



April 14, 2022
Submitted via regulations.gov portal

Mr. Stefan Passantino
Chair of the U.S. Cultural Property Advisory Committee
Cultural Heritage Center (ECA/P/C)
U.S. Department of State
2200 C Street, NW
Washington, DC 20037

Subject: Docket DOS-2022-0008 Pakistan

Dear Mr. Passantino and Cultural Property Advisory Committee Members:

On behalf of the Ancient Coin Collectors Guild, this responds to object to the proposed MOU and associated import restrictions with the Islamic Republic of Pakistan, as it impacts the importation of ancient coins. Published by the Executive Director of the Cultural Property Advisory Committee (CPAC) at 87 Federal Register 19724, Docket DOS-2022-0008 (April 5, 2022), the public notice states that any comments or requests to participate in the CPAC's April 26 open session meeting, must be made by April 19, 2022, which is only 14-days from the date of the public notice.

As detailed below, we have two procedural objections, and five substantive objections, why a Designated List of import restrictions of Pakistan cultural property should not include ancient coins. We ask the CPAC to advise the decision maker Acting Assistant Secretary Matthew Lussenhop not to include coins in any Designated List.

The Ancient Coin Collectors Guild (ACCG) is a nonprofit organization, whose mission is to promote and nurture the free and independent collecting of coins¹ from antiquity through education, political action and consumer protection. Our goal is to foster an environment in which the general public can confidently and legally acquire and hold, for personal or professional use, any numismatic item of historical interest regardless of date or place of origin. We do not in any way support, condone or defend the looting of designated archaeological sites, nor the violation of any nation's laws concerning the import or export of antiquities. We have

¹ The coin is "a mirror of the ancient world, which indicates the progress of the arts, which accompanies human society in all its aspects, civic life, laws, institutions, wars, conquests, peace treaties, changes of government, trade, and alliances. It perpetuates the fame of noble generations and keeps alive the memory of great men [as well as great women]." Elvira Eliza Clain-Stefanelli, Numismatics - An Ancient Science A Survey of its History at 3 (U.S. Government Printing Office, 1968) quoting Ernest Charles Babelon, Traité des monnaies grecques et romaines: Théorie et doctrine, Volume 1, col 66 (Paris, 1901).

twenty-four affiliate member organizations and advocates for the interests of thousands of ancient coin collectors and hundreds of small businesses of the numismatic trade. More information regarding the ACCG may be found at our website at accguild.org.

To begin with, we have two procedural objections that the public notice is legally defective, such that it needs to be rescinded and reissued, so that the public is truly afforded a meaningful opportunity to submit comments and participate in the CPAC's open session. This is because the April 5 public notice only gives the public a 14 day deadline to submit comments by April 19, or to request to participate in the CPAC's open session meeting by April 19. The April 5 public notice also fails to inform the public which ancient coins may be subject to import restrictions.

We also make five substantive objections, in the event that the CPAC decides to go forward in considering import restrictions with "Pakistan" coins, under the Cultural Properties Implementation Act (CPIA). First, that ancient coins do not qualify as artifacts of "cultural significance" under CPIA's 19 U.S.C. § 2601(2)(C)(i)(I). Second, it cannot be assumed that a particular "Pakistan" coin was "first discovered within" and "subject to the export control" of the country, which is required by CPIA's 19 U.S.C. § 2601(2)(C). Third, import restriction of ancient coins should not occur because there is available "remedies less drastic than the application of the restrictions" under CPIA's 19 U.S.C. § 2602(a)(1)(C)(2). Fourth, there is no indication that Pakistan has submitted a statement of facts that addresses the matters upon which the Department makes the determinations under CPIA's 19 U.S.C. § 2602(a)(1). Fifth, CPIA's 19 U.S.C. § 2601(2)(i)(II) prohibits consideration of an object of archaeological interest unless the object is at least 250 old.

