

NOTE

THE SECRET LIVES OF FREEPORTS: AN ANALYSIS OF THE REGULATION OF FREEPORTS AND THE ILLICIT ANTIQUITIES INSIDE

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ABSTRACT

Freeports are tax free warehouses located near airports and ports. Their original conception revolved around aiding merchants in the import and export of goods by allowing them to avoid import tariffs, keep their goods in transit, and save time transporting them from port to port. The ease at which a person could move their goods in and out of ports, avoiding both spoilage and tariffs, prompted merchants to seek out specific ports, generating business and developing economies. Recently, freeports have become a source of contention regarding their ability to promote illicit activity. The user anonymity and lack of regulations allow for the storing of illicit goods free of legal liability. This Note analyzes the origins of freeports, their importance to a country's economic development, and how attempts at their regulation have failed. This Note suggests that a uniform international body, such as the United Nations, should impose economic penalties on the misuse of freeports to help curb the looting and illicit trafficking of antiquities and cultural artifacts worldwide.

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ABSTRACT	717
I. INTRODUCTION	718
II. WHAT ARE FREEPORTS?	721
A. A Brief History of Freeports: Understanding Livorno	722
B. Singapore: A Modern Day Livorno	725
III. CURRENT FREEPORT REGULATIONS	730
A. The United Nations	730
A. Switzerland	733
B. The European Union	736
D. The United States	738
E. The Issue with Freeport Regulations and Smuggling Art.....	739
PART IV: SOLUTION AND SUGGESTED FRAMEWORKS	745
V. CONCLUSION	748

I. INTRODUCTION

Freeports are large warehouse-like structures commonly located near shipping ports or airports.¹ Goods that come into freeports are exempt from tariffs² paid to the government of that country. Only when goods leave the freeport and enter customs are they subject to taxes.³ Although freeports were intended to provide tax exemptions and transportation efficiencies, the current regulatory framework allows for the storing of illicit goods, including looted⁴ or stolen cultural objects and antiquities,⁵ before

1. *Freeports: What Are They and Where Will They Be?*, BBC (May 11, 2021), <https://www.bbc.com/news/uk-politics-55819489> [<https://perma.cc/8G3Y-8FW3>].

2. A tariff is a government or supranational union-imposed tax on export or import of goods. They can be a fixed constant sum per unit or a percentage of the price of the goods. The intention is to provide competition with the hope of raising revenue and protecting domestic industries or exerting political leverage over another country. Will Kenton, *Tariff Definition*, INVESTOPEDIA (May 27, 2021), [Investopedia.com/terms/t/tariff.asp](https://investopedia.com/terms/t/tariff.asp) [<https://perma.cc/72NR-Q43R>].

3. *Freeports*, *supra* note 1.

4. Looting is the practice of taking cultural objects to sell or commemorate transpiring events, which dates back to ancient times.

5. Looting has been a prevalent and unrelenting problem throughout history. Since ancient times and through the nineteenth century, it was viewed as an acceptable accessory to war. Whether it is for celebratory purposes or support in military efforts (an issue later discussed through the modern lens of terrorism), looting is still a prevalent

they eventually settle into museums or private collections.⁶ Modern day looters have exploited the lack of oversight of freeports to conceal illicit goods from the wider public while in transit.⁷ Every time an object moves, it becomes increasingly difficult to track, especially if the object never passes through customs checkpoints and leaves no paper trail.⁸

Economic loss is not the only consequence of this exploitation. Freeports can lead to the loss of culture. Once the art or artifact is hidden away in the freeport, the rest of the world loses the opportunity to experience it. The ability to share culture is the best way to keep it intact and educate others about it.⁹ Cultural heritage allows peoples to affirm their identity as it creates a comprehensive framework for the preservation of cultural heritage, including old buildings, monuments, and artifacts. Culture and its heritage reflect and preserve values and beliefs and therefore define a people's national identity.¹⁰ Hiding a cultural object away results in the loss of an item that could educate others on a world beyond their own. Owners of precious cultural artifacts can choose to store them in freeports to avoid paying the import

problem today. See Abigail Harrison Moore, *Voyage: Dominique-Vivant Denon and the Transference of Images of Egypt*, 25 ART HIST. 531, 535 (2002); see also, *Victory Stele of Naram-Sin*, LOURVE, <https://www.louvre.fr/en/oeuvre-notices/victory-stele-naram-sin>. This is a commemorative stele of the victory of Sumerian king of Akkad, Naram-Sin over the Lullubi. It is an ancient Mesopotamian artifact dating to 2250 BC. It was found in the Iranian cite of Susa, having been looted by the Elamite king Shutruk-Nahhunte during his successful campaign in Babylon. Although not considered the earliest example of looting, it appears to be one of the first examples we can find today.

6. Items may be acquired by the end purchaser through both legal (an auction house that has done due diligence on the provenance) and illegal channels (Facebook or a dark website or an illicit dealer) because of lack of transparency and oversight. *Id*; see also *infra* Part III for further discussion. See also, Steve Swann, *Antiquities Looted in Syria and Iraq are Sold on Facebook*, BBC (May 2, 2019), <https://www.bbc.com/news/world-middle-east-47628369> [<https://perma.cc/U2CQ-SD75>].

7. Caroline Elbaor, *Free ports Come Under Scrutiny by UNESCO as Havens for Stolen Cultural Property*, ARTNET 3 (Oct. 10, 2016) <https://news.artnet.com/art-world/unesco-holds-meeting-freeports-stolen-cultural-property-694412> [<https://perma.cc/5TAF-GKVY>].

8. Samuel Weeks, *A Freeport Comes to Luxembourg, or, Why Those Wishing to Hide Assets Purchase Fine Art*, 9 ARTS 87 (2020).

9. Mimar Sinan University of Fine Arts, *Preserving Culture and Heritage Through Generations*, 7TH DIVERSITY MATTERS A FORUM ON PRESERVING CULTURE AND HERITAGE, 4 (May 11-14, 2014).

10. *Id*.

tax rather than be found out for dealing in illicit artifacts and have to return them to their countries of origin.¹¹

This Note argues that freeports can aid in a city and country's ability to become a hub for business and economic growth. As certain countries restrict their freeports, those that do not will gain a relative political and economic growth in their region. However, fewer regulations in such regions may also spawn hubs of illegally trafficked goods and result in increased illicit activity. This Note suggests that an international organization such as the United Nations¹² or the World Trade Organization¹³ should put in place a uniform international regulatory system with all participating countries subject to sanctions for failure to comply.

Part II will examine freeports and how easy it is to hide stolen objects, making certain ports more desirable than others. Part III will investigate how freeports are currently regulated and explore the risks posed by nonregulation, including the proliferation of global art smuggling of looted objects. Part III will also elaborate on the existing tools available to international organizations and governments to tighten restrictions to avoid this result. Finally, Part IV will explore and suggest a framework for regulation.

11. 19 U.S.C. § 2601 et seq.

12. The United Nations is an international organization founded after 1945 with the goal of fostering international peace and security and maintaining good relationships between countries while promoting human rights, better living standards, and social progress. *History of the UN*, UN.ORG (2015) <https://www.un.org/un70/en/content/history/index.html> [https://perma.cc/CF6K-NMSK]. The Security Council is responsible for sanctions and other "punishments" the UN is allowed to impose. This is where the UN could take more action as illicit goods are often sold and the proceeds go to fund terrorist groups, affecting human rights. *United Nations Security Council*, UNITED NATIONS, <https://www.un.org/securitycouncil/sanctions/information> [https://perma.cc/LJN5-QRCU].

13. The World Trade Organization is an international organization with the purpose of fostering international trade and enforcing the rules surrounding international trade. The members can impose sanctions on a country, affecting its ability to trade and exist on the supply chain. *What We Do*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm [https://perma.cc/A2TY-8KDS]. As discussed later, plans by the World Customs Organization, the Revised Kyoto Convention, fall short of expectation in enforcing any rules around freeports. But with more international organizations on board, it could result in better rules and punishments going into place to stop the illicit trading and hiding of goods. *See generally* Hugo Miller, *Art Collectors Quit Scandal-Hit Geneva*, BLOOMBERG (Apr. 29, 2016), <https://www.bloomberg.com/news/articles/2016-04-29/art-collectors-start-to-quit-geneva-as-scandals-dent-reputation> [https://perma.cc/UTG5-425K].

II. WHAT ARE FREEPORTS?

Modern day freeports are large warehouses located near international transportation hubs, such as maritime ports and airports, which allow businesses and individuals to avoid import and tariff regulations.¹⁴ They require simplified customs forms and exist outside of any country's territorial jurisdiction.¹⁵ Moving out of the designated zone subjects one to a nation's tariffs.¹⁶ These "free zones"¹⁷ create ideal conditions for trading and storing artworks, as collectors and dealers can avoid paying taxes and duties on anything stored or sold in a freeport. Once it leaves the freeport, it is subject to import tariffs.¹⁸ While stationed at a freeport, goods are considered to be "in transit" and are therefore not taxed until they are imported to a final destination.¹⁹ Early freeports benefitted from a complex web of incentives regarding the warehousing and transiting of goods which provided a competitive advantage over other ports.²⁰ Towns and cities that host freeports attract business due to these tax incentives.²¹

14. *Trade: Free Ports and Free Zones*, INSTITUTE FOR GOV'T (Feb. 10, 2020), <https://www.instituteforgovernment.org.uk/explainers/trade-freeports-free-zones> [<https://perma.cc/7UPS-U6FD>].

