

*What Every Member of the  
Trade Community Should Know About:*

# **Works of Art, Collector's Pieces, Antiques, and Other Cultural Property**



AN INFORMED COMPLIANCE PUBLICATION

REVISED MAY 2006

**U.S. CUSTOMS and BORDER PROTECTION**

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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**PRINTING NOTE:**

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## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "***informed compliance***" and "***shared responsibility***," which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division, ORR, is an aid to prospective importers as to the admissibility of and duty status of various artworks. **Works of Art, Collector's Pieces, Antiques, and Other Cultural Property** will aid in the importation of these rigorously defined articles. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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## INTRODUCTION

This Informed Compliance Publication discusses the requirements that apply to importations of works of art and other cultural property. In addition to the normal rules that apply to all importations, there are special rules that apply to certain types of cultural property because of international agreements, treaties, or requirements set forth in Customs and Border Protection (CBP) law and in the Harmonized Tariff Schedule of the United States (HTSUS).

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Most works of art, collector's pieces, antiques, and cultural property will be classified under the provisions of Chapter 97 of the HTSUS. However, Chapter 97 does not include:

- ◆ Unused postage or revenue stamps, postal stationery (stamped paper) or the like, of current or new issue in the country to which they are destined (chapter 49);
- ◆ Theatrical scenery, studio backdrops or the like, of painted canvas (heading 5907) except if they may be classified in heading 9706; or
- ◆ Pearls, natural or cultured, or precious or semiprecious stones (headings 7101 to 7103).

## PAINTINGS, DRAWINGS, PASTELS, COLLAGES AND SIMILAR DECORATIVE PLAQUES

Although original works of art such as paintings, drawings, pastels, collages and similar decorative plaques must be declared to CBP, most of these articles are entitled to enter the Customs territory of the United States duty-free under the provisions of heading 9701.

In order to qualify under this heading, a painting, drawing, or pastel (whether ancient or modern) must be executed **entirely by hand**. However, hand drawn plans and drawings for architectural, engineering, industrial, commercial, topographical or similar provisions do not fall under this heading, but rather under heading 4906. Articles imported under heading 4906 are duty free if from a column 1 country, but are subject to a 25% *ad valorem* duty if imported from a column 2 country.<sup>11</sup> Heading 9701 does **not**

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<sup>11</sup> At the time of issuance of this publication, only products of the following countries were subject to column 2 duty rates: Cuba, Laos and North Korea. However, this list is subject to change. In addition, temporary trade sanctions or restrictions may be in effect for products of other countries from time to time.

apply to hand-painted or hand-decorated manufactured articles such as wall coverings consisting of hand-painted woven fabrics, holiday souvenirs, boxes and caskets, ceramic wares (plates, dishes, vases, etc.). These articles are usually classifiable under their own appropriate headings and are subject to duty at the rate of the manufactured article.

The heading 9701 provisions apply to the works of art whether they are framed or unframed. Frames around paintings, drawings, pastels, collages or similar decorative plaques, are classified with those articles, provided they are of a kind and of a value normal to those articles. Frames which are not of a kind or of a value normal to the articles are classified separately and may be subject to different rates of duty.

The heading 9701 provisions do not apply to theatrical scenery or studio backdrops of painted canvas. These items are classified under heading 5907, unless they qualify as antiques over 100 years old, in which case they are classified under heading 9706.

Collages and similar decorative plaques, consisting of bits and pieces of various materials, assembled so as to form a picture, design or motif and glued or otherwise mounted on a backing of wood, paper, textile or other material, are classified under subheading 9701.90.00. The backing may be plain, hand painted or imprinted. Collages range in quality from inexpensive mass-produced souvenirs to articles requiring a high degree of craftsmanship. Since there is no artist or originality requirement, the key to this provision is that the article must consist of bits and pieces (a single piece of material is excluded) forming a picture, design or motif and be mounted. See HQ 958591, dated April 5, 1996 (seashell plaque); HQ 957621, dated July 12, 1995 (nautical wall display plaque); HQ 958360, dated October 13, 1995 (skiing memorabilia shadow box).

