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VIA www.regulations.gov
The U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: USTR-2019-0004 (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) 84 FR 22564

June 2, 2019

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

The Committee for Cultural Policy,¹ respectfully submits the following request not to impose 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." Other art/cultural goods classifications including stamps, paintings, and sculptures numbering 9701- 9706 are also listed in the tariff proposal, and should not be included under tariffs. All such goods have long been exempt from import duties as a matter of public policy in the U.S. in order to benefit the public through access to cultural goods from around the world.

The USTR acted wisely in exempting these art, antique and ancient goods from the 10% tariffs imposed on other Chinese goods in a decision taken in 2018.

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

Neither China nor the United States can "manufacture, produce, or grow" an antique today, only a modern fake. Antiques and archaeological items for China are by definition made long ago, and have been circulating in international markets for hundreds of years.

¹ 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.

Tariffs on antique and ancient art will not harm China. Antiques, collectibles and ancient art are already subject to import restrictions when exported from China, under a bilateral agreement made at China's request dating from 2009, and renewed on January 19, 2019.

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 EU, where Chinese art circulated in the past. 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.

U.S. museums, collectors, and art dealers fear that this will severely disadvantage them in the world market and deplete available materials for future museum donation. For the last 90 years, there have been no customs duties on art, antiques or books imported into the U.S. It was considered in the public interest and the interest of peace to bring art and literature to the U.S.

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 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.

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

Historically, U.S. policies emphasized the free trade of cultural property for the public good. The U.S. has longstanding import policies encouraging the importation of modern and antique artworks, manuscripts, books, scientific, and other cultural objects by making such imports free of duty. The Educational, Scientific, and Cultural Materials Importation Act of 1966, Section 1(b) provides that "The purpose of this Act is to enable the United States to give effect to the Agreement on the Importation of Educational, Scientific and Cultural Materials... with a view to contributing to the cause of peace through the freer exchange of ideas and knowledge across national boundaries."² This Act made importation of "antiques made prior to 100 years before their date of entry" duty free,³ and enabled duty free importation of "[e]thnographic objects made in traditional aboriginal styles and made at least 50 years prior to the date of entry."⁴

Even earlier, in 1930, Congress had 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.⁵

² The Educational, Scientific, and Cultural Materials Importation Act of 1966, Pub. L. No. 89-651, 80 Stat. 897 (1966).

³ *Id.* at §4(b) (Works of Art, Antiques). Section 1(a) of Pub. L. 89-651, Oct. 14, 1966, 80 Stat. 897.

⁴ *Id.*

⁵ The Harmonized Tariff Schedule for the U.S. Tariff Act of 1930 established the concept of an "antique" as a handcrafted object 100 years old or older. 19 U.S.C. ch. 4 (1930). The exemption from duty on antiques and

Thus, the U.S. exempted antiques from duty as a matter of public policy even before the UNESCO Florence Agreement of 1952, which also 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.”⁶ The free trade policies of the past are still reflected in customs duties allowing free entry of art, antiques, books and manuscripts into the U.S.

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 agreement⁷ 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.

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.⁸

archaeological materials is under the Harmonized Tariff Schedule of the United States Revision 7, ch. 97, § XXI (2019), (Works of Art, Collectors’ Pieces and Antiques, Subheading 9705.00.00 to 9706.00.00).

⁶ 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”), 131 U.N.T.S. 25 (1950). The U.S. signed June 24, 1959 and ratified November 2, 1966. Declarations & Reservations: Protocol to the Agreement on the Importation of Educational, Scientific or Cultural Materials, with Annexes A to H 1976, UNESCO, adopted by the General Conference at its fifth Session, Florence, 17 June 1950, entered into force 1952 (“Florence Agreement”).

⁷ 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).

⁸ “*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/>

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 and 2011, and by 2011, the Chinese auction market surpassed all other countries in the world with \$9.3 billion in total sales value.⁹

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.¹⁰

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 overall 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 2016.¹¹ 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.¹²

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.¹³

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

⁹ 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%.

¹⁰ 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; Barbara Pollack, *China’s Growing Auction Giant*, Art News, Oct. 21, 2013, <http://www.artnews.com/2013/10/21/chinas-growing-auction-giant/>.

¹¹ Artnet and Chinese Association of Auctioneers, *Global Chinese Art Auction Market Report 2016* at 9, 13 (2016).

¹² *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%.

¹³ 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>.

instead consolidate and encourage the trade within China's borders.¹⁴ 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 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.¹⁵

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 2017.¹⁶ Since 2012, the introduction of free ports and free-trade zones in Beijing, Shanghai, Guangdong, Tianjin, and Fujian have incentivized the import of artwork from abroad by permitting storage of artworks free of China's high import taxes.¹⁷ 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.¹⁸

Conclusion

China would actually benefit from tariffs on U.S. imports in these areas because they would strengthen China's monopoly on the ancient and antique art trade of Chinese goods, of which it is the world's largest consumer.

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.

¹⁴ 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

¹⁵ Xinhua, *China eases restrictions art imports, exports*, ChinaDaily USA, Feb. 3, 2016, http://usa.chinadaily.com.cn/culture/2016-02/03/content_23369886.htm.

¹⁶ Global Chinese Art Auction Market Report 2016 at 18.

¹⁷ 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>.

¹⁸ 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/>.

Mr. Peter K. Tompa has already applied to present testimony on behalf of the Committee for Cultural Policy and Global Heritage Alliance. Thank you for your attention.

Sincerely,

/s/

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