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[Page 19488-19492]
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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 97-31]
RIN 1515-AC14

Archaeological and Ethnological Material From Canada

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological and ethnological material of Canada's native peoples and certain underwater archaeological material. These restrictions are being imposed pursuant to an agreement between the United States and Canada which has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document also contains the Designated List of Archaeological and Ethnological Material which describes the articles to which the restrictions apply.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Donnette Rimmer, Intellectual Property Rights Branch
(202) 482-6960.
Operational Aspects: Louis Alfano, Commercial Enforcement, Office of
Field Operations (202) 927-0005.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft,

encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ``Convention on Cultural Property Implementation Act'' (Pub.L. 97-446, 19 U.S.C. 2601 et seq.)(``the Act''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations from which they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention. During the past several years, import restrictions have been imposed on an emergency basis on archaeological and cultural artifacts of a number of signatory nations as a result of requests for protection received from those nations.

Import restrictions are now being imposed as the result of a bilateral agreement entered into between the United States and Canada. This agreement was signed on April 10, 1997, under the authority of the provisions of 19 U.S.C. 2602. Accordingly, Sec. 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Canada.

This document contains the Designated List of Archaeological and Ethnological Material representing the cultures of the native peoples of Canada which are covered by the agreement. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certification issued by the Government of Canada. In reaching the decision to recommend the application of import restrictions, the Deputy Director, USIA, determined, pursuant to the requirements of the Act, that with respect to:

(1) Inuit (Eskimo) archaeological and ethnological material, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological and ethnological material from the Inuit which includes the following periods/cultures: Paleo-Eskimos (2000-500 B.C.), Dorset (500 B.C.-1000 A.D.), Thule (1000-1800 A.D.), and the historic period beginning approximately 1800 A.D.; and originates in the geographic region extending from the Alaskan border in the west to Baffin Island in the east and as far southeast as the coast of Labrador, and south to the treeline, and falling within the present day area defined by the Yukon and Northwest Territories and the provinces of Quebec and Newfoundland-Labrador; and with respect to

(2) Subarctic Indian ethnological material, that the cultural patrimony of Canada is in jeopardy from the pillage[[Page 19489]]of ethnological material of the Subarctic Indian which covers the period from approximately the 17th century and which material dates from the 17th century A.D.; and which material originates in the geographic region extending from the Alaskan border in the west to Labrador in the east, from the tundra extending south encompassing large areas of the Yukon and Northwest Territories and including parts of all provinces except New Brunswick, Nova Scotia and Prince Edward Island on the east coast; and, with respect to

(3) Northwest Coast Indian archaeological and ethnological material, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological and ethnological material of the Northwest Coast Indian beginning from approximately 10,000 B.C. for archaeological material and since approximately 1800 A.D. for ethnological material; and originates in the geographic region extending in Canada along the coast of British Columbia (including offshore islands) from the Alaskan border in the north to the southern tip of Vancouver Island; and, with respect to

(4) Plateau Indian archaeological material, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological material of the Plateau Indian dating from approximately 6,000 B.C.; and originates in the southern part of the interior region, between the coastal mountain range and the Rocky Mountains, in the province of British Columbia; and, with respect to

(5) Plains Indian ethnological material, that the cultural patrimony of Canada is in jeopardy from the pillage of ethnological material (dating from approximately 1700 A.D.) of the Plains Indian; and originates in Canada in the region extending eastward from the Rocky Mountains, southward from the North Saskatchewan River to the Canada/U.S. border, and encompassing portions of the provinces of Alberta, Saskatchewan and Manitoba; and, with respect to

(6) Woodlands Indian archaeological and ethnological material, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological (dating from approximately 9,000 B.C. to approximately 1550 A.D.) and ethnological material (dating from approximately the mid-16th century) of the Woodlands Indian; originating in an area south of the boreal forest in eastern Canada from the Great Lakes to the east coast; and, with respect to

(7) Underwater archaeological material, that the cultural patrimony of Canada is in jeopardy from the pillage of underwater archaeological material found (at historic shipwrecks and other underwater historic sites) in the inland waters of Canada as well as the Canadian territorial waters of the Atlantic, Pacific and Arctic Oceans, and the Great Lakes.

Designated List of Archaeological Artifacts and Ethnographic Material
Culture of Canadian Origin and Certain Underwater Archaeological
Material Restricted From Importation Into the United States

Pursuant to an agreement between the United States and Canada, the following list contains descriptions of the cultural materials for which the United States imposes import restrictions under the

Convention on Cultural Property Implementation Act (P.L. 97-446), the legislation enabling implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Definitions

For purposes of this list and in accordance with the United States Cultural Property Implementation Act and Canada's Cultural Property Export and Import Act, the following definitions are applicable: Archaeological artifact means an object made or worked by a person or persons and associated with historic or prehistoric cultures that is of cultural significance and at least 250 years old and normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water.

