

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

_____	:	
ANCIENT COIN	:	
COLLECTORS GUILD	:	
	:	
Plaintiff,	:	Case No. 1:10-cv-00322-CCB
vs.	:	
	:	
U.S. CUSTOMS AND	:	
BORDER PROTECTION,	:	JURY TRIAL DEMANDED
DEPARTMENT OF	:	
HOMELAND SECURITY	:	
<i>et al.</i> ,	:	
Defendants.	:	

FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. Pro. 15 (a) (1) (B), Plaintiff Ancient Coin Collectors Guild (“Plaintiff” or “ACCG”), by its attorneys, Bailey & Ehrenberg PLLC, files this First Amended Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is an action to recover twenty-three (23) common ancient coins (“the collectors’ coins”), and, in so doing, to test the legality of certain import restrictions promulgated by Defendants U.S. Customs and Border Protection (“Customs”) and the United States Department of State (“State”) designed to bar entry into the United States of ancient coins of Cypriot and Chinese type of the sort widely and freely collected world-wide, including in Cyprus and China. ACCG also requests the Court: (a) to declare that the decision to impose import restrictions on ancient coins of Cypriot type is arbitrary and capricious because, pursuant to applicable law, State failed to disclose to Congress a rational basis for the reason, or reasons, behind State’s decision to reject the advice of its own advisory

committee and also in departing from prior agency practice; (b) to declare that the decisions to impose import restrictions on ancient coins of both Cypriot and Chinese type are also arbitrary and capricious because they are both contrary to law and the product of bias, prejudice and *ex parte* contact; and (c) to declare that under the applicable statutes Customs must prove that the Cypriot or Chinese coins at issue were illicitly removed from Cypriot or Chinese find spots before they may be forfeited.

2. This is also a case to vindicate the freedom to trade in informational materials - specifically the right of coin collectors and coin dealers, free from government interference, to trade in ancient coins. It is brought under the First and Fifth Amendments to the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (hereinafter “the APA”). In particular this case is about whether the government may dictate the types of coins which may be restricted from importation based upon the country of origin or type of coin in question without regard to their place of discovery. The relief sought is threefold: (a) a declaration that a specific rulemaking by a sub-department of the Department of State - the Bureau of Educational and Cultural Affairs (“ECA”) is invalid on constitutional and statutory grounds; (b) a declaration that the specific rulemaking by Customs in 19 CFR §12.104a is overbroad and invalid on constitutional and statutory grounds; and (c) an injunction to end the enforcement of restrictions the Defendants have imposed, by that rulemaking, on importation of ancient coins from Cyprus and China. Those restrictions have abridged Plaintiff’s First Amendment right to engage in protected speech and its Fifth Amendment liberty interest in the trade in informational materials. In addition to their constitutional infirmities, Customs’ restrictions on trade in Cypriot and Chinese coins challenged herein are invalid under the APA because they are not rationally related to the

exclusive purpose of the statute - the Convention on Cultural Property Implementation Act, 19 U.S.C. § 2601 *et seq.* (“the CPIA”) under which they were promulgated.

3. As set forth more fully below, ACCG imported the collectors’ coins on or about April 15, 2009, Customs detained the collectors’ coins on or about April 24, 2009, or some fifteen (15) months ago, and Customs seized the collectors’ coins on July 20, 2009, or some twelve (12) months ago. Upon information and belief, as of the date for filing this Complaint, the United States has not filed a forfeiture action against the collectors’ coins, which would allow ACCG to contest their seizure in Court. As such, in bringing this action, ACCG also seeks to vindicate one of the foundational principles of American law: that government may not unilaterally deprive its citizens of their property and possessions without promptly affording them the process due as required under our Constitution, statutes and common law.

JURISDICTION AND VENUE

4. This action is brought pursuant to the APA, 5 U.S.C. § 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, the Mandamus and Venue Act, 28 U.S.C. § 1361, and 42 U.S.C. § 1983 for vindication of rights under the First and Fifth Amendments of the United States Constitution, the CPIA, 19 U.S.C. § 2600 *et seq.*, the Berman Amendment of 1988, 50 U.S.C. app § 5(b)(4) (2000) (hereinafter the Berman Amendment), and the Free Trade in Ideas Act, 12 U.S.C. § 95a, 50 U.S.C. § 1702 (2000) (hereinafter “the FTIA”). To the extent the Government threatens forfeiture under the National Stolen Property Act, 18 U.S.C. §§ 2314-2315 or other Customs violations outside of Title 19 of the U.S. Code, ACCG also seeks the protections of the Civil Asset Forfeiture Reform Act of 2000, 18 U.S.C. § 983.

5. This action also seeks the Court to declare under the APA, the Declaratory Judgment Act, the Mandamus and Venue Act, 42 U.S.C. § 1983, the CPIA, the Berman Amendment and the FTIA that import restrictions imposed on ancient coins of Cypriot and Chinese type are arbitrary, capricious and contrary to law, *ultra vires* or wrongfully applied by Customs to seize coins where there is no proof that they were “first discovered within” the ground either in the Republic of Cyprus (“Cyprus”) or the People’s Republic of China (“China”).
6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1346, and 1361; under 5 U.S.C. § 702; and by virtue of its inherent equitable powers.
7. Venue is proper in the United States District Court for the District of Maryland under 28 U.S.C. §§ 1391, 1395.

THE PARTIES

8. Plaintiff ACCG is a Missouri based non-profit corporation committed to promoting the free and independent collecting of coins from antiquity. ACCG strives to achieve its goals through education, political action, and consumer protection. Membership of the ACCG is comprised of collectors and numismatic professionals who care passionately about preserving, studying and displaying ancient coins from all cultures. ACCG purchased the collectors’ coins in London, England, is the legal owner of the collectors’ coins, and is entitled to their use and enjoyment. In importing the collectors’ coins and contesting their seizure, ACCG is acting on behalf of collectors and the small businesses of the numismatic trade who typically cannot financially afford to contest Customs seizures due to the low value of most ancient coins and the high cost of legal services.
9. Defendant Customs is an agency of the Executive branch of the United States Government within the Department of Homeland Security, having responsibility for enforcing our

nation's customs laws. Defendant Customs has statutory authority to both promulgate and to enforce import regulations dealing with the import of cultural artifacts, including import restrictions under the CPIA imposed on ancient coins of Cypriot and Chinese type.

10. Defendant Commissioner of Customs and Border Protection ("Commissioner of Customs") acts as the head of Defendant Customs. Currently, Alain Bersin serves in that role.

11. Defendant State is an agency of the Executive branch of the United States Government sharing responsibility with Defendant Customs over import restrictions under the CPIA.

12. Defendant Assistant Secretary of State (Educational and Cultural Affairs) ("the Assistant Secretary, ECA") heads the ECA, a component of Defendant State. Judith Ann Stewart Stock currently serves in that role. Upon information and belief, Defendant Assistant Secretary, ECA reports to the Under Secretary for Public Diplomacy and Public Affairs, who acts as the President's designee for entering into cultural agreements ("MOU's") with foreign countries that may contemplate import restrictions on cultural artifacts. Currently, Judith McHale serves in that role. At all relevant times, the Assistant Secretary, ECA acted as the President's designee related to decisions to impose import restrictions on cultural artifacts. As part of the decision making process under the CPIA, the Cultural Property Advisory Committee ("CPAC") makes recommendations to the Assistant Secretary, ECA on a proper balance between efforts to control looting at archaeological sites and the legitimate international exchange of cultural artifacts. Although CPAC is separately constituted under the CPIA, the ECA's Cultural Heritage Center acts as its secretariat.

