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VIA www.regulations.gov and  
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The Hon. Robert Lighthizer, U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, DC 20508

Re: USTR-2018-0026 (Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation)

**Request to Remove HTS Headings 9705 (Collections and Collector's Pieces) and HTS Heading 9706 (Antiques) from Consideration for Tariff Application**

Dear Ambassador Lighthizer,

The Committee for Cultural Policy,<sup>1</sup> submits the following request to remove proposed tariffs under HTS Heading 9705 on "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological etc. interest" and under HTS Heading 9706 on "Antiques of an age exceeding one hundred years." Mr. Peter K. Tompa has already applied to present testimony on behalf of the Committee for Cultural Policy and Global Heritage Alliance.

The inclusion of antiques and historical and archaeological collections in the proposed tariff on China imports will harm U.S. interests. It will benefit, not harm, China's burgeoning art market.

Such tariffs would be directly contrary to longstanding U.S. policies of placing no duties on books, archaeological materials, antiques and fine art. These policies guaranteed to U.S. citizens

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<sup>1</sup> The Committee for Cultural Policy is a 501(c)(3) educational and policy research organization. Our online publication, Cultural Property News, www.culturalpropertynews.org, covers national and international news affecting the art world, from in-depth research and reports on art and cultural policy to articles on museums, exhibits, the art market, media, education, technology, archeology, anthropology, and scientific discoveries. Cultural Property News is sponsored by the Committee for Cultural Policy (CCP), a US nonprofit organization established to strengthen the public dialogue on arts policy.

the greatest possible access to educational resources. For almost 90 years, they have worked to secure the United States' primary place in scientific, artistic and intellectual achievement, and to set the standard for academic excellence in the world.

Finally, placing tariffs on antiques is illogical. Neither China nor the United States can “manufacture, produce, or grow” an antique today, only a modern fake. Antiques and archaeological items are by definition made long ago, and are not reasonable candidates for tariffs.

### **Historically, Art and Antiques Have Been Exempt from Duty on Import**

Almost 90 years ago, Congress exempted antiquities and art objects made before 1830 from duty in order to encourage the free flow of artistic and cultural materials into the U.S.<sup>2</sup> The Harmonized Tariff Schedule for the U.S. Tariff Act of 1930<sup>3</sup> established the concept of an “antique” as a handcrafted object 100 years old or older.

Thus, the U.S. exempted antiques from duty even before the UNESCO Florence Agreement of 1952, which was intended to “facilitate the free flow of educational, scientific and cultural materials by the removal of barriers that impede the international movement of such materials.”<sup>4</sup>

The 100-year age definition of an antique used in the Tariff Act of 1930 was formalized in the ‘Educational, Scientific, and Cultural Materials Importation Act of 1966’, which made importation of “antiques made prior to 100 years before their date of entry” duty free.<sup>5</sup> The same

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<sup>2</sup> “Antique,” Encyclopedia Britannica online, <https://www.britannica.com/topic/antique-valuable-relic-or-old-object>.

<sup>3</sup> 19 U.S. Code Chapter 4 - TARIFF ACT OF 1930, § 1202. See current exemption from duty on antiques and archaeological materials under the Harmonized Tariff Schedule of the United States (2018) Revision 7, Section XXI, Works of Art, Collectors' Pieces and Antiques, Subheading 9705.00.00 to 9706.00.00.

