re-export certificate or a certificate of origin issued in accordance with the CITES by an authority of the re-exporting country competent for the purpose.	CITES Article V-3 requires for the import of an Appendix III specimen the presentation of a certificate of origin and of an export permit where the import is from a State which has included that species in Appendix III CITES Article V-4 requires in the case of re-export of an Appendix III specimen a certificate granted by the MA of the State of re-export that the specimen was processed in that State or

		is being re-exported (the latter being a re-export certificate according to Wijnstekers)

Article 4(5) Reg. 338/97	See comment under Article 5(6) Reg. 338/97	
Article 4(6) Reg. 338/97 Cases where the Commission may establish restrictions on the introduction into the community	*The formulation is unclear: it uses 'and' as well as 'or' in the listing of the conditions, which are all on the same 'level' (use of letters a to d). But the use of the 'or' could allow to think that paragraphs c and d are 'subdivisions' of the paragraph b.*	
Article 4(7) Reg. 338/97 When special cases of transhipment, air transfer or rail transport occur following introduction into EC	Derogations from completion of the checks and presentation of import documents at the border Customs office at the point of introduction	CITES Article VII-1 does not mention the case of air transfer or rail transport, only the case of transhipment. CITES Article VII-1 specifies that the derogation shall apply while the specimens remain in Customs control (see also Conf.9.7-a(i)) *See note 4*
Article 5(2)(a) Reg. 338/97 Advice of the competent SA for the issuance of an export permit for an Annex A specimen	Advice in writing that the capture or collections of the specimens in the wild or their export will not have a harmful effect on the conservation status of the species <u>or</u> on the extent of the territory occupied by the relevant population of the species	CITES Article III-2-a requires for the export of an Appendix I specimen that a SA of the State of export has advised that such export will not be detrimental to the survival of that species.
Article 5(2)(b) Reg. 338/97 Minor error/grammatical change	To clarify the respective responsibilities: …where the application is made to a Member State other than the Member State of origin, such documentary evidence shall be furnished by means of a certificate (<u>insert: from the Member State of origin</u>**)** stating that the specimen was taken from the wild in accordance with the legislation in force on its territory.	
Article 5(2)(c)(ii) Reg. 338/97 Minor error/grammatical change	*Change the term 'Annex' to 'Appendix' as per the term used in the text of CITES.*	

Article 5(2)(c) Reg. 338/97 Issuance of an export permit for an Annex A specimen: the MA must be satisfied that:	- (i) any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment - (ii) the specimens of species not listed in Annex I CITES will not be used for primarily commercial purposes or in the case of export to a State party to CITES of the species referred to in Article 3(1)(a) of the Reg. [listed in Appendix I to CITES for which the MS have not entered a reservation], an import permit has been issued	Specific requirements for the transport of live animals in Conf.10.21 *See note 2* - CITES Article III-2-d requires that a MA of the State of export is satisfied that an import permit has been granted for the specimen *See note 5*
Article 5(3) Reg. 338/97, referring to Article 5(2)(c) Reg. 338/97	See comments under Article 5(2)(c) Reg. 338/97	
Article 5(4) Reg. 338/97, referring to Article 5(2)(a) Reg. 338/97 Advice of the competent SA for the issuance of an export permit for an Annex B specimen	Advice in writing that the capture or collections of the specimens in the wild or their export will not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species	CITES Article IV-2-a requires for the export of an Appendix II specimen that a SA of the State of export has advised that such export will not be detrimental to the survival of that species.
Article 5(4) Reg. 338/97, referring to Article 5(2)(a) Reg. 338/97 Advice of the competent SA for the issuance of an export permit for an Annex C specimen	Advice in writing that the capture or collections of the specimens in the wild or their export will not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species	CITES Article V does not require any advice of a SA for the export of an Appendix III specimen.

Article 5(4) Reg. 338/97, referring to Article 5(2)(c)(i) Reg. 338/97 Issuance of an export permit or re-export certificate for Annexes B and C specimens	The MA must be satisfied that any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment	Specific requirements for the transport of live animals in Conf.10.21 *See note 2*
Article 5(4) Reg. 338/97, referring to Article 5(2)(d) Reg. 338/97 Issuance of an export permit for an Annex C specimen	MA satisfied that there are no other factors relating to the conservation of the species which militate against issuance of the export permit, following consultation with the competent SA	CITES Article V-2 does not require a 'non detrimental finding' for the issuance of an export permit for Appendix III specimens
Article 5(4) Reg. 338/97, referring to Article 5(2)(d) Reg. 338/97 Issuance of a re-export certificate for Annexes B and C specimens	MA satisfied that there are no other factors relating to the conservation of the species which militate against issuance of the re-export certificate, following consultation with the competent SA	CITES Articles IV-5 and V-4 do not require a 'non detrimental finding' for the issuance of re-export certificates for Appendices II and III specimens

Article 5(4) Reg. 338/97, referring to Article 5(3)(a) to (d) Reg. 338/97 Issuance of a re-export certificate for Annex C specimens: the applicant must provide documentary evidence that the specimens:	- a) were introduced into the Community in accordance with the provisions of the Reg. - b) if introduced into EC before the entry into force of this Reg., were introduced in accordance with the provisions of Reg. 3626/82/EC - c) if introduced into the EC before 1984, entered international trade in accordance with the provisions of CITES - d) were legally introduced into the territory of a MS before the provisions of the Regulations referred to in a) and b) or of the CITES became applicable to them, or became applicable in that MS	Is it in line with CITES Article V-4? "a certificate granted by the MA of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimens concerned" *Does it imply that to issue this certificate the MA must be satisfied (by means of documentary evidence provided by the applicant) that the specimens concerned entered international trade in accordance with the provisions of CITES?*
Article 5(6) Reg. 338/97 Reference to dead specimens	*Compare to Article 4(5), why are dead specimens referred to in the derogations for export permits/re-export certificates in this Article and not in the equivalent Article 4(5) which refers to import permits?*	
Article 6 Reg. 338/97 Time delay for informing the Commission	*In practice, what is the time delay between a Member State rejecting an application for a permit or certificate and informing the Commission and the Commission subsequently contacting other Member States? Have there been any problems associated with this process?*	
Article 7(1)(a) Reg. 338/97 Minor error/grammatical change	*For consistency and clarity, change the term 'Save' to 'Except' as used elsewhere in the Regulations for exemptions/derogations.*	
Article 7(1)(a) Reg. 338/97	Specimen of species listed in Annex A that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Annex B	Not in line with CITES Article VII-4. *See note 6*

Article 7(1)(b) Reg. 338/97 Case of artificially propagated plants	- Provisions of Articles 4 and 5 may be waived - Under special conditions laid down by the Commission. *Article 7(1)(c): in accordance with procedure Article 18* - Conditions relating to: (i) the use of phytosanitary certificates (ii) trade by registered commercial traders and by the scientific institutions [referred to in para. 4 of article 7 Reg. 338/97: 'registered by the MAs of the State in which they are located'] (iii) trade in hybrids	Specific case of Appendix II specimens: can an artificially propagated plant be introduced from the sea? *CITES does not provide for a limited list of cases for the application of this derogation*
Article 7(2)(a) Reg. 338/97 Case of a specimen in transit through the EC	Not required: checks and presentation at the border Customs office at the point of introduction of the prescribed permits	CITES Article VII-1 derogation applicable while the specimens remain in Customs control. *See note 4*
Article 7(2)(c) Reg. 338/97 Sanction of this condition	If document not issued before export or re-export, the specimen must be seized and may, where applicable, be confiscated unless the document is submitted retrospectively in compliance with the conditions specified by the Commission in accordance with Article 18 procedure. *What is this procedure? See note 7*	
Article 7(3) Reg. 338/97 Case of dead specimens, parts and derivatives which are personal or household effects	- Provisions of Article 4 do not apply to those specimens, where introduced into EC - In compliance with provisions specified by the Commission in accordance with procedure Article 18	Can a personal or household effect be introduced from the sea? Hunting trophy?
Article 7(4) Reg. 338/97 Case of non-commercial loans, donations and exchanges, between scientists and scientific institutions: documents shall not be required	Scientists and institutions registered by the MAs of the State in which they are located	CITES Conf.11.15(e)(iv) recognizes that this exemption should apply to legally acquired animal and plant specimens *See note 1* + Standards for registration quite developed in CITES Conf.11.15, but nothing in EC Regs.

Article 8(1) Reg. 338/97	Note the slightly different wording used here than in Article 16(1)(j) Reg. 338/97, would be better if consistent.	
Article 10 Reg. 338/97	*Should the Regulation be re-opened, this article could probably be deleted. It does not add any requirement in the Regulation. Reference is sometimes made to 'Article 10 certificates' to refer to the certificate delivered under Article 8(3) Reg. 338/97. However, this expression is not appropriate, as Article 10 refers to more than one type of certificates. This therefore creates confusion: in the example it could be more appropriate and simpler to talk about Article 8(3) certificates.*	
Article 12(4) Reg. 338/97 In exceptional cases a MA may authorise the introduction into the Community or the export or re-export therefrom at a Customs office other than the one designated in accordance with para. 1	- In accordance with criteria defined under Article 18 procedure.	No such possibility in CITES.
Article 12(5) Reg. 338/97 At border crossing points the public are informed of the implementing provisions of Reg. 338/97	*In practice how do Member States achieve this/deal with changes to the information as a result of amendments?*	No such requirement in CITES
Article 13(2) Reg. 338/97	*Where are the 'appropriate qualifications' of members of the scientific authority and 'separate duties of the scientific authorities' outlined?*	
Article 13(3)(a) Reg. 338/97	MS shall forward, not later than three months before the date of application of this Regulation, the names and addresses of SAs to the Commission	No such requirement in CITES.

