TESTIMONY on H.R. 2930, the Safeguard Tribal Objects of Patrimony Act of 2021

Submitted to the House Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States

Legislative hearing held on May 20, 2021, 12:00pm EDT

By ATADA, the Authentic Tribal Art Dealers Association

Madam Chairwoman, Members of the Committee my name is Robert Gallegos and I am speaking to today on behalf of ATADA.

ATADA is the largest organization of Native American tribal and international ethnographic art dealers in the United States, with 342 active members. It is the only U.S. art business organization representing dealers in antique and ancient Native American art. ATADA professional members not only include shops and galleries, but also art fairs and auction houses specializing in tribal art. ATADA associate members include a number of U.S. museums with specialization in Native American art.

While the ATADA membership is small compared to the total number of dealers in American Indian art and ethnographic art from other cultures, ATADA's membership includes many of the most prominent tribal and ethnographic art businesses in the U.S. Moreover, ATADA's website and Newsletter serve as key resources for tribal and ethnographic art dealers around the country for information on U.S. laws and regulations that will affect thousands more small businesses in this industry and literally hundreds of thousands of collectors of Native American and other tribal art in the U.S.

I submit this testimony to address H.R. 2930, the substitute Safeguard Tribal Objects of Patrimony Act of 2021. Instead of clarifying the terms or improving the functionality of prior versions of STOP, or incorporating provisions from HR 7075, a compromise bill that was negotiated with the Acoma Tribe in 2018, it is virtually identical to a longer, more convoluted and more opaque proposed bill from July 2020 that would have a negative impact on all stakeholders.

There is a lot that we agree with in the goals of this bill. We have shown that by our actions as business leaders - by mandating that our members do not sell sacred items - and most of all by our ATADA Voluntary Returns Program, which I manage, that has brought over 300 important sacred items donated by art dealers and private collectors back to Native communities over the last six years.

ATADA supports the following:

1. Ban the export of illegal items
2. Require documentation of commercial exports including with photo
3. Provide for written, trackable, attestation of legality by exporters

4. Utilize existing export processes to facilitate compliance and effectiveness (the current CBP AES system could be incorporated to do this)
5. Have a time-limited, user-friendly, certification process, especially for lower value items
6. Retain data and use the certification regime to facilitate the repatriation of illegal items
7. Government can provide only limited descriptions of types of items requiring certification to respect the secret nature of ceremonial items
8. Place the burden of proof on government to prove illegality, which is essential given that over 90% of items lack known "provenance"
9. Provide for a transparent process

All of these provisions above are consistent with HR 2390's stated objectives and are supported by ATADA. However, as now drafted, the STOP Act includes provisions that will make STOP less effective and raise serious constitutional issues.

Here are the harmful provisions of STOP that the Committee should amend to make the bill work:

· H.R. 2930 places the entire burden of proof on the exporter, which given the lack of known "provenance" of 90% of items is in effect a de-facto export ban.
· H.R. 2930 lacks a "knowing" standard to ensure due process. It has a "should have known" standard requiring vague "due diligence," which threatens law-abiding citizens with criminal prosecution.
· H.R. 2930 creates a new export regime in the Department of Interior with all the uncertainties about what regulations will be imposed and delay inherent in starting an export system from scratch. No consultation with industry is required for regulations governing that industry.
· H.R. 2930 places no time-limit on review of applications for export certification, serving as a bar to commercial transactions and scheduling of traveling exhibits.
· H.R. 2930 provides for unchallenged Tribal right to review without adequate funding or oversight, but at the same time giving Tribes unchecked authority to ban any and all exports.
· H.R. 2930's vague language does not make clear what happens to lawfully owned items claimed by Tribes.
· H.R. 2930 blocks transparency by making all Tribal communications on certifications exempt from Freedom of Information Act requests, denying due process and making appeals and challenges impossible.

The stakeholders affected by this bill include millions of Americans who own artworks and crafts created by Native American artisans, many of which were purchased from Native American artisans at the Santa Fe Indian Market, now in its 100th year.

The bill's provisions will be burdensome for American businesses, Native and non-Native alike. It will require detailed applications for export. It will long delay exports and discourage purchases by overseas tourists. It will require every tribe to set up a system to respond to applications – without adequate funding. Only $3 million is provided to establish it this system among approximately 600 federally registered tribes and Hawaiian organizations. It will inevitably depress markets for goods made by thousands of Native American artisans, past and present, tainting perfectly legal artworks with illegality and harming the interests it purports to protect.

