

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Sixty-second meeting of the Standing Committee
Geneva (Switzerland), 23-27 July 2012

Interpretation and implementation of the Convention

Exemptions and special trade provisions

PERSONAL AND HOUSEHOLD EFFECTS

1. This document has been prepared by the Chair of the Standing Committee Working Group on Personal and Household Effects*, in consultation with the Secretariat.

Background

2. At its 15th meeting (CoP15, Doha, 2010), the Conference of the Parties adopted Decision 14.64 (Rev. CoP15) which reads:

The Standing Committee shall extend the operation of its Working Group on Personal and Household Effects until the 16th meeting of the Conference of the Parties (CoP16) and oversee the Group's work in fulfilling the following terms of reference:

- a) *clarify the relationship between 'tourist souvenirs', 'hunting trophies' and 'personal and household effects';*
 - b) *clarify the interpretation of Article VII, paragraph 3 (b), of the Convention;*
 - c) *assess whether there are specific species or types of personal or household effects which, in view of conservation concerns, would require different treatment under Resolution Conf. 13.7 (Rev. CoP14);*
 - d) *collate information about how each Party has implemented Resolution Conf. 13.7 (Rev. CoP14), particularly with regard to requirements for export permits, and assess whether this indicates the need to amend the Resolution; and*
 - e) *report at each regular meeting of the Standing Committee until CoP16 and at CoP16.*
3. Document CoP15 Doc. 40 contains a summary of the Working Group's discussions between the 14th meeting of the Conference of the Parties (CoP14, The Hague, 2007) and CoP15. Document CoP15 Com. II Rec. 7 (Rev. 1) records Parties' interventions on this issue at CoP15. Based on those previous discussions, the Chair communicated to members his comments on the mandate of the Working Group and initiated a new discussion electronically. Given the diverse views previously expressed by members, the Chair reminded members that the treatment of personal and household effects should be aligned with Article VII, paragraph 3, of the Convention as much as possible. Taking advantage of the opportunity afforded by the 61st meeting of the Standing Committee (SC61, Geneva, August 2011), some members of the Working Group met informally in the margins of that meeting and discussed possible ways forward in implementing

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

the Group's terms of reference. Intersessional discussion thereafter continued electronically and several members provided thoughtful responses to the Chair's previous comments on the Group's mandate.

Discussion of the Working Group's terms of reference

- a) *clarify the relationship between 'tourist souvenirs', 'hunting trophies' and 'personal and household effects'*
4. Members generally agreed that the existing definitions of 'personal or household effects' and 'tourist souvenirs' in Resolution Conf. 13.7 (Rev. CoP14) are sufficiently clear as written and require no further amendments.
 5. 'Tourist souvenirs' acquired outside the owner's State of usual residence, as a sub-set of 'personal and household effects', would qualify for exemption, if they are personally owned for non-commercial purposes, "at the time of import, export or re-export", are "worn, carried or included in personal baggage", and the States of import and export implement the exemption in accordance with Resolution Conf. 13.7 (Rev. CoP14). The above exemption does not apply to 'tourist souvenirs' of Appendix-I species. Two party members indicated that they had different legal treatment to 'tourist souvenirs' imported as gifts for other persons according to their national legislation.
 6. Members noted the definition of 'hunting trophies' contained in Resolution Conf. 12.3 (Rev. CoP15) and unanimously agreed that 'hunting trophies' are personal in nature and could qualify for 'personal and household effects' under specific situations as set out in Resolution Conf. 13.7 (Rev. CoP14). However, there remained different views on the circumstances under which 'hunting trophies' are allowed to be imported or exported without an export permit. One non-governmental member considered that 'hunting trophies' are 'personal and household effects' and should include all of the animal's parts and products. The requirement for an export permit in the range State, in accordance with Article VII, paragraph 3. (b) iii), of the Convention, does not change the nature of the specimen as a 'personal or household effect'. In actual cases, the need for processing the trophy, for the purpose of meeting standards for the protection of agriculture and human health and securing the veterinary permit, make it almost impossible, in most cases, for the hunter to carry the trophies in personal baggage. The bulk and weight of a hunting trophy also prevent the carriage of the trophy in personal baggage. This member also proposed that Resolution Conf. 13.7 (Rev. CoP14) be amended, at least in the case of hunting trophies, to delete the limitation of the exemption to items worn or carried in accompanied baggage. The above proposal is echoed by another non-governmental member.
 7. One Party member noted that the required treatment and preparation of trophies after the hunt would not allow trophies to be carried in the hunter's personal baggage and that many Parties require CITES export permits for such hunting trophies. Taking into account the above, this member proposed to amend Resolution Conf. 13.7 (Rev. CoP14) to exclude "the export of hunting trophies" from the personal or household effects exemption.
 8. Another Party member reminded the Working Group that its mandate was to clarify the relationship between 'tourist souvenir', 'hunting trophies' and 'personal and household effects' and not to amend the definition of 'personal or household effects'. If there were grounds for amending the definition of 'personal or household effects' in Resolution Conf. 13.7 (Rev. CoP14), it may be necessary to submit a proposed decision at the 16th meeting of the Conference of the Parties (CoP16, Bangkok, 2013) which extends the operation of the Working Group for this purpose. After further discussion, these two Party members agreed not to amend the definition of 'personal and household effects' in Resolution Conf. 13.7 (Rev. CoP14) which is:

[The Conference of the Parties] DECIDES that the term 'personal or household effects' contained in Article VII, paragraph 3, means specimens that are:

- a) personally owned or possessed for non-commercial purposes;
- b) legally-acquired; and
- c) at the time of import, export or re-export either:
 - i) worn, carried or included in personal baggage; or
 - ii) part of a household move;

9. Based on the existing definition of 'personal and household effects' in Resolution Conf. 13.7 (Rev. CoP14), several Party members concurred that 'hunting trophies' as defined in Resolution Conf. 12.3 (Rev. CoP15) qualify for the personal effects exemption when they are worn, carried or included in personal baggage at the time of import, export or re-export.
- b) *clarify the interpretation of Article VII, paragraph 3 (b), of the Convention*
10. Members made various attempts to clarify the interpretation of Article VII, paragraph 3. (b), of the Convention. They noted that this provision deals with specimens of Appendix-II species and not specimens of Appendix-I species. They considered that it does not apply to live animals and plants and noted that the movement of personally owned live animals is addressed in Resolution Conf. 10.20 of the Conference of the Parties.
11. Several members emphasized that the text of the Convention allows Parties, in which the removal from the wild occurs, to require an export permit. Parties can also choose to adopt stricter domestic measures, pursuant to Article XIV of the Convention, so as not to implement the personal or household effects exemption. It is recommended in Resolution Conf. 13.7 (Rev. CoP14) that the personal or household effects exemption not apply where a Party has been advised through a Notification from the Secretariat or on the CITES website that the other Party involved in the trade requires a CITES export permit. In the end, whether or not the exemption should be applied requires a case-by-case review. Recognizing that Parties not implementing the personal and household effects exemption have the obligation to inform other Parties of this, there is an assumption that all Parties implement the personal and household effects exemption unless they have reported otherwise.
12. Attempts were made to interpret the personal or household effects exemption in a positive manner. In this case, the exemption would not apply if an entire set of conditions were met. After several exchanges of views, one Party member provided the Working Group with a document entitled "Guidance for Interpretation of Personal and Household Effects" (see Annex 1). The Guidance appears to have captured most of the points previously raised by members and, if suitably modified, could serve as a useful reference for Parties in ensuring the uniform implementation of Resolution Conf. 13.7 (Rev. CoP14).
13. Another Party member shared with members a flowchart which provided border agents with a straightforward decision-making process for dealing with personal and household effects being imported into or exported from the country, and later provided an updated version (see Annex 2).
14. Members had some discussion about the subsequent use of items which qualified for the personal and household effects exemption on importation, e.g. items which were later transferred to another person as a gift, were sold or were displayed for commercial purposes. One Party member suggested that these subsequent uses were not regulated by CITES and were instead governed by the domestic law of the Party concerned.
15. Similar to their suggested treatment of 'hunting trophies', two Party members maintained that other 'personal and household effects' not "worn, carried or included in personal baggage" also do not qualify for the exemption. These sorts of specimens include commercial shipments associated with an Internet order, specimens sent by post, specimens re-exported for repair, etc. The two members expressed concern that, without a requirement for personal and household effects to accompany the owner, a large amount of trade would be exempted and not tracked. In their view, such unregulated trade was likely to adversely impact CITES-listed species. A different view was expressed by a non-governmental member, which suggested that the way an item is shipped should not alter its very nature as a 'personal or household effect'. Requiring a CITES permit in such circumstances simply changed the way in which the personal or household effect was treated, that is, whether the relevant CITES exemption was applied.
16. One Party member proposed that owners be required to prove that a particular personal or household effect was not taken from the wild and instead was the product of a ranching, captive-breeding or artificial propagation operation. Another Party member suggested that pre-issued permits could help to facilitate the trade of personal or household effects which were specimens of Appendix-I species that had been captive bred for commercial purposes.