Ethnographic material culture means an object that was made, reworked or adapted for use by a person who is an Aboriginal person of Canada (e.g., the product of a tribal or non-industrial society), is of ethnological interest and is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people. The terms ethnographic material culture and ethnological material are used interchangeably.

Aboriginal person of Canada means a person of Indian or Inuit ancestry, including a Metis person, or a person recognized as being a member of an Indian, Inuit or Metis group by the other members of that group, who at any time ordinarily resided in the territory that is now Canada.

General Restrictions

Pursuant to Canada's Cultural Property Export and Import Act, certain archaeological artifacts and ethnographic material are subject to export control. Export permits are available at designated offices of Canada Customs. Information about export controls is available from Movable Cultural Property, Department of Canadian Heritage by telephone at 819-997-7761.

In the absence of export permits where required, United States import restrictions will apply to the following Aboriginal cultural groups in Canada: Inuit (Eskimo) archaeological and ethnological material; Subarctic Indian ethnological material; Northwest Coast Indian archaeological and ethnological material; Plateau Indian archaeological material; Plains Indian ethnological material; Woodlands Indian archaeological and ethnological material. Such import restrictions will also apply to underwater archaeological material found at historic shipwrecks and other underwater historic sites in the inland waters of Canada as well as the Canadian territorial waters of the Atlantic, Pacific and Arctic Oceans, and the Great Lakes. Below are representative lists, subject to amendment, of objects covered by these import restrictions.

Ethnographic Material Culture

Below is a representative list, subject to amendment, of objects of ethnographic material culture, organized by the primary type of material used to make the object.

In accordance with Canadian law, restrictions only apply to ethnological material listed below which was made, reworked or adapted

for use by an Aboriginal person of Canada who is no longer living, which is greater than 50 years old, and which has a fair market value in Canada of more than \$3,000 (Canadian).

Ethnographic material from the following Aboriginal cultural groups is included in this list and is subject to United States import restrictions: Inuit (Eskimo); Subarctic Indian; Northwest Coast Indian; Plains Indian; and Woodlands Indian.

Ethnographic material from the following cultural group is excluded from this list and is not subject to United States import restrictions: Plateau Indian.

This section is organized by the primary type of material used to make the object. [[Page 19490]]

I. Animal and Bird Skins (Hide), Fur and Feathers

A. Hunting and fishing equipment:

Quivers (arrow cases);

Rifle scabbards/holsters and bandoliers (ammunition belts); and Kayaks, canoes and other boats made of skin or hide.

B. Horse trappings:

Saddle bags and throws, blankets, etc.

C. Clothing (often decorated with beads, buttons, hair, fur, shells, animal teeth, coloured porcupine quills): Belts, dresses, jackets, leggings, moccasins, robes, shirts, vests, parkas; Yokes, beaded; Headdresses, decorated with feathers, hair, fur, and/or horn; and Ornaments, jewelry and other accessories (including necklaces often with hide-covered stone).

D. Other sewn objects: Cradle boards and covers; Bags, pouches; Rugs; and Tipi covers (with or without paint or other decoration).

E. Skins with applied writing, drawing, or painted decoration, design or figures.

F. Musical instruments: Drums.

G. Prepared Skins of Birds and mammals used in sacred bundles or as wrappings.

H. Parfleches (all-purpose hide containers, folded and/or sewn, with or without painted or other applied decoration).

II. Wood, Bark, Roots, Seeds

A. Weapons and hunting equipment: Tomahawks; Snowshoes; Clubs; Sheathes for knives; Paddles; and Canoes and other boats (carved wood, birchbark).

B. Containers: Baskets, pouches, bags, mats; and Boxes and chests (bark, root, wood), often elaborately carved or painted.

C. Domestic utensils and tools: Bowls; Spoons, ladles; Trays; Spindle whorls (small, usually circular flywheels to regulate textile or other spinning); Adzes (axe-like tool for trimming and smoothing wood) and other woodworking tools; Bark beaters; and Mat creasers.

D. Furniture:

Chairs, backrests, settees (seat or small bench with back); and Mats.

E. Carved models: Animal and human figurines; and Miniature canoes and totem poles.

F. Toys, dolls and games.

G. Musical instruments: Drums; Whistles, flutes, recorders; and Rattles, sometimes elaborately carved in animal or human form and painted or otherwise decorated.

H. Ornaments and accessories: Pendants, chains and other jewelry; Combs; and Birchbark belts.

I. Hats (spruce root, wood, bark, woven grass).

J. Ceremonial objects: Pipes and pipestems; Masks and headdresses (wood or cornhusk, often complexly carved and painted, usually resembling animals, or human faces, sometimes contorted); Rattles (see description above in G.); Bowls; Staffs, standards (ceremonial poles, in some cases used to support banners or flags); and Birchbark scrolls with carved pictographic designs or figures.