Article 13(3)(b) Reg. 338/97 The Commission can request each primary MA to communicate to it certain information	Among others impressions of the stamps, seals or other devices used to authenticate permits or certificates	-In Conf.12.3 section I-m this is envisaged as an obligation for the Parties, not as a possibility for the Commission to request the information. - CITES does not require communication of impressions of the stamps, seals, etc.
Article 13(3)(c) Reg. 338/97 MS shall communicate to the Commission any changes in the information provided	Not later than two months after the implementation of such change	CITES Conf.12.3. section I-m gives a shorter delay: "within one month of any change"
Article 13(3)(c) Reg. 338/97 MS shall communicate to the Commission any changes in the information provided about the SAs according to 13(3)(a) Reg. 338/97	Not later than two months after the implementation of such change	No such requirement in CITES.
Article 16 Reg. 338/97	*Some of the wording of some of the paragraphs is similar or closely related. It would provide more clarity if similar infringements could be grouped and possibly simplified or at least re-ordered ie group those relating to permits compared to those about specimens.*	
Article 16(1)(j) Reg. 338/97	Note the slightly different wording used here than in Article 8(1) Reg. 338/97, would be better if consistent.	
Article 16(2) Reg. 338/97	'The measures referred to in paragraph 1 shall be appropriate to the nature and gravity of the infringement.' *Do Member States require more specific guidance on this?*	
REGULATION 865/2006		

Article 2(1) Reg. 865/2006 Forms on which import permits, export permits, re-export certificates, and application for such documents are drawn up	- shall conform to the model set out in Annex I to Reg. 865/2006 - except with regards to spaces reserved for national use *See note 8 about re-export certificates*	- In the case of Annex B specimens, need to compare the import permits with CITES Conf.12.3, for the introduction from the sea certificates? - CITES Article VI-2: 'An export permit shall contain the information specified in Appendix IV'. *What is this Appendix IV?*
Article 2(3) Reg. 865/2006 Forms on which travelling exhibition certificates and application for such documents are drawn up	- shall conform to the model set out in Annex III to Reg. 865/2006 - except as regards spaces reserved for national use	CITES Conf.12.3 section VI-b: Model for travelling exhibition included in Annex III to this Resolution *See note 9*
Article 2(4) Reg. 865/2006 Forms on which continuation sheets for travelling exhibition certificate are drawn up	shall conform to the model set out in Annex IV to Reg. 865/2006	CITES Conf.12.3 section VI-b: Model for travelling exhibition included in Annex III to this Resolution *See note 9*
Article 2(5) Reg. 865/2006 Identical forms for internal and international trade	Same model to draw up forms for internal trade certificates (provided for in Articles 8(3) and 9(2)(b) Reg. 338/97) and for re-export certificates (provided for in Articles 5(3) and 5(4) Reg. 338/97) *See note 8*	CITES Conf.12.3 section I-d: To avoid abusive or fraudulent user, the Parties do not use forms for their internal trade certificates that are identical to CITES forms
Article 3(1) Reg. 865/2006 Paper used for the forms	Free of mechanical pulp and dressed for writing purposes, and shall weigh at least 55 g/m2.	CITES Conf.12.3 section I-i: parties should consider printing permits and certificates printed on security paper

Article 5 Reg. 865/2006	Requirements for the contents of permits, certificates and applications for the issue of such document	*No requirements in CITES Conf.12.3 for the content of the applications for permits and certificates (CITES Conf.12.3 concerns only the contents of the permits and certificates themselves).*
Article 9 Reg. 865/2006 Specific case of shipments of specimens shipped together as part of one load	A separate import permit shall be issued for each shipment of specimens shipped together as part of one load. *Is it clear the difference between what constitutes a shipment and a load? Is the term shipment consistently used?*	CITES Art. VI-5: 'a separate permit or certificate shall be required for each consignment of specimens'. *See note 10* (terminology)
Article 10(1) Reg. 865/2006 Validity of import permits for Annex B specimens	- Period shall not exceed 12 months - Import permit not valid in the absence of a valid corresponding document from the country of export or re-export	No provisions in CITES concerning the validity of certificates for introduction from the sea of Appendix II specimens
Article 10(6) Reg. 865/2006 Minor error/grammatical change	'in accordance with in *(delete 'in')* Articles 30 and…'	
Article 10(6) Reg. 865/2006	The holder shall, without undue delay, return to the issuing MA the original and all copies of any import permit, export permit, re-export certificate, travelling exhibition certificate or personal ownership certificate which has expired or which is unused or no longer valid	No such requirement in CITES
Article 11(1) Reg. 865/2006 Copies for the holder of used import permits shall cease to be valid in the following cases (a to d)	Specimen dead, escaped, released to the wild, destroyed, etc.	No such requirement in CITES. Only Article VI-4: Copies must be clearly marked as copies.

Article 15(1) Reg. 865/2006	Annex A specimens: Exceptional retrospective issue of documents for specimens of species listed in Annex A and referred to in Article 4(5) Reg. 338/97 (specimens previously legally introduced into or acquired in the EC and reintroduced into the EC, modified or not; worked specimens acquired more than 50 years previously) *Articles 15(2), 15(3), 15(4) provide for conditions for retrospective issue. Not checked here because primary inconsistency.*	CITES Conf.12.3 section XIII: a(i) a MA of an exporting or re-exporting country do not issue CITES permits and certificates retrospectively b) a MA of an importing country, or of a country of transit or transhipment, do not accept permits or certificates that were issued retrospectively c) exceptions from the recommendations under a) and b) not be made with regard to Appendix I specimens.
Article 15(1) Reg. 865/2006 Exceptional retrospective issue of documents for specimens of species listed in Annex B and C Reg. 338/97	Condition: provided that the importer or (re-)exporter informs the competent management authority on arrival or before departure of the shipment of the reasons why the required documents are not available	This condition is not required under CITES Conf.12.3 section XIII.
Article 15(2) Reg. 865/2006 Conditions for exceptional retrospective issue of documents for Annexes B and C specimens	the competent MA of the MS, in consultation with the competent authorities of a third country where appropriate, is satisfied that (…)	CITES Conf.12.3 section XIII-c requires that both the MAs of the (re-) exporting and importing countries be satisfied, and after a prompt and thorough investigation in both countries. Seems stricter than EC requirements

Article 18(1) Reg. 865/2006 Sim0plified procedures for biological samples	- In the case of trade that will have no impact on the conservation of the species concerned or only a negligible impact - simplified procedures on the basis of pre-issued permits and certificates may be used - for biological samples of the type and size specified in Annex XI, where those samples are urgently required to be used in the manner specified in that Annex and	CITES Conf.12.3 section XII-a(i) states that the biological samples must be urgently required in a limited number of cases: A. in the interest of an individual animal; B. in the interest of the conservation of the species concerned or other species listed in the Appendices; C. for judicial or law enforcement purposes; D. for the control of diseases transferable between species listed in the Appendices; E. for diagnostic or identification purposes.
Article 18(1)(a) Reg. 865/2006 Conditions for simplified procedure for biological sample	Each MS must establish and maintain a register of the persons and bodies that may benefit from simplified procedures, hereinafter 'registered persons and bodies', as well as of the species that they may trade under such procedures, and must ensure that the register is reviewed by the MA every five years	Nothing in CITES about the review of the register by the MA every five years.
Article 19(1) Reg. 865/2006 Simplified procedures with regard to export or re-export of dead specimens listed in Annexes B and C	Member States may provide for the use of simplified procedures on the basis of pre-issued export permits or re-export certificates	In line with CITES Conf.12.3 section XII-a?: the CoP recommends that Parties use simplified procedures to issue permits and certificates to facilitate and expedite trade that will have a negligible impact, or none, on the conservation of the species concerned.

Article 19(1) (a) to (c) Reg. 865/2006 Conditions for simplified procedures with regard to dead specimens listed in Annexes B and C	- (a) a competent scientific authority must advise that such export or re-export will have no detrimental impact on the conservation of the species concerned; - (b) each Member State must establish and maintain a register of the persons and bodies that may benefit from simplified procedures, hereinafter 'registered persons and bodies', as well as of the species that they may trade under such procedures, and must ensure that the register is reviewed by the management authority every five years; - (c) Member States must provide registered persons and bodies with partially completed export permits and re-export certificates	- No such requirement in CITES - Nothing in CITES about the review of the register by the MA every five years (CITES Conf.12.3 section XII-b(i)). - CITES Conf.12.3 section XII-b(ii) states also that those partially completed permits and certificates shall remain valid for a period of up to six months for export permits, and 12 months for import permits and re-export certificates.
Article 19(1)(d)(i) Reg. 865/2006 Signature of the completed permit or certificate in box 23	*Does this refer to box 23 on the application form or in the 'Special conditions' box on the permit? This follows on from the general comment that it is unclear in some cases which form is being referred to, therefore the text of the regulation should refer to the Annex (and ideally the specific form).*	
Article 20 Reg. 865/2006 Applications for an import permit	Completion, submission, case of previous rejection, marking	Nothing so specific in CITES, to check with Conf.12.3
Article 20(1) Reg. 865/2006 Application forms for import permits	*'Member States may, however, provide that only an application form is to be completed, in which case such an application may relate to more than one shipment.'* Does this cause any practical problems for permitting staff especially with live animal shipments if the one form is used for more than one shipment?	

