April 23, 2013

VIA Regulations.gov Portal
Prof. Patty Gerstenblith, Chair
Cultural Property Advisory Committee
Cultural Heritage Center (ECA/P/C)
U.S. Department of State
2200 C Street, NW
Washington, DC 20037

Re: Meeting of the Cultural Property Advisory Committee Regarding
Proposed Renewal of the Memorandum of Understanding with the People’s
Republic of China, Federal Register: April 1, 2013 (Volume 78, Number 62
(Pages 19564-65))

Dear Prof. Gerstenblith:

I am writing on behalf of the International Association of Professional
Numismatists (IAPN) and the Professional Numismatists Guild (PNG) (jointly the
Numismatic Trade)\(^1\) concerning the proposed renewal of the Memorandum of
Understanding (MOU) with the People’s Republic of China (PRC). The Numismatic
Trade’s comments here and at the upcoming Cultural Property Advisory Committee
(CPAC) meeting will focus on the existence of a huge internal market in undocumented
artifacts within the PRC itself. Any honest assessment of that market raises serious
questions whether the interests of American collectors, small businesses and museums
are being harmed for no good reason. Given the size of this market, the current MOU
cannot possibly be effective in curbing looting of Chinese archaeological sites, and
serious consideration must be given to suspension. See Convention on Cultural
Property Implementation Act ("CPIA"), 19 U.S.C. § 2605 (g) (2) (B) (CPAC may submit
a report on suspending or improving current agreement).

---

\(^1\) The IAPN is a nonprofit organization of the leading international numismatic firms founded in 1951. It
was formed in the aftermath of WW II to help reestablish relationships amongst professional numismatists
that had been badly frayed during years of conflict. The objectives of IAPN are the development of a
healthy and prosperous numismatic trade conducted according to the highest standards of business
ethics and commercial practice, the encouragement of scientific research and the propagation of
numismatics, and the creation of lasting and friendly relations amongst professional numismatists around
the world. The IAPN has 113 member firms in twenty-one (21) countries, including thirty-one (31) in the
U.S. More about the IAPN may be found on the internet at http://www.iapn-coins.org. The PNG is a
nonprofit organization founded in 1955. The PNG's motto, "Knowledge, Integrity, Responsibility"
continues to reflect its aims, and is expressed in the strict requirements for election to membership to the
PNG. The PNG has over 300 members across the U.S.and abroad. More about the PNG may be found
If the current MOU is not suspended, CPAC should at least act to reform the current designated list. The CPIA explicitly limits import restrictions to artifacts "first discovered within and...subject to export control" of a UNESCO State Party. 19 U.S.C. § 2601(2) (c). Under the CPIA's plain meaning, import restrictions may only be lawfully applied on specific coin types that are only found in Chinese contexts, and hence must be subject to the PRC's export control. In contrast, the current designated list that encompasses all coins dating from the 6th c. B.C. to the 10th c. A.D. "from China" confuse a coin's place of production with its find spot, which is completely different.

Based on the CPIA's statutory mandate, CPAC should recommend that the State Department and Customs and Border Protection (CBP) delist all bronze "cash type" coins, some of which are on the current designated list and some of which are not. Cash coins were made from circa 221 B.C. until the proclamation of the Chinese Republic. Ones on the designated list are difficult to distinguish from later ones that may still be freely imported. In addition, restricted Tang Dynasty and earlier "cash coins" typically were mixed together with later unrestricted issues in trade that spanned much of Asia, the Persian Gulf and parts of Africa. One cannot, therefore, safely assume that any cash coins are only found in China, a prerequisite of the CPIA that must be satisfied before restrictions on such coins may lawfully be renewed.

I. Background

A. Chinese Coins

Coinage began in China in the late 7th or early 6th c. B.C. The earliest money was cast into the form of spades, knives or cowry shells. Ultimately, by around 221 B.C., a round bronze coin marked with Chinese characters referencing values and

---

2 A source from the PRC embassy reportedly stated that the PRC never actually asked for import restrictions on coins, a fact that appeared to be confirmed in releases of government documents under the Freedom of Information Act. The Ancient Coin Collectors Guild (ACCG) sought to test the evident decision to add coins to the PRC designated list without a specific request in court, but the United States Court of Appeals for the Fourth Circuit ultimately concluded that any such decision was subject to only "political" review and not "judicial" review. See Ancient Coin Collectors Guild v. U.S. Customs and Border Protection, 698 F.3d 171 (4th Cir. 2012). If anything, the court's decision underscores the importance of CPAC's role. For if CPAC will not insist on strict adherence to the provisions of the CPIA in the face of State Department pressure "to get the job done," who will?