## **ORIGINAL ENGRAVINGS, PRINTS AND LITHOGRAPHS**

Original engravings, prints and lithographs (whether ancient or modern) are classified under subheading 9702.00.00. The expression "original engravings, prints and lithographs" means impressions produced directly, in black and white or in color, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but excluding any mechanical or photomechanical process. Original impressions remain in this heading even if they have been retouched. The key for this provision is that the plates (or stones) must be executed entirely by hand by the artist. From the plates (or stones) numerous prints can be produced which would all be included under subheading 9702.00.0000. The prints are usually signed and numbered, although this is not a requirement. Thus, an original print might be marked "Dali, 1/75." This would be the first of 75 prints created from the original plates (or stones). All 75 would be classified under subheading 9702.00.0000.

It is often difficult to distinguish the original article from a copy, fake or reproduction, but the relatively small number of impressions and the quality of the paper may be useful guides in determining originals. On the other hand, evidence of the use of half-tone screens (in photogravure and heliogravure) and, very often, the absence of the mark left on the paper by the plate, may indicate a copy or reproduction.

This classification applies whether the engravings, prints or lithographs are framed or unframed. As in heading 9701, frames around original engravings, prints and lithographs, are classified with those articles, provided they are of a kind and of a value normal to those articles. Frames that are not of a kind or of a value normal to the articles are classified separately and may be subject to different rates of duty.

## **ORIGINAL SCULPTURES AND STATUARY, IN ANY MATERIAL**

Heading 9703 covers ancient or modern original sculptures and statuary in any material. In the following section we discuss which items are included, what the term "original" means, whether there are limits on how many copies can be made, and whether the sculptures must be created by an artist.

Sculptures may be in any material (stone, reconstituted stone, terra-cotta, wood, ivory, metal, wax, etc.), in the round, in relief or in intaglio (statues, busts, figurines, groups, representations of animals, etc., including reliefs for architectural purposes).

These works may be reproduced by various processes including the following:

- ◆ The artist carving the work directly from hard materials, or
- ◆ The artist modeling soft materials into figures, which are then cast in bronze or plaster, or are fired or otherwise hardened or reproduced by the artist in marble or other hard materials.

In the latter process, the artist usually proceeds on the following lines:

He begins by roughing out his idea as a model, also known as a maquette, (usually on a reduced scale) in clay or other plastic material; with this as a basis, he then models a "clay form." This "clay form" is seldom sold, but is usually destroyed after it has served for molding a very limited number of copies decided in advance by the artist, or it is placed in a museum for study purposes. These reproductions include, firstly, the "plaster model" produced directly from the "clay form." This "plaster model" is used either as a model for the execution of the work in stone or wood, or for preparing molds for casting in metal or wax.

These two methods, casting (bronze) or carving (marble), are only two of several processes that can be used. Previously it was implied in the *Explanatory Notes* that these were the only two processes used. Although these are the most used, they are only two of many.

The same sculpture may be reproduced as two or three "copies" in marble, wood, wax, bronze, etc., and a few in terra cotta or in plaster. Not only the preliminary model, but also the "clay form," the "plaster model" and these "copies" constitute original works of the artist; the copies are in fact never quite identical as the artist has intervened at each stage with additional modeling, corrections to casts, and for the patina imparted to each article. Only rarely does the total number of replicas exceed twelve.

The heading therefore covers not only the original models made by the sculptor but also copies and reproductions of those models made by the second process described above, whether these are made by the sculptor himself or by another artist.

Additional U.S. Note 1 to Chapter 97 states that:

Heading 9703 covers not only original sculpture made by the sculptor, but also the first 12 castings, replicas or reproductions made from a sculptor's original work or model, by the sculptor himself or by another artist, with or without a change in scale and whether or not the sculptor is alive at the time the castings, replicas or reproductions are completed.

The term "original" has been judicially defined as original in design, conception and execution, as distinguished from the works of skilled craftsmen that are representative of the decorative or industrial arts.