Article 20(4) Reg. 865/2006, Article 64(1) Reg. 865/2006 Marking requirements for imports permits	*See note 11*	
Article 21 Reg. 865/2006	The copy for the exporting country may be returned to the applicant for submission to the MA of the country of (re-)export, for the purposes of the issue of an export permit or re-export certificate. If not, the applicant shall be given a written statement that an import permit will be issued and on what conditions.	*For an explanation see note 12.*
Article 26(4) Reg. 865/2006, Article 65(3) Reg. 865/2006 Marking requirements for issuing export permits for any container of caviar as specified in point (g) of Article 64(1) [caviar of *Acipenseriformes* spp., including tins, jars or boxes into which such caviar is directly packed]	*See note 13*	
Article 26(4) Reg. 865/2006, Article 65(4) Reg. 865/2006 Export permits for live vertebrates of Annex A species	- shall be issued only if the applicant has satisfied the competent MA that the relevant requirements laid down in Article 66 of this Regulation have been met. - For export permits concerning specimens referred to in Article 65, the applicant shall satisfy the management authority that the marking requirements laid down in Article 66 have been fulfilled. *See note 13*	

Article 26(5) Reg. 865/2006 Exception to the rule that the 'copy for the holder', or the 'copy for the importer', or a certificate issued on the basis thereof, must be returned to the applicant.	Such a document shall not be returned to the applicant if the re-export certificate is granted for the total number of specimens for which the document is valid (…) *Why not?*	
Article 30(1)(a) Reg. 865/2006 Characteristic of the specimens part of the travelling exhibition	Born and bred in captivity in accordance with Art. 54 and 55, or artificially propagated in accordance with Art. 56 Reg.865/2006	CITES Article VII-7-b seems to require that travelling exhibition certificates be delivered to Appendix I specimens bred in captvity or artificially propagated for non commercial purposes *See note 14* CITES Conf.12.3 section VI-a: the specimens concerned are CITES specimens. No such restriction in EC legislation.
Article 32 Reg. 865/2006 Birth of an animal covered by a travelling exhibition certificate	Where, during a stay in a Member State, an animal covered by a travelling exhibition certificate gives birth, the management authority of that Member State shall be notified… *Would it not also be useful for there to be a notification requirement for any deaths and/or escapes?*	
Article 33(1)(a) Reg. 865/2006 Requirement for specimens covered by travelling exhibition certificate	The specimen must be registered by the issuing MA	CITES Conf.12.3 section VI-a requires that the travelling exhibition itself be registered with the MA of the state in which it is based

Article 36 Reg. 865/2006	Replacement of a travelling exhibition certificate lost, stolen or destroyed	CITES Conf.12.3 section VI-l: documents lost, stolen or accidentally destroyed
Article 48(1)(c) Reg. 865/2006	*Should this paragraph also include artificially propagated specimens as well as per Article 8(3)(d) Reg. 338/97?*	
Article 50(1) Reg. 865/2006	The applicant for the certificates provided for in Article (…) 9(2)(b) (…) shall, where appropriate, complete boxes 1, 2 and 4 to 19 of the application form and boxes 1, (insert 2) and 4 to 18 of the original and all copies. *For consistency the applicant should fill out the details in box 2, Annex V (ie 'Authorised location for live specimens of Annex A species) in both the application form and the permit forms.*	
Article 51 Reg. 865/2006	Amendments to permits and certificates	No amendments to permits and certificates in CITES (only amendments to the convention or the the appendices)
Article 51(1) Reg.865/2006	Where a shipment, covered by a 'copy for the holder' (form 2) of an import permit, or a 'copy for the importer' (form 2) of an import notification, or a certificate, is split or where, for other reasons, the entries in those documents no longer reflect the actual situation, the management authority may take either of the following actions (…) *What is a split shipment? The Management Authority can implement a number of processes if the documents no longer reflect the actual situation-does this provision cause any problems in practice?*	
Article 55 Reg. 865/2006 Establishment of ancestry	Where, for the purposes of Article 54, a competent authority considers it necessary to establish the ancestry of an animal through the analysis of blood or other tissue, such analysis or the necessary samples shall be made available in a manner established by that authority.	No mention of this in CITES
Article 56 Reg. 865/2006	Criteria for determining whether a specimen has been artificially propagated	Differences with definition in CITES Conf.11.11 (except in the case of timber) *See note 15*

Article 57(1) and 57(2) Reg. 865/2006	The derogations in paragraph 1 and 2 could be combined into a list form for greater clarity and ease of use, for example: *'The derogation from Article 4 of Regulation (EC) No 338/97…shall not apply to:* *(a) those specimens used for commercial gain…; or* *(b) to specimens of species listed in Annex A thereto…* *The derogation shall only apply to …'*	
Article 57(1)(c) Reg. 865/2006 Hunting trophies taken by a traveller and imported at a later date as personal and household effects	*What is the definition of 'a traveller', why do traveller's have different rights to residents, what does the term 'taken' refer to ie taken within the community (ie a re-export) or in a third country, imported at a later date is there a time limit on this import?*	
Article 57(3) Reg. 865/2006 First introduction into the EC of personal and household effects, including hunting trophies, by a person normally residing in the Community	- No presentation of an import permit if presentation of the original of a (re-)export document and a copy thereof - Customs shall forward the original in accordance with Article 45 Reg. 865/2006 and return the stamped copy to the holder	Different in CITES Article VII-3 *See note 16*

Article 57(5) Reg. 865/2006 The introduction or re-introduction into the Community of certain specimens never require the presentation of a (re)-export document or an import permit (Derogation form Articles 57(3) and 57(4) Reg. 865/2206)	(a) caviar of sturgeon species (Acipenseriformes spp.), up to a maximum of 250 grams per person; (b) rainsticks of Cactaceae spp., up to three per person; (c) dead worked specimens of Crocodylia spp., excluding meat and hunting trophies, up to four per person; (d) shells of Strombus gigas, up to three per person	CITES Conf.13.7 specifies that are concerned the personal and household effects that are dead specimens, parts or derivatives of the species listed, and includes also seahorses (Hippocampus spp.) – up to four specimens per person; and giant clam (Tridacnidae spp.) – up to three specimens, each of which may be one intact shell or two matchin halves, not exceeding 3 kg per person. Moreover the Resolution includes all the specimens of crocodilian species – up to four specimens per person.
Article 58(2) Reg. 865/2006	The derogation of Article 7(3) Reg. 338/97(personal and household effects) will not apply to Annex A specimens in the case of export	CITES Conf.13.7 includes the case of export
Article 58(4) Reg. 865/2006 Derogation from Article 58 paragraphs 2 and 3 for certain items listed in Annex B [items listed in points (a) to (d) of Article 57(5)]	the export or re-export of those items shall not require the presentation of a (re-)export document 57(5)(a) caviar of sturgeon species (*Acipenseriformes* spp.), up to a maximum of 250 grams per person; 57(5)(b) rainsticks of *Cactaceae* spp., up to three per person; 57(5)(c) dead worked specimens of *Crocodylia* spp., excluding meat and hunting trophies, up to four per person; 57(5)(d) shells of *Strombus gigas*, up to three per person.	CITES Conf.13.7 specifies that are concerned the personal and household effects that are dead specimens, parts or derivatives of the species listed, and includes also seahorses (Hippocampus spp.) – up to four specimens per person; and giant clam (Tridacnidae spp.) – up to three specimens, each of which may be one intact shell or two matchin halves, not exceeding 3 kg per person. Moreover the Resolution include all the specimens of crocodilian species – up to four specimens per person.
Chapter XV Reg. 865/2006, Articles 59 to 63	*This chapter is quite confusing due to the number of conditions regarding the derogations and exemptions. Does it need to be reworked?*	

Article 59(5) Reg. 865/2006 An exemption provided for in Article 8(3) of Regulation (EC) No 338/97 shall be granted with regard to live vertebrates…	*Why does this only refer to vertebrates? Article 8(3) refers to animal species and does not specify vertebrates. Note: Article 66 (marking) only refers to live birds/vertebrates, Article 65(4) refers to vertebrates but Article 67 refers to 'live animals.' Need to be consistent with use of terms. It is possible to mark some invertebrates, should these not be included in the requirements under Article 66?*	
Article 62 Reg. 865/2006	*As per the comment regarding Chapter XV, Article 62 is a derogation of the derogation. As a result Article 8(3) Reg. 338/97 requires a certificate, whereas Article 62 does not require a certificate for the same specimens.*	
Article 64 Reg. 865/2006	*Are there marking requirements for plants/timber? Article 64 only refers to captive breeding and ranching ie animal specimens.*	
Article 64(1) Reg. 865/2006, Article 20(4) Reg. 865/2006	Marking requirements for imports permits *See note 11*	
Article 65(1) Reg. 865/2006, Article 65(2) Reg. 865/2006, Article 65(3) Reg. 865/2006, Article 26(4) Reg. 865/2006	Marking requirements for re-export certificates *See note 17*	
Article 65(3) Reg. 865/2006, Article 26(4) Reg. 865/2006	Marking requirements for issuing export permits for any container of caviar as specified in point (g) of Article 64(1) [caviar of *Acipenseriformes* spp., including tins, jars or boxes into which such caviar is directly packed] *See note 13*	
Article 65(4) Reg. 865/2006, Article 26(4) Reg. 865/2006 Export permits for live vertebrates of Annex A species	- shall be issued only if the applicant has satisfied the competent MA that the relevant requirements laid down in Article 66 of this Regulation have been met. - For export permits concerning specimens referred to in Article 65, the applicant shall satisfy the management authority that the marking requirements laid down in Article 66 have been fulfilled. *See note 13*	

Article 71(1) Reg. 865/2006 Effect of the Article 4(6) restriction:	*See note 18. Location of the article in the Regulation.*	
CITES		
CITES Article IV-3	No such requirements in the EC Regs.	A SA in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a SA determines that the exports of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the SA shall advise the appropriate MA of suitable measures to be taken to limit the grant of export permits for specimens of that species.
CITES Article VI-3, CITES Conf.12.3 section I-e Permits and certificate numbers	No such requirements in the EC Regs.	Each permit or certificate shall contain a control number assigned by the MA granting it CITES Conf.12.3 section I-e: for tracking purposes permits and certificates number be limited, if possible, to 14 characters in the format WWxxYYYYYY/zz.

