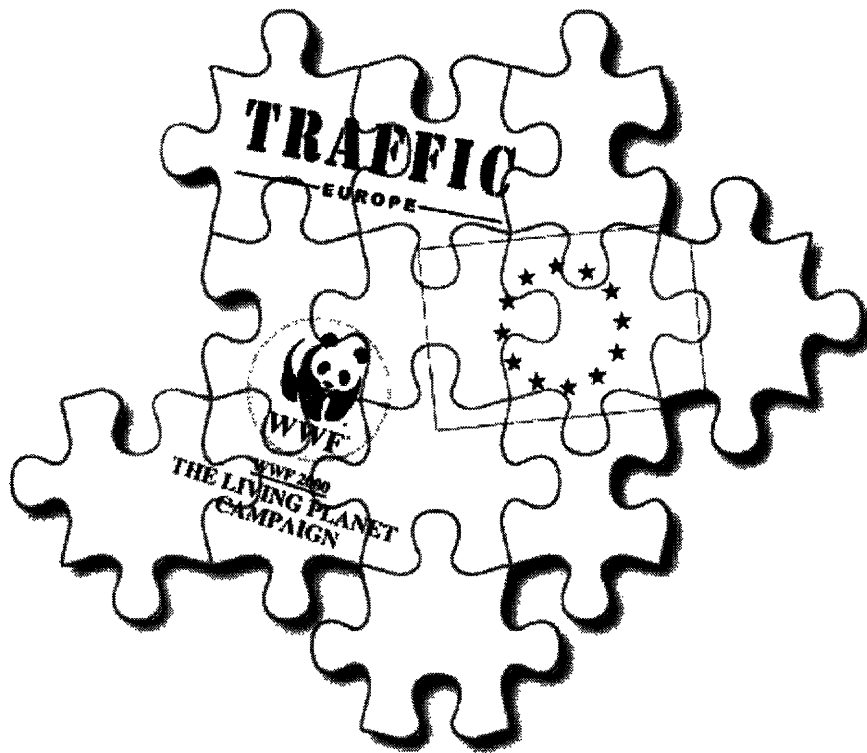


Reference Guide

European Community

Wildlife Trade Regulations



1998



<http://europa.eu.int/en/comm/dg11/cites/citeshome.htm>

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For an in depth reference to CITES, consult the latest edition of "The Evolution of CITES" that can be obtained from the CITES Secretariat.

For additional information, check the web site above.

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1. Introduction

Information About the Guide

1. The European Union (EU) represents one of the three largest markets for international wildlife trade along with the United States and Japan. For many years, legislation to govern this trade has been a conservation priority in the region. The EU adopted *Council Regulation (EC) No. 338/97 on the Protection of the Species of Wild Fauna and Flora by Regulating Trade Therein* on 9 December 1997 (hereafter referred to as **Regulation (EC) 338/97**). On 26 May 1997, the EU adopted *Commission Regulation (EC) No. 939/97* laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 (referred to in this guide as **the Commission Regulation (EC) 939/97**). **These Regulations must be read together to understand Community wildlife trade law.**
2. This guide is to be used as reference material by CITES Management and Scientific Authorities, wildlife trade enforcement officials, wildlife traders and anyone interested in the legislation and the technicalities of its provisions.
3. This guide is divided into sections relating to particular themes. The guide is not intended to be read sequentially. The chapters are independent and may easily be extracted according to the reader's needs. Use the **Table of Contents** to move directly to most relevant sections.
4. This guide will be updated regularly, therefore it is recommended that the material contained here-with be compiled in a loose-leaf binder.
5. A "virtual" copy of this guide as well as Regulation (EC) 338/97 and the **Commission Regulation (EC) 939/97** are available on the European Com-

mission's Europa server in all official languages at the following address:

<http://europa.eu.int/en/comm/dg11/citeshome.htm>

This reference guide was produced in the framework of the EU Wildlife Trade Information Campaign (see Chapter 25: Public Awareness). The European Commission, the EU Management Authorities and TRAFFIC Europe have collaborated to produce this guide. The translation services of the European Commission have made the guide available in the eleven official languages.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

On 3 March 1973, CITES was signed in Washington DC by 21 countries. On 1 January 1975, it entered into force. As of 29 December 1997, there are 143 Parties to CITES of which 14 are EU Member States. Ireland is expected to accede to the Convention soon.

Core Functions

CITES regulates **international trade in specimens of species of wild fauna and flora**, i.e., export, re-export and import of live and dead animals and plants and of parts and derivatives thereof, based on a system of **permits and certificates**. Permits and certificates are issued if certain conditions are met and must be presented before consignments of specimens are allowed to leave or enter a country. The Convention provides for a **Secretariat** and a **Conference of the Parties**,

1. Introduction

which play a major role in the functioning of the Convention. The Conference of the Parties, which is convened every two-and-a-half years establishes a number of **permanent committees**, which play an significant role in between its biennial meetings. The CITES permanent committees are: the Standing Committee, the Animals Committee, the Plants Committee, the Nomenclature Committee and the Identification Manual Committee.

3. The remaining provisions of the Convention establish **procedures for amending the Convention and its Appendices**, address **enforcement measures** to be taken by the Parties, the Convention **effects on domestic legislation and on other international conventions, the resolution of disputes, ratification, accession and denunciation** and allow for the **entry of reservations**. The listing of species in Appendices I and II requires a two-thirds majority decision by the (Conference of the) Parties. Parties can, however, list native species in Appendix III on their own initiative.

Management and Scientific Authorities

4. Each Party must designate one or more *Management Authorities* responsible for issuing these permits and certificates, subject to the advice from one or more *Scientific Authorities* designated for that purpose.

Appendices

5. The animal and plant species subject to different degrees of regulation are listed in three appendices:

Appendix I includes species *threatened with extinction* and for which trade must be subject to particularly strict regulation and can only be authorized in exceptional circumstances for specimens of wild origin.

Appendix II species are *not necessarily now threatened with extinction* but may become so unless trade is strictly regulated. Appendix II further contains so-called *look-alike* species, which are controlled because of their similarity in appearance to the other regulated species, thereby facilitating a more effective control thereof.

Appendix III contains species that are *subject to regulation within the jurisdiction of a Party* and for which the *cooperation of other Parties* is needed to prevent or restrict their exploitation.

Conditions Required for Issue of Permits

Conditions for the issue of permits and certificates for international trade with a species covered by the convention involve questions with regard to whether or not trade will be *detrimental* to its survival, the legal *acquisition* of specimens, the preparation for *shipment* of live specimens and, for Appendix I species, whether the importer has suitable *facilities* to house and care for live specimens. Imports of Appendix I specimens cannot take place if they are to be used for *primarily commercial purposes*.

Exemptions

7. The Convention provides for several conditioned *exemptions* from its provisions. They concern *transit and transshipment*, specimens *acquired before the Convention* became applicable to them, certain specimens that are *personal or household effects*, *captive bred* animals and *artificially propagated* plants, the exchange of specimens in the collection of *scientists and scientific institutions* and of captive bred or pre-Convention specimens held by *traveling exhibitions*. Such transactions/species are less strictly "regulated".
8. The *monitoring of trade* is an essential tool for achieving the aims of the Convention. Scientific Authorities are to monitor export permits granted for Appendix II species and the actual export thereof. They have to advise their Management Authorities of suitable measures to limit the issue of export permits whenever they determine that *the export should be limited in order to maintain a 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 it might become eligible for inclusion in Appendix I*.

Trade records/Annual Reports

9. A second significant monitoring system is based on the *trade records* to be kept by all Parties and to be reported to the CITES Secretariat on an annual basis. The *annual reports* of all Parties together should provide statistical information on the total volume of legal and reported world trade in CITES species, which is an invaluable element for the assessment of their conservation status.

These annual reports further reflect the "performance" of Parties regarding CITES implementation when all reported exports and re-exports are compared with all reported imports.

Non-Parties

10. There are a number of countries that are not Party to CITES. The Convention addresses this situation by providing that Parties shall require documentation from *non-Parties* that substantially conforms to the requirements for CITES permits and certificates.

Recommendations

11. Hundreds of recommendations of the Conference of the Parties complicate CITES implementation and enforcement which subject the text of the Convention to interpretation. The recommendations on implementation and enforcement matters are non-binding and lead to significant differences in implementation between Parties. The provisions of the new Community Regulations clarify which recommendations are implemented and which are not.

The Community and CITES

1. The Community it is not yet a Party to CITES in its own right. In 1983, an amendment to CITES was adopted which would allow Community accession. This "Gabarone" Amendment requires 45 ratifications (two-thirds of the 78 parties that were a Party in 1983). To date, approximately 34 of those Parties have deposited the necessary instruments of ratification. Nevertheless, the Community has been implementing CITES since 14. January 1984 with Council Regulation (EEC) No. 3626/82¹ and Commission Regulation (EEC) No. 3418/83² and its modifications and updates.

2. *In the last 15 years, wildlife trade regulations have shifted from a national matter to one of Community competence. External trade rules are an exclusive Community competence and hence require Community involvement. Further, implementation of the CITES Convention by individual Member States was only possible under a derogation from the provision of the Treaty of Rome that Member States cannot adopt quantitative trade restrictions between them. Article 36 of the Rome Treaty conditionally allows such trade restrictions between Member States for the protection of the life and health of animals and plants. Generally, this does not apply to areas covered by Community legislation.*

In addition, in 1982, only five of the Community

Member States were Party to the Convention. The absence of systematic border controls between Member States, as a result of the customs union, made implementation of the Convention by individual Member States ineffective at best.

Apart from these technical reasons, the adoption of environmental action plans for Community legislation protecting and conserving the indigenous species also made wildlife trade regulations a matter of Community competence.

3. In December 1991, the Commission proposed that the Council replace the 1982 Regulation by a more comprehensive, Regulation as of 1 January 1993, the date of completion of the Single Market. The almost total disappearance of internal trade controls of goods, capital, persons and services on that date made the revision of the 1982 Regulation necessary (particularly in order to increase the effectiveness of external border controls).

There were other reasons for redesigning Community wildlife trade legislation. Disparate implementation by Member States of the Community Regulations and recommendations of the Conference of the Parties had led to confusion and an increasing lack of harmonisation.

Further, the Regulations needed to be adapted to the evolution of wildlife trade control techniques and policies and to modern conservation and management policies.

It took the Council of the European Union longer than expected to reach agreement on this new legislation. On 9 December 1996, it adopted **Regulation (EC) 338/97 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein**³ (Regulation (EC) 338/97).

Regulation (EC) 338/97 entered into force on 1 June 1997.

At the same time, Commission Regulation (EEC) 3418/83⁴, containing detailed implementation provisions, particularly on the use of permits and certificates – has been replaced **Commission Regulation (EC) No 939/97**⁵ (Commission Regulation (EC) 939/97).

¹ OJ L 384 of 31.12.82, p. 1

² OJ L 344 of 7.12.83, p.1

³ OJ L 61 of 3/3/97, p. 1

⁴ OJ L 344 of 7.12.83, p. 1

⁵ OJ L 140 of 30.5.97, p. 9

More than CITES

The Regulations from the eighties already had a number of measures which were stricter than CITES. These measures are maintained and further extended in the new Regulations.

- ▶ **Annexes contain non-CITES listed species**
- ▶ **Stricter import conditions apply for species in Annexes A and B**
- ▶ **Import permits are also required for Annex B species, import notifications are required for Annex C and D species**
- ▶ **Housing conditions are specified for live specimens of species in Annex A and B**
- ▶ **Transport conditions apply for all live specimens**
- ▶ **More comprehensive restrictions are applicable for internal trade in Annex A species**
- ▶ **Annex D contains species for which import levels are monitored**

2. Main differences between the old and new Regulations

The old Regulations:	The new Regulations:	Advantage:
Fully implemented CITES; CITES was attached as an Annex to the Regulation (EC) 3626/82; contained provisions where these were different from (read stricter than) those of the Convention. The implementation of most of the more than 130 Resolutions of the Conference of the Parties was left to individual Member States, which caused increasing differences and thus confusion.	Fully implements CITES as well as and the bulk of Resolutions of the Conference of the Parties (which facilitates implementation by Member States). The text of the Convention is no longer annexed to the Regulation but fully integrated into the Regulation itself, with all applicable provisions contained in the Regulations themselves.	<i>Much higher degree of harmonisation, provisions are more readily accessible, less confusion, adaptable to further modifications of the Convention.</i>
Were restricted to the regulation of trade in species listed in Appendices I, II and III of the Convention.	Allow for the inclusion of non-CITES listed species in its Annexes A, B, C and D where these meet specific listing criteria.	<i>Significant increase of the scope of the Community's trade-related conservation measures. The new Annex D lists non-CITES species for which import levels are monitored; an significant contribution to the precautionary principle.</i>
Rather inflexible: a time-consuming, Council decision was required for amendments to the listing of species other than those resulting from decisions of the CITES Conference of the Parties.	Commission can amend Annexes B to D.	<i>Faster adaptation of the Annexes to conservation needs.</i>
Annex C2 – species subject to stricter import conditions than CITES II and III – contained some 600 species.	All Annex B species -CITES II, some III and a number of non-CITES – are subject to these stricter import conditions now 4,000 animal and 22, 000 plant species.	<i>Increased possibility to take conservation measures</i>
Annex C-2 import restrictions: no formal requirement for consultation of range states; were insufficiently disseminated.	Annex B (and stricter A) import restrictions to be established and published by the Commission after consultation with country of origin. Real-time accessibility through an Internet WCMC web site.	<i>Improved collaboration with exporting countries. Maximum transparency for both traders and authorities that will result in increased harmonisation and enforcement.</i>
Non-Appendix I/Annex C species were not subject to housing conditions.	All imported live specimens of Annexes A and B species require appropriate housing.	<i>Increased possibility to avoid improper housing and mortality in captivity.</i>

3. Species covered

Annex A

Commercial trade from, to and within the Community is as a general rule prohibited for Annex A species. External trade is governed by provisions comparable to those applicable to Appendix I species under CITES, including:

1. All CITES Appendix I species (Regulation (EC) 338/97 Article 3.1.a).
2. Any species (CITES II, III, non-CITES) that is or may be in Community or international demand that is threatened with extinction or is so rare that any trade would imperil its survival (Regulation (EC) 338/97 Article 3.1.b.i). Where Appendix III species in Annexes A, B and C are concerned, **species** are subject to the corresponding provisions of the Regulations and **not** just the populations of the countries that listed them in Appendix III.
3. Look-alike species (CITES II, III, non-CITES).

If most of the species in a genus are listed in Annex A, the remaining species in the genus can be listed if that is essential for the effective protection of the species listed under the criteria in 1 and 2 above (Regulation (EC) 338/97 Article 3.1.b.ii).

Although there is a similar provision for Annex B, the difference is significant and results in the following:

- ◆ A minority of species in a genus which does not qualify for listing in Annex A can nevertheless be listed in order to exclude commercial trade in the entire genus. This exclusion avoids that specimens of threatened species are in trade as specimens of more common species.
- ◆ The inclusion of look-alike species in Annex B is more of a technicality. Species that do not qualify for listing in Annex A or B on conserva-

tion grounds can be listed in Annex B in order to facilitate controls.

Although there is no separate provision in the Regulation (EC) 338/97, CITES-listed species that are subject to internal trade prohibitions under Community legislation on the protection of indigenous species (Directive on the protection of wild birds⁶ and the so-called Habitats Directive⁷) are automatically listed in Annex A. This is necessary to ensure compatibility between the different legislative instruments and to avoid confusion. The names of these species in Annex A are printed in bold.