The standard used in determining whether a creator of a work is a professional sculptor rather than a skilled craftsman is that he be a graduate of a course in sculpture at a recognized school of art (free fine art, not industrial art) or that he be recognized in art circles as a professional sculptor by the acceptance of his work in public exhibitions limited to the free fine arts. Thus, one who has not received the formal education may nevertheless be recognized as a professional sculptor by the merit of his publicly exhibited works.

The limit of sculptures that we allow under heading 9703 in an edition is 12. The reason 12 is used (previously 10) is that fine art is normally very limited. If an artist such as Edgar Degas creates 15 of a particular sculpture only the first 12 or cast numbers 1 through 12 will be allowed in duty free. When an artist such as Salvadore Dali produces more than 50 in an edition, it is no longer fine art and none will be allowed duty free.

## **EXCLUSIONS:**

Note 3 to Chapter 97, HTSUS, states that:

Heading 9703 does not apply to mass-produced reproductions or works of **conventional craftsmanship of a commercial**

**character, even if these articles are designed or created by artists.**

The *Explanatory Notes* to heading 9703 explain that several items are excluded from this heading, even if they are designed or created by artists:

- ◆ Ornamental sculptures of a commercial character
- ◆ Articles of personal adornment and other works of conventional craftsmanship of a commercial character (ornaments, religious effigies, etc.)
- ◆ Mass produced reproductions in plaster, staff, cement, paper maché, etc.

Thus, if a professional artist produces a piece of jewelry (wearable) that is unique, it is not allowed under heading 9703, HTSUS, as it is a functional object. The same holds true for furniture such as the tables and chairs created by Diego Giacometti, a recognized professional artist. They are functional and useable as furniture and not within the guidelines of heading 9703, HTSUS. They can also be considered ornamental sculptures of a commercial character. Please see HQ 963158, dated January 14, 2000, which specifically discusses functional sculptures created by Diego Giacometti.

The following Headquarters rulings also concern functional objects:

- HQ 955753, dated May 20, 1994 concerned woven straw baskets. After discussing the requirements of original sculptures, heading 9703, HTSUS, was excluded as the baskets were considered works of conventional craftsmanship of a commercial character.
- HQ 956267, dated September 19, 1994 concerned “artistic wood turnings” such as wall hangings, boxes and perfume containers. Since no proof was provided establishing the items as original and created by a professional sculptor, and since they were works of conventional craftsmanship of a commercial nature, heading 9703, HTSUS, was not applicable.
- HQ 956544, dated October 19, 1994, concerned boxes covered with hand made art paper. Since the boxes were works of the decorative arts rather than the free fine arts and were functional (articles of utility), heading 9703, HTSUS was denied.
- HQ 089094, dated August 2, 1991, concerned a steamed-bent cedar box, hand-painted drum, and a Whaler's hat constructed of woven grass, bark and root. Since the three articles were all functional and considered works of the decorative arts rather than free fine arts (works of conventional craftsmanship of a commercial character), heading 9703, HTSUS was not applicable.

### **Importer Responsibilities under Headings 9702 or 9703**

An importer of merchandise under headings 9702 or 9703, HTSUS, should take care to include the following information as required in 19 CFR §10.48 which provides as follows:

§10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the CBP officer is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of the sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand engraved plates, stones, or blocks:

I, \_\_\_\_\_ do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely covered by the annexed invoice dated; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

In certain instances, the port director may waive the declaration requirement set forth in paragraph (b) of this section. An importer should check with the import specialist at the port of entry for specific entry requirements.

### **PHILATELIC AND NUMISMATIC MATERIAL AND COLLECTIONS**

Philatelic items such as postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper) and the like are classified under heading 9704 if they are used or if they are unused and are not of current or new issue in the

country to which they are destined. Albums containing collections of such articles are treated as forming part of the collections, provided they are of a value normal to the collection.

