

## Committee for Cultural Policy and Global Heritage Alliance

### Submission to Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, U.S. Department of State, on the Proposed Request for a Memorandum of Understanding Between the United States of America and the Republic of Albania

Sent via [http:// www.regulations.gov](http://www.regulations.gov), docket DOS–2021–0003

Re: Public Notice: 11346

Proposed Memorandum of Understanding with the Republic of Albania

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March 3, 2021

Mr. Stefan Passantino, Chair

Cultural Property Advisory Committee

Cultural Heritage Center (ECA/P/C)

U.S. Department of State 2200 C Street, NW Washington, DC 20037

Dear Chairman Passantino and Members of the Cultural Property Advisory Committee to the President:

The Committee for Cultural Policy<sup>1</sup> and Global Heritage Alliance<sup>2</sup> jointly submit this testimony on the Proposed Memorandum of Understanding (MOU) for the imposition of import restrictions between the United States and the Republic of Albania. We have attempted to address below whether the requests meet the legal criteria set by Congress for import restrictions under the Cultural Property Implementation Act. However, we are hampered in our ability to respond fully to the request from the Republic of Albania due to the failure of the Department of State to include any facts establishing the State Party's need for import restrictions under the Cultural

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<sup>1</sup> The Committee for Cultural Policy (CCP) is an educational and policy research organization that supports the preservation and public appreciation of the art of ancient and indigenous cultures. CCP supports policies that enable the lawful collection, exhibition, and global circulation of artworks and preserve artifacts and archaeological sites through funding for site protection. CCP deplores the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. CCP defends uncensored academic research and urges funding for museum development around the world. CCP believes that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art is the responsibility and duty of all humankind. The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. [www.culturalpropertynews.org](http://www.culturalpropertynews.org), [info@culturalpropertynews.org](mailto:info@culturalpropertynews.org).

<sup>2</sup> Global Heritage Alliance (GHA) advocates for policies that will restore balance in U.S. government policy in order to foster appreciation of ancient and indigenous cultures and the preservation of their artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts and promotes responsible collecting and stewardship of archaeological and ethnological objects. The Global Heritage Alliance, 1015 18<sup>th</sup> Street, N.W. Suite 204, Washington, D.C. 20036. <http://global-heritage.org/>

Property Implementation Act (CPIA). The failure of the request to provide any support for the sought-after import restrictions appears to reflect Albania's inattention to the statute and CPAC's administrators failure to ensure that its requirements are clear to the requestor. Public comment is a necessary component of the regulatory process – especially given the short-staffing of an under-filled CPAC.

### **Inadequate Public Summary/Blanket Request Contrary to Congressional Intent**

Instead of providing a justification for the imposition of import restrictions, the “Public Summary” provided by the Department of State is merely a listing of all prehistoric and historic periods and types of objects that existed in the region. This is the Public Summary in its entirety:

*“The archaeological materials requested date from the Middle Paleolithic to the Ottoman Period, and include stone, ceramic, metal, glass, wood, and other organic materials. The ethnological materials requested date from the Byzantine, Middle Age, and Ottoman periods and include sacred icons and frescoes, written material such as illuminated manuscripts and codices, traditional clothing, religious vestments, ceremonial paraphernalia, and architectural elements, sculptures, mosaics, and reliefs found in historical or religious structures.”<sup>3</sup>*

Blanket restrictions on objects that are neither currently threatened by looting nor demonstrated to be illicitly trafficked in the U.S. were never contemplated by Congress, either in the CPIA or in the Congressional hearings on it.

On the contrary, Professor James Fitzpatrick, an expert on cultural property law who was personally involved in the negotiations in Congress that resulted in passage of the CPIA, has noted,

“...On their face, wall-to-wall embargoes fly in the face of Congress' intent.<sup>4</sup> Congress spoke of archeological objects as limited to “a narrow range of objects...”<sup>5</sup> Import controls would be applied to “objects of significantly rare archeological stature...As for ethnological objects, the Senate Committee said it did not intend import controls to extend to trinkets or to other objects that are common or repetitive or essentially alike in material, design, color or other outstanding characteristics with other objects of the same type...”<sup>6</sup>

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<sup>3</sup> This is the whole of the Public Summary.

<sup>4</sup> James F. Fitzpatrick, *Falling Short – the Failures in the Administration of the 1983 Cultural Property Law*, 2 ABA Sec. Int'l L. 24, 24 (Panel: International Trade in Ancient Art and Archeological Objects Spring Meeting, New York City, Apr. 15, 2010).

<sup>5</sup> See Senate Report No. 564, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess. at 4 (1982)

<sup>6</sup> See Senate Report No. 564, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess. at 6 (1982)

The Public Summary refers to ethnological items from the “Ottoman” period. Typically, “Ottoman” items do not meet the above definition of “ethnographic” items under the CPIA. The term “Ottoman” is a general description of a period of political rule in which a wide range of commercial products were manufactured within multiple Mediterranean countries. Unquestionably, many decorative objects of metal, glass, wood and stone were made throughout the territories of the Ottoman Empire and then sold in widely in an active trade. Ottoman-style goods, wherever produced, are repetitive, essentially alike, and the products of urban cultures. How are they ‘ethnographic’ if they were acquired through the market? They cannot be characterized as ‘ethnographic’ under the CPIA.

## Coins

Coins are amongst the most common and generally the least valuable ancient artifacts. They are the artifacts most often found, having been dropped and not missed in ancient sites, or found in small hoards that were hidden away from invaders or marauding bands in war and times of instability. In respect to coins, we defer to experts such as Peter K. Tompa, who has contributed a separate commentary covering the facts of the distribution of the coin types variously made and found in Albania, and the intent that they be circulated in international commerce.<sup>7</sup>

## Import Restrictions Must Be of Substantial Benefit in Deterring a Serious Situation of Pillage

A measure of whether an MOU would reduce the jeopardy of pillage is whether there is a market in pillaged material in the U.S. and other states imposing import restrictions. Section 303(a)(1)(C) of the CPIA states that U.S. import restrictions may be implemented only if:

*“the application of the import restrictions set forth in section 307 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...)”*

It is completely illogical to argue that pillaging will be reduced through import restrictions if there is not a significant import trade with the U.S. The Albanian request fails to show that the United States or any other nation with import restrictions is a significant market for recently looted Albanian antiquities. The Public Summary provides no evidence of looting of items from Albania, nor any evidence of a market for archaeological goods in the United States. Our research provides no evidence supporting this claim either.

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<sup>7</sup> Please see the commentary submitted by Mr. Tompa to this committee regarding the Albanian request on behalf of the International Association of Professional Numismatists.

There are no auction records from Sotheby's or Christie's, the largest auction houses in the U.S., for sales of antique or ancient objects from Albania. None. In fact, there does not appear to be any significant market for Albanian antiquities or ethnographic materials anywhere. Under these circumstances, U.S. import restrictions could not possibly have a significant effect in preventing current looting in Albania.

The vast majority of antique items resulting from any search of "Albania" items for sale at auction are books, lithographs, prints and paintings produced by travelers to Albania and depicting its people, their costumes and its dramatic landscapes.

The only objects actually from Albania offered for sale by Sotheby's in the last twenty years are: Six (6) Albanian flintlock holster pistols from the late 18th/19th Century, all sold in an auction for lower value goods in London in 2002.<sup>8</sup>

The only objects from Albania offered for sale by Christie's in the last twenty-five years are: Coins made between 1926 and 1939 (sold mostly in a single auction in the 1990s), unused postage stamps from 1929 which sold in 1999 in London, fewer than a half dozen military medals in scattered low value auctions, and one (1) 19<sup>th</sup> C Albanian long gun sold in 2012 in London.<sup>9</sup>

### **Import Records from Official U.S. Customs Data Show Almost No trade**

We have attached data spreadsheets and charts showing the importation of **objects of Albanian origin** entered into the United States from 2002-2020. All U.S. customs duties and object classifications are based on the country of "origin," that is, of manufacture. The exporting country is not noted. Therefore, these official records do not show imports from the Republic of Albania, only goods of Albanian origin. These are goods of Albanian origin that may have entered the United States from any country in the world, including but not limited to Albania itself.

Please note when reviewing this data that in 2018, there were changes to the categories under which art imports were reported for U.S. entry specifically based upon the definitional language of the CPIA. Under the Harmonized Tariff Schedule of the United States (2018) Revision 6, Annotated for Statistical Reporting Purposes, "archaeological pieces" are now reported

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<sup>8</sup> See results from: <https://www.sothebys.com/en/search?query=albania&tab=objects>

<sup>9</sup> See results from:

[https://www.christies.com/lotfinder/searchresults.aspx?sc\\_lang=en&lid=1&searchFrom=searchresults&entry=albania&searchtype=p&action=paging&pg=all](https://www.christies.com/lotfinder/searchresults.aspx?sc_lang=en&lid=1&searchFrom=searchresults&entry=albania&searchtype=p&action=paging&pg=all)

separately from “ethnographic pieces” and both of those are reported separately from “historical pieces.”<sup>10</sup>

Trade records are important – they tell us the value of imports and the date they arrived in the U.S. – something that no review of eBay sales can do.

What these charts and graphs show is that the U.S. does not import significant amounts of any Albanian art or antiquities from any country. The U.S. imports from Albania in the art field vary a great deal from year to year, so we have provided charts for years 2002 to 2020. Within these nineteen years, the vast majority of art imports are original statuary less than 100 years old (\$872,635 in 2019, \$0 in 2020), paintings and drawings by hand (\$115,960 in 2019, \$3000 in 2020) and collections of botanical and historic interest (\$74,026 in 2019, \$425,872 in 2020). (Perhaps this relates to Albania’s fame as a source of perfume plants.) Collector’s coins (non-archaeological) imports were \$0 in 2019, \$7,048 in 2020, and coins more than 250 years of age were \$14,372 in 2019, \$35,486 in 2020.

There are no entries whatsoever for 2019 and 2020 for “antiques over 100 years of age” or for “ethnographic” pieces as described in the CPIA, when the more detailed Harmonized Tariff classifications came into force.

The entries for “archaeological” pieces described in Statistical Note 1, equivalent to archaeological goods under the CPIA, are valued at \$14,372 in 2019 and \$35,486 in 2020. There is no duty on any of the objects in the original art classifications, regardless of age.

(See the attached Ex. 1 Harmonized Tariff Schedule of the United States (2020) Revision 10 for the description of each numbered category of objects, Ex. 2 Art and Antiques Imports from Albania (2019-2020), Ex. 3 Graph Key Imports from Albania (2015-2020), Ex. 4 Graph All Art

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<sup>10</sup> For the purposes of statistical reporting, number 9705.00.0075 “archaeological pieces” are objects of cultural significance that are at least 250 years old and are of a kind normally discovered as a result of scientific excavation, clandestine or accidental digging or exploration on land or under water.

For the purposes of statistical reporting, number 9705.00.0080, “ethnographic pieces”, which may also be called “ethnological pieces,” are objects that are the product of a tribal or nonindustrial society and are important to the cultural heritage of a people because of their distinctive characteristics, comparative rarity or their contribution to the knowledge of the origins, development or history of that people.

For statistical reporting of merchandise provided for in subheading 9705.00.00, collections made up of articles of more than one type of cultural property, i.e., zoological, biological, paleontological, archaeological, anatomical, etc., shall be reported by their separate components in the appropriate statistical reference numbers, as if separately entered.

Besides the former differentiation of gold and other, “Numismatic (collector’s) coins” are now separated by age as “250 years or more in age” and “other”. “Numismatic (collector’s) coins” are also now differentiated from coins that are “archaeological pieces.”

See Customs and Border Protection (CBP) Informed Compliance Publication on “Works of Art, Collector’s Pieces, Antiques, and Other Cultural Property.” [https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/Works%20of%20art%20etc%20ICP\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/Works%20of%20art%20etc%20ICP_0.pdf)

and Antiques Imports from Albania (2019-2020), and Ex. 5 Art and Antiques Imports from Albania (2002-2020).

In contrast, Albania's top exports, recorded in 2019, are leather footwear (\$352M), footwear parts (\$230M), crude petroleum (\$189M), ferroalloys (\$129M), and non-knit men's suits (\$116M). Top export partners are Italy (\$1.21B), Spain (\$216M), Germany (\$161M), Greece (\$143M), and France (\$95.1M). In the last five years, the total exports of Albania have changed by \$313M from \$2.36B in 2014 to \$2.67B in 2019.

### **Albania's Entry into the E.U. Will Provide an Opportunity for Legal Trade in the Same Materials Covered in the Proposed MOU**

The Republic of Albania is currently seeking admission to the European Union. According to a statement by the European Commission:

*“Albania applied for the EU membership in April 2009 and received the candidate status in June 2014. In April 2018, the Commission issued an unconditional recommendation to open accession negotiations. The Council set out the path towards opening accession negotiations in June 2019, depending on progress made in key areas such as the judiciary, fight against corruption and organised crime, intelligence services and public administration. In March 2020 the members of the European Council endorsed the General Affairs Council's decision to open accession negotiations with Albania and in July 2020 the draft negotiating framework were presented to the Member States.”<sup>11</sup>*

Accession to the E.U. would render U.S. import controls on Albanian goods circulating within the E.U. meaningless. CPIA import restrictions only apply to cultural goods subject to the export control of a particular country.<sup>12,13</sup> As stated by Peter K. Tompa, executive director of Global Heritage Alliance:

*“U.S. Customs and Border Protection has failed to acknowledge that E.U. member countries are part of a common market that allows for the export of archaeological and ethnological objects with or without a license according to the local law of the exporting E.U. member. Allowing entry of objects legally exported from the E.U. that are found on “designated lists” for E.U. member countries would greatly facilitate lawful trade in a situation that could not have been specifically contemplated by the CPIA, which predates the E.U.'s export control regime. This can be simply accommodated by modifying Art. I of any MOU with Albania to make any import restrictions inapplicable to cultural objects*

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<sup>11</sup> European Commission, Candidate Countries and Potential Candidates, <https://ec.europa.eu/environment/enlarg/candidates.htm>, last accessed March 3, 2021.

<sup>12</sup> 19 U.S.C. § 2601

<sup>13</sup> See Council Regulation (EC) No 116/2009, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0116> (last visited September 8, 2020).

legally exported from another E.U. country, with or without a formal export permit under local law.”

When Albania joins the E.U., its antiquities and art would no longer be subject to the recently established E.U. import controls. The result would be to facilitate a lawful trade in art already in lawful circulation among E.U. members, and lawful trade is a clear goal of the CPIA.

**Albania is a lovely place to visit, but having a few ancient sites does not make it an art source nation or a cultural partner with the U.S.**

Tourism is a major source of income for Albania (1.5 billion euros annually, before Covid) and the tourism sector is expected to increase. The Spanish Millennium Development Goals Achievement Fund has sponsored and funded the Culture and Heritage for Social and Economic Development Programme (CHSED) in Albania,<sup>14</sup> implemented jointly by UNESCO and UNDP, and working in conjunction with the Albanian Ministries of Tourism, Education, Cultural Monuments, and Foreign Affairs. The program’s goal is to popularize all forms of Albanian culture within both the domestic and international tourism framework. By linking cultural activities, history, and education about culture to everyday life, the program hopes to revitalize crafts, modernize facilities for tourism, and ensure a more robust cultural life within Albania.

While natural beauties and an unspoiled countryside are major attractions, Albania has five fairly well known historical sites. The most famous is the ancient Greek colony and bishopric of Apollonia. The archaeological park surrounding the ruins is a major tourist site with a functioning site museum. It has never been fully excavated and was very seriously damaged through the building of 400 military bunkers at one end of the site. Apollonia is currently receiving finding through the CHSED.

Other important sites are Butrint National Archeological Park, like Apollonia, a UNESCO World Heritage Site. The Durres Amphitheater was built during the rule of Trajan and continued to function between the 2<sup>nd</sup> and 4<sup>th</sup> centuries CE. Kruje Castle is primarily a 15<sup>th</sup> century site, Berat castle is an older site but its current formation is primarily 13<sup>th</sup> century.

While the CHSED project – and hopefully others - may eventually place Albania in a position to provide Albanian cultural experiences to the United States through museum loans and exchanges, this is not yet even being considered. Albania’s government recognizes that it needs to focus on its own internal development needs. Therefore, while Albania welcomes foreign tourists and is reworking its museums to retune the historical narrative and replace the xenophobia of the Enver Hoxha period with a more welcoming attitude, Albania has not and will

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<sup>14</sup> Culture and Heritage for Social and Economic Development Programme (CHSED), <http://www.unesco.org/culture/pdf/mdgif/albania-fact-sheet.pdf>

not likely engage in the sorts of cultural exchange with the U.S. envisioned under the CPIA for the foreseeable future.

## Conclusion

Under the aegis of the State Department's Bureau of Educational and Cultural Affairs, import restrictions under the CPIA have provided for near permanent bans on the import of virtually all cultural items from the prehistoric to the present time from the countries which have sought agreements. If CPAC fails to heed the concerns of Congress regarding overbroad import restrictions unsubstantiated by clear evidence of meeting the four determinations, CPAC not only acts in derogation of U.S. law, but also lends support to what Congress feared, an exclusively statist rather than internationalist policy on cultural heritage.

Congress placed procedural and substantive constraints on the executive authority to impose import controls under the CPIA. Non-emergency restrictions may only be applied to archaeological artifacts of "cultural significance" "first discovered within" and "subject to the export control" of the requesting nation.<sup>15</sup> There must be some finding that the cultural patrimony of the requesting nation is in jeopardy.<sup>16</sup> The imposition of import restrictions must be part of a "concerted international response" "of similar restrictions" of other market nations, and can only be applied after less onerous "self-help" measures are tried.<sup>17</sup> Import restrictions must also be consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.<sup>18</sup> Those are the requirements under the law.

Albania has not provided evidence that the determinations required by the Cultural Property Implementation Act are met. The market for Albanian goods – if it exists at all – can only be a trickle of low value items offered in Europe and the U.S. without any showing that these were found in Albania specifically – or that they were looted - or even that they are authentic.

Mandatory statutory determinations must be based on evidence and facts, not speculation about imaginary markets and an 'illicit' goods traffic for which there isn't evidence. Without having provided the facts substantiating the four determinations, Albania does not meet the criteria required by the Cultural Property Implementation Act to justify an MOU. It hardly needs repeating that every one of the statutory criteria must be met in order for the U.S. to implement import restrictions under the Cultural Property Implementation Act.

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<sup>15</sup> 19 U.S.C § 2601

<sup>16</sup> *Id.* § 2602.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*



When the CPIA was passed, its goal was to facilitate a lawful trade that enriched U.S. cultural life and to block imports only of objects at immediate risk of looting which the requesting country, despite its best efforts, could not stop. Congress viewed the CPIA as balancing the United States' academic, museum, business, and public interests by assisting art source countries to preserve archaeological resources while ensuring the U.S.'s continuing access to international art and antiques through a relatively free flow of art from around the world.<sup>19</sup>

The Cultural Property Advisory Committee should apply a plain reading to the four determinations it must make. For the last 20 years, critics of the operation of CPAC by the Department of State (including a number of former members of CPAC) have argued that the agreements and import restrictions under the CPIA are overbroad and have disregarded the requirements of the law. Import restrictions should only be imposed in situations where the facts and the law support them.

The Committee for Cultural Policy and Global Heritage Alliance respectfully request that Albania's request for import restrictions be rejected, that the full text of the Albania request be supplied to the public, and that the public be given a meaningful opportunity to address the range of materials sought to be restricted and the chronological scope of the request.

Thank you very much for your attention. I look forward to speaking with you on March 17, 2021.

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<sup>19</sup> 19 U.S.C. § 2602(a)(1)(A-D) and 19 U.S.C. § 2602(a)(4)