K. Totem poles, house posts and wall panels (usually carved and/or painted).

III. Bone, Tooth, Shell, Horn, Ivory, Antler (Items Made From, or Decorated With)

A. Carved hunting and fishing equipment (such as carved bow handles).

B. Weapons and tools: Clubs; Needles and sewing kits; and Shuttles (small instrument containing a reel or spool or otherwise holding thread or other similar material during weaving or lace-making).

C. Carved figurines: Representations of people, fish, animals.

D. Ornaments and other accessories: Combs; Beads and pendants; and Snow goggles and visors.

E. Ceremonial objects: Masks (see description in II J.); and Amulets and charms.

F. Miniatures and game pieces: Especially cribbage boards.

G. Pipes.

H. Musical instruments: Whistles.

IV. Stone, Argillite Stone, Amber

A. Hunting and fishing equipment: Bola and bola weight (weapon consisting of long cord or thong with stone balls at the end); Blubber pounder; Harpoon head; Net weights; and Toggles (rod, pin or bolt used with rope to tighten it, to make an attachment or prevent slipping).

B. Tools: Snow knives; and Ulu (crescent-shaped knife with small handle on side).

C. Domestic utensils: Plates, platters, bowls; Lamps (bowl or trough-shaped) and wick trimmers; Boxes; and Hearthstone.

D. Ornaments and other accessories: specially incised pendants.

E. Ceremonial objects: Masks; and Seated human and animal figure bowls.

F. Pipes: Argillite, catlinite and steatite, often ornately carved with animals and human designs.

G. Carved figurines: Especially carved argillite figural groups and miniature totem poles.

V. Porcupine Quills (items made from, or ornamented with)

A. Drinking tubes; and

B. Ornamentation for clothing and other sewn objects, usually colored.

VI. Textiles (Cotton, Wool, Linen, Canvas)

A. Decorated cloth panels and ceremonial dance curtains;

B. Garments and accessories: Belts, dresses, hats/hoods, jackets, leggings, moccasins, robes, shirts, vests, aprons, tunics; Blankets or capes, often decorated with buttons, quillwork, beads, shells; and Pouches and bags.

C. Wrappings for ceremonial objects;

D. Canvas tipis and tipi models; and

E. Woven blankets (incl. Chilkat blankets of woven mountain goat wool and cedar bark, with elaborate coloured designs).

VII. Metals (Copper, Iron, Steel, Gold, Silver, Bronze)

A. Weapons and shields: Daggers.

B. Hunting and fishing equipment: Fishing lures.

C. Tools: Snow knives; and Ulus (see description under IV B.).

D. Clothing and hair ornaments;

E. Ceremonial objects: Masks; [[Page 19491]]Rattles, charms; and Coppers (large flat copper plates with beaten or incised decoration).

VIII. Clay

A. Figurines (people, fish, animals);

B. Pipes; and

C. Pottery vessels and containers such as bowls or jars.

IX. Beads (Glass, Clay, Shell, Bone, Brass) (Items Decorated With)

A. Horse gear (bridles, saddle bags, decorative accessories);

B. Bags, pouches, parfleches (see description in I H.), and knife sheaths (decorative);

C. Clothing: belts, dresses, leggings, moccasins, shirts, vests, jackets, hoods, mantles/robes;

D. Musical instruments: Drums; and

E. Ceremonial/sacred amulets and objects

X. Hair (Items Decorated With, or Made From Human or Animal Hair)Ornamentation used on clothing and other sewn objects, such as pouches, ceremonial objects.

Archaeological Artifacts

Below is a representational list, subject to amendment, of archaeological artifacts recovered from the soil of Canada, the

territorial sea of Canada or the inland or other internal waters of Canada.

The Government of Canada, in accordance with Canadian law, will not restrict the export of archaeological artifacts recovered less than 75 years after their loss, concealment or abandonment. United States import restrictions, however, only will apply to archaeological material that is at least 250 years old.

Archaeological artifacts from the following Aboriginal cultural groups are included in this list: Inuit (Eskimo); Northwest Coast Indian; Plateau Indian; Woodlands Indian. Also included in this list is underwater archaeological material from historic shipwrecks and other underwater historic sites.

Archaeological artifacts from the following Aboriginal cultural groups are excluded from this list: Subarctic Indian, Plains Indian.

I. Aboriginal Archaeological Artifacts

A. Animal and Bird Skins (Hide), Fur and Feathers: Quivers (arrow cases); Kayaks, canoes and other boats made of skin or hide; Clothing, ornaments and other accessories; Bags, pouches; and Drums.