H.R. 2930 will

- embargo lawfully owned Indian artifacts,
- fail to provide notice to the public of what Indian objects are prohibited from export,
- impose burdensome export requirements on all items regardless of value, and
- allow seizure without constitutional due process for recovery.

We would like to have an efficient, sensible means of assuring the American people that Tribal rights will be respected by our laws. ATADA would have no objection to a law that made it illegal to export items prohibited from trafficking under existing law and increase penalties under NAGPRA and ARPA. We have attached a simplified and clarified version of Section 5 of H.R. 2930 that would be workable for all.

Sincerely,

/s/ Robert Gallegos

Treasurer, ATADA

DETAILED ANALYSIS OF H.R. 2930:

Under Sections 5 and 9, H.R. 2930 undermines constitutional protections guaranteed to American citizens, placing the burden of proof on the applicant to determine, at the risk of lengthy incarceration, both whether an item requires certification for export, and whether it was legally acquired under ARPA and NAGPRA, long after it entered the stream of commerce, when he has no means of determining that and when the government has carte blanche to withhold information submitted by tribes, making that information exempt from disclosure even when it might be essential to an exporter's defense if he is charged with violating the Act, or when an object is claimed by a tribe under ARPA or NAGPRA.

H.R. 2930 allows seizure and repatriation of items to tribes on the basis of a claim by a Tribe without providing evidence that items were acquired in violation of NAGPRA, passed in 1990, or ARPA, passed in 1979.

It places the burden of proof on exporters challenging seizure to show that an item IS lawfully owned, an impossible task when objects have often circulated for more than one hundred years in trade. If export is refused, it requires exporters to provide historical information to substantiate lawful ownership, even though such information simply does not exist for the vast majority of objects traded over the last 140 years.

Under Section 5, H.R. 2930 sets no time-limit for review and gives limitless scope to the objects that <u>cannot</u> be exported. Fails to utilize an established Customs system with clear rules and substitutes a cumbersome one where criteria will be secret, known only to Tribes.

STOP fails to utilize the existing U.S. Customs' AES export reporting system agreed to by tribes in 2018, sets no low-value threshold. The AES system used for all commercial exports of $2500.00 or more provides an adaptable online system for tracking exports. Using this $2500.00 threshold would already be far more restrictive than **any** import/export system for art and artifacts currently in use in market nations in the developed world.

H.R. 2930 establishes by far the most stringent and burdensome export certification process for cultural materials in the developed world, where export permits are generally only required for objects more than $100,000 in value, on average.

There is no time limit for processing of applications. A 60 day response limit applies only to determinations regarding objects that have been seized and are in possession of the Secretary, not to applications for export. Detained items that are later returned to exporters may not be later exported even though they are NOT prohibited from export. (Sec. 4.)

Without providing an adequate description of what is forbidden to export, H.R. 2930 requires that every object have a description and "pictures" for application and that an exporter provide "all available information regarding the provenance," and a sworn Attestation that to the best of the exporter's knowledge and belief, the item in not an Item prohibited from Exportation.

Tourists visiting the US will have to complete applications that could take many months to process and be subject to unknown charges in order to export their lawful purchases. U.S. businesses and attendees at art fairs will have no way to inform customers when lawfully owned goods would be shipped or know whether goods could be available for art fairs.

SPECIFIC PROVISIONS

I.

Section 3(2) : Definitions (p 4)

Opens entire new categories of objects to claims by tribes, expands NAGPRA and ARPA without public hearings or passage of legislation specific to those statutes.

Under NAGPRA, to be subject to tribal claims, scared items must be used in present day religion and historical items must have significance to specific individuals or families. This bill covers much more than sacred items under NAGPRA.

H.R. 2930 expands NAGPRA to allow present day tribes to claim legal ownership of lawfully owned ancient items made by tribes that no longer exist, based upon a tenuous, undefined, "shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group." While ancient peoples lived in the same region as several dozen current Southwestern tribes, there is no documented continuous link to specific current tribes and no scientifically accepted, documented link between religious activities of ancient peoples and present-day tribes. (Sec. 3.(2))

II.

Section 5(a)(2): Penalties. (p 8)

H.R. 2930 penalizes with 1-10 years incarceration for unknowing violations based solely upon failure to exercise "due care" when the exporter "should have known" an object was prohibited, which is a completely subjective standard for "due care."

