

Committee for Cultural Policy and Global Heritage Alliance¹
Written Testimony submitted to Cultural Property Advisory Committee, Bureau of
Educational and Cultural Affairs, U.S. Department of State, on the Request for Renewal of
the Memorandum of Understanding Between the United States of America and Bulgaria
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The Committee for Cultural Policy (CCP) is an educational and policy research organization that supports the preservation and public appreciation of art of ancient and indigenous cultures. CCP supports policies that enable the lawful collection, exhibition, and global circulation of artworks and preserve artifacts and archaeological sites through funding for site protection. We deplore the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. We defend uncensored academic research and urge funding for museum development around the world. We believe that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art from all cultures is the responsibility and duty of all humankind.

Global Heritage Alliance (GHA) advocates for policies that will restore balance in U.S. government policy in order to foster appreciation of ancient and indigenous cultures and the preservation of archaeological and ethnographic artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts, and promotes responsible collecting and stewardship of archaeological and ethnological objects.

The Committee for Cultural Policy and Global Heritage Alliance jointly submit this testimony on the renewal of the Memorandum of Understanding with Bulgaria.

The Proposed Renewal of the 2014 Memoranda of Understanding Between the US and Bulgaria

On January 14, 2014, the U.S. and Bulgaria signed the first Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bulgaria Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ecclesiastical Ethnological Material of the Republic of Bulgaria. This bilateral agreement imposed import restrictions on archaeological materials from within the current geographic/political borders of Bulgaria from Neolithic period (7500 B.C.) through approximately 1750 A. D., and the restricted ecclesiastical ethnological material represents Bulgaria's Middle Ages (681 A.D.) through approximately 1750 A.D. The agreement will expire on January 13, 2019.

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A Designated List² describing the object types covered by this agreement was published in the Federal Register by the Department of Homeland Security and the Department of the Treasury.

Reasons for Declining to Renew or Limiting Future Import Restrictions for Bulgaria

The Cultural Property Advisory Committee should decline to renew import restrictions under a U.S.-Bulgaria Memorandum of Understanding because Bulgaria fails to meet the four determinations required for an agreement.

In order to recommend renewal of the CPAC must make findings that the request satisfies all four requirements set forth in the statute.

(1) All restricted cultural patrimony must be threatened by pillage. Bulgaria has not demonstrated that the objects in the Designated List are in jeopardy of pillage.

The current MOU is not only overbroad, it is virtually all-inclusive. There is no showing that all the objects on the designated list are threatened by pillage. The Government of Bulgaria and Department of State have provided no information showing that the entire range of prehistoric and historical materials in Bulgaria are in jeopardy.

Given the scope of the 2014 Bulgarian Designated List, such a showing is hardly possible. The list includes virtually the entire cultural production of Bulgaria from the Neolithic period (7500 B.C.) through 1750 A. D. Such all-encompassing restrictions were never contemplated by Congress under the CPIA, and were explicitly rejected in Senate Committee discussions during its enactment. Congress intended that import restrictions apply to only “a narrow range of objects...”,³ not everything made within a 9000 year period. Bulgaria has never shown that this vast range of objects is threatened by pillage and therefore merits import restrictions.

When the CPIA was in the process of enactment, members of the Senate Committee also stated that it did not intend import controls to extend to trinkets or to other objects that are common or repetitive or essentially alike in material, design, color or other outstanding characteristics with other objects of the same type....”⁴

The Bulgarian Designated List clearly includes great numbers of “objects that are common or repetitive or essentially alike” and do not have “outstanding characteristics.” Mass-produces,

² Import Restrictions Imposed on Certain Archaeological and Ecclesiastical Ethnological Material From Bulgaria, 19 CFR Part 12 [CBP Dec. 14-01], 1/15/2014, <https://eca.state.gov/files/bureau/bg2014dlfrn.pdf>

³ Senate Report No. 564, 97th Cong., 2nd Sess. (1982), p. 4, <https://eca.state.gov/files/bureau/97-564.pdf>

⁴ Ibid., 5.

identical coins fall into the “common, repetitive” category by definition. So do “necklaces and beads” through 1750, seals, undecorated ceramic plain wares and utilitarian wares, needles, awls, chisels, axes, hoes, picks, and harpoons. So does anything “written on parchment.” The Designated List is a laundry list of everything old from Bulgaria, not outstanding objects of cultural patrimony. At the least it should be reduced to a small fraction of what it now covers, in order to conform with the statute.

