



Homeland Security Investigations

Cultural Property, Art, and Antiquities Investigations Handbook

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U.S. Immigration
and Customs
Enforcement

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Foreword

The Cultural Property, Art, and Antiquities (CPAA) Investigations Handbook provides a single source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents when investigating the smuggling of illicitly trafficked CPAAs. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency among all HSI field offices. Oversight over the CPAA Investigations Program resides with the Unit Chief, Multilateral Operations Unit, HSI Office of International Affairs (OIA).

This Handbook supersedes U.S. Customs Service Directive 5230-015, entitled, "Detention and Seizure of Cultural Property," dated April 18, 1991, and all other policies or other documents on CPAA investigations issued before the date of this Handbook by the former U.S. Customs Service, the former U.S. Immigration and Naturalization Service, the former ICE Offices of Investigations, Intelligence, or International Affairs, or by ICE HSI.

The CPAA Investigations Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any private person, party, or entity, or any foreign nation or foreign government, in any administrative, civil, or criminal matter. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit and the appropriate ICE Office of the Chief Counsel and/or U.S. Attorney are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, 5 U.S.C. § 552(b), and protected from disclosure pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the HSI Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit, which will coordinate all revisions with the Multilateral Operations Unit in HSI OIA.



James A. Dinkins
Executive Associate Director
Homeland Security Investigations

11/8/13
Date

CULTURAL PROPERTY, ART, AND ANTIQUITIES INVESTIGATIONS HANDBOOK

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CULTURAL PROPERTY, ART, AND ANTIQUITIES INVESTIGATIONS HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The Cultural Property, Art, and Antiquities (CPAA) Investigations Handbook establishes policies and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) when investigating the illicit importation, exportation, or trafficking of CPAAs.

Chapter 2. INTRODUCTION

Despite increasingly aggressive efforts of many countries to prevent the theft of CPAAs representing their cultural heritage, the illicit movement of such items across international borders continues to challenge the best efforts of the nations of the world to reduce the trafficking of such property. The plundering of cultural property is one of the oldest forms of organized cross-border crime and has become a world-wide phenomenon that transcends frontiers. Federal criminal and civil laws support HSI's leading role in investigating crimes involving the illicit importation, exportation, and trafficking of CPAAs.

On November 14, 1970, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970 UNESCO Convention). The 1970 UNESCO Convention resulted from a growing international concern that high demand for cultural objects in the art market had generated rampant pillaging of archaeological and ethnological materials, particularly in countries with few resources to protect their cultural heritage. In 1972, the United States Senate gave its unanimous advice and consent to ratify the 1970 UNESCO Convention subject to a reservation and certain understandings. The Convention on Cultural Property Implementation Act (CPIA), Pub. L. 97-446, was passed by Congress in December 1982 and signed into law by the President on January 12, 1983. The CPIA is codified at Title 19, United States Code (U.S.C.), Section 2601 *et seq.*

As discussed throughout this Handbook, CPAA investigations may involve a broad array of merchandise. The CPIA only applies to specific importation violations, and is only one of several legal authorities that may apply in a CPAA investigation. In many cases, the CPIA will not be specifically applicable to the facts and evidence. Therefore, SAs should be familiar with the scope and breadth of the other laws referenced in this Handbook that may be applicable and controlling in a particular CPAA investigation.

Chapter 3. DEFINITIONS

The following definitions are provided for the purposes of this Handbook:

3.1 Archaeological Material

For the purposes of coverage under the CPIA, archeological material means any object, fragment, or piece of archaeological interest to a State Party to the 1970 UNESCO Convention which was first discovered within, and is subject to export control by, that country. To qualify as archaeological material, the object must be of cultural significance, at least 250 years old, and normally discovered as part of scientific excavation, clandestine or accidental digging, or exploration on land or under water. *See* 19 U.S.C. § 2601(2) and Title 19, Code of Federal Regulations (C.F.R.), Section 12.104(a). Archaeological material may include tools, vessels, weapons, jewelry, textiles, furniture, etc., made in a variety of materials, including stone, pottery, metal, fabric, and wood. Such archaeological material may include elaborate materials and everyday objects.

3.2 Archaeological Resource

For the purposes of the Archaeological Resources Protection Act (ARPA) of 1979, 16 U.S.C. § 470aa *et seq.*, the term “archeological resource” means any material remains of past human life or activities that are of archaeological interest. This includes items such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of these items. Fossilized and non-fossilized paleontological specimens, or any portion or piece thereof, are not considered archaeological resources unless found in an archaeological context. (Note: For the purposes of ARPA, no item is treated as an archaeological resource unless such item is at least 100 years of age.)

3.3 Artifact

An artifact generally refers to any object that has been used, modified, or produced by humans. Examples include tools, vessels, weapons, jewelry, clothing, furniture, ritual objects, etc., made in a variety of materials, including stone, pottery, metal, fabric, and wood, whether for everyday or specialized use or simply for enjoyment.

3.4 Conservator

A conservator is a professional who works on the preservation of objects. The work of a conservator involves determining the structural stability of an object, addressing problems of chemical and physical deterioration, and performing corrective treatment based on an evaluation of the aesthetic, historic, and scientific characteristics of the object.

3.5 Context

Context is the exact location where an object and materials associated with the object, including architectural remains, faunal and floral remains, and other objects, are found. The information recovered from this context tells the object's full story, history, and meaning. By means of careful study of these contexts and their contents, experts understand the scientific significance of the object and the stories that belong to it.

3.6 Cultural Property

For the purposes of the CPIA, cultural property includes any articles described under Article 1 of the 1970 UNESCO Convention which a State Party has specifically designated as being important to archaeology, prehistory, history, literature, art, or science. Examples include rare collections of animals, plants, and minerals; property relating to military, scientific, and social history; pieces of destroyed monuments; pictures, paintings, and drawings; original statues and sculpture; rare manuscripts; etc. A full list of these objects may be found under 19 C.F.R. § 12.104(c). (Note: 19 U.S.C. § 2607 (theft from certain institutions) applies to cultural property, whereas 19 U.S.C. § 2606 (import violations) applies to the more narrowly-defined merchandise qualifying as archaeological or ethnological materials.)

3.7 Curator of a Cultural Institution

A curator of a cultural institution (*e.g.*, archive, gallery, library, museum, or garden) is a content specialist responsible for an institution's collections and, together with a publications specialist, the institution's associated collections catalogs.

3.8 Designated Archaeological or Ethnological Material

For the purposes of the CPIA, the term "Designated Archaeological or Ethnological Material" includes any archaeological or ethnological material which is: (1) covered by an agreement with the United States (*i.e.*, through a Memorandum of Understanding or bilateral agreement); or (2) subject to emergency import restrictions pursuant to 19 U.S.C. § 2603. Specific items subject to designation and import restrictions under 19 U.S.C. § 2606 are described by 19 C.F.R. §§ 12.104g and 12.104j and are published by U.S. Customs and Border Protection (CBP) in the *Federal Register*.

3.9 Documented Cultural Property

Documented cultural property constitutes property appertaining to the inventory of a museum, religious or secular monument, or similar institution in a State Party. Such objects are generally known and recorded as part of a collection before theft or illegal removal. Only documented cultural property is subject to protection under 19 U.S.C. § 2607.

3.10 Ethnological Material

Like archaeological material, ethnological material covered by the CPIA means any object, fragment, or piece of archaeological interest to a State Party to the 1970 UNESCO Convention which was first discovered within, and is subject to export control by, that State Party. To qualify as ethnological material, the object must be: (1) the product of a tribal or nonindustrial society; and (2) 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. *See* 19 U.S.C. § 2601(2) and 19 C.F.R. § 12.104(a). Examples may include, but are not limited to, tribal masks, spears, baskets, and ecclesiastical materials such as sculptures and paintings from Byzantine or Spanish colonial period churches.

3.11 Hold Harmless Agreement

The Hold Harmless Agreement (see Appendix A) is essentially a “contract” between the foreign country asserting ownership over merchandise and the United States. In consideration for receiving the merchandise, the foreign country agrees to release any of its claims against the United States and to indemnify the United States against any claims raised by a third party.

3.12 Immovable Object

An immovable object is an object that cannot be moved from one place to another (*i.e.*, monuments of architecture, art, or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest).

3.13 Looting

Looting is the unauthorized, undocumented digging and removal of cultural property from a historical site. (Note: Looting destroys the integrity of context and thus eliminates most sources of information about the past.)

3.14 Movable Object

A movable object is a cultural object that can be moved from one place to another (*i.e.*, works of art and manuscripts, books, and other objects of artistic, historical, or archaeological interest, as well as scientific collections and important collections of books or archives).

3.15 National Ownership Laws

National ownership laws define which categories of cultural property are owned by the State. Access to sites, structures, and objects also may be controlled by such laws. A national ownership law may be different from an export control and exists in addition to

such a control. While national ownership laws are important in the context of determining who has legal right to the property, U.S. law governs whether a violation has occurred.