STATEMENT OF FACTS

Ancient Coins and Ancient Coin Collecting

13. Ancient coins typically depict portraits of rulers, gods and goddesses or other symbols associated with the issuing authority. In addition to acting as money, they also served as the newspapers of their day. Their inscriptions carry religious dedications or references to the ruler. They convey information that the issuing authority hoped would circulate far and wide.
14. Western coinage originated in Asia Minor sometime around the 7th c. B.C. This innovation soon spread to the Greek mainland and islands like Cyprus. The first true Cypriot coins date from the late 6th c. B.C., when various Cypriot kingdoms began to issue coin types derived from designs on coins from the East that had arrived on Cyprus in trade. Subsequently, the Persian Empire, Alexander the Great, the Ptolemaic Kingdom and the Romans struck coins on the Island, which were often indistinguishable from coins struck at their other imperial mints. Because Cyprus is located on an important trade route, coins minted in Cyprus circulated widely around the Mediterranean region and even as far away as Afghanistan. Accordingly, it is impossible to determine a Cypriot coin's find spot merely from identifying it as being made at a Cypriot mint.
15. Coinage began in China in the late 7th or early 6th c. B.C. The earliest money was cast into the form of spades, knives or cowry shells. Ultimately, by around 221 B.C., a round bronze coin marked with Chinese characters referencing values and issuing authorities and featuring a square center hole became standardized. These "cash" coins were produced in immense numbers from roughly 221 B.C. to 1912 A.D. This type was widely emulated from Central Asia to Japan, with similar types being cast in Vietnam as late as 1933.

16. The circulation patterns of Chinese cash coins were equally wide, with such coins being exported in quantity from the Fifth to Tenth Centuries to East Africa, the Persian Gulf, India, Ceylon, Burma, Thailand, Vietnam, Malaya, the Philippines, Sumatra, Java and Borneo. Later on, Chinese immigrants even took such coins with them to the United States. Accordingly, it also is impossible to determine a Chinese coin's find spot merely from identifying it as being made at a Chinese mint.
17. Historical coins have been traded avidly for at least 500 years as collectibles. Due to their usual modest value and the huge numbers extant, historical coins are typically traded without any provenance information or documentary history as to where and when they were found.
18. As a result, it is therefore, 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.
19. All coin collectors share a desire to preserve, study and display their coins, which convey information about ancient cultures in their portraiture and inscriptions. Americans have specifically enjoyed collecting ancient coins for generations. President John Quincy Adams was a serious, early American collector of ancient coins. Many other Americans enjoy collecting at least some ancient coins. Such individuals have included Presidents Thomas Jefferson, Theodore Roosevelt, Ronald Reagan and, upon information and belief, William Jefferson Clinton. Though there are some very wealthy collectors, most collectors are of relatively modest means, including educators, members of our armed services and government employees.

20. Collectors in Cyprus, the rest of the European Union (the “EU”) and China share the interest of collectors in the United States in collecting ancient coins. On information and belief, such collectors in Cyprus, the rest of the EU and in China also openly enjoy collecting and importing ancient coins without any known provenance information.

The UNESCO Convention and the CPIA

21. In or about 1970, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“the 1970 UNESCO Convention”) was promulgated. Broadly speaking, the 1970 UNESCO Convention contemplates that governments will enter into agreements to enforce each other's cultural property laws.

22. In 1972, the U.S. Senate ratified the 1970 UNESCO Convention subject to reservations intended to preserve the “independent judgment” of the United States Government as to whether, and as to what extent, to impose import restrictions on cultural artifacts at the behest of State Parties to the 1970 UNESCO Convention.

23. Upon information and belief, the Senate was concerned about foreign governments taking advantage of the 1970 UNESCO Convention to pursue their own cultural nationalistic agendas to the disadvantage of American citizens and institutions.

24. “Cultural Nationalism” is a form of nationalism in which the nation is defined by its shared (inherited) culture. Cultural nationalists hold that artifacts “belong” within the physical boundaries of the nations in which they are found or with which they are typically associated. Cultural nationalist states, like Cyprus, China and Italy, typically claim legal title to all artifacts, including common ones like coins, found in the ground of their territory. On the other hand, such countries, like Cyprus, China and Italy, also encourage their own

citizens to possess collections of artifacts of their own cultures, particularly if these citizens reclaim such artifacts from abroad by purchase.

25. The 1970 UNESCO Convention is not self-executing. In 1983, Congress passed the CPIA to enact the 1970 UNESCO Convention. In so doing, Congress incorporated the CPIA into Public Law 97-446 “An Act to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes” after the legislation had passed through the trade subcommittees of the Senate Finance Committee and the House Ways and Means Committee.
26. Upon information and belief, the trade subcommittees of the Senate Finance Committee and the House Ways and Means maintain primary oversight responsibility over the CPIA and have had jurisdiction over recent, unsuccessful efforts to amend the legislation.
27. As set forth in the CPIA’s legislative history, Congress sought to limit the “Cultural Nationalist” reach of State Party requests under the 1970 UNESCO Convention:

The [Senate Finance] 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.

See S. Rep. No. 97-564, at 27 (1982), reprinted in 1982 U.S.C.C.A.N. 4078, 4099.

28. The CPIA contemplates that State Parties to the 1970 UNESCO Convention will initiate any request for import restrictions and that such requests can only relate to artifacts as to which that State Party has already promulgated export controls. CPIA, 19 U.S.C. § 2602 (a) and § 2601 (2) (C).

29. Once such a request is made, the CPIA places certain limitations on the ability of the Defendants to impose import restrictions on cultural artifacts. These include provisions requiring: (a) that the restricted artifacts were “first discovered within” the State Party seeking restrictions (CPIA, 19 U.S.C. § 2601 (2) (C)); (b) that the restricted artifacts are of “cultural significance”(CPIA, 19 U.S.C. § 2601 (2) (C) (i) (I)); (c) that less drastic remedies than import restrictions are unavailable (CPIA, 19 U.S.C. § 2602 (a) (1) (C) (ii)); and (d) that any restrictions are part of a “concerted international response” of other State Parties to the 1970 UNESCO Convention. CPIA, 19 U.S.C. § 2602 (a) (1) (C) (i).
30. As part of exercising this independent judgment under the CPIA, the Assistant Secretary, ECA receives recommendations from CPAC in the form of a report setting forth: (a) the results of its investigation and review; (b) its findings as to the nations individually having a significant trade in the relevant material; and (c) CPAC’s recommendation as to whether an agreement should be entered into, together with its reasoning. CPIA, 19 U.S.C. § 2605 (f) (1). In addition, when import restrictions are recommended, the CPAC report must include: (a) any terms and conditions CPAC recommends for such agreements; and (2) a listing of archaeological or ethnological material, specified by type or such other classification as CPAC deems appropriate, which should be covered by any such agreement. CPIA, 19 U.S.C. § 2605 (f) (4).
31. If import restrictions are recommended, Customs must by regulation designate the material restricted, by type or classification, but shall ensure that the list is sufficiently specific and precise to ensure that the material is *only applied* to the material covered by any agreement to impose import restrictions. CPIA, 19 U.S.C. § 2604 (1) (emphasis added).

32. Once imposed, import restrictions under the CPIA bar entry of designated artifacts not accompanied by detailed certifications concerning the artifacts' whereabouts at the time the restrictions were imposed or an export permit from the State Party that requested the restrictions. CPIA, 19 U.S.C. § 2606.
33. In practice, such certifications are difficult to procure, particularly for items of modest value like coins which are typically traded without provenance documentation.
34. The CPIA, by its very terms, also sets forth the procedures that must be followed, before any artifact that has been subject to detention and seizure is forfeited to the government. In pertinent part, according to the CPIA, "Any designated archaeological or ethnological material or article of cultural property, as the case may be, which is imported into the United States in violation of section 2606 of this title... shall be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture and condemnation for violation of customs laws shall apply to seizures and forfeitures incurred, or alleged to have occurred, under this chapter, insofar as such provisions of law are applicable to, and not inconsistent with, the provisions of this chapter." CPIA, 19 U.S.C. § 2609.
35. Upon information and belief, though Cyprus allows imports of cultural artifacts for the enjoyment of Cypriot collectors, Cyprus does not provide export permits for collectors to remove Cypriot artifacts from the country legally.
36. Upon information and belief, though China encourages an extensive internal trade in cultural artifacts for the enjoyment of Chinese collectors and allows imports of those artifacts for the enjoyment of Chinese collectors, China has established a complex system of export controls that govern the export of "cultural relics" based on their assignment into a particular "grade."