15. *Id.*

16. *Id.*

17. Free zones and freeports are both areas subject to a broad array of certain regulatory requirements. Freeports specifically encourage businesses that import, process, and re-export goods rather than more general business support objectives or regeneration objectives. Merchants received tax breaks or new ways to change goods as they were stored. *Trade*, *supra* note 14.

18. See Foreign-Trade Zones Act of 1934, 19 U.S.C. §§ 81a-81u; Talia Berniker, *Behind Closed Doors: A Look At Freeports*, CENTER FOR ART LAW (Nov. 3, 2020) <https://itsartlaw.org/2020/11/03/behind-closed-doors-a-look-at-freeports> [<https://perma.cc/S8YE-YQPE>].

19. This is analogous to a person moving through an airport; if one were to fly from New York to Geneva with a connection through London Heathrow Airport, they would remain in transit the entire time and never be subject to immigration until their final destination of Geneva.

20. COREY TAZZARA, *THE FREE PORT OF LIVORNO AND THE TRANSFORMATION OF THE MEDITERRANEAN WORLD, 1574-1790*, 11 (2017).

21. *Id.*

A. A Brief History of Freeports: Understanding Livorno

Livorno in the sixteenth century shows the earliest and most successful example of a freeport.²² Sixteenth century freeports varied widely in their institutional structure and in their hospitality extended toward foreigners and goods—in other words, how easy they made it for people from other countries to bring their business to the port.²³ The more generous these liberalities were, the more business the freeport saw.²⁴ Livorno's freeport was the most generous to foreigners in hospitality and tax breaks, storing both personal belongings and goods, like grain and other agricultural products.²⁵ Not only did this save merchants money, but also unnecessary time wherein the goods could spoil if they were subject to inspections and had to pass through customs twice.²⁶

To deal with the complexities that came with international trade, Livorno opened the doors of its freeport to foreign merchants in 1590.²⁷ The foundation and subsequent development of Livorno by the Medici²⁸ and its rival freeports created a new global marketplace.²⁹ Throughout the sixteenth century, Livorno grew to eclipse its competition. Trade shifted from Genoa³⁰ to Livorno, threatening to turn Genoa into a satellite with little

22. R. Grant Kleiser, *Free Ports in the Atlantic World*, OXFORD BIBLIOGRAPHIES (Sept. 22, 2021), <https://www.oxfordbibliographies.com/view/document/obo-9780199730414/obo-9780199730414-0357.xml> [https://perma.cc/V7HM-ZVZH].

23. *Id.*

24. *Id.*

25. Talia Berniker, *Behind Closed Doors: A Look At Freeports*, *Center for Art Law* (Nov. 3, 2020), <https://itsartlaw.org/2020/11/03/behind-closed-doors-a-look-at-freeports> [https://perma.cc/RK9M-BMND]; *Agriculture: 1500 To 1690*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/international/encyclopedias-almanacs-transcripts-and-maps/agriculture-1500-1690> [https://perma.cc/6XKS-9DMN].

26. Arne Mielken, *Freeports: Benefit or Burden?*, *FOOD MANUFACTURE* (Mar. 16, 2021), <https://www.foodmanufacture.co.uk/Article/2021/03/16/Freeports-Benefit-or-burden> [https://perma.cc/8DS3-SM84].

27. TAZZARA, *supra* note 20, at 11.

28. The Medici were one of the largest banking families and political dynasties in Europe during the first half of the fifteenth century. *See generally*, CHRISTOPHER HIBBERT, *THE HOUSE OF MEDICI: ITS RISE AND FALL* (1974).

29. TAZZARA, *supra* note 20.

30. At the time, Genoa was the most powerful trading outpost in that area. With Livorno becoming a more competitive outpost, Genoa began to lose its hold in Italy and, with it, its wealth. Thomas Kirk, *Genoa and Livorno: Sixteenth and Seventeenth-century Commercial Rivalry as a Stimulus to Policy Development*, 1 *WILEY* 3, 3 (2001).

purpose as it did not offer the same tax incentives than its growing competition.³¹ This theme, that a freeport can shift the power and economic dynamic, is crucial to the central point of this Note.³² Livorno grew to become a nexus of commerce and politics in the early modern Mediterranean, and consolidated the role of Italy as the first contact point and trade outpost between the Levant³³ and North West Europe.³⁴ Interloping merchants would choose Italian ports over their English and French counterparts as the three countries fought to establish their monopolies in a competitive trading zone.³⁵

Livorno's freeport is also a useful example of how a freeport can help a certain town or country gain power, as well as subsequently cause it to lose power if it is unable to provide competitive tax incentives. In 1669, France established Marseille as a freeport,³⁶ challenging Livorno for best Mediterranean trading post and first contact between the West and the East.³⁷ The Marseille freeport promoted business, improved trade routes, and intensified competition in the region. In response, Livorno in 1676 eliminated customs duties and applied a stallage tariff,³⁸ which agents assessed upon arriving goods regardless of their provenance, transaction destiny, or destination.³⁹ By the early eighteenth century, a majority of ports in the central Mediterranean had modeled other port's customs frameworks after Livorno's, opening their ports to foreign traders and simplifying rules for the import storage and export of goods.⁴⁰ The spread of freeports resulted in the absence of armed trading companies and a rich intertwinement of cross-cultural trading networks in the central Mediterranean.⁴¹ By the early twentieth

31. *Id.*

32. *See infra* Section II.B for further parallels.

33. A historical geographical term referring to the Eastern Mediterranean region of Western Asia. *Levant*, BRITANNICA, <https://www.britannica.com/place/Levant> [<https://perma.cc/4AYA-YKTR>].

34. TAZZARA, *supra* note 20. Livorno's freeport aided Italian economies while helping the import of raw materials and provisions on the best terms for Italy.

35. *Id.*

36. *Id.* at 148.

37. *Id.*

38. A tax paid to set up a market stall. *Id.* at 149.

39. *Id.*

40. *Id.* at 11.

41. *Id.*

century, the remaining European freeports, many of which morphed into the freeports existing today, existed primarily as duty-free areas where raw materials were stored free of import taxes until bought and sold.⁴²

Outside of the Mediterranean, beginning in the 1760's European colonial powers erected freeports in various regions to exert sovereignty, maintain the colonial system, and increase revenue.⁴³ Colonial freeports possessed "generous tax regimes" and encouraged fraud, contraband, and disorder.⁴⁴ Free trade was essentially unrestrained, with essentially no taxes or tariffs.⁴⁵ Countries began using freeports both to consolidate power by placing a popular trade space in one or many of their colonies, and to store illicit goods. Freeports allowed foreign merchants to trade in previously inaccessible regions.⁴⁶ For example, the establishment of freeports in cities such as Singapore and Hong Kong helped in the economic penetration of East Asia by European merchants.⁴⁷

Since the late nineteenth and early twentieth centuries, freeports have largely served as special economic zones that act as tax havens.⁴⁸ Such shift has resulted in the increased storage of high-value assets, including art, antiques, gold, wine, and precious stones, sometimes on a permanent basis.⁴⁹ Freeports act as vessels

42. *Id.* at 259.

43. *Id.*

44. *Id.* at 260

45. *Id.*

46. Kleiser, *supra* note 22.

47. *See infra* Section II.B for further discussion on Singapore. *See also*, TAZZARA *supra* note 20.

48. *Id.*

49. Ron Korver, *Money Laundering and Tax Evasion Risks in Free Ports*, EURO. PARLIAMENTARY RSCH. SERV. 5 (Oct. 2018).

to defer indirect taxes, such as user⁵⁰ or VAT,⁵¹ and import duties, all with a high degree of secrecy.⁵²

B. Singapore: A Modern Day Livorno

Freeport supporters claim many economic incentives, including tax breaks and government stimulus, which encourage reinvestment into the economy;⁵³ they can create jobs and lower costs for companies.⁵⁴ The main benefits of freeports are decreased duties and paperwork costs. Businesses that are within the freeport zone benefit from cheaper import duties than those outside the area,⁵⁵ cheaper import duties could mean more money spent elsewhere within the company budget. Those against freeports, however, cite multiple issues, mainly regarding taxes and secrecy.⁵⁶ Such critics fear that freeports do not create new economic activity, but instead move existing business into a place where the allure of tax breaks is large and ultimately passes off costs to the taxpayers.⁵⁷ As good as this is for business, it presents a serious moral dilemma when considering stolen or illicit goods that could be easily hidden away and sold, both effecting the taxpayer literally and other people morally.

Consider, for example, Singapore, a small but crucial port on the southern end of the Strait of Malacca,⁵⁸ which has long existed

50. User tax is similar to sales tax, but instead of applying when the product or service was purchased, it is applied when a merchant buys a product or service then converts that product for their own use. HELLERSTEIN ET AL., STATE AND LOCAL TAXATION, CASES AND MATERIALS (West Academic Publishing 2019).

