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Case Ancient Coins – Ancient Coin Collectors Guild v. United States

Ancient Coin Collectors Guild – United States/États-Unis – Archaeological object/objet archéologique – Post-1970 restitution claims/demandes de restitution post 1970 – Judicial Claim/action en justice – Judicial decision/décision judiciaire – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Illicit importation/importation illicite – Procedural issue/limites procédurales – Request denied/rejet de la demande

In an attempt to challenge import regulations in force in the United States (US), the Ancient Coin Collectors Guild (ACCG) fabricated a situation which would give way to a test case. The 23 ancient coins the ACCG imported into the US were seized by customs officials, allowing them to bring a legal challenge to import restrictions which they believed unfairly limited the ability of collectors to acquire ancient coins from overseas. The case was litigated from 2007 to 2019, with courts consistently deciding in favour of the US Government and the import restrictions remaining in place.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

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I. Chronology

Post 1970 restitution claims

- **30 July 2004 – 11 October 2007:** During this period, the Ancient Coin Collectors Guild (ACCG)¹ began a lobbying campaign aimed at preventing the government of the United States (US) from imposing import restrictions on ancient coins. They were unsuccessful.² The ACCG also made eight requests for documentation relating to import restrictions on ancient coins from Cyprus, China and Italy, in accordance with the Freedom of Information Act (FOIA). 70 documents were released in full and 39 in part. 19 were withheld.
- **15 November 2007:** Unable to obtain the remaining 19 documents through the FOIA, the ACCG brought a case in the District Court of the District of Columbia to compel the US Government to produce the withheld documents.³
- **April – May 2009:** The ACCG attempted to have 23 ancient Chinese and Cypriot coins imported into the US.
- **8 September 2009:** Legal counsel for the ACCG formally claimed the coins and asserted their intention to contest the forfeiture.
- **20 November 2009:** The District Court of the District of Columbia denied the ACCG's remaining FOIA request, holding the 19 documents withheld by the government were protected by the Act's exemptions.⁴
- **11 February 2010:** The ACCG brought a lawsuit against the US Department of State, the US Customs and Border Protection, the Commissioner for Customs and Border Protection, and the Assistant Secretary of State for Educational and Cultural Affairs in the District Court of Maryland. The US Government filed a counter complaint.⁵
- **8 August 2011:** The District Court dismissed the ACCG's claims.⁶
- **22 October 2012:** The Court of Appeals for the Fourth Circuit upheld the 2011 judgement.⁷
- **22 April 2013:** The US Government filed a complaint in the District Court for the District of Maryland intended to secure the forfeiture to the US of the 23 coins.⁸ The Courts granted the government a warrant for the arrest of the defendant property.⁹
- **3 June 2014:** The District Court for the District of Maryland held that the 2012 ruling of the Court of Appeals prevented the ACCG from further challenging the validity of the import

¹ The Ancient Coin Collectors Guild is a US-based organisation which unites coin collectors and aims to push for the continuation and expansion of the ability of numismatists to import and acquire ancient coins. See "About the ACCG" (<http://www.accg.us/about.aspx>).

² *United States v. Ancient Coin Collectors' Guild* 17-1625 (4th Cir. 7 August 2018), 10.

³ *Ancient Coin Collectors Guild v. US Customs and Border Protection, Department of Homeland Security et al.* 801 F. Supp. 2d 383 (D. Maryland 2011), 395.

⁴ *ACCG v. US Customs* (2011) 394.

⁵ *Ibid.*, 395.

⁶ *Ibid.*, 418.

⁷ *Ancient Coin Collectors Guild v. US Customs and Border Protection* 11-2012 (4th Cir. 22 October 2012).

⁸ Verified Complaint for Forfeiture (Maryland, 22 April 2013).

⁹ Warrant for Arrest in Rem (Maryland, 23 April 2013).

- regulations concerning ancient coins, and limited further challenges made by the ACCG to those concerning the forfeiture of the particular coins.¹⁰
- **31 March 2017:** The District Court ruled that of the 23 coins in question, 15 fell within the relevant category of import restriction. All additional claims of the ACCG relating to the forfeiture process were rejected.¹¹
 - **22 March 2018:** The ACCG appealed the decision of the District Court.¹²
 - **7 August 2018:** The Court of Appeals rejected all grounds of the ACCG's appeal, upholding the District Court's decision in support of the forfeiture of the 15 disputed coins.¹³
 - **17 September 2018:** The ACCG petitioned the Court of Appeals for the Fourth Circuit for a rehearing of the case.¹⁴ The request was denied.
 - **12 December 2018:** The ACCG sought a review of the Court of Appeal's decision by the US Supreme Court.¹⁵
 - **19 February 2019:** The US Supreme Court denied the ACCG's request for review.¹⁶