CITES Article VI-3, CITES Conf.12.3 section I-j, CITES Conf.12.3 section I-k Security stamps	Security stamps not required in the EC Regulations. Possibility of security stamps mentioned in the Instructions and explanations for travelling exhibition certificates.	Each permit or certificate shall contain the name and any identifying stamp of the MA granting it CITES Conf.12.3 section I-j: Parties that do not already do so affix a security stamp to each permit and certificate CITES Conf.12.3 section I-k: cancellation of the security stamp: by a signature and a stamp or seal, preferably embossed; number of the stamp also recorded on the document.
CITES Article VI-7	No general marking requirement in the EC Regs.	General requirement for the marking of specimens
CITES Conf.12.3 section I-d Signature of applicant	Nothing concerning signature in EC Regs.	If a permit or certificate form includes a place for the signature of the applicant, the absence of the signature should render the permit or certificate invalid
CITES Conf.12.3 section II-e No export permit or re-export certificate for specimens illegally acquired	No such requirement in the EC Regulations.	The CoP recommends that "no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation, unless the specimen has previously been confiscated." *See note 1*
CITES Conf.12.3 section II-f No import of specimens illegally acquired	No such requirement in the EC Regulations.	The CoP recommends that "Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin" *See note 1*

CITES Conf.12.3 section V-b Validity of certificates of origin	No such requirement in the EC Regs	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 not be accepted to authorize export or import except during the period of validity.
CITES Conf.12.3 section V-c Validity of certificates of origin		After the expiry of the said 12-months period of validity, a certificate of origin be considered as void and of no legal value whatsoever.
CITES Conf.12.3 section VII-i	No such requirement in Reg. 865/2006	Parties check travelling exhibitions closely, at the time of export/re-export and import, and note especially whether live specimens are transported and cared for in a manner that minimises the risk of injury, damage to health or cruel treatment

CITES Conf.12.3 Section XIII-c, CITES Conf.12.3 Section XIII-e Specific case of retrospective issue of documents for personal and household effects	Nothing specific in the EC Regulations.	- CITES Conf.12.3 Section XIII-c(i): specific condition: the MA, 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 Here too CITES Conf.12.3 section XIII-c requires that both the MAs of the (re-) exporting and importing countries be satisfied, and after a prompt and thorough investigation in both countries. - CITES Conf.12.3 Section XIII-e: in cases where retrospective permits are issued for personal or household effects, Parties make provision for penalties and restrictions on subsequent sales within the following six months to be imposed where appropriate to ensure that the power to grant exemptions from the general prohibition on the issue of retrospective permits is not abused
CITES Conf.12.3 Section XIII-f	No such requirement in the EC Regulations	The above discretion to issue permits and certificates retrospectively not be afforded to benefit repeat offenders

Notes accompanying the Table

The following 'Notes' relate to some of the possible errors or discrepancies (ie issues for consideration) or inconsistencies that have been identified through the comparison of EC Regulations and CITES provisions. Those notes are referred to in the Table summarizing all the inconsistencies identified during the study. The Notes are here to provide background, when necessary, to some of the key issues. This is not an exhaustive list.

Note 1: Articles 2(j), 7(4) Reg. 338/97, CITES Resolutions Conf.11.15, Conf.13.7 and Conf.12.3 section II-e and f: Specimens illegally acquired?

Can they be personal or household effects (PHE) under the EU Regulations?

Article 2(j) of *Regulation 338/97* gives the following definition:

> *"(j) 'personal or household effects' shall mean dead specimens, parts and derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels;"*

In the CITES Resolution Conf.13.7, the Conference of the Parties decided that the terms 'personal or household effects' means specimens that are, among others, legally acquired.

Article 7(4) of *Regulation 338/97* establishes a derogation:

> *"The documents referred to in Articles 4, 5, 8, and 9 shall not be required in the case of non-commercial loans, donations and exchanges between scientists and scientific institutions (…) of herbarium specimens and other preserved, dried and embedded museum specimens, and of live plant material, bearing a label (…)"*

The CITES Resolution Conf. 11.15(e)(iv) recommends that

> *"to prevent abuse of this exemption, it should be limited to shipments of legally obtained specimens between registered scientific institutions"*

Other cases:
CITES Conf.12.3 section II-e: the CoP recommends that "no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation, unless the specimen has previously been confiscated."
CITES Conf.12.3 section II-f: the CoP recommends that "Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin"
Is there anything similar in EU Regs?

There are no similar requirements in the EC Regulations.

Note 2: Articles 4(1)(f), 4(2)(c), 5(2)(c)(1), 5(3), 5(4) Reg. 338/97, CITES Resolution Conf.10.21-g and f: Transport of live animals

In the EC Regulations, several provisions relate to the transport of live animals. Several similar provisions also appear in the text of CITES and in Resolution Conf.10.21.

In particular Conf.10.21-g requires that

> *"applicants for export permit and re-export certificates be notified that, as a condition of issuance, they are required to prepare and ship live specimens in accordance with the IATA Live Animals Regulations for transport by air and the CITES Guidelines for Transport of Live Specimens for carriage by means other than air."*

Moreover, Conf.10.21-h requires that

> *"to the extent possible, shipments of live animals be examined and necessary action taken to determine the well-being of the animals by CITES-designated persons or airline personnel during extended holding period at transfer points"*

There does not seem to be a similar requirement in the EC Regulations. The requirements of the EC *Regulation 338/97* are the following:

Concerning Annex A specimens:

For introduction from the sea Article 4(1)(f)

> *"the management authority is satisfied that any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment."*

For export Article 5(2)(c)(i)

> *"the management authority is satisfied that: any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment."*

For re-export Article 5(3) and 5(2)(c)(i)

> 5(3) *"A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) have been met"*
>
> 5(2)(c)(i) *"the management authority is satisfied that: any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment"*

Concerning Annex B specimens:

For introduction from the sea Article 4(2)(c) and Article 4(1)(f)

> 4(2)(c) *"The import permit may be issued only when: the conditions referred to in paragraph 1(f) have been met."*
>
> 4(1)(f) *"the management authority is satisfied that any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment."*

For export Article 5(4) and Article 5(2)(c)(i)

> 5(4) *"An export permit may be issued only when the conditions referred to in paragraph 2 (c) (i) have been met."*
>
> 5(2)(c)(i) *"the management authority is satisfied that: any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment"*

For re-export Article 5(4) and Article 5(2)(c)(i)

> 5(4) *"A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) (i) and (d) and in paragraph 3 (a) to (d) have been met."*
>
> 5(2)(c)(i) *"the management authority is satisfied that: any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment"*

Concerning Annex C specimens:

For export Article 5(4) and Article 5(2)(c)(i)

> 5(4) *"An export permit may be issued only when the conditions referred to in paragraph 2 (c) (i) have been met."*
>
> 5(2)(c)(i) *"the management authority is satisfied that: any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment"*

For re-export Article 5(4) and Article 5(2)(c)(i)

5(4) *"A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) (i) and (d) and in paragraph 3 (a) to (d) have been met."*

5(2)(c)(i) *"the management authority is satisfied that: any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment"*

Note 3: Articles 4(1)(c), 4(1)(f) and 4(2) Reg. 338/97, Articles IV-4, IV-6 and XIV-4 CITES: Specific case of introduction into the EC: introduction from the sea

In CITES introduction from the sea of a specimen is treated as a specific case, distinct from the cases of import, export and re-export and as such there are specific requirements for such specimens, including issuance of an 'introduction from the sea certificate'.

By contrast EC *Regulation 338/97* does not consider the situation of introduction from the sea as significantly different from the case of import. In fact, EC Reg. 338/97 considers only the case of Introduction into the Community, which covers both the import and the introduction from the sea. Therefore the requirements are the same in both cases, with one exception: Article 4(1)(f) Reg. 338/97 adds an additional condition for introduction from the sea ("*any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment*"). Otherwise the introduction from the sea of a specimen must be consistent with the same requirements for the import of specimen and requires an import permit (there is no equivalent to an 'introduction from the sea' certificate).

Annex A specimens

Globally the EC requirements for the introduction from the sea into the Community seem to be in line with the CITES provisions. The only difference is the requirement under Article 4(1)(f) EC Reg. 338/97 that "*any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment*", which does not appear as such in CITES.

However, a difference appears within the *Regulation 338/97*, when reading Articles 4(1)(c) and 4(1)(f) Reg. 338/97.

> Article 4(1)(c): the scientific authority is in charge of examining that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly.
>
> Article 4(1)(f): the management authority, in case of introduction from the sea, is in charge of examining that any live specimen will be so prepared as to minimise the risk of injury, damage to health or cruel treatment.

The same difference appears also in CITES. Articles III-3-b (case of import) and III-5-b (case of introduction from the sea) concern the question of whether the proposed recipient of a live Appendix I specimen is suitably equipped to house and care for it. But in III-3-b the scientific authority is in charge of examining it, whereas in III-5-b the management authority bears this task. According to Willem Wijnstekers[45] in CITES this is simply an error that has never been removed. If this is the same type of error in the Regulation, it should be removed.

Annex B specimens

The situation is more complicated regarding the introduction from the sea of Annex B specimens. Article 4(2) EC Reg. 338/97 requires an import permit for the import of an Annex B specimen (noting that this also includes Annex B specimens that have been introduced from the

[45] W. WIJNSTEKERS, *The Evolution of CITES – A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 8th Edition, version 1.0, 2005, Geneva, Switzerland, available on the CITES website http://www.cites.org/eng/resources/publications.shtml.

sea), although Article IV-4 of CITES does not require an import permit for the import of an Appendix II specimen. Therefore in the case of import into the EC of an Annex B specimen, the EC provisions are stricter than the requirements for Appendix II specimen under CITES.

As noted previously, Introduction from the Sea specimens in the EC Regulations require an import permit whereas Article IV-6 of CITES requires a certificate for Introduction from the Sea of Appendix II specimens.

The CITES provides an exception to this rule in Article XIV-4:

> *"A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement in question."*

In other words the certificate for introduction from the sea of Appendix II specimen is not required with regard to specimens that are taken by ships registered in a state which is a Party to a treaty, convention or international agreement affording protection to marine species included in Appendix II and in force at the time of the coming into force of CITES, and where that take is in accordance with that treaty, convention or international agreement.