Bulgaria’s 2009 Law on Cultural Heritage⁵ amended 2013, provides that “The Ministry of Culture shall create and keep a register of the movable cultural valuables having acquired a status of national treasury.” A “national treasury” status sounds more appropriate for restriction than the repetitive items listed above, yet the current U.S.-Bulgarian MOU draws no distinction.

This 2009 law has clearly not been implemented within Bulgaria. Among its registrations requirements was one requiring Bulgarian collectors (including coin collectors) to register. Stated one Bulgarian numismatist:

“Of the some 50,000 coin collectors in this country (enlisted in the early 1990s at the numismatic clubs), only around 150-200 collections were de facto declared by this law. The rest simply vanished, buried in bank safes, hidden in the ground, etc. The owners just did not want to bother.”⁶

Bulgaria has a rich cultural history. Its museums possess significant numbers of artworks of global significance. Its many metal detectorists also have dug up hundreds of thousands of duplicative items of little or no commercial or historical value, and its unguarded archaeological sites are very vulnerable to their depredations. Nonetheless, Bulgarian authorities’ very occasional raids and highly touted seizures – especially when 99% of what is seized is of little or no value, or fake – does not establish that there is a significant market, even locally. What it shows is that there are a great number of ancient and antique sites within Bulgaria that are not being monitored or protected.

(2) The self-help requirement – Bulgaria has not taken measures to protect its cultural patrimony.

Despite its citizens’ reluctance to register their collections, Bulgaria allows private ownership and inheritance of antiquities of the same types of objects that are restricted from U.S. import.

⁵ Law on Cultural Heritage (Apr. 10, 2009, as amended July 2013), Article 102(1).

[http://www.ifar.org/upload/PDFLink53443ff64d2b7Bulgaria%20-%20CHA%20am.%20July%202013%20\(eng\)%20WMK.pdf?seccode=unsecpdf](http://www.ifar.org/upload/PDFLink53443ff64d2b7Bulgaria%20-%20CHA%20am.%20July%202013%20(eng)%20WMK.pdf?seccode=unsecpdf)

⁶ Mark Fox, *Bulgaria Seeks Import Restrictions*, Numismatic News, October 31, 2011, <http://www.numismaster.com/ta/numis/Article.jsp?ad=article&ArticleId=24311>

There is nothing wrong with allowing domestic collecting of historical materials, so long as archaeological sites are not being destroyed in order to obtain them. There is something very wrong with prohibiting U.S. citizens from acquiring the same type of objects that circulate in Bulgaria's domestic markets.

Although the same 2009 Law on Cultural Heritage requires government and institutionally-held antiquities or ecclesiastical holdings to be inventoried and accounted for, the Bulgarian government seriously underfunds cultural institutions so that despite the best efforts of dedicated museum and institutional personnel, they are unable to modernize records or track inventory museum and institutional holdings to European standards. Minor and local museums are particularly vulnerable to underfunding. See, for example, Novinite.com, *Bulgaria's Cultural Sector Workers to Protest Against Insufficient Funding*, November 24, 2015.