Efforts to Extend Import Restrictions to Ancient Coins

37. On or about January 28, 1999, CPAC first considered and later recommended against imposing import restrictions on coins, as part of a larger request for import restrictions on cultural artifacts made by Cyprus, a State Party to the 1970 UNESCO Convention.
38. On or about October 12, 1999, CPAC considered import restrictions on ancient artifacts from Italy, another State Party, including coins. Sometime thereafter, CPAC recommended against restrictions on coins of Italian type. *See* Report of the Cultural Property Advisory Committee on the Request from the Government of Italy Recommending U.S. Import Restrictions on Certain Categories of Archaeological Material (Feb. 7, 2000).
39. On or about January 23, 2001, Defendants adopted CPAC's recommendations and exempted ancient coins from import restrictions imposed on cultural artifacts from Italy. *See* 66 Fed. Reg. 7399-7402 (Jan. 23, 2001).
40. On or about July 19, 2002, Defendants adopted CPAC's recommendations against import restrictions on coins of Cypriot types. *See* 67 Fed. Reg. 47447-47450 (Import Restrictions Imposed on Pre-Classical and Classical Archaeological Material Originating in Cyprus).
41. On or about May 27, 2004, the United States received a request for import restrictions from China, another State Party to the 1970 UNESCO Convention. The Federal Register Notice did not appear until September 3, 2004. That Federal Register Notice makes mention of import restrictions on several categories of archaeological artifacts, but makes no specific mention of import restrictions on coins. *See* 69 Fed. Reg. 53970 (Sept. 3, 2004).
42. In or about November 2004, ECA's Cultural Heritage Center placed a summary of China's Request for import restrictions on its web site. Unlike the Federal Register notice, the summary indicated that China sought import restrictions on coins, albeit in a one word

reference, at the end of an eleven (11) page explanation detailing the need for restrictions to be placed on other artifacts.

43. Upon information and belief based primarily on information received in response to FOIA requests, China never formally requested import restrictions on coins.
44. On February 17, 2005, CPAC conducted a hearing to consider China's request for import restrictions. Upon information and belief, the ACCG and others noted: (a) that ancient Chinese coins are extremely common with individual types known from numerous examples; (b) that ancient Chinese coins circulated far from China; (c) that demand for Chinese coins in the U.S. is minimal while internal Chinese demand for such items is large; (d) that the Bank of China and other Chinese companies regularly sell large numbers of coins of the sort for which restrictions were requested; (e) that less drastic remedies like the establishment of a "treasure trove" scheme were not considered; (f) that the "concerted international response" requirement had not been met.
45. In prepared testimony, ACCG also stated, "Oddly enough, one of the wealthiest capitalists in China has made a fortune selling Chinese coins - not to collectors, but to tourists. According to a Forbes article, Wang Gang's business associate is the state run Bank of China. He reportedly owns some 500 tons of ancient coins, estimated at about 90 million pieces and representing about 70% of China's supply. It seems ludicrous that the Bank of China would sell genuine ancient Chinese coins to tourists, and then ask the U.S. to restrict these same coins." ACCG Written Testimony, dated February 17, 2005 at 2.
46. Upon information and belief, the Archaeological Institute of America ("AIA") is a nonprofit group that promotes professional archaeology. Upon further information and belief, although the AIA maintains it has some 200,000 members, this figure is derived from the

circulation of its magazine, *Archaeology*. In contrast, upon further information and belief, a small number of professional archaeologists – many of whose careers are dependent on excavation permits issued by Cultural Nationalist states like China, Cyprus and Italy—actually govern the AIA and formulate its public stances. Upon information and belief, according to its pronouncements, all unprovenanced artifacts should be deemed to be “stolen” and repatriated to their supposed countries of origin.

47. On September 8, 2005, CPAC held another hearing to consider the renewal of import restrictions on Italian cultural artifacts. At that hearing, it was unclear whether Italy had requested State to extend import restrictions on coins. It was clear, however, that representatives of the AIA requested CPAC to include coins in any renewal of import restrictions on Italian cultural artifacts.

48. Upon information and belief, the Cyprus American Archaeological Research Institute (“CAARI”) is a nonprofit group formed to promote the study of Cypriot archaeology and related disciplines. Upon further information and belief, the careers of many CAARI associated archaeologists are dependent upon the Cypriot Department of Antiquities issuing them excavation permits. Upon further information and belief, CAARI also maintains that all unprovenanced artifacts should be deemed to be “stolen” and repatriated to their supposed countries of origin.

49. In or about November 2005, Dr. Pavlos Flourentzos, Director of the Cyprus Department of Antiquities, visited the United States at the invitation of CAARI and with the support of the U.S. Embassy in Cyprus. During this time, CAARI facilitated a meeting between Flourentzos and employees of ECA’s Cultural Heritage Center, including its Executive

Director, Maria Kouroupas, and a staff archaeologist. *See* J. Green, *Cyprus Director of Antiquities, Dr. Pavlos Flourentzos, Visits the U.S.*, 31 CAARI News 3 (Winter 2006).

50. Upon information and belief, CAARI has benefited from direct and/or indirect financial and/or material support from State, the Government of Cyprus and Cypriot entities, including the Bank of Cyprus Cultural Foundation.
51. Upon information and belief, the Bank of Cyprus Cultural Foundation was established to rescue the Island's cultural heritage, which the Foundation maintains was pillaged and destroyed by Turkish forces when they occupied the Northern part of the Island. Upon further information and belief, the Bank of Cyprus Cultural Foundation maintains one of the largest collections of ancient coins of Cypriot type within Cyprus. Upon further information and belief, the Bank of Cyprus Cultural Foundation purchases unprovenanced coins on the open market for its collection of the sort now subject to U.S. import restrictions on coins of Cypriot type.
52. On January 19, 2006, State announced a five (5) year renewal of its Memorandum of Understanding (MOU) with Italy relating to cultural artifacts. Once again, Defendants exempted ancient coins struck in Italy from import restrictions.
53. On December 7, 2006, the Federal Register carried a notice indicating that CPAC would conduct a review of the MOU with Cyprus. That notice invited public comment to be submitted no later than January 11, 2007. The Federal Register notice contained no mention of an effort to extend new restrictions to coins. *See* 71 Fed. Reg. 71015-71016 (Dec. 7, 2006).

54. On December 8, 2006, Principal Deputy Assistant Secretary, ECA Miller Crouch indicated in a response to an e-mail inquiry that he “d[id] not anticipate” that new restrictions on coins would be addressed at CPAC’s hearing to consider the renewal of the MOU with Cyprus.
55. On December 14, 2006, two numismatic trade associations filed a request with State to recuse CPAC member Joan Connelly from voting on any last minute effort to impose import restrictions on ancient Cypriot coins. That recusal request noted that Dr. Connelly excavated in Cyprus and had publicly thanked “the Department of Antiquities of Cyprus, its Director, Dr. Demos Christou and the Ministry of Communication and Works, Republic of Cyprus, for granting us the license to excavate on Yeronisos Island.”
56. On January 12, 2007, State summarily denied the recusal request.
57. On January 17, 2007, according to a heavily redacted document released in response to a FOIA request, a State ECA Cultural Heritage Center staff archaeologist conferred with the late Dr. Danielle Parks, an archaeologist associated with the CAARI, about the inclusion of coins in the Cypriot request.
58. On January 19, 2007, according to a document released in response to a FOIA request, Cyprus requested State to amend the designated list of artifacts subject to import restriction to include coins of Cypriot type.
59. On January 25, 2007, CPAC conducted a public hearing on the renewal of the MOU with Cyprus. At that hearing, CPAC Chairman Jay Kislak announced that he had learned that Cyprus had requested that State amend the designated list of Cypriot artifacts subject to import restrictions to include coins of Cypriot type.