51. Value-Added Tax ("VAT tax") is collected on a product during every stage of its production when value is added to it, from production to point of sale. The amount someone pays is based on the cost of the product, minus any costs of material used in making the product which have already been taxed at a previous stage. *Value-Added Tax (VAT)*, INVESTOPEDIA (Aug. 29, 2021), <https://www.investopedia.com/terms/v/valueaddedtax.asp> [<https://perma.cc/GT6H-88F2>].

52. Korver, *supra* note 49.

53. Kleiser, *supra* note 22.

54. *Trade: freeports and free zones*, INSTITUTE FOR GOV'T (July 22, 2021), <https://www.instituteforgovernment.org.uk/explainers/trade-freeports-free-zones> [<https://perma.cc/3L5T-54NG>].

55. Kleiser, *supra* note 22.

56. Korver, *supra* note 49.

57. *Id.*

58. This is a narrow stretch of water between the Malay Peninsula and the Indonesian island of Sumatra and acts as a main shipping channel between the Pacific and

in the shadow of Hong Kong.⁵⁹ Singapore, like Livorno, became a prominent competitor in the region for trade because its freeport⁶⁰ was a key player in the growth and success of the old maritime Silk Road.⁶¹ Singapore serves as a meeting place for ships maneuvering through different sectors of the Silk Road,⁶² linking seaports in China with India and the West in trade that has spanned two millennia.⁶³ Though Singapore's location rendered it a valuable trade hub since the fourteenth century, Singapore has also developed a reputation in the region as a trusted neutral forum for commercial dispute resolution, offering varying tax incentives such as freeports.⁶⁴ The combination of these factors, among others—the competence of the labor force, the industrial base, and the ability to realign its resources to meet changes in global

Indian oceans. Patrick Winn, *Strait of Malacca Is World's New Piracy Hotspot*, NBC NEWS (Mar. 27, 2014), <https://www.nbcnews.com/news/world/strait-malacca-worlds-new-piracy-hotspot-n63576> [<https://perma.cc/8V96-TVGJ>].

59. Poppy Skinner, *Hong Kong Vs. Singapore: Battle Of Two Asian Tigers*, BLLNR SINGAPORE (June 14, 2020), <https://www.blnr.sg/leadership/hong-kong-vs-singapore-battle-of-two-asian-tigers> [<https://perma.cc/4HUX-CVYX>]; David Ramli & Lulu Chen, *The Super Rich Are Choosing Singapore as the World's Safest Haven*, BLOOMBERG (May 26, 2021, 12:00 PM), <https://www.bloomberg.com/news/features/2021-05-26/singapore-during-covid-is-city-of-choice-for-billionaires-and-their-families> [<https://perma.cc/8DU4-ZU5K>].

60. Singapore has the largest freeport dedicated to the storage of high value collectibles in the world. *Christie's Launches Christie's Fine Art Storage Service (CFASS) at the Singapore Freeport*, CHRISTIE'S (May 18, 2009), <https://www.christies.com/presscenter/pdf/05182009/174032.pdf> [<https://perma.cc/9NRB-4KWD>].

61. The Silk Road was a network of various trade routes connecting China with the Middle East and Europe from the second century BCE to the eighteenth century CE. Steven Chong, *Dispute Settlement in the Belt and Road Initiative: Lessons from the Singapore Experience*, 8 THE CHINESE J. OF COMPAR. L. 30, 30 (2020).

62. The Maritime Silk Road is the maritime section of the Silk Road that connected China, the Indian subcontinent, Southeast Asia, Somalia, the Arabian peninsula, Egypt, and Europe. See generally, Kwa Chong Guan, *The Maritime Silk Road: History of an Idea*, NALANDA-SRIWIJAYA CENTRE WORKING PAPER SERIES NO. 23 (Oct. 2016), <https://www.iseas.edu.sg/images/pdf/nscwps23.pdf> [<https://perma.cc/M2DB-KHJP>].

63. Chong, *supra* note 61, at 31.

64. *Id.*

demand⁶⁵—have primed Singapore to overtake Hong Kong as a major power in Asia.⁶⁶

China's recent human rights abuses, such as its treatment of the Uyghur population, has also prompted this shift in power.⁶⁷ International condemnation has led many international economic players to look elsewhere for business partners.⁶⁸ Although China

65. *Id.*; Skinner, *supra* note 59 (explaining that throughout the coronavirus pandemic, Singapore has become a major haven for wealth—reacting to the pandemic and the political turmoil in Hong Kong, some of the wealthiest tycoons in the region have relocated to Singapore).

66. China is arguably exacerbating its own declining position by imposing anti-sanctions on Hong Kong. Anti-Sanctions are countermeasures taken in response to foreign entities involved in discriminatory measures that violate international basic norms and laws. Jeffie Lam, *China's Anti-sanctions Law: What Is It, How Will It Take Effect in Hong Kong and Should the Business Community Worry?*, SOUTH CHINA MORNING POST (Aug. 18, 2021). In June, Beijing adopted a law in which entities or individuals involved in making or instigating discriminatory measures against Chinese entities or citizens could be put on a government anti-sanctions list. This came as a response to the United States imposing sanctions on China after their crackdown on Hong Kong's freedoms. Although no official statements have been made, there have been rumblings of banks and companies attempting to make contingency plans. Alun John & Scott Murdoch, *China's Planned Anti-Sanctions Law for Hong Kong Unsettles Financial Sector*, REUTERS (Aug. 19, 2021, 7:00 PM), <https://www.reuters.com/business/finance/chinas-planned-anti-sanctions-law-hong-kong-unsettles-financial-sector-2021-08-19/> [<https://perma.cc/49V6-DD73>].

67. Gary Clyde Hufbauer & Euijin Jung, *US Economic Sanctions Against Human Atrocities in China and Myanmar*, PETERSON INSTITUTE FOR INT'L ECON. (Apr. 8, 2021, 5:00 AM) <https://www.piie.com/blogs/realtime-economic-issues-watch/us-economic-sanctions-against-human-atrocities-china-and> [<https://perma.cc/Y34N-2VH6>]. The United States issued sanctions against China due to the Chinese persecution of its Uyghur Muslim minority. The European Union and the United States have teamed up in the Trade and Technology Council as an effort to defend and counter against China's often disruptive global action through a partnership. The Trade and Technology Council was formed in June 2021 at a US-EU Summit specifically for the purpose of to promote US and EU "competitiveness and prosperity and the spread of democratic, market-oriented values by increasing transatlantic trade and investment in products and services of emerging technology, strengthening our technological and industrial leadership, boosting innovation, and protecting and promoting critical and emerging technologies and infrastructure." *U.S.-E.U. Trade and Technology Council*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (2021), <https://ustr.gov/useuttc> [<https://perma.cc/K9HT-TGP3>]; Mark Magnier & Finbarr Bermingham, *US, EU Meet to Forge Trade and Tech Alliance to Reduce Dependence on China*, SOUTH CHINA MORNING POST (Sept. 30, 2021 2:45 AM) <https://www.scmp.com/news/china/article/3150644/us-eu-meet-forge-trade-and-tech-alliance-reduce-dependence-china> [<https://perma.cc/6M8Q-AYAY>]. Even though China is not specifically mentioned in the 17-page joint statement and EU officials insist the council is not aimed at any one country in particular, the implication of the document is clear.

68. John & Murdoch, *supra* note 66.

has freeports of its own, including in Hong Kong,⁶⁹ the unpopularity of the Chinese government might make international consumers unwilling to store their goods in Chinese ports as a way to avoid doing business with China as a whole.⁷⁰

Singapore's freeport⁷¹ is one of several incentives for people to choose Singapore over Hong Kong.⁷² Singapore has garnered attention not only because of its freeport and associated tax incentives, but also due to its ease for setting up and operating businesses, its high quality of life, and its qualified and affordable labor force.⁷³ Between the distrust of the Chinese government and the ease of setting up business in Singapore, it makes sense to see a shift from one country to another. Regulations are relaxed relative to other freeports, both in Asia and in other regions of the world.⁷⁴ For example, those who store goods in the Singaporean freeport can do so with *carte blanche* anonymity.⁷⁵ A modern-day Livorno, Singapore has encouraged international business in Asia and is beating out Hong Kong, its main competition.⁷⁶

69. *Hong Kong's Trade Policy*, TRADE AND INDUSTRY DEPARTMENT, THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION <https://www.tid.gov.hk/english/aboutus/tradepolicy/trpolicy.html> [https://perma.cc/3EG9-9469].

70. David Rothnie, *Quietly, Some Hong Kong Desks are Moving to Singapore*, EFANCIALCAREERS (Apr. 7, 2021), <https://www.efinancialcareers.com/news/2022/01/hong-kong-bankers-relocate-to-singapore> [https://perma.cc/SKA8-ZKCT]; Hufbauer & Jung, *supra* note 67.

