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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 17-14

RIN 1515-AE33

**Extension of Import Restrictions on Archaeological and Ecclesiastical Ethnological
Materials from Guatemala**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological and ecclesiastical ethnological materials from Guatemala. These restrictions, which were last extended and revised by CBP Dec. 12-17, are due to expire on September 29, 2017, unless extended. The Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State (Department of State), has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to indicate this additional extension. These restrictions are being extended

pursuant to determinations of the Department of State under the terms of the Convention on Cultural Property Implementation Act, which implements the 1970 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. CBP Dec. 12-17 contains the Designated List of archaeological and ecclesiastical ethnological materials that describes the articles to which the restrictions apply.

DATES: Effective September 29, 2017.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0215, lisa.burley@cbp.dhs.gov. For operational aspects, William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of Trade, (202) 863-6554, william.r.scopa@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the Convention on Cultural Property Implementation Act (hereafter, the Cultural Property Implementation Act or the Act) (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), which implements the 1970 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 (hereinafter, the Convention), in U.S. law, the United States may enter into international agreements with other States Party to the Convention to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements

prescribed by the Act. Under the Act and applicable CBP regulations (19 CFR 12.104g), the restrictions are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

In certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603). Under the Act and applicable CBP regulations (19 CFR 12.104g(b)), emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered materials (19 U.S.C. 2603(c)(3)); such restrictions may also be continued pursuant to an agreement concluded within the meaning of the Act (19 U.S.C. 2603(c)(4)).

On April 15, 1991, under the authority of the Cultural Property Implementation Act, the former U.S. Customs Service published Treasury Decision (T.D.) 91-34 in the **Federal Register** (56 FR 15181) imposing emergency import restrictions on Pre-Columbian archaeological artifacts from the Peten Region of Guatemala and accordingly amended 19 CFR 12.104g(b) pertaining to emergency import restrictions. These restrictions were effective for a period of five years and were subsequently extended for a three-year period by publication of T.D. 94-84 in the **Federal Register** (59 FR 54817).

On September 29, 1997, the United States entered into a bilateral agreement with Guatemala concerning the imposition of import restrictions on archaeological materials

from the Pre-Columbian cultures of Guatemala (the 1997 Agreement). The 1997 Agreement included among the materials covered by the restrictions the archaeological materials then subject to the emergency restrictions imposed by T.D. 91-34. On October 3, 1997, the former United States Customs Service published T.D. 97-81 in the **Federal Register** (62 FR 51771), which amended 19 CFR 12.104g(a) to reflect the imposition of restrictions on these materials and included a list designating the types of archaeological materials covered by the restrictions. These restrictions were to be effective through September 29, 2002. (T.D. 97-81 also removed the emergency restrictions for Guatemala from the CBP regulations.)

The restrictions were subsequently extended, in 2002 by T.D. 02-56 (67 FR 61259); and in 2007 by Customs and Border Protection Decision (CBP Dec.) 07-79 (72 FR 54538), to September 29, 2012.

In 2012, the Agreement was amended to include certain ecclesiastical ethnological materials of the Conquest and Colonial Periods of Guatemala, c. A.D. 1524 to 1821. On September 28, 2012, CBP published CBP Dec. 12-17 in the **Federal Register** (77 FR 59541), effective on September 29, 2012, amending CBP regulations to reflect the extension of import restrictions on archaeological materials and the addition of ecclesiastical ethnological materials covered by the restrictions (*see* 19 U.S.C. 2604, authorizing the Secretary of the Treasury, by regulation, to promulgate and, when appropriate, revise the list of designated archaeological and/or ethnological materials covered by an agreement between State Parties). The import restrictions are due to expire on September 29, 2017.

On July 28, 2017, after reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Acting Assistant Secretary for Educational and Cultural Affairs, Department of State, concluding that the cultural heritage of Guatemala continues to be in jeopardy from pillage of certain archaeological materials and certain ecclesiastical ethnological materials, made the necessary statutory determinations, and decided to extend the agreement with Guatemala for an additional five-year period to September 29, 2022. Diplomatic notes have been exchanged that reflect the extension of the agreement. Accordingly, CBP is amending 19 CFR 12.104g(a) in order to reflect the extension of the import restrictions pursuant to the agreement.

The Designated List of Archaeological Materials and Ecclesiastical Ethnological Materials from Guatemala covered by these import restrictions is set forth in CBP Dec. 12-17. The Designated List may also be found online at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/guatemala>.

The restrictions on the importation of these archaeological and ecclesiastical ethnological materials from Guatemala are to continue in effect for an additional five years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is

essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reason, a delayed effective date is not required under 5 U.S.C 553(d)(3).

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 Orders 12866 and 13771

Because this rule involves a foreign affairs function of the United States, it is not subject to either Executive Order 12866 or Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

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

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§ 12.104g(a) [Amended]

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Guatemala by adding the words “extended by CBP Dec. 17-14” after the words “CBP Dec. 12-17” in the column headed “Decision No.”.

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Approved: September 25, 2017

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
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