60. Upon information and belief, at that same hearing, neither Cypriot authorities nor members of the archaeological community could point to any material change of fact justifying a change in the exemption from import restrictions on Cypriot coins.

61. On January 26, 2007, in response to complaints about the lack of public notice for the inclusion of coins in the Cypriot request, State announced an additional ten (10) day comment period. State made this announcement on the Cultural Heritage Center website and not in the Federal Register. Nevertheless, during this extremely short time frame, numismatic groups generated over 1100 letters opposing the extension of import restrictions to coins.

62. Upon information and belief, comments provided by ACCG and others established: (a) that Cypriot coins were common, with many known examples of coin types struck on the Island; (b) that Cypriot coins travelled widely so that one could not assume that a coin struck in Cyprus was “first discovered” there; (c) that less drastic remedies like the imposition of a treasure trove law and/or the regulation of metal detectors should be tried before import restrictions were considered; (d) and that the CPIA’s “concerted international response” requirement could not be met.

63. Upon information and belief CAARI, the AIA, the Bank of Cyprus Cultural Foundation, and the late Dr. Danielle Parks submitted comments supporting import restrictions at the behest of Cyprus.

64. In a letter dated February 5, 2007, the AIA’s president claimed that it was proper to assume that coins of Cypriot type can be assumed to have Cypriot find spots, because “Coins minted on Cyprus were very rarely taken from the island in antiquity.”

65. On May 2, 2007, Assistant Secretary of State, ECA Dina Powell, the decision maker for the extension of the MOU with Cyprus announced her departure to become the Director for Global Corporate Engagement at Goldman Sachs. *See* http://en.wikipedia.org/wiki/Dina_Powell (last checked, 7/13/10).
66. Upon information and belief, Goldman Sachs is a bank holding company with worldwide business interests, likely including relationships with Cyprus or Cypriot entities like the Bank of Cyprus.
67. On or about May 7, 2007, according to a document released in response to a FOIA request, CPAC issued its report making its recommendations concerning the extension of the MOU with Cyprus. Although State has refused to release that report in unredacted form to the public, as set forth more fully below CPAC's Chairman at the time later indicated that his committee recommended against extending restrictions to coins.
68. On or about May 14, 2007, according to a document released in response to a FOIA request, Pavlos Flourentzos, Director, Cypriot Department of Antiquities, admitted in a private communication to State, "It is true that Cypriot coins shared the same destiny as all other coins of the ancient world. As a standard media of exchange they circulated all over the ancient world due to their small size, which facilitated their easy transport... The continuous circulation of coins for many centuries amongst collectors and between collectors and museums make any attempt to locate their exact find spot extremely difficult."
69. On or about May 16, 2007, Undersecretary of State Nicholas Burns, upon information and belief the third ranking official at State, accepted an award from Greek and Greek Cypriot advocacy groups as these groups lobbied the State policy makers. According to a press release, "Undersecretary of State Nicholas Burns was the first Philhellene to receive the

Livanos Award. This award is given each year to, as its states on the award, 'that individual who, like George P. Livanos, has utilized ancient Hellenic values to realize extraordinary achievement in modern society while contributing to the improvement of our civilization.'"

See <http://news.pseka.net/uploads/img/documents/PSEKA->

[SAE_2007_Conference_EN_01_CEH_01.pdf](#) (last checked, 7/13/10).

70. On or about May 16, 2007, State's news service quoted Burns as stating on receipt of the Livanos award, "I wear this title of Philhellene rather proudly. You don't spend four years in Greece, as my wife and three daughters and I did, and not come back feeling committed to Greek thought, to the Greek way of life, to Greece itself in my case....We're personally committed to the country, to the relationship."
71. On May 17, 2007, according to a document released in response to a FOIA request, Kurt Volker, Acting Assistant Secretary of State, Bureau of European and Eurasian Affairs, wrote the Assistant Secretary, ECA Dina Powell, stating "[G]iven our general support for protection of antiquities and the importance of this MOU to our bilateral relations with Cyprus, EUR strongly recommends that ECA approve the renewal of the MOU and include the protection of coins."
72. On May 29, 2007, according to a document released in redacted form in response to a FOIA request, Principal Deputy Assistant Secretary, ECA Miller Crouch wrote an "Action Memo" to the decision maker Assistant Secretary, ECA Dina Powell regarding the extension of the MOU with Cyprus. That Action Memo only provides the decision maker with the false choice of approving the import restrictions including coins in their entirety or disapproving them in their entirety. The Action Memo does not provide the decision maker the option of continuing the then current import restrictions without extending them to coins.

73. On May 30, 2007, according to that same document, Assistant Secretary of State Dina Powell signed off on that action memo that authorized import restrictions on ancient coins of Cypriot type.
74. On July 13, 2007, Defendants formally extended import restrictions to coins of Cypriot Types. *See* Extension of Import Restrictions Imposed on Pre-Classical and Classical Archaeological Objects and Byzantine Period Ecclesiastical and Ritual Ethnological Material from Cyprus, 19 CFR Part 12, reported at 72 Fed. Reg. 38470-74 (July 13, 2007). The applicable regulations impose import restrictions on “coins of Cypriot type” and generally cover archaeological objects “from Cyprus.” The regulations contain no qualifying language that the restrictions only apply to archaeological artifacts “first discovered within” Cyprus.
75. On July 16, 2007, the MOU renewal with Cyprus was signed. That MOU fails to suggest that restrictions under the agreement satisfy the CPIA’s requirements, including the “concerted international response” requirement or the requirement that less drastic remedies than import restrictions on coins are not available.
76. On July 19, 2007, Undersecretary Nicholas Burns conducted a signing ceremony for the MOU to coincide with Greek and Greek Cypriot lobbying efforts on Capitol Hill and at the State Department itself. Upon information and belief, representatives of CAARI were invited to this signing ceremony.
77. The official transcript of the Cyprus MOU signing ceremony omits several significant words. In the transcript, Ambassador Kakouris of Cyprus is reported as saying, "In fact, I was reminded just before we came in about something that I had said in January when we were before the Committee and responding to someone very much on the side of the coin

collectors who -- talked about the hobby of collecting coins. And I said to him: 'It may be your hobby, but it's our heritage!' and that is the way that we look at this issue.'

78. In fact, what Kakouris actually said can be heard (at 10:09 of the audio). There, he states, "In fact, I was reminded by [*Cultural Heritage Center ED*] *Maria Kouroupas* just before we came in about something that I had said in January when we were before the Committee and dealing with the coin collectors and somebody who was very much on their side, when he talked about the hobby of collecting coins. And I said to him: 'It may be your hobby, but it's our heritage!' and that is the way that we look at this issue.'" (Emphasis added.)

79. On July 20, 2007, State issued a press release about the MOU. That press release stated, "With the extension of this MOU, DHS amended the designated list of restricted categories to include ancient coins of Cypriot types produced from the end of the 6th century B.C. to 235 A.D. Coins, a significant and inseparable part of the archaeological record of the island, are especially valuable to understanding the history of Cyprus. *This extension of the MOU is consistent with the recommendation of the Cultural Property Advisory Committee, which is administered by the Bureau for Educational and Cultural Affairs.*" (Emphasis added.)

80. On August 29, 2007, State sent a report mandated under the CPIA to Congress. Under 19 U.S.C. § 2602 (g)(2), that report is required to: (a) describe the actions taken; (b) whether there were any differences between those actions and CPAC's recommendations; and, (c) if so, the reasons for those differences. That report, however, contains no indication whether State rejected CPAC recommendation against import restrictions on coins, and, if so, why?