71. The Statutes of the Republic of Sing., Free Trade Zones Act, Ch. 114, Part II, § 5 (Nov. 15, 2021).

72. See generally *Christie's*, *supra* note 60.

73. Singapore currently outscores Hong Kong in all of these metrics. At the moment, Singapore makes it somewhat easy for the superrich to settle. The country grants fast-track permanent residency to families or qualified business owners if they invest S\$2.5 million (about \$1,836,210 USD) in local businesses, certain funds, or a family office (with at least S\$200 million in assets). Ramli & Chen, *supra* note 59. The tax system in Singapore is also generous. Foreign sources of income are taxed when they are remitted or deemed remitted into Singapore unless the income was "already subjected to taxes in a jurisdiction with headline tax rates of at least 15%"; corporate tax is capped at 17 per cent; and personal tax starts at 0 percent and caps at 22 percent (above S\$320,000 or around \$235,034 USD) *Singapore Tax System & Tax Rates*, GUIDEMESINGAPORE (2021), <https://www.guidemesingapore.com/business-guides/taxation-and-accounting/introduction-to-taxation/singapore-tax-system-and-tax-rates> [https://perma.cc/23J2-DZ5J].

74. See *Christie's*, *supra* note 60.

75. *Id.*

76. Banks are quietly moving Hong Kong staff or trading desks, although not fully because of the political tensions. Hufbauer & Jung, *supra* note 67.

Singapore structured its freeport with the intentions of building its economic strength⁷⁷ and attracting both prominent businesses and people.⁷⁸ However, the resulting loose restrictions and the high-value entities that flow through its freeport has made Singapore a haven for bad actors.⁷⁹ Singapore's motives notwithstanding, since its freeport's inception, researchers suspect that the port holds more illicit goods than other freeports in the region and around the world.⁸⁰ This puts an unfair advantage on some countries willing to bend the rules or have fewer rules than the countries that will not.

Thus, irrespective of any individual country's motives for establishing a freeport, there must be a global consensus on the regulation of freeports—most importantly, the elimination of complete anonymity of their users to those running the freeport. No longer allowing shell companies and other loopholes in identity would make it easier to impose penalties if a person is found using a freeport in an illicit manner. This would not completely hinder the ability of places like Singapore to expand, as tax incentives would not be eliminated altogether, but would make it more challenging for any individual state to use its freeport to gain a competitive advantage over another. It would also discourage those hoping to use a freeport only to avoid taxes by storing their high value art. This Note weighs the balance between these two interests—economic freedom and expansion against trafficking stolen goods.

77. See *Christie's*, *supra* note 60.

78. *Id.*

79. Hrishikesh Dubey, *HSBC and Yves Bouvier's Freeport: Can Singapore Avoid the Global Crackdown?*, JAKARTA GLOBE (Apr. 24, 2019), <https://jakartaglobe.id/opinion/hsbc-and-yves-bouviere-freeport-can-singapore-avoid-the-global-crackdown/> [<https://perma.cc/J528-7GBQ>].

80. One of the issues with the Singapore freeport is the owner, Yves Bouvier. Known for defrauding clients by misrepresenting the value of artwork, he has come under scrutiny for a myriad of tax evasion issues. This case brought unwanted attention to the freeport and has left researchers wondering what is hiding in there that would cause any problem. *Singapore 'Fort Knox' Said to be Up for Sale as Swiss Owner Fights Russian Tycoon*, BUSINESS TIMES (July 26, 2019), <https://www.businesstimes.com.sg/real-estate/singapore-fort-knox-said-to-be-up-for-sale-as-swiss-owner-fights-russian-tycoon> [<https://perma.cc/JKN9-QGPN>].

III. CURRENT FREEPORT REGULATIONS

A. *The United Nations*

Disputes between governments and individual persons predominantly arise when individuals use freeports as semi-permanent storage for high value goods. In 2006, the World Customs Organization (“WCO”)⁸¹ and its members developed a specific protocol to address freeports known as the Revised Kyoto Convention (“RKC”),⁸² with the aim of bringing more clarity to the role of customs in free zones and freeports.⁸³ Standard 4 of the convention allows customs to have the right to carry out checks on goods in free zones at any time. Standard 5 requires customs to authorize any kind of good coming in to a freeport while also giving customs the right to spot check stored goods to ensure unauthorized goods are not stored or removed.⁸⁴

In the European Union, freeports (and zones) fall under the purview of the Union Customs Code, the governing regulation only for EU customs.⁸⁵ The current UCC states that EU and non-EU goods can be stored indefinitely in such customs territories without being subject to any import duty or other charges. Only in the rarest of cases, such as where long-term storage may pose a threat to human, animal, or plant health, or the environment, can customs authorities set a time-limit on which a storage unit must be emptied.⁸⁶ Although many import rules have changed, not much has changed for freeports.⁸⁷ For example, Singapore is not a party

81. World Customs Organization focuses on customs as opposed to trade like the WTO. It is an independent intergovernmental body whose goal is to enhance the effectiveness and efficiency of customs administrations. *Discover the WCO*, WORLD CUSTOMS ORGANIZATION, www.wcoomd.org/en/about-us/what-is-the-wco/discover-the-wco.aspx [https://perma.cc/TYA4-LRQR].

82. The RKC is formally titled Specific Annex D, Chapter 2 in the International Convention on the Simplification and Harmonization of Customs Procedures (as amended). See *Intergovernmental Committee For Promoting The Return Of Cultural Property To Its Countries Of Origin Or Its Restitution In Case Of Illicit Appropriation*, UNESCO 20th Session 3 (Sept. 29-30, 2016).

83. *Id.* at 4.

84. *Id.* at 7.

85. Union Customs Code, Art. 238-243.

86. Dubey, *supra* note 79.

87. *Id.* at 4.

to the Revised Kyoto Convention.⁸⁸ This presents a major problem in presenting a unified front; as states implement stricter rules, individuals may move their illicit goods to a Singaporean freeport.

Many tools exist to help the regulation of freeports, most of which include UN treaties and initiatives originating after World War II, when many art and cultural objects were stolen. The United Nations Educational, Scientific and Cultural Organization (“UNESCO”)⁸⁹ is one of the largest forces in pushing the UN forward with such initiatives.⁹⁰ Concern for freeport misuse is nothing new. In March 2010, the Financial Action Task Force, a Group Seven (“G7”)⁹¹ initiative, released a special report highlighting the potential misuse of freeports and zones for money laundering and other financial crimes.⁹² It noted that in some instances, it is unclear whether the government or the customs authorities have jurisdiction in these cases.⁹³ Furthermore, searches of freeports for illicit goods often only occur due to a random selection process, rather than a formal investigation.⁹⁴ Without a unified system of investigation, proper restrictions will never come into place.

In the past, museums have also been complicit in such illicit deals. In 1995, a freeport in Geneva was discovered as a haven network of looted antiquities connected to the Getty Museum.⁹⁵ Although recently museums have taken a stricter approach to their

88. *The Revised Kyoto Convention*, WORLD CUSTOMS ORGANIZATION (enacted 2006), http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx [<https://perma.cc/J74B-TVDT>].

89. UNESCO is a specialized entity with the goal of promoting world peace through international cooperation in arts, sciences, education, and culture. *See generally UNESCO*, UNESCO, <https://en.unesco.org> [<https://perma.cc/B7GH-29CG>].

90. Dubey, *supra* note 79.

91. The G7 is an inter-governmental political forum comprising France, Germany, Canada, Italy, Japan, the United States, the United Kingdom, and heads of state from the EU. It is not based on a treaty and has no permanent office, but still holds great influence over international politics and policy. Michael Shear, *G7 News: A Return to Face-to-Face Diplomacy*, N.Y. TIMES (June 11, 2021) <https://www.nytimes.com/live/2021/06/11/world/g7-summit> [<https://perma.cc/6UBA-PVHG>]; *see also*, G7, *What is the G7?*, G7 UK, (2021) <https://www.g7uk.org/what-is-the-g7/>.

92. Dubey, *supra* note 79.

93. *Id.*

94. *Id.*

95. Andrew Slayman, *Geneva Seizure*, ARCHAEOLOGY MAGAZINE (Sept. 14, 1998) <https://archive.archaeology.org/online/features/geneva/> [<https://perma.cc/6Y5R-L5MU>]. The Getty Museum is a major art and artifacts museum based in Los Angeles. GETTY, <https://www.getty.edu> [<https://perma.cc/CJV5-37MN>].

pieces checking provenance, these institutions need to work as a unified front. Most recently, on September 29, 2016, the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (“ICPRCP”) met regarding the growing problem of freeports and their abuse in the illegal trafficking of art and other cultural property.⁹⁶ This meeting followed a previous meeting in March of that year, during which government officials addressed the prevalent use of freeports to store newly-acquired illicit goods until “things cooled down” and they could be sold on the black market.⁹⁷ The September meeting focused on the risk of freeports to cultural objects.⁹⁸

The European Parliament requested that the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance address these issues.⁹⁹ The investigation centered on the freeport in Luxembourg, which mirrors that in Geneva.¹⁰⁰ The goal was to tighten restrictions after Luxembourg lawmakers realized their freeports were susceptible to money laundering schemes. Luxembourg subsequently enacted strict anti-money laundering (“AML”) legislation, requiring due diligence on the items stored in their freeports.¹⁰¹ Due to the lack of transparency among other freeports, the study concluded that another freeport free of regulations likely gained the business that Luxembourg lost as a result of increased regulations.¹⁰² In July 2015, Luxembourg unilaterally introduced into national law some of the elements of what would eventually be included in the future AMLD5¹⁰³ legislation following an assessment of money laundering risks relating to the freeport.¹⁰⁴ The result was a movement of business elsewhere to other more “private” freeports where customers could maintain their secrecy.¹⁰⁵

96. Elbaor, *supra* note 7.

97. *Id.*

98. *Id.*

99. Korver, *supra* note 49.

100. *Id.*

101. *Id.* at 39.

