



6-24-2021

The Art of Economic War: Cultural Property Import Tariffs as Foreign Policy

Catherine Braun

Follow this and additional works at: <https://scholarship.law.nd.edu/ndjicl>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Braun, Catherine (2021) "The Art of Economic War: Cultural Property Import Tariffs as Foreign Policy," *Notre Dame Journal of International & Comparative Law*. Vol. 11 : Iss. 2 , Article 8.
Available at: <https://scholarship.law.nd.edu/ndjicl/vol11/iss2/8>

This Note is brought to you for free and open access by the Notre Dame Journal of International & Comparative Law at NDLScholarship. It has been accepted for inclusion in Notre Dame Journal of International & Comparative Law by an authorized editor of NDLScholarship. For more information, please contact lawdr@nd.edu.

The Art of Economic War: Cultural Property Import Tariffs as Foreign Policy

Cover Page Footnote

Juris Doctor, University of Notre Dame Law School, 2021; B.S. in Media, Culture and Communication, New York University, 2016.

THE ART OF ECONOMIC WAR: CULTURAL PROPERTY IMPORT TARIFFS AS FOREIGN POLICY

CATHERINE BRAUN*

I. INTRODUCTION	294
II. OVERVIEW OF U.S. TARIFFS.....	298
A. <i>BRIEF HISTORY OF U.S. TARIFFS</i>	298
B. <i>THE POLITICS AND ECONOMICS OF THE U.S.-CHINA TRADE WAR</i>	299
III. THE MODERN INTERNATIONAL MARKET AND THE ROLE OF ART	302
A. <i>ART AS CULTURAL PROPERTY</i>	302
B. <i>ART AS POWER</i>	306
C. <i>ART AS AN ECONOMIC DRIVING FORCE</i>	308
IV. THE IMPACT OF THE TRADE WAR ART TARIFFS	310
A. <i>PRIVATE PARTIES: AUCTION HOUSES AND INDIVIDUAL COLLECTORS</i>	310
1. <i>Auction Houses</i>	310
2. <i>Art Collectors</i>	312
B. <i>PUBLIC PARTIES: ART FAIRS AND MUSEUMS</i>	314
1. <i>Art Fairs</i>	314
2. <i>Museums</i>	315
V. CONCLUSION	316

I. INTRODUCTION

In 2011, Qi Baishi and Zhang Daqian surpassed Pablo Picasso and Andy Warhol as the world's top auction price earners.¹ Zhang and Qi were not only the most popular artists in China, but also the best-selling artists in the world that year, earning more than \$500 million and \$445 million in auction revenue, respectively.² In 2017, Qi's "Twelve Landscape Screens" from 1925 sold for \$141 million to a Chinese bidder.³ Qi's sale by Chinese art house Poly Auction House solidified his reign as one of the decade's most profitable painters, along with Pablo Picasso and Andy Warhol.⁴ In 2017, there was a 21% increase in

* Juris Doctor, University of Notre Dame Law School, 2021; B.S. in Media, Culture and Communication, New York University, 2016.

1 Katya Kazakina, *Chinese Artist Ousts Picasso as Top Auction Earner*, THE BOSTON GLOBE (Jan. 13, 2012), <https://www.bostonglobe.com/arts/2012/01/13/chinese-artist-ousts-picasso-top-auction-earner/VpQGabeaORIUSdADDR7bcN/story.html>.

2 *Id.*; Liz Hammer, *Zhang Daqian: A Guide to China's Most Popular Artist*, CHRISTIE'S (Oct. 21, 2019), <https://www.christies.com/features/10-things-to-know-about-Zhang-Daqian-9229-3.aspx>.

3 Ben Kwok, *China's Qi Baishi Now Among World's 'Most Profitable' Painters*, ASIA TIMES (Dec. 19, 2017), <https://www.asiatimes.com/2017/12/article/chinas-qi-baishi-now-among-worlds-profitable-painters/>.

4 Charmmy Zhang, *Qi Baishi Paintings Fetch Record US \$141 Million at Auction*, SOUTH CHINA MORNING POST (Dec. 18, 2017, 4:23 PM), <https://www.scmp.com/news/china/society/article/2124773/qi-baishi-paintings-fetch-record-us141-million-auction>.