I. Procedural Objections:

A. The April 5 public notice fails to afford the public a meaningful opportunity to comment or request to participate in the CPAC's open session meeting, since it gives the public only 14 days to respond.

The 14-day public notice for the public to either comment or to request participation in the CPAC's open session, published at 87 Federal Register 19724 (April 5, 2022), does not afford the public a meaningful opportunity to comment. As such, its failure to offer the public a meaningful opportunity violates the Administrative Procedure Act, 5 U.S.C. 533(c), that requires that an agency "shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation."

The important purposes of the Administrative Procedure Act's notice and comment procedure cannot be overstated. The agency benefits from the experience and input of comments by the public, which help "ensure informed agency decision making." *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314, 321 (4th Cir.1980). The notice and comment procedure are also designed to encourage public participation in the administrative process. *Chocolate Mfrs.Ass'n v. Block*, 755 F.2d 1098, 1103 (4th Cir.1985). And by giving the public the necessary "meaningful opportunity" to comment, the public benefits and the agency maintains a flexible and open-minded attitude. *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1101 (D.C.Cir. 2009) citing *Gerber v. Norton*, 294 F.3d 173, 179 (D.C.Cir. 2002).

The limited 14-day public comment time period also violates Executive Order 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993) which provides that "each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days."

B. The public notice fails to indicate which ancient coins may be prohibited and thus fails to afford the public with advance notice to provide meaningful comments.

The public notice at 87 Federal Register 19724 (April 5, 2022), merely states that the Islamic Republic of Pakistan "seeks U.S. import restrictions on archaeological and ethnological material representing Pakistan's cultural patrimony." The notice of the CPAC's meeting states that "additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions" is available at the Cultural Heritage Center website. But contrary to the notice, however, the website offers no meaningful information as to the specific coins² being considered to be restricted. And since the public notice and the website has failed to offer sufficient factual details as to what ancient coins may be subject to import restrictions, interested parties cannot comment meaningfully.

If the CPAC is considering import restrictions of "Pakistan" coins, then the public notice needs to be reissued to afford the public with advance notice as to what coins are being sought to be restricted, and whether the coins had been minted, just circulated, or "first discovered" within the country, so to allow for meaningful public comments. Such a revised public notice is required under the Administrative Procedure Act, which requires an agency's notice must "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir.1988). Moreover, if there is an extension of the import restrictions of ancient coins, then it must be first fully explained. The failure of an agency to comply with the procedural requirement to provide a "reasoned explanation" for its action is "arbitrary and capricious" under the Administrative Procedure Act. *Dept. of Homeland Security v. Regents of the University of California*, 140 S.Ct. at 1916 (2020).

II. Substantive Objections:

We believe that import restrictions on "Pakistan" coins runs afoul of at least five statutory provisions of the CPIA and should be denied:

² The cited Bureau of Educational and Cultural Affairs website at <https://eca.state.gov/highlight/culturalproperty-advisory-committee-meetingapril-26-27-2022>, viewed on April 6, 2022, offers no meaningful information as to which coins are being considered for import restrictions. Rather, the website merely states that Pakistan seeks import restrictions of "metal objects including coins" from "the Lower Paleolithic, Mesolithic, Neolithic, Chalcolithic, Bronze Age, Iron Age, Historic Pre-Muslim Period, Early Muslim Period, Mughal, Sikh, and Colonial periods through the creation of Pakistan." Besides being vague as to the coins involved, the time frame is immense, since the website describes the Lower Paleolithic as occurring 2 million years ago, when humans had yet to create either metal or coins.