102. *Id.*

103. For further discussion, *see infra* Section III.B.

104. Korver, *supra* note 49, at 7.

105. *Id.*

A. Switzerland

The Swiss Federal Audit Office (“SFAO”) similarly revealed such an abuse of freeports in its 2014 audit of the value of the goods stored in freeports.¹⁰⁶ The result was a realization of a huge increase in the value of goods stored in some of the Swiss custom warehouses and freeports since 2007.¹⁰⁷ Although the audit did not specifically measure the increase in stored artwork, it is estimated that more than 1.2 million pieces are stored in the Geneva freeport alone, and at least fourteen pieces had not left the freeport in decades.¹⁰⁸ The report did not identify the origin of the pieces, but it is likely some had questionable provenance and were out of the reach of the appropriate authorities.¹⁰⁹

As briefly mentioned above,¹¹⁰ the governing authority for European freeports is the Union Customs Code (“UCC”), which defines the legal framework for customs rules and procedures in EU customs territories.¹¹¹ Title VII, Chapter 3, Section 2 and “free zones” (freeports) (Title VII, Chapter 3, Section 3) are the relevant articles for freeports and customs warehouses.¹¹² Under these articles, the storage of goods in a freeport is subject to “special storage procedures.”¹¹³ According to these procedures, a non-EU good may be stored in the customs territory without being subject to import duty for an unlimited period of time.¹¹⁴ Free zones must be enclosed spaces subject to customs supervisions.¹¹⁵

The UCC is intended¹¹⁶ to ensure that import duties and indirect taxes are paid when the goods are officially imported.¹¹⁷ The rules are helpful regarding the actual importation of goods, however, none address the need to monitor activity within the freeport storage units themselves. Freeports are not recognized as

106. *Id.*

107. *Id.* at 17.

108. *Id.*

109. *Id.*

110. *See supra* Part III.

111. *See generally* Union Customs Code (effective May 1, 2016), https://ec.europa.eu/taxation_customs/union-customs-code-ucc-introduction_en [<https://perma.cc/9GQ2-MVRM>].

112. *Id.*; Korver, *supra* note 49, at 19.

113. *Id.*

114. Union Customs Code, Art. 238.

115. Union Customs Code, Art. 243.

116. *See generally*, Union Customs Code.

117. Korver, *supra* note 49, at 21.

such in the UCC; instead they fall under “any other free zone” which may lend itself to problems regarding the scope of the fifth Anti-Money Laundering Directive (“AMLD5”)¹¹⁸ and the ability to regulate them under such a directive.¹¹⁹ Since freeports are not fully outlined in the UCC, they could lead to interpretational issues and cause problems bringing them under the purview of the AMLD5 and the terms defined therein. If freeports do not fall within that scope, there is nothing prohibiting people from continuing to use them as they have been.¹²⁰ As of January 10, 2020, the drafters of the AMLD5 are attempting to broaden the scope of their efforts to explicitly include freeports and other actors in the art market.¹²¹ Since then, within the European Union, freeports must report suspicious transactions to the financial intelligence units.¹²² However, the issue still remains that the “unknown is the unknown,”¹²³ and if companies do not self-report, the financial intelligence units cannot put preventative measures into place.

Switzerland, while not in the EU,¹²⁴ has a similar applicable regulation called the Swiss Federal Council and Customs Ordinance,¹²⁵ which was amended in 2015.¹²⁶ Under this legislation, “sensitive goods” imported into freeports must be declared to Swiss Customs, which in turn will not disclose any information. Because of the nondisclosure, the values and quantities of art stored in the Swiss freeports are unknown and

118. The European Parliament adopted the fifth Anti-Money Laundering Directive on April 19, 2018 to prevent financial systems from engaging in money laundering or terrorism. *The 5th Anti-money Laundering Directive*, DELOITTE, <https://www2.deloitte.com/uk/en/pages/financial-services/articles/fifth-anti-money-laundering-directive.html> [<https://perma.cc/6TBG-UN7K>] (last visited Nov. 8, 2020).

119. Korver, *supra* note 49, at 23.

120. *Id.* Allowing people to circumvent the law and hide illicit goods in the freeports.

121. Korver, *supra* note 49, at 22.

122. *Id.* at 22.

123. *Id.* at 6.

124. Although Switzerland is not in the EU or an EEA member, they are part of the single market. *Countries Not in the EU or EEA*, GOV.UK (2022), <https://www.gov.uk/eu-eea>.

125. Customs Ordinance, 631.01 (Jan. 1, 2016), <https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/2007/250/20160101/fr/pdf-a/fedlex-data-admin-ch-eli-cc-2007-250-20160101-fr-pdf-a.pdf> [<https://perma.cc/V3NL-ACAA>].

126. UNESCO, *supra* note 89.

could easily be worth in the billions of Euros or Swiss Francs.¹²⁷ This is not exclusive to Switzerland, the same holds true for freeports around the world. However, Switzerland is known to hold the world's largest stock of works of art and antiquities.¹²⁸ La Praille, the largest freeport in Geneva, dedicates approximately forty percent of its space to art and antiquities.¹²⁹ A 2014 report by the Swiss Federal Audit Office warned that freeports could be used to circumvent laws concerning war materials, medicines, the trade in raw diamonds, and cultural goods.¹³⁰

Looting and the storage of looted artifacts is especially problematic because the stolen goods are often used for illicit purposes. For example, in 2015 ISIS¹³¹ ransacked the ancient site of Palmyra¹³² and sold artifacts to fund its organization.¹³³ Illicit goods are also sold on black market sites and channels.¹³⁴ Freeports contribute to this issue, acting as havens for hidden illicit goods, even if the owner is unaware of the item's illegal provenance.¹³⁵ In December 2015, the Security Minister of Geneva called for increased security and vigilance in making sure stolen artifacts coming from Iraq and Syria remained out of freeports.¹³⁶ If Switzerland allowed the storage of these goods, it could be accused of financing terrorism and violating the UNSC 2253 Resolution.¹³⁷ In response, Switzerland created eighty-six new

127. *Id.* Valuation is derived by good faith reporting, and individuals may misstate art values to avoid triggering a provenance check.

128. *Id.* (citing a 2012 Art Media Agency study).

129. *Id.*

130. Korver, *supra* note 49, at 17.

131. The Islamic State of Iraq and the Levant ("ISIS") is a militant Sunni Islamist group that follows a jihadist doctrine. Ishaan Tharoor, *ISIS or ISIL? The Debate Over What to Call Iraq's Terror Group*, WASH. POST (June 21, 2014).

132. "The city of Palmyra is located near the Syrian capital of Damascus containing monumental ruins of a great city that was one of the most important cultural centers of the ancient world." *Site of Palmyra*, UNESCO, <https://whc.unesco.org/en/list/23/#:~:text=An%20oasis%20in%20the%20Syrian,centres%20of%20the%20ancient%20world> [https://perma.cc/3FDM-GLMR].

133. *See generally* Swann, *supra* note 6.

134. Examples of this include Turkey as a smuggling route for millions of dollars' worth of looted artifacts for centuries, more recently from Iraq and Syria. *Id.*

135. Miller, *supra* note 13; *see also* Simon Cherner, *France Returns to Egypt 114 Antiquities Looted During Clandestine Excavations*, LE FIGARO (June 25, 2021).

136. Swann, *supra* note 6.

137. S.C. Res. 2253, ¶ 7 (Dec. 17, 2015) (banning any help financially to terrorist groups by means of anything that could aid in their assets, in this case, allowing them to fund their organization through selling stolen art and antiquities).

posts in the Swiss government aimed at fighting terrorism.¹³⁸ Further, in 2015 the Swiss Parliament approved new regulation on the use of freeports, forming a larger anti-money-laundering strategy with the aim of freezing assets in Swiss bank accounts and amending the Swiss Customs Act and its Ordinance.¹³⁹ The regulation redefined freeports and stripped them of their “foreign custom territory” extraterritorial status, which precluded inspections on the premises.¹⁴⁰ Freeport managers will be required to keep a list of tenants and operators in the area and present it to customs authorities.¹⁴¹ This list must contain an inventory of all sensitive goods, their certificate of origin, their value, and the name of the person entitled to dispose of them.¹⁴² According to Article 19 of the Cultural Property Transfer Act and its Ordinance (CPTO), customs may request access to freeports (“persons active in the art trade”) and conduct controls within a reasonable time.¹⁴³ Between a six-month storage cap and “the requirement to reveal the contents of the crates going in and out of the duty-free warehouses,” it is possible to surmise that this might affect who stores which items there.¹⁴⁴ While this requires that forms be completed in good faith, these actions, discussed previously about the United Nations and now Switzerland, demonstrate a desire to crack down on the illegal nature of freeports. But as seen with the European Union below, there are too many entities with too many varied solutions to allow for a successful monitoring of freeports.