3.16 Object

An object is a general term that refers to a discrete, portable item (*e.g.*, a ceramic pot), or a component removed from an immovable entity, such as a building, monument, or cave site, that was intended to be a permanent part of it (*e.g.*, a mural or sculptural fragment).

3.17 Pre-Columbian Monumental or Architectural Sculpture or Mural

For the purposes of the import restrictions covered by 19 U.S.C. § 2091 *et seq.*, by statute the term “Pre-Columbian Monumental or Architectural Sculpture or Mural” includes any stone carving or wall art (or fragments or parts) which is subject to export control by the country of origin and which is the product of a pre-Columbian Indian culture of Mexico, Central America, South America, or the Caribbean Islands. *See* 19 U.S.C. § 2095(3). By regulation, this term includes any stone carving or wall art which is the product of a pre-Columbian Indian culture of Belize, Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela. The term “stone carving or wall art” is defined in 19 C.F.R. § 12.105(b). Artifacts are rarely implicated by this definition, which mainly encompasses stone monuments, structures, or items that were affixed to monuments or structures. It does not apply to routine pieces of pottery, sculptures, figurines, tools, etc.

3.18 Provenance

The provenance of an object is its history and ownership. Knowing the provenance can assist with determining if a violation has occurred and who the violators may be.

3.19 Provenience

The provenience of an object is its original find-spot, which can determine country of origin, date of discovery, and applicable ownership laws that may apply.

3.20 Recent History of an Artifact

The recent history of an artifact is the information we have about its context and current location. This information ideally includes the excavation notes and maps, the identification number from the excavation, all conservation history, photographs and/or drawings, the inventory number from the storage institution (*e.g.*, museum, university, etc.), and all past institutions where the artifact has resided. Information on all publications and sales, if applicable, should also be included.

3.21 Satisfactory Evidence

To demonstrate that “designated archaeological or ethnological material” is legally imported into the United States and exempt from seizure, the importer of record (and certain other parties) may provide “satisfactory evidence” to the CBP Port Director upon entry of the merchandise. “Satisfactory evidence” is provided in lieu of an actual export certification or similar documentation. (Note: For a full list of what qualifies as “satisfactory evidence,” for the purposes of suspected CPIA/19 U.S.C. § 2606 import violations, *see* 19 U.S.C. § 2606(c) and 19 C.F.R. § 12.104c(d); and, for the purposes of suspected violations involving pre-Columbian monumental or architectural sculpture or murals, *see* 19 U.S.C. § 2092(b) and 19 C.F.R. § 12.107). The “satisfactory evidence” standard only applies if HSI is investigating whether merchandise was imported in violation of 19 U.S.C. § 2606, or 19 U.S.C. § 2091 *et seq.*

3.22 State Party

A State Party is any country that has ratified, accepted, or acceded to the 1970 UNESCO Convention.

3.23 Subject Matter Expert

A subject matter expert is an individual (academic, historian, etc.) with extensive knowledge and skill in a particular subject matter who can help identify an object and assess its authenticity through the analysis of style, materials, method of manufacture, condition, and/or age.

When an expert examines an archaeological object, he or she aims to identify its likely cultural and geographical source, and determine whether it is what it appears to be.

3.24 Undocumented Artifact

An undocumented artifact is an artifact not known and not recorded before its theft or illegal removal, including looting from the ground, and is typically first known when it appears on the market.

3.25 Undocumented Object

An object that is not recorded before theft or illegal removal is considered an undocumented object. It is considered looted once it is illegally removed (*e.g.*, an artifact dug up clandestinely in an archaeological site).

Chapter 4. AUTHORITIES/REFERENCES

4.1 Authorities

- A. 16 U.S.C. § 470aa *et seq.*, Archeological Resources Protection Act
- B. 18 U.S.C. § 371, “Conspiracy”
- C. 18 U.S.C. § 541, “Entry of Goods Falsely Classified”
- D. 18 U.S.C. § 542, “Entry of Goods by Means of False Statements”
- E. 18 U.S.C. § 554, “Smuggling Goods from the United States”
- F. 18 U.S.C. § 545, “Smuggling Goods into the United States”
- G. 18 U.S.C. § 982, “Criminal Forfeiture”
- H. 18 U.S.C. § 1001, “[False] Statements or Entries Generally”
- I. 18 U.S.C. § 1956, “Laundering of Monetary Instruments”
- J. 18 U.S.C. § 1957, “Engaging in a Monetary Transactions in Property Derived from Specified Unlawful Activity”
- K. 18 U.S.C. § 2314, National Stolen Property Act (NSPA), “Transportation of Stolen Goods, Securities, Moneys, Fraudulent State Tax Stamps, or Articles Used in Counterfeiting”
- L. 18 U.S.C. § 2315, NSPA, “Sale or Receipt of Stolen Goods, Securities, Moneys, or Fraudulent State Tax Stamps
- M. 19 U.S.C. § 1484, “Entry of Merchandise”
- N. 19 U.S.C. § 1485, “Declaration”
- O. 19 U.S.C. § 1497, “Penalties for Failure to Declare”
- P. 19 U.S.C. § 1499, “Examination of Merchandise”
- Q. 19 U.S.C. § 1595a, “Forfeitures and Other Penalties”
- R. 19 U.S.C. § 1607, “Seizure; Value \$500,000 or Less, Prohibited Articles, Transporting Conveyances”

- S. 19 U.S.C. § 1609, “Seizure; Summary Forfeiture and Sale”
- T. 19 U.S.C. § 2091 *et seq.*, “Pre-Columbian Monumental or Architectural Sculpture or Murals”
- U. 19 U.S.C. § 2601 *et seq.*, “Cultural Property Implementation Act”
- V. 22 U.S.C. § 2459, “Immunity from Seizure Under Judicial Process of Cultural Objects Imported for Temporary Exhibition or Display”
- W. Native American Graves Protection and Repatriation Act, P.L. 101-601 (Nov. 16, 1990), codified at 25 U.S.C. § 3001 *et seq.*
- X. 19 C.F.R. § 12.104 *et seq.*, Regulations implementing the Cultural Property Implementation Act
- Y. 19 C.F.R. § 12.105 *et seq.*, Regulations implementing the Pre-Columbian Monumental and Architectural Sculpture and Murals statutes
- Z. 31 C.F.R. Part 500 —Money and Finance: Treasury, Chapter V--Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury
- AA. Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, Treaty between the United States and Mexico, Treaties and Other International Act Series (T.I.A.S.), No. 7088; 63 Dept. of State Bulletin 206 (1970); 9 Int. Legal Materials 1028 (1970)

4.2 References

- A. *United States v. McClain*, 593 F.2d 658 (5th Cir. 1979)
- B. *United States v. Schultz*, 333 F.3d 393 (2d Cir. 2003); *cert. denied by Schultz v. United States*, 540 U.S. 1106 (2004)
- C. *United States v. Davis*, 648 F.3d 84 (2d Cir. 2011)

Chapter 5. RESPONSIBILITIES

5.1 Executive Associate Director, Homeland Security Investigations

The Executive Associate Director of HSI has the overall responsibility for the oversight of the policies and procedures set forth in this Handbook.

5.2 Assistant Director, Office of International Affairs

The Assistant Director, Office of International Affairs (OIA), has the overall responsibility for the implementation of the policies and procedures set forth in this Handbook.

5.3 Unit Chief, Multilateral Operations Unit

The Unit Chief, Multilateral Operations Unit, OIA, HSI, is responsible for the oversight of the CPAA investigative and repatriation program which promotes increased coordination with, and the provision of investigative assistance to, HSI's domestic and international offices.

5.4 Deputy Assistant Director, Cyber Crimes Center

The Deputy Assistant Director (DAD), Cyber Crimes Center (C3), is responsible for overseeing and supporting all Internet-related cultural property violations. The C3 DAD is also responsible for forwarding leads and/or collateral investigations to the appropriate HSI field office and making undercover Internet purchases as deemed necessary.

5.5 Special Agents in Charge and Attachés

Special Agents in Charge and Attachés are responsible for implementing the policies and procedures set forth in this Handbook within their respective areas of responsibility.

5.6 Special Agents

SAs are responsible for complying with the provisions of this Handbook and for investigating the origin, title, value, possession, and transfer of imported artifacts suspected of being stolen and/or imported unlawfully. SAs who are the case agents in a CPAA investigation are responsible for notifying the HSI OIA CPAA Program Manager when property or artifacts are forfeited and ready for repatriation, or when CBP's Office of Fines, Penalties and Forfeitures (FP&F) grants an administrative petition for remission and repatriation. The CPAA Program Manager also should be made aware of any petitions for remissions filed by a claimant with FP&F. The CPAA Program Manager may be contacted directly or via e-mail at (b) (7)(E) @ice.dhs.gov. SAs should also contact their local ICE Counsel for legal guidance, and, as appropriate with local CBP counsel as described immediately below.