Chinese and Asian art sales.⁵ However, in 2018, the Chinese and Asian art market sales declined by 17% and continued to decline in 2019.⁶

In 2019, the three largest art markets were the United States (U.S.) (44%), the United Kingdom (U.K.) (21%) and China (19%). Sales in these three countries accounted for 84% of the global market's total value in 2018, and all three countries are embroiled in ongoing economic turmoil, including Brexit, the U.S.-China Trade War, and the Hong Kong Protests.⁷ The stable ease of free market cross-border art transactions and the American precedent of art imported and exported duty free have been two of the main reasons the U.S. has dominated the global art market since the 1960s.⁸ "The U.S. is a global entrepôt market and trading center that couples strong domestic alongside foreign buying, with the latter facilitated by one of the most liberal trading regimes in place for the circulation of artworks, comprising low tariffs and few restrictions."⁹ However, this economic stability was threatened in 2018 when the U.S. government imposed tariff restrictions on Chinese imports, including art and antiquities created in or imported from China.¹⁰

On July 10, 2018, President Trump imposed a 10% tariff on \$200 billion worth of Chinese imports ranging from chemicals, textiles, petroleum, robotics, fish, handbags, airplane parts, and—on the last page of the 205 page report—art and antiquities.¹¹ U.S. Trade Representative Robert Lighthizer claimed the tariff was imposed as a response to unfair trade practices, including intellectual property and technology theft, and that the tariff targeted products that "benefit from China's industrial policy and forced technology transfer practices."¹² However, the high import tariff included Chinese paintings, drawings, pastels, prints, lithographs, original sculptures, and "antiques of an age exceeding one hundred years."¹³ This meant that all artworks that originated in China, regardless of where they were imported from, would be subject to the tariff.¹⁴ Because the U.S. Customs and Border Protection classifies tariffs based on the country of origin, the tariff applies based on an artwork's geographic origin rather than the artist's nationality, so pieces created by a Chinese artist in another country are exempted. For example, renowned Chinese artist Ai Weiwei lives in Berlin and produces artwork out of Germany so his work is exempted from the

5 CLARE MCANDREW, *THE ART MARKET 2019: AN ART BASEL & UBS REPORT 37* (2019).

6 Elena Martinique, *The Art and Finance Industry - Where Are We Now? A Deloitte Report Investigates*, WIDEWALLS (Oct. 16, 2019), <https://www.widewalls.ch/deloitte-art-finance-report-2019/>.

7 MCANDREW, *supra* note 5, at 16.

8 *Id.* at 38.

9 *Id.* at 392-393.

10 *Id.* at 38.

11 Ana Swanson & Jim Tankersley, *U.S. Threatens Tariffs on \$200 Billion of Chinese Goods, From Tilapia to Handbags*, N.Y. TIMES (July 10, 2018), <https://www.nytimes.com/2018/07/10/us/politics/trump-china-trade-war.html>.

12 OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, STATEMENT BY U.S. TRADE REPRESENTATIVE ROBERT LIGHTHIZER ON SECTION 301 ACTION (July 10, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/statement-us-trade-representative>.

13 OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, REQUEST FOR COMMENTS CONCERNING PROPOSED MODIFICATION OF ACTION PURSUANT TO SECTION 301: CHINA'S ACTS, POLICIES, AND PRACTICES RELATED TO TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY, AND INNOVATION 205 (2018). https://ustr.gov/sites/default/files/301/2018-0026%20China%20FRN%207-10-2018_0.pdf.

14 Scott Reyburn, *Will Art Become a Casualty of the U.S.-China Trade War?*, N.Y. TIMES (Aug. 24, 2018), <https://www.nytimes.com/2018/08/24/arts/will-art-become-a-casualty-of-us-china-trade-war.html>.

tariff.¹⁵ Yet, an American artist who made an art piece in China would not be exempted and would be prevented from exporting her artwork to the U.S.