A. Coins should not qualify as artifacts of “cultural significance” under CPIA's 19 U.S.C. § 2601(2)(C)(i)(I).

The ACCG continues to believe that coins should not qualify as artifacts of “cultural significance” under the CPIA's 19 U.S.C. § 2601(2)(C)(i)(I). During the legislative debate preceding passage of CPIA, the U.S. State Department representative, Mr. Mark Feldman, made it clear that coins were not considered objects of concern under the proposed Act. Responding to questions posed by Congressman Vanik, which included concerns that “a government may declare that all ancient coins within its borders are government property” as part of its “archaeological or ethnological material” Mr. Feldman responded:

“I think in theory, they may well come within the definition but we did not have coins in mind when we addressed the issue. I think as a practical matter, it would not be a serious problem. In most cases, it is impossible to establish the provenance of a particular coin or hoard of coins. Therefore, there would be no reason for the United States, in most cases, to list coins as one of the categories of objects of archaeological or ethnological interest that would be included in the agreement.”

“Cultural Property Treaty Legislation,” Hearing before the House Subcommittee on Trade of the Committee on Ways and Means, 96th Cong., 1st session on HR 3403. p. 8. (September 27, 1979).

As then-ACCG Executive Director Wayne G. Sayles wrote the CPAC on September 20, 2010, ancient coins are rarely significant cultural objects, that the effective preservation of cultural resources requires a cooperative approach, that the private ownership of ancient coins is not only consistent with the interests of society, and that import restrictions would have no effect on the world market except to exclude our citizens from it.

Moreover, coins are the first truly “massed-produced” objects in the ancient world, created by striking engraved obverse and reverse dies onto blank metal disks. Yet the individual ancient coin is essentially a duplicate minted from coin dies, which are produced in the thousands, and do not meet the “cultural significance” requirement. There is “a lot of debate as to whether or not nations and scholars should consider coins as culturally significant.... Coinage, in a general sense, provides evidence to historians about the monetary systems of ancient civilizations, various historical events, information about the art styles of ancient civilizations, and more. Individual coins, however, are ‘by their very nature duplicates.’ Nothing new about a culture can be learned from a duplicate coin if a single, viable copy of that coin has been studied.” Cody Wisniewski, *The Currency of History: The Possible, and Improper, Restriction on Ancient Egyptian Coinage*, 17 San Diego Int’l L.J. 329, 346 (2016)(footnotes omitted).

B. It cannot be assumed that a particular “Pakistan” coin was “first discovered within” and “subject to the export control” of the Islamic Republic of Pakistan, which is required by the CPIA's 19 U.S.C. § 2601(2)(C).

It is well known that that it is typically impossible to assume a particular coin was “first discovered within” and “subject to the export control” of the Islamic Republic of Pakistan. *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection*, 801 F. Supp. 2d 383, 407

n. 25 (D. Md. 2011) ("Congress only authorized the imposition of import restrictions on objects that were 'first discovered within, and [are] subject to the export control by the State Party.'). Indeed, large numbers of ancient coins struck within Pakistan were circulated and hoarded outside the island, and are nowadays found widely and legally available for sale elsewhere and even within Pakistan itself.

This statutory terms of "first discovered within" and "subject to the export control" is critical and may not be expended by asserting that a coin type "circulated primarily" within a given modern nation state. Expanding the CPIC to include "circulated primarily" coins is contrary to the CPIA's plain meaning. Only archeological material "specifically found" in a particular State Party can also be "subject to export control by" that same State Party. 19 U.S.C. §§ 2601, 2604. Accord Scalia and Garner, Reading Law: The Interpretation of Legal Texts § 26 at 174 (Thompson/West 2012) ("[E]very word and every provision is to be given effect (verba cum effectu sunt accipienda). None should be ignored."). The legal requirement of the CPIA is not whether a coin type "circulated primarily" within the confines of a modern-day nation, but rather whether such coin types were specifically "first discovered within."

To the extent that the MOU with Pakistan seeks to restrict "Pakistan" coins, from "the Lower Paleolithic, Mesolithic, Neolithic, Chalcolithic, Bronze Age, Iron Age, Historic Pre-Muslim Period, Early Muslim Period, Mughal, Sikh, and Colonial periods through the creation of Pakistan" scholarly evidence demonstrates not only were there relatively few mints located there, but that their coins were widely circulated and typically found outside the confines of modern-day Pakistan.

