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DEPARTMENT OF THE TREASURY
Customs Service
19 CFR Part 12
[T.D. 90-37]

Import Restrictions Imposed on Significant Archaeological Artifacts
From Peru

AGENCY: U.S. Customs Service, Treasury.
ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of emergency import restrictions on culturally significant archaeological artifacts from the Sipan Region of Peru. These restrictions have been 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: May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Samuel Orandle, Commercial Rulings Division (202) 566-5765. Operational Aspects: Pamela Wenner, Trade Operations (202) 535-4931. Both are at U.S. Customs, Washington, DC 20229.

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.

It was with these goals in mind that Customs issued interim regulations to carry out the provisions of the Act. The interim regulations, which were set forth in Sec. 12.104, Customs Regulations (19 CFR 12.104), were published in the Federal Register as T.D. 85-107 on June 25, 1985 (50 FR 26193), and took effect immediately. After consideration of comments received on the interim regulations, final regulations were issued as T.D. 86-52, published in the Federal Register on February 27, 1986 (51 FR 6905), and took effect on March 31, 1986. Those regulations were again amended on January 19, 1990 (55 FR 1809), by T.D. 90-3 which provided members of the public a listing of all T.D.s which had been issued imposing import restrictions under the Act. Both the country where the article originates and a highlight of the type of article covered appear next to the T.D. This document amends the regulations again by adding additional cultural property to the list of articles for which import restrictions exist.

Peru

Under Section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of Peru, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose emergency import restrictions on certain archaeological materials from the Sipan Archaeological Region of Peru, which material was identified as comprising part of Peru's cultural patrimony pillaged, or 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 June 23, 1989 (54 FR 26462).

On June 23, 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 September 20, 1989. The Committee found the situation in Peru to be an emergency, in accordance with the provisions of 19 U.S.C. 2603(a) (2) and (3), and recommended that emergency import restrictions be imposed on archaeological material from the Sipan Archaeological 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 Sipan Archaeological Region of Peru. 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 Peru legally and not in violation of the laws of Peru.

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).

Archaeological Material From the Sipan Archaeological Region Forming Part of the Remains of the Moche Culture

Artifacts from the Sipan Region are known to fall into the categories listed below. As this region is further excavated, it is expected that other types of material will be discovered.

I. Metal

(Dimensions are for height)

A. Gold

1. Small masks, human or feline, some with rattle inside, 2-13 cm.
2. Disk-shaped ear ornaments with beaded edges.
 - (a) With figural inlay of turquoise or shell.
 - (b) Simple, nonfigurative, sometimes with dangles.
3. Nose ornaments, usually crescent-shaped, some with metal dangles.
4. Necklaces.
 - (a) Peanut-effigy necklace.
 - (b) Peanut-effigy beads, 5-13 cm.
 - (c) Round beads, 1-3 cm.
5. Crowns or diadems.
6. Heads of scepters and/or sacrificial knives, with scenes.
7. Small disks, 1.5-5 cm.
8. Rattles, semicircular or trapezoidal, usually with scenes; attached to copper tool.
9. Axe-shaped objects with figures, often with rattle, 20-45 cm.
10. Knives, or tumis, simple or figural, 8-15 cm.
11. Human figures, 10-30 cm.
12. Necklace pendants of various forms, including small spiders.
13. Human and animals heads, with turquoise and/or shell and/or metal dangles, probably headdress ornaments.
14. Bracelets, or anklets, single sheet with designs.
15. Small effigy idols, with hooks for attachment.
16. Funerary masks, made from a single sheet.
17. Flutes.
18. Headdress ornaments, crescent-shaped, open with figures attached.
19. Pendants or attachments with "sacrificer" figure and beaded edge.

B. Gilded Copper

1. Small masks, feline, 5-16 cm.

2. Nose ornaments, usually crescent-shaped, some with metal danglers.
3. Rattles, semicircular, usually with figures.
4. Axe-shaped objects, with figures, often with rattle, 20-45 cm.
5. Scepters, usually geometric, 5-20 cm.
6. Crowns or diadems with hands and a central figure, 20-45 cm.
7. Human figures, 10-30 cm.
8. Necklace pendants, various.
9. Human and animal heads, with turquoise and/or shell and/or metal danglers, probably headdress ornaments.
10. Small effigy idols, with hook for attachment.
11. Funerary masks, single sheet.
12. Owl heads.
13. Pendants or attachments with "sacrificer" figure and beaded edge.

C. Silver

1. Small masks human.
2. Nose ornaments, usually crescent-shaped, some with metal danglers.
3. Necklaces, peanut and plain beads.
4. Heads of scepters or sacrificial knives, with scenes.
5. Rattles, semicircular, usually with figures.
6. Axe-shaped objects, with figures, often with rattle, 20-45 cm.
7. Knives, or tumis, simple or figural, 8-15 cm.
8. Scepters, usually geometric, 5-20 cm.
9. Human figures, 10-30 cm.
10. Necklace pendants.
11. Human and animal heads, with turquoise and/or shell and/or metal danglers, probably headdress ornaments.
12. Bracelets or anklets, single sheet.
13. Small effigy idols, with hook for attachment.
14. Funerary masks.

D. Copper

1. Masks.
2. Knives, or tumis, simple or with figure, 8-15 cm.
3. Scepters, usually geometric, 5-20 cm.
4. Clubs.
5. Disks.
6. Owl Heads.
7. Tweezers.
8. Lance Tips.
9. Tools with elaborate scenes on top.

II. Ceramics

A. Stirrup-spout Vessels

1. Seated figures with headdress.
2. Owls.
3. Reptiles.

B. Open-spout Vessels

1. Seated Figures.
2. Prisoners.
3. Warriors.
4. Animals.

III. Miscellaneous

- A. Textile fragments (often with copper platelets).
- B. Copper platelets and textile fragments.
- C. Feathers, remains of feathered ornaments.
- D. Beads of turquoise and shell.
- E. Fragments of shell (Spondylus) ornaments.

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 Sec. 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.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that, if adopted, the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it 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.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Rules and Regulations, 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

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.

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Sections 12.104-12.104i also issued under 19 U.S.C. 2612.

Sec. 12.104g [Amended]

2. In Sec. 12.104g, the list of emergency actions imposing import restrictions on described articles of cultural property is amended by adding "Peru" under the column headed "State Party", the description "Archaeological material from the Sipan Archaeological Region forming

part of the remains of the Moche culture" under the column headed "Cultural Property", and "TD 90- 37" on the same line as "Peru", in the column headed "T.D. No."

Carol Hallett,
Commissioner of Customs.

Approved: April 9, 1990.
John P. Simpson,
Acting Assistant Secretary of the Treasury.

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