Figure 1 – Species in Annex A

Order	CITES I	CITES II	CITES III	Non-CITES	Total
Mammals	254	81	1	1	337
Birds	157	72	9	10	248
Reptiles	70	12		1	83
Amphibians	15	1			16
Fish	8				8
Invertebrates	72	1		73	
Total animals	576	167	10	12	765
Plants	311	13		324	
Total	887	180	10	12	1.089

Annex B

Annex B contains species, trade from and to the Community in specimens of which require the issuance of import permits, export permits and re-export certificates along the lines of the provisions applicable to CITES Appendix II species. There are significant

⁶ Council Directive (EC) 409/79
⁷ Council Directive (EC) 43/92

3. Species covered

differences, however: unlike for CITES Appendix II, This, however, is an action which can only be carried out import permits are required for Imports of specimens by the countries which included them originally). of Annex B species and imports can be restricted in spite of the fact that the (re-)exporting country has issued a valid CITES permit/certificate. This was the case for species in Annex C2 to Council Regulation (EEC) No 3626/82, which contained only a selection of CITES Appendices II and III species (547 instead of the 26.156 species now in Annex B).

Annex B contains:

1. Remaining CITES Appendix II species (Regulation (EC) 338/97 Article 3.2.a).
2. Appendix I species with reservation (Regulation (EC) 338/97 Article 3.2.b) (of which there are currently none).
3. Any species (CITES III, non-CITES) subject to levels of international trade that might not be compatible with survival of populations in certain countries or with the maintenance of its total population at a level that is consistent with its role in ecosystem (Regulation (EC) 338/97 Article 3.2.c.i).
4. Look-alike species, to be listed for effective control of trade in species above (Regulation (EC) 338/97 Article 3.1.c.ii).
5. Species (CITES III, non-CITES) known to pose an ecological threat to indigenous species (Regulation (EC) 338/97 Article 3.2.d).

Figure 2 – Number of species in Annex B

Order	CITES I	CITES II	CITES III	Non-CITES	Total
Mammals		308	4	3	315
Birds		1.181	19	17	1.217
Reptiles		379		6	385
Amphibians		66		10	76
Fish		29			29
Invertebrates		2.000		12	2.012
Total animals		3.963	23	48	4.034
Plants		22.122		22.122	
Total		26.085	23	48	26.156

Annex C

Annex C contains the CITES Appendix III species that are not listed in Annex B. (For many of these species, there may not be a conservation reason for the inclusion of many of these species in Appendix III. These species could be removed from Appendix III according to the recommendations by the Conference of the Parties.

Annex C contains:

1. Remaining Appendix III species (Regulation (EC) 338/97 Article 3.3.a).
2. Appendix II species with reservation (Regulation (EC) 338/97 Article 3.3.b). (Currently there are no Appendix II species subject to a "Community" reservation.)

Figure 3 – Number of species in Annex C

Order	CITES III	CITES II	Total
Mammals	58		58
Birds	120		120
Reptiles	19		19
Amphibians			0
Fish			0
Invertebrates			0
Total animals	197		197
Plants	6		6
Total	203		203

Annex D

Annex D lists species that do not have a CITES equivalent. Imports of Annex D specimens require an import notification. As the purpose of Annex B is to ensure sustainable trade in species and thus prevent them from becoming Annex A candidates, the Annex D monitoring system is intended to allow an early detection of possible conservation concerns in relation to the species listed. Where necessary, Annex D species will be "up-listed" and brought under the trade provisions related to Annex B.

Annex D contains:

1. Non-CITES species that are not listed in Annexes A to C and that are imported into the Community in such numbers as to warrant monitoring (Regulation (EC) 338/97 Article 3.4.a).
2. Appendix III species with reservation (Regulation (EC) 338/97 Article 3.4.b).

Figure 4 – Number of species in Annex D

Order	CITES III	Non-CITES	Total
Mammals	4		4
Birds		78	78
Reptiles		87	87
Amphibians			0
Fish		38	38
Invertebrates			0
Total animals	4	203	207
Plants		52	52
Total	4	255	259

4. Documents required for trade from and to the Community

What document for what purpose?

- At the first point of **introduction into the Community**, specimens of species listed **Annexes A and B** to the Regulation (EC) 338/97 require an **import permit** of prior issue which must be presented to the customs office.

An import permit consists of the following:

the original	form number 1	white with grey guilloche
a copy for the holder	form number 2	yellow
a copy for the exporting or re-exporting country (only in the case of specimens of CITES Appendix I species) ⁸	form number 3	pale green
a copy for the issuing authority	form number 4	pink
an application form	form number 5	white

- The **introduction into the Community** of specimens of species listed **Annexes C and D** to the Regulation (EC) 338/97 requires the completion by the importer of an **import notification** and its presentation to the customs office at the first point of introduction into the Community.

An import notification consists of:

an original	form number 1	white
a copy for the importer	form number 2	yellow

- The **export from the Community** of specimens of species listed in **Annexes A, B and C** to the

Regulation (EC) 338/97 requires the prior issue and presentation of an **export permit** at the customs office where export formalities are completed.

- The **re-export from the Community** of specimens of species listed **Annexes A, B and C** to the Regulation (EC) 338/97 requires the prior issue and presentation of an **re-export certificate** at the customs office where re-export formalities are completed.

Export permits and re-export certificates consist of:

the original grey guilloche	form number 1	white with
a copy for the holder	form number 2	yellow
a copy for return by customs to the issuing authority	form number 3	pale green
a copy for the issuing authority	form number 4	pink
an application form	form number 5	white

4.1. Import permits for specimens of species in Annexes A and B

From permit application to import


- The importer must obtain an **import permit application** form (model laid down in Annex 1 to the **Commission Regulation (EC) 939/97**) from the Management Authority of the Member State of destination.

Management Authorities are required to issue permits within one month from the date of sub-

⁸ This copy may be replaced by a written statement that an import permit will be issued and on what conditions.

4. Documents required for trade from and to the Community

Import permit form

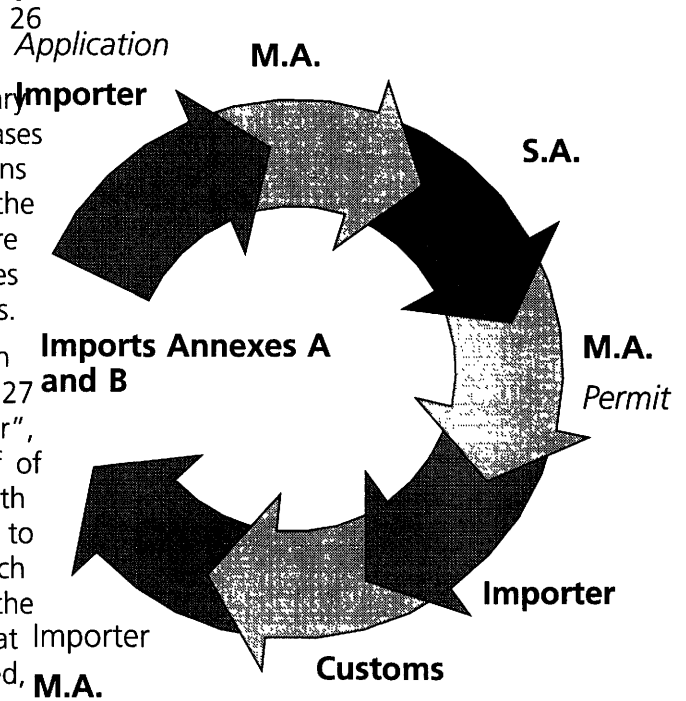
Number and name of form	1. Exporter/re-exporter <i>Must contain the full name and address of the actual exporter or re-exporter and not of an agent</i>	PERMIT/CERTIFICATE <input checked="" type="checkbox"/> IMPORT <input type="checkbox"/> EXPORT <input type="checkbox"/> RE-EXPORT		No <i>Unique number to be attributed by issuing authority</i> 2. Last day of validity: <i>Maximum 12 months</i>				
	3. Importer <i>Must contain the full name and address of the actual importer not of an agent</i>	 Convention on International Trade in Endangered Species of Wild Fauna and Flora						
	6. Authorized location for live wild-taken specimens of Annex A species <i>The proposed housing location for live, wild-taken Annex A specimens must be mentioned on the application form only. The issuing authority will decide whether or not this location will be prescribed, in which case any movement of the specimens requires prior authorization.</i>	4. Country of (re)-export <i>Country from which the goods are to be imported; the country of export can only be the country of origin of the specimens, i.e. where they were taken from the wild, bred or propagated</i>		5. Country of import <i>The Member State of final destination of the specimens</i>				
		7. Issuing management authority <i>The Management Authority of the Member State of final destination of the specimens</i>						
8. Description of specimens (including marks, sex/date of birth for live animals) <i>This description must be as precise as possible and include a 3-letter code in accordance with Annex 5 to the Commission Regulation</i>	9. Net mass (kg) <i>See Annex 5 to Commission Reg. for units to be used</i>		10. Quantity					
	11. Cites appendix <i>I, II or III</i>	12. EC Annex <i>A or B</i>	13. Source	14. Purpose <i>use code in Annex 7 C'ion Reg.</i>				
	15. Country of origin <i>Where specimens were taken from the wild, bred or propagated, see 4</i>							
	16. Permit No <i>Provide details of the relevant export permit</i>		17. Date of issue					
	18. Country of last re-export <i>Re-exporting country from which import takes place, see 4</i>							
	19. Certificate No <i>Provide details of the relevant re-export certificate</i>		20. Date of issue					
21. Scientific name of species <i>The standard references for nomenclature in Annex 6 to the Commission Regulation must be used</i>								
22. Common name of species <i>A common name is not available for all species</i>								
23. Special conditions <i>Space for the issuing authority to add stipulations, conditions and requirements in order to ensure compliance with Community and national legislation</i> <p style="text-align: center;">This permit/certificate is only valid if live animals are transported in compliance with the Cites Guidelines for the transport and preparation for shipment of live wild animals or, in the case of air transport, the Live Animals Regulations published by the International Air Transport Association (IATA)</p>								
24. The (re)-export documentation from the country of (re)-export <input type="checkbox"/> has been surrendered to the issuing authority <input type="checkbox"/> has to be surrendered to the border customs office of introduction <div style="border: 1px solid black; padding: 5px; font-size: small;"> <i>Where the original of the (re)-export document is available at the time of application, it will be held by the issuing authority. Where this is not the case, the original must be surrendered to customs. Space is provided to indicate details about the authority that has to issue (re)-export documents in order to facilitate this task for customs.</i> </div>		25. The <input type="checkbox"/> importation <input type="checkbox"/> exportation <input type="checkbox"/> re-exportation of the goods described above is hereby permitted. Signature and official stamp: <i>Is the actual validation of the import permit</i> Name of issuing official: Place and date of issue:						
26. Bill of lading/air waybill No: <i>to be indicated by the importer at the time of importation</i>		Signature and official stamp:						
27. For customs use only								
<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Quantity/net mass (kg) actually imported</td> <td style="width: 50%;">Number of animals dead on arrival</td> </tr> <tr> <td><i>if more than in box 9 or 10, customs to contact M.A.</i></td> <td><i>Only relevant for shipments of live animals</i></td> </tr> </table>		Quantity/net mass (kg) actually imported	Number of animals dead on arrival	<i>if more than in box 9 or 10, customs to contact M.A.</i>	<i>Only relevant for shipments of live animals</i>	Customs document Type: Number: Date:		
Quantity/net mass (kg) actually imported	Number of animals dead on arrival							
<i>if more than in box 9 or 10, customs to contact M.A.</i>	<i>Only relevant for shipments of live animals</i>							
		<i>After completion, customs return the original to the Management Authority in their country and return the copy for the permittee to the importer. The latter document serves as proof that the specimens concerned have been legally imported</i>						

4. Documents required for trade from and to the Community

at a designated point of introduction (**Chapter 22**). Where appropriate, the number of the Bill of Lading or Air Waybill must be indicated in box 26 of the import permit.

16. The customs office shall carry out the necessary checks, i.e. checks of the documents and – in cases where this is provided for in Community provisions or in other cases by representative sampling of the shipment – examination of the specimens, where appropriate accompanied by the taking of samples with a view to analysis or more detailed checks.
17. When the shipment and required documentation are in order, the customs office completes box 27 of the original and the “copy for the holder”, returns the latter to the importer (for later proof of legal importation) and the original – together with the document from the (re-) exporting country – to the Management Authority of the country in which it is located. Where applicable, the latter passes the document on to the Management Authority that issued the permit. If documents are not returned, the Management Authority lacks information on whether the import has actually taken place. This makes annual reporting (see **Chapter 28**) on the basis of permits used impossible and leads to discrepancies between their annual reports and those of (re-)exporting parties to CITES.

Figure 5 – The steps involved with an import permit



M.A. = Management Authority
S.A. = Scientific Authority

When there appears to be a problem, the customs office must inform the Management Authority in that country to find a solution. Until the necessary documents are available, specimens shall not be authorised to be assigned to a customs procedure. Also see **Chapter 24**.

There is a new element in the Regulations as compared to their predecessors for shipments of live animals. *The part of the import permit to be completed by customs must now contain information on the number of dead animals in the shipment at the time of arrival.* This is important in view of possible measures to be taken to improve transport conditions or to restrict trade in live animals of species that are subject to high transport mortality.


4.2 Import notifications for specimens of Annexes C and D species

An easy procedure

1. The forms to be used are contained in Annex 2 to the **Commission Regulation (EC) 939/97** and are available from the competent authorities in each Member State.
2. The importer or his/her authorised representative completes boxes 1 to 13 of the original and the “copy for the importer” in accordance with the instructions on the back of the forms and surrenders them to a designated border customs office at the first point of introduction into the Community.
3. For specimens of CITES Appendix III species in Annex C, the necessary CITES (re-)export documents must be presented together with the import notification.
4. Transport of live specimens must be in accordance with the CITES Guidelines for Transport or the IATA Live Animals Regulations and live animals must be conveyed to their destination as soon as possible (see **Chapter 14**).

4. Documents required for trade from and to the Community

Annotated export permit/re-export certificate

Number and name of form	1. Exporter/re-exporter <i>Must contain the full name and address of the actual exporter or re-exporter and not of an agent</i>	PERMIT/CERTIFICATE <input type="checkbox"/> IMPORT <input checked="" type="checkbox"/> EXPORT <input checked="" type="checkbox"/> RE-EXPORT <i>(Tick applicable box)</i>		No <i>Unique number to be attributed by issuing authority</i> 2. Last day of validity: Maximum 6 months				
	3. Importer <i>Must contain the full name and address of the actual importer and not of an agent</i>	 Convention on International Trade in Endangered Species of Wild Fauna and Flora						
	6. Authorized location for live wild-taken specimens of Annex A species <i>Not applicable for export and re-export</i>	4. Country of (re)-export <i>Member State from which the goods are to be (re)-exported; the country of export can only be the country of origin of the specimens, is where they were taken from the wild, bred or propagated</i>	5. Country of import <i>The third country of final destination of the specimens</i>					
		7. Issuing management authority <i>The Management Authority of the Member State in which the specimens are located</i>						
8. Description of specimens (including marks, sex/date of birth for live animals) <i>This description must be as a precise as possible and include a 3-letter code in accordance with Annex 5 to the Commission Regulation</i>	9. Net mass (kg) <i>See Annex 5 to Commission Reg. for units to be used</i>	10. Quantity						
	11. Cites appendix <i>I, II or III</i>	12. EC Annex <i>A, B or C</i>	13. Source <i>use code in Annex 7 C'ion Reg.</i>	14. Purpose				
	15. Country of origin <i>Where specimens were taken from the wild, bred or propagated, see 4</i>							
	16. Permit No <i>Not to be completed if country of origin is a Member State</i>		17. Date of issue					
	18. Country of last re-export <i>Re-exporting third country form which import takes place</i>							
	19. Certificate No <i>Provide details of the relevant re-export certificate</i>		20. Date of issue					
21. Scientific name of species <i>The standard references for nomenclature in Annex 6 to the Commission Regulation must be used</i>								
22. Common name of species <i>A common name is not available for all species</i>								
23. Special conditions <i>Space for the issuing authority to impose stipulations, conditions and requirements in order to ensure compliance with Community and national legislation</i> This permit/certificate is only valid if live animals are transported in compliance with the Cites Guidelines for the transport and preparation for shipment of live wild animals or, in the case of air transport, the Live Animals Regulations published by the International Air Transport Association (IATA)								
24. The (re)-export documentation from the country of (re)-export <input type="checkbox"/> has been surrendered to the issuing authority <input type="checkbox"/> has to be surrendered to the border customs office of introduction <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"><i>Not applicable for export and re-export</i></div>		25. The <input type="checkbox"/> importation <input type="checkbox"/> exportation <input type="checkbox"/> re-exportation of the goods described above is hereby permitted. Signature and official stamp: <i>Is the actual validation of the export permit or re-export certificate</i> Name of issuing official: Place and date of issue:						
26. Bill of lading/air waybill No: <i>to be indicated by the importer at the time of export</i>		27. For customs use only						
<table border="1" style="width: 100%;"> <tr> <td>Quantity/net mass (kg) actually imported</td> <td>Number of animals dead on arrival</td> </tr> <tr> <td colspan="2" style="text-align: center;"><i>Not applicable for export and re-export</i></td> </tr> </table>		Quantity/net mass (kg) actually imported	Number of animals dead on arrival	<i>Not applicable for export and re-export</i>		Signature and official stamp: Customs document Type: <i>After completion, customs return to original to the exporter or re-exporter and the copy for return to the issuing authority to the Management Authority in their country. The original is necessary for import by the country of destination under CITES</i> Number: Date:		
Quantity/net mass (kg) actually imported	Number of animals dead on arrival							
<i>Not applicable for export and re-export</i>								