The tariff effected all art imported from China, in addition to art created in China and exported from any national port in the world.¹⁶ For clarification, these tariffs applied to any artist—American, Chinese, or any other nationality—producing artwork in and exporting from China, and any art that was created in China. China retaliated with its own tariffs on American products, which prompted the U.S. to raise its tariff from 10% to 15% on September 1, 2019.¹⁷ Thus, an American art collector purchasing an artwork created by a Chinese artist from a European owner in Hong Kong would have to pay 15% more than the auction price. Art collectors in New York buying an artwork that originated in China would have to pay the 9% state sales tax in addition to the 15% federal tariff.¹⁸ Organizations like the Art Dealers Association of America, the British Antique Dealers' Association, the Association of Art Museum Directors, and international auction houses Sotheby's and Christie's filed complaints explaining that "the art market is completely distinct from the market for industrial and manufactured goods" such that "imposing duties on Chinese-origin antique art will not result in increased demand for American-made antique art," while noting that almost all qualifying Chinese artworks are imported from countries other than China, so there would be no detrimental effect on its economy.¹⁹ Additionally, of the total \$7.1 billion Chinese art and antiquities sales in 2017, \$5.1 billion worth of sales occurred within mainland China.²⁰ This premium placed only on American buyers would inevitably move international trade from New York to London, Paris, and Hong Kong.²¹ The tariff would effectively remove all American competitive pricing capability and drive U.S. competitors out of China, thereby granting Chinese dealers and auctioneers full monopoly over those art sales. Moreover, regardless of where the cultural property was found, all 100-year-old or more Chinese-originating artworks were effectively cost-prohibited from exhibition in any U.S. museum, institution, gallery, or auction if they were not already imported before the tariff was in effect, which reduced critical cultural exchange at the heart of the international art world.²²

15 *Id.*

16 MCANDREW, *supra* note 5, at 38.

17 Eileen Kinsella, *A Newly Increased Trump Tariff on Chinese Goods Will Rattle the Art Market in America, Trade Experts Say*, ARTNET NEWS (Aug. 29, 2019), <https://news.artnet.com/art-world/china-tariffs-trump-art-market-1637782> (recounting the various industry experts' concerns, including that "it is hard to see how this [tariff] will have a material impact on Chinese trade policy" and that "the imposition of tariffs on art from China will have a detrimental impact on many American art dealers. With the tariffs in place, it will be virtually impossible for these businesses to price artwork competitively within the global art market"... "the move would be warmly welcomed by the Chinese government and the art auctioneers and dealers in China because it will likely drive many of China's American competitors out of business and further redirect sales to Chinese dealers serving a mostly Chinese clientele").

18 Reyburn, *supra* note 14.

19 *Id.*; see also Sarah Cascone, *The US and China Have Reached a Trade Deal—But What Does That Mean for Chinese Art and Antiquities?*, ARTNET NEWS (Dec. 17, 2019), <https://news.artnet.com/art-world/what-does-us-china-trade-deal-mean-for-art-tariffs-1732263>.

20 Eileen Kinsella, *The Key Findings of Art Basel's 2017 Global Art Market Report*, ARTNET NEWS (Mar. 22, 2017), <https://news.artnet.com/market/key-findings-art-basel-ubs-report-899525>.

21 Reyburn, *supra* note 14.

22 *Id.*

The punitive tariff disproportionately harmed American institutions and investors with a counterproductive effect on Chinese trade policy, and it clearly misplaced cultural heritage such as ancient art and antiquities inside the scope of the tariff's purpose of protecting domestic industrial manufacturing and technological intellectual property.²³ The American public was punished rather than the Chinese government, and China gained an even stronger foothold in the global art market because international demand and sales of these works were largely redirected to China, which continued to import and export art duty-free.²⁴

Many major international auction houses and dealers, such as Sotheby's and Christie's, vehemently opposed this tariff. Sotheby's sold roughly \$77 million in its three Chinese departments over 10 sales in 2017 and Christie's sold almost \$40 million in Chinese art and objects during New York's Asia Week in early 2018.²⁵ Countless ancillary operations and employers, such as transportation and shipping logistics companies, that depend on the art market were indirectly harmed as well.²⁶ Due to fierce protests and industry outrage from the U.S. art market, especially after President Trump announced a proposed increase from 15% to 25% import tariff on Chinese goods, including antiques and artifacts, government officials agreed to reduce the art import tariff to 7.5% but still refused to eliminate it.²⁷