issuing authorities and featuring a square center hole became standardized. These "cash" coins were produced in immense numbers from roughly 221 B.C. to 1912 A.D.⁴

In addition, Chinese cash coins circulated widely. China exported such coins in quantity from the fifth to tenth centuries to East Africa, the Persian Gulf, India, Ceylon, Burma, Thailand, Vietnam, Malaya, the Philippines, Sumatra, Java and Borneo.⁵ Later on, Chinese immigrants even took such coins with them to the United States. Such coins have sometimes been found in the remains of "China Towns" of the old West. Owing to the wide circulation of such coins, cash type coins were also widely copied from Central Asia to Japan, with similar types being cast in Vietnam as late as 1933.

As two scholars from the British Museum and the University of Sydney have further explained:

*The export of coins from China is a well-documented aspect of Chinese monetary history.... The volume of exports was massive, as is clear from the extent to which the importing territories were able to use the imported coins to monetise their own economies....*

*The earliest exports predated the beginning of the Song Dynasty and can be detected in the copying of the early Tang coins (from 621) in Korea and Japan. The exports continued after the Song Dynasty, with the last major shipments out of China taking place in the early fifteenth century, when the Ming Dynasty was making coins specifically for export to Japan and the famous eunuch admiral Cheng He was distributing large amounts of bronze coins to local rulers on his journeys in the South China Sea and the Indian Ocean, 1405-1433....*

⁴ Many such "cash coins" remain extant. To begin with, mintages could be fantastically large. For example, in the 11th century, the Song Dynasty produced some 6 billion coins annually. It is also not uncommon to find exceptionally large numbers of Chinese coins in hoards. For example, in 2011, some 200,000 cash coins were found in a well. See 200,000 Ancient Coins Found in China, Thai Indian News (June 4, 2011) (available at http://www.thaiphat.com/newsportal/world-news/200000-ancient-coins-found-in-china_100540893.html) (last visited April 17, 2013). Moreover, in 2009, another two tons were found in an old vault. See Two Tonnes of Ancient Coins Found in History-Laden Chinese Provence, China View (June 10, 2009) (available at http://news.xinhuanet.com/english/2009-06/10/content_11520287.htm) (last visited April 17, 2013). Indeed, the numbers are so large that overwhelmed Chinese archaeologist's "analysis" is typically limited to weighing the coin finds, estimating the total number of coins and taking a sample to determine what Dynasty's coins might be present. Wang, supra at 10. What happens afterwards to the coins in such hoards is anyone's guess.

The main problem for interpretation is the continuing circulation of Chinese coins for centuries after their first issue. For example, a hoard of exported coins buried in Japan before 1368 could contain coins ranging from the late second century BC to the early fourteenth century AD. The standard coin used in China remained fundamentally the same, a cast bronze square-holed piece with a four character Chinese inscription weighing 3-4 grammes, from the seventh century until the fifteenth century. From the sixteenth century the metal for the coins changed to brass, but the form was the same. Most earlier Chinese coins were also the same in form and size as the seventh century issues, but with fewer characters in the inscription. There was, therefore, little reason to remove old coins from use if they continued to conform to the expected standard of later coins. In addition the coins were normally used in bulk, tied together by strings through their square holes, often in bundles of a thousand coins each, so that the users could not see the design on the face of each coin, i.e., the means by which the date of issue could be recognized. Any group of coins in circulation in China exported could therefore be expected to contain a wide age range of coins.

J. Cribb and D. Potts, *Chinese Coin Finds from Arabia and the Arabian Gulf*, Arab arch. Epig. 1996: 7:108-118 at 108-109, 112. Accord Helen Wang, *Money on the Silk Road* 10 (British Museum Press 2004) (noting that early Wu Zhu cash coins produced circa 118 B.C. - 621 A.D. were recorded as being kept with later issues in strings of coins as late as the nineteenth century); Hartill, *supra* at xviii (“In the nineteenth century, it was not uncommon for Ban Liang or Wu Zhu coins of the second century B.C. to be found strung up with mediaeval Song dynasty and other coins.”). Accordingly, it is impossible to determine a Chinese cash coin’s find spot merely from identifying it as being produced at a Chinese mint.