<sup>4</sup> UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials, adopted by the General Conference at its fifth Session, Florence, 17 June 1950, entered into force 1952 (“Florence Agreement”). The United States signed the Florence Agreement on June 24, 1959; it was ratified November 2, 1966. The Florence agreement sought to abolish customs and trade barriers for (a) books, publications and documents; (b) works of art and collectors' pieces of an educational, scientific or cultural character; (c) visual and auditory materials of the same character when consigned to approved institutions; (d) scientific instruments and apparatus, and (e) objects for the blind. (V. A. 2. Intro. 1) [http://www.unesco.org/education/pdf/FLOREN\\_E.PDF](http://www.unesco.org/education/pdf/FLOREN_E.PDF). See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XIV-2&chapter=14&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIV-2&chapter=14&clang=_en). Note that the United States (and 22 other nations) signed the Florence Agreement subject to Declarations and Reservations under the Protocol to the Agreement on the Importation of Educational, Scientific or Cultural Materials, with Annexes A to H 1976, [http://portal.unesco.org/en/ev.php-URL\\_ID=15224&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15224&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>5</sup> Section 4(b) Works of Art, Antiques, Pub. L. 89–651, Oct. 14, 1966, 80 Stat. 897. Section 1(a) of Pub. L. 89–651, Oct. 14, 1966, 80 Stat. 897, provided: “That this Act [enacting section 1544 of Title 28, Judiciary and Judicial Procedure, amending Schedules 2, 7, and 8 of the Tariff Schedules of the United States and section 2602 of Title 28, and enacting provisions set out as a note preceding section 1202 and under section 1981 of this title] may be cited as the ‘Educational, Scientific, and Cultural Materials Importation Act of 1966’. Section 1(b) provides The purpose

act enabled duty free importation of “Ethnographic objects made in traditional aboriginal styles and made at least 50 years prior to the date of entry.”

### **China Wants U.S. Import Restrictions on Ancient and Antique Art**

Tariffs on antiques will not punish China. On the contrary, they will further the interest of the Chinese government in strengthening China’s near monopoly on Chinese antique and ancient art. The proposed tariff on Chinese art **only** punishes U.S. collectors, art businesses, and art museums – not the Chinese government, which requested that the U.S. impose import restrictions on art and antiques up to 1912 ten years ago, a request which was only partially granted, and which China has since abused to build its own domestic market in antiques.

In 2009, China first asked the U.S., to place import barriers on Chinese art and antiques. A U.S. China bilateral agreement<sup>6</sup> under the Cultural Property Implementation Act (CPIA) was signed in 2009 and renewed in 2014. The bilateral agreement is expected to be renewed again this year. This U.S.-China bilateral agreement already covers virtually all Chinese art and artifacts from the Paleolithic through the Tang period, as well as monumental sculpture and wall art over 250 years of age. The Government of China itself sought a renewal of the 2009 U.S. import restrictions again in 2018. Why? U.S. import barriers facilitate the movement of the global market for Chinese art to China itself.

In fact, opponents of trade restrictions have argued that China’s violation of U.S. intellectual property rights was an important reason NOT to impose import restrictions that benefitted China’s domestic monopoly on art.<sup>7</sup>

### **China’s Domestic Art Market is World’s Largest**

The Chinese art market is now “the world’s largest market for art and antiquities.” After the enactment of the original bilateral agreement under the CPIA with the United States in 2009, the auction market for art and antiques in mainland China experienced a 500% growth between 2009

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of this Act is to enable the United States to give effect to the Agreement on the Importation of Educational, Scientific and Cultural Materials, opened for signature at Lake Success on November 22, 1950, with a view to contributing to the cause of peace through the freer exchange of ideas and knowledge across national boundaries.

<sup>6</sup> Memorandum of Understanding between the Government of the United States of America and the Government of the People’s Republic of China concerning the imposition of import restrictions on categories of archaeological material from the Paleolithic Period through the Tang Dynasty and Monumental Sculpture and Wall Art at least 250 Years Old (January 14, 2009).