4. Documents required for trade from and to the Community

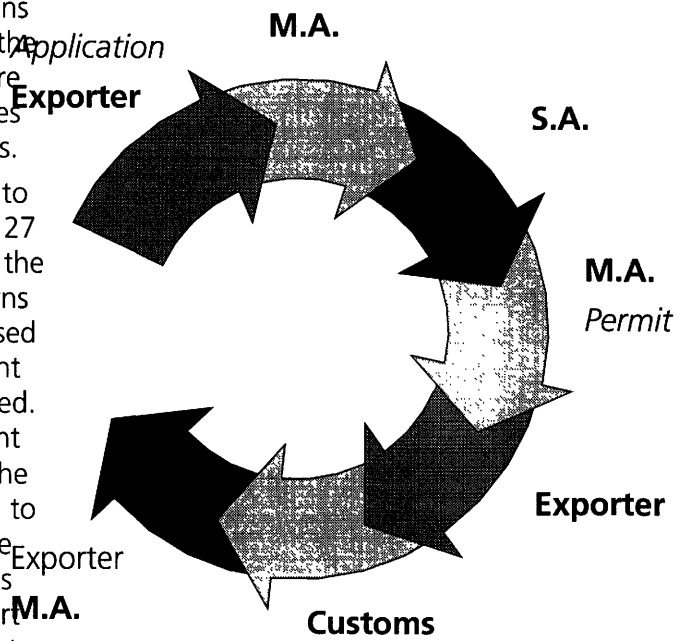
14. At the time of (re-)export from the Community, the (re-)exporter – or his authorised representative – must surrender the original of the permit, the “copy for the holder” and the “copy for return to the issuing authority” to a designated customs office. Where appropriate, the number of the Bill of Lading or Air Waybill must be indicated in box 26 of the export permit / re-export certificate.

When there appears to be a problem, the customs office must inform the Management Authority of his country and consult on steps to take. Until such time as the requisite documents are available, specimens shall not be authorised to be assigned to a customs procedure. Also see **Chapter 24**.

15. The customs office shall carry out the necessary checks, i.e. checks of the documents and – in cases where this is provided for in Community provisions or in other cases by representative sampling of the shipment – examination of the specimens, where appropriate accompanied by the taking of samples with a view to analysis or more detailed checks.

Figure 7 – Steps required for obtaining an export permit for specimens in Annexes A, B and C

16. When the shipment and documents are found to be in order, the customs office completes box 27 of the original, the “copy for the holder” and the “copy for return to the issuing authority”, returns first two to the (re-) exporter or his authorised representative and the latter to the Management Authority of the country in which it is located. Where applicable, the latter passes the document on to the Management Authority that issued the permit. It is crucial that documents are returned to the Management Authorities. If documents are not returned, the Management Authority lacks information on whether the export or re-export has actually taken place. This makes annual reporting (see **Chapter 28**) on the basis of permits used impossible.



The same applies to re-export certificates

5. Conditions for the issue of import permits (Annexes A and B)

Annex	Conditions ⁹
A B	<i>Commission</i> has not established Article 4.6 import restriction (Regulation (EC) 338/97 Article 4.1 and 4.2).
A*	<i>Management Authority</i> is satisfied that the specimens are not to be used for primarily commercial purposes (Regulation (EC) 338/97 Article 4.1.d), i.e. will be used for purposes of which the no commercial aspects clearly predominate (Regulation (EC) 338/97 Article 2.m).
A* B*	<i>Scientific Authority</i> has advised the Management Authority of its finding (after considering possible opinion Scientific Review Group) that import would not have a harmful effect on the conservation status of the species or decrease the population concerned (Regulation (EC) 338/97 Article 4.1.a.i)*;
A*	import is under exceptional circumstances required for the advancement of science or for essential biomedical purposes; species is the only one suitable and there are no captive bred animals (Regulation (EC) 338/97 Article 4.1.a.ii, first indent);
A*	specimens are intended for captive breeding (animals) or propagation (plants) from which conservation benefits will accrue to the species concerned (Regulation (EC) 338/97 Article 4.1.a.ii, first indent);
A*	specimens are intended for research or education aimed at the preservation or conservation of the spec (Regulation (EC) 338/97 Article 4.1.a.ii, first indent);
A*	import is for other purposes that are not detrimental to the survival of the species concerned (Regulation (EC) 338/97 Article 4.1.a.ii, second indent)
A B*	<i>Management Authority</i> in consultation with the <i>Scientific Authority</i> are satisfied that there are no other conservation factors against import (Regulation (EC) 338/97 Article 4.1.e / 4.2.c).
A B*	<i>Scientific Authority</i> ¹² is satisfied that intended accommodation for live animals/plants at the place of destination is adequately equipped to conserve and care for them properly (Regulation (EC) 338/97 Article 4.1.c).

⁹ For marking requirements, see Chapter 21.

¹⁰ NB. For Annex B species, the *Scientific Authority* does not need to advise the *Management Authority* of its non-detriment finding on a case-by-case basis; its opinion on this (taking account of current and anticipated levels of trade) is valid for subsequent importations. The *Scientific Review Group*, does not come to another finding (Council Reg. Article 4.2.a).

* Does not apply to re-imports and specimens acquired before 1 June 1947 (Council Reg. Article 4.5).

¹¹ An example of such a non-detrimental purpose is the import of hunting trophies obtained under an approved management plan for the species which is beneficial to its conservation. For a number of species hunting trophy quotas are established by the CITES Conference of the Parties.

¹² NB. For Annex B specimens, the *Scientific Authority* is not necessarily involved; Article 4.2.b only provides that the applicant must provide documented evidence that he has adequate housing for the specimens. The *Management Authority* may therefore take a decision on this itself.

6. General import restrictions established by the Commission under Article 4(6) of the Regulation (EC) 338/97

1. Import restrictions with regard to specimens of species of wild fauna and flora must be applied throughout the Community and cannot be applied by individual Member States. An exception is legally possible where species that are indigenous to a Member State are concerned and where such national import restrictions can be justified under the provisions of the Treaty. This also applies to national import restrictions for other reasons than those covered by the Regulations. It is therefore essential that import restrictions are uniformly implemented, i.e. it must be ensured that at any moment in time all Member States issue or do not issue import permits for a given species.
 2. The Regulation (EC) 338/97, in Article 6(1) and (2), therefore provides that a Member State rejecting an application in a case of significance in respect of the objectives of the Regulation, shall immediately inform the Commission thereof and of its reasons. The Commission then informs the other Member States to ensure uniform application.
 3. There will be cases where the Scientific Authority of a Member State advises its Management Authority not to issue a permit for an Annex A or B species because it considers that import would be harmful to the conservation of the species/population, because there are other conservation factors against import, or because live specimens of an Annex B species are subject to high transport mortality or not likely to survive in captivity. In such cases, the other Member States' authorities must be informed as soon as possible and suspend the issue of import permits on the basis of the conditions of Article 4(1) or (2) until a restriction is established (or not) under Article 4(6). This requires an opinion of the Scientific Review Group, the Committee and indeed, consultation with affected range states.
- Where a reason for the rejection of import permit applications originates in a meeting of the Scientific Review Group, the temporary rejection on the basis of Article 4(1) or (2) will be equally necessary. An example:
- A Scientific Authority advises its Management Authority under Article 4(2)(a) of the Regulation (EC) 338/97 not to issue an import permit because it is of the opinion that the import is harmful to the conservation status of the species or to the conservation of the species' population from which the import is to take place.
- It must then be immediately ensured that the other Scientific Authorities provide the same advice to their Management Authorities and – more importantly – that no import permits are issued on the basis of Article 4(2) until an Article 4(6) restriction is established.
- It is of course also possible that during this process a non-detriment finding is made on the basis of additional scientific information, e.g. from another Scientific Authority, or the Scientific Review Group. The condition of Article 4(2)(a) is then met and imports can be resumed.
- Where an Article 4(6) restriction is established by the Commission, the **Commission Regulation (EC) 939/97**'s Article 41(1) provides that Member States shall immediately reject all permit applications for as long as that restriction is in place.
- Article 41(4) of the **Commission Regulation (EC) 939/97** provides that, unless specifically decided otherwise, Article 4(6) restrictions do not apply to:
- ♦ specimens that are born and bred in captivity in accordance with the criteria laid down in Article 24 of the **Commission Regulation (EC) 939/97** (see **Chapter 10**)

6. General import restrictions established by the Commission under Article 4(6) of the Regulation (EC) 338/97

- ◆ specimens that are being imported for one of the purposes referred to in Article 8(3)(e) to (f) of the Regulation (EC) 338/97 (see **Chapter 12**) and to
- ◆ specimens (including live animals and plants) that are part of the household of persons moving into the Community to take up residence there.

7. It is important for every importer to be aware of the fact that each and every application will be considered on its own merits and that the absence of import restrictions at the time of the application does not mean that a permit will be issued. It would therefore be extremely unwise to conclude definitive contracts, to pay for ordered specimens and to arrange for their shipment in the absence of an import permit or at least a sufficient guarantee that a permit will be issued.

8. There will, however, be cases where restrictions are established with regard to imports that would appear to meet the conditions of Article 4(1) and/or 4(2), but which are nevertheless established on the basis of Article 4(6).

There are indeed several possibilities of this kind:

- ◆ on the basis of Article 4(6)(a) and 4(1)(e) – other factors relating to the conservation of the species that militate against issuance of an import permit¹³,
- ◆ on the basis of Article 4(6)(c) – for live specimens of Annex B species subject to high transport mortality or unlikely to survive in captivity, or
- ◆ on the basis of Article 4(6)(d) – for live specimens of species posing an ecological threat to indigenous species.

9. For the cases referred to in point 8, Article 41(2) of the **Commission Regulation (EC) 939/97** contains a “hardship clause” to ensure a harmonised treatment of applications made before a restriction is established.

It provides that an import permit may be issued where:

- ◆ an application was submitted prior to the establishment of the restriction and
- ◆ the competent management authority is satisfied that a contract or order exists for which payment has been made or as a result of which the specimens have already been shipped.

This requires some further explanation. A provision of this kind should of course not lead to a situation in which imports continue to take place in spite of the fact that the conditions for import are not met.

The option should therefore only be used in relation to restrictions under Article 4(6) mentioned in point 8. It should not normally be used where imports permits are to be rejected on the basis of the considerations referred to in points 3 to 5 above and certainly not at the time when these cases are established as a general import restriction under Article 4(6).

10. To further reduce the possibility for abuse, Article 41(3) of the **Commission Regulation (EC) 939/97** provides that import permits issued under the derogation shall only be valid for 1 month.

11. Article 4(6) import restrictions are also possible with regard to live specimens of species that are known to form an ecological threat to indigenous Community species (Article 4(6)(d). Although only two species have so far been listed in Annex B for this purpose (the American bull frog (*Rana catesbeiana*) and the red-eared terrapin (*Trachemys scripta elegans*)), this measure is possible for all species listed in the Annexes.

Where an import restriction is established for this purpose, the Commission can also establish restrictions on the holding and movement of live specimens of the species concerned (Article 9(6) of the Regulation (EC) 338/97).

12. Article 4(6) restrictions are to be published by the Commission in the Official Journal of the European Communities on a quarterly basis.

The situation with regard to import restrictions under Article 4, paragraphs 1, 2 and 6 can, however, be checked on the Internet web site created for that purpose by the World Conservation Monitoring Centre in Cambridge (<http://www.wcmc.org.uk/species/trade/eu>).

¹³ For example a recommendation by the CITES Conference of the Parties, Standing Committee or Secretariat to suspend trade of a given origin for non-compliance with the Convention.

7. Conditions for the issue of export permits

Annex	Conditions ¹⁴
A* B* C*	<i>Scientific Authority</i> has advised its Management Authority in writing that the capture or collection of the specimens in the wild and their export will not have a harmful effect on the conservation status of the species or decrease the population concerned (Regulation (EC) 338/97 Article 5.2.a and 5.4)
A B C	<i>Management Authority</i> must receive documentary evidence from applicant that specimens were obtained in accordance with legislation on their protection; where specimens originate in another Member State, a certificate is required (Regulation (EC) 338/97 Article 5.2.b and 5.4) except where specimens have been individually marked under the supervision of a Management Authority so as to allow an easy reference to the documents concerned (Commission Regulation (EC) 939/97 Article 16 15.3.3 rd subparagraph). In the absence of supporting documentary evidence, the Management Authority shall establish the legal acquisition, where necessary in consultation with a Management Authority of another Member State
A B C	<i>Management Authority</i> is satisfied about preparation for shipment and transport arrangements (Regulation (EC) 338/97 Article 5.2.c.i and 5.4)
A*	<i>Management Authority</i> is satisfied that specimens will not be used for primarily commercial purposes by the intended importer; where a CITES Appendix I species is concerned an import permit must have been issued by the country of destination (Regulation (EC) 338/97 Article 5.2.c.ii)
A B C	<i>Management Authority</i> in co-operation with the <i>Scientific Authority</i> are satisfied that there are no other factors against export (Regulation (EC) 338/97 Article 5.2.d and 5.4)

¹⁴ For marking requirements, see Chapter 21.

* Does not apply to worked specimens acquired 50 years before Regulation and dead specimens legally acquired before 338/97 or 3626/2006/Convention became applicable to them (Council Reg. Art. 5.6).

¹⁵ Scientific Authority is to monitor exports of Annex B species and if it is of the opinion that export should be limited, Management Authority in writing of suitable measures. Management Authority to inform Commission which may recommend export restrictions (Council Reg. Art. .

8. Conditions for the issue of re-export certificates

Annex	Conditions ¹⁶
A B C	<i>Management Authority</i> is satisfied with preparation for shipment and transport arrangements (Regulation (EC) 338/97 Article 5.2.c.i, 5.3 and 5.4)
A*	<i>Management Authority</i> is satisfied that specimens will not be used for primarily commercial purposes by the intended importer; where a CITES Appendix I species is concerned an import permit must have been issued by the country of destination (Regulation (EC) 338/97 Article 5.2.c.ii and 5.3)
A B C	<i>Management and Scientific Authorities</i> are satisfied that there are no other factors against export (Regulation (EC) 338/97 Article 5.2.d, 5.3 and 5.4)
A B C	<i>Management Authority</i> is satisfied that specimens were introduced in accordance with Regulation 338/97, Regulation 3626/82, CITES, or were legally introduced into a Member State before applicability of these Regulations/Convention to species or in the Member State concerned (Regulation (EC) 338/97 Article 5.3.a-d and 5.4). Where this import took place in another Member State, its <i>Management Authority</i> must be consulted (Regulation (EC) 338/97 Article 5.5). Where specimens have been individually marked under the supervision of a <i>Management Authority</i> so as to allow an easy reference to the documents concerned Commission Regulation (EC) 939/97 Article 16.3.3 subparagraph) the physical presentation of such documents shall not be required. In the absence of supporting documentary evidence, the <i>Management Authority</i> shall establish the legal introduction into the Community, where necessary in consultation with a <i>Management Authority</i> of another Member State.

