

## **COMMENT**

# **People’s Republic of China Provisional Regulations on Art Import and Export Administration**

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China’s increased interaction with the global community has led to significant changes in art and artistic expression. The China art market is expanding by leaps and bounds, and artists are subject to an increasingly broad range of influences. Not least of these are the discourses of artistic criticism, with targets that range from international financial institutions to domestic policies.<sup>1</sup> Art in China has for millennia been used as a vehicle for political criticism. Among early examples are the bamboo and landscape paintings of the Yuan dynasty that conveyed a sense of whimsical alienation from the affairs of formal society—implicitly a critique of Mongol rule.<sup>2</sup> During the revolutionary period prior to 1949, the Communist insurgency encouraged painters like Shi Lu to enliven popular resistance to Japanese imperialism and against China’s Goumindang rulers.<sup>3</sup>

Mindful of this history, the Chinese Communist Party and government have long adopted policies and attitudes that attempt to subject art to the imperative of the Party and State. Mao Zedong’s famous lectures at the Yan’an Forum on Literature and Art in 1942 have stood for decades as the orthodox ideal that art should serve the interests of the Party and State. In the period of post-Mao reforms beginning in 1978, the regime has gradually become less interested in ensuring that art serves the Party and State, and more interested in simple censorship. During the spring of 1989, when student democracy demonstrations held the world in thrall, a major art exhibition at the National Art Museum expressed the idea of “no turning back” to the days of state-controlled art.<sup>4</sup> The regime quickly determined that the art being exhibited was too critical of Party and State orthodoxy and shut the exhibit down. The creation of the “Goddess of Democracy” by students at the Beijing Art Academy in May 1989 further convinced the Party and State of the dangers of unrestricted artistic expression.

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This attitude toward censorship has accelerated in the past decade, as China faces continued criticism at home and abroad over economic inequalities, corruption, and government abuse. In response to these changing conditions, the Ministry of Culture and the Customs Authority of China jointly issued Provisional Regulations on Art Import and Export Administration (1 August 2009) (hereinafter Art I/E Regulations); the stated purpose of the regulations is to “strengthen the administration of art import and export management activities and exhibition activities of commercial art products, promote cultural exchange between China and abroad, enrich the cultural activities of the masses of people.”<sup>5</sup> The regulations extend control to imports and exports of paintings of all kinds, calligraphy, sculpture, photography, textiles, as well as to licensed reproductions of original art limited to 200 copies or less, but do not cover antiques and industrially produced art handicrafts. The regulations also cover art imports from Hong Kong, Macao, and Taiwan (Art I/E Regulations, Art. 16).

Under the new measures, control over art imports and exports is exercised first by requiring that all import and export units be licensed by the Ministry of Commerce (Art I/E Regulations, Art. 3).<sup>6</sup> Art import and export units must comply with relevant laws and regulations; submit to the direction, supervision, and inspection by China’s culture administration departments; and ensure that imported and exported art have lawful origins (*hefa laiyuan*) (Art I/E Regulations, Art. 4). Organizations seeking approval for art imports and exports must apply to the relevant provincial level culture administration departments (including departments in the nationality autonomous regions and the centrally administered cities) (Art I/E Regulations, Art. 7.1). Decisions are to be issued within 15 days of receipt by the relevant department and reasons for refusal given (Art I/E Regulations, Art. 7.2). These organizational controls echo provisions in China domestic regulatory system for culture, media, and communications, which sharply restrict content to ensure political and ideological orthodoxy.<sup>7</sup>

Import and export of works for research and teaching reference, museum collection, and public interest exhibitions that are not subject to formal administration must comply with the same provisions through an entrustment arrangement with a local art import and export organization (Art I/E Regulations, Art. 10.1). Individuals transporting or mailing art in and out of China must also secure customs approvals (Art I/E Regulations, Art. 10.2). Applications for exhibitions by foreign commercial art organizations must seek approval from the provincial level culture department 45 days in advance (if the exhibition is to run for longer than 120 days, approval must be obtained from the Ministry of Culture) (Art I/E Regulations, Art. 8). Violation of these procedures can result in fines of up to RMB 10,000 as well as additional administrative penalties under China’s Customs Law and “Provisional Measures on Customs Administration Punishments.” Criminal penalties are also possible.

