

recent fiscal year, derived 15 percent or less of its gross revenues from securities related activities unless the acquiring company would control such person after the acquisition.

(b) Notwithstanding section 12(d)(3) of the Act, an acquiring company may acquire any security issued by a person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities related activities, *provided that*:

(1) Immediately after the acquisition of any equity security, the acquiring company owns not more than five percent of the outstanding securities of that class of the issuer's equity securities;

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than ten percent of the outstanding principal amount of the issuer's debt securities; and

(3) Immediately after any such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in the securities of the issuer.

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of a general partnership interest or a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter.

(d) For purposes of this section:

(1) "Securities related activities" are a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company.

(2) An issuer's gross revenues from its own securities related activities and from its ratable share of the securities related activities of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities related activities. Such information may be obtained from the issuer's annual report to shareholders, the issuer's annual reports or registration statement filed with the Commission, or the issuer's chief financial officer.

(3) "Equity security" is as defined in § 240.3a-11 of this chapter.

(4) "Debt security" includes all securities other than equity securities.

(5) Determination of the percentage of an acquiring company's ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures

described in the rules under § 240.16 of this chapter.

(6) Where an acquiring company is considering acquiring or has acquired options, warrants, rights, or convertible securities of a securities related business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights, or conversion privileges had been exercised.

(7) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this section;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this section;

(iii) Exercise of options, warrants, or rights acquired in compliance with this section;

(iv) Conversion of convertible securities acquired in compliance with this section; and

(v) Acquisition of puts, as defined in § 270.2a-7(a)(12), provided that, immediately after the acquisition of any put, the company will not, with respect to seventy-five percent of the total value of its assets, have invested more than five percent of the total value of its assets in securities underlying puts from the same institution. An unconditional put shall not be considered a put from that institution, *provided that*, the value of all securities issued or guaranteed by the same institution and held by the investment company does not exceed ten percent of the total value of the company's assets. For purposes of this section, a put will be considered to be from the party to whom the company will look for payment of the exercise price and an unconditional put, as defined in § 270.2a-7(a)(19), will be considered to be a guarantee of the underlying security or securities.

(8) Any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company.

Note: It is not intended that this rule should supersede the requirements prescribed in Investment Company Act Release No. 13005 (Feb. 2, 1983) with respect to repurchase agreements with brokers or dealers.

Dated: September 16, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23192 Filed 9-22-93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 93-74]

Import Restrictions Imposed on Significant Archaeological Artifacts From Mali

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 culturally significant archaeological artifacts from the region of the Niger River Valley of Mali and the Bandiagara Escarpment (Cliff), Mali. 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: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Susan Wilson, Intellectual Property Rights Branch (202) 482-6960; (Operational Aspects) Mark Laria, Trade Operations (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 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 § 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. number.

This document amends the regulations again by adding additional cultural property to the list of articles for which import restrictions exist.

Mali

Under section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of Mali, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose emergency

import restrictions on certain archaeological materials from the region of the Niger River Valley in Mali and the Bandiagara Escarpment (Cliff) in Mali.

Notice of receipt of this request was published by the U.S. Information Agency (USIA) in the *Federal Register* on September 21, 1992.

On September 14, 1992, the request had been 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, in December 1992. The Committee found the situation in Mali 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 above mentioned regions in Mali. 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. (See USIA notice elsewhere in this issue of the *Federal Register*.)

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 region of the Niger River Valley and the Bandiagara Escarpment in Mali. The materials on the list are subject to § 12.104a(b), Customs Regulations. As provided in 19 U.S.C. 2601 *et seq.*, and § 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 Mali legally and not in violation of the laws of Mali.

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

List of Archaeological Artifacts From the Niger River Valley Region, Mali, and the Bandiagara Escarpment (Cliff), Mali

Archaeological material made prior to 1742 from the Region of the Niger River Valley, Mali, and the Bandiagara Escarpment (Cliff), Mali, includes, but is not limited to, the categories listed below. As this region is further excavated, other types of artifacts may be found and added to an amended list. The following list is representative only; dimensions are approximate.

I. Ceramics/Terracotta/Fired Clay

Types of ceramic forms (stylistically known as Djénne-jéno or jenne, Bankoni, Guimbala, Bambara, Bougouni, and other stylistic labels) known to come from the region include, but are not limited to:

A. Figures/Statues.

1. Anthropomorphic figures, often incised, impressed and with added motifs, such as scarification marks and serpentine patterns on their bodies, often depicting horsemen or individuals sitting, squatting, kneeling, embracing, or in a position of repose, arms elongated the length of the body or crossed over the chest, with the head tipped backwards. (H: 6-30 in.)

2. Zoomorphic figures, often depicting a snake motif on statuettes or on the belly of globular vases. Sometimes, the serpent is coiled in an independent form. A horse motif—usually mounted—is common. Includes quadrupeds. (H: 6-30 in.)