¹⁶ For marking requirements, see **Chapter 21**.

* Does not apply to worked specimens acquired 50 years before Regulation and dead specimens legally acquired before 338/97, 3626/82 or Convention became applicable to them (Council Reg. Art. 5.6).

9. The retrospective issue of an import permit, export permit or re-export certificate

1. Article 8(3) of the **Commission Regulation (EC) 939/97** deals with the retrospective issue of documents.
2. It is possible that an importer receives an unexpected shipment at a Community border for which he/she is indicated as the consignee. He/she must immediately inform the competent Management Authority of the arrival and of the reasons why the necessary documents are not available. A Management Authority may exceptionally issue them retrospectively for species listed in Annex B and C and for specimens of Annex A species that are being reintroduced into the Community or are specimens that were acquired more than 50 years previously.

Before doing so, however, the Management Authority must be satisfied, where appropriate in consultation with the competent authorities of the third country involved, that any of the occurred irregularities are not attributable to the (re-) exporter and/or the importer and that the transaction

concerned is otherwise in compliance with the provisions of Community Regulations, the Convention and the relevant legislation of the third country involved.

It should be noted that an importer's or (re-)exporter's claim that he or she was unaware of the permit certificate requirement is not normally an acceptable reason for the retrospective issuance of documents. This is particularly unacceptable where professionals are concerned. A private individual may have a better chance of defending his/her case and it is the Management Authority which decides.

Retrospectively issued permits and re-export certificates must clearly indicate that they have been issued retrospectively and why.

Simple declarations about the legality of exports or re-exports by authorities of the third country involved are not acceptable, nor are declarations about the validity of documents that do not meet the requirements of the Regulations and/or the provisions of CITES.

10. Derogations from import and export conditions

Captive bred specimens

1. Specimens of Annex A animal species are treated as specimens of Annex B species (Regulation (EC) 338/97 Article 7.1.a) if they were captive bred in accordance with the criteria of Article 24 of the **Commission Regulation (EC) 939/97**. These criteria also apply to specimens of Annex B species. Where they are met for such specimens, this of course has an effect on the considerations related to whether or not trade is harmful to the conservation of the species. Article 4(6) import restrictions will not normally apply to such specimens either (see point 6 **Chapter 6**). Article 24 provides:

Without prejudice to Article 25, a specimen of an animal species shall only be considered to be born and bred in captivity when a competent scientific authority of the Member State concerned is satisfied that:

- a) *it is, or is derived from, the offspring born or otherwise produced in a controlled environment either of parents that mated or had gametes otherwise transferred in a controlled environment, if reproduction is sexual, or of parents that were in a controlled environment when the development of the offspring began, if reproduction is asexual;*
- b) *the parental breeding stock was established in accordance with the legal provisions applicable to it at the time of acquisition and in a manner not detrimental to the survival of the species concerned in the wild;*
- c) *the breeding stock is maintained without the introduction of specimens from the wild, except for the occasional addition of animals, eggs or gametes, in accordance with the legal provisions*

applicable and in a manner not detrimental to the survival of the species concerned in the wild:

- (i) *to prevent or alleviate deleterious inbreeding, with the magnitude of such addition determined by the need for new genetic material;*
 - (ii) *to dispose of confiscated animals in accordance with Article 16, paragraph 3, of Regulation (EC) No 338/97; or*
 - (iii) *exceptionally, for the use of breeding stock;*
- d) *the breeding stock has itself produced second or subsequent generation offspring in a controlled environment, or is managed in a manner that has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment.*

(See **Section 29** for the definitions of "first and second-generation offspring", "breeding stock" and "controlled environment" as defined in Article 1).

2. Article 25 of the Commission Regulation (EC) 939/97 provides for the possibility that proof of captive breeding in accordance with the above criteria and conditions can be obtained through DNA tests:

Where, for the purposes of Article 24 or Article 32 (a) or (b) or Article 33 (1), a competent authority deems it necessary to establish the ancestry of an animal through the analysis of blood or other tissue, such an analysis, or the necessary samples shall be made available in a manner prescribed by that authority.

3. The Community does not implement the recommendations of the Conference of the Parties to CITES (Resolution Conf. 8.15) with regard to restrictions on trade in specimens of Appendix I species produced by commercial captive breeding

10. Derogations from import and export conditions

operations. Registration of such operations with the CITES Secretariat is not a requirement for trade from or to the Community.

It is further important to note that there are no restrictions on the purposes of import of captive bred specimens: an animal produced by a non-commercial captive breeding operation can very well be imported for commercial purposes and vice versa (the conditions for specimens of Annex B species in Article 4(2) of the Regulation (EC) 338/97 apply).

Artificially propagated specimens

1. Specimens of Annex A species are treated as specimens of Annex B species (Regulation (EC) 338/97 Article 7.1.a) if they were artificially propagated in accordance with the criteria of Article 26 of the Commission Regulation (EC) 939/97. These criteria also apply to specimens of Annex B species. Where they are met for such specimens, this of course has an effect on the considerations related to whether or not trade is harmful to the conservation of the species. Article 4(6) import restrictions will not normally apply to such specimens either (see point 6 in **Chapter 6**). Article 26 which provides:

A specimen of a plant species shall only be considered to be artificially propagated when the scientific authority of the Member State concerned is satisfied that:

- a) *it is, or is derived from, plants grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules under controlled conditions, i.e. in a non-natural environment that is intensively manipulated by human intervention, which may include tillage, fertilisation, weed control, irrigation, or nursery operations such as potting, bedding and protecting from weather;*
- b) *the cultivated parental stock was established in accordance with the legal provisions applicable to it at the time of acquisition and is maintained in a manner not detrimental to the survival of the species in the wild;*
- c) *the cultivated parental stock is managed in such a way that its long term maintenance is guaranteed; and*
- d) *in the case of grafted plants, both the root stock and the graft have been artificially propagated*

in accordance with subparagraphs (a) to (c).

For artificially propagated Annex B and C plants and hybrids of unannotated Annex A plants, **phytosanitary certificates** may be used instead of export permits or re-export certificates (Regulation (EC) 338/97 Article 7.1.b). The Commission Regulation (EC) 939/97 confirms this in Article 18 (1) and further provides that:

Where such a plant health certificate is used, it shall include the scientific name at the species level or, if this is impossible for those taxa included by family in the Annexes to Regulation (EC) No 338/97, at the generic level, whereas artificially propagated Annex B orchids and cacti may be referred to as such. Plant health certificates shall also include the type and quantity of specimens and bear a stamp, seal or other specific indication stating that "the specimens are artificially propagated as defined by CITES"

Where a Member State has **registered commercial nurseries** of Annex A species, pre-issued export permits may be made available on the conditions laid down in Article 18.3 of the Commission Regulation (EC) 939/97:

Where a Member State, in compliance with the guidelines adopted by the Conference of the Parties to the Convention¹⁷, registers nurseries exporting artificially propagated specimens of species included in Annex A, it may make pre-issued export permits available to the nurseries concerned on which, in box 23, the registration number of the nursery as well as the following statement is included:

'PERMIT VALID ONLY FOR ARTIFICIALLY PROPAGATED PLANTS AS DEFINED BY CITES RESOLUTION CONF. 9.18.

VALID ONLY FOR THE FOLLOWING TAXA:'

Transit

1. Specimens in transit between two "third" countries (see definition in Article 2(v) of the Regulation (EC) 338/97 – **Chapter 29**) are not subject to import permits/notifications and re-export certificates, but for CITES-listed species a valid CITES (re-)export document must have been issued which specifies the destination of the specimens (Article 7(2)(a) and (b) of the Regulation (EC) 338/97).

¹⁷ Resolution Conf. 9.19.

2. Without such a valid (re-) export document, specimens must be seized and may be confiscated provided that a document is not issued retrospectively (Regulation (EC) 338/97 Article 7.2). Commission Regulation (EC) 939/97 Article 8(3) to (5) lay down the conditions for the retrospective issue of documents, see **Chapter 9**.
3. This is certainly not an easy provision to implement and enforce. It is not always the case that CITES shipments are transported together with CITES documents, but this does not necessarily make shipments illegal. The documents may simply be with the exporter and/or importer.

Where trade takes place between two non-Parties to the Convention, there is not likely to be a CITES document at all.

Article 7(2)(b) of the Regulation (EC) 338/97 implies the seizure of such shipments until a valid CITES export or re-export document (or a comparable document from a non-Party) is presented.

4. Resolution Conf. 9.7 of the CITES Conference of the Parties recommends that, when an illegal shipment in transit is discovered that cannot be seized, the country of destination and the CITES Secretariat are provided with all relevant information.

Convention poses a series of recognised implementation problems with regard to Appendix II species which the Conference of the Parties has not been able to solve through Resolutions. Community provisions are necessarily based on those of the Convention and will not be easy to implement.

The fact that the Regulations make no difference between the requirements for CITES-listed species and non-CITES species makes them easier to explain, but not necessarily easier to implement and enforce. A lot will depend on the efforts made with regard to public awareness activities on both the Community and Member State level (see **Chapter 25**).

The difference in the treatment of persons normally residing in the Community and of residents of third countries is the result of Article VII.3 of the Convention, which implies that CITES does not apply to specimens acquired by their owner in his own country and with which he/she travels to or through other countries.

The internal trade prohibitions of Article 8 of the Regulation (EC) 338/97 (see **Chapter 11**) should prevent residents of third countries to sell Annex A specimens imported into the Community under the personal effects and household goods exemption.

3. Article 27 of the Commission Regulation (EC) 939/97 deals with:

Introduction into the Community of personal and household effects

1. *In view of the application of the derogation referred to in Article 7 (3) of Regulation (EEC) no 338/97 from the provisions of Article 4 of that Regulation, goods that are introduced into the Community in order to be used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale cannot be considered to be personal or household effects.*
2. *The derogation referred to in Article 7(3) of Regulation (EC) No 338/97 from the provisions of its Article 4 shall not apply to the first introduction into the Community by a person normally residing in the Community of personal or household effects involving species listed in its Annex A.*
3. *The first introduction into the Community by a person normally residing in the Community of personal or household effects involving species listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit where the original of a (re-) export document and a copy thereof are pre-*

Personal effects and household goods

1. Article 7.3 of the Regulation (EC) 338/97 contains a derogation from the provisions of its Articles 4 (import) and 5 (export/re-export) for personal and household effects as defined in its Article 2(j), (see **Chapter 29**). It is important to note that the derogation *does not apply to live animals and plants*. It should further be noted that tourist souvenir specimens may well fall within the scope of the definition of personal and household effects and that the treatment thereof is subject to the same rules as those applied by customs regarding personal effects to other goods contained in the luggage of travellers.

The derogation is not restricted in the case of personal and household effects involving specimens of species in Annexes C and D.

With regard to species in Annexes A and B, however, the Commission Regulation (EC) 939/97's Articles 27 and 28 specify the necessary provisions on the applicability of the derogation in order to ensure compliance with Article VII.3 of the Convention. (The derogation of Article VII.3 of the

10. Derogations from import and export conditions

sented. Customs shall forward the original as specified in Article 19 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 involving species listed in Annex A or B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit where the customs-endorsed "copy for the holder" of a previously used Community import or export permit, the copy of the document referred to in paragraph 2, or proof that the specimens were acquired within the Community is presented.
 5. The provisions of paragraphs 2 and 3 shall not apply to a maximum of 250 grammes per person of caviar of the sturgeon species (*Accipenseriformes* spp.) listed in Annex B to Regulation (EC) No 338/97.
4. Article 28 of the Commission Regulation (EC) 939/97 lays down the provisions for:

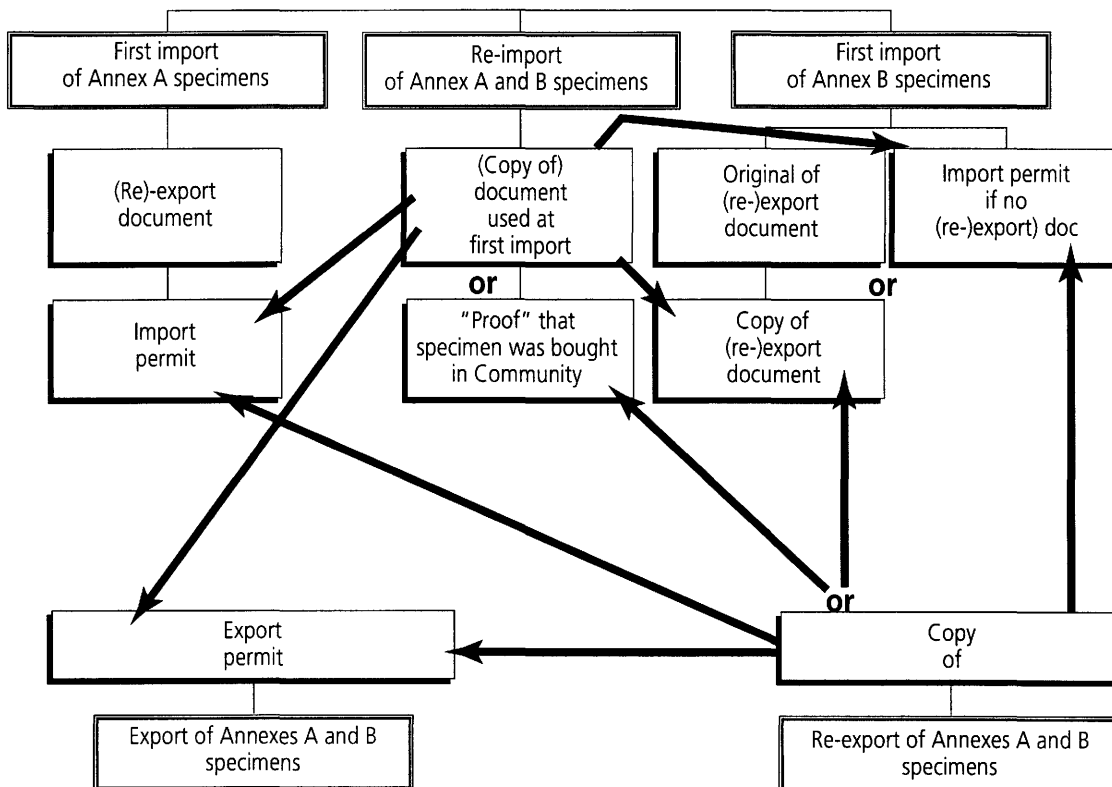
Export and re-export from the Community of personal and household effects

1. In view of the application of the derogation referred to in Article 7 (3) of Regulation (EEC) no 338/97 from the provisions of Article 5 of

that Regulation, goods that are exported or reexported from the Community in order to be used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale cannot be considered to be personal or household effects.

2. The derogation referred to in Article 7(3) of Regulation (EC) No 338/97 from the provisions of its Article 5 shall not apply to the export of personal or household effects involving species listed in its Annex A or B.
3. The re-export of personal or household effects by a person normally residing in the Community involving species listed in Annex A or B to Regulation 338/97 shall not require the presentation to customs of a re-export certificate where the customs-endorsed "copy for the holder" of a previously used Community import or export permit, the copy referred to in Article 27(2), or proof that the specimens were acquired within the Community is presented.
4. The provisions of paragraphs 1 and 2 shall not apply to a maximum of 250 grammes per person of caviar of the sturgeon species (*Accipenseriformes* spp.) listed in Annex B to Regulation (EC) No 338/97.

Figure 8 – Requirements for personal and household effects involving specimens of species in Annexes A and B



Scientific institutions

Article 7.4 of the Regulation (EC) 338/97 allows for the use of a label instead of permits and certificates for non-commercial loans, donations and exchanges between registered scientists and scientific institutions of herbarium specimens and other preserved, dried or embedded museum specimens as well as of live plant material. Commission Regulation (EC) 939/97 Annex 4 lays down the model of the label (see next page) and Article 22 contains further details:


1. In compliance with Article 7(4) of Regulation (EC) 338/97 (EC) No 338/97, the labels referred to in Article 2(4) of this Regulation shall only be used for the movement between duly registered scientists and scientific institutions of non-commercial loans, donations and exchanges of herbarium specimens, preserved, dried or embedded museum specimens and live plant material for scientific study.

