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**INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN
OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS
RESTITUTION IN CASE OF ILLICIT APPROPRIATION**

**Twentieth Session
UNESCO Headquarters, Room II
29-30 September 2016**

Provisional agenda item 12: Free Ports and risks of illicit
trafficking of cultural property

This document presents research on the growing
phenomenon of free ports and its implication on the
art market trade and the risk in illicit trafficking of
cultural property.

Decision required: paragraph 33.

1. BACKGROUND

1. This document is drafted on the basis of a proposal of the Secretariat, as a follow up to the discussions started during the round table entitled, “The movement of cultural property in 2016”, held on 30 March 2016 at UNESCO Headquarters. On that occasion, Ms Françoise Benhamou, Economist and Professor at University Paris 13, raised the issue of the growth and internationalization of the art market and drew attention on free ports as a possible problem for the protection of cultural property and its illicit trafficking. The issue of free ports was also raised during the second session of the Round Table discussing about money laundering and tax fraud. On this occasion; Mr Jean-Robert Gisler, Coordinator of the Cultural Heritage Unit of the Swiss Fedpol, briefly introduced the new Swiss Customs legislation adopted on November 2015 to fight these crimes, including the import of stolen or illicit exported cultural goods into free ports in Switzerland. Taking into consideration these discussions and current context of growing illicit traffic of cultural property from conflicts zones, in coordination with the World Customs Organization, the Secretariat conducted an in-depth research on the issue of free ports concerning the protection of the cultural heritage and the fight against the illicit trafficking of cultural property.

1.1. How free ports work?

2. Free ports are tax-free warehouses that were initially created to store raw materials and, later, to hold manufactured goods for a short period of time before their transportation, transit and reshipment.
3. The ‘free’ aspect of free ports refers to the suspension of Customs duties and taxes. Today, goods may be kept there for an unlimited period of time and at minimal expense. While goods are stored at free ports, owners pay no import taxes or duties until the goods reach their final destination. If the good is sold at the free port, the owner pays no transaction tax either.
4. This system allows collectors and galleries to store unlimited quantities of cultural objects without paying VAT and Customs duties. According to many national legislations, storing of goods or artefacts is sufficient to declare the nature of the asset and the name of the depositor, but not the name of the owner of the object.

1.2. What are the issues related to free ports in the illicit trafficking of cultural property?

5. Over the recent years, free ports are increasingly used as permanent homes by investors and collectors. According to the specialist art journal *Connaissances des Arts*, in 2013 the Geneva free port held around 1.2 million artefacts (plus around three million bottles of vintage wine and several tonnes of gold bars)¹.
6. However, free zones attract not only legitimate businesses but also criminals wishing to use the governmental incentives to their advantage. Due to generally favourable national legislations it is not easy to find out what is actually being stored in the free-ports around the world and who the owners are. There is a high risk that the free ports are used by art dealers to store works of art from thefts, lootings or illicit excavations for resale in the black market when things have cooled down, even many years later.

¹ <https://www.connaissancedesarts.com/marche-de-lart/dans-le-secret-des-ports-francs-11136/>

7. In March 2010, the Financial Action Task Force (FATF)² released a special report which highlighted the potential misuse of free zones by money launderers and other financial criminals³. According to the report, there is a lack of clarity and transparency regarding regulations covering the control of free zones. In some cases it is not clear whether the government or the Customs authorities have the jurisdiction to exercise controls. The lack of control by Customs raises problems in the fields of intellectual property, valuation fraud and other non-fiscal offences. Moreover, controls are often carried out by random selection methods rather than based on risk assessment or indicators and there are no clear procedures, authority, or documentation identified to organize and carry out the investigations.
8. In May 2013, the International Chamber of Commerce (ICC) published its *Business Action to Stop Counterfeiting and Piracy* (BASCAP), presenting findings and recommendations on the link between the trade in counterfeit products through Free Trade Zones (FTZs)⁴. The Action emphasizes risks and vulnerabilities of free zones with regards to money laundering and terrorism financing.
9. Recent embarrassments have confirmed that some art dealers are closely involved in the illegal trafficking of cultural property through free ports. In the past, some investigations were conducted in Swiss free ports. For example, in 1995, it was discovered that the free port of Geneva was a haven for an international network of looted antiquities linked to the Getty Museum in Los Angeles. In 2003, the Swiss Customs discovered 200 stolen ancient Egyptian treasures, including two mummies, in the free port of Geneva. They were later returned to Egypt⁵. In 2010, a Roman sarcophagus was also discovered by Swiss Customs officers of the free port of Geneva. There are allegations that it might have been plundered from a site in southern Turkey⁶. In 2014, a priceless treasure trove of Roman and Etruscan antiquities was discovered hidden in a repository in Geneva. The antiquities, stored there for 15 years, were found hidden inside 45 crates marked with the name of an offshore company. The culprit, a famous British art dealer who has done business with several museums, told the Swiss authorities that he had spread his antiquities in 29 warehouses all around the world⁷. Finally, in January 2016, the antiquities were returned to Italy⁸.
10. According to legislation all over the world, storing stolen, looted or illicit excavated works of art into free ports is a crime, but these cases demonstrate how easy it is to get around the law.