Although this tariff affected only a small share (5%) of the total value of art and antiquities imported into the U.S. (compared to an estimated 50% share of art and antiquities imports from France and the UK), there was a direct correlation between market confidence and investor fears over international art transactions on U.S. soil.²⁸ The U.S. Trade Commission reported Chinese antiquities imports totaled \$107.2 million in 2017, "while paintings, drawings, pastels, and other original works of art total[led] \$114.5 million."²⁹ Global sales from auction houses Christie's, Phillips, and Sotheby's fell 20.3% in the first half of 2019 and the risk perception of the overall art market increased by 10%.³⁰ The collateral damage of this retaliatory, excessive tariff on Chinese art and antiquities, especially the proposed 25% tariff, would only benefit the Chinese government's efforts to redirect Chinese art back to China, thereby strengthening Chinese auction houses linked to its government and reorienting the global art industry.³¹

This paper analyzes the imposition of U.S. import tariffs on art and cultural property as foreign policy within the context of modern economic warfare. Part II provides a brief political and historical overview of U.S. tariffs, and focuses on the Chinese art import tariffs imposed during the ongoing U.S.-China Trade War. Part III explores the modern international art market and the role of art as

23 Anna L. Sussman, *What the U.S.-China Trade War Means for the Art Market*, ART MARKET (Jul. 23, 2018), <https://www.artsy.net/article/artsy-editorial-us-china-trade-war-art-market>.

24 *Id.*

25 *Id.*

26 MCANDREW, *supra* note 5, at 38; *see also* Cascone, *supra* note 19.

27 Margaret Carrigan, *Chinese Art and Antiquities Spared from Trump's Tariffs*, THE ART NEWSPAPER (Sept. 18, 2018, 21:15 BST), <https://www.theartnewspaper.com/news/chinese-art-and-antiquities-spared-from-trump-s-tariffs>.

28 MCANDREW, *supra* note 5, at 38; *see also* Cascone, *supra* note 19 (explaining that US collectors and dealers rarely import art from mainland China because the mainland Chinese government prohibits the export of all Chinese antiques).

29 Carrigan, *supra* note 27.

30 DELOITTE, ART & FINANCE REPORT 2019 (6th ed. 2019).

31 Carrigan, *supra* note 27.

cultural property, as cultural “soft power,” and as an economic driving force. Part IV delves into the various private and public parties that are impacted by these import tariffs, including auction houses, art collectors, art fairs, and museums. Part V concludes with a reflection on how these cultural property tariffs are economically counterproductive trade policies, and therefore are more representative of the political ideologies underlying foreign policy, such as the economic nationalism of the Trump Administration.

II. OVERVIEW OF U.S. TARIFFS

A. BRIEF HISTORY OF U.S. TARIFFS

What is a tariff? Tariffs, or customs duties, are used by almost all countries as a tax on products purchased from abroad, “usually designed to collect revenue or to give a price advantage to a domestic product over an imported one.”³² Tariffs have played an integral role in shaping American economic and foreign policy. The notorious 1773 Boston Tea Party and the Boston Massacre resulted from the punitive Townshend Acts in the mid-1760s that Britain imposed on American colonists to import taxes on a range of necessary goods (including tea, glass, paper and lead).³³ Although the U.S. was staunchly opposed to tariffs (no taxation without representation), the War of 1812 showed that the U.S. needed to tax imported goods to become self-sufficient and compete against Britain. However, this realization resulted in the Embargo of 1807, which was meant to catalyze national manufacturing production and successfully established the textile industry, but at the expense of placing extremely harsh tariffs on most imported goods, even cheap copper.³⁴ In 1828, President Adams imposed a tax rate of 38% on almost all imported goods in an effort to promote an industrial revolution but received intense backlash.³⁵ Adams’ successor, President Jackson, issued a more modest tariff in 1832 but when southern states refused to comply, the “nullification crisis” ensued and Jackson issued a “force bill” that allowed him to enforce compliance by using military force, to which South Carolina responded with the threat to leave the Union entirely.³⁶ The 1833 Compromise Tariff, a tariff that would decrease each year for ten years, was enacted by Congress but failed to follow through on its promises shortly after passage.³⁷

