# Commission Regulation (EC) No 100/2008 of 4 February 2008 amending, as regards sample collections and certain formalities relating to the trade in species of wild fauna and flora, Regulation (EC) No 865/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 338/97

## COMMISSION REGULATION (EC) No 100/2008

## of 4 February 2008

## amending, as regards sample collections and certain formalities relating to the trade in species of wild fauna and flora, Regulation (EC) No 865/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 338/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein[(1)], and in particular Article 19(1) (i) and (iii), (2) and (4) thereof,

Whereas:

(1) In order to implement certain resolutions adopted at the thirteenth and fourteenth meetings of the Conference of the Parties to CITES, further provisions should be added to Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein[(2)].

(2) CITES Resolutions Conf. 9.7 (Rev. CoP13) on Transit and Trans Transhipment and Conf. 12.3 (Rev. CoP13) on Permits and Certificates provide for special procedures in order to ease the cross-border movement of sample collections covered by ATA carnets as defined in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(3)]. In order to provide economic operators within the Community with similar conditions as those of other CITES Parties for the movement of such sample collections, it is necessary to make provision for such procedures in Community legislation.

(3) CITES Resolution Conf. 12.3 (Rev. CoP13) on Permits and Certificates allows for permits to be issued retrospectively for personal and household effects, where the Management Authority is satisfied that a genuine error was made and that there was no attempt to deceive, and requires Parties to report on such permits in the biennial reports to the Secretariat. Provision should be made to that effect in order to allow for adequate flexibility and to reduce the bureaucratic burden in relation to imports of personal and household effects.

(4) CITES Resolution Conf. 13.6 on the implementation of Article VII, paragraph 2 of the Convention concerning ‘pre-Convention’ specimens provides a definition of ‘pre-

Convention' specimen and clarifies the dates that are to be taken to establish whether a specimen can be considered as 'pre-Convention'. For clarity purposes, these provisions should be implemented in Community Legislation.

(5) CITES Resolution Conf. 13.7 (Rev. CoP14) on Control of Trade in Personal and Household Effects provides a list of species for which no document is required for the export and import of specimens that are Personal and Household Effects below a certain amount. This list includes derogations for giant clams and seahorses as well as for a reduced quantity for caviar, which should be implemented.

(6) CITES Resolution Conf. 12.7 (Rev. CoP14) on Conservation of and Trade in sturgeons and paddlefish sets out specific conditions for Parties to allow imports, exports and re-exports of caviar. In order to reduce fraud, these provisions should be implemented in Community Legislation.

(7) At the fourteenth meeting of the Conference of the Parties to CITES, the standard references for nomenclature, to be used to indicate scientific names of species in permits and certificates, were updated and the listing of animal species in the CITES Appendices were rearranged in order to present the orders, families and genera in alphabetical order. These changes therefore need to be reflected in Annex VIII and Annex X of Regulation (EC) No 865/2006.

(8) The Conference of the Parties to CITES has adopted a Biennial report format for the submission of the biennial reports required under Article VIII, paragraph 7(b) of the Convention. Member States should therefore submit their biennial reports in accordance with Biennial report format, as regards information required under the Convention, and in accordance with a supplementary report format as regards the information required under Regulation (EC) No 338/97 and Regulation (EC) No 865/2006.

(9) Experience gained in implementation of Regulation (EC) No 865/2006 has shown that the provisions therein relating to transaction-specific certificates need to be amended in order to provide greater flexibility in the use of such certificates and to allow them to be used in Member States other than the issuing Member State.

(10) Regulation (EC) No 865/2006 should therefore be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Trade in Wild Fauna and Flora,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 865/2006 is amended as follows:

1. Article 1 is amended as follows:

(a) Point (1) is replaced by the following:

(1) "date of acquisition" means the date on which a specimen was taken from the wild, born in captivity or artificially propagated, or, if such date is unknown or cannot be proved, any subsequent and provable date on which it was first possessed by a person;

(b) point (7) is replaced by the following:

(7) "transaction-specific certificates" means certificates issued in accordance with Article 48 that are valid only for one or more specified transactions;

(c) the following points (9) and (10) are added:

(9) "sample collection" means a collection of legally acquired dead specimens, parts and derivatives thereof, that are transported across borders for presentation purposes;

(10) "pre-Convention specimen" means a specimen acquired before the species concerned was first included in the Appendices to the Convention.;

2. Article 2, paragraph 1 is replaced by the following:

1. The forms on which import permits, export permits, re-export certificates, personal ownership certificates, sample collection certificates and applications for such documents are drawn up shall conform, except as regards spaces reserved for national use, to the model set out in Annex I.;

3. Article 4, paragraph 1 is replaced by the following:

1. Forms shall be completed in typescript.

However, applications for import and export permits, for re-export certificates, for the certificates provided for in Articles 5(2)(b), 5(3), 5(4), 8(3) and 9(2)(b) of Regulation (EC) No 338/97, for personal ownership certificates, for sample collection certificates and for travelling exhibition certificates as well as import notifications, continuation sheets and labels may be completed in manuscript, provided this is done legibly, in ink and in block capitals.;

