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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 12

[T.D. 99-88]
RIN 1515-AC52

Import Restrictions Imposed on Certain Khmer Stone Archaeological
Material of the Kingdom of Cambodia

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by imposing emergency import restrictions on certain Khmer stone archaeological material of the Kingdom of Cambodia of the 6th century through the 16th century A.D. These restrictions are being imposed pursuant to a determination of the United States Information Agency issued under the terms 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 contains the Designated List describing the Khmer stone archaeological material of the Kingdom of Cambodia to which the restrictions apply.

EFFECTIVE DATE: December 2, 1999.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Michael L. Smith, Intellectual Property Rights Branch (202) 927-1996; (Operational Aspects) Joan E. Sebenaler, Trade Programs (202) 927-0402.

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 to the nations from where they originate and to achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests received from those nations under Article 9 of the 1970 Convention and pursuant to provisions of the Convention on Cultural Property Implementation Act that allow for emergency action and bilateral agreements between the United States and other countries.

This document amends the regulations by imposing emergency import restrictions on certain archaeological artifacts from Cambodia as described below.

Cambodia

Under Sec. 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), Cambodia, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose import restrictions on certain categories of archaeological and/or ethnological material the pillage of which, it was alleged, jeopardizes the national cultural patrimony of Cambodia. Notice of receipt of this request was published by the United States Information Agency (USIA) in the Federal Register (64 FR 28873) on May 27, 1999.

The request was forwarded to the Cultural Property Advisory Committee, which conducted a review and investigation and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Associate Director for Educational and Cultural Affairs, USIA. Pursuant to the provisions of 19 U.S.C. 2603(a)(3), the Committee found, with respect to a certain category of archaeological material, the situation in Cambodia to be an emergency, and recommended that emergency import restrictions be imposed on certain Khmer stone archaeological material from Cambodia. The Associate Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 99-4, considered the Committee's recommendations and on September 29, 1999,

the Associate Director made the determination that emergency import restrictions be applied.

The Commissioner of Customs, in consultation with the Associate Director of the USIA, has developed a list of types of covered Khmer stone archaeological material of the 6th century through the 16th century A.D. from Cambodia. The materials on this list are subject to Sec. 12.104a(b), Customs Regulations (19 CFR 12.104a(b)). As provided in 19 U.S.C. 2601 et seq., and Sec. 12.104a(b), Customs Regulations, listed materials from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Cambodia legally and not in violation of the laws of Cambodia.

In the event an importer cannot produce the certificate, documentation, or other evidence required by Sec. 12.104c, Customs Regulations (19 CFR 12.104c) at the time of making entry, Sec. 12.104d, Customs Regulations (19 CFR 12.104d) provides that the port director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

The list of archaeological material from Cambodia for which import restrictions apply is set forth below. [[Page 67480]]

List of Khmer Stone Archaeological Material of the 6th Century Through the 16th Century A.D. From Cambodia

Khmer stone archaeological material of the 6th century through the 16th century A.D. from Cambodia, includes the categories listed below. The following list is representative only.

Stone

This category consists largely of materials made of sandstone, including many color shades (grey to greenish to black, pink to red and violet, some yellowish tones) and varying granulosity. Due to oxidation and iron content, the stone surface can become hard and take on a different color than the stone core. These surface colors range from yellowish to brownish to different shades of grey. This dense surface can be polished. Some statues and reliefs are coated with a kind of clear shellac or lacquer of different colors (black, red, gold, yellow, and/or brown). The surface of sandstone pieces can also, however, be quite rough. Chipped surfaces can be white in color. In the absence of any systematic technical analysis of ancient Khmer stonework, no exact description of other stone types can be provided. It is clear, however, that other types of stone were also used (some volcanic rock, rhyolite and schist, etc.), but these are nonetheless exceptional. Some quartz objects are also known. Precious and semi-precious stones were also used as applied decor or in jewelry settings.

Different types of stone degradation can be noted. Eroded surfaces result from sanding (loss of surface grains), contour scaling (detachment of surface plaques along contour lines), flaking and

exfoliation. The stone can also split along sedimentation layers. Chipping or fragmentation of sculpted stone is also common. Stone objects included here come under three historical periods: pre-Angkorian (6th-9th century), Angkorian (9th-14th century) and post-Angkorian (14th-16th century). Many stone objects can be firmly assigned to one of these three periods; some, notably architectural elements and statues, can be further assigned a specific style and a more precise date within the given period.

A. Sculpture

1. Architectural Elements

Stone was used for religious architecture in the pre-Angkorian and Angkorian periods. The majority of ancient Khmer temples were built almost entirely in stone. Even for those temples built primarily in brick, numerous decorative elements in stone were also employed. Only small portions of early post-Angkorian edifices were built in stone. The architectural elements that follow are, therefore, characteristic of pre-Angkorian and Angkorian times. The state of the material varies greatly, some objects being well preserved, others severely eroded or fragmented. The sculpture of some pieces remains unfinished.

a. Pediments. Pediments are large decorative stone fixtures placed above temple doorways. They are triangular in shape, and are composed of two or more separate blocks, fitted together and sculpted with decorative motifs. The ensemble can range from approximately 1-3 meters in width and 1-3 meters in height. Motifs include floral scrolls, medallions, human figures and animals. A whole scene from a well-known story can also be represented.

b. Lintels. Lintels are rectangular monoliths placed directly above temple entrance gates or doorways, below the pediments described above. They are decorated with motifs similar to those of pediments. They can reach up to nearly one meter in height and one and a half meters in width.

c. False doors. Three of the four doorways of a temple sanctuary are frequently "false doors"; that is, though they are sculpted to look like doors, they do not open. They bear graphic and floral motifs, sometimes integrating human and animal figures. These doors can reach up to more than two meters in height and more than one meter in width. They can be monolithic, or composed of separate blocks fitted together.