II. Dispute Resolution Process

Judicial claim – Judicial decision

- Under the Convention on Cultural Property Implementation Act (CPIA),¹⁷ the US Government may enter into bilateral agreements with the government of other States in order to establish mutually agreed upon import restrictions concerning the particular State's cultural property. The Cypriot government has been working with the US Government since 1998 to impose import restrictions on Byzantine archaeological and ethnological objects entering into the US.¹⁸ In 2007, a Memorandum of Understanding was issued by the two governments, stating that coins, including those minted during the Hellenistic and Roman eras, should be subject to import restrictions.¹⁹ Similarly, the US State Department and the government of China have been cooperating since 2004 to establish import restrictions on archaeological material from the Palaeolithic to the Qing Dynasty.²⁰ In 2009, the State Department entered into a Memorandum of Understanding with China to impose import

¹⁰ *US v. 3 Knife-Shaped Coins et al.* CCB-13-1183 (D. Maryland, 3 June 2014).

¹¹ *US v. 3 Knife-Shaped Coins et al.* CCB-13-1183 (D. Maryland, 31 Mars 2017).

¹² *US v. ACCG* (2018) 1.

¹³ *Ibid.*, 2.

¹⁴ Claimant-Appellant's Petition for Rehearing and Rehearing En Banc (4th Cir., 17 September 2018).

¹⁵ Petition for Writ of Certiorari (D. Maryland, 12 December 2018).

¹⁶ *Ancient Coin Collectors Guild v. United States*, No 18-767, 19 February 2019,

<https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\18-767.html>.

¹⁷ This Act was passed to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 into US law.

¹⁸ United States Information Agency: Notice of Receipt of Cultural Property Request from the Government of the Republic of Cyprus, Federal Register, vol. 63, No. 177 (14 September 1998).

¹⁹ Memorandum of Understanding between the United States of America and Cyprus, amended July 2007.

²⁰ *ACCG v. US Customs* (2011) 393.

restrictions on Chinese coins minted from the Zhou Dynasty to the Tang Dynasty.²¹ The ACCG were convinced the State Department entered into the Memoranda of Understanding with China and Cyprus in bad faith. Following unsuccessful attempts to lobby the government to allow the importation of ancient coins, or produce information regarding import policy, the ACCG decided to fabricate a situation which would allow them to bring a test case to challenge the legality of the import restrictions.²²

- The ACCG purchased 23 Chinese and Cypriot coins from London dealer Spink, who was complicit in the scheme. He attached a schedule of contents to the coins, which indicated they were minted in Cyprus and China and each had no recorded provenance or “find spots”. The notice had the desired effect, and the coins were confiscated by Customs upon arrival in the US in Baltimore. The ACCG was issued with a Notice of Detention by Customs authorities, enabling their lawyers to file a response, objecting to the seizure of the coins, stating the Guild believed the laws enabling the coins’ seizure to be “arbitrary and capricious”, and indicating that the Guild intended to take the matter to court.²³
- In February 2010, the ACCG made good on its promise, filing a civil action against US Customs and Border Protection, the Commissioner for Customs and Border Protection, the US Department of State and the Assistant Secretary of State for Educational and Cultural Affairs in the District Court of Maryland.²⁴ The ACCG claimed the defendants had acted *ultra vires* in imposing the import restrictions.²⁵ They challenged the detention of the coins, and alleged a breach of the Administrative Procedures Act and the Guild’s First and Fifth Amendment Rights. The Court dismissed the ACCG’s claims, holding that none of the parties had exceeded their authority, and finding no grounds for the Guild’s constitutional claims.²⁶ The decision was appealed, however the Court of Appeals unanimously upheld the previous judgement²⁷ and ruled the ACCG were prohibited from further challenging the legality of import restrictions.²⁸ The Court, however, also informed the ACCG that they would be entitled to a forfeiture procedure if they were to bring a case challenging the government’s claim that the 23 coins in question fell within the scope of the import restrictions.²⁹ In 2013, the US Government filed a complaint seeking forfeiture to the US of coins in the District of Maryland. The government claimed that the importer failed to supply the Customs officers with relevant evidence as to the origin of the coins and that their importation had not been certified by Cyprus and China.³⁰ The Court granted the US Government a warrant to arrest the contested property.³¹ In response, the Guild filed a Claim

²¹ Memorandum of Understanding between the United States of America and China, signed January 2009.

²² *US v. ACCG* (2018) 11.

²³ *Ibid.*, 12-13.