B. The European Union

As of January 1, 2018, direct tax authorities of each country separately have “access upon request” regarding a wide set of information for ultimate beneficial owners, much of which is found

138. UNESCO, *supra* note 89.

139. *Id.* at 6.

140. *Id.*

141. Swiss Custom Act, Arts. 178a, 182, 184 (2015).

142. *Id.*

143. UNESCO, *Ordinance on the International Transfer of Cultural Property* (Apr. 13, 2005) https://en.unesco.org/sites/default/files/suisse_otbc_entno_15; UNESCO, *supra* note 89.

144. Henri Neuendorf, *Switzerland's Tough New Stance on Freeports Will Shake the Art World*, ARTNET (Nov. 19, 2015), <https://news.artnet.com/market/switzerland-freeport-regulations-367361> [<https://perma.cc/9UKY-VA62>].

in the AMLD5.¹⁴⁵ Examples of this include consumer due diligence (“CDD”) obligations by banks and other obliged entities (AMLD4 Articles 13 and 40);¹⁴⁶ beneficial ownership information held by companies (AMLD4 Article 30, paragraphs 1 and 2)¹⁴⁷ or trusts (AMLD4 Article 31, paragraphs 1 and 2);¹⁴⁸ and beneficial ownership registers (AMLD4 Articles 30 and 31, paragraph 3).¹⁴⁹ However, it is still largely debated how this will work in practice given ambiguity in the AMLD5 on the way data is kept. Since authorities cannot “fish”¹⁵⁰ for information of non-financial obligated entities, it is difficult to see any potential for systematic benefit. Unless the authorities have prior information, such as a specific request received from a counterpart authority abroad, the information is again completely unknown.¹⁵¹

Similarly, under the AMLD5 rules, in addition to freeports, other actors in the art market will fall under the classification of non-financial entities. Therefore, they will come under the purview of the authorities, who are still unable to simply march into a freeport and start opening containers to see what is inside.¹⁵² After Luxembourg came under the authority of AMLD, it lost appeal for storage purposes as compared to non-EU freeports.¹⁵³ It remains to be seen how these rules affect other European freeports. The rules Luxembourg has to apply now, means that owners are no longer allowed to use offshore companies or their lawyers, trusts, or galleries to hide their ownership of goods.¹⁵⁴ Even though these rules are supposed to impose stricter guidelines for freeports, it is still a matter of good faith “gatekeeping” and reporting suspicions for the AMLD to work. This does not present a viable systematic alternative going forward. Even if it did, people could simply move to another freeport out of the European Economic Zone.

145. Korver, *supra* note 49, at 23.

146. Anti-money laundering (AMLD IV) - Directive (EU) 2015/849 art. 13 & 40 (2015).

147. *Id.* art. 30, at ¶¶ 1-2.

148. *Id.* art. 31, at ¶¶ 1-2.

149. *Id.* art. 30-31, at ¶ 3.

150. Korver, *supra* note 49, at 6.

151. *Id.*

152. *Id.* at 22.

153. *Id.* at 36, 38.

154. *Id.* at 36.

The best known freeports today are those in Luxembourg, Geneva, Beijing, Singapore, Delaware, and Monaco.¹⁵⁵ These jurisdictions interpret freeports as an addition to their lure as financial markets, with many being offshore markets already.¹⁵⁶ Notably, freeports are only a small part of the high-end storage market.¹⁵⁷ Many are managed by private companies. Other than Luxembourg, a majority of freeports allow almost anyone to bring in goods on behalf of someone else, without revealing the “ultimate beneficial owner.”¹⁵⁸ This provides even greater levels of secrecy for people looking to avoid creditors and tax authorities. Furthermore, registration of the value of goods is left to self-declaration, leaving room for over or under valuing items.

D. The United States

As previously mentioned at the beginning of this section,¹⁵⁹ reform dealing with looted art came largely into effect post World War II since the Nazis looted so much art and cultural objects.¹⁶⁰ Turning briefly to United States’ legislation, there was an attempt to take steps regarding the restitution of Nazi era looted art, although courts have held differently.¹⁶¹ But between President Clinton’s Holocaust Victims Redress Act¹⁶² and The Terezín Declaration,¹⁶³ the United States has purported to support restitution of Nazi-stolen art, but not in a manner that addresses

155. *Id.* at 5.

156. *Id.*

157. *Id.* There are also customs warehouses or bonded warehouses that have a bigger market, which also offer similar benefits, although a different procedure. Goods can be stored, manipulated, or undergo manufacturing operations without any taxes. These warehouses can be managed by the state or privately, the latter case requiring a customs bond to be posted with the government. 19 U.S.C. § 1555.

158. *Id.* at 6.

159. *See supra* Part III.

160. Alex Shoumatoff, *The Devil and the Art Dealer*, VANITY FAIR (Mar. 19, 2014), <https://www.vanityfair.com/news/2014/04/degenerate-art-cornelius-gurlitt-munich-apartment> [<https://perma.cc/PGG4-UQFP>].

161. Bert Demarsin, *Let’s Not Talk about Terezin: Restitution of Nazi Era Looted Art and the Tenuousness of Public International Law*, 37 BROOK. J. OF INT’L L. 118, 118 (2011).

162. Which authorized twenty-million dollars to be distributed to charitable organizations in an effort to help track down stolen art and bring it to the rightful heirs. *Id.* at 151; 112 Stat. 15, 16, 17, and 18.

163. The Terezín Declaration is a non-binding declaration with 47 signatories who agree to righting the economic wrongs from World War II. *Terezin Declaration*, WORLD JEWISH RESTITUTION ORGANIZATION (2021).

freeports, yet again adding to the lack of unified regulations surrounding them.

E. The Issue with Freeport Regulations and Smuggling Art

Smuggling is an unavoidable consequence of looting.¹⁶⁴ The current freeport regulations in place to monitor illicit activity, allow for a 'parade of horrors' like issues to arise wherein smuggled art can be stored without anyone ever knowing. *Knight v. United States Fire Insurance Company*,¹⁶⁵ a case in the Southern District of New York, outlines how smugglers may evade detection by circumventing certain countries the minute an issue arises.¹⁶⁶ This parallels the issues with freeports since they too lack uniform regulation, allowing illicit dealings to happen in the shadows. Because each country has its own rules and regulation regarding smuggling goods, smugglers may evade detection more easily than if uniform laws were in place.¹⁶⁷ In *Knight*, the plaintiff obtained 222 artifacts, worth approximately US\$65,000 from Thailand.¹⁶⁸ However, the plaintiff hired an appraiser to state that the goods were worth significantly more.¹⁶⁹ The goods were shipped from Bangkok to Singapore, after which point the plaintiff claimed he had a Dutch seller interested in the goods.¹⁷⁰ He contacted a London brokerage firm to insure the goods in the amount of about US\$20 million for the shipment from Singapore to the Netherlands.¹⁷¹ The broker was alerted of potential fraud and in turn relayed this information to the lead London underwriters of the policy who swiftly ordered their own appraisal of the goods.¹⁷² The plaintiff's policy was voided due to alleged material misrepresentations and non-disclosures.¹⁷³

164. Laetitia Kac, *We Must Punish the Looters, but also the Buyers*, UNESCO (2020), <https://en.unesco.org/courier/2020-4/we-must-punish-looters-also-buyers> [<https://perma.cc/GPA4-LGV6>]. Looters can sell art to people and therefore the two tend to go hand in hand.

165. 651 F.Supp. 477 (1986).

166. *Id.* at 478.

167. *See generally id.*

168. *Id.* at 478.

169. *Id.* at 478.

170. *Id.*

171. *Id.*

172. *Id.* at 479.

173. *Id.*

The plaintiff attempted this scheme two more times. Finally, new risk was placed with the insurance companies, most of whom were privy to the initial policy that was cancelled.¹⁷⁴ The shipment was eventually insured by an American brokerage, which was not told of the plaintiff's previous attempt in London to get insurance, nor aware of the fact that under Thai law, antiquities of such value could only have made it out of the country if they were smuggled illegally.¹⁷⁵ The goods were loaded aboard the ship at the port in Singapore, the *Aliakmon Runner*, which later sank in the Indian Ocean.¹⁷⁶ The court ruled that faced with "the undisputed fact that plaintiff failed to disclose, although he knew of, the London underwriters' cancellation and their stated reasons therefor, and the fact that no reasonable trier of fact could find that this information would not have been material to defendants' decision to take on the risk," the defendants were well within their right to cancel the policy.¹⁷⁷

Knight v. United States Fire Insurance Company demonstrates how smugglers can circumvent the law by going from country to country.¹⁷⁸ Freeports present the same issue in that they are not regulated through a singular entity and instead by a variety of different rules for different countries. When one freeport tightens restrictions, people can simply move their goods to another country's port.¹⁷⁹ The failure of the United States and Europe to regulate stolen goods demonstrates why country-by-country tightening of regulations is ineffective—instead, global restrictions are required.¹⁸⁰

There are many cases concerning illicit goods that local authorities found in freeports. On September 13, 1995, Italian and Swiss law enforcement raided one of the storage rooms in a Geneva freeport. The room belonged to Giacomo Medici, a notorious illicit art dealer.¹⁸¹ Rather than use his own name on any ownership documents, the warehouse was owned by a shell company, Editions Services, allowing Medici to hide behind a corporation to

174. *Id.*

175. *Id.*

176. *Id.* at 483.