HSI and CBP often work together in CPAA cases. CBP performs a critical role in CPAA cases, and SAs are responsible for coordinating with CBP, which will often include CBP Officers, CBP port management, CBP FP&F, and local CBP Counsel. A CBP Officer is usually the discovering officer of imported merchandise at a port of entry, and a CBP Officer implements decisions to release, detain and/or seize merchandise at a port of entry. When CBP detains or seizes merchandise at a port of entry, CBP should contact HSI to

conduct a CPAA investigation. SAs will work with the CBP Officer to gather all evidence available at the time of entry or export.

By regulation, the CBP Port Director is responsible for determining whether “satisfactory evidence” exists to permit importation of “designated archaeological or ethnological material” or of “Pre-Columbian Monumental or Architectural Sculpture or Murals.” CBP FP&F conducts administrative proceedings of seizures and forfeitures, and FP&F handles all matters related to storage of seized property, hiring of experts, issuance of notices of seizure, review of administrative petitions, issuance of petition decisions, declaration of administrative forfeitures, and related matters. Local CBP Counsel provides legal advice to the CBP Officers at ports of entry and FP&F on issues of entry, search, seizure, citations for seizure notices, petitions, forfeiture, and other such matters. Local CBP Counsel is also responsible for handling all claims filed with FP&F for civil judicial forfeiture proceedings, and works with SAs and the U.S. Attorney’s Office on any such claims. In practice, SAs will work closely with CBP Officers, CBP port managers, CBP FP&F, and CBP Counsel on the issues described in this paragraph.

Chapter 6. ACTS, TREATIES, AND LAWS WHEN CONDUCTING CULTURAL PROPERTY, ANTIQUITIES, AND ART INVESTIGATIONS

6.1 Legal and Illegal Movement of Cultural Heritage Material

Cultural property, archaeological material, and ethnological material may include objects, collections, specimens, structures, or sites identified as having artistic, historic, scientific, religious, or social significance.

In most source countries, ownership of or control over such merchandise is considered the responsibility of the national government. Typically, the Ministry of Culture or an equivalent ministry has the responsibility for archaeological fieldwork and sites, excavated artifact collections, and museum collections.

The responsible government authority issues and regulates the permits required by anyone proposing to do in-country cultural heritage research, including archaeological investigation. Finds from an archaeological project may be the property of the country or state. An inventory of all excavated materials is submitted to authorities. The finds may be stored at the site, at a nearby secure facility, or transferred to a museum. A permit must be obtained to study materials from these depositories.

Most ministries can be contacted via Web sites, foreign embassies, or U.S. Embassies. SAs should first coordinate with HSI OIA’s CPAA Program Managers and the relevant HSI Attaché Office prior to contacting foreign embassies, law enforcement organizations, or foreign non-governmental organizations.

6.1.1 Legal Movement

Although some objects may appear to facially qualify as cultural property, this does not, by itself, mean that the import, export, or transfer of such merchandise is illegal under the CPIA or other applicable statutes and regulations.

- A. For imports of “designated archaeological or ethnological material,” merchandise may be exempt from seizure under the CPIA, or as pre-Columbian monumental or architectural sculpture or murals under 19 U.S.C. § 2091 *et seq.*, if proper documentation is presented to the CBP Port Director upon entry. *See* 19 U.S.C. §§ 2606(a) and (b) and 19 C.F.R. §§ 12.104c(a-c); *see also* 19 U.S.C. § 2092(b) and 19 C.F.R. § 12.107. Such documentation may include an export certificate from the country of origin, similar papers (*e.g.*, an affidavit, license, or permit issued under seal by the government of that country), or other “satisfactory evidence.” (Note: For a full list of what qualifies as “satisfactory evidence,” *see* 19 U.S.C. § 2606(c) and 19 C.F.R. § 12.104c(d) for suspected violations of 19 U.S.C. § 2606, and 19 U.S.C. § 2092(b) for suspected violations involving pre-Columbian monumental or architectural sculptures or murals.) “Designated archaeological or ethnological material” also may be exempt from seizure if it meets the requirements of 19 C.F.R. § 12.104h(b), such as being held by a recognized museum for 3 consecutive years following import and the piece was purchased in good faith and without notice of illegal importation.

- B. An object may be exempt from seizure if it is imported for temporary display, exhibition, or other purposes, and immunity from seizure has been awarded by the U.S. Department of State (DOS) pursuant to 22 U.S.C. § 2459. *See* 19 C.F.R. § 12.140h(a).

6.1.2 Illegal Movement Red Flags

- A. (b) (7)(E) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

E. (b) (7)(E)

6.2 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, and the Cultural Property Implementation Act

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property provides that a State Party whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other State Parties for assistance, including the control of exports, imports, and international commerce of said materials. The 1970 UNESCO Convention also calls upon State Parties to prohibit the import of cultural property stolen from a museum, religious or secular public monument, or similar institution located in another State Party's territory. The CPIA was passed by Congress in 1983, and implements articles 7b and 9 of the 1970 UNESCO Convention.

As a State Party of the 1970 UNESCO Convention, the United States may respond to a request from another State Party to the 1970 UNESCO Convention by imposing import restrictions on designated archaeological or ethnological materials. Import restrictions are implemented following the United States' entrance into a bilateral agreement (a Memorandum of Understanding) with another country party to the 1970 UNESCO Convention. The materials covered by these import restrictions are published in the *Federal Register* and are referenced in 19 C.F.R. § 12.104g. The United States also may establish emergency import restrictions covering certain merchandise without entering into a bilateral agreement with another country. See 19 U.S.C. § 2603. These import restrictions, and their effective dates, also are available on the DOS Cultural Property Office Web site, <http://eca.state.gov/cultural-heritage-center/cultural-property-protection>. SAs should access this webpage for an up-to-date listing of bilateral agreements and applicable import restrictions.

Unless immunity is granted pursuant to 22 U.S.C. § 2459 (see Section 6.1.1.B above), designated archaeological or ethnological material will be permitted entry if, at the time of importation, (a) a valid export certificate, or similar document, issued by the country of origin of the material, is provided to the CBP Port Director, (b) "satisfactory evidence" is presented to the CBP Port Director that the material was exported from the country with the bilateral agreement at least 10 years before importation into the United States, and that

the person on whose account the material is imported did not acquire an interest in the object for at least one year before importation, or (c) “satisfactory evidence” is presented to the CBP Port Director that the material was exported from the country with the bilateral agreement on or before the date it was designated in the published import restrictions.

At the time of entry, if designated archaeological or ethnological material lacks evidence of either (a), (b), or (c) above, CBP will detain the material and the importer will be given 90 days, or longer period as may be allowed by the Port Director, to present such documentation or evidence. “Satisfactory evidence” is defined by 19 U.S.C. § 2606(c) and 19 C.F.R. § 12.104c(d) and it is the importer’s/consignee’s burden to produce sufficient evidence to permit entry. In many circumstances, the export certificate, or similar documentation, will be issued by the minister of culture (or similar government entity) in the country of origin. Export certifications are often forged. If a case agent suspects that an export certification is forged, the CPAA HQ Program Manager can assist in identifying its validity. (Note: The European Union also has standardized its export controls for Member States and only certain customs offices are authorized to process cultural property

(b) (7)(F)

(b) (7)(E)

(b) (7)(E)

After the applicable detention period, if there is no evidence to support either (a), (b) or (c) above, and it has been confirmed by an expert that the material is authentic and is specifically designated by the import restrictions, and immunity does not apply (see Section 6.1.1.B above), the material will not be permitted entry by CBP and is subject to seizure pursuant to 19 U.S.C. § 2609.

The CPIA also prohibits the importation of any documented stolen cultural property originating or pertaining to the inventory of a museum or religious or secular public monument, or similar institutions, from all countries that are State Parties to the UNESCO Convention. See 19 U.S.C. § 2607. This provision of the CPIA applies regardless of whether the State Party had physical possession of the cultural object. In these cases, SAs will need to determine: (1) the location from which the object was stolen; (2) whether the location was a museum or religious or secular public monument, or similar institution; (3) whether the object was part of the inventory of such location; (4) whether the object was documented as part of the inventory of such location; and (5) whether the object was stolen from the location after the date of the State Party’s entry into force of the UNESCO Convention, or the effective date of the UNESCO Convention in the United States (April 12, 1983), whichever is later. (Note: A list of effective dates for the UNESCO Convention is contained under 19 C.F.R. § 12.104b.) If the evidence establishes that the object was stolen from a museum or religious or secular public monument, or similar institution, pursuant to the requirements of the CPIA, and immunity does not apply (see Section 6.1.1.B above), the object is subject to seizure pursuant to 19 U.S.C. § 2609.