The Art I/E Regulations’ prohibitions against various art imports and exports reflect political and ideological priorities of the ruling regime. Thus, the prohi-

bition against items that violate basic provisions of the People's Republic of China (PRC) constitution (Art I/E Regulations, Art 5.1) permits control of artwork challenging the leadership of the Chinese Communist Party.<sup>8</sup> The prohibition against works that harm national unity, sovereignty, and territorial integrity (Art I/E Regulations, Art. 5.2) permit control over items that express dissident views on contested regions like Tibet and Taiwan.<sup>9</sup> The prohibition against works that disclose state secrets, threaten national security, or harm the honor (*rongyu*) or interests of the state (Art I/E Regulations, Art. 5.3) invites controls over art that challenge the orthodoxy of the Party and State.<sup>10</sup> Similar restrictions on works that undermine the unity of nationalities (Art I/E Regulations, Art. 5.4) permit controls against art that challenges official policies on nationality minorities.<sup>11</sup> Prohibitions against import and export of works that promote heretical sects and mysticism (Art I/E Regulations, Art. 5.5) are directed against religious art involving *Falun Gong* or other dissident religious groups.<sup>12</sup> The prohibition against art that may contribute to social unrest or disorder (Art I/E Regulations, Art. 5.6) allows controls over art that examine delicate issues like the Tiananmen demonstrations of 1989 and the dissident manifesto Charter 08, or issues of contemporary labor unrest.<sup>13</sup> Prohibitions against art that willfully misrepresents (*cuangai*) or seriously distorts (*waiqu*) history (Art I/E Regulations, Art. 5.9), works to entrench the orthodox historical interpretations of the Party and State (despite the fact that such official histories often run counter to the historical record).<sup>14</sup>

Prohibitions against works that violate public morals or harm the distribution of excellent works of national minorities (Art I/E Regulations, Art. 5.10) allow the Party and State to be the final arbiter of morality and acceptable minority culture, while the catchall prohibition against "other items prohibited by law, administrative laws and regulations, and other state regulation" (Art I/E Regulations, Art. 5.11) opens the door to prohibition against virtually any art deemed objectionable by any state agency.<sup>15</sup> Some of the prohibitions, such as those banning art imports and exports that support social ills such as pornography, fraud, violence, and terrorism (Art I/E Regulations, Art. 5.7) or that infringe on the lawful rights of others (Art I/E Regulations, Art. 5.8), are broadly consistent with provisions in other countries.<sup>16</sup> However, as with all other provisions in the regulations, questions arise about the process for determining how artistic expression will be deemed to violate these provisions.

Official dissemination of the new regulations focuses on the need for registration, the approval procedures, and timetables, and the scope of artwork subject to the regulations.<sup>17</sup> Interestingly, the same censorship priorities that inform much of the content of the regulations influenced their dissemination in China—official accounts omitted reference to the specific types of art that would be suppressed under Article 5 of the regulations.<sup>18</sup> Instead, assuming perhaps that readers would already be familiar with the sorts of limitations discussed above, the official accounts focus more intently on the procedures and licensing requirements.

As highlighted in the official accounts, the new art control regulations are a response to many of the international and domestic circumstances that induced recent revisions to China's laws on protection of cultural relics.<sup>19</sup> The antiquities departments empowered under the cultural relics law operate under the jurisdiction of the same Ministry of Culture that oversees art imports and exports. The cultural relics law operates in a context of legacy protection that parallels efforts to protect contemporary art. China's rich legacy of art and artifacts has attracted collectors of various stripes over the centuries. In the contemporary era, China's rise to prominence has been accompanied by an ever-intensifying demand for art and artifacts—ranging from original oil paintings to Tang dynasty tricolor horses. In the early years of the Deng era, China's Antiquities Bureau (*Wenwu Ju*) struggled to keep up—confining its attention mainly to confirming the antiquity of old paintings, porcelain, and furniture and the issue of approvals for export licenses for those antiques allowed out of China (generally post-Qianlong). In recent years, the growth of China's economy and the revitalized nationalism among wealthy Chinese living abroad have resulted in a movement to acquire artifacts on the international market and repatriate them to China. The case of the Yuan Ming Yuan zodiac animals, which had been looted from Beijing at the turn of the twentieth century by invading European armies, exemplifies this trend and its ripple effects in society and politics.<sup>20</sup>

