

DEPARTMENT OF THE TREASURY
Customs Service
19 CFR Part 12
[T.D. 91-34]

Import Restrictions Imposed on Archaeological Artifacts From Guatemala

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 pre-Columbian culturally significant archaeological artifacts from the Peten region of Guatemala. These restrictions are being imposed pursuant to a Determination of the United States Information Agency issued under 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

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Donnette Rimmer, Intellectual Property Rights Branch (202) 566-6956. Operational Aspects: Pamela Wenner, Trade Operations (202) 535-4931.

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 make 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 spirit of the Convention was enacted into law to promote U.S.

leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence 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.

Customs issued regulations to carry out the provisions of the Act as T.D. 86-52, published in the Federal Register on February 27, 1986 (51 FR 6905), which took effect on March 31, 1986. Those regulations were amended by T.D. 90-3, on January 19, 1990 (55 FR 1809), so that the public would have a listing of countries and those T.D.s which contained detailed information on articles for which import restrictions had been imposed under of the Act.

This document amends the listing by adding the name of State Party "Guatemala" and the description of the archaeological material from the Peten Archaeological Region contained in this T.D. to the regulations. The document further describes the cultural property from the Peten Archaeological Region for which import restrictions exist.

Guatemala

Under section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of Guatemala, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose emergency import restrictions on certain archaeological materials from the Peten region of Guatemala. This material, identified as comprising part of Guatemala's cultural patrimony, the record of the Maya culture found in the Peten region, was being pillaged, or is in danger of being pillaged, in crisis proportions. Notice of receipt of this request was published by the U.S. Information Agency (USIA) in the Federal Register on October 23, 1989 (54 FR 43213).

On November 14, 1989, the request was referred 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 Deputy Director, USIA, on February 9, 1990. The Committee found the situation in Guatemala to be an emergency, in accordance with the provisions of 19 U.S.C. 2603(a)(3), and recommended that emergency import restrictions be imposed on archaeological material from the Peten region. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86-3, considered the Committee's recommendations and made the determination that emergency import restrictions be applied.

The Commissioner of Customs, in consultation with the Deputy Director of the USIA, has drawn up a list of types of covered archaeological material from the Peten region of Guatemala. The materials on the list are subject to Sec. 12.104a(b), Customs Regulations. As provided in 19 U.S.C. 2601 et seq., and Sec. 12.104a(b), Customs Regulations, listed material from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Guatemala legally and not in violation of the laws of Guatemala.

In the event an importer cannot produce the certificate, documentation, or evidence required by Sec. 12.104c, Customs Regulations, at the time of making entry, Sec. 12.104d provides that the district 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).

These import restrictions of smaller, portable archaeological material are a logical extension of the restrictions imposed by the 1972 Pre-Columbian Monumental or Architectural Sculpture or Murals Statute (19 U.S.C. 2091-2095), which denied entry into the United States of segments of Maya monuments and stelae from the Peten region since May 2, 1973.

Archaeological Material From the Peten Region, Guatemala

The Peten Region has yielded pre-Hispanic ceramic, stone, shell and bone artifacts. The Peten region is defined as an area of approximately 40,000 square kilometers which shares a border to the north with Campeche, Mexico and to the east with Belize. To the west, it is bound by the Rio Usumacinta and Chiapas, Mexico and to the south by the Guatemalan Highlands. The archaeological material from the Peten region is part of the remains of the Lowland Maya Culture. As this region is further excavated, it is expected that other similar artifacts may be discovered. The following is a non-inclusive list of types of artifacts which have been identified as originating in the Peten region.

I. Ceramics

(Dimensions are approximate) Ceramic vessels and other ceramic forms from the Peten region are decorated with one or a combination of two decorative techniques, regardless of the vessel's color. The decorative techniques are:

- * Altering the smooth surface with incisions, punctures channels and similar work, or by adding feet or bases, or handles;
- * Adding decorative designs, such as buttons, curls, little faces and similar designs, or especially by painting with two or more colors.

The types of ceramic forms are:

A. Common Vessels

1. Vases with straight or rounded sides, sometimes with 3 feet, pedestal base or lid. Height, 9.9-29 cm.
2. Bowls, sometimes with feet, base, or lid. Height, 8.7-21.5 cm.
3. Dishes and plates, sometimes with 3 or 4 feet. Diameter, 17-62 cm.
4. Jars. Height, 16-38 cm.

B. Special Ceramic Forms

1. Drums. Height, 35-75 cm.
2. Figurines. Height, 5-6 cm.

3. Whistles. Height, 6-15 cm.
4. Miniature vessels. Height, 5-12 cm.
5. Stamps/Seals.
6. Effigy vessels. Height, 16-30 cm.
7. Incense Burners.

II. Stone

(Dimensions are approximate) Moveable stone artifacts from the Peten region are made from the following mineral components:

A. Jade or Green Stone, May Have Traces of Red Pigment

1. Masks. Height, 14.5-28 cm.
2. Jaguar Figure. Length, 15 cm.
3. Earplug. Diameter, 3.5-9 cm.

B. Obsidian Length, 3-20 cm.

C. Flint Length, 10-15 cm.

D. Alabaster or Calcite Height (Vase), 6-23 cm.

III. Shell

(Dimensions Are Approximate) Shell artifacts from the Peten region may be carved or incised into human or animal or other shapes and designs and may have traces of red pigment. Height, 4-6.5 cm; length, 5-32 cm; diameter, 5-7 cm.

IV. Bone

(Dimensions are approximate) Bone artifacts from the Peten region may be carved or incised into human or animal or other shapes and designs and may have traces of red pigment. Length, 6.5-7 cm.

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 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Inapplicability of Notice and Delayed Effective Date

Because this amendment imposes emergency import restrictions on cultural property which is currently subject to pillage and looting, pursuant to section 553(b)(B) 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.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, 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 and specific authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.* * * Secs. 12.104-12.104i also issued under 19 U.S.C. 2612.

Sec. 12.104g [Amended].

2. Section 12.104g(b) is amended by adding "Guatemala" under the column headed "State Party", the description "Archaeological material from the Peten Archaeological Region forming part of the remains of the ancient Maya culture" under the column headed "Cultural Property", and "91-34" in the column headed "T.D. No."

Carol Hallett,
Commissioner of Customs.

Approved: April 10, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 91-8788 Filed 4-12-91; 8:45 am] BILLING CODE 4820-02-M