177. *Id.*

178. *See generally id.*

179. Miller, *supra* note 13.

180. *See supra* Section III.A-C.

181. Slayman, *supra* note 95.

keep his privacy.¹⁸² The warehouse contained 10,000 artifacts smuggled from Italy,¹⁸³ worth approximately US\$35 million dollars.¹⁸⁴ However, Medici had forged many of their provenance to circumvent the law.¹⁸⁵ A curator of classical art at the Museum of Fine Arts, Boston verified they were in fact stolen,¹⁸⁶ and provided for their return to Italy.¹⁸⁷ However, it is still unknown how the artifacts disappeared in the first place.¹⁸⁸ Although some of the items were legally bought at auction,¹⁸⁹ the number of stolen items evidences the ease with which owners may hide stolen artifacts under the guise of legitimately purchased pieces.

Moreover, loose freeport restrictions can aid criminals in avoiding jail time. A notable case is *United States v. Douglas Latchford*.¹⁹⁰ Between 1960-1970, civil unrest in Southeast Asia stemming from atrocities of the Khmer Rouge¹⁹¹ allowed people to loot items from notable sites like Angkor Wat and Koh Ker.¹⁹² Many artifacts entered into the black market through an organized looting network, a problem widely recognized in the international legitimate art market.¹⁹³ Military personnel and local looters often worked in tandem to remove the artifacts, statues, or architectural elements—damaging them in the process—and transport them to the Cambodian/Thailand border.¹⁹⁴ From there, Thai brokers would transport them to dealers of Khmer artifacts, usually located

182. *Id.*

183. *Id.*

184. *Id.*

185. *See generally id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. Indictment at 2, *United States v. Latchford*, 19-CR-748 (S.D.N.Y. Oct. 10, 2019), *indictment dismissed*, S.D.N.Y. Sept. 16, 2020 [hereinafter *Latchford Indictment*].

191. This was the name given to members of the Communist Party of Kampuchea, ruling Cambodia between 1975 and 1979, responsible for countless war atrocities. *See generally Khmer Rouge*, ENCYCLOPEDIA.COM (Jan. 17, 2021).

192. Angkor Wat is in northwest Cambodia and is the largest religious structure in temple complex form in the world by land area. *Angkor Wat*, NATIONAL GEOGRAPHIC SOCIETY (Mar. 1, 2013) <https://www.nationalgeographic.org/photo/angkor-wat-cambodia-990/> [<https://perma.cc/5P54-2CVG>]. Koh Ker is a tenth century temple complex in the north part of the Cambodia jungle. It was the former capital of the Khmer Empire. *See generally Koh Ker: Archeological Site of Ancient Lingapura Or Chok Gargyar*, UNESCO (2020) <https://whc.unesco.org/en/tentativelists/6458/> [<https://perma.cc/6UNC-2AA8>].

193. *See Latchford Indictment*, *supra* note 190, at 2.

194. *Id.*

in Bangkok. After being sold in first instance, the items would stay on the international art market in a seemingly legitimate fashion.¹⁹⁵

In response, the United States implemented the Cultural Property Implementation Act (“CPIA”) in 1983.¹⁹⁶ Pursuant to the Act, Cambodia submitted a request to the United States to impose restrictions on the import of Khmer objects in December 1999.¹⁹⁷ That same year, the United States put into place an emergency embargo. In 2003, the two nations entered a formal memorandum of understanding, expanding the 1999 restrictions to include bronze objects.¹⁹⁸ Such restrictions require importers to submit truthful and accurate information to the department of Homeland Security, Customs and Border Protection (“CBP”) regarding the nature of the merchandise, its country of origin, and value so the legality of the item can be properly assessed.¹⁹⁹

This good faith requirement and, as seen in *Latchford*, is not always followed. In *Latchford*, the defendant participated in a scheme to sell looted Cambodian artifacts on the international art market, including to buyers and dealers in the United States.²⁰⁰ He created many false provenances for the antiquities sold to avoid the CPIA Embargo.²⁰¹ The goods were stolen and moved throughout multiple countries in a complex web, evading legal regulations.²⁰²

Though *Latchford* is not an example of artifacts found in freeports, but rather imported objects subject to full duties and taxes,²⁰³ it demonstrates a larger problem at hand.²⁰⁴ Although the

195. *Id.*

196. 19 U.S.C. § 2601. During this period, both the United States and Cambodia were parties to the UNESCO 1970 Convention on the Means of Prohibiting and Preventing Illicit Import, Export, and Transport of Ownership of Cultural Property, which intended to prevent the illegal trade in cultural property. It required state parties to take active steps to prevent the illegal import or export of cultural property, and if they could not, take the necessary steps to recover and return the objects at the request of the country of origin. *Id.* at 4.

197. See *Latchford Indictment*, *supra* note 190, at 3.

198. *Id.*

199. *Id.*

200. *Id.* at 5.

201. *Id.*

202. See generally *id.*

203. *Id.*

204. *Id.*

United States and Cambodia had an understanding, it never included Thailand and other Southeast Asian countries that helped facilitate the illegal shipment of antiquities from the region.²⁰⁵ This Note suggests that with these issues in mind, freeport regulations similarly cannot be bilateral country agreements. Any regulations need to be implemented to all freeports globally to ensure efficacy.²⁰⁶ In 2003, Geneva police found 200 ancient Egyptian artifacts in freeports, all of which had been illegally exported to Switzerland. In 2010, Swiss customs officers found a Roman sarcophagus, which had disappeared from a site in Southern Turkey, in a Geneva freeport as well.²⁰⁷ In 2013, Swiss authorities at a freeport in Geneva seized antiquities looted from Syria and approximately nine sites in Yemen and Libya.²⁰⁸ In 2016, Italian officers from the Carabinieri, working with Swiss authorities, raided British antiquities dealer Robin Symes' rented storage unit at the Geneva freeport.²⁰⁹ Unsurprisingly, the unit contained a large quantity of stolen antiquities linked to Medici and his notorious illicit dealings. In April of the same year, Geneva prosecutors opened a criminal probe into who owned a Modigliani painting (*Seated Man with a Cane*), which was stored at a freeport.²¹⁰ The Nazis looted the painting and the original owner died before he was able to retrieve it.²¹¹ Its whereabouts remained a mystery until it surfaced at an auction in 2008. This occurred even after Switzerland attempted to tighten restrictions on freeports after the Medici incident, demonstrating the lack of efficacy in reform efforts.²¹² In 2014, a British art dealer told Swiss authorities he had spread looted antiquities around twenty-nine

205. *Id.* at 4.

206. *See infra* Part IV.

207. Elbaor, *supra* note 7; Cherner, *supra* note 135.

208. Amah-Rose Abrams, *Looted Items from War Zones Seized From Geneva Freeport*, ARTNET (Dec. 6, 2016) <https://news.artnet.com/art-world/looted-palmyra-yemen-swiss-freeport-773207>.

209. Lorena Muñoz-Alonso, *Trove of Looted Antiquities Belonging to Disgraced Dealer Robin Symes Found in Geneva Freeport*, ArtNet (Feb. 2, 2016), <https://news.artnet.com/art-world/trouve-looted-antiquities-belonging-disgraced-dealer-robin-symes-found-geneva-freeport-418157>.

210. David Lawler, *Modigliani painting seized in Geneva in Panama Papers probe*, TELEGRAPH (April 11, 2016), <https://www.telegraph.co.uk/news/2016/04/11/modigliani-painting-seized-in-geneva-in-panama-papers-probe/> [<https://perma.cc/MR5W-K5VA>].

211. Miller, *supra*, note 13.

212. Elbaor, *supra* note 7.

freeports all around the world, again demonstrating a lack of unified restrictions.²¹³ Although unconfirmed, it is not a stretch to consider that artifacts are currently hidden away in freeports attached to this case; and if not this case, another one similar to it.²¹⁴

It is not only the bilateral agreements, but unilateral ones that are failing to properly regulate freeports. As of March 2006, the United States enacted 18 U.S.C.A. § 545 which directly addressed smuggling goods into the United States.²¹⁵ The statute is grounded in “knowingly and willfully” participating in smuggling.²¹⁶ However, this fails to address situations where the owner is unaware (either choosing to turn a blind eye or lacking actual knowledge) of the lack of provenance of the goods or when the goods never officially enter the country.²¹⁷ The same problem applies to the United States’ stance on the sale of stolen goods.²¹⁸ 18 U.S.C.A. § 2315, which covered the sale of stolen goods, specifically deals only with goods which “have crossed a State or United States boundary after being stolen.”²¹⁹ Therefore, it applies only *after* a stolen work has crossed into the legal boundaries of the country.

Europe has adopted a similar approach on the illegal importing and trafficking of cultural goods into the European Union. As of July 13, 2017, the Taxation and Customs Union imposed new measures to try to deter this behavior.²²⁰ The idea

213. *Intergovernmental Committee For Promoting The Return Of Cultural Property To Its Countries Of Origin Or Its Restitution In Case Of Illicit Appropriation*, UNESCO 20th Session 3 (Sept. 29-30 2016).