2. A registration number shall be attributed to the scientists and scientific institutions referred to in paragraph 1 by a management authority of the Member State in which they are located, which shall contain five digits, the first two of which shall be the 2-letter ISO country code for the Member State concerned and the last three a unique number assigned to each institution by the competent management authority.

3. The scientists and scientific institutions concerned shall complete boxes 1 to 5 of the label and, by the return of the part of the label provided for that purpose, immediately inform the management authority with which they are registered of all details about the use of every label.

¹⁸ Resolution Conf. 2.14 of the CITES Conference of the Parties contains a series of recommendations on the registration concerned.

ANNEX IV
LABEL PROVIDED FOR IN ARTICLES 2 (4) AND 22

	Convention on International Trade in Endangered Species of Wild Fauna and Flora
	<i>Article VII (6)</i>
SCIENTIFIC MATERIAL	
1. Contents:	
2. From (full name and address):	
3. Registration No:	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
4. To (full name and address):	
5. Registration No:	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Label No:	
✂	
This part to be returned to the management authority immediately after use	
Registration No of sender	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Registration No of recipient	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Contents:	
Label No:	

11. Provisions relating to internal trade

1. It is important to realise that internal trade is considered trade within the Community and therefore includes both trade within and between individual Member States.
 2. Article 8(1) of the *Regulation (EC) 338/97* prohibits the following commercial activities involving Annex A specimens:
 - ◆ purchase,
 - ◆ offer to purchase,
 - ◆ acquisition for commercial purposes,
 - ◆ display to the public for commercial purposes,
 - ◆ use for commercial gain,
 - ◆ sale,
 - ◆ keeping for sale,
 - ◆ offering for sale,
 - ◆ transport for sale
 3. The prohibitions to purchase, offer to purchase, acquire for commercial purposes and use for commercial gain are new compared to the prohibitions that existed under the 1982 Regulation.
4. Article 8(5) makes the prohibitions of Article 8(1) applicable to Annex B specimens for which it cannot be proved to the satisfaction of the competent authorities of Member States that they were acquired (and, where applicable, introduced into the Community) in accordance with conservation legislation. It should be noted that this proof cannot be prescribed to take place by means of a certificate. However, certificates may be issued where the holder of Annex B specimens applies for them.
- NB** Article 8(2) provides that Member States may prohibit the holding of specimens and in particular of live Annex A specimens. Measures of this kind must be justifiable under the Treaty.

12. Specific exemptions from internal trade prohibitions

1. Article 8(3) of the *Regulation (EC) 338/97* provides that a Management Authority of a Member State may grant exemptions from the prohibitions of Article 8(1). Such a specific exemption is of course not necessary for specimens subject to a general derogation under Article 8(4), see **Chapter 13**.
2. These exemptions must be in accordance with the requirements of other Community legislation on the conservation of wild fauna and flora (currently the Birds (Council Directive 79/409/EEC) and Habitats Directive (Council Directive 92/43/EEC).
3. Exemptions may only be granted by the issue of a certificate on a case-by-case basis and on the following conditions:
 - a) the specimens were acquired in or introduced into the Community before the provisions relating to Annex A of 338/97, Annex C1 of 3626/82, or Appendix I of CITES became applicable to them;
 - b) specimens are worked specimens that were acquired before 1/6/47 (this follows from the definition in Article 2(w) of the *Regulation (EC) 338/97*, see **Chapter 29**);

NB The above two provisions, together with the provisions of Article 4, imply that any Annex A specimen acquired outside the Community is subject to all import conditions (e.g. cannot be imported for primarily commercial purposes) and internal trade prohibitions no matter when it was acquired. The Community does therefore not recognise pre-Convention certificates issued by third countries. An exception is only made for specimens acquired before 1/6/47, which are in addition subject to a general derogation from the provisions of Article 8(1), see **Chapter 13**.

- c) specimens introduced in compliance with the *Regulation (EC) 338/97* and are to be used for non-detrimental purposes;

NB The purpose of this provision is to allow e.g. the sale of Annex A specimens imported for a given accepted non-commercial purpose for a subsequent non-detrimental purpose. An example: An animal was imported for a captive breeding programme and has become redundant, it can be sold for the same or another non-detrimental purpose, such as the one referred to in g) below.

- d) specimens were born and bred in captivity or artificially propagated in compliance with the criteria laid down in Article 24 and 26 of the Commission Regulation (EC) 939/97 (see **Chapter 10**). See also the general derogations provided for (**Chapter 13**).
- e) specimens are required under exceptional circumstances for the advancement of science or essential biomedical purposes. Directive 86/609/EEC (animal experimentation) applies. The specimens must further be of the only suitable species and there must be no captive bred specimens available;
- f) specimens are intended for breeding/propagation from which conservation benefits will accrue to the species concerned;
- g) specimens are intended for research or education aimed at the preservation or conservation of the species. This – together with the prohibition to display specimens to the public for commercial purposes, limits the transfer to and use by zoos, dolphinariums and other fauna and flora exhibitions. Such establishments must therefore either be involved in captive breeding, artificial propagation or research with conservation benefits for the species involved, or provide an educational programme aimed at the conservation of the species. The judgement of whether these requirements are met is a matter for the

13. General exemptions from internal trade prohibitions

1. Article 8(4) of the Regulation (EC) 338/97 allows the Commission to define general derogations for any Annex A species from the prohibitions of its Article 8(1) based on the conditions mentioned under a) to h) in point 3 **Chapter 12**.

The Commission can further define general derogations for species listed in Annex A for look-alike reasons. The Commission Regulation does not differentiate between the reasons for the general derogations it defines.

2. Articles 29 to 33 of the Commission Regulation (EC) 939/97 lay down the general derogations concerned.
3. Article 30:

Without prejudice to Article 9 of Regulation (EC) 338/97 (EC) No 338/97, a derogation from the prohibitions of its Article 8(1) may be granted to scientific institutions, approved by a Management Authority for the purposes of this Article, by the issuance of a certificate covering all specimens of species listed in Annex A to that Regulation in the collection that are intended for captive breeding or artificial propagation from which conservation benefits will accrue to the species, or for research or education aimed at the preservation or conservation of the species, provided that any sale of specimens is to other scientific institutions holding such a certificate.

Under this exemption, a Management Authority may grant a single certificate to a scientific institution it has approved for the purpose of this exemption which allows it to carry out any of the activities referred to in Article 8(1) of the Regulation (EC) 338/97 that would normally require the issue of a certificate on a case-by-case basis.

If there is a prescribed location for live specimens of Annex A species, the movement of such speci-

mens still requires prior authorisation from the Management Authority (see **Chapter 15**)

Another limitation is that sale without a specific authorisation can only be to scientific institutions holding a certificate under this exemption.

Article 31:

Without prejudice to Article 9 of Regulation (EC) No 338/97, the prohibition to purchase, offer to purchase, or acquire specimens of species listed in its Annex A for commercial purposes and the provision of its Article 8(3), that exemptions from these prohibitions shall be granted on a case-by-case basis by the issuance of a certificate, shall not apply where the specimens involved:

- a) are covered by one of the certificates provided for in Article 20(3) and are to be used in accordance with the purpose referred to therein, ~~if~~ specimen for which there is an authorisation to sell can be purchased or acquired for commercial purposes without the need for the receiving end to obtain a certificate. However, subsequent activities prohibited under Article 8(1) of the Regulation (EC) 338/97 require a new certificate, see point 5 in **Chapter 12**) or
- b) are subject to one of the general exemptions provided for in Article 32.

Article 32:

The prohibitions of Article 8(1) of Regulation (EC) No 338/97 and the provision of its Article 8(3) thereof, that exemptions therefrom shall be granted by the issuance of a certificate on a case-by-case basis, shall not apply to:

- a) live specimens of captive born and bred animals of the species listed in Annex ~~the~~ (

14. The transport of live specimens of species in Annexes A to D

1. The transport of live animals from, to and within the Community is subject to Council Directive (EEC) No 95/29/EEC on the protection of animals during transport.
2. The Directive and the Regulation combined make compliance with the IATA Live Animals Regulations for air transport and the CITES Guidelines on the transport of live animals for other modes of transport legally binding.
3. The provision of Article 9(5) of the Regulation (EC) N° 338/97 that live specimens transported into, from or within the Community, or held during any period of transit or transshipment shall be prepared, moved and cared for in a manner so as to minimise the risk of injury, damage to health or cruel treatment applies to all live specimens in Annexes A to D. However, the transport requirements of Directive 95/29/EEC do not apply to the intra-Community transport of animals for distances of less than 50 kilometres nor to the movement of personal pets.

15. The movement of live specimens of Annex A species within the Community

1. Article 9 of the Regulation (EC) 338/97 subjects the movement within the Community of live specimens of Annex A species to prior authorisation in case the import permit or a certificate indicate the location at which they must be kept.
2. The prescription of such a location is optional. Article 4(1)(c) of the Regulation (EC) 338/97 provides that the accommodation must be approved by the Scientific Authority, but does not provide for the prescription of an approved location. The Commission Regulation (EC) 939/97 (see permit and certificate forms) limits the option to wild-taken specimens of Annex A species. It must be used for specimens of species with particular housing requirements and e.g. not where the agreed purpose for import implies the frequent movement of the animals or plants concerned (breeding exchanges, falconry).

Where a specimen is to be moved from a prescribed location, the new location for the specimens concerned must be satisfactory to the Scientific Authority of the Member State concerned. If it is, the Management Authority of the Member State of the current location can issue a certificate which authorises the movement. Where applicable, a copy thereof must be sent to the Management Authority of the other Member State.

An exception to the prior authorisation requirement is made (Regulation (EC) 338/97 Article 9.3) for the movement of live animals for the purpose of urgent veterinary treatment after which they are returned directly to their authorised location.

The transport requirements for live specimens (**Chapter 14** of course apply).

16. The movement of live specimens of Annex B species within the Community

1. One of the import conditions for live specimens of Annex B species is the availability of adequate housing facilities at the place of destination (Article 4(2)(b) of the Regulation (EC) 338/97).

The definition of Article 2(k) of the Regulation (EC) 338/97 implies that only the place at which – at the time of introduction into the Community – it is intended that specimens will normally be kept, i.e. 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.

There is therefore no such provision for the subsequent movement of specimens of live Annex B species as there is for specimens of Annex A species (see **Chapter 15**).

2. Article 9(4) of the Regulation (EC) 338/97, however, prescribes that the holder of live specimens of Annex B species may only relinquish them after ensuring that the intended recipient is adequately informed of the required accommodation, equipment and practices to ensure that they will be properly cared for.

This provision should amongst others encourage pet traders to provide the information concerned to their potential customers.

Many products on the market have adequate user manuals. Indeed, there is no reason for live animals and plants to be sold without such information.

Although the above provision has animal welfare aspects, it is in fact based on conservation considerations and intended to contribute to the survival of particularly live animals in captivity, thereby reducing replacement needs which may cause a drain on certain wild populations.

It should be noted that where specimens are known to be imported for a specific purpose, e.g. sale to private individuals, the Commission can restrict imports under Article 4(6)(c) of the Regulation (EC) 338/97 (see **Chapter 6**) for species for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span.

The transport requirements for live specimens (**Chapter 14**) apply.

17. Restrictions on the holding or movement of live specimens that are known to pose an ecological threat to indigenous Community species

Article 9(6) of the Regulation (EC) 338/97 provides that the Commission may establish restrictions on the movement of live specimens of species subject to import restrictions under Article 4(6) because of the fact that they are known to form an ecological threat to species that are indigenous to the Community.

18. Internal Community certificates

Purpose of Certificates

1. Internal Community certificates are necessary for a number of purposes:
 - ◆ To provide documentary evidence that an Annex A specimen acquired in one Member State and to be exported from another was taken from the wild in accordance with the legislation of the Member State of origin (Regulation (EC) 338/97 Article 5.2.b). See **Chapter 7**.
 - ◆ To provide documentary evidence for Annex A or B specimens to be re-exported that they were imported in accordance with Regulation 338/97 (after 1 June 1997), Regulation 3626/82 (between 1 January 1984 and the last day of validity of an import permit issued under that Regulation), before 1984 in accordance with CITES, or before any of these became applicable to the species or in the Member State of acquisition. See **Chapter 8**.
 - ◆ To grant a specific exemption from the prohibitions of Article 8.1 of the Regulation (EC) 338/97. See **Chapter 12**
 - ◆ To authorise the movement of live specimens of Annex A species from a prescribed location. See **Chapter 15**.
2. Certificates can only be used for the purposes laid down in the Regulations and Member States cannot require the issue of certificates for any other purpose.
3. Articles 20 of the Commission Regulation (EC) 939/97 specifies the many different types of certificates to be issued:
 1. *A management authority of the Member State in which specimens are located may, on receiving an application in accordance with the provisions of paragraphs 5 and 6 issue certificates referred to in paragraphs 2, 3 and 4 which shall be exclusively for the purposes specified in these paragraphs:*
 2. *A certificate for the purposes of Article 5(2)(b), (3) and (4) of Regulation (EC) No 338/97 shall state that specimens:*
 - a) *were taken from the wild in accordance with the legislation in force on its territory; or*
 - b) *are abandoned or escaped specimens that were recovered in accordance with the legislation in force on its territory; or*
 - c) *were acquired in, or were introduced into the Community in accordance with the provisions of Regulation (EC) No 338/97; or*
 - d) *were acquired in, or were introduced into the Community before 1 June 1997 in accordance with Council Regulation (EEC) No 3626/82; or*
 - e) *were acquired in, or were introduced into the Community before 1 January 1984 in accordance with the provisions of the Convention; or*
 - f) *were acquired in, or were introduced into the territory of a Member State before the provisions of the Regulations referred to in (c) or (d) or the Convention became applicable to them, or became applicable in that Member State.*
 3. *A certificate for the purposes of Article 8(3) of Regulation (EC) 338/97 shall state that specimens of species listed in its Annex A are exempted from one or more of the prohibitions of Article 8(1) thereof because they:*
 - a) *were acquired in, or were introduced into, the Community when the provisions relating to species listed in that Annex or in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 were not applicable to them; or*

18. Internal Community certificates

- b) originate in a Member State and were taken from the wild in accordance with the legislation in force on its territory; or
- c) are abandoned or escaped specimens that were recovered in accordance with the legislation in force on its territory; or
- d) are, or are parts of, or are derived from animals born and bred in captivity; or
- e) 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.

4. A certificate for the purposes of Article 9 of Regulation (EC) No 338/97, shall state that the movement of live specimens of a species listed in its Annex A from the prescribed location indicated in the import permit, or in a previously issued certificate, is authorised.

Procedure from application to issuance of a certificate

1. The applicant must obtain a form for a certificate application (model laid down in Annex 3 to the Commission Regulation (EC) 939/97) from the Management Authority of the Member State in which the specimens are located.

Management Authorities are required to issue certificates within one month from the date of submission of a full application, but this may take longer where third parties need to be consulted.

Applications must therefore be made in a timely fashion.

2. Depending on the system applied in a particular Member State, the applicant either receives a full set of forms or just the application form.

A certificate form consists of:

the original	form number 1	yellow with grey guilloche
the copy for the issuing authority	form number 2	pink
the application	form number 3	white

3. **If only the application form is to be completed**, the importer must fill in boxes 1, 2 and 4 -19) in typescript or legibly in manuscript (ink and block capitals).

Erasures and alterations should be avoided at all costs.

Where a certificate is required for more than one species, forms for annexes must be obtained and completed.

If the full set of forms is to be completed, the importer must fill in boxes 1, 2 and 4 to 19 of the application form and boxes 1 and 4 to 18 of the original and the copy for the issuing authority. This must be done in typescript and not in manuscript.

The original and copies of the certificate may not normally contain erasures and alterations and where this is the case they must be authenticated by the stamp and signature of the issuing Management Authority.

Where a certificate is required for more than one species, forms for an annex must be obtained and completed.

Instructions for completing the forms are contained on the back of the application form and the original.

Also see the annotated certificate form on the next page.