As a consequence the certificate for Introduction from the Sea of Appendix II specimen is only required with regard to:

1) specimens that are taken by ships <u>non registered</u> in a state which is a Party to a treaty, convention or international agreement affording protection to marine species included in Appendix II, <u>or</u>
2) specimens that are taken by ships registered in a state which is a Party to a treaty, convention or international agreement affording protection to marine species included in Appendix II, where that take is <u>not in accordance</u> with that treaty, convention or international agreement.

In these two cases only the provisions of EC Regulations relating to the import permit for Introduction from the Sea of Annex B specimens have to be consistent with the requirements laid down in CITES for the certificates for Introduction from the Sea of Appendix II specimens, in Article IV-6 CITES.

Willem Wijnstekers further notes that Article XIV-4 "*only applies to treaty, convention and international agreement which were in force on 1 July 1975 and not to those which entered into force thereafter.*" He quotes the example of the 1946 International Convention for the Regulation of Whaling, which is older than CITES and affords protection to Appendix II marine species: "*All cetaceans regulated by that Convention, however, have meanwhile been included in Appendix I of CITES, as commercial whaling is subject to zero quotas under the Whaling Convention. At its ninth, 10th, 11th, 12th, and 13th meetings, the Conference of the Parties confirmed that cetacean species subject to zero quotas under the International Convention on Regulation of Whaling should be listed in Appendix I*".[46]

Note 4: Articles 2(v), 4(7) and 7(2)(a) Reg. 338/97, Article 53 Reg. 865/2006, Article VII-1 CITES, CITES Resolution Conf.9.7: Transit and transhipment: specimens must remain in Customs control?

CITES Article VII-1 provides that:

[46] W. WIJNSTEKERS, *The Evolution of CITES – A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 8th Edition, version 1.0, 2005, Geneva, Switzerland, available on the CITES website http://www.cites.org/eng/resources/publications.shtml.

> "*The provisions of Articles III, IV and V shall not apply to the transit or transhipments of specimens through or in the territory of a Party while the specimens remain in customs control*."

Moreover, for both case of transit and transhipment, in CITES Resolution Conf.9.7-a the CoP recommends that

> *"for the purpose of Article VII-1 of the Convention, the phrase 'transit or transhipment of specimens' be interpreted to refer only to:*
> *(i) specimens that remain under customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic;"*

In the case of transit, Article 7(2)(a) Reg. 338/97 provides that:

> "*By way of derogation from Article 4, where a specimen is in transit through the Community, checks and presentation at the border customs office at the point of introduction of the prescribed permits, certificates and notifications shall not be required*."

Article 2(v) gives the term transit as follows:

> "*'transit' shall mean the transport of specimens between two points outside the Community through the territory of the Community which are shipped to a named consignee and during which any interruption in the movement arises only from the arrangements necessitated by this form of traffic*"

In the case of transhipment, Article 4(7) Reg. 338/97 provides that:

> *"Where special cases of transhipment, air transfer or rail transport occur following introduction into the Community, derogations from completion of the checks and presentations of import documents at the border customs office at the point of introduction which are referred to in paragraphs 1 to 4 shall be granted in accordance with the procedure laid down in Article 18, in order to permit such checks and presentations to be made at another customs office designated in accordance with Article 12 (1)."*

The procedure mentioned is laid down in Article 53 Reg. 865/2006, which provides that:

> *"1. Where a shipment to be introduced into the Community arrives at a border customs office by sea, air or rail for dispatch by the same mode of transport, and without intermediate storage, to another customs office in the Community designated in accordance with Article 12(1) of Regulation (EC) No 338/97, the completion of checks and the presentation of import documents shall take place at the latter.*
>
> *2. Where a shipment has been checked at a customs office designated in accordance with Article 12(1) of Regulation (EC) No 338/97 and is dispatched to another customs office for any subsequent customs procedure, the latter shall require presentation of the 'copy for the holder' (form 2) of an import permit, completed in accordance with Article 23 of this Regulation, or the 'copy for the importer' (form 2) of an import notification, completed in accordance with Article 24 of this Regulation, and may carry out any checks it deems necessary in order to establish compliance with Regulation (EC) No 338/97 and this Regulation."*

The exemption is similar in the two instruments. However, CITES seems to insist on the fact that the specimen must remain in Customs control (mention in the Convention and in the Resolution). This does not appear in the *Regulation 338/97* or in *Regulation 865/2006*.

Nowhere in Article 7(2)(a) or in the definition of transit in Article 2(v) of Reg. 338/97, nor in Article 4(7) Reg. 338/97 or in Article 53 Reg. 865/2006, is it mentioned that the specimens must remain in Customs control for the presentation of the permits, certificates and notifications not to be presented at the border Customs office.

However, Reference Guide on EC legislation states that "transit refers only to specimens that remain in Customs control" (p.41).

Note 5: Articles 5(2)(c)(ii) Reg. 338/97, Article III-4-c CITES: Conditions for issuance of a re-export certificate for Annex A specimens

Article 5(3) of *Regulation 338/97* requires that the conditions referred to in Article 5(2)(c) be met. In particular Article 5(2)(c)(ii) Reg. 338/97 requires that:

> "*The management authority is satisfied that:*
> *the specimens of species not listed in Annex I* (should be Appendix I) *to the Convention will not be used for primarily commercial purposes, or*
> *in the case of export to a State party to the Convention of specimens of the species referred to in Article 3(1)(a) of this Regulation, an import permit has been issued*"

Therefore for Annex A specimens that are listed in Appendix I and are re-exported the issuance of re-export certificate requires the previous issuance of an import permit.

This is in line with CITES Article III-4-c only as it applies to living specimens. This Article requires:

> *"a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen".*

As far as the dead specimens are concerned, the import permit is not required for the issuance of a re-export certificate.

Note 6: Article 7(1)(a) Reg. 338/97, Article VII-4 CITES: Exception to the scope of Annex A: Specimens of species listed in Annex A that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Annex B

Relevant provisions

Article 7(1)(a) Reg. 338/97

> *"[Save where Article 8 applies,] specimens of species listed in Annex A that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Annex B."*

CITES Article VII-4

> *"Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II."*

Issue

There are two differences:

1) In EC Reg. Annex A animal specimens have to be born and bred in captivity to be treated as specimens of Annex B. In CITES Appendix I animals have only to be bred (and not born) in captivity to be treated as specimens of Appendix II.

   Note: Although at first there appears to be a difference used in the terminology between the EC Regulations and CITES, this is clarified in CITES Resolution Conf. 10.16 which defines a specimen bred in captivity as a specimen "*born or otherwise produced in a controlled environment*" ie born and bred, as per the text used in Article 7(1)(a) EC Reg. 338/97 and also the definition used in Article 54 EC Reg. 865/2006.

2) In CITES Appendix I animal specimens bred in captivity for commercial purposes, or Appendix I plant specimens artificially propagated for commercial purposes shall be

treated as specimens of Appendix II. By contrast in the EC Regulations the purpose is not stated. Therefore regardless of the purpose of the captive breeding or artificial propagation operation (eg whether commercial, non-commercial etc), Annex A animal specimens born and bred in captivity and plant specimens artificially propagated shall be treated as specimens of Annex B.

Supplementary Information

CITES Conf.12.10 (Rev. CoP 13) clarifies the definition of the term 'bred in captivity for commercial purposes' as referring to any specimen of an animal bred to obtain economic benefit, including profit, whether in cash or kind, where the purpose is directed toward sale, exchange or provision of a service or any other form of economic use or benefit. This Resolution further states that the exemption of Article VII-4 should be implemented through the registration by the Secretariat of operations that breed specimens of Appendix I species for commercial purposes. The Resolution establishes guidelines for the procedure to register and monitor such operations.

Note 7: Article 7(2)(c) Reg. 338/97, Article 16 Reg. 865/2006Retrospective issuance and submission of export or re-export document in case of transit through the Community

Article 7(2)(c) Reg. 338/97:

> "*If the document referred to in (b) [= valid export or re-export document provided for by CITES, necessary for an Annex A specimen to enter the EC territory for transit] has not been issued before export or re-export, the specimen must be seized and may, where applicable, be confiscated unless the document is submitted retrospectively in compliance with the conditions specified by the Commission in accordance with the procedure laid down in Article 18*"

However there are no such conditions laid down by the Commission for retrospective submission of export or re-export documents necessary for a specimen to transit through the Community in Reg. 865/2006. But Article 16 Reg. 865/2006 refers to Article 15 which only relate to retrospective issue of documents (not submission).

We might understand that Article 15 and 16 Reg. 865/2006 on the retrospective issue of certain documents are applicable to the retrospective submission of export or re-export documents for specimens in transit through the EC.

In Article 16 Reg. 865/2006:

> "*Articles 14 and 15 of this Regulation shall apply mutatis mutandis to specimens of species listed in Annexes A and B to Regulation (EC) No 338/97 which are in transit through the Community where that transit is otherwise in accordance with the latter*"

Therefore for specimens in transit through the community the provision of Article 15 are applicable to retrospective issue of certain documents. But the query is which documents are referred to here? If a specimen is in transit through the Community, the MS is neither the country of export nor the country of import. So the MS is not competent to issue export or import documents, at the time or retrospectively. Moreover, for a specimen in transit there is no need to show the import permit at the point of introduction, only the export or re-export documentation (Article 7(2)(a) and (b) Reg. 338/97).

Note 8: Articles 5(3) and 5(4) Reg. 338/97, Articles 2(1), 2(5), 6(2), 6(4), 10, 11, 26(1) and 50 Reg. 865/2006: Specific requirements for re-export certificates for Annex A, B and C specimens?

Reg. 865/2006 provides for **common procedural requirements** for export permit and re-export certificate (Article 5) and also Article 2(1) regarding forms, Article 10 regarding the

validity of the permits and Article 26 about the application process. However in addition, in the Reg. 865/2006 there is reference in some Articles for **specific requirements** concerning "the certificates provided for in Articles 5(2)(b), 5(3), 5(4), 8(3) and 9(2)(b) of *Regulation 338/97*" (eg Article 2(5), Article 46, Article 50(1)). These additional references also cover requirements for export and re-export certificates which are referred to in Articles 5(3) and 5(4). As a consequence the re-export certificates are subject to two sets of rules, which might sometimes not be coherent and be a source of confusion. The provisions for re-export certificates should either be collated or re-considered to determine if there are errors.