However, unused postage, revenue or similar stamps of current or new issue in the country to which they are destined are classified under subheading 4907.00.00, and are duty free only if imported from a column 1 country. Maximum cards and first-day covers not bearing postage stamps are classified under heading 4817 or Chapter 49, respectively. Trading stamps or savings stamps given by merchants to customers and redeemable for gifts or rebates on purchases are classified under heading 4911.

Numismatic (coin and money) collections and collector's pieces are classified under heading 9705 with other types of collections (see below). For statistical purposes, gold coins are classified under the provisions of subheading 9705.00.00.30, while other coins are classified under subheading 9705.00.00.60. Coins that are so battered or bent that they are clearly fit only for re-melting are generally classified in the headings for scrap and waste metal. Coins that are legal tender in the country of issue fall in heading 7118. If they are in current circulation and are being imported for monetary purposes, they are admitted without formal entry but may be subject to currency and monetary instrument reporting requirements if an amount exceeding \$10,000 on any one occasion is brought into the U.S. Coins or medals mounted as jewelry are classified in Chapter 71 or heading 9706.

Goods produced as a commercial undertaking to commemorate, celebrate, illustrate or depict an event or any other matter, whether or not production is limited in quantity or circulation, **do not fall** under heading 9705 as collections or collectors' pieces of historical or numismatic interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity.

## **Collections**

In addition to collections and collector's pieces of numismatic interest, collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, palaeontological, or ethnographic interest are also classified under heading 9705, specifically subheading 9705.00.00.90. This subheading includes, for example:

- ◆ Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as: mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.
- ◆ Articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary primitive peoples, for example, tools, weapons or objects of worship,
- ◆ Geological specimens for the study of fossils (extinct organisms which have left their remains or imprints in geological strata), whether animal or vegetable.

## ANTIQUES

Antiques are classified under heading 9706. In order to qualify as an antique for CBP purposes, the article must be over 100 years of age at the time of importation. Whenever an article is entered for sale under heading 9706, and later determined to be not over 100 years of age, a duty of 6.6 percent *ad valorem* for articles subject to column 1-general treatment, free of duty for goods originating in the territory of Canada or a duty of 25 percent *ad valorem* for articles subject to column 2 treatment will be assessed in addition to any other duty or penalty imposed on that article under the tariff schedule. Normally, theatrical scenery, studio backdrops or the like, of painted canvas must be classified under heading 5907, not chapter 97. However, if such items are over 100 years old, they are classifiable under this provision. Articles, such as original paintings (9701), engravings (9702) or sculptures (9703), and stamps or collections (9704 and 9705) which are classifiable under the other provisions of chapter 97, and articles such as pearls (7101) and precious or semi-precious stones (7103) are not classifiable under heading 9706, even if over 100 years old.

Provided they retain their original character, the heading includes antique articles that have been repaired or restored. For example, the heading includes antique furniture incorporating parts of modern manufacture. However, if the essential character is changed, or more than 50% of the item has been repaired or restored, the item is no longer considered an antique and is subject to duty.

## SPECIAL RULES FOR PROTECTED CULTURAL PROPERTY

A violation of a foreign export control law is not in and of itself grounds for CBP action. To qualify for protection as ***cultural property***, an imported item *must* generally fall under one of the Acts listed below. Of course, if a violation of US law occurs, the articles may be subject to seizure and forfeiture under U.S. law regardless of foreign law.

### The Pre-Columbian Monumental Act

The *Pre-Columbian Monumental, Architectural Sculpture or Murals Act of 1972* ("Pre-Columbian Monumental Act"), 19 USC §§2091-2095 and the implementing regulations at 19 CFR §§12.105-12.109 govern the importation of stone carvings and wall art that:

- ◆ are the product of a pre-Columbian Indian culture of one of the following countries: Belize, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela, AND
- ◆ are pre-Columbian monumental or architectural sculptures or murals including:

- stone monuments such as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;
- architectural structures such as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;
- architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, glyphs, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs; or
- any fragment or part of any stone carving or wall art listed in the preceding subparagraphs.