Where an annex is attached to a certificate, this as well as the number of pages must be clearly indicated on the certificate. Each annexed page must include the number of the certificate and the signature and stamp or seal of the issuing authority. See also point 3 above.

The duly completed form(s) must be submitted to the Management Authority of the Member State in which the specimens are located together with all the documentary evidence and information which is necessary to allow the Management Authority to determine whether a certificate should be issued.

The payment of a fee for processing the application may be required.

6. For live specimens of Annex A species that are taken from the wild in a Member State and for live wild-taken specimens of Annex A species for which a location was prescribed in the import permit or an earlier certificate, the proposed address must be specified in box 2 of the application for a certificate. In the case of species with particular housing requirements, this address may then be prescribed as the only authorised location for keeping the specimens Also see **Chapter 15**.

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7. The omission of information from the application must be justified. saying that he/she must also be informed of the rejection of his application and the reasons thereof.
8. When an application is made for a certificate relating to specimens for which such an application has previously been rejected, the Management Authority must be informed thereof. 10. When a certificate is issued, it may contain stipulations, conditions and requirements imposed by the issuing authority in order to ensure compliance with the Community Regulations and national legislation on their implementation. The use of the document issued is without prejudice to other necessary formalities and relating documents.
9. As indicated in point 1, a certificate will generally be issued within a month from the submission of a complete application. The applicant must be informed of significant delays. It goes without

18. Internal Community certificates

EUROPEAN COMMUNITY

ANNEX III

Number and name of form	1. Holder/breeder (only for specimens of species listed in Annex A) Complete name and full address of the holder of the certificate, not of agent. However, in the case of a certificate issued under Article 27(6)(b) of the Commission Regulation, this box must only contain the name of, or a reference to, the breeder and the Member State in which he is located		CERTIFICATE Not for use outside the European Community		No A unique number to be attributed by the issuing authority
	2. Authorized location for live wild-taken specimens of Annex A species To be completed by the applicant only on the application form in the case of live, wild taken specimens of Annex A species. On the original only to be completed for Annex A specimens by the issuing authority where a location was prescribed in an import permit or earlier certificate, or where specimens taken from the wild in its Member State shall be required to be kept at an authorised location		3. Issuing management authority A Management Authority of the Member State in which the specimens are located		
	4. Description of specimens (including marks, sex/date of birth for live animals) Description must be precise as possible and include one of the 3-letter codes provided for in Annex 5 to the Commission Regulation		5. Net mass (kg) use units mentioned in Annex 5 to Commission Reg.		6. Quantity
			7. Cites appendix I, II or III	8. EC Annex A or B	9. Source use codes in Annex 7 C'ion Reg.
			10. Purpose		
			11. Country of origin Country where specimens were taken from the wild, bred or propagated		
			12. Permit No Only applicable where country of origin is not a Member State		13. Date of issue
			14. Member State of import Only applicable for specimens originating outside the Community		
			15. Document No details of the import permit issued by importing Member State		16. Date of issue
	17. Scientific name of species Use name in accordance with standard references referred to in Annex 6 to the Commission Regulation				
18. Common name of species Not available for all species, see Annexes to Council Regulation					
19. It is hereby certified that the specimens described above:					
1 <input type="checkbox"/> were in accordance with the legislation in force in taken from the wild/are recovered abandoned or escaped live animals					
2 <input type="checkbox"/> are captive born-and-bred specimens of an animal species or are parts or derivatives thereof					
3 <input type="checkbox"/> are artificially propagated specimens of a plant species or are parts or derivatives thereof					
4 <input type="checkbox"/> were acquired in or introduced into the Community in compliance with the provisions of Regulation (EC) No 338/97					
5 <input type="checkbox"/> were acquired in or introduced into the Community before 1 June 1997 in accordance with the provisions of Regulation (EEC) No 3626/82					
6 <input type="checkbox"/> were acquired in or introduced into the Community before 1 January 1984 in compliance with the provisions of Cites					
7 <input type="checkbox"/> were acquired in or introduced into before the provisions of the Regulations cited in 4 and 5, or of Cites became applicable to them or became applicable in its territory					
8 <input type="checkbox"/> are allowed to be used for the following purpose(s):					
9 <input type="checkbox"/> are allowed to be moved to the following location:					
Special conditions:					
This part is either the application or the certification/authorisation. Some Member States may print originals which only contain the applicable certification/authorisation instead of "tick boxes"					
----- Signature					
----- Name of issuing official					
----- Place and date					
The issuing authority may insert conditions, requirements and stipulations in order to ensure compliance with the provisions of Community Regulations and national provisions on their implementation					

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19. Validity of and special conditions related to permits and certificates

Community-wide validity

1. Article 11(1) of the Regulation (EC) 338/97 establishes the principle that permits and certificates issued by one Member State in accordance with the Regulation shall be valid throughout the Community.
2. This may, however, not be the case where a Member State has (Treaty-compatible) stricter measures in place with regard to the specimens concerned.
3. The fact that – for Annexes A and B species – import permits must be issued by the Member State of destination and export permits and re-export certificates by the Member State in which the specimens are located would seem to limit the applicability of this principle.
4. Certificates to grant an exemption from the prohibitions of Article 8.1 are valid for an activity in the Member State in which the specimens are located. This implies that the authorised sale of an Annex A specimen to a buyer in another Member State may not be known to the receiving Member State because the buyer does not need a certificate from “his” Management Authority (Article 31 of the Commission Regulation (EC) 939/97). The buyer, however, will require a new certificate in case he wants to use the specimens for another purpose than the one authorised and which is prohibited under Article 8.1.

There is, however, no provision in the Regulations to the effect that an import permit cannot be used for import into another Member State.

Imports of specimens of Annex A species can only be authorised for a specified purpose and for live specimens there may be a prescribed housing location. Such permits must therefore contain conditions and stipulations to ensure that the destination of specimens is not changed after import without prior authorisation of the relevant Management Authority/ Authorities, (see point 6 below).

As far as Annex B specimens are concerned, there is no reason to refuse import into another Member State other than stricter national measures related to indigenous species. The necessary changes must be made in accordance with the provisions referred to under *Adaptation and replacement of documents* below.

Permits and certificates shall be deemed void if it is established (by a competent authority or the Commission, in consultation with the issuing authority) that they were issued on the false premise that the conditions for their issue were met. The specimens covered by such a document must be seized and may subsequently be confiscated (Regulation (EC) 338/97 Article 11.2).

Both Article 11.3 of the Regulation (EC) 338/97 and Article 5.1 of the Commission Regulation (EC) 939/97 provide that permits and certificates may stipulate conditions and requirements imposed by the issuing authority to ensure compliance with the applicable legal provisions on the implementation of the Regulations.

Time validity of permits and certificates

Article 7 of the Commission Regulation (EC) 939/97 lays down rules with regard to the time validity of permits and certificates (Internal Community certificates cannot have a final date of validity. This

19. Validity of and special conditions related to permits and certificates

does not imply, however, that specific exemptions granted from the prohibitions of Article 8(1) of the Regulation (EC) 338/97 (see **Chapter 12**) cannot be limited in time. This must be dealt with in the context of the special conditions attached to the authorised activity):

1. *The period of validity of Community import permits shall not exceed*

twelve months. An import permit shall, however, not be valid in the absence of a valid corresponding document from the country of export or re-export.

The period of validity of Community export permits and re-export certificates shall not exceed six months.

After their expiration, the Community permits and certificates referred to in subparagraphs (a) and (b) shall be considered as void and of no legal value whatsoever.

The holder shall without undue delay return the original and all copies of an expired or unused Community import permit, export permit or re-export certificate to the issuing management authority.

1. *Where a shipment which is covered by a 'copy for the holder' of an import permit, a 'copy for the importer' of an import notification, or a certificate are split, or where for other reasons the entries in such a document no longer reflect the actual situation, the management authority may make the necessary amendments in accordance with Article 4(2), or issue one or more corresponding certificates only in accordance with the provisions of and for the purposes referred to in Article 20 and after having established the validity of the document to be replaced, where necessary in consultation with a management authority of another Member State.*
2. *Where certificates are issued to replace a "copy for the holder" of an import permit, a "copy for the importer" of an import notification, or a previously issued certificate, such a document shall be retained by the management authority issuing the certificate.*
3. *A certificate that has been lost, stolen, or destroyed can only be replaced by the authority having issued it.*
4. *Where, for the purposes of paragraph 1, a management authority consults a management authority of another Member State, the latter shall respond within a period of one week.*

Adaptation and replacement of documents

1. Import permits, export permits and re-export certificates

Article 7(3) and (4) of the Commission Regulation (EC) 939/97:

3. *When a permit or certificate is issued to replace a document that has been cancelled, lost, stolen, destroyed, or that – in the case of a permit or re-export certificate – has expired, it shall indicate the number of the replaced document and the reason for the replacement in the box reserved for the entry of special conditions.*

4. *When an export permit or re-export certificate has been cancelled, lost, stolen, or destroyed, the issuing Management Authority shall inform the Management Authority of the country of destination and the Secretariat of the Convention thereof.*

2. Internal Community certificates

Article 21 of the Commission Regulation (EC) 939/97 provides that:

What makes documents invalid as evidence for legal acquisition

Article 7(2) of the Commission Regulation (EC) 939/97 provides that:

With the exception of the certificates referred to in Article 30 and 32 (b), the certificates referred to in Article 20 and copies for the holder of used import permits shall cease to be valid when live specimens referred therein have died, where live animals have escaped, where specimens were destroyed, or where any of the entries in boxes 1, 2 and 4 of a certificate, or boxes 3 – in the case of species in Annex A -, 6 and 8 of a copy for the holder of a used import permit, no longer reflect the actual situation.

Such a document shall without undue delay be returned to the issuing authority which, where appropriate, may issue a certificate reflecting such changes in accordance with Article 21.



20. Time limit for the issue of permits and certificates

Article 11(5) of the Regulation (EC) 338/97 provides that the Commission shall establish such time limits. This limit does not apply where the Management Authority has to consult one or more third parties (CITES Secretariat, Management Authority of a third country, ...).

Article 5(3) of the Commission Regulation (EC) 939/97 obliges Management Authorities to as a general rule decide on the issue of permits and certificates within one month from the date of submission of a complete application. Applicants must be notified of significant delays in processing their applications and, although not specifically provided for, applicants must of course also be informed of the rejection of their application and the reason thereof.

21. The marking of specimens

The Regulation (EC) 338/97 (Article 19.1.iii) mandates the Commission to establish marking requirements in order to facilitate identification and to ensure enforcement.

The Commission Regulation (EC) 939/97's Chapter VI deals with marking as follows:

Article 34

1. A certificate for the purposes of Article 8(3) of Regulation (EC) No 338/97 and Article 32(b) of this Regulation shall only be issued with regard to live vertebrates when the applicant has satisfied the competent management authority that the relevant provisions of Article 36.4 have been met.
2. Import permits for the following specimens shall only be issued when the applicant has satisfied the management authority that the specimens have been marked in accordance with the provisions of Article 36.4
 - a) specimens that derive from a CITES approved captive breeding operation¹⁹;
 - b) specimens that derive from a ranching operation that was approved by the Conference of the Parties to the Convention²⁰;
 - 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 Conference of the Parties to the Convention²¹;
 - d) raw tusks of African elephant and cut pieces thereof that are both over 20 cm in length and 1 kg in weight²²;
 - e) raw, tanned or finished crocodilian skins, flanks, tails, throats, feet, back strips 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 Community²³;

- f) live vertebrates of species listed in Annex A to Regulation (EC) 338/97 No 338/97 that belong to a travelling live animal exhibition²⁴.

Article 35

1. Re-export certificates for specimens marked in accordance with Article 34(2)(a) to (d) and (f) that were not substantially modified shall only be issued when the applicant has satisfied the management authority that the original marks are intact.
2. Re-export certificates for entire raw, tanned, or finished crocodilian skins and flanks shall only be issued when the applicant has satisfied the management authority that the original tags are intact or, where these have been lost or removed, the specimens have been marked with a re-export tag²⁵.

¹⁹ There are only vague recommendations on the use of a uniform marking system by registered commercial breeding operations for Appendix I species and the development of marking systems that meet the requirements of the uniform marking system for ranching specimens (Resolution Conf. 8.15, which is further not implemented by the Community - see **Chapter 10**)

²⁰ Marking requirements currently contained in Resolution Conf. 5.16.

²¹ Universal tagging system for crocodilian skins currently in Resolution Conf. 9.22, but also see Resolution Conf. 6.17. The marking requirements for leopard skins (hunting trophies and skins for personal use) are currently in Resolution Conf. 8.10(Rev.). There is no recommended marking for cheetah hunting trophies.

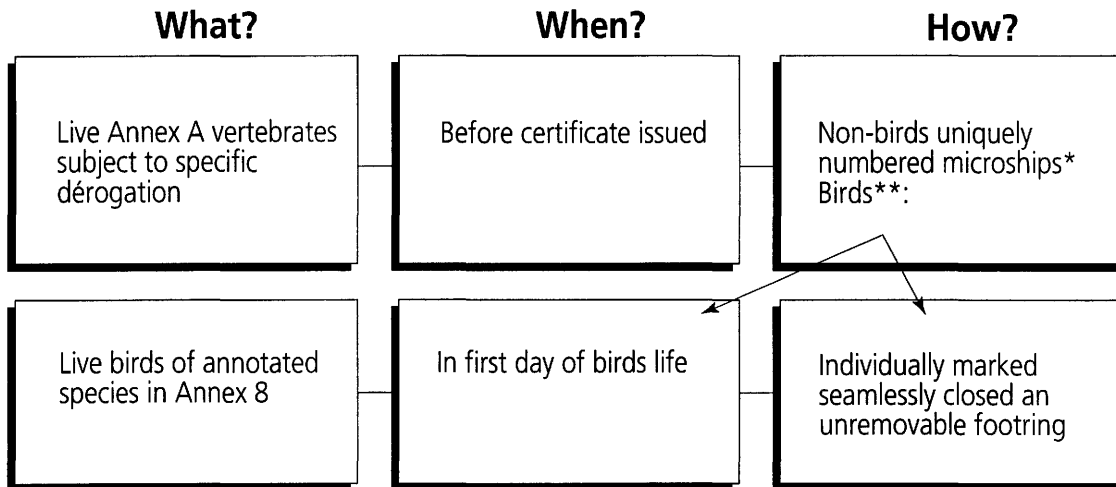
²² In Resolution Conf. 9.16.

²³ In Resolution Conf. 9.22.

²⁴ Recommendation in Resolution Conf. 8.16 without proposed methods.

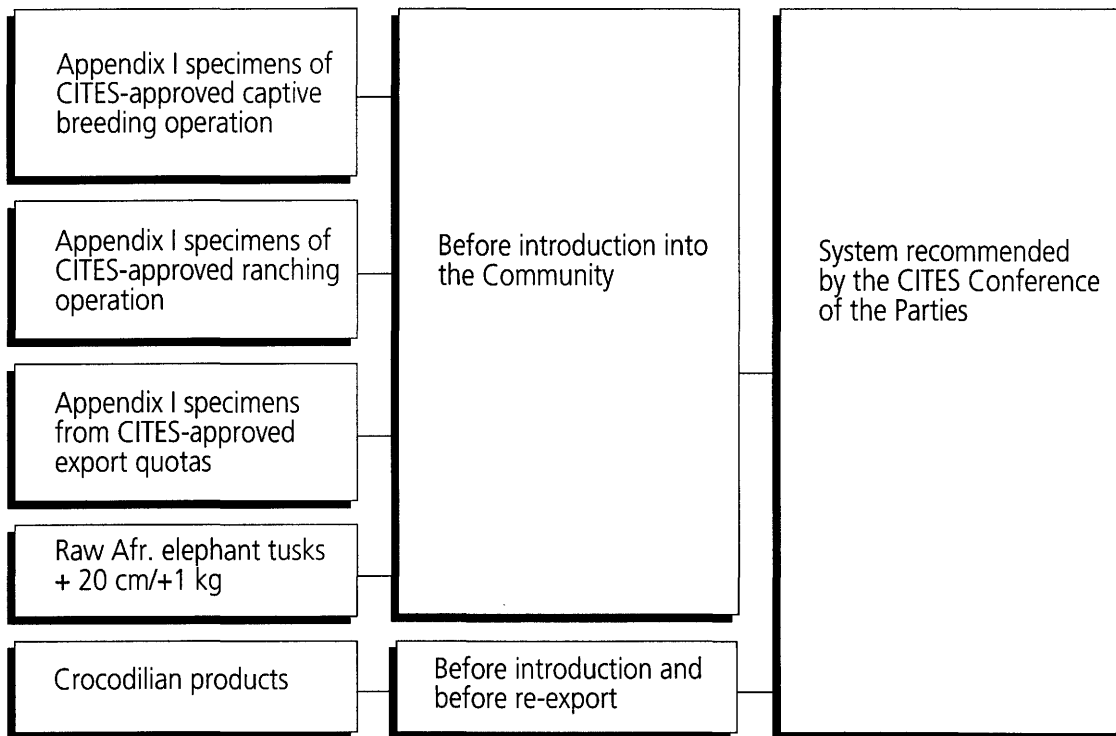
²⁵ Under recommended universal tagging system for the identification of crocodilian skins currently in Resolution Conf. 9.22.