A violation should only exist when an exporter knows that the object exported should not be, because it was acquired in violation of US law, or because the exporter knowingly failed to follow export permit procedures. However, H.R. 2930 will subject U.S. citizens and visiting tourists to felony charges, fines, imprisonment, and loss of property based on a vague standard that they in "*the exercise of due care should have known*" that an object was "unlawfully taken, possessed, transported or sold" "in violation of any Federal law or treaty" when (a) information on an object's history is rarely available, no matter how much "due care" is taken, (b) there is no public listing of items that cannot be exported, and (c) when the difference between "lawful" and "unlawful" has nothing to do with observable characteristics of the object but is based only on whether it was originally found on private or Federal or Indian land under ARPA. (Sec. 5. (a)(2))

(1) Section 5(b)(1)(B)(i)(II) Export Certification System (p 10)

H.R. 2930 requires publication by the Secretary of the "provenance requirements associated with trafficking provisions of 18 USC 1170(b) and Section 6 of ARPA." The word "provenance" does not occur in this section of NAGPRA, although it might be interpreted as being from federal or Indian lands under ARPA. What does provenance mean here and how is it to be determined if no evidence exists of an object's circulation in the trade for 100 years or more?

(2) Section 5(b)(1)(B)(i)(II)(aa)-(bb) – Publication (p 10-11)

Publication of objects covered is so broad it covers everything over 100 years old (1921 or earlier) made by human hands. It covers many objects lawful to own, trade, buy, or sell by individuals and museums in the U.S. For example the cited ARPA definition of an archaeological resource does not include that the cultural item must be from federal or Indian lands to be subject to claims by the federal government, as does the rest of ARPA.

Pursuant to NAGPRA [25 USC 3001(3)], cultural items are: (3) "cultural items" means human remains and—

> (A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.[1]
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> (B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,
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> (C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and
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> (D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group. **[**This allows tribes to redefine according

to their own standards what is inalienable as of today, even if objects were considered alienable in the past.]

Pursuant to the Archaeological Resources Protection Act, 16 USC 470bb

(1)
The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this chapter. Such regulations containing such determination shall include, but not be limited to: 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 the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.
[**The definition section of ARPA does not reference the requirement that to be subject to ARPA, an object must be from federal or Indian lands.]**

(3) Section 5(b)(1)(B)(i)(II) – (p 11)

H.R. 2930 also allows the Secretary to require exported objects to meet unspecified "provenance" requirements, placing burden of proof on exporter. It does not state that this provenance may refer to being found on federal or Indian land.

It states that at some future date the Secretary will, "describe the provenance requirement associated with the trafficking prohibition applicable to (aa) cultural items under section 1170(b) of title 18 USC," and (bb) "archaeological resources under subsections (b) and (c) of ARPA 16 USC 470ee".

(4) Section 5(b)(1)(B)(ii)(I). Characteristics of items requiring and not requiring export certification. (p 12)

Potentially restricts commercially made and legal items as tribal heritage. Affects objects of any value, even $1, and both new objects and objects in commercial circulation more than 100 years.

H.R. 2930 provides only that the Secretary will publish a general description of "characteristic typical of objects" that <u>may</u> be unlawful to export without a permit. (Compare this to specific, detailed bans on weapons or technology.) (Sec. 5(b)(ii)(I))

This would be a de-facto export ban for low value items as the work required to submit an application for export would not be justified. Its delays and burdens on application requirements would apply to traditional jewelry, sculpture, and textiles purchased by tourists and seriously damage that market.

Legitimate business relationships with international partners and art fairs will be curtailed due to concerns over delays. The lack of a clear definition of what may be exported without a permit will result in the seizure of thousands of objects exported in good faith.

(5) Section 5(b)(1)(B)(ii)(I). Commercial items. (p 12)

H.R. 2930 excludes from possible tribal claims only items made "solely" for commercial purposes, when most trade in Native American items for 140 years has been in items made for Native Americans for themselves as well as for sale, and then grants Tribes ability to halt exports even of solely commercial items if Tribes challenge this presumption.

Under these terms, no jewelry, rugs, beadwork, textiles, ceramics, kachinas and other wood carvings could be deemed lawful to export without a permit.

This would grant Native American political entities full authority and extra-territorial jurisdiction to define what is inalienable cultural heritage even if it is lawfully owned private property.