Forms

Article 2(1) Reg. 865/2006

> *"The forms on which import permits, export permits, re-export certificates, personal ownership certificates and applications for such documents are drawn up shall conform, except as regards spaces reserved for national use, to the model set out in Annex I."*

But Article 2(5) Reg. 865/2006

> *"The forms on which the certificates provided for in Articles 5 (2)(b), 5(3), 5(4), 8(3) and 9(2)(b) of Regulation (EC) No 338/97 and applications for such certificates are drawn up shall conform, except as regards spaces reserved for national use, to the model set out in Annex V to this Regulation."*

Article 2(5) Reg. 865/2006 provides for the similar model (set out in Annex V to 865/2006) for re-export certificates and for certificates used for internal trade (provided for in Article 8(3) and 9(2)(b) Reg. 338/97. However this does not seem to be in line with CITES Conf.12.3 section I-d which states that '*to avoid abusive or fraudulent use, the Parties not use forms for their internal trade certificates that are identical to CITES forms*.' Therefore the incorporation of provisions relating to international trade 5(3) and 5(4) and internal trade 8(3) and 9(2)(b) has created a conflict with CITES as well as confusion.

Completion of forms

Following on from the duplication of forms for re-export certificates (ie Annex I and Annex V), the provisions outlined below concerning the completion of those forms needs to be clarified.

Article 50(1) Reg. 865/2006

> *"The applicant for the certificates provided for in Articles 5(2) (b), 5(3), 5(4), 8(3) and 9(2)(b) of Regulation (EC) No 338/97 shall, where appropriate, complete boxes 1, 2 and 4 to 19 of the application form and boxes 1 and 4 to 18 of the original and all copies.*
> *Member States may, however, provide that only an application form is to be completed, in which case such an application may be for more than one certificate."*

Article 26(1) Reg. 865/2006

> *"The applicant for an export permit or re-export certificate shall, where appropriate, complete boxes 1, 3, 4, 5 and 8 to 23 of the application form and boxes 1, 3, 4 and 5 and 8 to 22 of the original and all copies.*
> *Member States may, however, provide that only an application form is to be completed, in which case such an application may relate to more than one shipment."*

Annex to forms

Article 6(2) Reg. 865/2006

> "*Where the forms referred to in Article 2(1) are used for more than one species in a shipment, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species in the shipment, reproduce boxes 8 to 22 of the form concerned as well as the spaces contained in box 27 thereof for 'quantity/net*

mass actually imported or (re-)exported' and, where appropriate, 'number of animals dead on arrival'."

Article 6(4) Reg. 865/2006

"*Where the forms referred to in Article 2(5) are used for more than one species, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species, reproduce boxes 4 to 18 of the form concerned.*"

Therefore there seem to be two requirements for re-export certificates, do Articles 6(2) and 6(4) apply to the same document? Are they additive?

Validity of the re-export certificates

Article 10 Reg. 865/2006 is entitled "Validity of import permits, re-export certificates, travelling exhibition certificates, and personal ownership certificates".

Article 11 Reg. 865/2006 is entitled "Validity of used import permits and of the certificates referred to in Article 47, 48, 49, 60 and 63." Article 47 refers to "Certificates provided for in Article 5(2)(b), (3) and (4) of Regulation (EC) No 338/97 (certificates required for export or re-export)." Articles 5(3) and 5(4) refer to re-export certificates.

Once again there appear to be two lots of rules applying to re-export certificates but it is not clear how they relate to each other. For example Article 10(2) states that '*the period of validity of re-export certificates…shall not exceed six months.*' Whereas Article 11(2) states that the certificates referred to in Article 47 (which in turn refers to Articles 5(3) and 5(4) ie re-export certificates), shall cease to be valid in a number of different cases eg where live specimens have died. Therefore do the requirements laid out in Article 11 apply in addition to those in Article 10(2)?

In addition, Article 11 refers to Article 47 which in turn refers to Articles 5(3) and 5(4), this appears to be overly complicated. Perhaps Article 11 could refer directly to the certificates provided for in Article 5-3 and others, or could even refer directly to the term re-export certificates.

Provisions relating to re-export certificates in EC 338/97 and EC 865/2006 that appear to be consistent

Note: Article 46 Reg. 865/2006 is in line with Article 5(1) Reg. 338/97 and Article 5(4) Reg. 338/97; Article 47 Reg. 865/2006 does not seem to contradict with other provisions of Reg. 865/2006 or 338/97. Article 50(2) Reg. 865/2006 is in line with Articles 26(2) and 26(3) Reg. 865/2006.

Note 9: Annexes III and IV Reg. 865/2006, Annex III to CITES Resolution Conf.12.3: Models for travelling exhibition certificates and continuation sheets

A few differences can be noted between the models for travelling exhibition certificates set out in Annex III CITES Conf.12.3 and Annexes III and IV Reg. 865/2006. These differences have been outlined further in Table Model Travelling Exhibition Certificates.

Note 10: Article 9 Reg. 865/2006, Article VI-5 CITES: Terminology consignment/shipment

CITES and EC *Regulation 865/2006* contain both a similar requirement concerning the "shipment of specimens shipped together as part of one load". However, the two instruments do not use the same vocabulary:

Article 9 Reg. 865/2006 states that:

> *"A separate import permit, import notification, export permit or re-export certificate shall be issued for each shipment of specimens shipped together as part of one load."*

Whereas CITES Article VI-5 requires that:

> *"A separate permit or certificate shall be required for each consignment of specimens"*

Note 11: Articles 20(4) and 64(1) Reg. 865/2006: Marking requirements for issuing import permits in EC Regulations

In *Regulation 865/2006* Article 64(1) requires that certain specimens are marked for import permits in accordance with Article 66(6). There is an additional requirement in Article 20(4) for import permits that certain specimens listed in Article 64(1) be marked according to the requirements laid down in Article 66.

Article 64(1) Reg. 865/2006

> "*Import permits for the following items shall be issued only if the applicant has satisfied the competent management authority that the specimens have been individually marked in accordance with Article 66(6) Reg. 865/2006*
>
> *a) specimens that derive from a captive breeding operation that was approved by the CoP to CITES*
> *b) specimens that derive from a ranching operation that was approved by the CoP to CITES*
> *c) specimens from a population of a species listed in Appendix I to the Convention for which an export quota has been approved by the CoP to CITES*
> *d) raw tusks of African elephant and cut pieces thereof that are both 20 cm or more in length and 1 kg or more in weight*
> *e) raw, tanned and/or finished crocodilian skins, flanks, tails, throats, feet, backstrips and other parts thereof that are exported to the Community, and entire raw, tanned, or finished crocodilian skins and flanks that are re-exported to the Community*
> *f) live vertebrates of species listed in Annex A that belong to a travelling exhibition(*)*
> *g) any container of caviar of Acipenseriformes spp., including tins, jars or boxes into which such caviar is directly packed*"

Article 20(4) Reg. 865/2006

> "*For import permits concerning the specimens referred to in Article 64(1)(a) to (f), the applicant shall satisfy the management authority that the marking requirements laid down in Article 66 have been fulfilled.*"

There are two differences between the two articles regarding the number of categories and reference to provisions in Article 66:

- Article 64(1) lists specimens from a to g: 7 categories of specimens must be marked in accordance with Article 66(6)
- Article 20(4) imposes marking in accordance with Article 66 (as opposed to specifically referring to Article 66(6)) only for specimens referred to in Article 64(1) a to f = 6 categories only.

Marking in accordance with Article 66(6) means:

> "*in accordance with the method approved or recommended by the Conference of the Parties to the Convention for the specimens concerned and, in particular, the containers of caviar referred to in Article 64(1)(g) shall be individually marked by means of non-reusable labels affixed to each primary container*"

Reading of Article 64(1) and Article 20(4) in combination means that:

> Specimen in 64(1)(g) ie caviar: marked in accordance with Article 66(6) only

Specimens in 64(1) a to f: marked in accordance with all of the provisions in Article 66

Article 20(4) seems to be contrary to Article 64(1), by applying to categories a to f other provisions than those indicated in Article 64(1). In fact this is not a mistake: by reading the provisions of Article 66, we see that only paragraph 6 is relevant for the 7 categories of Article 64(1), and therefore for the 6 categories of Article 20(4).
Paragraphs 1 to 5 are clearly only applicable to travelling exhibition certificates and personal ownership certificates, Paragraph 7 concerns the licensing of packaging plants for caviar, and paragraph 8 concerns the case of captive born and bred birds as well as other birds born in a controlled environment.

Note 12: Article 4(1)(b) Reg. 338/97, Article 21 Reg. 865/2006: Exception to the requirement that an export permit or re-export certificate or copy thereof must be presented to apply for an import permit

The exception to the rule that an export permit or a re-export permit must be presented by the applicant to issue an import permit is established in Article 4(1)(b)(ii) Reg. 338/97, and further detail is provided in Article 21 Reg. 865/2006. There seems to be some duplication between the provisions and the text could be presented more clearly and simply.