81. In addition, that report also indicates that Customs acted as the lead agency for imposing import restrictions on coins. In pertinent part, the report states, "The Federal Register notice for Cyprus was amended by the Department for Homeland Security, in consultation with the

Department of State, to include coins of Cypriot types which are also vulnerable to archaeological looting.”

82. In or about July 17, 2007, ECA publicized the new restrictions on coins of Cypriot types on its website as follows: “The Government of the Republic of Cyprus requested and amendment to the designated list to include coins.... Q. What was the response? A. The Cultural Property Implementation Act places the authority for the Designated List with the Department of Homeland Security (DHS) in consultation with the Department of State. On July 13, 2007, DHS published a Federal Register notice concerning the extension of the agreement and amending the Designated List to include certain coins from Cyprus, effective July 16, 2007.”
83. In or about May-June 2008, the Cyprus News Service quoted CAARI’s president as stating, “CAARI has been in the forefront of the successful effort to renew the Memorandum of Understanding between Cyprus and the USA restricting the import of Cypriot antiquities into the United States.....” See <http://www.caari.org/CAARIat30.htm> (last checked, 7/13/10).
84. On January 16, 2009, the Federal Register announced import restrictions on Chinese cultural artifacts, including those on early media of exchange to Tang era cash coins. See 19 CFR Part 12, reported at 74 Fed. Reg. 2838-2844 (Jan. 16, 2009). The applicable regulations impose import restrictions on “coins” and generally cover archaeological objects “from China.” The regulations contain no qualifying language that the restrictions only apply to archaeological artifacts “first discovered within” China.
85. On April 20, 2009, past CPAC Chairman Jay Kislak signed a declaration in FOIA litigation that stated in pertinent part:

- *I am told that Section 303 (g) of the CPIA requires the State Department to report to Congress any differences between CPAC's recommendations and the State Department's ultimate decision to impose import restrictions. In this regard, the release of the most recent CPAC report related to Cyprus and its discussion about coins could clarify misleading information contained in official State Department documents.*

- *I specifically recall the Cypriot request that then current import restrictions on other cultural artifacts be extended to coins was a matter of great public controversy. CPAC considered the question specifically and I recall a special vote being taken on this particular issue.*

- *With that in mind, I have reviewed both an official State Department Press Release and a State Department report made pursuant to CPIA Section 303 (g) about the MOU with Cyprus...I believe it is absolutely false to suggest in those materials that the State Department's decision to extend import restrictions to ancient coins was consistent with CPAC's recommendations. The full release of CPAC's recommendations with regard to coins could be in the public interest because it should clarify misleading information contained in official State Department documents.*

86. On November 13, 2009, at a public interim review of import restrictions on Italian cultural artifacts, archaeologists associated with the AIA and the Italian Ministry of Culture argued to CPAC that import restrictions should be extended to coins struck in Italy based on the Cypriot precedent.

87. On April 7, 2007, the Federal Register provided public notice of a CPAC hearing to address the renewal of the MOU with Italy. *See* 75 Fed. Reg. 17823 (April 7, 2010). That notice was silent as to whether Italy had formally requested new restrictions on coins or that CPAC would such new restrictions on coins in the context of that renewal. Although a written inquiry was made to Under Secretary McHale about whether CPAC would consider new restrictions on coins, no response was ever received.

88. The Federal Register Notice only provided a little over two weeks for public comment. In that short period, coin collectors sent almost two thousand (2,000) faxes to CPAC opposing any effort to extend new restrictions to coins. In addition to collectors and the small businesses of the numismatic trade, the American Numismatic Association and the Italian Numismatic Society also wrote CPAC to express opposition to any such proposal. At the subsequent CPAC meeting on the subject, nine (9) speakers opposed various aspects of the MOU, including six (6) representatives of the numismatic trade or collectors. This group included the President of the American Numismatic Association as well as the curator of its museum.
89. Upon information and belief, the Bank of Cyprus Cultural Foundation and collectors in Cyprus have materially benefitted from the imposition of U.S. import restrictions because they (like other collectors in the EU and worldwide) now enjoy a competitive advantage over U.S. collectors who must contend with difficult to meet provenance requirements on the Cypriot coins they import pursuant to current Customs regulations and practices.
90. Upon information and belief, collectors in China have materially benefitted from the imposition of U.S. import restrictions because they (like other collectors worldwide) now enjoy a competitive advantage over U.S. collectors who must contend with difficult to meet provenance requirements on the Chinese coins they import pursuant to current Customs regulations and practices.

Customs Seizes the Collectors' Coins and Harasses ACCG's Executive Director

91. On or about April 7, 2009, ACCG purchased the collectors' coins from Spink, a coin dealer established since 1666 in London, England. The collectors' coins consisted of twenty-three

(23) ancient Chinese and Cypriot coins valued at \$275.00. Upon information and belief, certain of the Chinese coins were sourced from Canada.

92. As is typical for the vast majority of historical coins on the international numismatic market and in collections such as that of the Bank of Cyprus Cultural Foundation, the collectors' coins have no known provenance. ACCG has no knowledge where or when the collectors' coins were found.

93. The commercial invoice that accompanied the coins reflected the seller's lack of knowledge about the coins' provenience. Although the invoice identified the coins as being minted in either Cyprus or China, the invoice also indicated that each had "No recorded provenance. Find spot unknown."

94. On April 15, 2009, ACCG imported the collectors' coins via a British Airways flight to Baltimore, Maryland where ACCG's customs broker presented the Collectors' coins to Customs along with a copy of the applicable regulations.

95. On or about April 24, 2009 (amended May 15, 2009), Customs detained the collectors' coins for possible violation of 19 U.S.C. § 2606 and 19 CFR § 12.104.

96. On July 20, 2009, Customs seized the collectors' coins which it described as 3-Knife shaped coins, 12-Chinese coins and 7-Cyprus coins. The coins were seized under 19 U.S.C. § 2609 (a) due to alleged violations of 19 U.S.C. § 2606 and 19 CFR § 12.104.

97. On August 26, 2009, Customs wrote to ACCG's counsel to report the seizure of the collectors' coins.

98. On September 3 and 8, 2009, ACCG asserted a claim to the collectors' coins and provided Customs with a cost bond to secure any forfeiture action in U.S. District Court.

99. In or about early January 2010, Customs detained Spink's stock on entry to the United States for an important international coin fair held each year in New York, New York. Although Customs ultimately released the coins, upon information and belief Spink suffered substantial financial loss as a result of Customs' actions.
100. After several telephonic inquiries, on January 26, 2010, counsel for ACCG wrote Customs to indicate that if a forfeiture action was not filed within two-week's time, ACCG would likely seek relief in Court.
101. On February 11, 2010, ACCG filed this action in this Court.
102. On March 15, 2010, ACCG's Executive Director was searched by uniformed Customs officers on his return to the United States from England after speaking at a conference designed to help bridge gaps between collectors and archaeologists. Based on his interactions with Customs at the time as well as Customs' detention of Spink's property, ACCG's Executive Director reasonably believes he was placed on a "watch list" due to ACCG's decision to import coins of Cypriot and Chinese type for purposes of this test case.
103. On August 25, 2010, Defendants filed a motion to dismiss or, in the alternative, motion for summary judgment in this action. In their mem. at 12-16, Defendants portray CPAC as a mere "rubber stamp" for MOU's with no authority to make specific recommendations as to what artifacts should appear in the list of materials subject to import restrictions. At page 28, Defendants also state that the collectors' coins could be forfeited as "stolen" property exported in violation of patrimony laws.
104. As of the date for filing this First Amended Complaint, upon information and belief, the United States has not filed a forfeiture action against the collectors' coins, which would allow ACCG to contest the validity of their seizure in Court.