Like the art market, the antiquities trade in China remains under relatively tight government control. However, while the regulation of antiquities exports reflects primarily the imperative to conserve and protect China's cultural heritage, regulation of art exports is also about censorship and control of the expression of ideas by Chinese artists.<sup>21</sup> Of the 11 categories of controlled art, at least 8 reflect current policy imperatives of the Party and State around issues of Party control, minority policy, religious freedoms, and territorial issues related to Taiwan and Tibet. And one of the prohibitions relates to art that adopts unorthodox interpretations of history itself, with which the Party and State disagree. Unlike the cultural relics preservation regime, the art import and export control regime addresses much more than protecting China's artistic heritage. Rather, the new regulations reflect ongoing efforts to entrench current ideological and political priorities of the regime. Unfortunately, the role of political and ideological factors in approvals on import and export of art will likely continue.

## ENDNOTES

1. See, e.g., "China Cracks Down on Outspoken Artist," *CBC News* (12 July 2009), (<http://www.cbc.ca/arts/artdesign/story/2009/07/12/aiweiwei-criticism-china.html>) accessed 1 November 2010; Edward Wong, "Chinese Defend Detention of Artist on Grounds of 'Economic Crimes,'" *New York Times* (7 April 2011), ([http://www.nytimes.com/2011/04/08/world/asia/08china.html?\\_r=1&ref=edwardwong](http://www.nytimes.com/2011/04/08/world/asia/08china.html?_r=1&ref=edwardwong)) accessed 20 April 2011.

2. See, e.g., Hearn, "Chinese Painting"; Cahill, *Hills Beyond the River*; Bush, *The Chinese Literati*, chapter 4.

3. Smith and Wen, *China: A History in Art*, pp. 281–88; Wang, *Zai zai tan suo* [Inquiring Once Again], pp. 27–52; also see *Shi Lu zuopin xuanji* [Compilation of Works by Shi Lu], pp. 75–80 (plates).

4. Hung, “Exhibiting Experimental Art in China.”

5. “Meishu pin jinchukou guanli zanxing guiding” [Provisional Regulations on Art Import and Export Administration] (17 June 2009), ([http://www.ccnt.gov.cn/sjzz/whscs/yssc/200906/t20090625\\_71410.html](http://www.ccnt.gov.cn/sjzz/whscs/yssc/200906/t20090625_71410.html)) accessed 8 March 2010.

6. This has the effect of placing art among the controlled categories of exports for which Ministry of Commerce license approval is required for exporters. See Foreign Trade Law of the PRC, Article 16.1, permitting the state to restrict international trade in goods where it is “necessary . . . to safeguard national security, public interests, or public morals.” “Foreign Trade Law of the PRC,” in *China Laws for Foreign Business (loose leaf)*, para. 19–586(16).

7. See, e.g., “Chang Ping on the State of Media in China,” *Reporters Without Borders: For Press Freedom*, (<http://en.rsf.org/chine-chang-ping-on-the-state-of-media-02-11-2010,38720.html>) accessed 2 November 2010; John Taylor, “China Tightens Media Regulation,” *ABC News* (14 April 2006), (<http://www.abc.net.au/news/newsitems/200604/s1616275.htm>) accessed 2 November 2010.

8. Under the PRC Constitution, opposition to the socialist system and the rule of the Chinese Communist Party is prohibited. See PRC Constitution, Preamble and Art. 1. Also see “Wu Bangguo weiyuanzhang zai shi jie quanguo rend a changweihui di liu ci huiyi bimuhui shang de jianghua” [Chairman Wu Bangguo’s speech . . .].

9. These three themes of national unity, sovereignty, and territorial integrity express the regime’s opposition to discussion about greater autonomy for Taiwan and Tibet. See, e.g., Potter, “Governance of the Periphery.”

10. China’s state secrets regime has been deployed to restrict the flow of a wide range of information deemed sensitive by the regime. See Congressional Executive Committee on China, “Silencing Critics by Exploiting National Security and State Secrets Laws.”