If entry into the CBP territory of the United States is sought for any articles listed above, the importer will be required to file one of the following with the port director of CBP at the time of making entry:

- ◆ A certificate, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary of the Treasury, certifying that such exportation was not in violation of the laws of that country; or
- ◆ Satisfactory evidence that such sculpture or mural was exported from the country of origin on or before **June 1, 1973**; or
- ◆ Satisfactory evidence that such sculpture or mural is not an article subject to the Pre-Columbian Monumental Act and regulations.

If the required certificate or evidence is not presented to CBP, the articles may be detained for 90 days (or longer, if authorized by CBP) to allow the importer to obtain the required documentation. If the certificate or evidence is not presented in the required time period, the articles may be seized and forfeited. For purposes of this law, the term "country of origin," as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was **first discovered**.

### **The UNESCO Convention and U. S. Implementation**

The 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* ("UNESCO Convention"), has been implemented in the United States by enactment of the *Convention on Cultural Property Implementation Act* ("Cultural Property Act"), 19 USC §§ 2601-2613, and the adoption of regulations at 19 CFR §§ 12.104-12.104i. Under the Cultural Property Act, the United States may enter into a bilateral agreement with another nation that has ratified, accepted, or acceded to the 1970 UNESCO Convention

(a "State Party") or multilateral agreements with other nations to restrict the importation of archeological or ethnological materials that are in jeopardy of pillage.

Under the Cultural Property Act and regulations, no archaeological or ethnological material **designated** pursuant to 19 USC §2604 **and listed** in 19 CFR §12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 USC §2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party. The designations may be pursuant to a bilateral or multi-lateral agreement or because of emergency action.

As of the date of publication, the U.S. had entered into agreements with State Parties imposing import restrictions on the designated cultural property listed in 19 CFR §12.104g and reproduced below:

<i>State Party</i>	<i>Designated Cultural Property</i>	<i>TD Number</i>
Bolivia	Archaeological and ethnological material	TD 01-86 Effective 12/07/01
Cambodia	Khmer stone archaeological material from Cambodia	TD 99-88 extended by CBP 03-28 Effective 12/02/99
Colombia	Archaeological Materials and Artifacts (1500 B.C. – A.D. 1530) and Ecclesiastical Ethnological Materials (A.D. 1530 – 1830)	CBP Dec. 06-09, Effective 3/17/2006
Cyprus	Archaeological material of pre-Classical and Classic periods ranging approximately from the 8th millennium B.C. to 330 A.D.	TD 02-37 Effective 07/19/02
El Salvador	Archaeological material representing Prehispanic cultures of El Salvador	TD 95-20 extended by CBP 05-10 Effective 03/08/95
Guatemala	Archaeological material from sites in the Peten lowlands of Guatemala, and related pre-Columbian material from the highlands and the southern coast of Guatemala	TD 91-34 Extended by TD 02-56 Effective 04/15/91
Italy	Archaeological material of pre-Classical, Classical, and Imperial Roman periods ranging approximately from the 9 <sup>th</sup> century BC to the 4 <sup>th</sup>	TD 01-06 Effective 01/23/01 Extended by CBP 06-01

	century AD	
Mali	Archaeological material from the Niger River Valley Region, Mali, and the Bandiagara Escarpment (Cliff) forming part of the remains of the sub-Sahara culture	TD 97-80 Extended by TD 02-55 Effective 09/19/97
Nicaragua	Archaeological material of pre-Columbian cultures ranging approximately from 8000 BC to 1500 AD	TD 00-75 Effective 10/26/00 Extended by CBP-05-33
Peru	Archaeological artifacts and ethnological material from Peru	TD 97-50 Extended by TD 02-30 Effective 06/11/97
Honduras	Archaeological artifacts ranging approximately from 1200 BC to 1500 AD	CBP 04-08 Effective 03/16/04

In addition, the following emergency actions imposing import restrictions had been imposed on the described cultural property of State Parties listed in 19 CFR §12.104g and reproduced below:

<i>State Party</i>	<i>Cultural Property</i>	<i>TD No.</i>
Cyprus	Byzantine ecclesiastical and ritual ethnological materials from Cyprus	TD 99-35 extended by CBP 03-25 Effective 04/12/99

In addition, no article of cultural property which was **documented as being part of the inventory** of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the UNESCO Convention for the State Party, whichever date is later, may be imported into the U.S.