<sup>7</sup> “Will US Embargo on Art of China & Tibet Be Renewed?” Cultural Property News, April 10, 2018, <https://culturalpropertynews.org/testimony-on-renewal-of-us-embargo-on-art-of-china-tibet/>

and 2011, and by 2011, the Chinese auction market surpassed all other countries in the world with \$9.3 billion in total sales value.<sup>8</sup>

China's voracious internal trade in Chinese art and antiquities continues to be carefully orchestrated and controlled by its government. The Chinese government has refused access to foreign firms attempting to sell antiquities in China, making room for *only* Chinese antiquities dealers.<sup>9</sup>

Imposing customs duties on Chinese antiques entering the United States would only foster and promote China's anticompetitive and isolationist commercial strategies.

According to a comprehensive study published by Artnet and the China Association of Auctioneers, while auction sales in Chinese art and antiques experienced a 5% decline between 2015 and 2016, the auction market in Mainland China saw a 7% increase in total sales value of art and antiquities, reaching \$4.8 billion in 2016.<sup>10</sup> Even more curiously, after the enactment of the original bilateral agreement (MOU) with the United States in 2009, the auction market for art and antiques in mainland China surpassed all other countries in the world with \$9.3 billion in total sales value.<sup>11</sup>

In 2014, the year after the U.S.-China agreement on cultural property's first renewal, statistics show that the fastest growing import into China was art, antiques, and collector items, which increased at a staggering 2281% rate, while export of art, antiques, and collector items increased by 320% percent.<sup>12</sup>

China appears to be doing everything in its power to *monetize* its cultural property. Reports indicate that China is making efforts to exclude foreign trade of Chinese art and antiques, and instead consolidate and encourage the trade within China's borders.<sup>13</sup> Most recently, in January 2016, China's Ministry of Culture further eased restrictions by issuing "Measures on the Administration of Artwork Trade (MOU Order No. 56)." Under MOU Order No. 56, which

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<sup>8</sup> Artnet and Chinese Association of Auctioneers, *Global Chinese Art Auction Market Report 2016* at 12 (2016). Between 2009 and 2011 auction sales of arts and antiques overseas had also expanded by 278%.

<sup>9</sup> The largest auction house in China is the Beijing Poly International Auction Co., which is part of a state-owned enterprise known predominantly for arms dealing. Deborah Lehr, *China's Art Market is Booming—Just Not for Foreigners*, Huffington Post, Mar. 1. 2017, [https://www.huffingtonpost.com/entry/chinas-art-market-is-booming-but-not-for-foreigners\\_us\\_58b6fb0de4b0563cd36f6399](https://www.huffingtonpost.com/entry/chinas-art-market-is-booming-but-not-for-foreigners_us_58b6fb0de4b0563cd36f6399); Barbara Pollack, *China's Growing Auction Giant*, Art News, Oct. 21, 2013, <http://www.artnews.com/2013/10/21/chinas-growing-auction-giant/>.

<sup>10</sup> Artnet and Chinese Association of Auctioneers, *Global Chinese Art Auction Market Report 2016* at 9, 13 (2016).

<sup>11</sup> *Global Chinese Art Auction Market Report 2016* at 12. Between 2009 and 2011 auction sales of arts and antiques overseas had also expanded by 278%.

<sup>12</sup> Dezan Shira & Associates, *Importing and Exporting in China: A Guide for Foreign Trading Companies* at 5 (2015), <https://keitercpa.com/wp-content/uploads/2015/07/Importing-and-Exporting-in-China.pdf>.

<sup>13</sup> Deborah Lehr, *China's Art Market is Booming—Just Not for Foreigners*, Huffington Post, Mar. 1. 2017, [https://www.huffingtonpost.com/entry/chinas-art-market-is-booming-but-not-for-foreigners\\_us\\_58b6fb0de4b0563cd36f6399](https://www.huffingtonpost.com/entry/chinas-art-market-is-booming-but-not-for-foreigners_us_58b6fb0de4b0563cd36f6399)

came into effect in March 2016, dealers now only need to obtain a standard business license and register with the Ministry of Culture; they no longer need to meet additional departmental requirements. Commercial exhibitors of imported artworks only need to provide information about the content of the art exhibitions; they no longer need to provide details like budget and venue information. Finally, the Ministry of Culture delegated oversight of cross-border art transactions to provincial governments.<sup>14</sup>