²⁴ *ACCG v. US Customs* (2011) 395.

²⁵ *Ibid.*, 388.

²⁶ *Ibid.*, 418.

²⁷ *ACCG v. US Customs* (2012).

²⁸ *US v. 3 Knife-Shaped Coins et al.* (2014).

²⁹ *US v. ACCG* (2018) 15.

³⁰ Verified Complaint for Forfeiture (Maryland, 22 April 2013).

³¹ Warrant for Arrest in Rem (Maryland, 23 April 2013).

of Interest for the coins.³² In 2017, following a lengthy discovery process, the District Court for the District of Maryland ruled that, for 7 of the Cypriot coins and 8 of the Chinese coins, the government satisfied the burden placed upon it to demonstrate that the coins fell within the scope of the import restriction. However, as there was no evidence provided by either party as to the origin of the remaining Chinese coins, the Court awarded summary judgment to the ACCG in relation to these coins. All other claims of the Guild were rejected.³³ The ACCG appealed the judgement of the District Court, with the judgement of the previous court upheld in full.³⁴

- Unsatisfied with this outcome, the ACCG requested a rehearing of the case by the Court of Appeals for the Fourth Circuit in September 2018. The ACCG stated that the original decision was based solely on the fact that the types of coins in question were found on “designated lists” of items covered by import regulations. They argued that the CPIA permits the taking of archaeological objects “first discovered within” a State with whom the US has signed a bilateral agreement, and attention should have also been given to the question of whether the coins’ lack of provenance impacted the ability of customs to authorise their seizure.³⁵ Following the rejection of this request, and the approval of the forfeiture, the ACCG sought a review of the case by the US Supreme Court, submitting a Petition for a Writ of Certiorari in December 2018.³⁶ The request was based on the same arguments as the petition to the Court of Appeal. The Supreme Court rejected the petition. All avenues of appeal within the US have thus been exhausted by the ACCG.

III. Legal Issues

Illicit excavation – Illicit exportation – Illicit importation – Procedural issue

- The main legal issue raised by the ACCG was the correct interpretation of the evidentiary requirements for importation enshrined in CPIA legislation. According to the ACCG, the government’s interpretation of the CPIA severely restricts the ability of collectors to legally import coins into the US. The Guild argued that given the high prevalence of coins with uncertain find spots and provenance, it would be extremely difficult for an importer to obtain a certificate from a foreign State to satisfy the importation requirements of the US. They contended ancient coin collecting could be destroyed if coins were included in the scope of CPIA restrictions. According to the ACCG, CPIA regulations should be interpreted as restricting the definition of cultural patrimony to items “first discovered within” the borders of a specific State Party. They argued that, as many ancient coins have been circulated internationally over significant periods of time, and many do not have a recorded “find spot”, it is “specious” to assume that a particular category of coin can be definitively

³² Claim of Interest in the Defendants in Rem (Maryland, 31 May 2013).

³³ *US v. 3 Knife-Shaped Coins et al.* (2017) 31.

³⁴ *US v. ACCG* (2018) 55.

³⁵ Claimant-Appellant’s Petition for Rehearing and Rehearing En Banc (4th Cir., 17 September 2018).

³⁶ Petition for Writ of Certiorari (D. Maryland, 12 December 2018).

attributed to one particular State. The ACCG therefore challenged what they perceived as the government's failure to provide evidence to support their assertion that coins should be considered part of a State's cultural patrimony.³⁷ During the 2018 appeal, the Court held that while it is correct to argue that the CPIA can only impose restrictions on archaeological and ethnological material that had been first discovered within the State who sought the restrictions, the Guild has misinterpreted the scope of these restrictions. The Court ruled that, once a category of material is added to the restricted list, the government is no longer required to address the first discovery element of a forfeiture case.³⁸