Reg. 338/97Article 4: Introduction into the Community

> *"1. The introduction into the Community of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.*
> *The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when the following conditions have been met:…*
> *(b) (i) the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned which, in the case of import from a third country of specimens of a species listed in the Appendices to the Convention, shall be an export permit or re-export certificate, or copy thereof, issued in accordance with the Convention by a competent authority of the country of export or re-export;*
>
> *(ii) however, the issuance of import permits for species listed in Annex A in accordance with Article 3(1)(a) shall not require such documentary evidence, but the original of any such import permit shall be withheld from the applicant pending presentation of the export permit or re-export certificate."*

Reg. 865/2006 Article 21: Import permits issued for specimens of species included in Appendix I to the Convention and listed in Annex A to Regulation (EC) No. 338/97

> *"In the case of an import permit issued for specimens of species included in Appendix I to the Convention and listed in Annex A to Regulation (EC) No 338/97, the copy for the exporting or re-exporting country may be returned to the applicant for submission to the management authority of the country of export or re-export, for the purposes of the issue of an export permit or re-export certificate. The original of that import permit shall, in accordance with Article 4(1)(b)(ii) of that Regulation, be withheld pending presentation of the corresponding export permit or re-export certificate.*
>
> *Where the copy for the exporting or re-exporting country is not returned to the applicant, the latter shall be given a written statement that an import permit will be issued and on what conditions."*

In Article 4(1)(b)(i) Reg. 338/97 for an import permit to be issued by a management authority of a Member State for an Annex A specimen, the applicant must provide:

> *"documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned which, in the case of import from a third country of specimens of a species listed in the Appendices to the Convention, shall be an export permit or re-export certificate, or copy thereof, issued in accordance with the Convention by a competent authority of the country of export or re-export;"*

The issuance of an **import** permit for an Annex A specimen by a Member State is conditioned to the previous issuance of an **export** permit or **re-export** certificate by the third country of export or re-export. However, in the case of Annex A specimens from Appendix I this condition can not be met. CITES Article III(2)(d) provides that for Appendix I specimens, the **export** permit or **re-export** certificate can not be issued by the management authority before the management authority of the importing country has issued an **import** permit.

To be consistent with CITES, special requirements have been outlined in the Regulations for species listed in both Annex A to Reg. 338/97 and Appendix I to CITES. Such species are listed in Annex A in accordance with Article 3(1)(a)) and Article 4(1)(b)(ii) Reg. 338/97 provides that the import permit is issued prior to the export permit (although the original import permit is to be withheld):

> *"(ii) however, the issuance of import permits for species listed in Annex A in accordance with Article 3(1)(a) shall not require such documentary evidence, but the original of any such import permit shall be withheld from the applicant pending presentation of the export permit or re-export certificate."*

Reg. 865/2006, in its Article 21 gives the steps of the practical process for the issuance of an import permit for an Annex A and Appendix I species (species that appears in both categories):

1) The applicant will receive a "copy for the exporting or re-exporting country" of the import permit, or a "written statement that an import permit will be issued and on what conditions".
2) The applicant will submit this document to the management authority of the country of export or re-export, for the purposes of the issue of an export permit or re-export certificate.
3) The issuance of the export permit or re-export certificate will allow the delivering of the import permit by the management authority of the importing country, permit which might have been already issued, but which has been withheld "*pending presentation of the export permit or re-export certificate.*

Note 13: Articles 26(4), 65(3) and 65(4) Reg. 865/2006: Marking requirements for issuing export permits in EC Regulations

As per the previous note relating to import permits, the same type of comment can be made for export permit marking provisions.

Article 65(3) Reg. 865/2006

> "*Export permits for any container of caviar as specified in point (g) of Article 64(1) of Acipenseriformes spp., including tins, jars or boxes into which such caviar is directly packed] shall be issued only if the container is marked in accordance with Article 66(6)*"

Article 65(4) Reg. 865/2006

> "*Export permits for live vertebrates of Annex A species shall be issued only if the applicant has satisfied the competent MA that the relevant requirements laid down in Article 66 of this Regulation have been met.*"

Article 26(4) Reg. 865/2006

> "*For export permits concerning specimens referred to in Article 65, the applicant shall satisfy the management authority that the marking requirements laid down in Article 66 have been fulfilled.*"

For caviar specimens (Article 65(3)) the marking requirements must be in accordance only with Article 66(6), whereas for live vertebrates of Annex A species (Article 65(4)) the relevant marking requirements referred to as being in Article 66. However Article 26(4) requires that all of the marking requirements for specimens in Article 66 be fulfilled for specimens referred to in Article 65 ie containers of caviar and live vertebrates of Annex A.

Article 26(4) seems to be contrary to Articles 65(3). In fact this is not a mistake because paragraph 6 of Article 66 is relevant for the containers of caviar. Paragraphs 1 to 5 are clearly only applicable to travelling exhibition certificates and personal ownership certificates, Paragraph 7 concerns the licensing of packaging plants for caviar, and paragraph 8 concerns the case of captive born and bred birds as well as other birds born in a controlled environment.

Note 14: Articles 30(1), 54 and 55 Reg. 865/2006, Articles VII-4, VII-5 and VII-7 CITES: Commercial purpose of artificial propagation or captive breeding in relation to travelling exhibition certificates

The requirements for travelling exhibition certificates are set out in CITES Article VII-7:

> "*A management authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that: ...*
> *(b) the specimens are in either of the categories specified in paragraph 2 or 5 of this Article*"

One of the conditions for a specimen to be part of a travelling exhibition is to be bred in captivity or artificially propagated as required by paragraph 5 of CITES Article VII.

NB: Willem Wijnstekers notices that Article VII-7-b refers only to VII.5 and not to VII.4 which also relates to artificial propagation and captive breeding. In the light of the adopted interpretation of the paragraphs VII.4 and VII.5 (see below), this implies that the exemption does not apply to animals and plants of Appendix-I species bred in captivity or artificially propagated for commercial purposes.

Interpretation of commercial purpose[47]

Article VII.4 deals with specimens of Appendix-I species bred in captivity (animals) and artificially propagated (plants) 'for commercial purposes' and provides that these shall be deemed to be specimens of Appendix-II species. Article VII.5 provides that a certificate that an animal was bred in captivity or that a plant was propagated artificially, replaces the export, re-export and import documents normally required under Articles III, IV and V.

The combination of these provisions leads to the conclusion that Appendix I specimens bred in captivity or artificially propagated for commercial purposes shall be treated as Appendix-II specimens, and therefore require an export permit or re-export certificate under Article IV, which documents are, however, replaced by the certificate referred to in Article VII.5 (ie making Article VII.4 redundant).

"That can of course not have been the intention of the authors of the Convention." What was intended is the following:

- Appendix I animals bred in captivity for commercial purposes and Appendix I plants artificially propagated for commercial purposes shall be treated as Appendix-II specimens and therefore require an export permit or re-export certificate, which can be issued when the conditions of Article VII paragraphs 2 and 5 have been met.
- The provisions of Article VII.5 concern Appendix I animals and plants bred in captivity/artificially propagated for non-commercial purposes and Appendix II and III animals and plants bred in captivity/artificially propagated for either commercial or non-commercial purposes. A certificate replaces import and export permits and re-export certificates.

In the Regulations 865/2006 there is no mention of the difference between captive-bred or artificially propagated specimens for commercial purposes or non-commercial purposes. For

[47] W. WIJNSTEKERS, *The Evolution of CITES – A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 8th Edition, version 1.0, 2005, Geneva, Switzerland, available on the CITES website http://www.cites.org/eng/resources/publications.shtml.

Article 30 all the specimens born and bred in captivity in accordance with Art. 54 and 55, or artificially propagated in accordance with Art. 56 Reg.865/2006, can be eligible for a travelling exhibition certificate, whatever the purpose of the breeding or of the propagation.

Note 15: Articles 7(1)(c) Reg. 338/97, Articles 30(1) and 56 Reg. 865/2006, Cites Resolutions conf.11.11 and Conf.12.3 Article VI-a: Criteria for determining whether a specimen has been artificially propagated

Reference to commercial purpose in relation to artificially propagated specimens

Relevant provisions

Article 7(1)(c) Reg. 338/97 provides that:

> "*The criteria for determining whether a specimen has been born and bred in captivity or artificially propagated and whether for commercial purposes, (…) shall be specified by the Commission in accordance with the procedure laid down in Article 18*."

In Article 56 of *Regulation 865/2006* the Commission has outlined the criteria for artificially propagated specimens of plant species.

Issue

Article 7(1)(c) Reg. 865/2006 refers to the need to determine whether a specimen has been bred in captivity or artificially propagated for a 'commercial purpose'. However as noted above (Note 1) *Regulation 338/97* does not differ in its treatment of specimens for different purposes: whatever the purpose of the breeding or propagation, Annex A animal specimens born and bred in captivity and plant specimens artificially propagated shall be treated as specimens of Annex B (Article 7(1)(a)). In addition Article 56 Reg. 865/2006 which establishes the criteria for artificial propagated specimens of plant species makes no reference to purpose.

Differences in the criteria for artificially propagated specimens

Article 56 Reg. 865/2006 establishes criteria for artificially propagated plant specimens. There are a number of discrepancies between the criteria in Article 56 and those of the CITES provisions relating to artificially propagated specimens. The discrepancies are summarised in the table below.

	Article 56 Reg. 865/2006	CITES Resolutions	Comparison/ Discrepancy
Formulation for 'artificially propagated'	Article 56(1)(a): *" the specimen is, or is derived from, plants grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules under controlled conditions;"*	*Conf.11.11 (Rev. CoP13) refers 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;" "plants grown from cuttings or divisions are considered to be artificially	CITES Resolution Conf.11.11(Rev. CoP13) specifies that seeds etc can be either exempt or derived from cultivated parental stock. There is no equivalent text in the EC Regulations. This text is not reflected in the EC Regulations.

		propagated only if the traded specimens do not contain any material collected from the wild".	
Formulation for 'cultivated parental stock'	Article 56(1)(b): *"the cultivated parental stock was established in accordance with the legal provisions applicable to it on the date of acquisition and is maintained in a manner not detrimental to the survival of the species in the wild;"* Article 56(1)(c): *" the cultivated parental stock is managed in such a way that its long-term maintenance is guaranteed;"*	Conf.11.11 (Rev. CoP13) refers to: *"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 designated CITES authorities of the exporting country: i) established in accordance with the provisions of CITES and relevant national 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;"*	There is no definition of "cultivated parental stock" in the EC Regulations. In CITES there is no mention of a temporal element to determine the legal provisions applicable to the establishment of the cultivated parental stock Maintenance of the cultivated parental stock: in CITES the emphasis is on the elimination of augmentation from the wild, in the EC Reg. the emphasis is on the maintenance of the stock.
Formulation for 'artificially propagated timber'	Article 56(2) Reg. 865/2006: "Timber taken from trees grown in monospecific plantations shall be considered to be artificially propagated in accordance with paragraph 1"	CITES Conf.10.13 (Rev. CoP13) "Timber taken from trees grown in monospecific plantations shall be considered to be artificially propagated in accordance with the definition contained in Resolution Conf.11.11 (Rev. CoP13)"	In the case of timber the definitions are the same and the criteria for artificial propagation are the same in Article 56(1) Reg. 338/97 and in Resolution Conf.11.11 (Rev.CoP13).