4. The following Article 5a is inserted:

*Article 5a*

**Specific content of permits, certificates and applications for plant specimens**

In case of plant specimens that cease to qualify for an exemption from the provisions of the Convention or Regulation (EC) No 338/97 in accordance with the "Notes on the interpretation of Annexes A, B, C and D" in the Annex thereto, under which they were legally exported and imported, the country to be indicated in box 15 of the forms in Annex I and III, box 4 of the forms in Annex II and box 10 of the forms in Annex V to this Regulation may be the country in which the specimens ceased to qualify for the exemption.

In those cases the box reserved for the entry of "special conditions" in the permit or certificate shall include the statement "Legally imported under exemption from the provisions of CITES" and shall specify to which exemption this refers.;

5. in Article 7, the following paragraph 4 is added:

4. Permits and certificates issued by third countries with source code "O" shall be accepted only if they cover specimens that conform to the definition of pre-Convention specimen set out in Article 1(10) and include either the date of acquisition of the specimens or a statement that the specimens were acquired before a specific date.;

6. Article 9 is replaced by the following:

*Article 9*

**Shipments of specimens**

Without prejudice to Articles 31, 38 and 44b, a separate import permit, import notification, export permit or re-export certificate shall be issued for each shipment of specimens shipped together as part of one load.;

7. Article 10 is amended as follows:

(a) the title is replaced by the following:
Article 10

Validity of import and export permits, re-export certificates, travelling exhibition certificates, personal ownership certificates and sample collection certificates;

(b) in paragraph 1, the following subparagraphs are added:

As regards caviar of sturgeon species (*Acipenseriformes* spp.) from shared stocks subject to export quotas, which is covered by an export permit, import permits referred to in the first subparagraph shall not be valid beyond the last day of the quota year in which the caviar was harvested and processed or the last day of the 12-month period referred to in the first subparagraph, whichever is the earlier.

As regards caviar of sturgeon species (*Acipenseriformes* spp.) covered by a re-export certificate, import permits referred to in the first subparagraph shall not be valid beyond the last day of the period of 18 months after the date of issuance of the relevant original export permit or the last day of the 12-month period referred to in the first subparagraph, whichever is the earlier.;

(c) in paragraph 2, the following subparagraphs are added:

As regards caviar of sturgeon species (*Acipenseriformes* spp.) from shared stocks subject to export quotas, export permits referred to in the first subparagraph shall not be valid beyond the last day of the quota year in which the caviar was harvested and processed or the last day of the six-month period referred to in the first subparagraph, whichever is the earlier.

As regards caviar of sturgeon species (*Acipenseriformes* spp.), re-export certificates referred to in the first subparagraph shall not be valid beyond the last day of the period of 18 months after the date of issuance of the relevant original export permit or the last day of the six-month period referred to in the first subparagraph, whichever is the earlier.;

(d) the following paragraph 2a is inserted:

2a. For the purpose of paragraph 1, second subparagraph and paragraph 2 second subparagraph, the quota year shall be that agreed by the Conference of the Parties to the Convention.;

(e) the following paragraph 3a is inserted:

3a. The period of validity of sample collection certificates issued in accordance with Article 44a shall not exceed six months. The date of expiry of a sample collection certificate shall not be later than that of the ATA carnet accompanying it.;

(f) paragraph 4 is replaced by the following:

4. After their expiry, the permits and certificates referred to in paragraphs 1, 2, 3 and 3a shall be considered as void.;

(g) paragraph 6 is replaced by the following:

6. The holder shall, without undue delay, return to the issuing management authority the original and all copies of any import permit, export permit re-export certificate, travelling exhibition certificate, personal ownership certificate or sample collection certificate, which has expired or which is unused or no longer valid.;

8. Article 11 is amended as follows:

(a) in paragraph 2, the following point (e) is added:

(e) where any special conditions specified in box 20 are no longer fulfilled.;

(b) in paragraph 3, the following subparagraph is added:

Where a transaction specific certificate is issued for the purpose of allowing several transactions, it shall be valid only within the territory of the issuing Member State. Where transaction specific certificates are to be used in a Member State other than the issuing Member State, they shall be issued for one transaction only and their validity shall be limited to that transaction. It shall be indicated in box 20 whether the certificate is for one or more transactions and the Member State(s) in whose territory it is valid.;

(c) The second subparagraph of paragraph 4 shall be replaced by the following new paragraph 5:

5. Documents that cease to be valid in accordance with this Article shall, without undue delay, be returned to the issuing management authority which, where appropriate, may issue a certificate reflecting the required changes in accordance with Article 51.;

9. Article 15 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

As regards specimens imported or (re-)exported as personal and household effects, to which the provisions of Chapter XIV apply, and