B. The Collector Market

The PRC maintains a huge, internal collector market in unprovenanced ancient coins. See generally, Dom Yanchunas, *Coin Collecting in China*, Coinage Magazine 40 (May 2006) (Exhibit A). Chinese citizens often purchase their coins at antiquities bazaars. In Shanghai, there is a weekend stamp and coin trading market, and an indoor market at the Yu Zhou Business plaza. Beijing hosts several such markets and also holds an annual “Beijing International Coin Exhibition” at the International Trade and Exhibition Center. The Beijing International is so prominent that the Bank of China has issued a series of commemorative coins for the event that incorporate both ancient Chinese and Western coinage into their designs. Presumably, large numbers of

---

4 The fact that coins dating 1,000 years or more apart circulated together also means that Chinese coins make for very poor dating tools for archaeologists. Wang, *supra* at 10. Accord Hartill, *supra* at xviii (“In the nineteenth century, it was not uncommon for Ban Liang or Wu Zhu coins of the second century B.C. to be found strung up with mediaeval Song dynasty and other coins.”).
undocumented ancient Chinese coins are also sold quite openly in other cities to local collectors.

Ancient Chinese coins are also sold within the PRC at any one of the many growing number of domestic auction houses. For example, China Guardian Auctions specializes in ancient Chinese coins. See http://english.cguardian.com/ (last visited April 17, 2013). The Company also sells paintings, calligraphy, porcelain, oil paintings, sculptures, rare books, manuscripts, stamps, jadeite, and jewelry items, but is best known for its extensive coin auctions. See http://www.bloomberg.com/quote/CJDEZ:CH/profile (last visited April 17, 2013).

All this is part of a much, larger phenomenon. As the Economist reports,

The mainland Chinese are beginning to dominate the salerooms. Prevented so long from celebrating the achievements of their forebears, they have a thirst for their own history, and especially for anything that connects modern China with the glories of its imperial past... Nor are these buyers found in the old political and commercial strongholds of Beijing and Shanghai. There are probably seven Chinese cities with populations of more than 5m, and demand for fine art is as strong in Guangdong, adjacent to Hong Kong, as it is in Sichuan in the west or in more far-flung areas. "It's what I call 'natural repatriation'," says Patti Wong, who as chairman of Sotheby's Asia has been watching the Chinese buying wave grow for a decade, "and it is happening everywhere."

Dealers and auctioneers familiar with the Chinese market estimate that there are around 150 collectors in Hong Kong and Taiwan who spend at least $1m a year each on Chinese works of art, and that their number is relatively stable. The mainland has another 150 or so buyers in that category and the numbers there are growing rapidly. More Chinese treasures are now sold at auction in Hong Kong than in New York, London and Paris. Whereas back in 2004 Sotheby's did $10m-worth of business with 70 clients from the mainland in its spring and autumn sales in Hong Kong, the figure for the same sales this year is seven times higher and its list of mainland Chinese buyers has grown to 195. Many more bid through established dealers in Hong Kong. "Mainland China has clearly become our main land," says Kevin Ching, chief executive of Sotheby's Asia.

Mainland Chinese buyers made a dramatic first entrance in April 1999 when two previously unknown collectors, both entrepreneurs in their mid-30s from Chaozhou in Guangdong province, began to buy fine art and

---

7 The Numismatic Trade understands that a new auction law calls for consignors to produce "ownership certificates" before archaeological artifacts are sold; however, the meaning of this requirement is unclear, and, in any event, any such requirement would not impact private sales of ancient coins, which take place in the PRC's many coin markets.
ceramics at auction, reviving the market after the Asian financial crisis two years earlier. They were guided by William Chak, a Hong Kong dealer who has since become a well-known television personality and is one of the leading figures in the Asian art market in Hong Kong. Others followed.

The Chinese buy for themselves, but they also like to present gifts to valued customers or even to the government, which sees repatriating national treasures as an important issue. The authorities have been quietly tightening up on the re-export of repatriated artworks. Chinese buyers used to be able to re-export their treasures for up to two years after they had bought them. That period of grace has now been reduced to six months.

