

THE GOVERNMENT OF CHILE'S REQUEST FOR U.S. IMPORT RESTRICTIONS ON CULTURAL PROPERTY

On March 11, 2019, the U.S. Department of State published notification in the [*Federal Register*](#) of the receipt of a request from the Government of the Republic of Chile to the Government of the United States of America for import restrictions on archaeological material from Chile representing its archaeological heritage. This request is submitted pursuant to Article 9 of the [*1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*](#) as implemented by the [*Convention on Cultural Property Implementation Act*](#) (“CPIA,” 19 U.S.C. 2601 *et seq.*).

Accompanying its request, the Government of Chile provided a written statement of the facts known to Chile that relate to the determinations that must be made to enter into an agreement pursuant to the CPIA (19 U.S.C. § 2602(a)(1)). The following public summary derives from that request. It does not necessarily represent the position of the Government of the United States on this matter.

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PUBLIC SUMMARY

Request by the Government of the Republic of Chile to the Government of the United States of America to Impose Import Restrictions to Protect its Cultural Patrimony under Article 9 of the 1970 UNESCO Convention

Pillage and Jeopardy to the Cultural Patrimony of Chile

Complete and almost complete archaeological objects from the North and Central regions are the most commonly trafficked items. The greatest diversity of archaeological objects trafficked come from the northern regions of the country where dry environmental conditions allow excellent preservation. The Santiago region serves a central role in illicit distribution of archaeological objects brought from other regions. Based on expert reports and seizures analyzed by the National Monuments Council (CNM), the most commonly trafficked objects are ceramic vessels and, to a lesser extent, stone textile and metal artifacts. Ceramics styles include Inka culture ceramics from the Late period (A.D. 1470 – 1536) from Arica, Parinacota, Tarapacá, Antofagasta, Atacama, Coquimbo, Valparaíso, Santiago, and O'Higgins; Arica culture ceramics from the Late and Late Intermediate period (A.D. 1100 AD – 1450) from Arica and Parinacota; El Vergel cultural complex ceramics from the Late and Late Intermediate period (A.D. 1000 AD – 1500) from Bio Bío, the Araucanía, Los Ríos, and Los Lagos; San Pedro (*Atacameña*) culture ceramics from the Late Formative period (A.D. 100 – 500) and the Middle period (A.D. 510 – 920) from Antofagasta; Diaguita culture ceramics from the Late and Late Intermediate period (A.D. 900 – 1532) from Atacama, Coquimbo, Valparaíso, and Santiago region; and Early period pottery (A.D. 1 – 1050) including El Molle, Bato, Llolleo, and Pitrén culture ceramics from the semi-arid north, center, and south regions of Chile. Stone projectile points range from the Paleoindian period (ca. 12000 B.C.) to the Hispanic contact period (A.D. 1536) throughout the Chilean territory, and up to the end of the nineteenth century in the extreme south. Archaeological textiles from northern Chile include clothing such as robes (*unkus*), ceremonial tablecloths (*inkuñas*), different types of bags, such as belt bags, *talegas* and *chuspas*,

belts, and headbands from the Formative period (1000 B.C.) through the Late period (A.D. 1450).

Chilean law includes paleontological material as a subset of archaeological material (see below). Most seizures of illicitly trafficked fossils take place in the North and Central regions of the country, especially the Atacama and Santiago regions. However, the seizure location does not always correspond to the place of origin. In fact, most of the seized material was extracted in the Atacama and O'Higgins regions. Santiago region serves a central role in illicit distribution of fossils brought from other regions. Analysis of paleontological objects seized in Chilean territory between 2007 and March 2017 shows that the majority correspond to the *phylum Chordata* (mostly fossils of shark teeth from Atacama and Coquimbo; marine mammals from Atacama, Coquimbo, and Valparaíso; or fish fossils from Antofagasta, terrestrial animals, etc.) and fossils of mollusks (cephalopods, gastropods, and bivalves from throughout Chile).

Illicit trafficking of archaeological and paleontological material operates in various ways. In many cases, occasional looters or tourists ignore national legislation and illicitly excavate, collect, or purchase objects. However, there is also evidence that organized gangs contact Chilean or foreign collectors directly or through intermediaries to supply client demands.

Principle Laws Protecting Chile's Cultural Property

Legal protection of Chile's cultural patrimony began with the 1925 National Monuments Law. The 1970 National Monuments Law (Law No. 17.288) is the current principle legislation protecting cultural objects. According to this law, National Monuments are under the custody and protection of the State and include "places, ruins, constructions or objects of a historic or artistic nature; burials or cemeteries or other aborigines remains, anthropo-archaeological pieces or objects, paleontological or of natural formation, that exist under or over the surface of national territory, or in the continental shelf of its jurisdictional waters whose conservation is of interest to history, art or science; nature sanctuaries; monuments, statues, columns, pyramids, fountains, plaques, crowns, inscriptions and, in general, objects that are destined to remain in a public site, of commemorative nature" (Article 1, unofficial translation).

The 1970 National Monuments Law automatically protects archaeological material, including paleontological material. "By the sole virtue of the law, state-owned Archaeological Monuments include the places, ruins, sites and anthropo-archaeological pieces existing above or below the national territory. For the purposes of this law, paleontological pieces and the sites where they are found are also encompassed" (Article 21). These objects are property of the state and under the protection of the CMN.