(6) Section 5(b)(3)(A)(iii)(II) Application for Export Certification (p 16)

This section asks for a description and "pictures" of each item and "include all available information regarding the provenance of each item".

We have no objection to including a reasonable number of pictures in the application that could be uploaded via phone by tourists, for example. However, most antique items in circulation do not have a "provenance" or history of ownership, as they have circulated for decades. To require a provenance is unnecessary and unfair because it seeks information an exporter will almost never have at all, and certainly the exporter will not have a complete history. Also, we note that in the process of returning sacred items to tribes, ATADA frequently has to seek information from multiple tribes and tribal experts often cannot say to whom a particular object belongs. Some tribes consider very similar, even identical objects highly sensitive, while others do not.

(7) Section 5(b)(3)(B)(iii)(I)-(III) Delays and denials. (p 18)

The Secretary of the Department of the Interior can require additional evidence if export is denied. What kind of evidence and to what purpose? How much 'delay'? Compared to what? There is no requirement for a timely response from the Secretary to the exporter anywhere. Does this create a presumption of ineligibility? Because information is kept secret, the tribes can decide whatever they want and refuse to allow export, and no one will know the reason why.

(8) Section 5(b)(3)(D) Issuance of export certification. (p 20)

This provision means that there is no guarantee export will be allowed even if an application meets all requirements! It states that if the Secretary receives an export certification application that meets all requirements AND the Secretary confers with Indian Tribes and Native Hawaiians, then the Secretary MAY issue an export certificate.

(9) Section 5(b)(4) Detention, forfeiture, repatriation and return. (p 21-22)

Section 5(b)(4)(C)(1). The only date limit in the document applies when an object is already seized for attempted export without certification, and that is 60 days after delivery to the Secretary. The Act should have date requirements for all processes, especially review of export applications. The Secretary is not required to meet any time limit for exporters who wish to follow the rules and file a proper application.

(10) Section 5(b)(6)(A) Fees – In general. (p 27)

Unknown 'reasonable' fees can be collected for processing. What is reasonable when there is no value threshold and an item costing $1 is subject to export application and processing?

III.

Section 9. Treatment under FOIA

The bill explicitly allows evidence to be deleted from government records at the request of tribes. This raises serious procedural questions and furthers a Tribal review process that unconstitutionally embargoes items from trade based on secret information.

H.R. 2930 disallows export without providing reasons or evidence submitted by Tribes or "information for which an export certification was denied" to exporters and prohibits release of information even under Freedom of Information Act requests so exporters can obtain evidence necessary to defend their interests.

H.R. 2930's 'Deletion from Database" provision also provides that on request by an Indian Tribe or Native Hawaiian organization, the Secretary shall delete an export certification application from the database. Such a deletion policy pertaining to agency records would be in violation of federal law. Freedom of Information Act requests, lawsuits, Congressional inquiries and Federal judicial opinions all require the keeping of such records.

IV.

The bill denies representation on working groups to hundreds of legitimate American businesses dependent on the trade of legally owned native American items.

Section 10. Regulations. (p 37)

There is no provision whatsoever for consultation regarding the rules and regulations with the industries and individuals being regulated (Art dealers, auction houses, collectors, and museums). This denies representation on working groups to hundreds of legitimate American businesses dependent on the trade of legally owned native American items.

V.

In addition:

H.R. 2930 effectively bypasses NAGPRA and ARPA processes for museums and institutions sending goods for exhibit or restoration without public hearings or passage of legislation.

H.R. 2930 also incentivizes expansive claims by tribes to objects they deems to require export permits by failing to require proper NAGPRA processes for repatriation for objects loaned, studied, or restored outside of the U.S. (Sec. 5 (3)(C))

H.R. 2930 Raises serious questions regarding the granting of a religious right in excess of Constitutional protections of separation of Church and State and the ability of Tribes to constrain the First Amendment rights free expression to of Native American artists living off of Indian lands.

VI.

Conclusion

ATADA agrees that H.R. 2930 should forbid export of objects unlawfully possessed or trafficked in violation of U.S. law. Thirty-eight pages of vague language are not necessary to do so, and in fact, this bill's provisions overlap and even contradict existing U.S. Customs Law. This proposed legislation invites government and Tribal overreach, denies basic property rights to lawful owners of property, and undercuts fundamental rights to due process guaranteed by the U.S. Constitution.