China’s appetite for its own works of art, together with a national flair for commercial speculation, has helped expand the art market all over the country. On the mainland, auction houses were banned until 1992. Ms McAndrew of Arts Economics, who made a particular study of the art business in China last year, estimates that the country now has 50,000 art dealers and more than 2,000 auction houses. The biggest of these are Poly International, a subsidiary of the Chinese army, and China Guardian Auctions, founded by Yannan Wang, the daughter of a former Chinese leader, Zhao Ziyang, who died under house arrest about five years ago.


There is also an avowedly nationalistic aspect to this collecting, exemplified by Poly International. As the Financial Times has observed,

*America might have its vaunted military-industrial complex but China, fast becoming the world’s other great power, has its own version: a state-funded military-cultural complex charged with repatriating antiquities lost to foreign looters and returning them to mainland China.*

*At the heart of this vast and shadowy operation is Beijing-based Poly Culture and Arts, a pleasant-sounding body ultimately controlled by the People’s Liberation Army, the world’s largest military force by numbers and China’s leading arms dealer.*

*...*

*And as Poly grows, it issues new shoots. Beijing International Poly Auction, barely 10 years old, is a powerful player on the mainland art scene along with China Guardian Auctions, with Beijing Council International Auction (BCIA) further back. In 2005 Poly Culture opened a*
museum within the group’s new Beijing stone-and-glass headquarters, inviting a choice group of top art dealers to a lavish launch party. One European dealer remembers asking a Poly Culture director how they had built such a big museum in such a short time, whereupon the executive pointed to the sky, imitating the rapid-fire mechanism of a machine gun.

Along with leading individual collectors, Poly loans out its collections, most of which are retrieved from abroad, to Chinese museums in Xi’an and Shanghai, and the Palace Museum in Beijing’s Forbidden City.

While wealthy mainland collectors have become powerful players on the global auction scene, hunting for Chinese art, many are buying for investment. Poly Culture by contrast buys for keeps, thanks to the fathomless wealth of its paymasters, the PLA, a body determined to undo the Maoist-inspired cultural camage of the 1960s. Ironically, in doing so, China’s leaders have managed to create the most hard-nosed state-run cultural institution on the planet.


Regardless of the motivation to collect, the immense size of the PRC internal market is further borne out in the TEAF Art Market Report 2013. See http://www.tefaf.com/media/tefaf/media/TEFAF%20AMR%202013%20binnen%20V4%20DEF_LR.pdf (last visited April 17, 2013). Even with a strong slow down due to economic conditions, TEAF estimates that Chinese sales are some 25% of the world art market, second only to the U.S. market, and worth some €10.6 billion. TEAF also concludes, “Over the last five years the art market in China has been the strongest growing in the world, and the most important of the emerging markets, both in terms of the size of its domestic sales and the international significance of its buyers.”

In contrast, whatever the total value of the international market in Chinese art in general or antiquities in particular, the value of the U.S. and other markets for ancient Chinese coins must be infinitesimal. Despite exceptionally low prices for Chinese cash coins (which can retail for as little as $1.00), Westerners typically shy away from collecting them because of their austere designs which require knowledge of Chinese calligraphy. Indeed, there appears to be no more than six (6) established U.S. based coin dealers who specialize in ancient Chinese coins. Surely, there are serious collectors of ancient Chinese coins in the U.S., but they would be specialists or Chinese- Americans who, like their PRC counterparts, hope to “get in touch with their
own culture" through the preservation, study and display of coins. Certainly, whatever their number, it is dwarfed by the collector base in the PRC.

C. The Current MOU


Given the strong opposition to the request, the U.S. State Department conditioned those restrictions on the certain undertakings, including the following.

According to Section II Art. 9 of the current MOU:

6. The Government of the People's Republic of China shall make every effort to stop archaeological material looted or stolen from the Mainland from entering the Hong Kong Special Administrative Region and the Macao Special Administrative Region with the goal of eliminating the illicit trade in these regions.

...

9. The Government of the People's Republic of China shall continue to license the sale and export of certain antiquities as provided by law and will explore ways to make more of these objects available licitly.