In some instances, an attempt may be made to introduce into the United States cultural property in violation of laws that are not explicitly dedicated to cultural property. For example, SAs may pursue cultural property criminal cases based on violations of Title 18

of the United States Code: 18 U.S.C. § 542 (entry of goods by means of false statements); 18 U.S.C. § 545 (import smuggling); 18 U.S.C. § 554 (export smuggling); 18 U.S.C. § 1956 (money laundering); 18 U.S.C. §§ 2314 and 2315 (NSPA). Provisions of Title 19, such as 19 U.S.C. § 1481 (invoice requirements) and 19 U.S.C. §§ 1484 and 1485 (entry and declaration requirements), also may apply to support a violation of 18 U.S.C. §§ 542 or 545, or serve as violations in themselves. Additionally, importation of stolen cultural property may justify civil seizure pursuant to 19 U.S.C. §1595a(c)(1)(A) (importation contrary to law). Further, if a passenger fails to declare cultural property on his or her customs declaration, there may also be civil seizure and penalty authority pursuant to 19 U.S.C. § 1497. SAs should seek legal guidance regarding the applicability of potential seizure statutes. Finally, civil penalties pursuant to 19 U.S.C. §§ 1497 (failure to declare), 1592 (entry or introduction by negligence, gross negligence, or fraud), and 1595a(b) (aiding unlawful importation) may also apply.

6.3 Archaeological Resources Protection Act

The ARPA, 16 U.S.C. § 470aa *et seq.*, prohibits trafficking in interstate or foreign commerce in an archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law. *See* 16 U.S.C. § 470ee(c). Penalties under this law include fines up to \$100,000 and maximum imprisonment of 5 years. *See* 16 U.S.C. § 470ee(d). Note that many ARPA violations are investigated and enforced by agencies within the U.S. Department of the Interior, such as the Fish and Wildlife Service and the National Parks Service.

6.4 National Stolen Property Act

The NSPA, 18 U.S.C §§ 2314-2315, provides criminal penalties for the knowing transportation, receipt, possession, sale, and barter of stolen items that have been transported in foreign and interstate commerce valued at \$5,000 or more. The aggregate value of merchandise in a single shipment (rather than the value of a single item) can satisfy the \$5,000 threshold of the NSPA. *See Schaffer v. U.S.*, 362 U.S. 511, 514 (1960). Penalties for violations of the NSPA may include fines and/or up to 10 years imprisonment. The courts in *United States v. McClain*, 593 F.2d 658 (5th Cir. 1979) and *United States v. Schultz*, 333 F.3d 393 (2d Cir. 2003) held that archaeological objects taken from a foreign country in violation of its national ownership laws are stolen property under NSPA. Although a criminal statute, the NSPA may be used as the legal basis to support seizure and civil forfeiture. Specifically, a violation of the NSPA would satisfy the “importation contrary to law” by virtue of theft requirement of 19 U.S.C. § 1595a(c)(1)(A). *See U.S. v. Davis*, 648 F.3d 84 (2d Cir. 2011). (Note: For additional discussion about 19 U.S.C. § 1595a(c)(1)(A) and “importation contrary to law,” see Section 6.8.5.) It also may be irrelevant that the end purchaser in the United States knew that the object was stolen. *See U.S. v. Portrait of Wally*, 663 F.Supp.2d 232 (S.D.N.Y. 2009). The benefit of using Title 19, rather than the Civil Asset Forfeiture Reform Act (CAFRA) of 2000, 18 U.S.C. §§ 981 and 983, as the procedural basis for seizure and civil forfeiture is: (1) the burden of

proof is probable cause, rather than preponderance of the evidence; (2) the CAFRA 60-day seizure notice deadline does not apply; and (3) the CAFRA “innocent owner defense” does not apply. *See* 19 U.S.C. § 1615; and 18 U.S.C. § 983(i)(2).

The U.S. Supreme Court and the Southern District of New York also acknowledged that NSPA has a “broad purpose” and that “the statute should be broadly construed.” *McElroy v. United States*, 455 U.S. 642 (1982); *United States v. Wallach*, 935 F.2d 445, 469 (2d Cir. 1991), citing *Moskal v. United States*, 498 U.S. 103, 113 (1990). Courts have held that the language of NSPA “is broad enough to justify the federal courts in applying the statute whenever they determine that the [property was] stolen in another country.” *See United States v. Greco*, 298 F.2d 247, 251 (2d Cir. 1962); *see also United States v. Parness*, 503 F.2d 430, 440 n.14 (2d Cir. 1974), citing *Greco* with approval.

6.5 Pre-Columbian Monumental or Architectural Sculptures or Murals

The Pre-Columbian Monumental Architectural Sculptural or Murals statutes, 19 U.S.C. §§ 2091-2095, govern the importation of stone carvings and wall art that are products of pre-Columbian Indian cultures of Mexico, Central America, South America, or the Caribbean Islands. These import restrictions apply to any stone carvings or wall art described under 12 C.F.R. § 12.105(b) exported from its country of origin after June 1, 1973, regardless of whether the original export was to the United States. *See* 19 C.F.R. § 12.106. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

See 19 C.F.R. §

12.105(a). Similar to the CPIA, an importer may preclude seizure under these statutes if, upon importation, he or she presents a valid export certificate or similar documentation, or, within the 90-day detention period, provides CBP with “satisfactory evidence” that the importation into the United States is legal. *See* 19 C.F.R. § 107.

6.6 Immunity from Seizure Act

The Immunity from Seizure Act, 22 U.S.C. § 2459, renders 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 if immunity has been granted by DOS. It is the responsibility of the owner of the object, the exhibitor, and/or the consignee to request immunity from DOS. If immunity is not requested, SAs should follow CPAA investigative procedures in determining if a seizure is warranted.

6.7 Treaty of Cooperation between the United States and Mexico

The Treaty of Cooperation between the United States and Mexico, T.I.A.S., No. 7088; 63 Dept. of State Bulletin 206 (1970); 9 Int. Legal Materials 1028 (1970), entered into force on March 24, 1971, provides for the recovery and return of stolen archaeological, historical, and cultural property, including portions or fragments of such objects, artifacts, and archives, owned by federal, state, or municipal governments or their instrumentalities.

Under the Treaty, archaeological, historical, and cultural properties are defined as art objects and artifacts of the pre-Columbian cultures of the United States and Mexico 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 and Mexico of outstanding importance to the national patrimony; and documents from official archives for the period up to 1920 that are of outstanding historical importance.

6.8 Applicable Criminal or Civil Violations of Law When Conducting Investigations of CPAA-Related Items

6.8.1 Entry of Goods Falsely Classified

18 U.S.C. § 541, Entry of Goods Falsely Classified, provides criminal penalties for individuals who knowingly effect any entry of goods, wares, or merchandise at less than the true weight or measure thereof, or upon a false classification as to the quality or value, or by the payment of less than the amount of duty legally due.

6.8.2 Entry of Goods by Means of False Statements

18 U.S.C. § 542, Entry of Goods by Means of False Statements, provides criminal penalties for the following offenses: the entry, introduction, or attempted entry or introduction of merchandise into the commerce of the United States by: 1) means of fraudulent or false invoice, declaration, affidavit, letter, or paper; 2) means of any false statement, written or verbal, or by means of any false or fraudulent statement, documentation, practice, or appliance; or 3) any false statement in any declaration without reasonable cause to believe the truth of such statement.

6.8.3 Smuggling Goods into the United States

18 U.S.C. § 545, Smuggling Goods into the United States, contains several distinct violations, including (1) the knowing and willful smuggling or clandestine introduction (or attempts) of merchandise into the United States with the intent to defraud the United States; and (2) fraudulent or knowing importations or bringing into the United States contrary to law, including receipt, concealment, purchase, sale, or facilitation after importation with knowledge that the merchandise was imported contrary to law. The penalty in this statute is a fine or imprisonment of up to 20 years, or both.

6.8.4 Smuggling Goods from the United States

18 U.S.C. § 554, Smuggling Goods from the United States, prohibits the fraudulent or knowing (or attempted) exportation of merchandise from the United States contrary to law. This statute was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act

Improvement and Reauthorization Act of 2005 (H.R. 3199), and violations carry up to 10 years imprisonment and/or fines.

6.8.5 Forfeiture Statutes

Merchandise entered or introduced in violation of 18 U.S.C. § 545 may be seized and forfeited under that statute without reference to additional legal authorities. The provisions of CAFRA, such as the “innocent owner” defense under 18 U.S.C. § 983(d), do not apply to 18 U.S.C. § 545 seizures when 19 U.S.C. § 1595a(c)(1)(A) is used as the procedural basis for seizure and forfeiture. *See* 18 U.S.C. § 983(i). *See generally* *U.S. v. An Antique Platter of Gold, Known as a Gold Philale Mesomphalos*, C. 400, 991 F.Supp. 222, 231-32 (S.D.N.Y., 1997) (discussing the inapplicability of an “innocent owner” defense to statutes with seizure and forfeiture provisions, such as 18 U.S.C. § 545, absent explicit statutory language granting such a defense).