Temporary export of archaeological objects, including paleontological objects, can only be authorized by a Decree from the Ministry of Cultures, Arts, and Heritage, at the request of the CMN (Article 34, Law 16.441; Articles 1 and 21, Law 17.288).

Law No. 21.045 of 2017 created the Ministry of Cultures, Arts, and Heritage with the following as one of its governing principles, "to acknowledge that cultural heritage, in all its diversity and plurality, is a public good that constitutes a space for reflection, recognition, construction and reconstruction of identities and national identity."

Entities that Protect and Promote Cultural Heritage

Among other responsibilities, the Ministry of Cultures, Arts, and Heritage ensures compliance with international conventions and explores, establishes, and develops international links and programs focused on cultural and heritage matters in coordination with the Ministry of Foreign Affairs. Within the Ministry of Cultures, Arts, and Heritage, the Undersecretary of Cultural Heritage proposes policies to the Minister and designs and evaluates plans related to folklore, traditional cultures, indigenous cultures and heritage, material and immaterial cultural heritage, heritage infrastructure, and citizen participation in the processes of collective memory and definition of heritage.

The National Cultural Heritage Service is a decentralized public service under supervision of the President through the Ministry of Cultures, Arts, and Heritage. It implements policies and plans, and designs and executes programs in the areas of responsibility of the Undersecretary of Cultural Heritage. Among other duties, the service ensures compliance with international conventions in coordination with the Ministry of Foreign Affairs, works with the Ministry of Education to include cultural heritage in the formal education system at all levels, enters into agreements with national and international public and private institutions, and develops publically accessible national and regional information systems related to cultural heritage.

The National Monuments Council (CMN following the Spanish acronym) is a technical body dependent upon the Ministry of Cultures, Arts, and Heritage. It is responsible for monitoring and protecting National Monuments. Among other duties, the CMN decides whether to declare places, ruins, structures, or objects as National Monuments; prepares projects and regulations for restoration, repair, conservation, and signage for National Monuments; regulates access to National Monuments and develops or applies protection and conservation measures; and grants authorizations for archaeological and paleontological excavations. Created in 1925, today the CMN oversees the preservation of more than 1,600 National Monuments.

In 2013, Chile formalized the Working Group against Illicit Trafficking of Cultural Heritage Assets (further known as Mesa TIBP following the Spanish acronym) to consolidate a national strategy to combat illicit trafficking of cultural property. The Mesa TIBP budget supports organization and training and seminars, development and publication of public awareness materials, analysis of legislation, expert reports, and attendance at seminars and workshops in Chile and abroad. This working group includes officials from the National Archive, the National Library, the National History Museum, the National Museum of Fine Arts, the National Museum of Natural History, the National Board of Museums, the National Center for Conservation and Restoration, and the CMN. Permanent Advisors to the Mesa TIBP include the Ministry of Foreign Affairs, the Public Ministry, the State Defense Council, the Investigative Police of Chile (PDI after its Spanish acronym), the National Customs Service, the Chilean Carabineros, the Chilean National Commission for Cooperation with UNESCO, the National Council for Culture and the Arts, the Chilean Committee of the International Council of Museums (ICOM), the Ministry of National Defense, the Undersecretariat of Crime Prevention of the Ministry of the Interior and Public Security, the National Tourism Service, and the General Directorate of Civil Aviation.

Within the Investigative Police of Chile, the Investigative Brigade of Crimes against the Environment and Cultural Heritage (BIDEMA for its Spanish acronym) was created in 2002 and has offices across the country. Within the Public Ministry there is also a public prosecutor's office specialized in the prosecution of this kind of crimes. The Specialized Unit of Money Laundering, Environmental Crimes and Organized Crime judicially supports the investigations regarding crimes against cultural heritage and communicates with local prosecutors' offices across the country.

Collaboration with other countries

Chile has entered into bilateral agreements with other countries that include provisions to fight illicit trafficking of cultural property, including the Convention on the Protection and Restitution of Cultural Property between the Republic of Chile and the Republic of Peru (1978), the Agreement in Matters of Prevention of Theft, Clandestine Excavations and Illicit Importation and Exportation of Cultural Goods between the Government of the Republic of Chile and the Government of the People's Republic of China (2008), and the Agreement between the Republic of Chile and the United Mexican States on the Protection and Restitution of Cultural Goods with the United States of Mexico (2014).

Chile has increased efforts to collaborate with other countries with markets for Chilean cultural property since becoming a State Party to the 1970 UNESCO Convention (Decree No. 141 of 2014). Chile is also a State Party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, 1954).

Benefits for the International Community

Foreign researchers may be granted research permits as long as they belong to a solvent scientific institution and work in collaboration with a State scientific institution or a Chilean university. Chile has granted permission for temporary export of archaeological and paleontological objects for exhibition, study, and training purposes.

Helpful links

National Cultural Heritage Service – Illicit trafficking

<http://www.patrimoniocultural.gob.cl/englishoverview/site/Keywords/Illicit-trafficking/>

Chilean Museum of Pre-Columbian Art – Pre-Columbian Chilean cultures and art

<http://chileprecolombino.cl/en/>