10. Recognizing that, pursuant to this Memorandum of Understanding, museums in the United States will be restricted from acquiring certain archaeological objects, the Government of the People's Republic of China agrees that its museums will similarly refrain from acquiring such restricted archaeological objects that are looted and illegally exported from Mainland China to destinations abroad, unless the seller or donor provides evidence of legal export from Mainland China or verifiable documentation that the item left Mainland China prior to the imposition of U.S. import restrictions. This will apply to purchases made outside Mainland China by any museum in Mainland China and only to the categories of objects representing China's cultural heritage from the Paleolithic Period through the end of the Tang Dynasty (A.D. 907), and monumental sculpture and wall art at least 250 years old, as covered by this Memorandum of Understanding.
D. Current PRC Trade Practices

Current PRC export controls go well beyond current U.S. import controls on Tang and pre-Tang archaeological artifacts. Indeed, news reports suggest that these restrictions were recently extended to ban exports of all artifacts that predate the fall of the Qing Dynasty in 1911. See Treasures Reclaimed, supra. See also China to Extend Ban on Exports of Cultural Relics, Art Info (May 30, 2007) (available at www.artinfo.com/print/node/268156) (last visited April 17, 2013).

The PRC also prohibits export of the works of several Chinese modern painters including Zhang Daqian (1899-1983), Fu Baoshui (1904-1965) and Qi Baishi (1864-1957), and many other popular artists whose work is now highly valued on the international market. It appears, however, that these laws are enforced inconsistently and PRC officials can always say that they do “...license the sale and export of certain antiquities...” Moreover, despite the recent announcement that Sotheby’s and Christie’s will be allowed to do business in the PRC, the PRC does not typically license foreign-owned auctioneers or dealers to sell any of these things, but Chinese auctioneers sell many ancient items quite openly.

Chinese auctioneers mark “not for export” items with an asterisk in their catalogues, so items without any asterisk are presumed to be free for export, but without any guarantee that export permission will be granted. However, all these rules apply only inside mainland China. Hong Kong and Macao, declared ‘Special Administrative Regions’ of the PRC, remain as Free Trade Ports.

Any foreign buyer wishing to organize legal export of an item bought inside the PRC – whether in the trade or at public auction, and regardless of the marking or lack of marking with an asterisk in any auction catalogue- is told that an application to the Cultural Relics Bureau is required for official licensed export. If an export license is obtained, it must be presented to the PRC Customs, and the original document is retained by the PRC Customs officer at the time of export. No official copy of the export license is available. If an item is exported from Hong Kong or Macao, there is no export...
license required and no agency is willing or able to provide any document certifying legal export.

Another special feature of the PRC import/export regulations stipulates that Chinese art of any type or period (including Neolithic and ancient art), if it is officially imported and fully declared at the time it is imported into China, is allowed to be exported within the next six months. This law was evidently enacted after successful lobbying by Chinese art auctioneers to help them compete with international auction houses.

In a final twist, the Numismatic Trade understands that automatic export permissions granted for officially imported Chinese art and antiquities do not necessarily expire in six months, because they can be renewed every six months ad infinitum. In short, it appears there is a two-tier system in the PRC; one rule for Chinese citizens and another rule for foreigners. This two-tiered system may even operate differently within the PRC itself depending on the status of the buyer and seller.\(^{10}\)

II. Analysis

Any honest assessment of the current MOU suggests: (1) that it be suspended pursuant to 19 U.S.C. § 2605 (g) (2) (B); or (2) that the designated list be modified to exempt all cash coins. In light of the huge, legal internal market for undocumented artifacts covered by the MOU within the PRC itself, the current MOU does nothing but give Chinese auction houses, dealers and collectors a “leg up” on their foreign, and particularly their American, competition. Moreover, even assuming restrictions on some early coinage may be warranted, continuing restrictions on cash coinage, which probably exists in the millions, if not billions, makes little sense, stretching the concept of “cultural significance” to well past its breaking point.

A. The Current MOU should Be Suspended

Section 2605 (g) (2) (B) of the CPIA contemplates that CPAC will recommend that a MOU be suspended where the CPIA’s “concerted international response” requirement is not being met or where an agreement is not achieving its intended purpose. Here, suspension is warranted because no other country enforces restrictions on Chinese artifacts like the U.S. does\(^{11}\) and, more importantly, the vastness of the

\(^{10}\) It is hard to imagine that Poly Group is bound by the same rules as other, less connected auction companies. In this regard, it should be noted that the PRC ranks 80 of on Transparency International’s “Corruption Perception Index 2012” with a score of 39. A country with a score below 50 is considered to have a serious corruption problem. See [http://cptransparency.org/cpi2012/results](http://cptransparency.org/cpi2012/results) (last visited April 17, 2013).