In 2012, China also reportedly lowered its import tax on certain types of art from 12% to 6% and then again further reduced the tax to 3% in 2017.<sup>15</sup> Since 2012, the introduction of free ports and free-trade zones in Beijing, Shanghai, Guandong, Tianjin, and Fujian have incentivized the import of artwork from abroad by permitting storage of artworks free of China's high import taxes.<sup>16</sup> Chinese art and antiquity collectors have gotten wise to the free-port system—Chinese collectors are sending objects purchased at auction to free-port warehouses and then “borrowing” the objects for lengthy periods of times, all while avoiding potentially millions of dollars in taxes.<sup>17</sup>

### **Tariffs on All Chinese Art Will Make U.S. Imports from Other Nations More Costly to U.S. Buyers**

Because U.S. citizens are already prevented from importing many fine art objects and ancient works from China, a tariff on goods of Chinese origin will impact U.S. importation from other nations, such as Japan, the UK, and other nations where Chinese art circulated in the past. In the United States, the most recent high-value sales are from long-held and foreign collections of Chinese art, not artworks imported from China. A 2017 spike in U.S. sales of Chinese art resulted from a record-breaking sale at Christie's of works from a Japanese museum, which took 50% of total global auction sales during New York's Asia Week in March 2017.<sup>18</sup>

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<sup>14</sup> Xinhua, *China eases restrictions art imports, exports*, ChinaDaily USA, Feb. 3, 2016, [http://usa.chinadaily.com.cn/culture/2016-02/03/content\\_23369886.htm](http://usa.chinadaily.com.cn/culture/2016-02/03/content_23369886.htm).

<sup>15</sup> Global Chinese Art Auction Market Report 2016 at 18.

<sup>16</sup> Jason Chow, *Chinese Create Tax-Free Zone for Art*, The Wall Street Journal, Mar. 24, 2013, <https://www.wsj.com/articles/SB10001424127887323854904578261171833355606>; *Beijing Freeport: China's capital massive tax-free art storage facility — media round up*, *Art Radar Journal*, Aug. 8, 2012; Global Chinese Art Auction Market Report 2016 at 18; George Chen, *Shanghai's free-trade zone threat to Hong Kong art auctions*, South China Morning Post, July 5, 2013, <http://www.scmp.com/business/china-business/article/1275544/free-trade-threat-hong-kong-art-auctions>.

<sup>17</sup> Olivia Geng, *Artful Dodge: Why Chinese Collectors Are 'Borrowing' Their Own Pieces*, The Wall Street Journal, Jul. 28, 2014, <https://blogs.wsj.com/chinarealtime/2014/07/28/artful-dodge-why-chinese-collectors-are-borrowing-their-own-pieces/>.

<sup>18</sup> This single sale at Christie's, "*Important Chinese Art from the Fujita Museum*,"<sup>18</sup> realized \$262,839,500. According to a Christie's press release, "Seven auctions took place from 15-17 March [during Asia Week], attracting bidders from 37 countries, with *deep bidding from buyers in mainland China*, [emphasis added] Highlights of the sales included classical Chinese painting, *huanghuali* and *zitan* furniture, as well as archaic bronzes." "*An unprecedented series of Asian art auctions in New York*," <https://www.christies.com/features/An-unprecedented-night-for-Important-Chinese-Art-from-the-Fujita-Museum-in-New-York-8172-1.aspx>

## **Conclusion**

CCP respectfully requests that the Office of the United States Trade Representative reject the proposed tariffs on goods from the Peoples Republic of China under HTS Heading 9705 on “Collections and collectors’ pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological etc. interest” and under HTS Heading 9706 on “Antiques of an age exceeding one hundred years,” in light of the substantial concerns raised herein.

Sincerely,

/s/

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