Marking requirements



* Where not feasible: rings, tags, bands, labels, tattoos, or other appropriate means such as indication certificate

** Where not feasible: microship, or ▲



22. Places of introduction and export

1. Article 12.1 of the Regulation (EC) 338/97 obliges Member States to designate customs offices for carrying out the checks (see definition in Article 2(x) of the Regulation (EC) 338/97 **Chapter 29**) and formalities required under the Regulation and to state which are specifically intended to deal with live specimens. The latter will necessarily have to be the same as those designated under Community veterinary legislation. The list of designated offices must be communicated to and published by the Commission in the Official Journal Regulation (EC) 338/97 Article 12.3).
2. Designated offices must have sufficient and adequately trained staff. They must further have accommodation for live animals in accordance with Community legislation on the transport and accommodation of live animals. Member States must also take adequate steps with regard to accommodating live plants at designated customs offices Regulation (EC) 338/97 Article 12.2).
3. Article 12.4 of the Regulation (EC) 338/97 envisages that in exceptional cases a non-designated customs office may be used for introduction or (re-) export, criteria for which are to be defined by the Commission. The reason for creating this possibility was to prevent avoidable additional travel time for live animals. No provisions for the implementation of this possibility have been established so far.
4. It is important for checks on shipments introduced into the Community to take place at the first point of introduction irrespective of shipment's final Member State destination. An exception to this rule may, however, be necessary and is made possible in Regulation (EC) 338/97 Article 4.7. On the basis thereof, Commission Regulation (EC) 939/97 Article 23 (1) provides that:
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.
5. Shipments are frequently dispatched from a first customs office at the outside border to another customs office. At that second customs office the possibilities for physical checks are normally greater because the shipment will be cleared for "free circulation". Article 23(2) of the Commission Regulation (EC) 939/97 provides that:
Where a shipment was, in accordance with Article 4 of Regulation (EC) No 338/97, checked at either the border customs office at the point of introduction or at a customs office referred to in paragraph 1 and is dispatched to another customs office for any subsequent customs procedure, the latter shall require presentation of the 'copy for the holder' of an import permit, completed in accordance with Article 12, or the 'copy for the importer' of an import notification, completed in accordance with Article 14, and may carry out any checks it deems necessary in order to establish compliance with the provisions of Regulation (EC) No 338/97 and of this Regulation.

23. The designation of Management, Scientific and other competent Authorities

Management Authorities

1. The complexity of the Regulations and the workload involved in the assurance of their proper implementation and enforcement requires an adequately staffed and equipped Management Authority. Its work is clearly not limited to the issue of permits and certificates, although this aspect may absorb a significant part of the available human resources. The joint development of a computerised issuance of documents, production of annual reports and electronic means of communication between the fifteen Management Authorities and the many other actors involved in implementation, and enforcement of the Regulations and CITES should be a clearly established priority.
2. In accordance with Article 13.1 of the *Regulation (EC) 338/97*, at least one Management Authority must be designated by each Member State, which shall have primary responsibility for the implementation of the Regulations and for communication with the Commission (a similar requirement exists under CITES and concerns the communication with the CITES Secretariat and the (currently 135) Parties to the Convention). A representative of the primary Management Authority also represents his or her Member State in the Committee (**Chapter 27**).
3. Additional Management Authorities and other competent authorities to assist in implementation may be designated, in which case the primary Management Authority shall be responsible for providing them with all information necessary for a correct application of the Regulation. Representatives of additional authorities may attend Committee meetings, which is normally decided by the primary Management Authority.

4. Article 13.3.a of the *Regulation (EC) 338/97* envisaged that the names and addresses of designated authorities (including those of the Scientific Authorities referred to in the following section) had to be notified to the Commission before 1 March and published in the Official Journal before 1 April 1997. A problem with this provision is that Article 13 only became applicable on 3 March (date of publication in the Official Journal of the Regulation (EC) 338/97).

Scientific Authorities

Regulation (EC) 338/97 Article 13.2 provides that each Member State must designate at least one Scientific Authority which must have appropriate qualifications and which duties must be separate from those of any designated Management Authority. A representative of the Scientific Authority also represents his or her Member State in the Scientific Review Group (see **Chapter 26**).

Member States may have additional Scientific Authorities or as is the case in several countries have one for animals and one for plants. There are also Member States where the Scientific Authority consists of a committee of scientists from various scientific institutions. In that case the existence of a permanent secretariat would appear to be essential in order to ensure a proper co-ordination and a fixed partner for dialogue with the Commission and the Scientific Authorities of the other Member States. Participation in the Scientific Review Group by scientists involved is decided within the Scientific Authority. This may depend on the agenda and the expertise required to ensure a proper scientific input.

23. The designation of Management, Scientific and other competent Authorities ■■■■■■■■■■

3. In this context it is worth looking at the content of Resolution Conf. 8.6(Rev.) of the CITES Conference of the Parties. The absence of a properly designated and notified Scientific Authority may lead third countries to refuse imports! The Resolution further contains useful recommendations on the tasks to be carried out by the Scientific Authority under the Convention.

It is, however, important to note that the Regulations – and Article 4 of *Regulation (EC) 338/97* in particular – contain a large number of additional tasks to be carried out. The most significant example thereof is the need for Management Authorities to be able to provide the Management Authority with advice on the conservation aspects of imports of potentially 4,000 animal species and over 22,000 plant species.

Resolution Conf. 8.6 (Rev.) recommends that:

- a) the Secretariat distribute the addresses of the Scientific Authorities to the Parties and note the failure of any Party to inform the Secretariat of its designated Scientific Authority in the infractions report to the Parties at each biennial meeting;
- b) the Parties not accept any export permit or import permit for specimens of species included in Appendices I and II from a Party that has not designated at least one Scientific Authority and has not informed the Secretariat of this designation.
- c) Management Authorities not issue any export or import permit, or certificate of introduction from the sea, for species listed in the Appendices without first obtaining the appropriate Scientific Authority findings or advice;
- d) those Parties that are concerned about whether or not their procedures ensure the appropriate scientific review and Scientific Authority advice, consult with the Secretariat on ways to enhance their scientific assessment necessary for conservation of species listed in the Appendices such as designating joint Scientific Authorities and seeking information from regional conservation centers, within-country experts, and international specialist groups;
- e) the Parties consult with the Secretariat when there is reason for concern as to whether the proper Scientific Authority findings are being made;
- f) the appropriate Scientific Authority advise on the issuance of permits for export or of certifi-

cates for introduction from the sea for Appendix I or II species, stating whether or not the actions will be detrimental to the survival of the species in question and that every export permit or certificate of introduction from the sea be covered by Scientific Authority advice [re-export certificates do not require Scientific Authority advice];

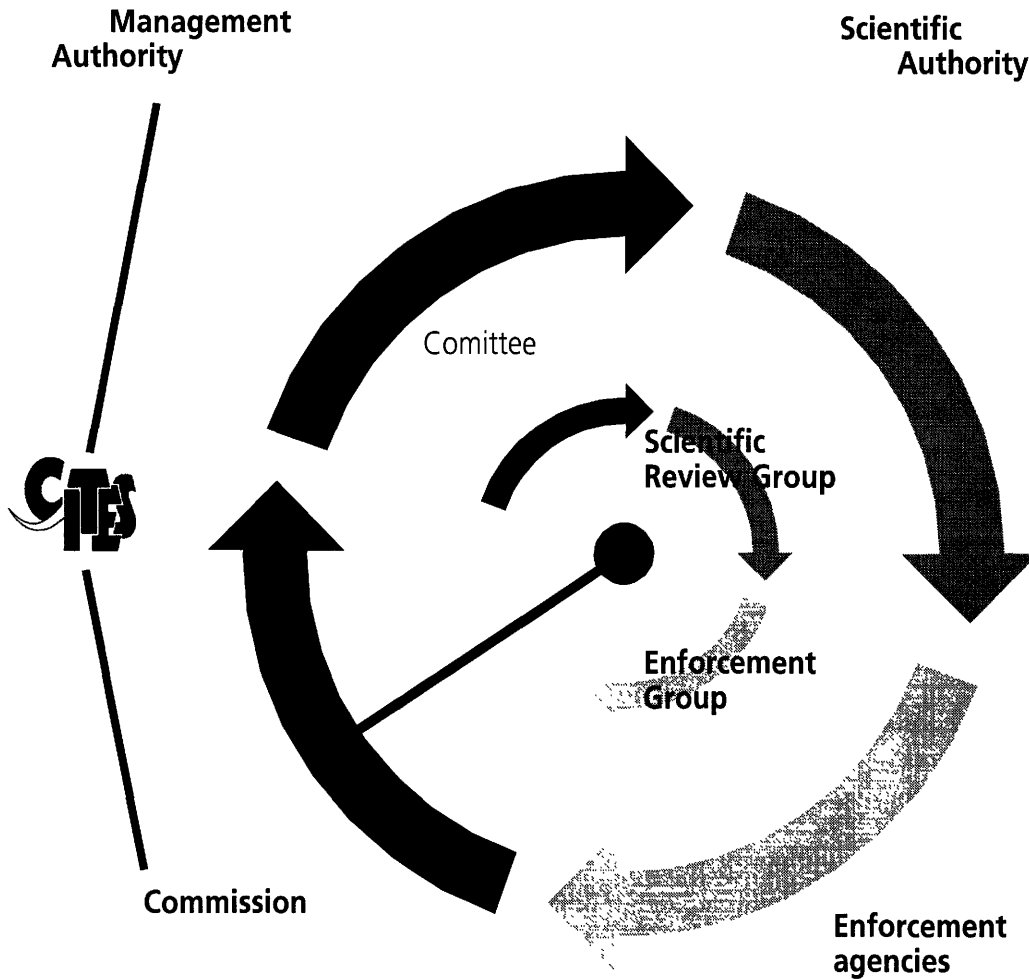
- g) the findings and advice of the Scientific Authority of the country of export be based on the scientific review of available information on the population status, distribution, population trend, harvest, and other biological and ecological factors, as appropriate, and trade information relating to the species concerned;
- h) the appropriate Scientific Authority of the importing country advise on the issuance of permits for the import of specimens of Appendix I species, stating whether the import will be for purposes not detrimental to the survival of the species;
- i) the appropriate Scientific Authority monitor the status of native species and export data, in order to recommend suitable remedial measures to limit the export of specimens to maintain each species throughout its range at a level consistent with its role in the ecosystem and well above the level at which the species might become eligible for inclusion in Appendix I;
- j) the appropriate Scientific Authority either make the finding required on the suitability of the recipient to house and care for live specimens of Appendix I species being imported or introduced from the sea, or make its recommendations to the Management Authority prior to the latter making such findings and the issuance of permits or certificates;
- k) the appropriate Scientific Authority provide advice to its Management Authority as to whether or not scientific institutions seeking registration for the purpose of being issued labels for scientific exchange meet the criteria established in Resolution Conf. 2.14, and other standards or any stricter national requirements;
- l) the appropriate Scientific Authority review all applications submitted for consideration under Article VII, paragraph 4 or 5, and advise its Management Authority as to whether the facility concerned meets the criteria for producing specimens considered to be bred in captivity or artificially propagated in accordance with the Convention and relevant Resolutions;

■ ■ ■ ■ ■ ■ ■ ■ ■ ■ 23. The designation of Management, Scientific and other competent Authorities

m) the appropriate Scientific Authority gather and analyze information on the biological status of species affected by trade to assist in the preparation of proposals necessary to amend the Appendices; and

n) the appropriate Scientific Authority review proposals to amend the Appendices submitted by other Parties and make recommendations as to how the delegation of its own country should address each proposal.

Cooperation and coordination



24. Enforcement

1. The Regulation (EC) 338/97's Articles 14 (Monitoring of compliance and investigation of infringements), 15 (Communication of information) and 16 (Sanctions) deal with aspects of enforcement and the co-ordination thereof.
 2. The competent authorities of the Member States are responsible for monitoring compliance with the provisions of the Regulations (Article 14.1.a). These authorities must take the appropriate steps to ensure compliance or to instigate legal action if they have reason to believe that provisions are being infringed (Article 14. 21.b). The Commission and (where CITES-listed species are concerned) the CITES Secretariat must be informed of any steps taken in relation to significant infringements of the Regulation. These significant cases include seizures and confiscations (Article 14.1.c).
 3. The Commission in its turn can draw the attention of the competent authorities of the Member States to matters whose investigation it considers necessary. The result of any ~~subsequent~~ *investigation must* be provided to the Commission and, where appropriate, the CITES Secretariat (Article 14.2).
 4. Article 15 more generally addresses communication and requires that Member States and the Commission shall communicate to one another the information necessary to implement the Regulation. The Commission must further communicate with the CITES Secretariat to ensure that CITES is effectively implemented *throughout the* territory to which the Regulations apply.
 5. Article 14.3 of the Regulation (EC) 338/97 establishes the **Enforcement Group** which consists of representatives of each Member State's authorities with responsibility for monitoring compliance with the Regulations. Its task shall be to examine of the Regulations. Its opinions shall be conveyed to the Committee by the Commission.
- Article 16 is one of the most significant ~~aspects~~ *of the Regulation (EC) 338/97* where enforcement is concerned. It provides that Member States shall take appropriate measures to ensure the imposition of **sanctions** for infringements and contains a minimum list of infringements to be sanctioned. It further provides that sanctions shall be appropriate to the nature and gravity of infringements and must include provisions on seizure and confiscation.
- Article 16.3 of the ~~Regulation (EC) 338/97~~ *Regulation (EC) 338/97* provides that, where specimens are confiscated, they shall be entrusted to a competent authority of the Member State concerned which shall – after consultation with its Scientific Authority – place or otherwise dispose of them under appropriate conditions, which are consistent with the purposes and provisions of CITES and the Regulations. According to Article 8.6 of the ~~Regulation (EC) 338/97~~ *Regulation (EC) 338/97*, confiscated specimens of Annexes B, C and D species may be sold by the competent authorities of the Member States, provided they are not directly returned to those from which they were confiscated or who were party to the offence. They may then be treated as legally acquired specimens.
- Live specimens may, after consultation with the State of export, be returned to that state at the expense of the convicted person ~~Regulation (EC) 338/97 Article 16.3.b).~~ *Regulation (EC) 338/97 Article 16.3.b).*
- Article 16.4 of the ~~Regulation (EC) 338/97~~ *Regulation (EC) 338/97* finally provides that live specimens of Annex B or C species arriving without valid permits or certificates must be seized/confiscated, or that – where the consignee refuses to acknowledge the specimens – the competent authority may require the

24. Enforcement

carrier to return the specimens to the place of departure.

10. The CITES Conference of the Parties devoted a lot of attention to the confiscation and disposal confiscated specimens and adopted comprehensive

recommendations on the issue which can currently be found in Resolutions Conf. 9.9, Conf. 9.10 and Conf. 9.11. The latter contains the very detailed CITES Guidelines for the disposal of confiscated live specimens.



