DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 12–11]

RIN 1515–AD89

Extension of Import Restrictions Imposed on Archaeological and Ethnological Materials From Peru

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological and ethnological material from Peru. The restrictions, which were originally imposed by Treasury Decision (T.D.) 97–50 and last extended by CBP Dec. 07–27, are due to expire on June 9, 2012, unless extended. The Assistant Secretary for Educational and Cultural Affairs, United States 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 third extension. These restrictions are being extended pursuant to determinations of the State Department under the terms 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. T.D. 97–50 contains the Designated List of archaeological and ethnological materials that describes the articles to which the restrictions apply.


SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, 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 United States entered into a bilateral agreement with the Republic of Peru on June 9, 1997, concerning the imposition of import restrictions on pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru. On June 11, 1997, the former United States Customs Service published T.D. 97–50 in the Federal Register (62 FR 31713), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating the types of archaeological and ethnological materials covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) 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. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists” (19 CFR 12.104g(a)).

On June 6, 2002, the former United States Customs Service published T.D. 02–30 in the Federal Register (67 FR 38877), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until June 9, 2007.

On June 6, 2007, CBP published CBP Dec. 07–27 in the Federal Register (72 FR 31176), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years.

On November 11, 2011, the Department of State received a request by the Government of Peru to extend the Agreement. After the Department of State proposed to extend the Agreement and reviewed the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, State Department, determined that the cultural heritage of Peru continues to be in jeopardy from pillage of archaeological and certain ethnological materials and made the necessary determination to extend the import restrictions for an additional five-year period. Diplomatic notes were exchanged on May 10, 2012, reflecting the extension of those restrictions for an additional five year period. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological and Ethnological Material from Peru covered by these import restrictions is set forth in T.D. 97–50, see 62 FR 31713 dated June 11, 1997. The Designated List and accompanying image database may also be found at the following internet Web site address: http://exchanges.state.gov/heritage/culprop/pafact.html, under “III. Categories of Objects Subject to Import Restriction”, by clicking on “Designated List” and on “Peru section of the Image Database”.

It is noted that the materials identified in T.D. 97–50 as “certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from...
§ 12.104g [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 Peru by removing the reference to “CBP Dec. 07–27” and adding in its place “CBP Dec. 12–11” in the column headed “Decision No.”.

David V. Aguilar,  
Acting Commissioner, U.S. Customs and Border Protection.  
Approved: June 4, 2012.

Timothy E. Skud,  
Deputy Assistant Secretary of the Treasury.

This final rule addresses only the nonimmigrant alien visa issue. The remaining issues raised by the 2002 interim final rule, and the public comments submitted with respect to those issues, will be addressed in a separate forthcoming rule.

DATES: This rule is effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT:  

SUPPLEMENTARY INFORMATION:  
I. Background  
On October 21, 1998, Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (“the Act” or “the 1998 Act”). Among other things, that Act amended the Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44), to enact the provisions now codified in 18 U.S.C. 922(d)(5)(B) and 922(g)(5)(B). These provisions expanded the list of aliens subject to certain firearms and ammunition prohibitions by proscribing, with certain exceptions, the sale or disposition of firearms or ammunition to, and the possession, shipment, transportation, or receipt of firearms or ammunition by, aliens admitted to the United States under a nonimmigrant visa. These prohibitions became effective upon the date of enactment.

Section 101(a)(15) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15), describes various categories of nonimmigrant aliens, including, for example, diplomats, temporary visitors for business or pleasure, foreign students, participants in exchange programs, fiancé(e)s, and various categories of temporary workers in the United States. Not all nonimmigrant aliens admitted to the United States require a visa; for example, some nonimmigrant aliens may be admitted under the Visa Waiver Program (VWP). See 8 U.S.C. 1187.  
Section 922(g)(5)(A) of title 18 makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5)(A) makes it unlawful for any person to sell or