The term, ***archaeological or ethnological material*** means--

- ◆ Any object of ***archaeological interest***. However, no object may be considered to be an object of archaeological interest unless such object--
  - Is of cultural significance;
  - Is at least 250 years old; and

- Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to the previous paragraphs;
- Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;
- ◆ Any object of ***ethnological interest***. However, no object may be considered to be an object of ethnological interest unless the object--
  - Is the product of a tribal or nonindustrial society, and
  - Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;
- ◆ Any fragment or part of any object referred to in paragraphs (1) or (2) above that was first discovered within, and is subject to export control by the State Party.

The term ***cultural property*** includes the following categories, whether or not any such article is specifically designated by any State Party:

- Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- Elements of artistic or historical monuments or archaeological sites which have been dismembered;
- Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;
- Objects of ethnological interest;
- Property of artistic interest, such as:
  - Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - Original works of statuary art and sculpture in any material;
  - Original engravings, prints and lithographs;
  - Original artistic assemblages and montages in any material;
- Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- Postage, revenue and similar stamps, singly or in collections;
- Archives, including sound, photographic and cinematographic archives;
- Articles of furniture more than 100 years old and old musical instruments.

Under the Cultural Property Act, the term ***museum*** means a public or private nonprofit agency or institution organized on a permanent basis for essentially

educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis.

The Cultural Property Act applies to the CBP Territory of the United States (the fifty states, District of Columbia and Puerto Rico), the U.S. Virgin Islands and any other territory or area the foreign relations for which the U.S. is responsible.

In order to import material that has been designated, one of the following must be presented at the time of entry:

- ◆ a certificate or other documentation issued by the government of the country of origin certifying that the exportation was not in violation of the laws of that country, or
- ◆ satisfactory evidence that the designated material was exported from the State Party not less than 10 years before the date of entry and neither the person for whose account the material was imported (or any related party) contracted for, or acquired an interest in the material more than one year before the date of entry, or
- ◆ satisfactory evidence that the designated material was exported from the State Party on or before the date that the material was designated under 19 USC §2604.

Detailed requirements may be found in the regulations, 19 CFR §12.104c.

If, at the time of entry, an importer cannot produce the documentary evidence to comply with the Cultural Property Act, the articles may be detained for 90 days (or longer, if authorized by CBP) to allow the importer to obtain the required documentation. If the certificate is not presented in the required time period, the articles may be seized and forfeited.

Articles of cultural property imported from any foreign country for temporary exhibition or display in not-for-profit cultural institutions within the United States may be protected by statute from civil and criminal seizure if certain requirements are satisfied prior to importation. [See: An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes ("Immunity from Seizure Act"), 22 USC § 2459 and 19 CFR § 12.104h(a)].

### **Other Stolen or Smuggled Property**

Cultural property and other articles, which were stolen, smuggled into the United States, or not declared to CBP are subject to seizure and forfeiture under the CBP and related laws (18 USC §545, 19 USC §§1497, 1595a) and the persons involved in such violations may be subject to civil and criminal penalties (18 USC §§545, 2314, 19 USC §§1497, 1595a).

## Other Antiques and Works of Art Restrictions

### I. CUBA

The Cuban Assets Control Regulations, 31 CFR Part 515, were issued by the U.S. Government on **July 8, 1963**, under the Trading with the Enemy Act, in response to certain hostile actions by the Cuban Government. They are still in force today and affect all U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the U.S. and all branches and subsidiaries of U.S. organizations throughout the world. The Regulations are administered by the U.S. Treasury Department's Office of Foreign Assets Control. The basic goal of the sanction is to isolate the Cuban Government economically and deprive it of U.S. dollars.

