

2605 of this title, which is section 306 of Pub. L. 97-446, as the probable intent of Congress.

#### EFFECTIVE DATE

Section 315 of title III of Pub. L. 97-446 provided that:“(a) IN GENERAL.—This title [enacting this chapter] shall take effect on the ninetieth day after the date of the enactment of this Act [Jan. 12, 1983] or on any date which the President shall prescribe and publish in the Federal Register, if such date is—

“(1) before such ninetieth day and after such date of enactment; and

“(2) after the initial membership of the Committee is appointed.

“(b) EXCEPTION.—Notwithstanding subsection (a), the members of the Committee may be appointed in the manner provided for in section 306 [2605 of this title] at any time after the date of the enactment of this Act [Jan. 12, 1983].”

#### SHORT TITLE

Section 301 of title III of Pub. L. 97-446 provided that:“This title [enacting this chapter] may be cited as the ‘Convention on Cultural Property Implementation Act’.”

### § 2602. Agreements to implement Article 9 of the convention

#### (a) Agreement authority

##### (1) In general

If the President determines, after request is made to the United States under article 9 of the Convention by any State Party—

(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;

(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(C) that—

(i) the application of the import restrictions set forth in section 2606 of this title with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and

(ii) remedies less drastic than the application of the restrictions set forth in such section are not available; and

(D) that the application of the import restrictions set forth in section 2606 of this title in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes;

the President may, subject to the provisions of this chapter, take the actions described in paragraph (2).

##### (2) Authority of President

For purposes of paragraph (1), the President may enter into—

(A) a bilateral agreement with the State Party to apply the import restrictions set

forth in section 2606 of this title to the archaeological or ethnological material of the State Party the pillage of which is creating the jeopardy to the cultural patrimony of the State Party found to exist under paragraph (1)(A); or

(B) a multilateral agreement with the State Party and with one or more other nations (whether or not a State Party) under which the United States will apply such restrictions, and the other nations will apply similar restrictions, with respect to such material.

##### (3) Requests

A request made to the United States under article 9 of the Convention by a State Party must be accompanied by a written statement of the facts known to the State Party that relate to those matters with respect to which determinations must be made under subparagraphs (A) through (D) of paragraph (1).

##### (4) Implementation

In implementing this subsection, the President should endeavor to obtain the commitment of the State Party concerned to permit the exchange<sup>1</sup> of its archaeological and ethnological materials under circumstances in which such exchange does not jeopardize its cultural patrimony.

##### (b) Effective period

The President may not enter into any agreement under subsection (a) of this section which has an effective period beyond the close of the five-year period beginning on the date on which such agreement enters into force with respect to the United States.

##### (c) Restrictions on entering into agreements

###### (1) In general

The President may not enter into a bilateral or multilateral agreement authorized by subsection (a) of this section unless the application of the import restrictions set forth in section 2606 of this title with respect to archaeological or ethnological material of the State Party making a request to the United States under article 9 of the Convention will be applied in concert with similar restrictions implemented, or to be implemented, by those nations (whether or not State Parties) individually having a significant import trade in such material.

###### (2) Exception to restrictions

Notwithstanding paragraph (1), the President may enter into an agreement if he determines that a nation individually having a significant import trade in such material is not implementing, or is not likely to implement, similar restrictions, but—

(A) such restrictions are not essential to deter a serious situation of pillage, and

(B) the application of the import restrictions set forth in section 2606 of this title in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individ-

<sup>1</sup> So in original. Probably should be “exchange”.

ually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

**(d) Suspension of import restrictions under agreements**

If, after an agreement enters into force with respect to the United States, the President determines that a number of parties to the agreement (other than parties described in subsection (c)(2) of this section) having significant import trade in the archaeological and ethnological material covered by the agreement—

(1) have not implemented within a reasonable period of time import restrictions that are similar to those set forth in section 2606 of this title, or

(2) are not implementing such restrictions satisfactorily with the result that no substantial benefit in deterring a serious situation of pillage in the State Party concerned is being obtained,

the President shall suspend the implementation of the import restrictions under section 2606 of this title until such time as the nations take appropriate corrective action.

**(e) Extension of agreements**

The President may extend any agreement that enters into force with respect to the United States for additional periods of not more than five years each if the President determines that—

(1) the factors referred to in subsection (a)(1) of this section which justified the entering into of the agreement still pertain, and

(2) no cause for suspension under subsection (d) of this section exists.

**(f) Procedures**

If any request described in subsection (a) of this section is made by a State Party, or if the President proposes to extend any agreement under subsection (e) of this section, the President shall—

(1) publish notification of the request or proposal in the Federal Register;

(2) submit to the Committee such information regarding the request or proposal (including, if applicable, information from the State Party with respect to the implementation of emergency action under section 2603 of this title) as is appropriate to enable the Committee to carry out its duties under section 2605(f) of this title; and

(3) consider, in taking action on the request or proposal, the views and recommendations contained in any Committee report—

(A) required under section 2605(f)(1) or (2) of this title, and

(B) submitted to the President before the close of the one-hundred-and-fifty-day period beginning on the day on which the President submitted information on the request or proposal to the Committee under paragraph (2).

**(g) Information on Presidential action**

**(1) In general**

In any case in which the President—

(A) enters into or extends an agreement pursuant to subsection (a) or (e) of this section, or

(B) applies import restrictions under section 2603 of this title,

the President shall, promptly after taking such action, submit a report to the Congress.