Alexander the Great's Empire, the successor Seleucid Empire, and then the Graeco-Bactrian kingdom all fall within the "Historic Pre-Muslim Period." Alexander the Great's Empire included the territories of much of modern-day Afghanistan and Pakistan. After Alexander's death, these territories became part of the Seleucid Empire. As for the location of their mints, "all the coins struck in the name of Alexander found to date in Central Asia come from the mints of Marathos [in modern-day Greece], Termessos [in modern-day Turkey], Perge [in modern-day Turkey], Lampsakos [in modern-day Turkey], Amphipolis [in modern-day Greece], Babylon [in modern-day Iraq] and Ecbatana [in modern-day Iran]. These coins were discovered with those of the towns of Akanthos in the Chalkidike and of Paros [all of which are in modern-day Greece]. It is quite probable that they were brought by Greek or Macedonian soldiers of the army of Seleucos I. About twenty years after the death of Alexander in June 323, the old Achaemenid territories that he had conquered passed to the control of Seleucos I, with the exception of the territories to the south of the Hindu Kush, which soon fell under the power of the Indian empire of the Maurya." From Bactria to Taprobane: Selected Works of Osmund Bopearachchi, Volume I Central Asian and Indian Numismatics (Manohar 1968) p. 18 (footnotes omitted)(parentheticals added).

After a revolt led by Diodotus I Soter ("Savior") against the Seleucid Empire, the Graeco-Bactrian kingdom was created in 256 BC. The kingdom lasted until the reign of Heliocles II at around 120-100 BC. These Greek kings issued coins, designated as Indo-Greek, which carried

bilingual legends and were minted in either Ai-Khanoum or Bactria³ -- both of which are located in modern-day Afghanistan. Besides being minted outside modern-day Pakistan, coins from the Graeco-Bactrian kingdom have been found in coin hoards located outside Pakistan in Afghanistan, and in India in Akhnoor, Ambala, East Panjab, Gogha, Hazara, Jammu according to Sylloge Nummorum Graecorum: Part 9 Graeco-Bactrian and Indo-Greek Coins (The American Numismatic Society 1998) Introduction and Provenances.

According to a data search at coinhoards.org on April 6, 2022, coins from the Kingdom of Bactria have been located at 52 findspots, including in modern-day Azerbaijan [IGCG 1737], India [IGCG 1836, 1855, 1869, 1870, 1871] and Afghanistan [IGCG 1858]. CoinHoards is a component of the National Endowment for the Humanities funded Hellenistic Royal Coinages project developed by the American Numismatic Society. CoinHoards provides primary data and other information on 2,387 hoards of coins produced by Greeks and other non-Roman peoples in the Mediterranean and adjacent regions between ca. 650 and 30 BC.

While Alexander the Great's Empire, the Seleucid Empire, and the Graeco-Bactrian kingdom fall within the "Historic Pre-Muslim Period," due to the unreasonable short time period that we had to submit our comments, we have not been able to research coins from the "Lower Paleolithic, Mesolithic, Neolithic, Chalcolithic, Bronze Age, Iron Age, ... Early Muslim Period, Mughal, Sikh, and Colonial periods through the creation of Pakistan." But just as the coins from the Alexander the Great's Empire, the Seleucid Empire, and the Graeco-Bactrian kingdom were minted and circulated outside modern-day Pakistan, we expect that coins minted from these other time periods were either minted or circulated outside modern-day Pakistan. Indeed, during the first century B.C. Scythians seized control of the Greek kingdom in Pakistan, who replaced the coins' royal portraits with a horseman design but kept the bilingual legend. The Scythians were succeeded by Parthians, Kushans, Sassanians, Huns and Turks, none of whom were native to the area. The location of mints during this period is uncertain. But it is possible that certain coins used during this period were struck in Afghanistan. Joe Cribb, Barrie Cook, and Ian Carradice, The Coin Atlas (MacDonald & Co. 1990) p. 168.