Goods or services of Cuban origin may not be imported into the U.S. either directly or through third countries, such as Canada or Mexico. The only exceptions are:

- \$100 worth of Cuban merchandise which may be brought into the U.S. as accompanied baggage by authorized travelers arriving from Cuba
- Publications, artwork and other informational material
- Merchandise other than tobacco or alcohol and not in commercial quantities carried as accompanied baggage by foreign persons legally entering the U.S.
- Merchandise for which a specific license has been received

The term information and informational material includes publications, films, posters, phonograph records, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks and news wire feeds. To be considered information or informational materials, artworks must be classified under Chapter subheading 9701, 9702 or 9703 of the HTSUS.

### II. IRAQ

On **August 2, 1990**, upon Iraq's invasion of Kuwait, President George H.W. Bush issued Executive Order No. 12722 declaring a national emergency with respect to Iraq. The International Emergency Economic Powers Act (50 USC § 1701), the National Emergencies Act (50 USC § 1601), and Section 301 of Title 3 of the U.S. Code, imposed economic sanctions, including a complete trade embargo, against Iraq. In keeping with United Nations Security Council Resolution 661 of August 6, 1990 and the United Nations Participation Act (22 USC § 287c), the President also issued Executive Order 12724 on August 9, 1990, which imposed additional restrictions.

The Treasury Department's Office of Foreign Assets Control (OFAC), following the United Nations Security Council's adoption of Resolution 1483 which substantially

lifted the multilateral sanctions with respect to Iraq, issued a General License, with an effective date of May 23, 2003, which was published in the Treasury Regulations as Section 575.533 (31 CFR 575.533). Transactions arising after May 23, 2003 are permitted with most state bodies, corporations or agencies of the former Iraqi regime. However, property that was blocked as of May 23, 2004 remains blocked.

Paragraph (b)(4) of the General License provides that the general license does not authorize transactions with respect to Iraqi cultural property or other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed from the Iraqi National Museum, the National Library and other locations in Iraq, since **August 6, 1990**. Any trade in or transfer of such items, including items with respect to which reasonable suspicion exists that they have been illegally removed, remains prohibited by subpart B of the Customs Regulations. The note to paragraph (b)(4) refers inquiries concerning particular Iraqi cultural property to the Cultural Property Office of the Department of State.

### III. IRAN

As a result of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, President Ronald Reagan, on October 29, 1987, used Executive Order 12613 to impose a new embargo in Iranian-origin goods and services.

On March 17, 2000, the Secretary of State announced that sanctions against Iran would be eased to allow U.S. persons to purchase and import carpets and food products such as dried fruits, nuts and caviar from Iran. This change was implemented through amendments to the Iranian Transactions Regulations at the end of April 2000.

Goods or services of Iranian origin may not be imported into the United States, either directly or through third countries, with the following exceptions:

- Gifts valued at \$100 or less
- Information and informational materials
- Foodstuffs intended for human consumption that are classified under chapters 2-23 of the HTSUS
- Carpets and other textile floor coverings and carpets used as wall hangings that are classified under chapter 57 or heading 9706.00.0060 of the HTSUS

#### IV. SUDAN

On **November 3, 1997**, after finding that the policies and actions of the Government of Sudan, including continued support for international terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations, including slavery and the denial of religious freedom, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, President William Clinton issued Executive Order No. 13067, declaring a national emergency to deal with the threat. The order imposed a trade embargo against Sudan and a total asset freeze against the Government of Sudan. The Sudanese Sanctions Regulations, 31 CFR Part 538 implement Executive Order No. 13067.

Goods or services of Sudanese origin may not be imported into the United States either directly or through third countries without a license, with the following exceptions:

- Sudanese merchandise up to \$100 in value in non-commercial quantities may be brought into the United States either for strictly personal use as accompanied baggage or sent as a gift to a person in the United States.
- Information and informational materials may be brought in without restriction.
- All other imports of Sudanese origin must be authorized by the Office of Foreign Assets Control.