Travelling exhibition certificates

The definition for captive-bred specimens is similar in CITES Conf. 10.16 and in Reg. 865/2006. However as outlined in the Table above, there are differences between the definitions for artificial propagation in Conf.11.11 and Reg. 865/2006. The definition of artificially propagated plants has repercussions in other aspects of the EC Regulations. For example, it is a requirement for issuance of a travelling exhibition certificate that plant specimens be artificially propagated, both EC 865/20069 and CITES Conf.12.3 (Rev.CoP13) impose this condition.

Article 30(1) Reg. 865/2006 provides that:

"Member States may issue travelling exhibition certificates in respect of legally acquired specimens which form part of a travelling exhibition and which meet either of the following criteria:
(a) they were born and bred in captivity in accordance with Articles 54 and 55, or artificially propagated in accordance with Article 56; (…)"

CITES Conf.12.3 provides in Article VI-a that:

"Each Party issue a travelling exhibition certificate for CITES specimens (…)
(ii) bred in captivity as defined in Resolution Conf.10.16; or
(iii) artificially propagated as defined in Resolution Conf.11.11 (…)"

Note 16: Article 57(3) Reg. 865/2006, Article VII-3 CITES: First introduction into the Community of Annex B specimens that are personal or household effects

Article 57(3) Reg. 865/2006 provides that:

"The first introduction into the Community of personal or household effects, including hunting trophies, by a person normally residing in the Community and involving specimens of species listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that the original of a (re-) export document and a copy thereof are presented."

The first introduction into the EC of Annex B specimens that are personal and household effects, including hunting trophies, by a person normally residing in the Community:
- do not require the presentation of an import permit if
- the original of a (re-)export document and a copy thereof is presented

The provisions of CITES concerning Appendix II specimens that are personal or household effects are different.

In the case of import:

Under Article VII-3 the provision of Article IV shall not apply to specimens that are personal or household effects, meaning in the case of import that the import of a specimen of Appendix II which is a personal or household effect does not require prior presentation of the export permit or re-export certificate (Article IV-4). An exception to this exemption is provided for in Article VII-3(b) which outlines when the exemption does not apply.

Article VII-3-b:

'The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where: (…)

(b) in the case of specimens of species included in Appendix II:

(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;

(ii) they are being imported into the owner's State of usual residence; and

(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.'

Where the situation outlined in Article VII-3-b above does not apply therefore Article IV-4 applies (prior presentation of export permit or re-export certificate is required for the import of Appendix II specimens that are personal or household effects).

However if the Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens, the exemption provided for in Article VII-3 of CITES applies and there is no need of the prior presentation of export or re-export documents for the import of Appendix II specimens that are personal or household effects.

In the case of introduction from the sea

Under Article VII-3 the provision of Article IV shall not apply to specimens that are personal or household effects, meaning in the case of Introduction from the Sea that the introduction of a specimen of Appendix II which is a personal or household effect does not require prior presentation of the Introduction from the Sea certificate (Article IV-6).

Note 17: Articles 26(4), 64(1), 65(1), 65(2) and 65(3) Reg. 865/2006: Marking requirements for issuing re-export certificates in EC Regulations (for Annexes A and B specimens)

Three specific cases are concerned in Article 65 Reg. 865/2006:

Under Article 65(1) re-export certificates shall only issued for specimens referred to in Article 64(1)(a)-(d) and (f) for which the original marks are intact.

Article 65(1) Reg. 865/2006

"Re-export certificates for specimens referred to in Article 64 (1)(a) to (d) and (f) that were not substantially modified shall be issued only if the applicant has satisfied the management authority that the original marks are intact."

Article 64(1) Reg. 865/2006 refers to the following specimens.

"(a) specimens that derive from a captive breeding operation that was approved by the CoP to CITES
(b) specimens that derive from a ranching operation that was approved by the CoP to CITES
(c) specimens from a population of a species listed in Appendix I to the Convention for which an export quota has been approved by the CoP to CITES
(d) raw tusks of African elephant and cut pieces thereof that are both 20 cm or more in length and 1 kg or more in weight
(f) live vertebrates of species listed in Annex A that belong to a travelling exhibition"(*)

Where the original marks are not intact or where the specimens have been substantially modified it seems that Article 26(4) applies. This article requires that marking requirements of Article 66 have been fulfilled. Article 65(1) could specify directly that if there is a need to re-mark the specimens (if substantially modified, or if original marks not intact), the marking requirements laid down in Article 66 have been fulfilled.

Article 26(4) Reg. 865/2006

"For export permits and re-export certificates concerning specimens referred to in Article 65, the applicant shall satisfy the management authority that the marking requirements laid down in Article 66 have been fulfilled."

Article 65(2) states that the original tags must be intact and it not the specimens must be marked with a re-export tag. To re-mark the specimens there must be application of Article 26(4) which refers to Article 66. Therefore Article 65(2) could refer directly to Article 66.

Article 65(2) Reg. 865/2006

"Re-export certificates for entire raw, tanned, and/or finished crocodilian skins and flanks shall be issued only if the applicant has satisfied the management authority that the original tags are intact or, where the original tags have been lost or removed, the specimens have been marked with a re-export tag."

Article 65(3) instead of referring to Article 66(6), this Article could mention directly the provisions outlined ie the method approved by the Conference of the Parties to the Convention and to be marked by means of non reusable labels.

Article 65(3) Reg. 865/2006

> *"re-export certificates for any container of caviar as specified in point (g) of Article 64(1) [of Acipenseriformes spp., including tins, jars or boxes into which such caviar is directly packed] shall be issued only if the container is marked in accordance with Article 66(6)."*

Note 18: Article 71 Reg. 865/2006: Location in the Regulation

Article 71 *Regulation 865/2006* is entitled *"Rejection of applications for import permits"*. It deals with the restrictions that Commission may impose to the issuance of import permits, in accordance with Article 4(6) *Regulation 338/97*.

Article 71 appears in the Chapter XVIII of the Regulation, entitled 'Final provisions', together with Article 72 'Transitional measures', Article 73 'Notification of implementing provisions', Article 74 'Repeal' and Article 75 'Entry into Force'.

This Article should be part of the Chapter IV, *"Import permits"*, related to 'Applications' (Article 20), 'Import permits issued for specimens of species included in Appendix I to the convention and listed in annex A to Regulation (EC) No 338/97' (Article 21), 'Documents to be surrendered by the importer to the customer office' (Article 22), and 'Handling by Customs office' (Article 23).

ANNEX 3

Comparison of the provisions relating to the derogation from the trade prohibition in the EC *Regulation 338/97* and the Birds and Habitats Directives

(taken from Chamoux, op.cit.)

The blank spaces reflect that there is no similar or corresponding requirement in the text of the instrument.

ARTICLE 8(3) *REGULATION 338/97*	ARTICLE 9(1) BIRDS DIRECTIVE	ARTICLE 16(1) HABITATS DIRECTIVE
Precondition:		
'***In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora****, exemption from the prohibitions referred to in paragraph 1 may be granted…**on a case-by-case basis** where the specimens*:'	*'Member States may derogate from the provisions of Articles 5, 6, 7 and 8,* ***where there is no other satisfactory solution****, for the following reasons:'*	'*Provided that there is* ***no satisfactory alternative*** *and the derogation* ***is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range****, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):'*
Precondition (in bold). Note the granting of an exemption is voluntary and under the discretion ('may') of the Member States.	Precondition (in bold). Note the granting of an exemption is voluntary and under the discretion ('may') of the Member States.	Precondition (in bold). Note the granting of an exemption is voluntary and under the discretion ('may') of the Member States.
Recognising the precondition (above), the derogation may be applied for the following reasons:		
(a) specimens acquired in, or introduced into, the community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens		

(b) worked specimens acquired more than 50 years ago		
(c) specimens introduced into the community in compliance with the provisions of this Regulation and to be used for purposes which are not detrimental to the survival of the species concerned		
(d) captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or parts or derivatives of such specimens		
(e) specimens required under exceptional circumstances **for the advancement of science or for essential biomedical purposes** pursuant to Council Directive 86/609/EEC where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have been born and bred in captivity	(a) **public health and safety**	(c) **in the interest of public health and public safety**
(f) specimens intended for **breeding or propagation** purposes from which conservation benefits will accrue to the species concerned	(b) for the purposes of re-population, of re-introduction, and for the **breeding** necessary for these purposes	(d) for the purpose of repopulating and reintroducing these species, and for the **breeding operations** necessary for these purposes, including the artificial propagation of plants
(g) specimens intended for **research or education** aimed at the preservation or conservation of the species	(b) for the purpose of **research and teaching**, and for the breeding necessary for this purpose	(d) for the purpose of **research and education**, and for the breeding operations necessary for this purpose, including the artificial propagation of plants
(h) specimen originating in a Member States and being taken from the wild in accordance with the legislation in force in that Member State		
	(a) air safety	

	(a) **to prevent serious damage to crops, livestock, forests, fisheries and water**	(b) **to prevent serious damage, in particular to crops, livestock, forests, fisheries and water** and other types of property
	(a) for the **protection of flora and fauna**	(a) in the interest of **protecting wild fauna and flora** and conserving natural habitats
	(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small number	(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or **keeping of** certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities
		(c) for other imperative reasons of **overriding public interest,** including those of a social or economic nature and beneficial consequences of primary importance for the environment