C. An import restriction of "Pakistan" coins should not occur because there is at least one available "remedies less drastic than the application of the restrictions" under the CPIA's 19 U.S.C. § 2602(a)(1)(C)(2).

There is no evidence that Pakistan has adopted the "less drastic" system that exists such as with the United Kingdom's Treasure Act and Portable Antiquities Scheme (PAS). Fully detailed at www.finds.org.uk, the United Kingdom's system⁴ is well regarded, effective, and is clearly "less

³ An extensive discussion on the location of the Graeco-Bactrian kingdom's mints being in either Ai-Khanoum or Bactria is found at From Bactria to Taprobane: Selected Works of Osmund Bopearachchi, Volume I Central Asian and Indian Numismatics (Manohar 1968) p. 21-35.

⁴ The British Museum's 8-page Portable Antiquities & Treasure Strategy: 2020, at <https://finds.org.uk/documents/file/PAS-strategy-2019.pdf> (visited June 27, 2020), lists many of the key accomplishments of the United Kingdom's Portable Antiquities Scheme. This includes that it "has recorded over 1 million archaeological finds discovered by the public on its online database, helping to identify new archaeological sites and help rewrite our understanding of the past[; that o]ver 10,530

drastic” than import restrictions of Pakistan coins. The United Kingdom’s system promotes the maximum public interest and benefit from the recovery, recording and research of portable antiquities; promotes best practice by finders/landowners and archaeologists/museums in the discovery, recording and conservation of finds made by the public; in partnership with museums and others, raises awareness among the public; creates partnerships between finders and museums/archaeologists to increase participation in archaeology and advance our understanding of the past; and increase opportunities for museums to acquire archaeological finds for public benefit. It should be noted that the UK Portable Antiquities Scheme also respects the rights of landowners, who are entitled under the law to share in the fair market value of antiquities found on their property. As a result, many farmers in the UK cooperate with metal detector hobbyists in providing permission for orderly access to their fields. Because of this, we know more about the circulation of ancient and medieval coinage in Britain than in any other part of the world.

D. There is no indication that Pakistan has submitted a statement of facts that addresses the matters upon which the Department makes the determinations under the CIA’s 19 U.S.C. § 2602(a)(1).

According to the Bureau of Educational and Cultural Affairs, found at <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/foreign-government-requests>, a Foreign Government’s request for cultural property protection must “include a statement of facts that addresses the matters on which the Department makes the determinations specified in the CIA, 19 U.S.C. § 2602(a)(1).” These determinations must include... “4. *Credible enforcement efforts*, including monitoring for compliance and appropriate sanctions, documentary evidence of which should include data of sufficient duration and scope to provide the information necessary for a reliable determination. ”

First, neither the 2022 public notice nor the Bureau’s website has stated that Pakistan has engaged in “credible enforcement efforts.” Until such documentation has been presented to the CPAC, and made available to the public, the CPAC cannot confirm that Pakistan has engaged in the necessary “credible enforcement efforts.”

Treasure finds have been reported via the PAS, of which 37% have been acquired by 215 museums across England and Wales for public benefit[; that] PAS data is important to archaeological research, and has been used in at least 455 research projects, including 20 pieces of large-scale research and 95 PhDs[; the t]he Code of Practice for Responsible Metal Detecting in England and Wales provides the baseline for best practice for those searching for archaeology[; and that t]he PAS provides a model for other finds recording systems, such as those being established in Flanders, Denmark, the Netherlands and Finland.”