Merchandise which is imported “contrary to law” may be seized and civilly forfeited pursuant to 19 U.S.C. § 1595a(c)(1)(A) if it is stolen, smuggled, or clandestinely introduced. This statutory provision is procedural in nature and may be used even when an explicit cultural property law does not apply. To use this statute as a basis for seizure, there must be probable cause to believe that the object was stolen at the time of importation, or that it was smuggled or clandestinely imported into the United States. To support a seizure under this statute, it is recommended that the seizing agent cite an underlying predicate offense with a nexus to international commerce, such as the NSPA or 18 U.S.C. § 542, if the evidence supports such a predicate offense. *See e.g.*, *U.S. v. Davis*, 648 F.3d 84 (2d Cir. 2011); *U.S. v. Broadening-Info Enterprises, Inc.*, 462 F. Appx. 93 (2d Cir. 2012). Under the so-called “Customs carve-out,” the provisions of CAFRA do not apply to Title 19 seizures and civil forfeitures. *See* 18 U.S.C. § 983(i).

Merchandise which is exported “contrary to law” may be seized and civilly forfeited pursuant to 19 U.S.C. § 1595a(d). Forfeiture under this statute must be supported by an underlying, predicate offense, establishing that the merchandise was, in fact, exported “contrary to law.” Typical examples of such underlying violations applicable to HSI cultural property investigations include NSPA, ARPA, NAGPRA, and, if applicable to the country of export, violations of the OFAC regulations under Title 31 of the Code of Federal Regulations.

Cultural property imported in violation of 19 U.S.C. § 2607 and designated archaeological and ethnological materials imported in violation of 19 U.S.C. § 2606 are subject to seizure and forfeiture under 19 U.S.C. § 2609. Following forfeiture to the United States, such merchandise is first subject to repatriation to the applicable UNESCO Convention State Party, but may also be returned to a claimant under other circumstances. These special post-forfeiture provisions are further described under 19 U.S.C. §§ 2609(b) and (c) and form the basis for HSI’s issuance of Hold Harmless Agreements (see Appendix A).

If a cultural property case is criminally prosecuted, a criminal statute may provide a basis for forfeiture. For example, if a defendant is prosecuted for smuggling or introducing merchandise into the United States contrary to law in violation of 18 U.S.C. § 545, the merchandise may be specifically forfeited under 18 U.S.C. § 545. However, SAs must be cognizant that, while the provisions of CAFRA generally apply to Title 18 seizures, it is always recommended to use a Title 19 basis for seizure, if applicable, to take advantage of the more favorable forfeiture provisions of that Title as opposed to those under CAFRA.

CBP's Office of Fines, Penalties and Forfeitures (FP&F) is responsible for issuing seizure notices and for conducting administrative forfeiture proceedings. Statutes that are specifically applicable to cultural property may have unique procedures for issuing notice and conducting forfeiture. Some statutes permit administrative petitions for relief, and some do not. If a claimant properly files an administrative petition with FP&F in response to a seizure notice, FP&F will request a review of the petition by the SA prior to rendering a decision on the petition. If a claimant files a request for the institution of judicial forfeiture proceedings, FP&F will refer the case to local CBP Counsel, who will work with the U.S. Attorney's Office to litigate the forfeiture. If a CPAA case involves a forfeiture involving property valued in excess of \$500,000, the property must be judicially forfeited pursuant to 19 U.S.C. § 1610. FP&F will also refer those cases to local CBP Counsel, who will work with the U.S. Attorney's Office to litigate the forfeiture. Local CBP Counsel will coordinate with the SA for any forfeiture litigation. Regardless of whether merchandise is judicially or administratively forfeited, SAs need to coordinate with their local FP&F Officer and local CBP Counsel as appropriate. Further discussion regarding forfeiture may be found in the Seized Asset Management and Enforcement Procedures Handbook (SAMEPH) (CBP Handbook (HB) 4400-01B), dated July 2011, or as updated, and in the Asset Forfeiture Handbook (HSI HB 10-04), dated June 30, 2010, or as updated.

6.8.6 False Statements

18 U.S.C. § 1001 criminalizes material false statements of all types and establishes penalties for making false statements.

6.8.7 Office of Foreign Assets Control Regulations

HSI enforces OFAC regulations for antiquities originating from sanctioned countries. A current list of sanctioned countries can be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. A violation of the OFAC regulations may be used to demonstrate that merchandise was imported or exported from the United States "contrary to law" and can support that same requirement for criminal charges, such as 18 U.S.C. §§ 545 and 554. SAs can contact the HSI OIA CPAA Program Manager for the most current regulations.

6.9 Entry of Merchandise

19 U.S.C. § 1484, Entry of Merchandise, addresses the submission or filing of entries to CBP, through physical documentation or an authorized electronic data interchange system, that, among other things, enables CBP to make determinations regarding whether to release imported merchandise from CBP custody. Non-compliance with these entry requirements can in appropriate circumstances support a finding that the importation was “contrary to law” under 18 U.S.C. § 545, or that the merchandise was entered by means of false statements under 18 U.S.C. § 542.

6.10 Declaration

19 U.S.C. § 1485, Declaration, requires that every importer making an entry under 19 U.S.C. § 1484 shall make and file under oath a declaration stating that the price on the invoice is true and that all other statements in the invoice or other documentation are true and correct. 19 U.S.C. § 1497 covers penalties for failure to declare merchandise. Non-compliance with these declaration requirements can in appropriate circumstances support a finding that the importation was “contrary to law” under 18 U.S.C. § 545, or that the merchandise was entered by means of false statements under 18 U.S.C. § 542. Any false declarations also may be examined for potential violations of 18 U.S.C. § 1001.

6.11 Detention

Per 19 U.S.C. § 1499(c)(1), Detentions, following the date on which merchandise is presented for customs examination, in general, customs officers must decide whether to release or detain the merchandise within 5 days (excluding weekends and holidays).

Per 19 U.S.C. § 1499(c)(2), Notice of Detention, customs officers must issue notice to the importer or other party having an interest in detained merchandise no later than 5 days (excluding weekends and holidays) after the decision to detain the merchandise is made. The notice must advise the importer about the initiation of detention; specific reason for detention; anticipated length of detention; nature of tests/inquiries to be conducted; and nature of information which, if provided to CBP, may accelerate disposition of the detention. Detention notices are issued by CBP, but may be forestalled if HSI has initiated an investigation before this 5-day period expires. As a practice point, SAs should assume that CBP will issue its detention notice absent a request from HSI to delay providing notice.

Per 19 U.S.C. § 1499(c)(5)(A), Effect of Failure to Make Determination, if CBP fails to make a final decision regarding the admissibility of detained merchandise within 30 days (or a longer period if specifically authorized by law), such merchandise will be treated as though CBP decided to exclude it.

As noted above, for suspected violations of 19 U.S.C. § 2606 (import restrictions under the CPIA) or 19 U.S.C. § 2901 *et seq.* (Pre-Columbian Monumental Art), the detention period

for merchandise is up to 90 days. During this 90-day period, consignees/importers have the opportunity to present documentation to CBP indicating that the merchandise may be legally imported into the United States.

6.12 Conspiracy

18 U.S.C. § 371, Conspiracy to Commit Offense or to Defraud United States, states that if two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined or imprisoned not more than 5 years, or both.

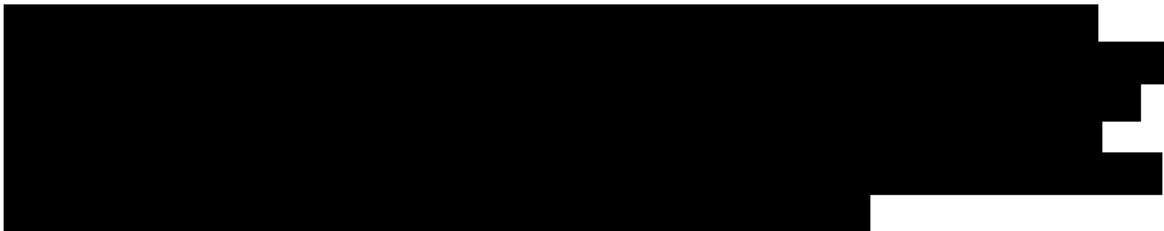
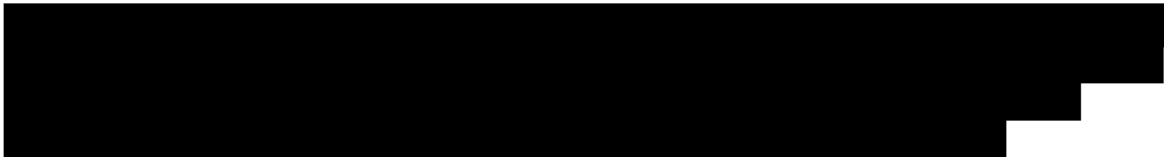
Chapter 7. INVESTIGATIVE METHODS AND PROCEDURES

7.1 Encountering Authentic Objects and Questionable Objects

(b) (7)(E)



(b) (7)(E)



7.2 Assistance from the HSI Office of International Affairs

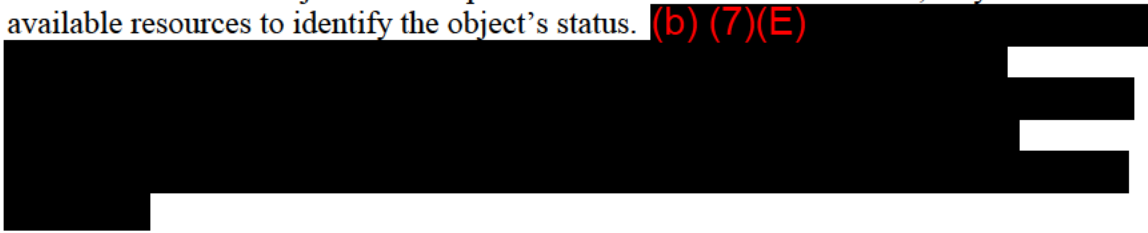
SAs should seek assistance from the HSI OIA CPAA Program Manager whenever an object suspected of being cultural property is encountered. HSI OIA can assist in finding qualified or certified experts who are familiar with the object.