**(2) Report**

The report under paragraph (1) shall contain—

(A) a description of such action (including the text of any agreement entered into),

(B) the differences (if any) between such action and the views and recommendations contained in any Committee report which the President was required to consider, and

(C) the reasons for any such difference.

**(3) Information relating to committee recommendations**

If any Committee report required to be considered by the President recommends that an agreement be entered into, but no such agreement is entered into, the President shall submit to the Congress a report which contains the reasons why such agreement was not entered into.

(Pub. L. 97-446, title III, §303, Jan. 12, 1983, 96 Stat. 2352.)

CODIFICATION

Section 2603 of this title, referred to in subsec. (g)(1)(B), was in the original "section 204", and was translated as section 2603 of this title, which is section 304 of Pub. L. 97-446, as the probable intent of Congress.

EX. ORD. NO. 12555. PROTECTION OF CULTURAL PROPERTY

Ex. Ord. No. 12555, Mar. 10, 1986, 51 F.R. 8475, as amended by Ex. Ord. No. 13286, §44, Feb. 28, 2003, 68 F.R. 10627, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of Public Law 97-446; hereinafter referred to as the "Act") [this chapter], and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *United States Information Agency.* The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of Homeland Security:

(a) The functions conferred by section 303(a)(1) [19 U.S.C. 2602(a)(1)] concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement.

(c) The functions conferred by section 303(e) relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement.

(d) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Convention").

(e) The functions conferred by section 303(g)(1)(B) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(f) The functions conferred by section 304(b) [19 U.S.C. 2603(b)] to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3).

(g) The functions conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural Property Advisory Committee by the President prior to extensions of emergency import restrictions.

(h) The functions conferred by sections 306(f)(6) and 306(g) [19 U.S.C. 2605(f)(6), (g)] relating to the receipt of reports prepared by the Cultural Property Advisory Committee.

(i) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings.

SEC. 2. *Department of State.* The following functions conferred upon the President by the Act are hereby delegated to the Secretary of State, acting in consultation with and with the participation of the Director of the United States Information Agency and in consultation with the Secretary of Homeland Security:

(a) The functions conferred by section 303(a)(2) [19 U.S.C. 2602(a)(2)] relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(b) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archaeological and ethnological materials from a party to an agreement.

(c) The functions conferred by section 303(e) relating only to negotiation and conclusion of extensions of agreements under the Act.

(d) Except with respect to subsection 303(g)(1)(B), the functions conferred by section 303(g), relating to the notification of Presidential action and the furnishing of reports to the Congress.

(e) The functions conferred by section 304(c)(4) [19 U.S.C. 2603(c)(4)] to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

SEC. 3. *Department of the Treasury [The Department of Homeland Security].* The following functions conferred upon the President by the Act are hereby delegated to the Secretary of Homeland Security, acting in consultation with the Director of the United States Information Agency and the Secretary of State:

(a) Subject to subsection (b) of Section 1 above, the functions conferred by section 303(d) [19 U.S.C. 2602(d)] to the extent that they involve the suspension of import restrictions.

(b) Subject to subsection[s] (f) and (g) of Section 1 above, the functions conferred by section 304 [19 U.S.C. 2603] to the extent that they involve the application of import restrictions set forth in section 307 [19 U.S.C. 2606] and the extension of such import restrictions pursuant to section 304(c)(3).

SEC. 4. *Enforcement in Territories and Other Areas.* The Secretary of the Interior is designated to carry out the enforcement functions in section 314 [19 U.S.C. 2613].

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Inter-course.]

### § 2603. Emergency implementation of import restrictions

#### (a) "Emergency condition" defined

For purposes of this section, the term "emergency condition" means, with respect to any archaeological or ethnological material of any State Party, that such material is—

(1) a newly discovered type of material which is of importance for the understanding of the history of mankind and is in jeopardy from pillage, dismantling, dispersal, or fragmentation;

(2) identifiable as coming from any site recognized to be of high cultural significance if such site is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; or

(3) a part of the remains of a particular culture or civilization, the record of which is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions;

and application of the import restrictions set forth in section 2606 of this title on a temporary basis would, in whole or in part, reduce the incentive for such pillage, dismantling, dispersal or fragmentation.

#### (b) Presidential action

Subject to subsection (c) of this section, if the President determines that an emergency condition applies with respect to any archaeological or ethnological material of any State Party, the President may apply the import restrictions set forth in section 2606 of this title with respect to such material.

#### (c) Limitations

(1) The President may not implement this section with respect to the archaeological or ethnological materials of any State Party unless the State Party has made a request described in section 2602(a) of this title to the United States and has supplied information which supports a determination that an emergency condition exists.

(2) In taking action under subsection (b) of this section with respect to any State Party, the President shall consider the views and recommendations contained in the Committee report required under section 2605(f)(3) of this title if the report is submitted to the President before the close of the ninety-day period beginning on the day on which the President submitted information to the Committee under section 2602(f)(2) of this title on the request of the State Party under section 2602(a) of this title.

(3) No import restrictions set forth in section 2606 of this title may be applied under this section to the archaeological or ethnological materials of any State Party for more than five years after the date on which the request of a State Party under section 2602(a) of this title is made to the United States. This period may be extended by the President for three more years if the President determines that the emergency condition continues to apply with respect to the archaeological or ethnological material. However, before taking such action, the President shall request and consider, if received within ninety days, a report of the Committee setting forth its recommendations, together with the reasons therefor, as to whether such import restrictions shall be extended.

(4) The import restrictions under this section may continue to apply in whole or in part, if before their expiration under paragraph (3), there has entered into force with respect to the archaeological or ethnological materials an agree-