Importation into the United States from third countries of goods containing raw materials or components of Sudanese origin is not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

#### V. BURMA

On May 20, 1997, in response to the Burmese Government's large-scale repression of and violence against the Democratic opposition, President William Clinton issued Executive Order No. 13047 declaring a national emergency with respect to Burma. On July 29, 2003, with an effective date of **August 28, 2003**, President George W. Bush expanded Executive Order No. 13047 and issued the Burmese Freedom and Democracy Act of 2003 prohibiting the importation into the United States of any article that is a product of Burma.

The Office of Foreign Assets Control issued General License No.9, effective August 28, 2003. It allows the importation of information and informational materials of Burmese origin.

## VI. MEXICO

The Treaty of Cooperation between the United States and Mexico was signed **March 24, 1971**. It provides for the recovery of stolen archaeological, historical and cultural properties. This treaty is in force only if the property in question is stolen and is the property of federal, state or municipal governments or their instrumentalities, including portions or fragments of such objects, artifacts and archives.

For the purposes of this Treaty, archaeological, historical and cultural properties are defined as:

- Art objects and artifacts of the pre-Columbian cultures of the United States of America and the United Mexican States of outstanding importance to the national patrimony, including stelae and architectural features such as relief and wall art
- Art objects and religious artifacts of the colonial periods of the United States of America and the United Mexican States of outstanding importance to the national patrimony
- Documents from official archives for the period up to 1920 that are of outstanding historical importance

## CHAPTER 97 HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (2006)

### WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES

#### Notes

1. This chapter does not cover:

(a) Unused postage or revenue stamps, postal stationery (stamped paper) or the like, of heading 4907;

(b) Theatrical scenery, studio backdrops or the like, of painted canvas (heading 5907) except if they may be classified in heading 9706; or

(c) Pearls, natural or cultured, or precious or semiprecious stones (headings 7101 to 7103).

2. For the purposes of heading 9702, the expression "original engravings, prints and lithographs" means impressions produced directly, in black and white or in color, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process.

3. Heading 9703 does not apply to mass-produced reproductions or works of conventional craftsmanship of a commercial character, even if these articles are designed or created by artists.

4. (a) Subject to notes 1 through 3 above, articles of this chapter are to be classified in this chapter and not in any other chapter of the tariff schedule.

(b) Heading 9706 does not apply to articles of the preceding headings of this chapter.

5. Frames around paintings, drawings, pastels, collages or similar decorative plaques, engravings, prints or lithographs are to be classified with those articles, provided they are of a kind and of a value normal to those articles. Frames which are not of a kind or of a value normal to the articles referred to in this note are to be classified separately.

#### Additional U.S. Notes

1. Heading 9703 covers not only original sculpture made by the sculptor, but also the first 12 castings, replicas or reproductions made from a sculptor's original work or model, by the sculptor himself or by another artist, with or without a change in scale and whether or not the sculptor is alive at the time the castings, replicas or reproductions are completed.

2. Whenever an article is entered for sale under heading 9706, and thereafter determined to be not over 100 years of age, a duty of 6.6 percent ad valorem for articles subject to column 1-general treatment, free of duty for goods originating in the territory of Canada or a duty of 25 percent ad valorem for articles subject to column 2 treatment shall be assessed thereon in addition to any other duty or penalty imposed on such article under the tariff schedule.

9701	Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand- painted or hand-decorated manufactured articles; collages and similar decorative plaques; all the foregoing framed or not framed:
9701.10.0000	Paintings, drawings and pastels
9701.90.0000	Other
9702.00.0000	Original engravings, prints and lithographs, framed or not framed
9703.00.0000	Original sculptures and statuary, in any material
9704.00.0000	Postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper) and the like, used or unused, other than those of heading 4907

9705.00.00	Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest
	Numismatic (collector's) coins:
30	Gold
60	Other
90	Other
9706.00.00	Antiques of an age exceeding one hundred years
20	Silverware
40	Furniture
60	Other

## **ADDITIONAL INFORMATION**

### **The Internet**

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

### **Customs Regulations**

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

### **Customs Bulletin**

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

## **Importing Into the United States**

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

## **Informed Compliance Publications**

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

## Value Publications

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

**“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA**



**Visit our Internet web site: <http://www.cbp.gov>**