(b) (7)(E)



7.3 Authentic Objects Reported or Known to Be Stolen

If SAs encounter an object that is reported stolen or known to be stolen, they must use all available resources to identify the object's status. (b) (7)(E)



(b) (7)(E)



(b) (7)(E)




(b) (7)(E)



7.4 Objects with a Valid Export Permit

It is very rare that an object designated as archaeological or ethnological material, or cultural property, is permitted for exportation by the country of origin. (b) (7)(E)



7.5 Determining the Validity of Customs and Shipping Documents and the Truthfulness of All Material Statements

(b) (7)(E)



7.6 Coordination and Consultation with Subject Matter Experts

When an object suspected of illegal entry is discovered, SAs may need to consult an outside expert to identify and/or authenticate the object. SAs may seek assistance by inquiring about the types of experts available and what assistance they might offer.

(b) (7) (E)

(b) (7) (E)

7.6.2 Identifying a Knowledgeable and Trustworthy Expert

When SAs need to identify a knowledgeable and trustworthy expert, they should:

- A. Begin with experts already known to them, maintain notes on experts, and build their circle of contacts.
- B. Contact the HSI OIA CPAA Program Manager, the DOS Cultural Heritage Center (CHC), or the Museum Conservation Institute at the Smithsonian Institution for recommendations.
- C. Know which questions they need answered.
- D. Communicate deadlines and the need for confidentiality to any expert they consult.
- E. Confirm that the expert is capable and available to testify in court, if needed.
- F. Avoid individuals with conflicts of interest, such as those who could benefit financially from information gained in an investigation.

7.6.3 Types of “Expert Professions” and Information They Can Provide

The following types of experts are listed by their profession, knowledge base, and location. Most of these experts, except for appraisers, may be affiliated with a university’s academic

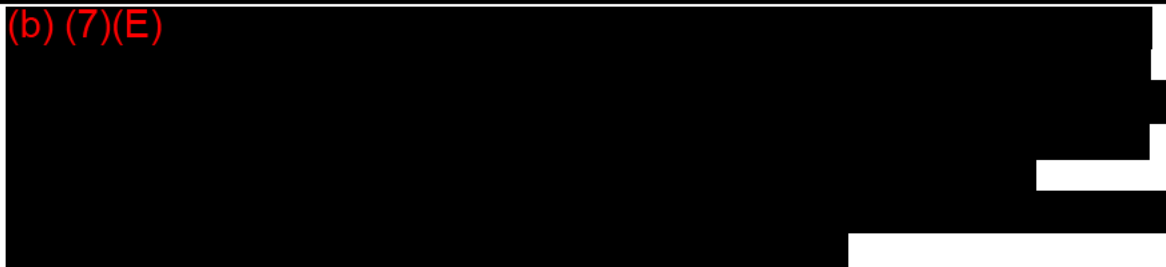
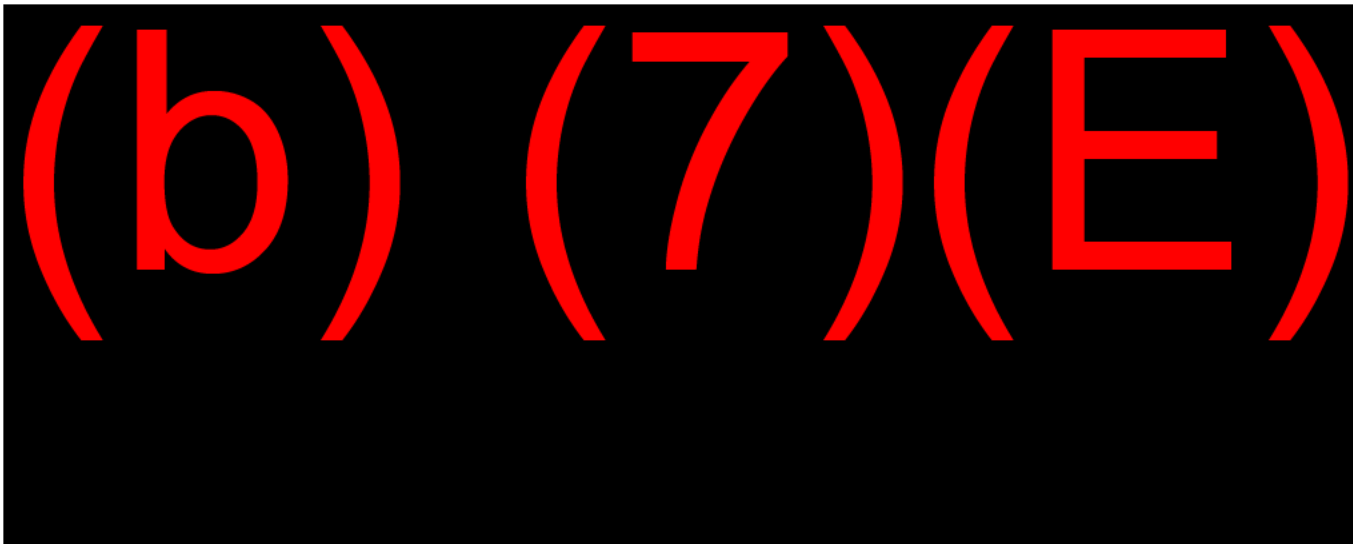
department, such as Anthropology or Classics; museum; research institute; or government agency. They may alternatively serve as an independent (free-lance) researcher. Appraisers are typically associated with art galleries of commercial art consulting firms.

- A. Archaeologist. Geographic and temporal specialty about group(s) that lived in the past; knows history and material culture of the place and time.
- B. Anthropologist. Geographic specialty, with knowledge about group(s), typically contemporary and from particular area(s), and various aspects of their cultures, including objects.
- C. Art Historian. Regional and/or temporal specialty, with knowledge of styles, technical features, and historical and social contexts.
- D. Conservator. Specializes in the preservation of a general class of objects and/or material type (*e.g.*, furniture, wooden objects, or paintings) and may have a temporal/regional specialization, similar to archaeologists and art historians. May be able to determine how and with what an object is made, the nature of its deterioration, and how to preserve the object, often using analytical methods.
- E. Conservation Scientist. Specializes in applying scientific knowledge and methods (*e.g.*, chemistry, analytical instrumentation) to support activities of conservation (*e.g.*, determining how and with what an object is made) and the nature of its deterioration. May further specialize in a general class of objects and/or material type, and/or particular analytical method.
- F. Curator. Specialty as described for archaeologist/anthropologist/art historian above. Responsible for the acquisition (including authentication), overall care and interpretation (including research, exhibition) of collections, typically in an area of specialization.
- G. Collections Manager. Specialty as described for archaeologist/anthropologist/art historian above. Responsible for overall policies, recordkeeping, care, storage, and accessibility of collections, typically in an area of specialization.
- H. Appraiser. Specializes in determining the monetary value of objects, often within specialty areas as described for archaeologist/anthropologist/art historian above.

Chapter 8. IMPORT RESTRICTIONS AND INVESTIGATIVE SOURCES

The HSI CPAA Program Manager can assist in arranging for the consultation of experts to authenticate items of cultural property and artifacts detained for evaluation. SAs can contact HSI OIA, DOS, and INTERPOL directly to identify items that are seized or

detained. At the point of entry, a determination of proof of origin should be undertaken to determine if the item qualifies as cultural property and whether it is subject to import restrictions. Suspect items should be detained for evaluation and determination of origin. Some items may require special transportation or storage requirements during the detention period.



In addition to aforementioned assistance and consultation that SAs may seek in conducting cultural property investigations, HSI field offices should follow local procedures for notification to the local U.S. Attorney's Office regarding CPAA investigations and the initiation of authentication, determination of ownership, assessment of value, and seizure or anticipated seizure of items.