“Workers at museums, galleries and municipal libraries will stage protests across Bulgaria on Tuesday against the insufficient funding allocated to the cultural sector. They will protest against the systematic underfunding of the cultural heritage and the inadequate remuneration of employees in the cultural sector... The protesters will be supported by the officials of the National Library, who have scheduled their own demonstration... Out of 3000 people working in the cultural sector, more than 2200 have confirmed their participation in the protests.”⁷

The Bulgarian government has failed to organize, administer, or fund care for hundreds of known archaeological sites across the country, effectively abandoning them to unpaid or underpaid site guards and locals, who do their best to make sites accessible to tourists, but who do not have the tools or manpower to protect them. In most cases, Bulgaria has not installed even the most basic security tools such as cameras at sites to protect them from vandalism, and petty looting. From the website of the Bulgarian Archaeological Association, Krassimira Luka wrote in February 2016:

“In the last few years Bulgarian government completely lost control on spending of EU Funds and the corruption in fact has destroyed Bulgarian heritage and historical legacy! The NGOs have been fighting for years to stop fake rebuilds of historical places (representative for Bulgarian history), which violate not only Bulgarian but also European and international standards. This report presents the most shocking stage of this process where "fake" is the project itself! One and half million BGN were spent [t] ... given by the Bulgarian taxpayer! Money for nothing...”⁸

⁷ Novinite.com, *Bulgaria's Cultural Sector Workers to Protest Against Insufficient Funding*, November 24, 2015, <https://www.novinite.com/articles/171941/Bulgaria%27s+Cultural+Sector+Workers+to+Protest+Against+Insufficient+Funding>.

⁸ Krassimira Luka, *Ratiaria – Money for Nothing*, February 2016, Bulgarian Archaeological Association, <http://www.archaeology.archbg.net/>.

Bulgaria has not only failed to take the self-help measures required under the statute. It appears to be allowing archaeological sites to fall further and further into a state of neglect. Congress was adamant that CPAC should assess self-help measures as part of the MOU renewal process. The House Committee on Appropriation recently reported as follows:

“Cultural Property.--The Cultural Properties Implementation Act (CPIA) requires countries participating in MOUs restricting cultural property take significant self-help measures. The Committee urges the Cultural Property Advisory Committee to consider the annual national expenditures on securing and inventorying cultural sites and museums in its annual reviews of the effectiveness of MOUs, as well as during the reviews required by the CPIA for extension of an MOU. The Committee also requests the Secretary of State review the feasibility of collecting and reporting on the cost of measures taken by partner countries in support of their cultural property MOU with the United States and be prepared to report on such review during the hearing process on the fiscal year 2019 budget request.”

House Report 115-253 at 11.

The Cultural Property Advisory Committee should insist on updated information on the effectiveness of measures for protection at Bulgaria’s archaeological sites to determine where and why Bulgaria has gone wrong, not only having failed to meet its obligations under Article II to work harder to protect sites and monuments, but having actually allowed them to deteriorate while government officials are alleged to have absconded with the funded granted by foreign entities and their own citizens to repair them

(3) The request does not meet the requirement that application of the requested import restriction if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by nations with a significant import trade in the designated objects, would be of substantial benefit in deterring a serious situation of pillage, or establish that other, less drastic remedies are not available.

Bulgaria is signatory to a variety of international instruments.⁹ None of these constitute similar restrictions with market nations under the CPIA.

⁹ 1954 UNESCO Convention (Hague Convention) entered into force 8 Oct. 1956, 1954 Protocol (First Protocol) to the 1954 UNESCO Convention (Hague Convention) entered into force 9 Jan. 1959, 1999 Protocol (Second Protocol) to the 1954 UNESCO Convention (Hague Convention) entered into force 14 Sept. 2000, 1970 UNESCO Convention entered into force 15 Dec. 1971, 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage entered into force 6 January 2004, Council Regulation (EC) No 116/2009 of 18 December 2008 on the Export of Cultural Goods [European Union] entered into force 2 March 2009, Council Directive 93/7/EEC of 15 March 1993 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State [European Union], Council Directive 93/7/EEC as *Returning of Unlawfully Removed Movable Cultural Monuments Classified as National Treasures from the Territory of a Member* (SG 21/06), entered into force 12 July 2006,