2. CURRENT SITUATION

2.1. The state of the art

11. Free-trade zones around the world are being monitored by several organizations. In 2010, the Financial Action Task Force (FATF), in its report, claimed that the free-trade zones, which

² Financial Action Task Force (FATF) is an intergovernmental body based at the headquarters of the Organization for Economic Co-operation and Development (OECD), in Paris.

³ <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>

⁴ <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/International-engagement-and-Advocacy/Free-Trade-Zones/>

⁵ http://www.swissinfo.ch/directdemocracy/free-port-problem_closing-in-on-the-archaeological-underworld/33088854

⁶ <http://en.artmediaagency.com/39699/swiss-customs-finds-a-sarcophagus-of-suspect-origins/>

⁷ <https://www.admin.ch/opc/fr/classified-compilation/20030370/index.html>

⁸ <http://www.telegraph.co.uk/news/worldnews/europe/switzerland/12134541/Disgraced-British-art-dealers-priceless-treasure-trove-discovered-hidden-in-Geneva.html>

include free ports, were a “money laundering and terrorist financing threat” partly due to inadequate safeguards, relaxed oversights and weak inspections⁹.

12. Today, there are several tens of free ports in the world and in Europe (more than forty into the European Union and over ten in Switzerland). Five of them have specialized in stocking works of art. The oldest, founded in 1850, is the free port of Geneva, Switzerland; the second was created in 2010 in Singapore; another one in 2013 in Monaco; while the two most recent ones opened during summer 2014 in Beijing and Luxemburg. A sixth one is planned to open in 2017 in Shanghai.
13. The rapid adoption of the free zone concept around the globe shows that it remains pertinent to both countries and the business community, considering that the free zones are also an integral part of the global supply and value chains.
14. Since free zone operators benefit from a special Customs treatment, there is a need to develop a commonly agreed Customs approach to free zones.
15. In this light, the World Customs Organization (WCO) and its Members developed a Specific Annex D, Chapter 2, addressing the issue of free zones, in the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), more commonly referred to as the Revised Kyoto Convention (RKC)¹⁰. Its role stems from the definition of a free zone as “a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory”¹¹.
16. In the European Union, the Union Customs Code (UCC) rules in matter of free zones (and ports). The new framework Regulation on the rules and procedures for Customs throughout the European Union (Reg. EU n. 952/2013 that repealed the Reg. EC 450/2008) entered into force on October 2015 but some of its substantive provisions are applicable only since 1 May 2016¹². Between November and December 2015, the European Commission adopted the Union Customs Code’s implementing Act (24th November 2015)¹³ and the Union Customs Code’s Transitional Delegated Act (17th December 2015) establishing rules for operators and Customs authorities pending the introduction of the new legal system¹⁴.
17. However, regarding the free ports legislation nothing has changed. The new Customs Code (UCC), as the previous one, states that Union and non-Union goods may be stored in the Customs territory of the Union without being subject to any import duty or other charges for an unlimited time. Only in exceptional circumstances, the Customs authorities may set a time-limit by which a storage procedure must be discharged in particular where the type and nature of the goods may, in the case of long-term storage, pose a threat to human, animal or plant health or to the environment (articles 237 and 238 of UCC).
18. In Switzerland, the applicable regulation is the Swiss Customs legislation¹⁵, as amended in November 2015. Under the rules, so-called “sensitive goods”, imported into free ports, must be declared to Swiss Customs which will not disclose any information. For these reasons the quantities and values of art stored in Swiss free ports are unknown and could easily amount

⁹ <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf> page 6

¹⁰ http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx

¹¹ The Secretariat wishes to thank Ms Mariya Polneer, policy advisor at the World Customs Organization (WCO), for her advice on this issue.