214. Kate Steiner, *Dealing with Laundering in the Swiss Art Market: New Legislation and its Threat to Honest Traders*, 49 *CASE WESTERN RESERVE J. OF INT’L L.* 351 (2017); Lorena Muñoz-Alonso, *Trove of Looted Antiquities Belonging to Disgraced Dealer Robin Symes Found in Geneva Free port*, ARTNET (Feb. 2, 2016), <https://news.artnet.com/art-world/trove-looted-antiquities-belonging-disgraced-dealer-robin-symes-found-geneva-freeport-418157> [<https://perma.cc/T7PP-62PT>]; Miller, *supra* note 13; David Lawler, *Modigliani Painting Seized in Geneva in Panama Papers Probe*, TELEGRAPH (Apr. 11, 2016) <https://www.telegraph.co.uk/news/2016/04/11/modigliani-painting-seized-in-geneva-in-panama-papers-probe/> [<https://perma.cc/X5UY-2HU9>].

215. 18 U.S.C.A. § 545.

216. *Id.*

217. Elbaor, *supra* note 214.

218. 18 U.S.C.A. § 2315.

219. *Id.*

220. *Security Union: Cracking Down on the Illegal Import of Cultural Goods Used to Finance Terrorism*, EURO. COMM’N (July 13, 2017)

was to ban the import of cultural goods exported illegally from their home country.²²¹ Tibor Navracsics, Commissioner for Education, Culture, Youth and Sport, stated:

The looting and illicit trafficking of cultural goods deprives citizens of affected countries of a part of their cultural identity and destroys the cultural heritage of humankind. Today we are demonstrating the Commission's commitment to protecting this global heritage, which we will showcase during the 2018 European Year of Cultural Heritage.²²²

Although the intentions of these new measures were good, its application was limited. These measures only apply to objects once they have been exported from one country and imported into another country.²²³ Freeports never allow for imports, depriving the authorities of their ability to take sure measures.²²⁴

It is important that the regulations for freeports extend beyond art and antiquities. Dangerous cargo²²⁵ generally must be monitored more strictly, especially if people are unaware of its presence, which could lead to disastrous results if stored incorrectly.²²⁶ For example, in the Beirut freeport, ammonium nitrate was improperly stored and caused an explosion that killed over 200 people.²²⁷ The absence of freeport uniformity allows for these dangerous scenarios since people can lie on their forms about what they are storing.

PART IV: SOLUTION AND SUGGESTED FRAMEWORKS

Organizations like the UN or WTO can provide helpful regulations to make freeports more transparent in what is being

https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1932
[<https://perma.cc/A7BL-WKEF>].

221. *Id.*

222. *Id.*

223. *Id.*

224. *See supra* Part I.

225. Dangerous cargo being is considered as such because it is flammable corrosive, poisonous, or contains other harmful aspects. Hariesh Manaadiar, *What is Dangerous Goods*, SHIPPING & FREIGHT RESOURCE (Aug. 17, 2015) <https://www.shippingandfreightresource.com/what-is-dangerous-goods/> [<https://perma.cc/9WHJ-4U86>].

226. *The Beirut Port Explosion*, FORENSIC ARCHITECTURE, <https://forensic-architecture.org/investigation/beirut-port-explosion> [<https://perma.cc/57L6-44AE>] (last visited Nov. 20, 2020).

227. *Id.*

stored there. As will be discussed in this section, such organizations can aid in developing regulation and providing support to countries that might want to pursue sanctions as a form of punishment for another country not complying with new freeport regulations.

The legislation and regulations currently in place lack a uniform system. There are too many organizations, rules, and committees which operate autonomously without a unified or collaborative framework. Introducing a non-compliance procedure, like the United Nations has in the Montreal Protocol,²²⁸ would hold states accountable for their actions. The Montreal Protocol, is an international agreement, that involved extensive negotiations during which countries could properly voice their opinions and what would work for them.²²⁹ Experts and state representatives alike were involved in the negotiations, lending credibility to the disputes at hand and allowing for flexibility on the issue since the science would eventually change.²³⁰ The treaty also clearly addressed specific chemicals—ozone depleting substances—not climate change as a whole, making it easier for countries to follow.²³¹ As new scientific discoveries emerge and technological advances are made, the treaty is continually adjusted and amended.²³²

An international organization could use a similarly focused and flexible treaty in regulating freeports, replacing climate experts with those in international art and taxation. Discussions should be focused on illegal goods, leaving out considerations of other incentives of freeports like anonymity. The people running

228. The Montreal Protocol enforces a binding progressive phase out obligations for developing and developed countries for major ozone depleting substances. The timetable is reviewed regularly with phase-out dates readjusted for newer technology. The Montreal Protocol on Substances that Deplete the Ozone Layer (effective January 1, 1989) 26 I.L.M. 1541, 1550 (1987); *Introduction the Montreal Protocol*, AUSTRALIAN GOV'T DEPT OF AGRICULTURE, WATER AND THE ENV'T (Oct. 3, 2021) <https://www.awe.gov.au/environment/protection/ozone/montreal-protocol>.

229. Ian Rae, *Saving the Ozone Layer: Why the Montreal Protocol Worked*, CONVERSATION (Sept. 9, 2012), <https://theconversation.com/saving-the-ozone-layer-why-the-montreal-protocol-worked-9249> [<https://perma.cc/NC7Q-T27M>].

230. *Id.*

231. *Id.*

232. *About Montreal Protocol*, UN ENVIRONMENT PROGRAMME, <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol> [<https://perma.cc/K6EH-U2NQ>].

the freeport should have access to the names of who is storing items there, but there is no need to make this public knowledge. Allowing those in charge of the freeport to have the real names of the people storing things would allow them to handle matters discretely and swiftly. Reputations could be saved while hitting people where it hurts the most: their wallets. Checks within the freeport would be random audits to see if anything illicit is being stored. If an anonymous freeport holder is found to have illicit goods after a random audit, the goods can be taken and the freeport holder or the company fined in some form, perhaps by prohibiting their use of that freeport or any other freeport facility. The anonymity is still present and the focus, like in the Montreal Protocol is now on one singular issue.

This type of flexible treaty, which considers the resources a country has on hand and adjusts the treaties accordingly, could be an effective approach to the freeport problem. Some countries might be able to phase out the illicit nature of freeports faster than others, similar to how some countries have the money and resources and are able to phase out substances that deplete the ozone faster than others.²³³ It does not have to be an overnight switch but can be a gradual change that by a set date, countries have implemented new legislation under one governing body. However, this only works if a country is party to whichever treaty is drafted.

Other policies could involve holding countries liable for other issues like terrorism, the way the UN did for Switzerland.²³⁴ Countries could use economic sanctions or possibly deploy forces, making it so even if a country is not party to a specific customs treaty, they could be held responsible through other means. An appropriate economic sanction in this scenario would be a financial penalty and stripping the illicit goods from the warehouse. This could be enforced by timely, random audits of each freeport by the international entity. If an illicit item is found not printed on the manifest, then that item is immediately confiscated, and the owner notified. There is no reason to ban anonymity completely, it is simply a matter of monitoring what goes into the freeport. The entire world need not know what is held

233. *Id.*

234. Elbaor, *supra* note 7.

in a freeport, much like the world does not need to know what is in a person's personal bank account. However, a mutual international body should be aware of what is in the freeport when the item is stored.

Most importantly, there needs to be one body, like the UN, WTO, or WCO that undertakes the specific legislation to monitor freeports. Even if it requires representatives from each of these groups on one council, it should all come under the purview of a singular entity. With one governing body implementing the necessary regulations and subsequent sanctions, if need be, freeports could be monitored far better.

The biggest issue is getting states to consent to such oversight. The most obvious solution would be requiring sanctions against member states that do not self-regulate their freeports. Since sanctions are a hassle that most countries do not want to deal with, especially over the actions of an individual, they could be a useful way to get countries to participate in the new regulatory regime. Although this seems like a severe punishment for paintings, artifacts, or hazardous materials, the scenario where this does not happen contains multiple pitfalls. There is not only the issue of losing culture, but also tax avoidance and loss of revenue. Hazardous material also presents safety concerns. The issue presented is always the same: when one country tightens restrictions, another will flourish. Sanctions directly address this, disincentivizing the allure that lax freeport regulations provide. As seen with Singapore, a freeport, though helpful and valuable, is one of many financial tools a country can use to bolster its economy. Sacrificing the other sources of income, like good trade relations, for a freeport, might not be incentivizing enough for a country to shy away from uniform regulations.

V. CONCLUSION

Without a uniform regulatory system forced by a single entity or entities in tandem, freeports will always be a haven to those who wish to deal in illegitimate business. To this end, a uniform set of regulations is required for all freeports around the world. This would help avoid the current predicament where criminals can move their goods secretly and freely from one freeport to the other without ever facing any consequences. Regulations and penalties from one governing body would be a plausible solution to fix the

issue of financial abuse that happens within the confines of a freeport. There needs to be more blanket restrictions on freeports, not simply a country-by-country solution.