FIRST CAUSE OF ACTION

**Agency Action Failing to Meet Statutory, Procedural, and Constitutional Requirements—
Administrative Procedure Act, 5 U.S.C. § 706 (2) (B), (C), and (D)**

105. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 104.
106. Under the APA, 5 U.S.C. § 706 (2) (B) (C) and (D), a federal district court may hold unlawful and set aside an agency decision that is “contrary to constitutional right, power, privilege or immunity; ... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” or “without observance of procedure required by law.”
107. By seizing and confiscating the collectors’ coins without filing a complaint for forfeiture Defendants have acted contrary to ACCG’s rights under the Fifth Amendment, which is actionable under the APA, 5 U.S.C. § 706 (2).
108. By reason of the foregoing, Defendants should be compelled to return the collectors’ coins.
109. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors’ coins in which the validity of import restrictions on Cypriot and Chinese coins can be tested in court as set forth more fully below.

SECOND CAUSE OF ACTION

Due Process of Law—Fifth Amendment

110. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 109.
111. By seizing the collectors’ coins without filing a forfeiture action, Defendants have deprived Plaintiff ACCG of its property without due process of law, in violation of the Fifth Amendment of the United States Constitution.

112. By virtue of its inherent equitable powers to remedy constitutional violations, and pursuant to 28 U.S.C. § 2201, this Court is possessed of authority and power to declare the seizure of the collectors' coins to be an unlawful violation of the Fifth Amendment of the U.S. Constitution, and to compel Defendants to return the collectors' coins to Plaintiff ACCG.

113. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors' coins in which the validity of import restrictions on Cypriot and Chinese coins can be tested in court as set forth more fully below.

THIRD CAUSE OF ACTION
Relief in the Nature of Mandamus

114. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 113.

115. At all relevant times, officials at Defendants had a nondiscretionary duty to cause the prompt commencement of a proceeding for the forfeiture of the collectors' coins and otherwise act in accordance with the law.

116. More than fifteen (15) months have elapsed since Defendant Customs detained the collectors' coins and over ten (10) months have elapsed since Plaintiff ACCG submitted a seized assets claim asserting ownership of the collectors' coins and requesting that the matter be referred to court for the institution of a forfeiture action.

117. Upon information and belief, Defendants have failed to cause the commencement of any proceeding for forfeiture of the collectors' coins. Instead, Defendants have in retaliation caused Spink and the Executive Director of Plaintiff ACCG to be placed on a "watch list," causing them delay, embarrassment and loss of income in violation of the First Amendment to the U.S. Constitution's right to seek access to the courts.

118. By virtue of its inherent equitable powers to remedy constitutional violations, and pursuant to 28 U.S.C. § 1361, this Court has the authority to grant Plaintiff ACCG relief in the nature of mandamus, compelling Defendants to return the collectors' coins to Plaintiff ACCG and to remove Spink and ACCG's Executive Director from any "watch list" they have been placed on as a result of pursuing this test case.

119. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors' coins in which the validity of import restrictions on Cypriot and Chinese coins can be tested and show cause whether Defendants unlawfully placed Spink and the Director of ACCG on a government watch list.

FOURTH CAUSE OF ACTION

Relief Under APA- Declaration that Cypriot Import Restrictions on Coins are Arbitrary and Capricious, an Abuse of Discretion or Without Observance of Procedure Required By Law

120. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 119.

121. Under the APA, 5 U.S.C. § 702, ACCG is entitled to review of Defendants actions.

122. Pursuant to the APA, 5 U.S.C. § 706 (2) (A), (D), a federal district court may hold unlawful and set aside an agency decision that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

123. The United States Supreme Court has set aside as "arbitrary and capricious" an agency action in circumstances where the agency failed to provide a reasoned explanation for its departure from prior agency precedent. *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 533-35 (2007) (Supreme Court ruled agency's decision to be arbitrary and capricious because the agency failed to offer any reasoned explanation for its refusal to decide whether

greenhouse gases caused or contributed to climate change); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 34 (1983) (agency's rescinding of rule requiring passive restraints in automobiles was arbitrary and capricious for failure to provide a reasoned explanation justifying the revocation).

124. Prior to the decision to impose import restrictions on coins of Cypriot type, such coins had been exempted from import restrictions.

125. Moreover, under CPIA, 19 U.S.C. § 2602 (g)(2), once State enters into an MOU with a State Party to the 1970 UNESCO Convention imposing import restrictions on cultural artifacts, State is required to report to Congress. That report must: (a) describe the actions taken; (b) indicate whether there were any differences between those actions and CPAC's recommendations; and (c) state, if so, the reasons for those differences.

126. On August 29, 2007, State sent the mandated report concerning the Cyprus MOU and import restrictions on cultural artifacts to Congress pursuant CPIA, 19 U.S.C. § 2602 (g)(2).

127. That Report contains no indication whether State rejected CPAC recommendation against import restrictions on coins, and, if so, why?

128. Subsequently, in a signed declaration, CPAC's chairman at the time the Cypriot restrictions were decided, reviewed this report and then stated, "*I believe it is absolutely false to suggest in those materials that the State Department's decision to extend import restrictions to ancient coins was consistent with CPAC's recommendations.*" (Emphasis added).

129. By reason of the foregoing, the Court should declare that Defendants' failure to provide a rational explanation under the CPIA for its departure from prior agency practice exempting

coins of Cypriot type from restriction mandates that State's decision be held unlawful and set aside as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

130. Moreover, by reason of State's failure under the CPIA to report to Congress about this departure from both prior agency practice and the recommendations of its own advisory committee, the Court should also declare that Defendants' actions are unlawful and should be set aside as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

131. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors' coins in which the validity of State's decision to impose import restrictions on coins of Cypriot type can be tested in Court as to whether it should be set aside as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

FIFTH CAUSE OF ACTION

Relief Under APA- Declaration that Cypriot and Chinese Import Restrictions on Coins are Arbitrary and Capricious, an Abuse of Discretion, Contrary to Law or Without Observance of Procedure Required By Law

132. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 131.

133. Under the APA, 5 U.S.C. § 702, ACCG is entitled to review of Defendants actions.

134. Pursuant to the APA, 5 U.S.C. § 706 (2) (A), (D), a federal district court may hold unlawful and set aside an agency decision that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

135. As set forth more fully above in the Statement of Facts, the decisions to impose import restrictions on coins of Cypriot and Chinese type and apply those restrictions broadly are the products of bias, and/or prejudgment and/or *ex parte* contact. Upon information and belief, these deficiencies include, *inter alia*, the following actions:

- a. Adding coins to the designated list of artifacts subject to restriction in response to China's request for import restrictions without a request from China to do so;
- b. Engaging in behind the scenes contacts with CAARI about extending import restrictions to coins of Cypriot type even before Cyprus requested them to be added to the designated list;
- c. Directly or indirectly funding CAARI, a proponent of extending import restrictions to coins of Cypriot type;
- d. Refusing to recuse an archaeologist who is dependent on a license from the Cypriot Department of Antiquities in order to continue to excavate on the Island from voting on CPAC's recommendations with regard to import restrictions on coins of Cypriot type;
- e. Failing to provide proper public notice for the effort to extend import restrictions on coins of Cypriot type;
- f. Confusing "cultural significance" with "archaeological significance" when it comes to objects that exist in many multiples, like coins;
- g. Ignoring evidence that Cypriot and Chinese coins circulated widely beyond the places of their manufacture and instructing Customs that its officers could assume that Cypriot and Chinese coins were first found in the ground of these countries for purposes of imposing import restrictions;

- h. Refusing to allow or ignoring CPAC's advice about whether coins should be subject to import restrictions;
- i. Ignoring or misapplying the CPIA's requirements that less drastic measures be contemplated before imposing import restrictions;
- j. Ignoring or misapplying the CPIA's "concerted international response" requirement;
- k.. Providing past Assistant Secretary, ECA Dina Powell with the false choice of either approving import restrictions adding coins in their entirety or disapproving them in their entirety;
- l. Allowing past Assistant Secretary, ECA Dina Powell to extend the MOU with Cyprus and add restrictions on coins of Cypriot type after she had already announced her departure from ECA to an entity that likely has business relationships with either Cyprus or Cypriot entities;
- m. Allowing Undersecretary of State Nicholas Burns to influence the decision to impose import restrictions on coins of Cypriot type, though he had just received an award from Greek and Greek Cypriot interests and had displayed bias in favor of such interests;
- n. Inviting proponents of import restrictions on coins to the signing ceremony for the Cypriot MOU, and stage managing the Cypriot Ambassador's statements disparaging coin collectors at that ceremony;
- o. Misleading the public in a press release about the MOU about CPAC's recommendations on coins;
- p. Misleading Congress about CPAC's recommendations about coins in an official report mandated under the CPIA;
- q. Holding Plaintiff's coins indefinitely without filing the required forfeiture action;

r. Harassing Plaintiff's Executive Director and the supplier of the coins used for this "test case" in retaliation for ACCG asserting its First Amendment rights to access to the Courts.