17. Pursuant to Article VII paragraph 3 (b) of the Convention, the personal and household effects exemption shall not apply when the specimen is acquired outside the State of usual residence, is being imported into the State of usual residence and the State where removal from the wild occurred requires a permit. Re-exported specimens would have to be imported first and therefore would never be covered by the above provision. In view of this, re-export certificates would never be required. Accordingly, the reference to 're-export certificate' in Resolution Conf. 13.7 (Rev. CoP14) is not necessary.
18. A Party member therefore suggested that the text of Resolution Conf. 13.7 (Rev. CoP14) under AGREES, paragraph b) referring also to "re-export certificates" should be deleted in order to avoid inconsistency with the Convention text. For enforcement reasons, based on conservation concerns and a precautionary approach, also in order to avoid misuse, the person involved has to furnish proof that the specimen concerned was acquired in a State where removal from the wild has not occurred. Another Party member also pointed out the difficulty in implementing the terms 'where removal from the wild occurred' and 'the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens' [i.e. *Article VII, paragraphs 3 (b) i) and (iii)*].
19. The term 'usual residence' may be clear in most cases. However, the precise definition and interpretation of the term may vary from Party to Party depending on a Party's national Customs regulations and its determination on a case-by-case basis of what constitutes "usual residence".
 - c) *assess whether there are specific species or types of personal or household effects which, in view of conservation concerns, would require different treatment under Resolution Conf. 13.7 (Rev. CoP14)*
20. The Chair noted that Article VII, paragraph 3, of the Convention does not indicate any need to afford different treatment to any specific species and a non-governmental member agreed with this statement. A Party member, however, expressed the view that there may be specific species or types of personal or household effects that should be partially or fully exempted from the Convention's provisions in view of conservation concerns. Parties may choose to make use of the procedures contained in the Annex to Resolution Conf. 13.7 (Rev. CoP14) to address such concerns.
21. Members discussed the European Union's proposal for amending Resolution Conf. 13.7 (Rev. CoP14) to make clear that the quantitative limits for "personal and household effects" exemptions comprised multiple pieces. The proposed addition to the Resolution reads:

Where a commodity (typically consisting of multiple pieces, such as a pair of shoes or a pair of earrings), such as jewellery or leather goods, is composed of multiple pieces of protected specimens and other items, it should be treated as one specimen.
- d) *collate information about how each Party has implemented Resolution Conf. 13.7 (Rev. CoP14), particularly with regard to requirements for export permits, and assess whether this indicates the need to amend the Resolution*
22. Two Party members explained that they had previously gathered information from Parties about their implementation of the 'personal or household effects' exemption. This valuable information was shared with other Working Group members (see Annexes 3 and 4). One of these members further encouraged Parties to correct their legal regulations if wrongly reported and correction to Annex 3 was made by the corresponding Party members.
23. A review of the information provided by the two members mentioned above showed that Parties do not implement the personal or household effects exemption in a consistent fashion. Moreover, in many cases, the requirement of a CITES permit for personal or household effects is not made known to other Parties through the Secretariat. Members unanimously agreed that there is currently insufficient information about how Parties implement the personal and household effects exemption. There is a need to collect complete information for CITES Management Authorities as well as for all stakeholders, including the public.
24. Noting that several attempts to obtain complete information from Parties on their treatment of personal and household effects had been made but that all had been unsuccessful to date, a Party member proposed the imposition of a clear reporting obligation with a clear time frame, accompanied by a 'sanction'. To implement this proposal, it was recommended that a Notification be sent with a questionnaire developed by the Working Group or that the biennial report format be amended to include such a questionnaire.

25. Another Party member recalled that it is recommended in Resolution Conf. 13.7 (Rev. CoP14) that the personal or household effects exemption be 'nullified' if a Party informs other Parties that it requires a CITES permit for specimens that are personal or household effects. To make national enforcement easier, this member proposed to amend Resolution Conf. 13.7 (Rev. CoP14) to include a negative presumption. In other words, if no information about a Party's treatment of personal or household effects is available on the CITES website, that Party is assumed not to apply the exemption for personal or household effects.
26. The above-mentioned member agreed that the Working Group should develop a questionnaire to elicit more information from Parties on their treatment of personal or household effects and proposed that a reporting requirement be included in Resolution Conf. 13.7 (Rev. CoP14).

Recommendation

27. It is recommended that the Working Group on Personal and Household Effects meet in the margins of the present meeting to develop a set of specific recommendations which would then be submitted for consideration by the Standing Committee before the conclusion of the present meeting.