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VIA Regulations.gov Portal
Dr. Jeremy Sabloff, 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 Memorandum of Understanding with the Republic of Turkey
Federal Register: November 26, 2019 (Volume 84, Number 228 (Page 65209))**

Dear Dr. Sabloff and Cultural Property Advisory Committee Members:

I am writing on behalf of the International Association of Professional Numismatists (“IAPN”)¹ concerning the Cultural Property Advisory Committee’s (“CPAC’s”) review of a proposed Memorandum of Understanding (“MOU”) with the Republic of Turkey. The small businesses of the numismatic trade ask this Committee to pay close attention to the statutory requirements found in the Cultural Property Implementation Act, 19 U.S.C. §§ 2601-2613 (“CPIA”) before approving what will certainly be a controversial MOU that would recognize Turkish government rights to the cultural goods of displaced Greek, Armenian and Assyrian-Syriac minority populations. Indeed, the very idea that the U.S. Government would recognize the rights of the modern Turkish State to the material remains of these groups should give great

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. IAPN members promise “[t]o guarantee that good title accompanies all items sold, and never knowingly to deal in any item stolen from a public or private collection or reasonably suspected to be the direct product of an illicit excavation, and to conduct business in accordance with the laws of the countries in which they do business.” The IAPN has approximately 100 member firms around the world in 23 countries, including 24 in the U.S. More about the IAPN may be found on the internet at <http://www.iapn-coins.org>.

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pause not only to the members of CPAC, but to the entire U.S. State Department leadership, particularly its political appointees responsible for the Bureau of Educational and Cultural Affairs and Public Diplomacy.

Of course, IAPN is particularly interested in how CPAC addresses the issue of historical coins, which are probably amongst the most common ancient artifacts. The “public summary” of the Turkish request is silent about whether import restrictions on coins are contemplated, but if history is any guide, proponents of this MOU will seek import restrictions on all types of cultural goods, including coins created by the ancestors of displaced Greek and Armenian minorities. Leaving aside whether coins that exist in many multiples can be restricted under the CPIA’s “cultural significance” test, or whether there are alternatives to import restrictions, such as the establishment of a Portable Antiquity Scheme, the critical issue is whether it is proper to assume coins of types struck or sometimes found in Turkey were in fact “first discovered” there so that they would be subject to Turkish “export control.” 19 U.S.C. § 2601. Indeed, this is particularly true for the imperial mints at Greek speaking ancient Antioch and Byzantium/Constantinople. Those mints issued huge numbers of coins for Alexander the Great and his Hellenistic successors, the Romans, and the Byzantines. Such imperial issues that were struck there and elsewhere in what is today Turkey were never intended to circulate only within the confines of modern-day Turkish nation state. Indeed, scholarly evidence demonstrates that ancient “Turkish” coins—with the possible exception of some local bronze civic issues -- are often found outside of the confines of modern day “Turkey,” which would make any restrictions imposed upon them solely predicated on where they were made or are sometimes found contrary to the CPIA’s statutory intent. *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection* (“*ACCG v. CBP*”), 801 F. Supp. 2d 383, 407 n. 25 (D. Md. 2011) (“Congress only authorized the imposition of import restrictions on objects that were ‘first discovered within, and [are] subject to the export control by the State Party.’”).

To the extent CPAC nonetheless approves of restrictions, CPAC should provide explicit direction to U.S. Customs and Border Protection (“CBP”), the U.S. Government enforcement agency, to ensure coins are not repatriated to the modern Turkish nation state merely because they are of types found on some designated list. In particular, any import restrictions on imperial types that circulated throughout the Empires of Alexander and his Hellenistic successors, the Romans, and the Byzantines and which, therefore, cannot be assumed to be found in Turkey must be framed explicitly to ensure that they only apply to coins actually found in Turkey—and hence which are also subject to the export control of Turkish authorities. 19 U.S.C. §§ 2601, 2604. Furthermore, any such restrictions should also be conditioned on allowing historical coins to leave Turkey with export permits, an assumption found both in the UNESCO Convention and the CPIA. 1970 UNESCO Convention, Art. 6; 19 U.S.C. § 2606. Allowing U.S. coin collectors to purchase and legally import such coins would only help stimulate tourism which is essential to the local Turkish economy, and would further honor the CPIA’s injunction that less drastic remedies be considered. 19 U.S.C. § 2602 (a) (C) (ii).

I. Background

A. Turkey's History

The public summary only alludes to the area's long history when it indicates that Turkey is seeking import restrictions on cultural goods dating from 1,200,000 BC to 1923 AD. (*See* Public Summary: Request by the Government of Turkey to the United States of America for Imposing Import Restrictions to Protect its Cultural Patrimony under Article 9 of the 1970 Convention, available at https://eca.state.gov/files/bureau/turkey_cpa_request_public_summary.pdf, last visited December 30, 2019). In fact, Turkish history is really that of two culturally distinct areas, Anatolia (the Asian part of Turkey) and Eastern Thrace (the European part of Turkey), as well as the diverse peoples who lived there. Many of these groups melded together over time into the larger population of what has become the Republic of Turkey. Significantly, however, three distinct groups who maintained their cultural identity since ancient times—the Greeks, the Armenians and Assyrian–Syriac peoples—were either slaughtered en masse or forced to emigrate in the dying days of the Ottoman Empire and the early days of the Turkish Republic. Ironically, any MOU would make U.S. Customs and Border Protection (CBP) Turkey's enforcer for "clawing back" the material remains of their cultures, which would likely comprise of a large portion of the "designated materials" subject to detention, seizure and forfeiture under any accompanying import restrictions. These would include all coins issued by the Greek speaking peoples of Anatolia and Thrace, the Hellenistic Kingdoms of Alexander the Great and his Successors, the Romans and the Byzantines.

1. Anatolia

Anatolia had important Bronze Age Civilizations including the Hattian, Akkadian, Assyrian and Hittite peoples. After the fall of the Hittite Empire, new states arose in Phrygia and Lydia, and Greeks colonized Ionia, the coast along the Aegean Sea.

The Persian Empire soon controlled the entire area, but allowed local rulers, called Satraps, a good deal of autonomy, including the rights to issue coinage. The first Armenian state also arose during this period, which included parts of Eastern Turkey.

During the 5th c. BC, Ionian Greeks revolted against Persian control, leading to a long series of wars that culminated in Alexander the Great "liberating" the Ionian Greeks and conquering the Persian Empire.

After Alexander's death, Anatolia became part of the Seleucid Empire, but was under constant threat of invasion both from the Gauls, and other powerful Hellenistic rulers in

Pergamum, Pontus and Egypt. Ultimately, the Seleucids became involved in a disastrous war with Rome, which led to the Seleucid's Anatolian territory being ceded to the Kingdom of Pergamum and the Republic of Rhodes (now in Greece), who were Rome's allies.

Eventually, Anatolia was incorporated into the Roman Empire, but the Romans allowed the area much local autonomy, including the rights of various cities to issue coinage. In the early 4th c., Constantine the Great established Constantinople as a new administrative center for the Roman Empire at the site of the Greek City of Byzantium. After the Roman Empire split into two, the Eastern half of the Roman Empire became known as Byzantium, after the original name of Constantinople.

2. Thrace

The Thracians were a group of Indo-European tribes inhabiting a large area of Central and Southeastern Europe. Ancient Thrace is today southeastern Bulgaria, northeastern Greece and the European part of Turkey. Greeks from Ionia also colonized the area, creating cities, including Byzantium. Eventually, the Greek kingdom of Macedon and successor Hellenistic Kingdoms dominated the area, before the Romans gained control, but allowed considerable local autonomy.

3. Byzantium

The process of Hellenization that began under Alexander the Great and his successors continued under Rome. By the early Christian era, local Anatolian languages were replaced by ancient Greek. Greek language and culture flourished under Byzantium, though the Byzantines saw themselves as "Roman."

During the early Byzantine period, there were frequent clashes with the Sassanian Persians, which exhausted both Empires, paving the way for the Arabs and Turks to gradually take over what had been the Byzantine Empire.

4. The Ottomans

Turkic people originally lived in a region extending from Central Asia to Siberia. Over time, they migrated towards Eastern Europe, the Iranian plateau and Anatolia in multiple waves. The Turkic Seljuk Empire was founded in 1037 AD. It stretched from the Hindu Kush to Persia before conquering Eastern Anatolia. On their trek through Asia, Turkic people came into contact with different religions including Buddhism, Christianity and Judaism, but ultimately largely adopted Islam.

The Ottomans were another Turkic people whose first capital was Bursa. Ottoman gradually expanded until 1453, when Sultan Mehmed II captured Constantinople, which was made the Ottoman Capital. To crown his conquest, the Sultan ordered Hagia Sophia, Byzantine Emperor Justinian the Great's magnificent patriarchal Cathedral, converted into a mosque. Although some parts of the city of Constantinople had fallen into disrepair, the cathedral had been maintained with funds set aside for this purpose. After Hagia Sophia's capture, the bells, altar, iconostasis, and other relics were destroyed and the mosaics depicting Jesus, his Mother Mary, Christian saints, and angels were also destroyed or plastered over. After that, Islamic features – most notably four minarets – were added.

After destroying the Byzantine Empire, Ottoman power would continue to expand throughout the 15th-17th centuries further into Central Europe, the Caucasus, North and East Africa, the Islands of the Mediterranean, Greater Syria, Mesopotamia, and the Arabian Peninsula. This expansion was only achieved after constant wars with the Bulgarian Kingdom, the Serbian Kingdom, the Hungarian Kingdom, the Holy Roman Empire, the Venetians, the Knights of Saint John, and the Persians. These wars had a distinct religious aspect to them, with Ottoman troops marching under the banner of Sunni Islam against the Persian Shia to the East and Christians to the West and North.

This period of expansion ended in the late 17th century. Thereafter, the Ottoman Empire was constantly on the defensive, losing territories including Hungary, the Balkans, Greece, Algeria, and Tunisia. As humiliating losses mounted, the search for scapegoats amongst conquered minority communities increased. The bloody denouement came during WW I and its immediate aftermath. During the war, Ottoman Turkey allied with Germany and the Austro-Hungarian Empire. As the war situation turned dire, Turkish troops carried out horrendous atrocities against Armenians, Assyrians, and Pontic Greeks, who were considered disloyal.

5. The Turkish Republic

The Treaty of Sevres, dated August 10, 1920, broke up the Ottoman Empire and contemplated significant territorial concessions in favor of Greece, Italy, Britain and France. This humiliation prompted the creation of a nationalist movement, under the leadership of Mustafa Kemal Ataturk, a military commander who had distinguished himself fighting British and Commonwealth troops at Gallipoli during the First World War. Even more killing and expulsions came after the Greek Kingdom's failed invasion to effectuate the provisions of the Sevres Treaty. As part of the settlement in the Treaty of Lausanne, there was a forced population exchange of Christian Greeks and Islamic Turkish peoples from what had been their homelands for generations.

Ataturk sought to modernize Turkey, and make it part of the Western World by secularizing its government. As part of this effort, Hagia Sophia, which had been converted into a mosque to mark the conquest of Constantinople, was turned into a museum in 1935.

Turkey remained officially neutral through most of WWII, but as the war's fortunes turned against the Axis, it took more pro-allied stances, culminating in a symbolic declaration of war against German and Japan in February 1945.

After the war, Turkey was concerned about possible Soviet territorial claims, and accepted considerable U.S. military assistance as a deterrent against Soviet aggression. Turkey participated with other UN forces in the Korean War, and joined NATO in 1952. There have been continuing disputes with Greece, including serious ones over Cyprus and territorial rights to exploit fishing and oil and gas fields in the Aegean Sea.

Although Turkey technically became a multiparty Democracy in 1945, civil rule has been interrupted periodically by a series of military coups. Although Turkey's president, Recep Tayyip Erdoğan, weathered such a coup, his government stands accused of seeking to reestablish the Ottoman Empire. Recent controversies under Erdoğan's rule include a threat to turn Hagia Sophia back into a mosque, an unprovoked military attack on U.S. Kurdish allies in Syria, and engaging in a proxy war against Egyptian, Emirati, and Russian interests in Libya that apparently has as much to do with carving up oil and gas rights in the Mediterranean as anything else. (See *Turkey's Erdogan says He Plans to Change Hagia Sophia's title from Museum to Mosque*, Reuters (March 29, 2019), available at <https://www.reuters.com/article/us-turkey-election-museum/turkeys-erdogan-says-he-plans-to-change-hagia-sophias-title-from-museum-to-mosque-idUSKCN1RA1ZB> (last visited December 31, 2019); Siobhán O'Grady and Miriam Berger, *Who are the Kurds, and Why is Turkey Attacking Them?* The Washington Post (Oct. 14, 2019), available at <https://www.washingtonpost.com/world/2019/10/11/who-are-kurds-why-is-turkey-attacking-them/> (last visited December 31, 2019); Keith Johnson, *Newly Aggressive Turkey Forges Alliance With Libya*, Foreign Policy (Dec. 23, 2019), available at <https://foreignpolicy.com/2019/12/23/turkey-libya-alliance-aggressive-miditerranean/> (last visited December 31, 2019).

B. Historical Coins that Circulated within Turkey, Including those Made in Turkey, but which also Circulated in Numbers Elsewhere.

Coinage was invented in what is today Western Turkey in the late 7th c. BC. The earliest coins were all made of electrum, an alloy of gold and silver. The first coins were just blobs of punch marked metal. The earliest attributable coins are marked with animal shapes, a lion as the badge of the Lydian Kingdom and a seal as the mark for the city of Phocaea.

Lydian King Croesus (c. 560-547 BC) is traditionally said to have issued the first pure silver and gold coins, marked with a design of the confronted foreparts of a lion and bull. It is now thought, however, that these “Croeseid” coins were actually issued later under the authority of the Persian Great king, who had conquered the Lydian kingdom. In any event, the concept of coinage spread from Western Anatolia across the Aegean Sea to Greece, Italy, Sicily and beyond.

At Sardes, huge numbers of silver sigloi and gold darics were struck by Greeks for the use of Greeks in the name of the Persian king. In the course of the 5th c. BC, cities all along the coastal areas of Turkey began to strike coins in their own name. These included Sinope and Trapezus to the North on the Black Sea, and Aspendus, Side, Celenderis, and Tarsus in the South. The use of fiduciary bronze coinage also began during this time frame. During this period, Persian Satraps in the South and local rulers in Lycia also began to experiment with portraiture on coins.

Alexander’s destruction of the Persian Empire transformed coinage in the area. During this period, Alexander’s Imperial issues of gold, silver and bronze struck at mints within and outside of the confines of present day Turkey replaced most local coinage. After Alexander’s death, Lysimachus controlled much of Western and Northwestern Turkey. His extensive silver and gold coinage featured a magnificent portrait of a horned Alexander the Great. His coin types were struck within and outside the confines of modern day Turkey both during his lifetime and for decades after his death in battle against Seleucus, another of Alexander’s generals in 281 BC.

After he defeated Lysimachus, Seleucus became the ruler of virtually all the eastern provinces of Alexander’s Empire, including much of present day Turkey. The dynasty he founded issued huge numbers of coins from mints both within and outside of Turkey. The principal Seleucid mints operating within Turkey were Antioch, Tarsus and Sardes.

Several smaller Hellenistic kingdoms and cities also began issuing coins as the Seleucid Empire began its decline from the mid 3rd c. BC. These include coins of the Attalid kings who ruled Pergamum. Early issues featured the portrait of the dynasty’s founder. Later issues, dating from 170 BC, featured an unusual design combining the sacred chest of Dionysus on the obverse and two coiled serpents and bow case on the reverse. Around this same time, other cities issued impressive Hellenistic Tetradrachms inspired by the “New Style” Tetradrachms of Athens.

As the Romans extended their control into Turkey, local mints gradually only tended to issue bronze coins, and local silver issues were replaced by Imperial Roman ones. During the early Imperial period, the Romans struck Greek style Tetradrachms at Antioch and Didrachms at Caesarea in Cappadocia that circulated throughout Turkey and beyond. In the second half of the 3rd c. AD, local coinages came to an end and the regular production of Roman denarii and antoniniani began at Antioch and Cyzicus. Starting in the late 3rd c., as Roman silver coinage

became debased, Imperial mints at Antioch, Cyzicus, Heraclea, Nicomedia, and later Constantinople churned out massive numbers of bronze and gold coins designed to circulate throughout the Roman Empire and beyond.

The Eastern Roman or Byzantine was the predominant power within Turkey until the eleventh century, producing all of its coinage, and retaining some power until its fall in 1453 AD. Mints at Nicomedia, Antioch and Cyzicus within Turkey helped to produce coinage for the entire Empire both within and outside present day Turkey from the 5th to 7th c. AD. Thereafter, Constantinople and Thessalonica (in present day Greece) were the only mints. Coins in bronze and in gold were struck in huge numbers. Silver coinage was issued less frequently, probably because most silver was instead used for liturgical purposes by the Greek Orthodox Church.

As Byzantine power declined, Arabs, Crusaders, Armenians, Seljuqs, Artiquids and Zengids, Mongols, and Ottomans began to strike coins that circulated regionally. Ottoman coins in particular circulated far from where they were manufactured, given the vast amount of territory the Ottoman Empire controlled.

The Coin Hoards Series (Volumes I-X) records coin hoards found in both official and unofficial archaeological excavations.² Information contained in our attachment about our review of the Coin Hoards Series establishes that ancient Greek, Roman, and Byzantine coins from Turkish mints have been found in substantial numbers outside of Turkey. The countries where such coins circulated in ancient times can be gleaned from find spots in Afghanistan, Albania, Algeria, Bulgaria, Croatia, Cyprus, Egypt, Greece, Great Britain, Israel, Italy (Sicily), Lebanon, Kuwait, Pakistan, Romania, Russia, Serbia, Syria, Turkmenistan, and the Ukraine. Furthermore, we have supplemented this information with further lists of late Roman and Byzantine coins recorded by the U.K.'s Portable Antiquities Scheme and a list of pertinent articles also showing that Turkish mint coins are often found well outside the confines of modern day Turkey.

C. The Numismatic Trade and Collecting

1. Collecting Outside of Turkey

² The Coin Hoards series has some significant limitations as a resource. First, it records hoards, not single finds. Thus, it seriously undercounts small denomination bronze coins that are less likely to be hoarded. Second, not all hoards that have been reported have been recorded. Third, a substantial number of listed hoards record issuing authorities, but not necessarily mints. We have also listed such Greek hoards which possibly contain Turkish mint coins based on the known mints of the issuing authority. Fourth, the exact find spots of many hoards is unknown. This also leads to an undercount of coins circulating far from where they were made. Fifth, many of the hoards are only partly recorded. Thus, there probably is a significant undercount of Turkish or Tunisian mint coins in such hoards. Finally, while the Coin Hoard series incorporates the earlier Inventory of Greek Coin Hoards (IGCH) (1973), it is unclear if the all the coin hoards in that volume are also included in the Coin Hoards series. Thus, it is possible that not all Turkish or Tunisian mint coins from IGCH are incorporated here.

Ancient coins have been found in great numbers for millennia. In an era without modern banks, the ancients typically buried their savings in hoards, many of which were never retrieved, leaving them to be found to even to this day. Most coins found in collectable condition come from such hoards found in pots or other containers that may contain hundreds, if not thousands, of coins. These containers protect the coins from corrosion due to contact with the soil. In an era before modern banking, people typically buried their savings in secret locations. If they did not return to claim them, those coins remained hidden until found by chance or design. Large savings and accumulation hoards are often found outside the archeological stratum.³ In contrast, coins archeologists typically find are “small change” of bronze that is likely corroded due to exposure to the elements.⁴

In any event, Turkish coins have been actively and legally collected in Europe and elsewhere for centuries. Not surprisingly, historical coins, like most common and less valuable Turkish artifacts now found both here and abroad, have lost their provenance over time. There simply was no reason to keep such information in most cases, and even now, there is no legal requirement either here or in Europe to keep the documentary history of Turkish artifacts in one’s collection.⁵

³ See *Mary Washington College Presents Symposium on Ancient Numismatics*, ANS Magazine 8, 11 (Spring 2002) (hereinafter *Mary Washington Symposium*) (“Coins recovered in good condition from containers, like those found in savings and accumulation hoards, are only found infrequently at archaeological sites.”).

⁴ See e.g., John H. Kroll with Alan Walker, *The Athenian Agora XXVI The Greek Coins 1* (American School of Classical Studies at Athens 1993) (“In comparison with museum or hoard specimens, it is in the area of absolute metrology that the Agora specimens are most deficient. Most are worn to some degree; almost all are found in a heavily corroded state.”); Theodore Buttrey, Kenan Erim, Thomas Groves, and R. Ross Holloway, *Morgantina Studies II The Coins at xi* (Princeton University Press 1989) (“The coins found at Morgantina are most entirely of bronze, as is usual in most excavations. The metal, less durable than gold or silver, has suffered not only from wear during the circulating life of the coins, but from the corrosive action of the soil, so that many have remained illegible even after cleaning.”).

⁵ Some in the archaeological community have claimed that import restrictions are “much ado about nothing” because it is simple to comply with the CPIA’s documentation requirements. As set forth above, that is patently untrue for low value artifacts like coins. Leaving that aside, it has also become increasingly clear to importers that even *where there is information available that should allow for a legal import, Customs may ask for more and more and more*. Here is what James McAndrew, a retired former senior agent involved with cultural property issues, said on the subject at a recent public forum:

One of the things that customs does when an object comes in from one of the 14 countries that has a bilateral agreement under the CPIA, the CPIA says that if an object is imported without a permit from the source country then the import can be allowed under the statute by providing “satisfactory information” that the object was out of the country before the imposition of the bilateral, or has been out of the country for more than ten years. And there are two paragraphs that quote what that satisfactory evidence consists of and what it should state. It was out of the country for 10 years prior to import - it was out of the country before the imposition of the bilateral, and so on. Just to show you what happens in that case. An affidavit

Coins of the sort that circulated within Turkey are collected as part of the Greek, Roman, Islamic and foreign coin series. In modern times, coins have been traded on the international market in huge numbers, with “Turkish” coins a significant part of this larger number. They appear on occasion in auctions in all the countries that hold auctions of ancient coins: Australia, Austria, China (Hong Kong), France, Germany, Italy, Japan, Netherlands, Spain, Switzerland, United Kingdom, and others. As far as IAPN knows, none of these countries other than Germany currently have any restrictions on the importation of Turkish coins.⁶ In fact, the vast majority of Turkish coins are probably worth so little that they have never been offered in auction and would not be offered in auction today, except in large multiple lots. During the past 100 years and more, there are likely thousands of these coins that have changed hands without any provenance being recorded. Any review of auction and sales records should also confirm that early Turkish coins are available on the marketplace with mostly modest values.

2. Collecting in Turkey

Our understanding of Turkish law and practice is as follows: (1) Law Number 2863, Art.4 requires finders to notify the authorities about the discovery of movable cultural property’ (2) Art. 23 effectively precludes the possession or sale of any Turkish coins made before the late Ottoman period that were found in Turkish soil or were not already in private collections as of 1906; (3) Notwithstanding, coins may be imported freely from abroad (Art. 33); (4) There are significant private collections within Turkey itself that include local finds; (5) There are

that satisfies this should be sufficient for the piece to be released, but it is not. You can literally lift that language right out of the law and have your client sign an affidavit that attests to that. Because it states exactly what the statute requires it should be sufficient. The shipment should be released, right? No. The CPIA does not put limitations on customs and homeland security to stop asking for more. The agent or inspector comes back and says, I want more. They say, I don't like that affidavit, give me another. I don't know that person, give me one from another person. They continually ask for more and create, at a whim, what they want. The question is do you feed the government more? If you don't give them more, they seize it. If you do give them more, they ask for more again. Maybe they are looking for you to establish that you made a false statement and take you down the path you never intended to go down. Then the case goes from civil to criminal. Don't forget that behind the scenes, any document you give them, they are sending collateral requests to the agents in foreign countries to verify the document. And if they can catch you with a false document or a false statement, intentionally or unintentionally now you have a criminal problem. There is no limitation on what is called quote unquote satisfactory evidence. I have a client who had an object seized in April 2011 – this is April 2014, and I still haven't got it released. This could go on for another 30 years. Again, there is no limitation on what they can ask for and what is satisfactory evidence and that is what is wrong with the CPIA.

Transcript, Reform of U.S. Cultural Property Policy Accountability, Transparency and Legal Certainty, Cardozo Law School, New York, N.Y. (April 10, 2014) at 11.

⁶ Although the E.U. recently approved of import restrictions on cultural goods originating outside of the E.U., it will take several years for the authorities to implement this law.

registered antiquity dealers within Turkey (Art. 27) although it unclear what they sell; (6) There are provisions in Turkish law for the creation of registered private museums (Art. 26); (7) It is precluded to export protected cultural property abroad (Art. 32); (8) Permits may be issued to hunt for treasure (Art. 50); and (9) Prizes are awarded in certain circumstances to people who report finds. (Art. 64).

Several numismatic publications discuss private collections—which include both individual and hoard finds of coins from within Turkey. *See* Muharrem Kayhan, Koleksyoundan Erken, and Andulu Sikkeleari, *Early Anatolian Coins from the Muharrem Kayhan Collection* 11 (Istanbul 2003) (“Mr. Kayhan has bought some of his most spectacular pieces from salerooms in Europe, but the great majority of coins in the collection are local finds from Western Anatolia, and their provenances, including several hoards, have were possible been precisely recorded. This is of prime importance, for all too many coins found in Turkey go unrecorded and their provenances, often valuable for scientific study, are frequently lost forever. One might hope that a system could be devised which would balance the interests of those who find mass produced items like coins and the state and of scholarship. In England and Wales, for example, the Treasure Act of 1996 has ensured that each year about twelve times are now declared to the authorities as was the case before it came into law.”); Richard Ashton, ed., *Studies in Ancient Coinage from Turkey* (RNS and British Institute of Archaeology at Ankara 1996) (compendium which includes discussion of several private collections of ancient coins within Turkey).

The Turkish Numismatic Association’s Chairman has criticized Turkey’s law because it encourages smuggling and even the melting of coins which cannot freely be traded within Turkey itself for their metallic value. (*See Ottoman Coins being Lost Due to Law of 30 Years Ago*, Anatolia News Agency via Hurriyet Daily News (May 31, 2012) available at <http://www.hurriyetdailynews.com/ottoman-coins-being-lost-due-to-law-of-30-years-ago-21979> (last visited January 2, 2020).

D. The Law, Past Actions on Coins, and Their Impact

The CPIA contains significant procedural and substantive constraints on the executive authority to impose import restrictions on cultural goods. Import restrictions may only be applied to archaeological artifacts of “cultural significance” “first discovered within” and “subject to the export control” of a specific UNESCO State Party. 19 U.S.C § 2601. There must be some finding that the cultural patrimony of the UNESCO State Party is in jeopardy. *Id.* § 2602. They must be part of a “concerted international response” “of similar restrictions” of other market nations, and can only be applied after less onerous “self-help” measures are tried. *Id.* They must also be consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes. *Id.*

Congress placed these constraints on executive power hoping to ensure that the United States exercises its “independent judgment” in such matters. As the Senate Committee Report explains,

The Committee intends these limitations to ensure that the United States will reach an independent judgment regarding the need and scope of import controls. That is, U.S. actions need not be coextensive with the broadest declarations of ownership and historical or scientific value made by other nations.

U.S. actions in these complex matters should not be bound by the characterization of other countries, and these other countries should have the benefit of knowing what minimum showing is required to obtain the full range of U.S. cooperation authorized by this bill.

Senate Report 97-564 at 6 (1982).

CPAC is to contribute to this effort by providing the executive with useful advice about this process. The CPIA contemplates that CPAC is to recommend whether import restrictions are appropriate as a general matter and also specifically whether they should be placed on particular types of cultural goods. *Id.* § 2605.

No import restrictions were imposed on ancient coins for some twenty-five (25) years after the CPIA came into law. This is not surprising. Ancient coins are items of commerce making it difficult for modern nation states to claim them as their “cultural property.” They are widely collected, including in several countries with MOU’s with the United States. Indeed, Mark Feldman, the State Department Deputy Legal Adviser, represented to Congress that “it would be hard...to imagine a case” where coins would be restricted under what would become the CPIA. *Cultural Property Treaty Legislation: Hearing on H.R. 3403 Before the H. Subcomm. on Trade of the Comm. on Ways and Means, 96th Cong. 8 (1979).*

In the past, CPAC also has recommended **against** import restrictions on coins. Initially those recommendations were followed; however, as the late CPAC Chairman Jay Kislak stated in a court declaration that in 2007, CPAC recommended against import restrictions on Cypriot coins, but the State Department rejected that recommendation and then misled the Congress and the public about it. Even more troublingly, that decision was made by the Assistant Secretary, ECA Dina Powell *after* she accepted a job at financial power house Goldman Sachs, where she was recruited by and worked directly for the spouse of the founder of the Antiquities Coalition, an advocacy group that has worked assiduously to promote MOUs with China and MENA

countries.⁷ Now, almost thirteen (13) years later, there are now restrictions on coins made in Algeria, Cyprus, China, Italy, Greece, Bulgaria, Syria, Egypt and Libya with new import restrictions on coins promised to Jordan as well. (See Perry Keziah, *Jordan, US Ink Agreement to Curb Artefact Smuggling*, the Jordan Times, via ZAWYA (December 18, 2019) available at https://www.zawya.com/mena/en/legal/story/Jordan_US_ink_agreement_to_curb_artefact_smuggling-SNG_162490004/?fbclid=IwAR3I97YMFfMCKwqORx8b7POScREHRuPLaLrZxmukb_zB4EZPwVQyjUuFSfl (last visited December 26, 2019).

Such import restrictions make it impossible for Americans to legally import collectors' coins widely and legally available abroad. Foreign sellers are typically unwilling or unable to certify the coin in question (which can retail as little as \$1) left a specific UNESCO State Party before restrictions were imposed as required by the CPIA and CBP rules. The cumulative impact of these restrictions have drastically limited Americans' abilities to purchase historical coins from abroad and have negatively impacted the cultural understanding and people to people contacts collecting fosters.

E. The Request

A public summary of the Turkish request appeared on the Cultural Heritage Center website on or about December 4, 2019. (See https://eca.state.gov/files/bureau/turkey_cpa_request_public_summary.pdf (last visited December 26, 2019).) That public summary raises more questions than answers about the justifications for the request.

The request confirms that Turkey seeks import restrictions on archaeological materials dating from 1,200,000 BC to 1770 AD and ethnologic materials produced from the 1st c. AD to 1923. This category also includes items that belonged to Mustafa Kemal Ataturk, the founder of

⁷ See Antiquities Coalition's #CultureUnderThreat Conference, The Antiquities Coalition (September 12, 2016) available at <https://theantiquitiescoalition.org/antiquities-coalitions-cultureunderthreat-conference/> (last visited December 26, 2019). Recently, information has come to light that raises the question whether these advocacy efforts have been leveraged to benefit the Antiquities Coalition's founder's for profit business. See <https://www.basilinna.com/insights/press-release-edelman-and-basilinna-partner-to-offer-integrated-china-and-middle-east-focused-public-affairs-and-communications-services> (last visited December 26, 2019). Moreover, it should be noted that the Antiquities Coalition 990 for 2017 indicates that the Coalition has received U.S. Government funding to support State Department efforts to close the U.S. border to "illicit antiquities" from MENA countries. From various sources, IAPN believes that the Coalition maintains that any undocumented antiquity (including coins) is also "illicit." Therefore, in addition to advocating for the U.S. State Department imposition of import restrictions, the Coalition receives U.S. government funding for publicizing such import restrictions to the public.

the Turkish Republic. (*Id.* at 1.) There is no specific mention of coins, though if history is any guide they will be included because (other than late Ottoman coins) they are explicitly included as part of Turkey's "protected" patrimony. (Law Number: 2863, Art.23.)

The public summary alludes to Turkey's extensive internal police enforcement efforts but unsurprisingly ignores recent controversies involving government stewardship of its cultural patrimony.

These controversies include:

- Threats to convert Hagia Sophia back into a mosque: <https://www.reuters.com/article/us-turkey-election-museum/turkeys-erdogan-says-he-plans-to-change-hagia-sophias-title-from-museum-to-mosque-idUSKCN1RA1ZB> (last visited January 2, 2020).
- State sponsored "Treasure Hunting" on Christian & Jewish sites: <https://www.gatestoneinstitute.org/15153/turkey-hate-christians-jews> (last visited January 2, 2020).
- Roman cities buried under water: <https://www.ancientworldreview.com/2011/03/roman-ruins-to-be-flooded-by-dam-in-turkey.html> (last visited January 2, 2020).
- Ancient Kurdish cities buried under water: <https://www.smithsonianmag.com/smart-news/turkey-moving-forward-its-plans-flood-10000-year-old-city-180973124/> (last visited January 2, 2020).
- Turkey's military bombs ancient culture
 - <https://culturalpropertynews.org/turkey-bombs-3000-year-old-syro-hittite-site-to-rubble/> (last visited January 2, 2020).
 - <https://www.telegraph.co.uk/news/2018/01/29/turkish-bombing-damages-3000-year-old-temple-northern-syria/> (last visited January 2, 2020).
- Turkish backed militia loot Syrian relics: <https://www.bellingcat.com/news/mena/2019/07/11/afrin-incidents-of-desecration-and-destruction-of-cultural-sites/> (last visited January 2, 2020).

II. Analysis

CPAC should ask itself whether the cultural heritage of Turkey is really in jeopardy or whether Turkey's own unclean hands should preclude a MOU, and whether there truly has been a "concerted international response" to looting. 19 U.S.C. §§ 2602 (a) (1) (A) and (C).

Moreover, before restrictions on coins are considered, it needs to be determined whether significant numbers of metal detectors are in use in Turkey, and, if so, whether there are less drastic remedies available other than more import restrictions on coins. 19 U.S.C. § 2602 (a) (C).

If restrictions are nonetheless imposed on coins, such restrictions must be written in a way to comply with the CPIA's requirements, i.e., only coins "first discovered within" and "subject to export control by" Turkey that are illicitly exported after the effective date of the regulations may be restricted. 19 U.S.C. §§ 2601, 2604, 2606, 2610.

Finally, import restrictions—if any—on coins should be conditioned on the provision of export permits for coins purchased in Turkey. Sales of common coins to U.S. visitors would promote tourism in a way consistent with the UNESCO Convention and the CPIA.

A. Any Import Restrictions Should Be Limited in Scope and Export Certificates Should be Provided.

1. It is Difficult to Justify Import Restrictions on Coins.

Although the State Department has claimed otherwise in the *ACCG* litigation⁸, 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, CPAC should recommend against import restrictions on coins.

As set forth above, the CPIA contains significant procedural and substantive constraints on the executive authority to impose import restrictions on cultural goods. Import restrictions may only be applied to archaeological artifacts of "cultural significance" "first discovered

⁸ 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 U.S. Customs 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). Unfortunately, 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 U.S. Customs decision-making. *See Ancient Coin Collectors Guild v. U.S. Customs and Border Protection*, 698 F.3d 171, 175 (4th Cir. 2012).

within” and “subject to the export control” of a specific UNESCO State Party. Restrictions are only proper after a finding that Turkey’s cultural patrimony is in jeopardy. Import restrictions must be part of a “concerted international response” “of similar restrictions” of other market nations, and can only be applied after less onerous “self-help” measures are tried. They must also be consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.

First, there is an overarching moral question whether the U.S. should enter a MOU with Turkey which would be used to “claw back” artifacts of displaced Greek, Armenian and Assyrian-Syriac minority populations merely because they are of types on some designated list. Indeed, the very idea that the U.S. Government would recognize the rights of the modern Turkish State to the material remains of these groups should give great pause not only to the members of CPAC, but to the entire U.S. State Department leadership, particularly its political appointees responsible for the Bureau of Educational and Cultural Affairs and Public Diplomacy. It should be simply unconscionable for this Committee to support the repatriation of such objects to a government that refuses to acknowledge the responsibility of the Turkish Republic in the slaughter and ethnic cleansing of the groups that produced these archaeological and ethnological artifacts.

Second, specifically with respect to coins, it is hard to claim with a straight face that Turkish coins—which exist many multiples—are of cultural significance, a prerequisite for restrictions.⁹

Third, as set forth above, given scholarly evidence, CPAC cannot properly conclude that such coins *are only found in the confines of modern day Turkey*, a prerequisite under the CPIA. 19 U.S.C. § 2601(2) (a) (c).¹⁰

⁹ The CPIA requires that restricted archaeological artifacts are of “cultural significance.” CPIA, 19 U.S.C. § 2601 (2) (C) (i) (I). The State Department has misapplied this “cultural significance” requirement when it comes to coins. The large numbers of such coins extant strongly argues 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, coins make poor dating tools because ancient types frequently circulated for hundreds of years.

¹⁰ 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 based on data about finds of local bronze coins at certain Greco-Roman archaeological sites that coins circulate “predominantly” where they are made. Even here, however, scholarly research indicates that the number of “foreign” coins as opposed to “local” coins found at archaeological sites can be quite high, with “foreign” coins comprising 91.3% of the coins found at Sardis, in what is now Turkey. Francois de Callatay, *Greek Coins from Archaeological Excavations: A Conspectus of Conspectuses and a Call for Chronological Tables*, in *Agoranomia*,

Fourth, specifically as to coins, CPAC must ask itself whether Turkey's cultural patrimony is in danger when Greek, Roman, Armenian, and Byzantine coins are the products of Turkey's displaced Greek and Armenian populations. In any event, it is doubtful that Turkey's "cultural patrimony" related to coins is in jeopardy from pillage. While the public summary is silent about coin seizures, even if coins have been looted from archaeological sites in Turkey, Turkey's cultural patrimony is not endangered because coin types exist in multiples and there are likely hundreds, if not thousands, of examples already extant in Turkish museum collections. . . 19 U.S.C. § 2602 (a) (1) (A).

Fourth, it is impossible to assume that the "concerted international response" requirement is met with respect to such coins. Coins struck in Turkey are widely traded as collector's pieces and curiosities worldwide. Indeed, "Turkish" coins are widely available for sale, especially in Europe. Yet, no one else (with the possible exception of Germany) currently imposes import restrictions similar to those proposed here.¹¹ Accordingly, restrictions on American collectors and small businesses will do little, if anything, to limit any damage to Turkish cultural artifacts. Instead, they will just move our trade abroad to Europe and the burgeoning markets of the Middle East and Asia.

Fifth, another issue is whether less drastic measures can be taken than import restrictions on coins. The public summary makes no mention of the use of metal detectors. If metal detectors are not in widespread use, then there is little possibility that ancient coins are being looted from archaeological sites quantity. If metal detectors are in use, there is no mention to what extent they are in fact being regulated. Unless and until metal detectors are actually regulated, less drastic remedies are available than the imposition of yet more import restrictions on coins. With respect to such regulations, the Numismatic Trade points to the success of the U.K.'s Treasure Act and Portable Antiquities Scheme as something that should be tried elsewhere.

Studies in Peter G. van Alfen ed., Money and Exchange, Presented to John H. Kroll 177, 185 at Table 5B (ANS 2006). In any event, 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) (a) (c). The State Department 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 subject to their export controls. Here, the State Department certainly cannot meet this test for coins struck in Tunisia. As the hoard evidence discussed above suggests it appears most—if not all—coins struck in Tunisia are found well beyond the confines of modern Tunisia. This is not that surprising when one considers that coins are items of commerce that in ancient times were used to pay mercenaries and for foreign trade goods such as amber.

¹¹ Although the E.U. Parliament has passed what appear to be draconian limits on the imports of cultural goods into the E.U., it should take several years for these restrictions to be written into national law and for any regulations to be promulgated.

Finally, it is also hard to see how restrictions are consistent with general interests of the international community in cultural interchange. Restrictions on historic coins will only impoverish our ability to appreciate ancient Turkish culture.

Notwithstanding the above, IAPN and PNG would also welcome CPAC recommending that any restrictions specifically mention coins stolen from Turkish private and public collections. These would likely be considered stolen in any case under CPIA, 19 U.S.C. § 2607 (“Stolen Cultural Property”) or under the terms of the National Stolen Property Act, 18 U.S.C. §§ 2311, 2314–2315.

2. If CPAC Recommends Import Restrictions on Coins they Should Be Limited in Scope and their Impacts Ameliorated.

As set forth above, there is a real question whether import restrictions can lawfully be placed on coins solely based on whether they were minted in the confines of modern day Turkey or are sometimes found there. Here, scholarly evidence demonstrates that “Turkish” coins—with the possible exception of some local bronze city issues -- are often found outside of the confines of modern day “Turkey,” which would make any restrictions placed upon them by place of minting or where they are sometimes found contrary to governing law. *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection* (“ACCG v. CBP”), 801 F. Supp. 2d 383, 407 n. 25 (D. Md. 2011) (“Congress only authorized the imposition of import restrictions on objects that were ‘first discovered within, and [are] subject to the export control by the State Party.’”).

Moreover, the CPIA only authorizes detention, seizure and forfeiture of types of objects on designated lists illicitly exported from the country for which restrictions are granted after the effective date of government regulations. 19 U.S.C. § 2606. U.S. Customs and Border Protection (“CBP”) instead, however, has detained and seized coins of types on designated lists imported into the United States after the effective date of the applicable regulations, i.e., an embargo of all coins of restricted types rather than targeted, prospective import restrictions that do not impact the purchase of coins from the legitimate marketplace abroad, mostly within Europe.

As early as 2005, the American Numismatic Society recognized that such embargoes endangered the legitimate collecting and study of coins. According to a “Cultural Property Statement” drafted by academics associated with the Society as well as representatives of collectors,

The American Numismatic Society recognizes the importance of legislative and treaty provisions aimed at curbing illicit traffic in archaeological artifacts.

At the same time the Society is aware that in the case of coins such measures can have the unintended effects of placing an undue burden on lawful collecting, legitimate numismatic trade, and scholarly research.

Historically, coins were produced by the millions and they survive by the hundreds of thousands. Since the Renaissance coins have been avidly collected and studied by princes, scholars, and historically-minded hobbyists alike. While the illicit recovery of coins from archaeological sites and the failure to record hoards properly continues to do irreparable harm to numismatic scholarship, collecting and dealing in coins that have been in private hands for many years does not contribute to the destruction of cultural heritage. Likewise, because most coins in private collections have been traded and held without any provenance, it is unreasonable to assume that a coin is stolen, illegally exported, or illegally imported merely because the holder cannot establish a chain of custody beyond receipt from a reputable source. Taken together, such considerations argue that within the world of artifacts, coins as a class do, in fact, stand apart.

Accordingly, The American Numismatic Society urges that in cultural property deliberations over the importation of artifacts, full attention should be given to these exceptional factors that pertain to historical coins, so as to ensure the continuance of legitimate collecting, the protection of the cultural heritage of countries negatively affected by the ongoing trade in illicit antiquities, and the preservation, analysis and dissemination of knowledge of the past.

(American Numismatic Society Statement on Cultural Property Concerns, Approved by the Board of Trustees on Oct. 22, 2005, available at <http://numismatics.org/about/culturalpropertystatement/> (last visited December 30, 2019).)

Fortunately, CPAC can ameliorate these issues.¹² If CPAC recommends import restrictions on coins, CPAC should also ensure that such restrictions are written in a way to comply with the CPIA's requirements, i.e., only coins "first discovered within" and "subject to export control by" Turkey that are illicitly exported after the effective date of the regulations

¹² While proponents of import controls on coins may claim that the *Ancient Coin Collectors* "green lighted" the State Department's and CBP's handling of import restrictions on coins, that decision was based on the supposition that the issue was a "foreign policy issue" beyond full judicial review. See *Ancient Coin Collectors Guild*, 698 F.3d at 175. That decision in no way precludes CPAC from exercising its supervisory role over how MOU's are implemented. In fact, decision makes CPAC addressing the issue even more important.

may be restricted.¹³ 19 U.S.C. §§ 2601, 2604, 2606, 2610. That means that prior restrictions based solely on where a coin was made millennia ago or is sometimes found must be replaced by a formulation that ensures explicit linkage to coins with Turkish find spots exported after the effective date of the regulations. This statutorily compliant formulation is found in recent Syrian import restrictions made pursuant to statute (and where the State Department and Customs bureaucracy knew they were under scrutiny from Congressional authorities) (*See* 81 Fed. Reg. 53916 (August 15, 2016).) More recent Libyan and Algerian import restrictions fail this test because they instead suggest any coin types generally found in Libya or Algeria are restricted. (82 Fed. Reg. 57346, 57348 (Dec. 5, 2017) (Libyan emergency restrictions) *superseded at* 83 Fed. Reg. 31654, 31656 (July 9, 2018) (regular restrictions); 84 Fed. Reg. 41909, 41911 (Aug. 16, 2019) (Algerian restrictions).)

Finally, if CPAC considers imposing import restrictions on coins, it should also ensure that U.S. collectors and tourists can import coins openly available for sale within Turkey itself. Both Article 6 of the 1970 UNESCO Convention and CPIA, 19 U.S.C. § 2606 (a) already contemplate that UNESCO State Parties will issue export permits for common cultural goods like coins. Making the issuance of export permits a pre-requisite for import restrictions on coins will merely allow Turkish dealers who already operate under Turkish law the ability to export their coins abroad. Finally, protecting collectors' and tourists' access to such coins will help stimulate interest in Turkey's history and promote not only tourism, but the appreciation and study of Turkish history.

III. Conclusion

In order to comply with the CPIA, CPAC should either recommend against import restrictions on coins or ensure that any restrictions only apply to coins actually found in Turkey that were illicitly removed from Turkey after the date of restrictions. If CPAC recommends restrictions, it should also recommend that Turkey issue export permits for coins sold within its borders. 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,

/s/

¹³ Congress also contemplated that CPAC would guide CBP in preparing "designated lists" of material subject to import restrictions. As the Senate Report indicates, "[T]he Advisory Committee ... is expected to contribute heavily to the composition of the list." S. Rep. No. 97-564, at 8 (1982).

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