B. Wood, Bark, Roots, Seeds: Snowshoes; Knives sheathes; Canoes and paddles (wood); Containers (wood baskets, pouches, boxes, chests); Domestic utensils (wood bowls, spoons, woodworking tools); Carved models, toys and games; Musical Instruments (wood drums, flutes, whistles, rattles); and Ceremonial objects (wood pipes, masks, rattles, bowls).

C. Bone, Tooth, Shell, Horn, Ivory, Antler: Carved hunting and fishing equipment; Weapons and tools (clubs, needles, shuttles); Carved figurines (representations of people, fish, animals); Ornaments and other accessories (combs, beads and pendants, snow goggles and visors); Masks and other ceremonial objects; Miniatures and game pieces (including cribbage boards); Pipes; and Whistles.

D. Stone, Argillite Stone, Amber: Hunting and fishing equipment (including harpoon or spear heads, net weights, toggles, bola weights); Tools (snow knives and ulus--see description in Ethnological Material); Plates, platters, bowls; Lamps (bowl or trough-shaped); Boxes; Ornaments and other accessories; Masks; Pipes; and Carved figurines.

E. Porcupine Quills (items made from, or decorated with): Drinking Tubes; Ornamentation for clothing, usually coloured; Pouches, bags; and Ceremonial objects.

F. Textiles (wool, cotton, linen, canvas): Garments (see description under Ethnological Material); Blankets, often decorated with buttons, quillwork, beads, shells; Pouches, bags; and Wrappings for ceremonial objects.

G. Metals (copper, iron, steel, gold, silver, bronze): Weapons and shields; Hunting and fishing equipment, including fishing lures; Tools (including snow knives and ulus--see description under Ethnological Material); Clothing and hair ornaments; Ceremonial objects, especially coppers (see description under Ethnological Material);

H. Clay: Figurines (people, fish, animals); Pipes; and Pottery vessels and containers such as bowls or jars.

I. Beads (glass, clay, shell, bone, brass) (items decorated with).

J. Hair (ornamentation of human or animal hair used on clothing and other sewn objects).

II. Non-aboriginal Archaeological Artifacts: Historic Shipwrecks

A. General Ship's Parts (wood and metal):Anchor; Wheel; Mast; Riggings (block and pulley; deadeye; lanyard);Bell; Hull and fittings (rudder, keel, keelson, futtock, fasteners, iron supports);Figurehead and other carved vessel decoration; Windlass and capstan (winches);Wood of the ship; Furniture; Porthole; Ballast (pig iron) (metal weight carried to stabilize ship); Pump assembly (plunger, working barrel, piston); Riggings (cables); and Heating, lighting and plumbing fixtures.

B. Navigational instruments: Compass; Astrolabe or sextant (instruments for calculation of navigation by stars); Telescope; Nocturnal; Sounding leads; Cross staff or back staff; Dividers; Lanterns; and Binnacle (the case enclosing a ship's compass).

C. Armaments: Cannon, carronade (type of short, light cannon), mortars; Cannonshot (balls, chair and bar); Arms (guns, knives, pikes, cutlasses, scabbards, swords); Gun carriage components; Musket shot (metal balls); and Bandoliers (cartridge straps).

D. Tools and wares: Carpenter's tools; Sail making tools; Rope making tools; Medicinal wares; Galley ware (cooking caldron, crockery, glassware, beverage bottles, cutlery, treen, stoves); Caulker tools; Surgeon tools;[[Page 19492]] Chaplain tools; Fishing supplies (lead sinkers, hooks, barrels, try works); Cooper's tools; and Blacksmith's tools.

E. Ship's Cargo: Raw metal (iron, copper, bronze, lead); Wood; Ceramics; Glassware (fine glass decanters); Tradebeads; Containers (casks, baskets); and Stone (for building or ballast).

F. Personal Goods Found on Ships: Jewelry (gold, silver, stone); Coins; Gaming pieces (dice); Buckles and buttons; Chests; Combs; Pipes; Religious items; Timepieces; Bedding, clothing and other textiles; and Shoes.

Inapplicability of Notice and Delayed Effective Date

Because this amendment is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to Sec. 553(a)(1) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12--[AMENDED]

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:
Sections 12.104--12.104i also issued under 19 U.S.C. 2612.

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

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Sec. 12.104g [Amended]

2. In Sec. 12.104g, paragraph (a), the listing of agreements imposing import restrictions on described articles of cultural property of State Parties is amended by adding "Canada" in appropriate alphabetical order under the column headed "State Party", and adding adjacent to the listing of "Canada" the description "Archaeological Artifacts and Ethnological Material Culture of Canadian Origin" under the column headed "Cultural Property" and the reference "T.D. 97-31" under the column headed "T.D. No."

George J. Weise,
Commissioner of Customs.
Approved: April 9, 1997.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 97-10504 Filed 4-21-97; 8:45 am]
BILLING CODE 4820-02-P