Chapter 9. DETENTION AND SEIZURE DETERMINATIONS

9.1 Detention Periods and Procedures

If there is suspicion that cultural property may be subject to import restrictions, HSI SAs should coordinate with CBP to detain the object(s). During this detention period, SAs have the opportunity to establish probable cause supporting seizure of the object, or it may be discovered that there is no basis for seizure and that the object should be returned to the importer. Applicable detention periods and procedures may be found as follows:

- A. For detention periods of suspected designated archaeological or ethnological material described, *see* 19 C.F.R. § 12.104d.
- B. For suspected pre-Columbian monumental or architectural sculptures or murals (stone carvings and wall art), *see* 19 C.F.R. § 12.108.
- C. For all other items, *see* 19 U.S.C. § 1499(c) and 19 C.F.R. § 151.16.
- D. After expiration of the applicable detention period, the provisions of 19 U.S.C. § 1499(c)(5) apply, as appropriate.

9.2 Storage During Detention

Storage during detention is typically the responsibility of CBP’s FP&F. Under certain circumstances, however, HSI may be required to provide storage during detention. In these instances, HSI will be required to provide and maintain the appropriate storage facility to safeguard items of cultural property within its possession. For example, some paintings require special humidity/climate control and should be stored in U.S. Government contract art storage warehouses, provided that sufficient bond is posted and that sufficient safeguards to protect the item have been taken (*see* 19 C.F.R. § 12.104f).

9.3 Seizure and Forfeiture Authorities Applicable to CPAA Investigations

Seizure and forfeiture authorities are as follows:

- A. For violations of 18 U.S.C. § 545, although the merchandise may be seized and forfeited pursuant to that statute itself, to ensure exemption from CAFRA, it is strongly recommended that SAs use 19 U.S.C. § 1595a(c)(1)(A) as the procedural basis supporting a 18 U.S.C. § 545 seizure and forfeiture.
- B. For importations “contrary to law” (*e.g.*, underlying violations of 18 U.S.C. §§ 541 and 542, 18 U.S.C. §§ 2314 and 2315 (NSPA)) where the merchandise was smuggled, stolen, or clandestinely introduced, SAs should utilize 19 U.S.C. § 1595a(c)(1)(A) as the procedural basis for the seizure and forfeiture – the underlying violation should still be cited. As noted above, such seizures and forfeitures fall within CAFRA’s “Customs carve-out.”
- C. For exportations “contrary to law” (*e.g.*, underlying violations of 18 U.S.C. § 554 or the OFAC Regulations), SAs should utilize 19 U.S.C. § 1595a(d) as the procedural basis for the seizure and forfeiture – the underlying violation should still be cited. As noted above, such seizures and forfeitures fall within CAFRA’s “Customs carve-out.”
- D. For stolen cultural property imported in violation of 19 U.S.C. § 2607, SAs should use 19 U.S.C. § 2609(c) as the procedural basis for the seizure and

forfeiture – the underlying violation should still be cited. As noted above, such seizures and forfeitures fall within CAFRA’s “Customs carve-out.”

- E. For designated archaeological or ethnological material imported in violation of 19 U.S.C. § 2606, SAs should use 19 U.S.C. § 2609(b) as the procedural basis for the seizure and forfeiture – the underlying violation should still be cited. Similar provisions apply to unlawfully imported pre-Columbian monumental or architectural sculptures or murals under 19 U.S.C. § 2093, and the implementing regulation found at 19 C.F.R. § 12.09. As noted above, such seizures and forfeitures fall within CAFRA’s “Customs carve-out.”
- F. If the value of the object exceeds \$500,000, the forfeiture must proceed judicially before the U.S. District Court with jurisdiction over the matter. *See* 19 U.S.C. § 1610. Similarly, if a claimant challenges administrative forfeiture of an object valued at \$500,000 or less, by filing a claim and cost bond, judicial forfeiture proceedings are required. In most cases involving judicial forfeitures, the U.S. Attorney’s Office will prepare a stipulation in connection with the proceeding. SAs should ensure that the stipulation not only indicates that the party from which the object was seized does not contest forfeiture, but also that the party will not contest forfeiture. Note that stipulations also may be filed with a court even if the forfeiture is proceeding administratively through CBP FP&F – the same standards for a stipulation will apply.
- G. If an object is abandoned to the United States, SAs should still work with CBP FP&F to process the piece for civil forfeiture. The forfeiture process ensures that ownership over the object vests with the United States and precludes a party from suing either the United States or a foreign government in connection with repatriation.
- H. SAs should ensure that any affidavit in support of a seizure establishes probable cause for the violations being alleged. *See* 19 U.S.C. § 1615. If the affidavit is insufficient, CBP may remit the forfeiture or a court may order the property to be returned to the claimant.

9.4 Seizure Notice and Disposition

CBP FP&F issues seizure notices to all known and potentially interested parties. Special consideration regarding whether to delay issuing a seizure notice should be given by CBP when an HSI criminal investigation is ongoing to avoid prematurely alerting individuals engaging in a criminal conspiracy. Petitions for remission are decided by the FP&F Officer or by the Penalties Branch of the Regulations and Rulings Division, Office of International Trade at CBP HQ, depending on applicable jurisdiction. The SAMEPH (CBP HB 4400-01B), dated July 2011, or as updated, dictates that all petitions for remissions involving merchandise valued at \$100,000 or less are adjudicated by the local FP&F Officer.

9.5 Exceptions from Import Restrictions

Certain cultural property is exempt from the prohibitions against the importation of cultural property as discussed in Chapter 8 of this Handbook.

Imported items of cultural property that have been in the United States for the minimum number of years prescribed by 19 C.F.R. § 12.104h(b) and that also satisfy the other requirements of that regulation are exempt from import restrictions imposed under CPIA.

Chapter 10. REPATRIATION

10.1 Repatriation Procedures

Notification to the CPAA Program Manager is to be made during a CPAA investigation as soon as it is known that an object will be seized and when it becomes eligible for repatriation following forfeiture to the United States.

The CPAA Program Manager will work with the case agent and/or CBP FP&F to obtain all pertinent facts related to the investigation and verify the legal status of the cultural property. This information is compiled by the case agent using the “Cultural Property, Art, and Antiquities Repatriation Checklist and Required Documents” (see Appendix B). Case agents complete and e-mail this checklist (along with the required supporting documents) to the CPAA Program Manager.

The CPAA Program Manager will contact the appropriate foreign embassy or consulate in the United States and advise that the cultural property is eligible for repatriation. No other office should contact the foreign embassy or consulate without HSI OIA’s knowledge and concurrence. The foreign embassy or consulate is to choose one of the following resolutions:

- A. Accept the artifact with a repatriation ceremony in the United States;
- B. Accept the artifact with a repatriation ceremony in the foreign country;
- C. Accept the artifact without a repatriation ceremony; or
- D. Decline to accept the artifact.

In all cases of repatriation, the confirmed country of origin should sign a Hold Harmless Agreement (see Appendix A), and agree to bear all expenses (storage and transportation) once the property is returned. In the case of a public repatriation ceremony resulting from an HSI-led investigation, the CPAA Program Manager is responsible for ensuring that these obligations are satisfied. In the case of a private (non-ceremonial) repatriation or a repatriation which involves only CBP, the FP&F Officer is generally responsible.

10.2 Repatriation Ceremonies

A repatriation ceremony requires significant planning among the domestic and/or foreign HSI offices, HSI OIA, the ICE Office of Public Affairs (OPA), CBP FP&F, and representatives of foreign governments. An object with great historical importance, a high value, or a high level of interest by the claiming government is generally considered for a repatriation ceremony.

If a foreign government elects to receive its cultural property during a repatriation ceremony, the CPAA Program Manager will work closely with the appropriate HSI domestic and international offices to plan the ceremony. Additionally, the CPAA Program Manager will consult with OPA to determine whether or not a media event is warranted.

If the repatriation ceremony warrants a media event to be attended by the ICE Director or Deputy Director, the CPAA Program Manager will coordinate with OPA, the Director's Office, and the foreign embassy or consulate to arrange a mutually agreeable date. Once the date and location of the media event are arranged, the CPAA Program Manager will coordinate with OPA and notify the case agent and other agencies involved in the case. The CPAA Program Manager and case agent will assist OPA in compiling the briefing book by including a case summary, photos, and other relative documents.

If the foreign government elects to receive its cultural property without a media event or repatriation ceremony, the CPAA Program Manager will arrange for the transfer of custody to the foreign embassy or consulate representative in coordination with the case agent. The CPAA Program Manager will provide case information and photograph(s) to OPA for a possible news release.

If the foreign government elects not to accept its cultural property, the CPAA Program Manager will request the decision in writing and advise the case agent and/or FP&F that the cultural property is eligible for disposal in accordance with law.