¹² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

¹³ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.343.01.0558.01.ENG&toc=OJ:L:2015:343:TOC

¹⁴ <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=OJ:L:2016:069:TOC>

¹⁵ The Swiss Federal Council and Customs Ordinance, as amended in November 2015.

to billions of Euros. The same holds true for many free port facilities in other regions of the world. According to the research carried out by the Art Media Agency (AMA) in July 2012, Switzerland holds the world largest stock of works of art¹⁶. The largest free port is “La Praille” located in Geneva, with more than 550,000 square feet of warehousing. According to the Security Minister of Geneva, Mr Pierre Maudet, 40 percent of the free-port is dedicated to storing art and antiquities.

19. In 2014, the Swiss Federal Audit Office published a report on the free ports and Customs-free zone in Switzerland. It warned that the free ports could be used improperly for fiscal optimization or to circumvent laws on “cultural goods, war materials, medicines or the trade in raw diamonds”¹⁷. In a 20 December 2015 interview, the Security minister of Geneva called for increased vigilance in keeping stolen artefacts coming from Syria and Iraq out of free port of Geneva. Indeed, for storing stolen or illicit excavated antiquities from Syria and Iraq, Switzerland can be accused of financing terrorism, in contravention with the UNSC 2253 Resolution. On this point, the Swiss government announced the creation of 86 new posts dedicated to the fight against terrorism¹⁸.

2.2. Good practices

20. In times of increasing transparency, accelerated circulation of information, expansion of internet access all over the world and civil responsibility, there is a critical need to ensure that the operational environment of the free zones is safe and secure, procedures are transparent, operators are law abiding, and commodities going through the free zones further in the supply chains are legal. These objectives can be achieved through the adoption and implementation of national legislations and good practices, which are the first steps to make the global trading environment safer and more secure

a) The new Swiss Customs regulation

21. On 18th November 2015, the Swiss Parliament approved a new regulation on the use of the free ports, amending the Swiss Customs Act and its Ordinance¹⁹. The new Swiss regulations, entered into force in January 2016, form part of a wider anti-money-laundering strategy, which is especially targeted at the freezing of assets in Swiss bank accounts and will have broader implications for the art market. The new Swiss Customs legislation brings an innovative definition of free ports, now known as “duty-free warehouses” and which are no longer defined as being foreign Customs territories. Consequently, they no longer have “extraterritorial” status, which precluded any inspection on their premises.
22. To enhance transparency, free port (duty-free warehouse) managers must keep a list of tenants and operators of the areas of the free port and that must be presented to the Customs authorities. This takes the form of a declaration of so-called sensitive goods, including cultural objects, present in the free port. The declaration must contain the inventory of all sensitive goods, their value, their certificate of origin and the identity of the person entitled to dispose of them²⁰.
23. According to article 19 of the Cultural Property Transfer Act (CPTA) and its Ordinance (CPTO), Customs are required to control the transfer of cultural property at the border, including import, export or transit declaration. Hence, Customs may request access to free ports and conduct controls at any time. They may request support or expert advice from Federal Office of Culture

¹⁶ <http://en.artmediaagency.com/tag/free-ports/>

¹⁷ [http://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/evaluationen/Evaluationen%20\(45\)/12490_BE_Entrepots_douaniers_PUBLICATION_RAPPORT_FINAL.pdf](http://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/evaluationen/Evaluationen%20(45)/12490_BE_Entrepots_douaniers_PUBLICATION_RAPPORT_FINAL.pdf)

¹⁸ http://www.swissinfo.ch/eng/geneva-free-port_security-director-warns-against-financing-terrorism-/41851414

¹⁹ https://www.admin.ch/opc/fr/classified-compilation/20052713/201601010000/631_01.pdf

²⁰ Articles 178a, 182 and 184 of the Swiss Custom Act as amended in November 2015.