25. Public awareness

1. Article 15.1 of the *Regulation (EC) 338/97* requires the Commission and the Member States to ensure that the public is sufficiently informed of the provisions regarding implementation of CITES and Community Regulations.

Article 12.5 specifically provides that Member States shall ensure that the public is informed of the implementing provisions at border crossing points.

2. The Commission's contribution to the WWF/TRAFFIC Europe information campaign regarding the entry into force and implementation of the new

Regulations is a significant first step towards a greater public awareness of the Community's regulations on wildlife trade.

The campaign has resulted in the availability of information material in the form of leaflets, posters, brochures and in-flight materials such as magazine articles/ads and videos. A significant element of the campaign it is the information provided to travellers via display/exhibition units at international airports.



26. The Scientific Review Group

1. The Committee, pursuant to Regulation 3626/82, soon realised the need for scientific co-ordination and created a Scientific Working Group. It is therefore not surprising that Regulation 338/97 officially establishes a Scientific Review Group consisting of the Member States' Scientific Authorities *Regulation (EC) 338/97 Article 17*).

The Scientific Review Group is to examine any scientific question relating to the application of the Regulations and has been given specific tasks in Article 4.1.a, 4.2.a and 4.6. Opinions of the Scientific Review Group are to be conveyed to the Committee by the Commission.

27. The Committee

1. Article 18 of the *Regulation (EC) 338/97* establishes the Committee and its working procedures. Many of the Articles of the *Regulation (EC) 338/97* refer implementation issues to measures to be adopted by the Commission in accordance with the Committee procedure. Proposals for such measures require a positive opinion from the Committee which is established by a qualified majority. In the absence of a positive opinion from the Committee, the Commission must immediately submit its proposal to the Council.
2. The Regulation provides for two different procedures in this case:

For measures related to issues mentioned in Article 19.1 and 2 of the *Regulation (EC) 338/97* (all of the

necessary provisions of an administrative nature and Article 4.6 import restrictions) the Commission can adopt the proposed measures if the Council has not acted (by qualified majority) within three months from the date of their referral to the Council.

For measures related to issues mentioned in Article 19.3 and 4 (amendments to the Annexes and measures to implement CITES Resolutions and recommendations on issues not covered in 19.1 and 2), the Commission can do the same, but within the 3-months period the Council can decide against the proposed measures by a simple majority.

28. Annual and biennial reports

1. Article 15.4 of the Regulation (EC) 338/97 prescribes that the Management Authorities of the Member States shall communicate to the Commission before 15 June the information which is necessary to draw up the reports referred to in Article VIII.7.a of CITES and equivalent information for non-CITES species. The Commission lays down the format for its presentation.
2. An annual report on Community trade in wildlife covered by the Regulations must be published by the Commission before 31 October of each year.
3. Article 39 of the Commission Regulation (EC) 939/97 provides that:
 1. *Member States shall collect data on imports into and exports and re-exports from the Community that have taken place on the basis of permits and certificates issued by their management authorities, irrespective of the actual place of introduction or (re)export. Member States shall, in compliance with Article 15(4)(a) of Regulation (EC) No 338/97, communicate this information relating to a calendar year to the Commission, before 15 June of the following year, in a computerised form and in accordance with the Guidelines for the preparation and submission of CITES annual reports issued by the Secretariat of the Convention²⁷. These reports shall include information on seized and confiscated shipments.*
 2. *The information referred to in paragraph 1 shall be presented in two separate parts:*
 - a) *on imports, exports and re-exports of specimens of species listed in the Appendices to the Convention and*
 - b) *on imports, exports and re-exports of specimens of other species listed in Annexes A to C to Regulation (EC) No 338/97 and on the introduction into the Community of specimens of species listed in Annex D thereof.*
 3. *With regard to imports of shipments containing live animals, Member States shall – where possible – maintain records of the percentage of specimens of species listed in Annexes A and B to Regulation (EC) No 338/97 which were dead at the time of introduction into the Community.*
 4. *The records referred to in paragraph 3 shall be communicated to the Commission for each calendar year before 15 June of the following year on a species-by-species basis and per country of (re-)export.*
4. The Regulation (EC) 338/97 (Article 15.4.c) also provides for the establishment of the biennial reports referred to in Article VIII.7.b of the Convention. The information must reach the Commission for the first time before 15 June 1999 and the Commission is to publish the first report before 31 October 1999.
5. Commission Regulation (EC) 939/97 Article 39.5 only adds that:

The information referred to in Article 15(4)(c) of Regulation (EC) 338/97 (EC) No 338/97 shall include details on legislative, regulatory and administrative measures taken to implement and enforce the provisions of Regulation (EC) 338/97 (EC) No 338/97 and of this Regulation.

²⁷ The guidelines concerned are contained in the CITES Secretariat Notification to the Parties No 788 of 10 March 1994.

29. Definitions

The Regulation (EC) 338/97's Article 2 provides that for the purposes of the Regulation:

- a) **Committee** shall mean the Committee on trade in wild fauna and flora, established under Article 18;
- b) **the Convention** shall mean the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- c) **country of origin** shall mean the country in which a specimen was taken from the wild, captive bred or artificially propagated;
- d) **import notification** shall mean the notification given by the importer or his agent or representative at the time of the introduction into the Community of a specimen of a species included in Annex C or D, on a form prescribed by the Commission in accordance with the procedure laid down in Article 18;
- e) **introduction from the sea** shall mean the introduction into the Community of any specimen which was taken in and is being introduced directly from the marine environment not under the jurisdiction of any State including the airspace above the sea and the sea-bed and subsoil beneath the sea;
- f) **issuance** shall mean the completion of all procedures involved in preparing and validating a permit or certificate and its delivery to the applicant;
- g) **management authority** shall mean a national administrative authority designated, in the case of a Member State, in accordance with Article 13(1)(a) or, in the case of a third country party to the Convention, in accordance with Article IX of the Convention;
- h) **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 the specimens lies;
- i) **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;
- 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;
- k) **place of destination** shall mean the place at which, at the time of introduction into the Community, it is intended that the 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 purposes of sanitary checks and controls;
- l) **population** shall mean a biologically or geographically distinct total number of individuals;
- m) **primarily commercial purposes** shall mean all purposes whose non-commercial aspects do not clearly predominate;
- n) **re-export from the Community** shall mean the export from the Community of any specimen that has previously been introduced;
- o) **re-introduction into the Community** shall mean the introduction into the Community of any specimen that has previously been exported or re-exported;
- p) **sale** shall mean any form of sale. For the purposes of the Regulation, hire, barter or exchange shall be regarded as sale; cognate expressions shall be similarly construed;

- q) **scientific authority** shall mean a scientific authority designated, in the case of a Member State, in accordance with Article 13(1)(b) or, in the case of a third country party to the Convention, in accordance with Article IX of the Convention;
- r) **Scientific Review Group** shall mean the consultative body established under Article 17;
- s) **species** shall mean a species, subspecies or population thereof;
- t) **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 these 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.
 A specimen will be considered to be a specimen of a species listed in Annexes 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. In cases where the 'parents' of such an animal or plant are of species listed in different Annexes, or of species only one of which is listed, the provisions of the more restrictive Annex shall apply. However, in the case of specimens of hybrid plants, if one of the 'parents' is of a species listed in Annex A, the provisions of the more restrictive Annex shall apply only if that species is annotated to that effect in the Annex;
- u) **trade** shall mean the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of this Regulation;
- v) **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;
- worked specimens that were legally acquired more than fifty 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.
- checks at the time of introduction, export, re-export and transit** shall mean documentary checks on the certificates, permits and notifications provided for in this Regulation and – in cases where Community provisions so provide or in other cases by representative sampling of the consignments – examination of the specimens, where appropriate accompanied by the taking of samples with a view to analysis or more detailed checks.
- Article 1 of the Commission Regulation (EC) 939/97 contains an additional definitions
- date of acquisition** shall mean the date on which a specimen was taken from the wild, born in captivity or artificially propagated
- first-generation offspring** (F1) shall mean specimens produced in a controlled environment from parents at least one of which was conceived in or taken from the wild;
- second-generation offspring** (F2) and "subsequent generation offspring (F3, F4, etc.)" shall mean specimens produced in a controlled environment from parents that were also produced in a controlled environment;
- breeding stock** shall mean all the animals in a breeding operation that are used for reproduction;
- controlled environment** shall mean an environment that is manipulated for the purpose of producing animals of a particular species, that has boundaries designed to prevent animals, eggs or gametes of the species from entering or leaving the controlled environment, and the general characteristics of which may include but are not limited to: artificial housing, waste removal, health care, protection from predators and the artificial supply of food.



Annexes

Codes to be included in the description of specimens and units of measure to be used in permits and certificates

Description	Code	Preferred units	Alternative units	Explanation
body	BOD	no.	kg	substantially whole dead animals, including fresh or processed fish, stuffed turtles, preserved butter flies, reptiles in alcohol, whole stuffed hunting trophies, etc.
bone	BON	kg	no.	bones, including jaws
calipee	CAP	kg		calipee or calipash
carving	CAR	kg		carvings (incl. wood) – there are some species from which more than one type of product may be carved (e.g. horn and bone); where necessary, the description should indicate the type of product (e.g. horn carving)
claw	CLA	no.	kg	e.g. of Feildae, Ursidae or Crocodylia, but not turtles
cloth	CLO	m ²	kg	if the cloth is not made entirely from the hair of a CITES species, the weight of the hair of the species concerned should, if possible, be recorded under HAI instead.
Coral (raw)	COR	kg		raw or unworked
culture	CUL	no. of flasks, etc.		cultures of artificially propagated plants
dried plant	DPL	no.		e.g. herbarium specimens
ear	EAR	no.		usually from elephant
egg	EGG	no.	kg	whole dead or blown eggs, including caviar
egg (live)	EGL	no.	kg	usually birds and reptiles but includes fish and invertebrates
extract	EXT	kg	l	usually plant extracts
feather	FEA	kg/ wings	no.	in the case of objects (e.g. pictures) record the number of objects
fibre	FIB	kg	m	e.g. plant fibres but includes strings of tennis rackets
flower	FLO	kg		
flower pot	FPT	no.		e.g. made of treefern fibres
frogs legs	LEG	kg		
fruit	FRU	kg		
foot	FOO	no.		e.g. of elephant, rhino, hippo, lion, crocodile, etc.
gall	GAL	kg		
gall bladder	GAB	no.	kg	
garment	GAR	no.		incl. gloves and hats but not shoes; incl. trimming or decoration on garments
graft rootstock	GRS	no.		
hair	HAI	kg	g	incl. all animal hair, e.g. of elephant, yak, vicugna, guanaco
horn	HOR	no.	kg	incl. antlers

trophy	TRO	no.		all the trophy parts of one animal if they are exported together: e.g. horns (2), skull, cape, backskin, tail and feet (i.e. ten specimens) constitute one trophy. But if, for example, the skull and horns are the only specimens of an animal that are exported, then these items together should be recorded as one trophy. Otherwise the items should be recorded separately. A whole stuffed body is recorded under BOD. A skin alone is recorded under SKI.
Tusk	TUS	no.	kg	substantially whole tusks, whether or not worked, incl. tusks of elephant, hippo, walrus, narwhal, but not other teeth
veneer	VEN	m ² or		
		m ³	kg	m ² for sliced veneer, for rotary verneer
wax	WAX	kg		incl. Ambergris

g = grams

kg = kilograms

l = litres

cm³ = cubic centimetres

ml = millilitres

m = metres

m² = square metres

m³ = cubic metres

no. = number of specimens

Standard references for nomenclature to be used under Article 4(3)(c) to indicate scientific names of species in permits and certificates

- a) *Mammal Species of the World: A Taxonomic and Geographic Reference*, 2nd edition, (edited by D.E. Wilson and D.M. Reeder, 1993, Smithsonian Institution Press) for mammalian nomenclature;
- b) *A Reference List of the Birds of the World* (J.J. Morony, W.J. Bock and J. Farrand Jr, 1975, American Museum of Natural History) for order and family level names for birds;
- c) *Distribution and Taxonomy of Birds of the World* (C.G. Sibley and B.L. Monroe Jr, 1990, Yale University Press) and *A supplement to Distribution and Taxonomy of Birds of the World* (Sibley and Monroe, 1993; Yale University Press) for the genus and species names of birds;
- d) *Reptiles del noroeste, nordeste y este de la Argentina – Herpetofauna de las selvas subtropicales, puna y pampa*, 1993 (Ceï, José M. In Monografie XIV, Museo Regionale di Scienze Naturali), for the species names of the genus *Urospinambis* found in Argentina and Paraguay;
- e) *Snake Species of the World: A Taxonomic and Geographic Reference: Volume 1* (Campbell, Mc Diamid and Touré, 1997), published under the auspices of the Herpetologists' League, for the nomenclature of snakes;
- f) *Amphibian Species of the World: A Taxonomic and Geographic Reference* (D.R. Frost, 1985, Allen Press and The Association of Systematics Collections) and *Amphibian Species of the World: Additions and Corrections* (W.E. Duellman, 1993, University of Kansas) for amphibian nomenclature until the second edition of the former reference has been published;
- g) *The Plant-Book*, reprinted edition, (D.J. Mabberley, 1990, Cambridge University Press) for the generic names of all CITES plants, unless they are superseded by standard checklists adopted by the Conference of the Parties as referenced below in paragraphs l) to m);
- h) *A Dictionary of Flowering Plants and Ferns*, 8th edition, (J.C. Willis, revised by H.K. Airy Shaw, 1973, Cambridge University Press) for generic synonyms not mentioned in *The Plant-Book*, unless they are superseded by standard checklists adopted by the Conference of the Parties as referenced below in paragraphs l) to m);
- i) *A World List of Cycads* (D.W. Stevenson, R. Osborne and K.D. Hill, 1995; In: P. Vorster (Ed.), Proceedings of the Third International Conference on Cycad Biology, pp. 55-64, Cycad Society of South Africa, Stellenbosch) and its updates accepted by the Nomenclature Committee, as a guideline when making reference to names of species of Cycadaceae, Stangeriaceae and Zamiaceae;
- j) *The Bulb Checklist* (1997, compiled by the Royal Botanic Gardens, Kew, United Kingdom) and its updates accepted by the Nomenclature Committee, as a guideline when making reference to the names of species of *Cyclamen* (Primulaceae) and *Galanthus* and *Sternbergia* (Liliaceae);
- k) *The CITES Checklist of Succulent Euphorbia taxa* (Euphorbiaceae) (1997, published by the German Federal Agency for Nature Conservation) and its updates accepted by the Nomenclature Committee, as a guideline when making reference to the names of species of succulent euphorbias;
- l) *CITES Cactaceae Checklist*, second edition, (1997, compiled by D. Hunt, Royal Botanic Gardens, Kew, United Kingdom) and its updates accepted by the Nomenclature Committee, as a guideline when making references to names of species of Cactaceae; and
- m) *CITES Orchid Checklist*, (compiled by the Royal Botanic Gardens, Kew, United Kingdom) and its updates accepted by the Nomenclature Committee, as a guideline when making reference to the names of species of *Aattleya*, *Cypripedium*, *Laelia*, *Paphiopedilum*, *Phalaenopsis*, *Phragmipedium*, *Pleione* and *Sophronitis* (Volume 1, 1995) and *Cymbidium*, *Dendrobium*, *Disa*, *Dracula* and *Encyclia* (Volume 2, 1997).

Codes for the indication in permits and certificates of the purpose of a transaction

- B** Breeding in captivity or artificial propagation;
- E** Educational
- G** Botanical gardens
- H** Hunting trophies
- L** Enforcement
- M** Bio-medical research
- N** Reintroduction or introduction into the wild
- P** Personal
- Q** Circuses and travelling exhibitions
- S** Scientific
- T** Commercial
- Z** Zoos

Codes for the indication in permits and certificates of the source of specimens

- 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 Title IV, 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 IV, 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 IV, as well as parts and derivatives thereof
- F** Animals born in captivity, but for which the criteria of Chapter IV are not met, as well as parts and derivatives thereof
- I** Confiscated or seized specimens*
- O** Pre-Convention*
- U** Source unknown (must be justified)

* Only to be used in conjunction with another source code