The Portable Antiquities Scheme Annual Report 2019 at

<https://finds.org.uk/documents/annualreports/2019>, visited September 21, 2021, reports that 81,602 finds were recorded; that the PAS database holds 1,511,589 objects and coins within 967,610 records; that 4,143 individuals offered finds for recording, and almost 90% of finds were found by metal-detectorists; that over 86% of finds were found on cultivated land, where they are susceptible to plough damage and artificial and natural corrosion processes; that over 99% of PAS finds were recorded to the nearest 100m; that new sites discovered through finds recorded by the PAS include a high-status dispersed Iron Age to Roman settlement with associated burials in Kent, a possible Medieval manor or lodge in Shropshire, and an Anglo-Saxon cemetery in Lincolnshire; that 511 researchers have full access to PAS data, and there are 50,171 registered account users; that 765 research projects have used PAS data to date, including 28 major pieces of large-scale research and 159 PhDs.

Second, neither the 2022 public notice nor the Bureau's website has stated that Pakistan has provided to the U.S. Cultural Property Advisory Committee the required "data of sufficient duration and scope to provide the information necessary for a reliable determination." Until such documentation has been presented to the CPAC, and made available to the public, the CPAC cannot confirm that Pakistan has submitted the required "data of sufficient duration and scope to provide the information necessary for a reliable determination."

E. CPIA's 19 U.S.C. § 2601(2)(i)(II) prohibits consideration of an object of archaeological interest unless the object is at least 250 old.

Finally, Pakistan's request to impose import restrictions on objects of archaeological interest -- such as coins -- from at least the "Sikh, and Colonial periods through the creation of Pakistan" is barred by CPIA's 19 U.S.C. § 2601(2)(i)(II), which expressly provides that "no object may be considered to be an object of archaeological interest unless such object -- ... is at least two hundred and fifty years old...."

Nor can coins be considered as "ethnological" objects, since the CPIA's 19 U.S.C. § 2601 (2)(C)(ii) requires such artifacts must be both "(I) the product of a tribal or nonindustrial society, and (II) important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people." "Pakistani" coins simply are not the crafts of "primitive" or "tribal" cultures. Rather, coins were the product of a relatively sophisticated industrial process of mass production, whereby identical blank pieces of metal were created and then cast or struck from dies, to create the coins' repetitive obverse and reverse image.

The CPIC's legislative history also makes clear that coins were not intended to be considered ethnological materials. U.S. Senate Report 97-564 at 5 (September 8, 1982) states that: "While these materials do not lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed 'primitive' or 'tribal' art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America.... The committee does not intend the definition of ethnological materials under this title to apply to trinkets or other objects that are common or repetitive or essentially alike in material design, color, or other outstanding characteristics with other objects of the same type...."

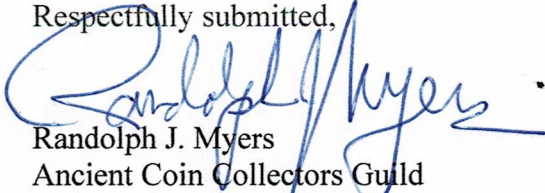
III. Conclusion

The Ancient Coin Collectors Guild urges the U.S. Cultural Property Advisory Committee to correct the procedural problems of its public notice. And due to the substantive objections we have detailed, we ask the CPAC to advise the decision maker Acting Assistant Secretary Matthew Lussenhop not to include coins in the Designated List.

The issues regarding ancient coins are very important to the large numbers of collectors like our members of the Ancient Coin Collectors Guild, who collect coins out of love of history and as an expression of our own cultural identity. And while the American Numismatic Association at www.money.org/consumer-awareness/ancient-coin-import-restrictions, "fully supports the idea of protecting cultural property," it has "consistently argued that ancient coins should not be included in MOUs for a number of reasons. First, coins are among the most common and

durable of artifacts (with a few notable exceptions), and therefore the information they contain is in no danger of being lost to historians or archaeologists in the way unique or rare objects would be if not preserved in cultural institutions. Additionally, there is no shortage of coins in museums in nations that have ancient specimens as part of their history, particularly Europe, the Middle East and China. Finally, coins are excellent teaching tools. Their durability – and the large number of specimens available – make them ideal collectors' items. They encourage interest in the past, which in turn promotes educational programs in museums and universities, many of whose collections were formed or financed by hobbyists.”

Respectfully submitted,



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