d. Columnettes. Columnettes are decorative columns placed on either side of a temple door entrance. They can be sculpted in deep relief out of a temple doorway and, therefore, remain attached to the doorway on their back side. The earliest columnettes are round, sculpted with bands themselves sculpted with decorative motifs. Later in the Angkorian period, the columnettes are octagonal in shape, and bear more complex and abundant sculpted decor on the concentric bands. This decor includes graphic designs (pearls, diamond shapes, flowers, etc.) repeated at regular intervals along the length of the column. The base of the column is square and is also sculpted with diverse motifs and figures. The columnettes can reach around 25 centimeters in diameter and more than two meters in height.

e. Pilasters. Pilasters are decorative rectangular supports projecting partially from the wall on either side of a temple doorway. They are treated architecturally as columns, with base, shaft and capital.

Motifs include floral scrolls and graphic designs of pearls, diamond shapes, etc., as well as human or animal figures. They range in width from approximately 20-30 centimeters and can reach a height of more than two meters.

f. Antefixes. Antefixes are decorative elements placed around the exterior of each level of a temple tower. They are small free-standing sculptures and can take multiple forms, including but not limited to graphic designs, animal figures, human figures in niches and miniature models of temples.

g. Balustrade finials. Long balustrades in the form of mythical serpents are found in many Angkorian temples. Often, these line either side of the entrance causeways to temples. The ends of the balustrade take the form of the serpent's multiple cobra-like heads.

h. Wall reliefs. Much of the surface area of most temples is sculpted with decorative reliefs. This decor includes graphic designs and floral motifs as well as human or animal figures. The figures can range in size from just a few centimeters to more than one meter in height. They can be integrated into the decor or set off in niches. Narrative scenes can also be represented.

i. Other decorative items. Other decorative items include wall spikes, roof tile finials, sculpted steps, and other architectural decorations.

2. Free-Standing Sculpture

The pre-Angkorian and Angkorian periods are characterized by extensive production of statuary in stone. Some stone statuary was also produced during the post-Angkorian period. This statuary is relatively diverse, including human figures ranging from less than a half meter to nearly three meters in height, as well as animal figures. Some figures, representations of Indian gods, have multiple arms and heads. Figures can be represented alone, or in groups of two or three. When male and female figures are presented together as an ensemble, the female figures are disproportionately smaller than their male counterparts. Some are part-human, part-animal. Figures can be standing or sitting, or riding animal mounts. Many figures are represented wearing crowns or special headdresses, and holding attributes such as a baton or a conch shell. Clothing and sometimes jewelry are sculpted onto the body. Though statues are generally monolithic, later post-Angkorian statues of the Buddha can have separate arms, sculpted in wood and attached to the stone body. Many statues were once lacquered in black or dark brown, red or gold colors, and [[Page 67481]]retain lacquer traces. Some yellow lacquer is also found.

a. Human and hybrid (part-human, part-animal) figures. Examples include a statue of the eight-armed god, four-armed god, representations of Buddha in various attitudes or stances, and female and male figures or deities, including parts (heads, hands, crowns or decorative elements) of statuary, and groups of figures.

b. Animal figures. Examples include bulls, elephants, lions, and small mammals such as squirrels.

c. Votive objects. A number of more abstract sculptures were also the object of religious representation from pre-Angkorian to post-Angkorian times. Examples include ritual phallic symbols and sculpted footprints of Buddha.

d. Pedestals. Pedestals for statues can be square, rectangular or round. They vary greatly in size, and can be decorated with graphic and floral decor, as well as animal or human figures. They are usually made of numerous components fitted together, including a base and a top section into which the statue is set.

e. Foundation deposit stones. Sacred deposits were placed under statues, as well as under temple foundations and in temple roof vaults, from pre-Angkorian to post-Angkorian times. Marks on these stones indicate sacred configurations, which could contain deposits such as gold or precious stones.

3. Stela

a. Sculpted stela. Free standing stela sculpted with shallow or deep reliefs served as objects of worship and sometimes as boundary stones from pre-Angkorian to post-Angkorian times. Examples include stele with relief images of gods and goddesses, Buddhas, figures in niches, and other symbols.

b. Inscriptions. Texts recording temple foundations or other information were inscribed on stone stela from pre-Angkorian to post-Angkorian times. Such texts can also be found on temple doorjambes, pillars and walls. The stela are found in a number of different shapes and sizes, and can also bear decorative reliefs, for example a bull seated on a lotus flower.

Regulatory Amendment

This document amends Sec. 12.104g(b), Customs Regulations (19 CFR 12.104g(b)) to incorporate by reference the above list of archaeological material from Cambodia for which emergency import restrictions are imposed.

Inapplicability of Notice and Delayed Effective Date

This amendment is being made without notice or public procedure, pursuant to 5 U.S.C. 553(b)(B), because the action being taken is of an emergency nature and such notice or public procedure would be impracticable and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

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.

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 Keith B. Rudich, Esq., 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

Cultural property, Customs duties and inspections, Imports.

Amendment to the Regulations

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

PART 12--SPECIAL CLASSES OF MERCHANDISE

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

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

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;
* * * * *

2. In Sec. 12.104g(b) the list of emergency actions imposing import restrictions on described articles of cultural property of State Parties is amended by adding Cambodia in appropriate alphabetical order as follows:

Sec. 12.104g Specific items or categories designated by agreements or emergency actions.

* * * * *
(b) * * *

State party	Cultural property	T.D. No.
Cambodia	Khmer stone archaeological material from Cambodia.	T.D. 99--88

Raymond W. Kelly,
Commissioner of Customs.

Approved: November 9, 1999.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
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