(FOC) which informs the Customs of the risks identified at the international level by organizations engaged in combatting the illicit trafficking of cultural property (UNESCO, INTERPOL, UNODC, ICOM)²¹. However, the Customs are not in a position to check all the declarations relating to cultural property.

b) The Revised Kyoto Convention

24. The Revised Kyoto Convention (RKC), as of July 2016 ratified by 103 Contracting Parties, promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. As mentioned above, Customs policy in relation to Free Zones is enclosed in the Specific Annex D, Chapter 2. This Chapter contains 21 standards covering different aspects of control of Free Zones²². The importance of the Specific Annex is that it brings more clarity to the role of Customs in the free zones. For the purpose of this Chapter “free zone” means “a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory”. A wider implication of this definition is that all non-tariff Customs activities, such as border control functions, including inspections and seizures, should be preserved and enforced.
25. In this regard, standard 4 states that Customs have the right to carry out checks at any time on the goods stored in a free zone and standard 5 requires Customs authorization to admit to a free port any kind of good, imported directly from abroad or brought from the Customs territory of the Contracting Party concerned.
26. The engagement of the Customs authorities in the early stages of developing the free zone concept is necessary to ensure safety and security within the free zone during its operational phase. The Customs controls in free zones are principally concerned with the relevant documentation in order to check that persons introducing goods into the free zone are keeping proper accounts of the goods. Furthermore, the Customs reserve a right to initiate spot checks on the goods stored, to certify their authenticity, to ensure that they are rightly accounted for and that no unauthorized goods are introduced or removed. A risk management system, as provided in the RKC, should be utilized as a base system for carrying out efficient and effective implementation of custom controls undertakings.
27. RKC's Specific Annex K refers to the origin of goods and Customs regimes which are frequently used by smugglers and criminal organisations to their advantage. Thus, origin of goods is considered as a risk indicator for Customs authorities²³.
28. In-transit and trans-shipment regimes (addressed in the RKC's Specific Annex E) pose a high risk particularly because these procedures can be used to disguise the country of origin or to enter goods into Customs territories where border enforcement for transshipped or transit goods might be feeble²⁴.

3. PROPOSALS

²¹ J-R Gisler, *Switzerland addresses the traffic in cultural goods*, WCO news Stop Illicit Trade, June 2016 n. 80, page 18.

²² http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/~/_link.aspx?id=9415CF3F04D44BB1A62B44853A63AAC1&z=z

²³ http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/~/_link.aspx?id=6652AAB486864E489FF7928162DE6C24&z=z

²⁴ http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/~/_link.aspx?id=7D0DBF5C6D5E4A44A2211C94F8656DDC&z=z

29. On the basis of the outcomes of this research, the Committee may consider proposing to the Member States to amend their national legislation in order to better describe and regulate the phenomenon of free ports, with a special focus on the issue related to the storage of cultural property and its illicit trafficking.
30. To facilitate this process, the Committee may organize awareness-raising activities on the implication of free ports on the art market trade and the risk of illicit trafficking of cultural property, as well as on good practices adopted in the fight against the illegal aspects of this increasing phenomenon. Specific campaigns could be organized in the Member States which host free ports.
31. The Committee may also consider organizing specific trainings for Customs and police units on the most efficient means to avoid the import of illicit trafficked cultural property into free ports.
32. The Committee may encourage all Member States which are not yet party to the UNESCO 1970 Convention, the UNIDROIT 1995 Convention and to the Revised Kyoto Convention - and in particular Member States which host free ports- to ratify these indispensable legal tools for the protection of cultural heritage and the fight against the illicit trafficking of cultural property.
33. In the view of the above document, the Committee may wish to adopt the following recommendation:

DRAFT RECOMMENDATION 20.COM/12

The Committee,

1. Having examined document 20.COM/12,
2. Thanks the Secretariat for the presentation of this research, and takes note of its analysis;
3. Requests the Secretariat to update the document in accordance with the most recent developments when needed and present these updates to the Committee;
4. Invites Member States to review their national legislation in order to improve the protection of cultural property located in free ports and avoid the risk of its illicit trafficking;
5. Encourages Member States to create or strengthen Customs and police units dedicated to the protection of cultural heritage and the fight against the illicit trafficking of cultural property;
6. Invites Member States to consider becoming contracting Party of the International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention) and its Annexes.