10.3 Disposition Other Than by Repatriation

Cultural property that is forfeited and not repatriated shall be disposed of by CBP FP&F in accordance with law. This means that, by law, CBP could offer the object for sale at a public auction at the port of entry where the object was seized.

In scenarios involving cultural property which is forfeited to the United States, but where the rightful owner is recognized as a private individual such as the heir of a family from whom the object was stolen, a court may order that the merchandise be returned to the family rather than repatriation or other disposition. If the forfeiture is proceeding administratively before CBP FP&F, the private party typically will enter as a claimant and petition for remission. If CBP grants this petition for remission, the object will be returned to the private party.

Some forfeited cultural property may originate from a country on which OFAC has imposed import and export restrictions, such as Iran. If this is the case, the case agent should contact the CPAA Program Manager for consultation with DOS. In some instances, donating the object to a museum in the United States also may be an appropriate course of action.

Chapter 11. CULTURAL HERITAGE DATABASES AND STOLEN OBJECTS

11.1 INTERPOL Stolen Works of Art Database

Managed by INTERPOL Headquarters in Lyon, France, objects stolen from INTERPOL member countries are reported to INTERPOL Headquarters through National Central Bureaus. This information is disseminated through the Stolen Works of Art Database. This searchable database shows abbreviated case information and images, as well as records of seized and unclaimed material.

To apply for access: (b) (7)(E)

For further information or to report cultural property thefts or recoveries:

INTERPOL – U.S. National Central Bureau
U.S. Department of Justice
Phone (202) 616-9000; Fax (202) 616-8400

11.2 FBI National Stolen Art File

The FBI National Stolen Art File (NSAF):

Displays images, descriptions, and other case information
Accessible for use by law enforcement on request, through the Art Theft Program:

Phone (b) (7)(E)

11.3 Trace

Trace allows law enforcement, auction houses, dealers, pawnbrokers and, most importantly, the public to search the database of stolen goods for free. The FBI's NSAF is available through Trace. <http://www.trace.com>

11.4 Oriental Institute, University of Chicago

Image database of objects stolen from Iraq:
<http://oi.uchicago.edu/OI/IRAQ/dbfiles/Iraqdatabasehome.htm>

Chapter 12. OBJECTS VULNERABLE TO TRAFFICKING

12.1 Cultural Heritage Center, U.S. Department of State

CHC provides a database showing images and descriptions of object types subject to import restrictions imposed by bilateral agreements under the CPIA.

Records are available for Bolivia, Colombia, Cyprus, El Salvador, Guatemala, Honduras, Italy, Mali, Nicaragua, and Peru:

<http://exchanges.state.gov/heritage/culprop/databas1.html>

Cultural Property Web site: <http://exchanges.state.gov/heritage/culprop.html>

12.2 Red Lists – International Council of Museums

The International Council of Museums (ICOM) in Paris, France, provides guides, by country or region, to categories of cultural heritage materials at risk of being illicitly traded on the antiquities market. Red Lists are available for Africa, Afghanistan, Iraq, Peru, Cambodia, Colombia, Haiti, Mexico, Central America, China, and Egypt. Print copies are available through DOS' CHC and in PDF form from the ICOM Web site: <http://icom.museum/programmes/fighting-illicit-traffic/red-list/>

Chapter 13. CULTURAL HERITAGE LAWS

13.1 UNESCO Database of National Cultural Heritage Laws

The UNESCO Database of National Cultural Heritage Laws is a searchable multilingual database of current national laws, import/export procedures, model export certificates, contact information for national authorities and official national cultural heritage Web site address: <http://www.unesco.org/culture/natlaws/index.php?&Ing=en>

13.2 Global Legal Information Network

The Global Legal Information Network is a public database of official texts of laws, regulations, judicial decisions, and other complementary legal sources contributed by governmental agencies and international organizations: <http://www.glin.gov/search.action>; click on “more search options” to see the full search page.

13.3 International Foundation for Art Research

The International Foundation for Art Research is a nonprofit organization that offers education resources, authentication research, and current news concerning cultural property issues: <http://www.ifar.org/home.php>.

13.4 Georgetown Law School

Georgetown Law School's resource page on cultural property law can be accessed at: <http://www.llrx.com/features/culturalproperty.htm>.

Hold Harmless Agreement

U.S. Immigration and Customs Enforcement
HOLD HARMLESS RELEASE AGREEMENT

U.S. Customs and Border Protection (CBP) Seizure Number: **[Insert Seizure Number]**

Property: **[Description of Item(s)]**

Released to: **[Insert name of Country]**

This Agreement is made between **[Insert name of individual]**, on behalf of the **[Insert name of Country]**, and the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE). The property described above was seized and forfeited pursuant to **[Insert statute(s)]**.

This Agreement is made in consideration of the return of the property described above, which is the subject of the Seizure Number shown above, and for other consideration, the receipt of which is hereby acknowledged.

In consideration of the release of the above listed property to the above named party, I, **[Insert name of individual]**, on behalf of the **[Insert name of Country]**, hereby release, remise, and forever discharge the United States, its officers, agents, servants, and employees, their heirs, successors, or assigns, from any and all action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and/or demands whatsoever in law or equity which I, my heirs, successors, or assigns, ever had, now have, or may have in the future, whether known or unknown, in connection with the detention, seizure, and/or release of the above listed property by DHS, or any component agency thereof, including ICE and CBP.

I, **[Insert name of individual]**, on behalf of the **[Insert name of Country]**, further agree to save, indemnify, and hold harmless the United States, its officers, agents, servants and employees, their heirs, successors, or assigns, from and against any claims by any others, including costs and expenses for or on account of any and all lawsuits or claims, charges, demands, debts, causes of action and claims of any character, type, or description whatsoever, whether known or unknown, in connection with the detention, seizure, storage and/or release of the above listed property by DHS, or any component agency thereof, including ICE and CBP. In addition, I agree to reimburse the United States, its officers, agents, servants, and employees from any necessary expenses, attorney's fees, or costs incurred in the enforcement of any part of this agreement within thirty (30) days after receiving written notice that the United States, its officers, agents, servants, and employees has incurred them.

I, **[Insert name of individual]**, as signatory to this Agreement, am signing on behalf of the **[Insert name of Country]**, am fully authorized and legally competent to execute this Agreement as the legal, valid binding act and deed of such party.

Date: _____

Print Name and Title: _____

Address: _____

*Signature: _____

Subscribed before me on this _____ day of _____, 201X:

Signature of Notary Public or ICE Officer: _____

My Commission expires: _____

***Either a Notary Public or ICE Officer must witness the signing of this document.**

CULTURAL PROPERTY, ART, AND ANTIQUITIES REPATRIATION CHECKLIST AND REQUIRED DOCUMENTS

1. Case Agent / Office:
 - a. Contact Phone / e-mail:
2. Case Number:
3. FP&F Number:
4. Country of Origin / Rightful Owner:
5. Object / Brief Description:
6. Value / Significance:
 - a. Appraiser or Authenticator:
7. Method of Seizure:
 - a. Seizing/Abandonment Statute:
 - b. Final Forfeiture Date:
8. FP&F Paralegal / Officer:
 - a. Location of Storage Facility:
 - b. POC and Contact Information:
9. Referring HSI / CBP Office (collateral or CBP Interdiction):
10. Other Involved Agencies:
 - a. USAO / AUSA Contact:
 - b. INTERPOL involvement, if any:

The following items must be submitted along with the Repatriation Checklist:

1. A summary of the investigation and the object(s) to be repatriated, including the name or title, artist, description, historical significance, background of the theft, etc.
2. Appraisal or Authentication Report.
3. Digital photographs of the object.
4. A copy of the final Declaration of Administrative/Judicial Forfeiture.
5. A copy of the Hold Harmless Agreement (the CPAA National Program Manager in HSI OIA will provide assistance, if required).
6. Parties to Consider for Recognition.

(Note: Submit the Repatriation Checklist, along with the supporting documentation, in electronic format to the CPAA National Program Managers at (b) (7)(E)

ACRONYMS

ALR	Art Loss Register
ARPA	Archaeological Resources Protection Act
C3	Cyber Crimes Center
CAFRA	Civil Asset Forfeiture Reform Act
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
CHC	Cultural Heritage Center
CPAA	Cultural Property, Art, and Antiquities
CPIA	Cultural Property Implementation Act
DAD	Deputy Assistant Director
DHS	Department of Homeland Security
DOS	Department of State
FP&F	Fines, Penalties, and Forfeitures
HB	Handbook
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
ICOM	International Council of Museums
INTERPOL	International Criminal Police Organization
NSAF	National Stolen Art File
NSPA	National Stolen Property Act
OFAC	Office of Foreign Assets Control
OIA	Office of International Affairs
OPA	Office of Public Affairs
SA	Special Agent
SAMEPH	Seized Asset Management and Enforcement Procedures Handbook
T.I.A.S.	Treaties and Other International Act Series
UNESCO	United Nations Educational, Scientific, and Cultural Organization
U.S.C.	United States Code
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism