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Cultural Property Advisory Committee
U.S. Department of State
2200 C Street, N.W.
Washington, D.C. 20522

Re: Renewal of United States- China Memorandum of Understanding

Dear Committee Members:

As President of the Lawyers' Committee for Cultural Heritage Preservation (LCCHP),¹ I submit this letter in support of the proposed five-year extension of the United States-China Memorandum of Understanding. The *only* criterion for extension of an agreement under the Convention on Cultural Property Implementation Act (CPIA) is that the conditions that justified the original bilateral agreement still exist.² LCCHP submits that China meets the four criteria for renewal contained in the CPIA³. My comments will focus on the third criterion, which concerns the "concerted international effort" to protect China's cultural objects. This determination is satisfied for several reasons, as discussed below:

A. International treaties that call for the prevention of illicit trade in cultural objects continue to gain State Parties, including several significant market nations in recent years.

B. Bilateral agreements with China, many of which have been created in the past decade, allow countries to implement their treaty obligations and to establish diplomatic relations through cooperative efforts.

¹ LCCHP is a not-for-profit organization that fosters the stewardship of the objects, places, and traditions that define us as societies, nations, civilizations, and even human beings.
(<http://www.culturalheritagelaw.org/>).

² Convention on Cultural Property Implementation Act (CPIA), Section 303(e), 19 U.S.C. § 2602(e).

³ CPIA, Section 303(a)(1)(A)-(D), 19 U.S.C. § 2602(a)(1)(A)-(D).

C. The enforcement of bilateral agreements through implementing legislation and cultural exchange programs further promotes the effectiveness of the import restrictions in the US-China agreement.

The third determination examines *the substantial benefit that U.S. import restrictions, either alone or in concert with actions taken by other market nations, would provide in deterring the serious situation of pillage*. Regarding the actions of other market nations, the Senate Report that accompanied enactment of the CPIA noted that identifying which countries have a “significant import trade” may be a function of “type and historic trading patterns,” as well as of the monetary value of the imports (Senate Report No. 97-564, 27). The CPIA emphasizes that, in order to be considered part of a “concerted international effort,” the measures employed by other nations need only be “similar,” as long as they function toward the same goal of restricting illicit trade. The CPIA also explicitly includes the actions of nations that are not party to the 1970 UNESCO Convention, further signaling that the third statutory determination does not require any specific type of import restrictions. This point is reiterated in the Senate Report: “the formula measuring the presence and worth of a ‘concerted international effort’ [need] not be so mechanical as to preclude the conclusion of agreements under Section 203(a) where the purposes of the legislation nevertheless would be served by doing so.” (Senate Report No. 97-564, 28.) There is, therefore, a significant degree of flexibility in the consideration of measures used by nations that serve the purpose of protecting cultural heritage. In supporting this determination, I refer to both the ratification of multinational treaties and the creation of bilateral agreements with China as evidence that market countries have joined in a “concerted international effort” to address the pillage of archaeological sites, both in China and throughout the world.

A. International Treaties

China signed the 1970 UNESCO Convention in 1989, and 58 additional countries have since joined. The current total number of State Parties is 123, seven of which have joined the Convention in the four years since the 2009 signing of the US-China agreement; this number includes Belgium and The Netherlands.⁴ Some of the largest market nations, such as Switzerland, Denmark, Sweden, and Germany, had already signed the treaty over the past ten years. Two other large market nations, the United Kingdom and France, joined in 2002 and 1997, respectively. The steady rate at which market nations have accepted the Convention indicates the international community’s respect for cultural patrimony and the shared responsibility to protect the world’s cultural heritage.

Many of the signatories consider UNESCO to be effective within their territories without enactment of implementing legislation. Others, including Australia and Canada, have made UNESCO effective by implementing domestic sanctions for the import of

⁴ The full list includes, in chronological order, Belgium, The Netherlands, Haiti, Equatorial Guinea, Kazakhstan, Palestine, and Swaziland.

illegally exported cultural materials from any other State Parties.⁵ Nations in both of these categories have therefore already implemented restrictions that are *similar* to, and in fact much broader than, the import restrictions imposed on objects from China by the United States pursuant to the CPIA.

Other countries, ones which require legislation to implement UNESCO regulations, have stated that, in enforcing import restrictions, they will apply the country of origin's law in determining whether the importation of certain objects is illegal. For example, the United Kingdom has criminalized knowingly "dealing in tainted cultural objects," defined as objects whose "removal or excavation constitutes an offence" in the nation of origin.⁶ Under UK law, the offense of dealing in tainted cultural objects, covers artifacts from China, including the import or export of such objects.⁷ Likewise, Germany's implementing legislation, which also encompasses looted Chinese materials, forbids the import of any illegally exported cultural objects that have been individually classified in an accessible inventory by the country of origin either one year prior to removal or within one year of the time when the country of origin gains knowledge of the excavation.⁸

The 1995 UNIDROIT Convention reinforces this focus on the law of the exporting country. The Convention requires State Parties to create private rights of action for the recovery of stolen and illegally exported cultural objects, and identifies in Article 3(2) *all* illegally excavated archaeological objects as stolen property when consistent with the law in the country of origin.⁹ In 1997, China joined the UNIDROIT Convention, to which there are now thirty-three State Parties; Denmark and Sweden are among the newest members, both having signed in 2011.

By applying the domestic law of the exporting country to actions in the destination country, the UNIDROIT Convention creates a potentially powerful deterrent

⁵ See, e.g., Canada Cultural Property Export and Import Act, R.S.C. 1985, c. C-51, § 37; Australia Protection of Movable Cultural Heritage Act 1986. These restrictions are much broader because they apply to *all* illegally exported cultural materials and are not restricted to archaeological materials that are older than 250 years or to specifically designated categories of archaeological and ethnological materials.

⁶ Dealing in Cultural Objects (Offences) Act 2003, 2003 Ch. 27, Sections 1 and 2(2), available at <http://www.uk-legislation.hmso.gov.uk/acts/acts2003/20030027.htm>. The statute refers to objects removed from "a building or structure of historical, architectural or archaeological interest" or from an excavation either in the United Kingdom or in a foreign country. Section 2(3)(a).

⁷ Section 4 of the Act gives British Customs the "necessary powers of enforcement where an offence involves the importation or exportation of a tainted cultural object."

⁸ See Act Implementing the Cultural Property Convention 2007, Ch. 3, Section 6, available at http://www.wipo.int/wipolex/en/text.jsp?file_id=230663.

⁹ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), Art. 3(2) ("For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.").

to the trade of archaeological materials in other State Parties, particularly when there is strong evidence that looting or pillage has occurred.¹⁰ The United States has ratified the UNESCO Convention, but not the UNIDROIT Convention. However, the UNIDROIT Convention represents an example of “similar” measures taken by other countries to protect the cultural objects at issue, as required under the CPIA.

B. Bilateral Agreements

Thirteen countries have signed bilateral agreements similar to the MOU signed by the US and China in 2009.¹¹ Often, agreements calling for the general promotion of cultural exchange are followed by implementation protocols and memoranda of understanding that explicitly pledge to protect one another’s cultural patrimony, with provisions for the prevention of excavation, theft, trade, and smuggling of illicit objects. Several of these agreements have been signed in the last few years, and this series of bilateral agreements demonstrates the existence of a “concerted international effort” to apply “similar restrictions” as stated in the CPIA’s third criterion.

1. Agreements Made Prior to the 2009 US-China Memorandum Of Understanding

In 2006, Italy signed an agreement with China to prevent the illegal import, export, theft, and excavation of cultural objects, stressing the need for cooperative measures in defense against these activities; the agreement followed cooperative efforts such as the Cultural Relics Protection & Restoration Center, an archaeological training facility “dedicated to protecting and restoring cultural relics in China,” which was jointly funded by China and Italy in 2004.¹²

Venezuela and China also signed their cultural exchange agreement in 2006.¹³ The Philippines signed the “Agreement on the Protection of Cultural Heritage” and

¹⁰ New Zealand, for example, has enacted legislation that incorporates implementation of both conventions into domestic law, prohibiting the import into New Zealand of unlawfully exported protected foreign objects. See Protected Objects Act 1975, as revised 2007, available at http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes. “Protected foreign object” includes all cultural objects as defined by Article 1 of the 1970 UNESCO Convention.

¹¹ See “Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,” UNESCO, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/china_2010-11natrep_1970_en.pdf (“By the end of November 2010, China had signed bilateral agreements or memoranda of understanding on preventing theft, clandestine excavations, and illicit import and export of cultural property with 13 countries including Peru, Italy, India, the Philippines, Chile, Cyprus, Venezuela, the USA, Turkey, Ethiopia, Australia, and Egypt.”). Jordan has since also signed a similar agreement.

¹² “Sino-Italian Agreement on Prevention of Cultural Heritage Theft,” BEIJING CULTURAL HERITAGE PROTECTION CENTER (Feb. 3, 2006), <http://en.bjchp.org/?p=207>; “China, Italy team up to protect cultural relics,” PEOPLE’S DAILY ONLINE (Feb. 10, 2004), available at http://english.people.com.cn/200402/10/eng20040210_134438.shtml.

“Agreement on the Prevention of Theft, Clandestine Excavation, Illicit Import and Export of Cultural Property between the Republic of the Philippines and the Government of the People's Republic of China” in 2007, both of which followed its first “Cultural Agreement” with China in 1979.¹⁴

Greece and China signed a Memorandum of Understanding in 2008, which called for the prevention of “theft, illegal excavation and illicit import and export of cultural property,”¹⁵ following the 1973 Cultural Exchange Program and 1978 implementing legislation.¹⁶ In 2008, Cyprus and Chile also made similar arrangements with China; Cyprus signed a Memorandum of Understanding “for the prevention of the theft, clandestine excavation and illicit import and export of cultural property”¹⁷ and Chile signed an “Agreement on the Prevention of Stealing, Illicit Excavation and Illegal Import and Export of Cultural Relics.”¹⁸

2. Agreements Made After the 2009 US-China Memorandum Of Understanding

In addition to the US-China MOU in 2009, China signed an agreement with Turkey calling for further cooperation for the purpose of protecting cultural property, including assuming the responsibility for adopting “preventative, mandatory, and remedial measures” in furtherance of the agreement.¹⁹ Egypt and China signed an agreement for the “Protection and Restitution of Stolen Cultural Property Transferred Illicitly” in October 2010 in furtherance of their UNESCO obligations.²⁰ The agreement further prohibits illicit trade, transfer of ownership, import, and export of certain cultural objects, and provides guidance for the lawful repatriation of such objects.²¹

¹³ “Voyage of Culture that Spans Oceans,” CHINA DAILY (June 28, 2012), http://www.chinadaily.com.cn/indy/2012-06/28/content_15528240.htm.

¹⁴ “List of Philippines-China Bilateral Agreements,” PHILIPPINE EMBASSY IN CHINA (Sept. 2011), http://www.philembassychina.org/index.php?option=com_content&view=article&id=92&Itemid=508&lang=en.

¹⁵ Id.

¹⁶ Embassy of Greece Press & Communication Office, Cultural Newsletter, Vol. 9 (2012).

¹⁷ “Cyprus-China Agreement on Cultural Property,” REPUBLIC OF CYPRUS, http://www.mcw.gov.cy/mcw/DA/DA.nsf/DMLnews_en/DMLnews_en.

¹⁸ “Joint Press Communiqué Between the People's Republic of China and the Republic of Chile,” MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA (Apr. 16, 2008), <http://www.fmprc.gov.cn/eng/wjdt/2649/t427229.shtml>.

¹⁹ Agreement Between the Government of the Republic of Turkey and the Government of the People's Republic of China on Preventing the Theft, Clandestine Excavation, and Illicit Import and Export of Cultural Property (2009), available at <http://www.resmigazete.gov.tr/eskiler/2009/09/20090909-3-1.pdf>.

²⁰ “Press Release - Egyptian/Chinese Agreement for Cultural Repatriation,” ZAHY HAWASS (2010), <http://www.drhawass.com/blog/press-release-egyptianchinese-agreement-cultural-repatriation>.

The trend of strengthening treaty obligations by creating bilateral ties has continued into the current decade. In 2011, China and Peru signed the “Agreement of People’s Republic of China’s State Administration of Cultural Heritage and Republic of Peru’s Ministry of Culture on the Cooperation and Training in the Fields of Protection, Preservation and Restitution of Cultural Heritage, and Museum Development,” in acknowledgement of their shared obligations under the UNESCO Convention.²² Jordan, recently implemented the third bilateral Executive Program for Cultural Cooperation, effective from 2011 to 2014 (following agreements signed in 1997 and 2007), in furtherance of its 1979 “Cultural and Scientific Cooperation Agreement with China.”²³

3. Enforcement of Bilateral Agreements

Other countries have continued to enforce their longstanding cultural agreements with China, including Australia, India, and Ethiopia, all of which have cooperated on implementation programs and cultural exchange activities since the establishment of the initial agreements in the 1980s.²⁴

4. Significance of Bilateral Agreements to the Third Determination

The recent proliferation of agreements with China provides several insights that are relevant to the CPIA determination related to the proposed MOU extension. The *first* is that other market countries have undertaken agreements similar to the United States’ Memorandum of Understanding in both purpose and scope; renewal of the import restrictions at issue would therefore not place the U.S. at an economic disadvantage to these other potential destinations for Chinese cultural objects. The *second* is that the international community shows a growing interest in enforcing the principles of cultural

²¹ Id.

²² “China’s State Administration of Cultural Heritage Signed a Cooperation Agreement about Cultural Relics Museums with Peru’s Ministry of Culture,” CHINESE ARCHAEOLOGY (May 23, 2011), <http://www.kaogu.cn/en/detail.asp?ProductID=2841>.

²³ “Jordan, China to boost cultural cooperation,” JORDAN MINISTRY OF PLANNING AND INTERNATIONAL COOPERATION (May 23, 2011), http://www.mop.gov.jo/pages.php?menu_id=113&local_type=1&local_id=510&local_details=1&local_details1=; “China: Establishment of Relations,” JORDAN MINISTRY OF PLANNING AND INTERNATIONAL COOPERATION, http://www.mop.gov.jo/pages.php?menu_id=295&local_type=0&local_id=0&local_details=0&local_details1=0;

²⁴ “Cultural Exchange Agreement with China,” AUSTRALIAN EMBASSY, CHINA, <http://www.china.embassy.gov.au/bjng/MR037-09-eng.html> (Australia and China signed their agreement in 1981, followed by many implementation programs); “Ethiopia,” CHINA.ORG.CN. (Oct. 10, 2006), <http://www.china.org.cn/english/features/focac/183534.htm> (China and Ethiopia signed an agreement for cultural exchange in 1988); “India-China Bilateral Relations,” MINISTRY OF EXTERNAL AFFAIRS (Jan. 2012), <http://mea.gov.in/Portal/ForeignRelation/China-January-2012.pdf> (India and China signed their “Agreement on Cultural Cooperation” in 1988, which required the continuing implementation of cultural exchange programs).

patrimony and promoting cultural exchange not only through multinational treaties and domestic legislation, but by establishing bilateral arrangements; the effectiveness of U.S. import restrictions should therefore be considered in conjunction with the restrictions implemented by other countries against Chinese imports, and the probability that similar agreements will follow. The *third* relates more directly to the second determination, that China has adopted extensive bilateral agreements to further its broader goal of protecting its own cultural heritage. As a party to an extensive array of bilateral agreements, China has signaled its interest in limiting the market for cultural objects and thereby discouraging looting within its territory; by taking an active role in reaching out to the international community for cooperation, China reinforces the effectiveness of the U.S. restrictive measures.

One of the criticisms of the MOU renewal is that import restrictions do not effectively deter pillage because China's internal market for the objects is large. However, in addition to implementing bilateral and multinational agreements, China has been increasingly policing and regulating its internal market. One such example of this effort is the recent agreement between Christie's, the international auction house, and the City of Shanghai.²⁵ Although this arrangement will allow Christie's to sell directly to buyers in the Chinese market (and result in making Christie's the first international auction house allowed to do so), the arrangement prevents the auction house from dealing in "cultural relics," thereby restricting the potential domestic movement of illicit cultural objects.²⁶ This stipulation tracks with China's recent domestic efforts and bilateral agreements to protect its own cultural heritage. As protective measures increase, implemented both by China and other countries, the U.S. import restrictions will provide significant reinforcement to the shared international interests in cultural exchange and protection of cultural patrimony.

For the forgoing reasons, LCCHP asks that CPAC recommend extension of the bilateral agreement between the United States and China.

Sincerely,
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²⁵ "Christie's Is Poised to Auction Art in China," N.Y. TIMES, Apr. 10, 2013, at C1, available at http://www.nytimes.com/2013/04/10/arts/design/christies-is-poised-to-auction-art-in-china.html?_r=1&.

²⁶ *Id.*

²⁷ The views stated in this letter represent those of LCCHP, and not Villanova University School of Law or Villanova University.