Section 2602(2)(c) of the CPIA explicitly denies the President the authority to enter into an import limitation without a showing that other major market nations have enacted similar restrictions. A concerted international response to pillage is required, or implementing U.S. agreements simply pushes art and artifacts around the world

However, the largest market for Bulgarian antiques and ethnological art and for ancient and antique coins of the types minted in Bulgaria is right next door, in the mostly-free trade zone of the European Union. How can Bulgaria meet the requirement that other market nations have similar restrictions, when goods can travel without inspection across borders to a major market, the EU, and when the same goods are traded there? Since Bulgaria is a EU member, with minimal or no restrictions on transfers to and trade with the European Union, these Bulgarian items also circulate in open markets in the European Union, yet U.S. citizens cannot acquire them.

(4) The request does not meet the criteria that the application of the import restrictions is consistent with the general interest of the international community in the interchange of cultural property.

Historically the question of the general interest in the interchange of cultural property is dealt with by CPAC by counting the number of museum exhibitions and loans to the United States. While this kind of an answer actually does not address the question of how the “general interest of the international community” can or should be defined, it at least establishes a yardstick for relative access.

CCP was unable to locate a single traveling exhibition from Bulgaria to the U.S. during the five years of the U.S.-Bulgarian MOU. The Bulgarian request fails here also.

Import Restrictions Discriminate Against American Collectors and Small Businesses

Practically the only type of antiquity from the region of Bulgaria that is widely collected outside its borders is its ancient coinage. Coins of Bulgarian type circulated very widely in ancient and medieval times throughout the Mediterranean, through ancient lands now forming the Eastern European nations, and eastward into Asia Minor. Hoards of coins of Bulgarian type have been found in present day Iraq, Iran, Romania, the Ukraine, and Turkey. Coins are by their nature mass-produced; individually, they are not of cultural significance and they may not be restricted under any plain reading of the statute. 26 U.S.C. §2601(2).

entered into force 11 April 1969, Council Regulation (EU) No 1332/2013 of 13 December 2013, entered into force 15 December 2013; amends Regulation (EU) No 36/2012, 19 January 2012.

Because this coinage circulated so widely, there is no reason to assume that coins of Bulgarian type, which are imported into the U.S., were actually discovered in Bulgaria. Simply because a coin is of Bulgarian type does not show that it meets the criteria for import restrictions under the statute. 26 U.S.C. §2601(2)(c). In fact, although Bulgarian coins traveled very widely in ancient times, the majority were circulated in the regions now comprising the EU.

Millions of coins are in circulation; they are of relatively low value, and because coin types were made and copied again and again, they cannot be deemed to have “cultural significance.” Very few coins have documentation; records that would demonstrate provenance satisfactory to U.S. Customs have not traditionally been kept. U.S. Customs and Border Protection will now seize and repatriate coins of Bulgarian type to Bulgaria, regardless of where they are imported from.

The same coins of Bulgarian type coins are widely traded today, without restriction, in the European Union. U.S. import restrictions on Bulgarian coins will punish the thousands of legitimate American coin businesses and the many tens of thousands of collectors that they supply. This makes no sense.

No Meaningful Basis for Review

The Government of Bulgaria and Department of State have provided no information to the public supporting the request for renewal or providing evidence of Bulgaria’ compliance with its undertakings under Article II of the 2014 agreement.

The failure of the Government of Bulgaria or the State Department to present facts supporting the renewal of the 2014 Bulgarian MOU to the public, is a striking example of the deliberate elimination of the ability of the public to comment of the merits of the proposed renewal. The State Department has not even provided a cursory public summary of a request for renewal, much less an analysis showing actions by Bulgaria to comply with the requirements of the law. Yet there are statutory requirements that must be met for any request or renewal, since the provisions of the CPIA require both an interim and 5-year review by the CPAC to determine whether there is a cause for suspension of the agreement under Section 2602(d) of the CPIA. Without access to a report on Bulgaria’s compliance with its undertakings under Article II, the public cannot know whether the obligations under the agreement have been met. This proposed renewal continues the pattern of complete secrecy that effectively denies the public the ability to respond fully to the proposed renewal.