- The ACCG argued that, in this case, the government failed to establish that the 15 confiscated coins were illegally removed from Cyprus or China.³⁹ This was rejected by the Court of Appeals who argued that the CPIA does not require the government to produce evidence establishing the provenance or export status of an item, and that neither factor indicates illegality, but rather places the burden on the importer to provide relevant documentation to prove to Customs that an item does not fall under an import restriction.⁴⁰
- The ACCG argued that Customs regulations did not provide sufficiently "fair notice" of the nature of goods subject to import restrictions. As this allegation was not combined with an assertion that the designated lists of Chinese and Cypriot items banned from importation were insufficiently "specific and precise", this argument could not be supported, and was rejected on appeal. The Court further argued the Customs regulations satisfied the requirements of constitutional due process, and were not lacking in relevant detail, so as to induce innocent parties to import excluded materials.⁴¹
- The Guild also presented a number of arguments against the way in which the case was conducted. The ACCG opposed the rejection of its expert testimony. On appeal, the Court affirmed that expert testimony regarding general issues (such as the difficulty of pinpointing sites of origin for most Cypriot coins, and previous examples of the successful export of Cypriot coins to other countries without legal complications) could not be included as evidence and had no relevance to the CPIA.⁴² In addition, the Guild argued that it was constrained from pursuing certain avenues of discovery, which would have allowed them to attain further information regarding the circulation of Chinese and Cypriot coins. They described this as an abuse of discretion. These claims were rejected by the Court of Appeal. The ACCG also opposed the striking of a number of defences they attempted to present on a number of occasions to contest the forfeiture, however the Court of Appeals argued that these defences lacked pertinence to the case, and concluded that the District Court was right to strike them out.⁴³

³⁷ *US v. ACCG* (2018) 9-10.

³⁸ *Ibid.*, 28.

³⁹ *Ibid.*, 27.

⁴⁰ *US v. ACCG* (2018) 34.

⁴¹ *Ibid.*, 43, 45, 48.

⁴² *Ibid.*, 39, 41-42.

⁴³ *Ibid.*, 49, 51, 53.

IV. Adopted Solution

Request denied

- The Court of Appeals rejected all aspects of the Guild's claims and upheld the District Court's decision that the forfeiture was legal, and ancient coins should be subject to import restrictions. Following the Supreme Court's refusal to review the Court of Appeal's decision, all avenues of appeal within the US have been exhausted by the ACCG.
- The ACCG were permitted to keep the 7 Chinese coins which the Court found to be exempt from import restrictions.

V. Comment

- Generally speaking, the import restrictions are adopted by States in order to fight against the illicit trafficking in cultural objects. In particular, the restrictions on the *import* of cultural objects into market States complement the *export* restrictions adopted by source States. Such restrictions can thus be considered as a form of cooperation between source and market States. While collectors and buyers may consider such restrictions to be unnecessarily narrow, and a threat to their ability to expand their collection, the rationale for such restrictions is sound. In effect, many experts point out that trafficking of cultural objects is widespread. Therefore, despite any reservations they may have, import restrictions do serve the interests of collectors and buyers.⁴⁴
- In the case under examination, the issue arose as a result of the effects of the CPIA. This Act is implemented through the making of bilateral agreements, with countries drafting individualised memoranda of understanding with the US, as to the nature of goods that should be subject to protection.⁴⁵ This mechanism empowers States to choose how best to control the movement of elements of their patrimony. Although Mas-Colell argues that allowing a State to define the parameters of its "protectable" cultural patrimony has the potential to threaten "basic freedoms",⁴⁶ and Blake points out that some believe import controls to be a threat to the free market,⁴⁷ there is a commonly accepted principle of solidarity in the protection of cultural property as proved by the texts of a number of treaties.⁴⁸ As said, the US aims at fostering this international solidarity through the CPIA.
- The ACCG argues that coins should not be considered a part of the cultural patrimony of countries given the difficulties in ascertaining their "find spots" and provenance. While the court dismissed this argument based on the fact that coins were among those on the "designated list" of items excluded from importation, archaeological evidence also supports the conclusion that separating coins from the generally accepted definition of cultural

⁴⁴ See for instance Vigneron, "Protecting Cultural Objects", 117-118.

⁴⁵ *Ibid.*, 132.

⁴⁶ Mas-Colell, "Should Cultural Goods Be Treated Differently?", 90.

⁴⁷ Blake, *International Cultural Heritage Law*, 31.

⁴⁸ Vigneron, "Protecting Cultural Objects", 126.

heritage is an artificial distinction. UNESCO classes coins as cultural property.⁴⁹ Furthermore, in a rebuttal to the arguments of the ACCG, Elkins maintains it is wrong to argue all types of ancient coins were widely circulated, as certain coins were circulated on a more local basis. He further argues that archaeological evidence demonstrates that Cypriot coins of the type detained in this case were primarily circulated within Cyprus.⁵⁰ Therefore, while the ACCG's case was predicated on a legitimate concern for the future of numismatics, their motives for instigating and tirelessly pursuing a test case failed to account for sound archaeological research and internationally accepted UNESCO principles.

VI. Sources

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⁴⁹ See Article 2 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.

⁵⁰ Elkins, "Ancient Coins, Find Spots, and Import Restrictions", 238.

c. Legislation

- Memorandum of Understanding between the United States of America and China, January 2009.
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- Convention on Cultural Property Implementation Act 1983.
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e. Media

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