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**Comments Regarding Reducing Regulation and Controlling Regulatory Costs
Docket Number USCBP-2017-0035
December 1, 2017**

The Global Heritage Alliance (“GHA”) makes these comments on behalf of itself and the Committee for Cultural Policy (“CCP”), a sister organization. GHA¹ is an advocacy organization representing the interests of collectors, museums and the trade in archaeological and ethnological objects. CCP² acts as a think tank that studies cultural property issues from the same pro-museum, pro-collecting focus. Without collectors, there would be no museums. Without museums, there would be no focal point for the preservation and display of archaeological and ethnological objects, and the appreciation of other cultures that comes with it.

Consistent with the goals of this regulatory cost reduction initiative, GHA respectfully requests that U.S. Customs and Border Protection (“CBP”) review how regulations imposing import restrictions on cultural goods have been misapplied as retroactive embargos on all cultural objects made by an ancient culture associated with a modern nation state rather than as focused, prospective import restrictions consistent with the terms of the Convention on Cultural Property Implementation Act (“CPIA”), 19 U.S.C. § 2601 *et seq.* Moreover, GHA would also request CBP to update its regulations to account for legal exports of historical artifacts from the European Union (“E.U.”) under regulations adopted after the CPIA became law.

A. The burden of proof set by Congress should be honored.

Specifically, GHA writes to express concerns about how CBP enforces the CPIA. Requiring the government to prove the elements of its case under the preponderance of the evidence standard applicable to civil forfeitures provides property owners with protection from government seizure of property whose origin is unknown. Given the hundreds of thousands, if not millions, of archaeological and ethnological items of “designated types” on the international market that are not in violation of the CPIA, but lack documentation, this is a significant protection to collectors and small businesses that deal in cultural artifacts.

¹ For more about GHA, see its website, <http://global-heritage.org/>

² For more about CCP, see its website, <https://committeeforculturalpolicy.org/>

However, current enforcement of the CPIA, should raise red flags. The CPIA only authorizes the imposition of import restrictions on “designated” archaeological and ethnographic objects illegally removed from their country of “first discovery” after the effective date of the restrictions. 19 U.S.C. § 2606. The CPIA explicitly places the burden of proof on the government to make out each of these elements. 19 U.S.C. § 2610. Unfortunately, despite the CPIA’s plain meaning, implementing regulations place the burden of proof on the importer, not the government, to prove the negative, i.e., that the object was exported from its country of first discovery before the date import restrictions were imposed. Given the modest value of most imported cultural goods and the high cost of legal services, in practice this usually means that the importer defaults and the government is able to forfeit the property without a fight. The implementing regulations thus make it easy for the government to prevail over collectors and small businesses, wrongfully denying them the protections Congress intended and miring them in red tape if they try to import items legally, which requires documentation that frequently does not exist, particularly for items of limited value.

In order to address this imbalance, GHA requests CBP to modify 19 C.F.R. § 12.104 (a) to ensure that all CPIP restrictions only apply to artifacts “first discovered within” and hence subject to the “export control” of a specific country for which restrictions are provided. GHA also requests that CBP prepare a guidance that confirms that CBP officers must have probable cause on all elements of the CPIA before property may be seized. Only items proven to have been illicitly exported from their country of first discovery after the date they are restricted should be subject to seizure and forfeiture.

B. Lawful trade with the EU should be facilitated.

There is another area where CBP could take a simple action that would eliminate much heartache for collectors. CPIA import restrictions only apply to cultural goods subject to the export control of a particular country. 19 U.S.C. § 2601 (2). However, CBP has failed to acknowledge that E.U. member countries are part of a common market that allows for the export of archaeological and ethnological objects with or without a license according to the local law of the exporting EU member. Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods. Allowing entry of objects legally exported from the E.U. that are found on “designated lists” for EU member countries like Bulgaria, Cyprus, Greece and Italy would greatly facilitate lawful trade in a situation that could not have been specifically contemplated by the CPIA, which predates the E.U.’s export control rules.

Thank you for consideration of our comments.