The State Department’s failure to inform the public is not new. As Jay Kislak, CPAC Chairman from 2003 to 2008, has stated:

“During my tenure as Chairman of CPAC, I became concerned about the secretive operations of the Cultural Heritage Center and its lack of transparency in processing requests for import restrictions made on behalf of foreign states. I believe this lack of transparency has hampered the ability of museums, private parties and others to make useful presentations to CPAC. I also believe that this lack of transparency has also hampered the ability of CPAC to provide recommendations to the executive branch about the best way to balance efforts to control looting at archeological sites against the legitimate international exchange of cultural artifacts.

Declaration of Jay I. Kislak, dated April 20, 2009; Ancient Coin Collectors Guild v. U.S. Department of State, Civ. Act 07-72074 (RSL) U.S. District Court for the District of Columbia (“Kislak Declaration”).

No Showing That Bulgaria Has Met Its Commitments under Article II of the 2014 MOU

Article II of the 2014 Bulgarian MOU included requirements that Bulgaria:

1. Continue its efforts to register and identify cultural property
2. Document, track, and publicize incidents of theft and looting
3. Gather statistics on the number of export permits issued both temporary and permanent and ensure that the process for applying for such permits for export is accessible and clear
4. Expand educational outreach into schools and to the public
5. Strengthen enforcing its cultural heritage protection laws, particularly by implementing administrative and punitive measure against the unauthorized use of metal detectors
6. Encourage its museums to lend archaeological and ethnological materials of the types covered by the MOU to U.S. museums and institutions.

The State Department has provided no meaningful basis for review by the Committee – or by Congress, or in order for the public to comment - of whether Bulgaria has complied with provisions of Article II.

Recommendations

Based upon the facts as outlined above, the Committee for Cultural Policy and Global Heritage Alliance find that the current MOU fails to meet the criteria set forth in the implementing statute. We do not believe that can be legally renewed under its current terms.

If renewed, any MOU should be limited in scope to materials legally allowed to be included under the CPIA. Bulgaria should be held accountable to reasonable benchmarks set by Congress when it mandated self-help measures. Under no circumstances should restrictions be applied to items that are neither archaeological nor ethnological in character according to the standards set in the statute and elucidated by the Senate in its deliberations.

Self-help measures by source countries, especially source countries with a history of lax domestic enforcement and corruption such as Bulgaria, can only be effective through rigorous police enforcement and adequate funding to protect archaeological sites, by education of the Bulgarian public, and by redirecting the thousands of metal detectorists in Bulgaria into more positive avenues for discovery.

If the Bulgarian MOU is renewed, one positive approach would be to amend Article II to require the Government of Bulgaria to provide fair compensation for chance finds, through instituting a program of rewards for reporting the location of archaeological finds and the payment of archaeological workers by the government to properly excavate them.

The Cultural Property Advisory Committee knows full well that import restrictions for any specific country under the Act were never intended to be a permanent fixture of the United States' customs laws. The Cultural Property Implementation Act instead recognizes the benefits of temporary import restrictions to ameliorate a serious problem of pillage in particular types and periods of objects.

The only justification for limiting the US market for archaeological materials is to give source countries the opportunity to build their own enforcement capacity, pass legislation, build museums and institutions of historical learning, and educate its people to appreciate the social benefits of preserving and honoring its past. We believe that CPAC cannot legitimately find that the Bulgarian government has made strides in any of these areas as a result of the MOU. The Bulgarian experiment has run its fruitless course. Other means of assisting Bulgarian cultural development and helping to support its many learned academics and hardworking archaeologists should be found - without damaging the US interest in the circulation of art.