B. Common Vessels.

1. Funerary jars, ochre in color, often stamped with chevrons. (H: 50-80 cm.)

2. Globular vases, often stamped with chevrons and serpentine forms. (H: under 10 in.)

3. Bottles with a long neck and a belly that is either globular or streamlined. Some have lids shaped like a bird's head.

4. Ritual pottery of the Tellem culture, decorated with a characteristic plaited roulette.

a. Pot made on a convex mold built up by coiling.

b. Hemispherical pot made on three or four legs or feet resting on a stand. (H: 18 cm.)

5. Kitchen pottery of the Tellem culture with the paddle-and-anvil technique decorated with impressions from woven mats. (H: 20 cm.)

II. Leather

Objects of leather found in Tellem funerary caves of the Bandiagara Escarpment include, but are not limited to:

A. Clothing.

1. Sandals, often decorated and furnished with a leather ankle protection.
2. Boots profusely painted with geometric designs.
3. Plaited bracelets.
4. Knife-sheaths.
5. Loinskins.
6. Bags.

III. Metal

Moveable metal artifacts from the Niger River Valley Region and the Bandiagara Escarpment are made from the following components:

A. Copper and Copper Alloy (such as Bronze).

1. Figures/Statues.
 - a. Anthropomorphic figures, including equestrian figures, kneeling figures. (Some are miniatures no taller than 2 inches; others range from 6 to 30 inches.)
 - b. Zoomorphic figures, such as the bull and snake.
2. Bells (H: 4–5 in.) and finger bells (H: 2–3 in.)
3. Pendants, known to depict a bull's head or a snake (H: 2–4 in.).
4. Bracelets, known to depict a snake (H: 5–6 in.), known to be shaped as a head and antelope (H: 3–4 in.).

B. Iron.

1. Figures/Statues.
 - a. Anthropomorphic figures. (H: 5–30 in.)
 - b. Zoomorphic figures, sometimes representing a serpent. (H: 5–30 in.)
2. Headrests of the Tellem culture.
3. Ring-bells or finger bells of the Tellem culture.
4. Bracelets and armlets of the Tellem culture.
5. Hairpins, twisted and voluted, of the Tellem culture.

IV. Stone

Objects of stone found in Tellem funerary caves of the Bandiagara Escarpment include, but are not limited to:

- A. Faceted carnelian beads.
- B. Quartz lip plugs.

V. Glass Beads

Glass beads have been recovered in the Tellem funerary caves and in archaeological sites in the region of the Niger River Valley.

VI. Textiles

Textile objects, or fragments thereof, have been recovered in Tellem funerary caves of the Bandiagara Escarpment and include, but are not limited to:

- A. Cotton.
 1. Tunics.
 2. Coifs.

3. Blankets**B. Vegetable Fibers.**

Skirts, aprons and belts made of twisted and intricately plaited vegetable fiber.

VII. Wood

Objects of wood may be found archaeologically (in the funerary caves of the Tellem or Dogon Peoples in the Bandiagara Escarpment) for example:

A. Figures/Statues.

1. Anthropomorphic figures, usually with abstract body and arms raised standing on a platform, sometimes kneeling. (H: 10–24 in.)

2. Zoomorphic figures, depicting horses and other animals. (H: 10–24 in.)

B. Headrests.**C. Household Utensils.**

1. Bowls.

2. Spoons, carved and decorated.

D. Agricultural/Hunting Implements.

1. Hoes and axes, with either a socketed or tanged shafting without iron blades.

2. Bows, with a notch and a hole at one end and a hole at the other with twisted, untanned leather straps for the "string".

3. Arrows, quivers.

4. Knife sheaths.

E. Musical Instruments.

1. Flutes, with end blown, bi-toned.

2. Harps.

3. Drums.

Inapplicability of Delayed Effective Date and Public Notice Procedures

While 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, it should be noted that the USIA did provide public notice in the *Federal Register* that it had received a request from the Malian Government that these restrictions be imposed. Because of the emergency nature of the action, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document concerns a foreign affairs function of the United States, it is not subject to E.O. 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required to promulgate this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations 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

Cultural property, Customs duties and inspections, Imports, International conventions, Prohibited merchandise, Reporting and recordkeeping requirements, Seizure and forfeiture.

Amendment to the Regulations

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 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;

* * * * *

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

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§ 12.104g [Amended]

2. In § 12.104g, in the table in paragraph (b), the list of emergency actions imposing import restrictions on described articles of cultural property is amended by adding "Mali" under the column headed "State Party", the description "Archaeological material from the Niger River Valley Region, Mali, and the Bandiagara Escarpment (Cliff) forming part of the remains of the ancient sub-Sahara culture" under the column headed "Cultural Property", and "T.D. 93–74" will be placed on the same line as "Mali", in the column headed "T.D. No."

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 8, 1993.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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