Suggested Replacement Language for H.R. 2930

The following language was negotiated in concert with the Pueblo of Acoma and received its approval under former Governor Riley in 2018, being set forth in the text of H.R. 7075.

EXPORT RESTRICTIONS AND AUTHORITIES.

(a) VOLUNTARY RETURN OF COVERED ITEMS.—Whoever seeks to export a covered item without a required export certification but voluntarily returns the covered item to the Indian Tribe with a likely cultural affiliation prior to active investigation shall not be prosecuted for such violation with respect to the covered item. The process of obtaining an export certification does not qualify as active investigation.

(b) EXPORT RESTRICTION.—

(1) IN GENERAL.—It shall be unlawful for any person to export or otherwise transport from the United States Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq. or 18 U.S.C. 1170), Native American archaeological resources obtained in violation of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and Native American objects of antiquity obtained in violation of the Antiquities Act under section 1866(b) of title 18, United States Code, and covered items under active Federal investigation.

(2) PENALTIES.—Any person who violates paragraph (1) knowing that the cultural items were obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002 et seq. or 18 U.S.C. 1170), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), or the Antiquities Act under section 1866(b) of title 18, United States Code, shall be fined in accordance with section 3571 of title 18, United States Code, and shall be imprisoned for not more than 1 year for a first violation and not more than 10 years for a second or subsequent violation.

(c) EXPORT CERTIFICATION.—

(1) WHEN EXPORT CERTIFICATION REQUIRED.—

(A) PROHIBITION ON EXPORT WITHOUT CERTIFICATION.—No covered item may be exported from the United States without first having obtained an export certification in accordance with this subsection.

(B) PUBLICATION.—The Secretary shall, in consultation with Indian Tribes, publish in the Federal Register a notice that includes—

(i) A description of characteristics typical of covered items which shall be sufficiently specific and precise to ensure export certification is required only of such covered items and that fair notice is given to exporters and other persons as to which items require an export certification;

(ii) a description of items that do not qualify as covered items and therefore do not require an export certification under this paragraph, which shall—

(I) clarify that objects made for commercial purposes generally do not qualify as a covered item; and

(II) clarify that in some circumstances receipts or certifications issued by Indian Tribes or Tribal artisans may be used as evidence to demonstrate a particular item does not qualify as a covered item.

(2) ELIGIBILITY FOR EXPORT CERTIFICATION.—A covered item, absent an ongoing federal investigation, shall be deemed eligible for export certification if it—

(A) was not obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002 et seq. or 18 U.S.C. 1170), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), or the Antiquities Act under section 1866(b) of title 18, United States Code, and the export of the covered item would not otherwise violate any other provision of Federal law;

(B) was excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979

(16 U.S.C. 470cc) or section 320302 of title 54, United States Code, or in compliance with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)), if the permit for excavation or removal authorizes export, and the export of the covered item would not otherwise violate any other provision of Federal law; or

(C) is accompanied with a confirmation from an Indian Tribe confirming the person's right of possession, as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), to the covered item, or confirming that the Indian Tribe has relinquished title or control, as provided for in section 3 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002), of the covered item, and the export of the covered item would not otherwise violate any other provision of Federal law.

(3) EXPORT CERTIFICATION PROCEDURES.—

(A) EXPORT CERTIFICATION PROCESS.—

(i) ATTESTATION.—An attestation shall be made by the exporter through one of the procedures set forth below stating that to the best of the applicant's knowledge and belief, the applicant is not exporting a Native American cultural item obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq. or 18 U.S.C. 1170), a Native American archaeological resource obtained in violation of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), or a Native American object of antiquity obtained in violation of the Antiquities Act under section 1866(b) of title 18, United States Code.

(ii) ATTESTATION FORM.—An attestation form, which shall describe and provide a picture of the covered items, shall be submitted by an exporter as an electronic filing through the Automated Export System (AES) for all commercial shipments including covered items. An exporter's attestation shall be required for covered items prior to the issuance of an export certification under the AES system.

(iii) INFORMATION PROVIDED BY CBP.—U.S. Customs and Border Protection shall provide to the Secretary the information in electronic declarations that include covered items.

(iv) EXPORT CERTIFICATION REQUIRED.—All covered items must receive an export certification through the AES system regardless of monetary value

(v) FALSE STATEMENTS.—Any willful or knowing false statement made on an attestation document described in clauses (i) through (iv) shall—

(I) subject the applicant to criminal penalties pursuant to section 1001 of title 18, United States Code; and

(II) prohibit the applicant from receiving an export certification for covered items through attestation in the future. These penalties do not attach to the covered item for future exports but rather to the applicant.