11. For orthodox government views on minority nationality policy, see State Council Information Office, “White Paper on Ethnic Policy.”

12. See “Zhonghua renmin gongheguo zongjiao shiwu tiaoli” [Regulations of the PRC on Religious Affairs] (30 November 2004), ([http://www.gov.cn/gongbao/content/2005/content\\_63293.htm](http://www.gov.cn/gongbao/content/2005/content_63293.htm)) accessed 5 January 2010; State Council Legal System Office, “Quanguo renmin daibiao dahui changwu weiyuanhui . . .” [Decision of the NPC Standing Committee on Outlawing Heretical Organizations].

13. On Tiananmen, see Nathan, “The Tiananmen Papers”; on Charter 08, see, e.g., Link, “China’s Charter 08”; on labor conditions, see Congressional Executive Committee on China, *Annual Report 2010*, pp. 71–85.

14. For example contrast the Party’s orthodox interpretation of the Maoist period with MacFarquhar, *Origins of the Cultural Revolution*. Other examples include official interpretations of Tiananmen (compare Oksenberg et al., *Beijing Spring 1989—Confrontation and Conflict* with Ziyang, *Prisoner of the State*) and the history of China’s relations with Tibet, for example, compare Xizang Zizhiqu Dangshi Ziliao Zhengqi Weiyuanhui [Tibet Autonomous Region Party History Materials Collection Committee] and Xizang Junqu Dangshi Ziliao Zhengqi Lingdao Xiaozu [Tibet Military Region Party History Materials Collection Leading Small Group], *Heping jiefang Xizang* [Peaceful Liberation of Tibet] and Xizang Zizhiqu Dangshi Ziliao Zhengqi Weiyuanhui [Tibet Autonomous Region Party History Materials Collection Committee] and Xizang Junqu Dangshi Ziliao Zhengqi Lingdao Xiaozu [Tibet Military Region Party History Materials Collection Leading Small Group], *Pingxi Xizang panluan* [Pacification of Armed Rebellion in Tibet] with Shakya, *The Dragon in the Land of Snows*.

15. While the judicial review provisions of the Administrative Litigation Law of the PRC have limited potential to restrain individual administrative decisions on particular works of art, judicial review does not extend to the content of regulations. See Potter, “The Administrative Litigation Law of the PRC.”

16. For example, Canada prohibits the importation of child pornography and hate propaganda. See Canada Border Services Agency, “Restrictions, Prohibited Goods” (<http://www.cbsa-asfc.gc.ca/publications/pub/bsf5087-eng.html#s13>), accessed 3 November 2010.

17. “Meishupin jinchukou guanli zanxing guiding 8 yue 1 ri qi zhengshi shish” [Provisional Regulations on Administration of Art Imports and Exports . . . Formally Go Into Effect August 1], *Zhongguo pufa wang* [China Legal Publicity] (1 August 2009), <[http://www.legalinfo.gov.cn/index/content/2009-08/01/content\\_1131771.htm](http://www.legalinfo.gov.cn/index/content/2009-08/01/content_1131771.htm)> accessed 8 March 2010; “Zuijin shengxiao . . .” [The most recent provisional . . .].

18. “Meishupin jinchukou guanli zanxing guiding 8 yue 1 ri qi zhengshi shish” [Provisional Regulations on Administration of Art Imports and Exports . . . Formally Go Into Effect August 1], *Zhongguo jingji xinxi wang* [China Economic Information Web] (4 August 2009), accessed 8 March 2010; “Zuijin shengxiao . . .” [The Investigation Concerns . . .].

19. See, e.g., “Zuijin shengxiao . . .” [The Investigation Concerns . . .]. Also see “Zhonghua renmin gongheguo wenwu baohu fa” [Law of the PRC on Safeguarding of Cultural Relics].

20. BkCreative, “Search for the 12 Lost Chinese Zodiac Antiquities of China.”

21. See, e.g., Belting, *Global Art and the Museum*; “China Tightens Up, Censors Artworks for Export,” *Shanghai Eye*, (7 November 2009) <[www.shanghaieye.net/english/2009/11/china-tightens-up-censors-artworks-for-export](http://www.shanghaieye.net/english/2009/11/china-tightens-up-censors-artworks-for-export)> accessed 8 March 2010.

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