\(^{11}\) The Numismatic Trade is aware that the PRC has entered into a series of largely symbolic cooperative agreements with countries like Peru, India, the Philippines, Chile, Cyprus, Venezuela and Egypt, but the “concerted international response requirement” anticipates that the PRC would instead negotiate similar import restrictions with other market countries like the U.K., Japan, France and Germany. CPIA, 19 U.S.C. § 2602 (a)(1) (c) and 2602 (c) (1).
domestic Chinese antiquities and coin market in unprovenanced material means that U.S. restrictions cannot possibly have any real impact on looting of archaeological sites.

As it is, current restrictions only discriminate against American collectors, dealers and institutions. Moreover, while it is now impossible to import many undocumented Chinese artifacts legally into the U.S., "repatriation by sale" has accelerated at a breathtaking pace. China Guardian, the Poly Group, and others have set up shop in the U.S. for the express purpose of accepting consignments for their auctions in the PRC or to purchase artifacts for resale, again in the PRC. See http://english.cguardian.com/mediaC/2013-02-07/199.html, http://english.cguardian.com/about/contact/2011-10-19/18.html, http://en.polypm.com.cn/english/contacte.php and http://orientalheritageinc.com/ (all last visited April 17, 2013). Surely, the intent of the MOU with China was not to encourage business for Chinese auction houses and dealers at the expense of American collectors, museums, auction houses and dealers, but that has certainly been what has actually transpired.

There is another reason to suspend the agreement. It appears that the PRC has not honored its own commitments under Article II of the current MOU, and thereby has failed to take the self-help measures contemplated under Section 2602 (a) (1) (B) of the CIPA or encourage the legal international interchange of cultural goods contemplated under Section 2602 (a) (1) (D). Business in Hong Kong and Macao appears to go on unhindered. The PRC has not made it easier to procure export permits; if anything, it appears that there is now a ban in effect on exports directly from the PRC (not Hong Kong or Macao) on any artifact pre-dating 1911. There also appears to be no effort on the part of PRC museums to limit their own purchases of undocumented artifacts. Indeed, the business plan of the Poly Group, an entity associated with the People's Liberation Army, appears to facilitate such purchases.13

12 This, along with the PRC's recent decision to allow Sotheby's and Christie's to do business in China, helps explain any drop-off in dealer opposition to the MOU. However, a slackening of public opposition due to business reasons or perhaps the perception that public comments "do not matter" does not excuse CPAC from exercising its statutory responsibilities based upon the evidence at hand.

13 The Numismatic Trade must also note that neither the PRC nor CBP have done much to stop the counterfeiting and sale of U.S. Collectors' coins, which remain legal tender. See generally Kathy Kristof, Counterfeit Coins Cost Consumers Million, CBS News Money Watch (Oct. 12, 2009) (available at http://www.cbsnews.com/8301-505144_162-36940768/counterfeit-coins-cost-consumers-millions/) (last visited April 19, 2013). See also Susan Headsly, Inside a Chinese Coin Counterfeiting Ring, About.com Coins (available at http://coins.about.com/od/worldcoins/ig/Chinese-Counterfeiting-Ring/) (last visited April 19, 2013). The Numismatic Trade requests that, assuming it is not suspended, Article II of the MOU be modified to require PRC officials to crack down on counterfeiting of U.S. and other collectors' coins. In any event, CBP should be interdicting such fake U.S. coins rather than spending its limited resources stopping entry of genuine cash coins that are openly available for sale within the PRC itself.
B. All Cash Coins Should Be Delisted

Although the State Department has claimed otherwise in the ACCG litigation\(^\text{14}\), the CPIA itself contemplates that CPAC will play an important role in ascertaining what types of objects ultimately appear on the designated list. See CPIA, 19 U.S.C. § 2605 (f)(4)(B) (CPAC report shall list "such archaeological or ethnological material of the State Party, specified by type or such other classification as the Committee deems appropriate, which should be covered by such agreement or action."). Accord S. Rep. No. 97-564 (1982) at 8 ("The Secretary [of the Treasury] [now U.S. Customs and Border Protection] will consult with the Director of the United States Information Agency [now Assistant Secretary, Bureau of Educational and Cultural Affairs] before promulgating such a lists [sic], as the latter is responsible for servicing the work of the Advisory Committee that is expected to contribute heavily to the composition of the list."). Here, at a minimum, CPAC should recommend that all cash coins be delisted.