(B) ISSUANCE OF EXPORT CERTIFICATION.—

(i) For commercial shipments valued at less than $2,500.00 that include covered items, the exporter shall complete the attestation process and will immediately receive an export certification from U.S. Customs and Border Protection through the AES system. The exporter is not required to obtain an Internal Transaction Number (ITN).

(ii) For commercial shipments valued at $2,500 or more that include covered items—

(I) the exporter must complete the attestation process;

(II) U.S. Customs and Border Protection must consult with the Secretary and with Native American tribes and Native Hawaiian organizations regarding issuing an export certification;

(III) U.S. Customs and Border Protection will issue an export certification through the AES system—

(aa) within 6 days of completion of the attestation process unless credible evidence is provided that indicates the covered item was obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002 et seq. or 18 U.S.C. 1170), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), or the Antiquities Act under section 1866(b) of title 18, United States Code, or of other U.S. law or the covered item is under active Federal investigation; or

(bb) with notice to the exporter, U.S. Customs and Border Protection can extend the review of an application for certification for up to 30 days if credible evidence is provided which requires investigation, after which certification shall be approved or denied, consistent with clause (iii); and

(IV) once U.S. Customs and Border Protection issues the export certification and upon completion of the AES application, the exporter will receive and Internal Transaction Number (ITN) through AES.

(iii) RULE OF CONSTRUCTION.—Denial of export certification shall not in itself enable seizure or in any way affect the legal status of an item under existing United States law.

(iv) ADDITIONAL EVIDENCE.—If an export certification is delayed or denied, notice shall be given to the exporter, who may provide U.S. Customs and Border Protection with evidence to establish that the covered item is not prohibited from export

(C) REVOCATION OF EXPORT CERTIFICATION.—If credible new evidence is provided that indicates a covered item that received an export certification was obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq. or 18 U.S.C. 1170), Archaeological Resources Protection Act

of 1979 (16 U.S.C. 470aa et seq.), or Antiquities Act under section 1866(b) of title 18, United States Code, or other Federal law, or is under active Federal investigation, U.S. Customs and Border Protection may immediately revoke export certification if prior to export, and shall obtain approval of a U.S. court to revoke the export certification after export has taken place. In making a determination about whether revocation is warranted, Indian Tribes and Native Hawaiian organizations shall be consulted.

(D) SEIZURE AND FORFEITURE.—

(i) SEIZURE.—Any covered item that a person is attempting to export without an export certification described in this subsection shall be subject to seizure by U.S. customs officers and a Notice of Detention shall be issued to the exporter.

(ii) FORFEITURE.—A covered item seized under clause (i) that is found to be obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002 et seq. or 18 U.S.C. 1170), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), or the Antiquities Act under section 1866(b) of title 18, United States Code, shall be forfeited, consistent with chapter 46 of title 18, United States Code, to the Federal government or repatriated to the Indian Tribe pursuant to the process provided for under the law under which it is found to be obtained in violation. The provisions of 18 U.S.C. 983(c) shall apply to any forfeiture under this Act.

(iii) RETURN TO EXPORTER.—A covered item seized under clause (i) for which credible evidence does not establish within 60 days that it was obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c) et seq. or 18 U.S.C. 1170), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), or the Antiquities Act under section 1866(b) of title 18, United States Code, shall be returned to the exporter but shall not receive an export certification at that time.

(E) APPEAL.—If the U.S. Customs and Border Protection denies an export certification, issues a Detention Notice, or seizes a

covered item under this subsection, the applicant shall, upon request, be given a hearing on the record.

(F) INFORMATION IN FILINGS.—The Secretary shall make information on the covered items included in the filings available to Native American tribes and Native Hawaiian organizations via a secure website or other method in compliance with AES procedures.

(d) AGREEMENTS TO REQUEST RETURN FROM FOREIGN COUNTRIES.—The President is authorized to request from a State Party agreements or provisional measures subject to the limitations of Article 9 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 823 U.N.T.S. 231 (1972), to request the return from the State Party cultural items that were obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq. or 18 U.S.C. 1170), Native American archaeological resources obtained in violation of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and Native American objects of antiquity obtained in violation of the Antiquities Act under section 1866(b) of title 18, United States Code.