136. By reason of the foregoing, the Court should declare that Defendants' decisions to impose import restrictions on coins of Cypriot or Chinese type should be held unlawful and set aside as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

137. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors' coins in which the validity of Defendants' decision to impose import restrictions on coins of Cypriot type can be tested in Court as to whether it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law."

SIXTH CAUSE OF ACTION
Relief Under APA and CPIA- Declaration that Customs Has the Burden of Proof to Trace
Coins Back to Their Find Spots

138. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 137.

139. Under the APA, 5 U.S.C. § 706 (2) (A) (C) and (D), a federal district court may hold unlawful and set aside an agency decision that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority or limitations, or short of statutory right" or "without observance of procedure required by law."

140. Under the CPIA, Customs must ensure that any designated list of material subject to restriction shall be sufficiently specific and precise to ensure that the material is *only applied*

to the material covered by any agreement to impose import restrictions. CPIA, 19 U.S.C. § 2604 (1) (emphasis added) before import restrictions may be imposed under CPIA, 19 U.S.C. § 2606.

141. By designating as restricted “coins of Cypriot type” and Chinese coins from the Tang and pre-Tang periods as subject to import controls under the applicable regulations, Defendants have violated the CPIA’s provisions that restrictions shall only be applied to artifacts that the restricted artifacts were “first discovered within” the State Party seeking restrictions. CPIA, 19 U.S.C. § 2601 (2) (C).

142. By issuing ambiguous regulations that fail to indicate that “coins of Cypriot type” “from Cyprus” and “Chinese coins” “from China” must also be “first discovered in” either Cyprus or China, Defendants have violated the notice provisions of the CPIA designed to ensure that any designated list shall be sufficiently specific and precise to ensure that the restrictions are *only applied* to the material covered by any agreement. CPIA, 19 U.S.C. § 2604 (1) (emphasis added).

143. Moreover, it is Defendants’ burden to meet all the requirements the CPIA, 19 U.S.C. § 2606, including that the collectors’ coins were “discovered” within Cyprus and China as required under 19 U.S.C. § 2601 (2). To the extent Defendants rely on the assumption to meet this burden that Cypriot and Chinese coins must have been first discovered in those countries, any such assumption is both demonstrably false and insufficient as a matter of law.

144. By reason of the foregoing, the Court should declare that Defendants’ practice to seize coins based on their type alone is unlawful and set it aside as “ arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory

...limitations, or short of statutory right” or “without observance of procedure required by law....”

145. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors’ coins in which the validity of State’s and Custom’s practice to seize coins based on their type alone can be tested in Court as to whether it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory ...limitations, or short of statutory right”; or without observance of procedure required by law....” and wherein the Court will assign Defendants the burden to demonstrate that the collectors’ coins were “first discovered” within Cyprus and China.

SEVENTH CAUSE OF ACTION
Relief Under APA--19 CFR §12.104a and Cypriot and Chinese Regulations Violate the Berman Amendment and the Free Trade in Ideas Act

146. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 145.

147. Under the APA, 5 U.S.C. § 706 (2) (A) (C) and (D), a federal district court may hold unlawful and set aside an agency decision that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “in excess of statutory jurisdiction, authority or limitations, or short of statutory right” or “without observance of procedure required by law.”

148. Congress passed the Berman Amendment, 50 U.S.C. app. § 5(b) (4) (2000) in order to rein in executive authority over the importation and exportation of informational materials.

149. Congress passed the (FTIA, 12 U.S.C. § 95a, 50 U.S.C. § 1702 (2000) both to clarify the scope and to reaffirm the intention of the Berman Amendment.

150. The Berman Amendment and FTIA prohibit the President from regulating or prohibiting the import and export of any and all First Amendment protected materials, directly or indirectly.
151. Ancient coins constitute “informational materials” because they convey historical information about ancient societies in the form of portraiture and inscriptions.
152. Defendants have seized the collectors’ coins pursuant to under 19 U.S.C. § 2609 (a) due to alleged violations of CPIA, 19 U.S.C. § 2606 and 19 CFR § 12.104.
153. 19 CFR §12.104a and the Cypriot and Chinese designated lists referenced at 72 Fed. Reg. 38470-74 (July 13, 2007) and 74 Fed. Reg. 2838-2844 (Jan. 16, 2009) (“the designated lists”) openly defy that unconditional ban by regulating and prohibiting, directly and indirectly, the import and export of information and informational materials, such as ancient coins, without regard to their place of discovery, violating not only the plain language of the statutes but the clearly expressed intent of Congress as evidenced in the statutes' legislative history.
154. These same regulations, by violating the Berman Amendment and the FTIA, exceed Defendants’ statutory authority.
155. By reason of the foregoing, the Court should declare Defendants’ actions to be unlawful and set them aside as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory ...limitations, or short of statutory right”; or without observance of procedure required by law....”
156. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors’ coins in which the validity of Defendants’ actions can be tested in court.

EIGHTH CAUSE OF ACTION

Relief Under APA--19 CFR §12.104a and Cypriot and Chinese Regulations are Unconstitutional under the First and Fifth Amendments to the Constitution of the United States

157. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 156.

158. Under the APA, 5 U.S.C. § 706 (2) (B), a federal district court may hold unlawful and set aside agency actions “contrary to constitutional right, power, privilege or immunity.”

159. 19 CFR §12.104a and the designated lists are unconstitutional on their face and as applied, under the First and Fifth Amendments to the United States Constitution.

160. 19 CFR §12.104a and the designated lists are not content and viewpoint neutral.

Defendants’ regulation in 19 CFR §12.104a and the designated lists attempt to direct or control the content of Plaintiff’s speech. Regulations that deny a collector’s access to the content of an ancient coin because of its content as “Chinese” or “Cypriot,” and therefore its historical significance, constitute regulations that control the content of the affected coin and the collector is deprived of that content. By promulgating rules that ban U.S. collectors’ trade in Cypriot and Chinese coins, the Defendants have denied collectors the indispensable "content" of direct experience of ancient Cypriot and Chinese coins. The prohibitions impose an unconstitutional burden on core First Amendment rights, including the rights to collect and disseminate information in the United States, the rights of United States citizens like the Plaintiff to promote the trade and publication in constitutionally protected materials in the United States and the American public's right to receive information.

161. The application of 19 CFR §12.104a and the designated lists by Customs amounts to a prior restraint on protected speech. Plaintiff’s coins were seized by Customs pursuant to 19

CFR §12.104a which states: “(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. §2604 and listed in §12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. §2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.” The regulations fail to address the fact that only archeological materials that are discovered within the State Party are subject to the restrictions under 19 U.S.C. §§2604 and 2606. As written, §12.104a is a content-based restriction because all “Chinese” and “Cypriot” type coins are restricted due to their content and not their place of discovery.