First, it is hard to claim with a straight face that such coins—which probably exist in the millions, if not billions—are of cultural significance, a prerequisite for restrictions.\(^\text{15}\) Second, because the early cash coins on the designated list circulated alongside later types not on the designated list in international trade, CPAC cannot properly conclude that such coins are only found in China, a prerequisite under the CPIA, 19 U.S.C. § 2601(2)(c).\(^\text{16}\) Third, it is impossible to assume that the "concerted international

\(^{14}\) In its test case, the ACCG alleged based on the sworn testimony of Jay Kislak, CPAC’s former Chairman, that CPAC recommended against import restrictions on Cypriot coins, but the State Department and CBP imposed them anyway and then misled the Congress and the public about it. In response, the State Department argued that CPAC’s role is limited to making recommendations as to the general findings found in 19 U.S.C. § 2602(a). As noted previously, the courts did not reach the merits of the dispute, instead holding that the ACCG was not entitled to judicial review of State Department and CBP decision-making. See Ancient Coin Collectors Guild, 698 F.3d at 175.

\(^{15}\) The CPIA requires that restricted archaeological artifacts are of "cultural significance." CPIA, 19 U.S.C. § 2601 (2) (C) (i) (l). The State Department has misapplied this "cultural significance" requirement when it comes to Chinese cash coins. The huge numbers of such coins extant (probably millions if not billions) strongly argue against them being considered of "cultural significance." Archaeologists have claimed that coins are "culturally significant" as dating tools at archaeological sites, but such an "archaeological significance" test finds little support in the CPIA. For "archaeological material" to be restricted, it must be both of "archaeological interest" and "cultural significance." CPIA, 19 U.S.C. § 2601 (2). While the use of coins that are "archaeological material" for dating at some sites may give them "archaeological interest," that in itself cannot also make them of "cultural significance" without doing violence to statutory intent. In any event, as set forth supra n. 5, Chinese cash coins make poor dating tools because they circulated for millennia.

\(^{16}\) Members of the archaeological community have contended that any coin type that circulated "predominantly" in a given country should be placed on the "designated list" for restrictions because it is easy for them to generalize solely based on data about finds of local bronze coins at certain Greco-Roman archaeological sites that coins circulate "predominantly" where they are made. However, the CPIA calls for much more. Assuming other statutory criteria are also met, the CPIA only authorizes seizure and forfeiture of artifacts "first discovered within and...subject to export control by" a given country. 19 U.S.C.§ 2601(2)(c). The Government can comply with the plain meaning of the CPIA by establishing by undisputed scholarly evidence that the coins placed on the designated lists could only have been discovered in a given country for which import restrictions are granted and, hence, must be
response" requirement is met with respect to such coins. Cash coins are widely traded as collector's pieces and curiosities worldwide. Finally, the existence of a truly immense internal Chinese market in such coins also argues against retention of these coins on the designated list. It makes little sense to continue to restrict the ability of American collectors to import such coins on the theory that import restrictions will somehow discourage looting when undocumented coins of the same type are being sold a thousand fold within the PRC itself.

III. Conclusion

The PRC is to be commended for allowing its own citizens to get in touch with China's glorious past through collecting common artifacts like coins. At the same time, the existence of a huge internal Chinese market in undocumented antiquities has made any impact of the current MOU on protecting Chinese contexts from looting purely symbolic. Moreover, import restrictions have effectively given a windfall to Chinese auction houses, dealers and collectors at the expense of their American competition. There is absolutely no reason for CPAC to bless such a situation. The current MOU should be suspended, or at a minimum, all Chinese cash coins should be delisted and once again made freely available to import.

I look forward to addressing CPAC again shortly. In the interim, thank you for your interest in the concerns of the small businesses of the Numismatic Trade as well as the untold numbers of collectors of historical coins both here and abroad.

Sincerely,

Peter K. Tompa

Attachment:

subject to their export controls. Here, the Government certainly cannot meet this test for cash coins. In addition, given evidence that earlier "knife money" also circulated in quantity outside of China, further research should be undertaken before CPAC gives its blessing to retaining restrictions on such coins as well.
Exhibit A