162. 19 CFR §12.104a and the designated lists are also unconstitutionally vague because they fail to provide the kind of notice that would enable ordinary people to understand what conduct is prohibited and it authorizes arbitrary and discriminatory enforcement, in violation of the First and Fifth amendments to the Constitution.

163. 19 CFR §12.104a and the designated lists are also unconstitutional on their face or as applied in that they are overbroad and encompass within its coverage activities that are clearly protected by the guarantees of the First Amendment to the Constitution of the United States.

164. The government’s interest in restricting the importation of archaeological coins under the CPIA is to deter looting in a foreign country. This can only apply and be effective to archaeological objects actually discovered within the foreign country. Most archaeological pieces lack inscription or other elements that would make them informational materials. Therefore, for most archaeological pieces the First Amendment issues are muted. However, ancient coins amplify the First Amendment concerns because of their information content.

165. The effect of §12.104a and the designated lists without the discovery requirement is to frustrate the purpose of the First Amendment which is "to secure 'the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (citations omitted).
166. 19 CFR §12.104a and the designated lists are also unconstitutional on their face or as applied in that it is susceptible to sweeping and improper application by Customs to protected activities in violation of the First Amendment to the Constitution of the United States.
167. The CPIA and 19 C.F.R. §12.104a restrict and burden plaintiffs' Fifth Amendment liberty collecting and trading in informational materials in the United States.
168. By reason of the foregoing, the Court should declare Defendants' actions to be unlawful and set them aside "as contrary to constitutional right, power, privilege or immunity."
169. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors' coins in which the validity of Defendants' actions can be tested in court.

NINTH CAUSE OF ACTION
Judicial Review of Ultra Vires Actions

170. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 169.
171. Pursuant to 28 U.S.C. § 1331, this Court has the authority to review whether Defendants acted beyond the scope of their authority under the CPIA, the Berman Amendment, the FTIA, and the First and Fifth Amendments in promulgating import restrictions on coins of Cypriot type and Chinese coins from the pre-Tang and Tang periods and in applying those

restrictions to coins with no proof that they were “first discovered” within either Cyprus or China.

172. Furthermore, APA, 5 U.S.C. § 703 provides that in the absence of special statutory authorization for review, “the form of proceeding for judicial review” is “any applicable form of legal action, including actions for declaratory judgments or writs of prohibition or mandatory injunction or habeas corpus.”

173. As set forth more fully above, Defendants have acted outside the provisions of the CPIA and instead have based their decisions to impose import restrictions and to seize ACCG’s collectors’ coins based on bias and/or prejudgment and/or *ex parte* contact with members of the archaeological community who are ideologically opposed to collecting even common artifacts like coins that are widely collected elsewhere. Moreover, by designating as restricted “coins of Cypriot type” and Chinese coins from the Tang and pre-Tang periods as subject to import controls, Defendants have violated the CPIA’s provisions that restrictions shall only be applied to artifacts that the restricted artifacts were “first discovered within” the State Party seeking restrictions. CPIA, 19 U.S.C. § 2601 (2) (C).

174. In addition, Customs acted outside its statutory authority when issuing 19 CFR §12.104a and the designated lists without including a requirement to determine an archaeological object’s place of discovery. The regulations, as written and enforced, prejudice the importation of all archaeological coins of a type restricted under the CPIA §§2604 and 2606 regardless of their place of discovery, thus exceeding the statutory authority granted in the CPIA and also in violation of the Berman Act, the FTIA, and the First and Fifth Amendments.

175. 19 CFR §12.104a and the designated lists assume that all coins that could have originated in a State Party, regardless of the actual find spot, are subject to import restriction. The absence of the discovery requirement rests only on the assumption that all “Chinese” or “Cypriot” coins must have been looted. The CPIA does not grant Customs such authority and it also is in violation of the Berman Act, the FTIA, and the First and Fifth Amendments.
176. By reason of the foregoing, the Court should declare Defendants’ actions to be unlawful and set them aside under the applicable statutory and Constitutional provisions.
177. Alternatively, Defendants should be compelled to cause a prompt commencement of a proceeding for forfeiture of the collectors’ coins in which the validity of Defendants’ actions can be tested in court.

TENTH CAUSE OF ACTION
Relief under CAFRA-18 U.S.C. §983

178. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraph numbers 1 through 177.
179. Under the APA, 5 U.S.C. § 706 (1), a “reviewing court shall...compel agency action unlawfully withheld or unreasonably delayed...”Under CAFRA, 18 U.S.C. § 983 (a) (3) (A), “[n]ot later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint....”
180. In the Memorandum accompanying its Motion to Dismiss or, in the Alternative for Summary Judgment, Defendants suggest that the collectors’ coins are the “stolen cultural property” of either Cyprus or China.

181. If so, Defendants' should have followed the procedures set forth in CAFRA and filed a forfeiture action within ninety (90) days of the filing of a claim for the collectors' coins.

182. More than ninety (90) days have elapsed since ACCG has submitted its seized asset claim, but upon information and belief, no proceedings relating to the collectors' coins have been instituted in any court.

183. By failing to file a forfeiture complaint within ninety (90) days of Plaintiff ACCG's submission of a seized asset claim, Defendants have unlawfully withheld and unreasonably delayed agency action required under CAFRA, in violation of and as actionable under APA, 5 U.S.C. § 706 (1).

184. As a result of Defendants' unlawful withholding and unreasonable delay of agency action, Plaintiff ACCG has been adversely affected and aggrieved.

185. By reason of the foregoing, Defendants should be compelled to return the collectors' coins.

186. Alternatively, by reason of the foregoing, Defendants should be compelled to cause the prompt commencement of a proceeding in forfeiture in which the validity of import restrictions on Cypriot and Chinese coins can be tested in court.

WHEREFORE, Plaintiff respectfully requests that judgment be granted as follows:

- a. Declaring as follows:
 - i. That Defendants have deprived Plaintiff of property without due process of law, in violation of the Fifth Amendment;
 - ii. That the decision to impose import restrictions on ancient coins of Cypriot type is arbitrary and capricious and/or *ultra vires* because, pursuant to applicable law, Defendant State failed to disclose the reason, or reasons,

to Congress behind State's decision making processes in rejecting the advice of its own advisory committee and also in departing from prior agency practice;

- iii. That the decisions to impose import restrictions on ancient coins of both Cypriot and Chinese type are also arbitrary and capricious and/or *ultra vires* because they are they are both contrary to law and the product of bias, prejudice and *ex parte* contact; and
 - iv. That under the CPIA Customs and State must prove that Cypriot or Chinese coins were illicitly removed from Cypriot or Chinese find spots before they may be forfeited.
 - v. That import restrictions violate Plaintiff's statutory and First and Fifth Amendment Rights to import informational material by restricting the importation of ancient coins without any reference to their place of discovery.
- b. Compelling or enjoining Defendants Commissioner of Customs and Assistant Secretary, ECA to suspend import restrictions on ancient coins of Cypriot type and Tang period and pre-Tang period Chinese coins and enjoining Defendants from enforcing these regulations;
 - c. Compelling or enjoining Defendant Commissioner of Customs to ensure that coins be traced back to their find spots before they may be forfeited under CPIA and enjoining Defendants from seizing coins based on their type;
 - d. Compelling or enjoining Defendants to return the collectors' coins to ACCG and enjoining Defendants from seizing them in the future;

- e. Or, alternatively compelling Defendants to cause a prompt commencement of a proceeding for forfeiture of the collectors' coins in which the validity of State's and Custom's decision to impose import restrictions on coins of Cypriot and Chinese type and practice to seize coins based on their type alone can be tested in Court.
- f. Awarding reasonable attorneys' fees and costs in favor of Plaintiff ACCG; and
- g. Ordering such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully demands a jury trial in this action.

Dated: July 15, 2010

Respectfully submitted,

/s/ Jason H. Ehrenberg

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