Henry Clay’s 1844 winning presidential slogan was “Champion of a Protective Tariff,” which represented the south’s weariness with northern economic protectionism.³⁸ By 1846, President Polk passed the Walker Tariff, which was a low tariff that supported the southern agricultural industry and

32 *Let’s Talk Tariffs*, WORLD TRADE ORGANIZATION (FEB. 2, 2019), https://www.wto.org/english/res_e/webcas_e/ltt_e/ltt2_e.htm.

33 Ryan P. Smith, *A History of America’s Ever-Shifting Stance on Tariffs*, SMITHSONIAN MAGAZINE (Apr. 12, 2018), <https://www.smithsonianmag.com/smithsonian-institution/history-american-shifting-position-tariffs-180968775/>.

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.*

remained low until the Civil War.³⁹ The Morrill Tariff was passed in 1861 by President Buchanan, which promoted northern industrial companies and provided necessary funding for the imminent Civil War.⁴⁰ This trade protectionist policy remained until the Great Depression when President Hoover enacted the Smoot-Hawley Act in 1930.⁴¹ This tariff was meant to mitigate the fallout from the 1929 stock market crash but instead significantly worsened international and national economic relations.⁴²

It wasn't until WWII and the Cold War that free trade as an American policy became an established ideology.⁴³ Those crises forced the U.S. to improve its economic, militaristic, and diplomatic ties with allies while technological developments, particularly the improved transportation and distribution network, were paving the way for our modern global economy.⁴⁴ The General Agreement on Tariffs and Trade (GATT) was created in 1947, and would later become the World Trade Organization (WTO). The U.S. joined GATT in 1948 and the WTO in 1995, and China joined the WTO in 2001.⁴⁵

Bipartisan cooperation remained until President Bush implemented a steel tariff in 2002 that undermined the goal of helping the steel industry and was repealed within 18 months.⁴⁶ Similarly, President Trump's 2016 presidential campaign targeted coal and steel workers with a promise of protecting U.S. industries and subsequently imposed tariffs on Chinese goods, including steel and aluminum.⁴⁷ However, unlike steel, aluminum, cars, and televisions, there is no equivalent product to an ancient Chinese scroll that can be made in the U.S.. Cultural property embodies a nation's identity and history, and the punitive tariff imposition therefore reveals an emerging policy of economic nationalism under the guise of economic protectionism.⁴⁸

B. THE POLITICS AND ECONOMICS OF THE U.S.-CHINA TRADE WAR

October 1, 2019 marked the 70th anniversary of the founding of the People's Republic of China (PRC).⁴⁹ Chairman Mao Zedong announced the formation of the PRC on October 1, 1949, yet the dramatic growth that catapulted China onto the world stage as an economic superpower rivaling the U.S. began in the late

³⁹ *Id.*

⁴⁰ Thomas J. DiLorenzo, *Lincoln's Tariff War*, MISES INSTITUTE (May 6, 2002), <https://mises.org/library/lincolns-tariff-war>.

⁴¹ Smith, *supra* note 33.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *United States of America and the WTO*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/countries_e/usa_e.htm; Yang Yao, *China's Export-Led Growth Model*, EAST ASIA FORUM (Feb. 27, 2011), <https://www.eastasiaforum.org/2011/02/27/chinas-export-led-growth-model/>.

⁴⁶ Doug Palmer, *Why Steel Tariffs Failed When Bush Was President*, POLITICO (Mar. 7, 2018), <https://www.politico.com/story/2018/03/07/steel-tariffs-trump-bush-391426>.

⁴⁷ Smith, *supra* note 33.

⁴⁸ Craig M. Bargher, *The Export of Cultural Property and United States Policy*, 4 DEPAUL J. ART, TECH. & INTELL. PROP. L. 189, 196 (1994); see also Sarah Cascone, *The US and China Have Reached a Trade Deal—But What Does That Mean for Chinese Art and Antiquities?*, ARTNET NEWS (Dec. 17, 2019), <https://news.artnet.com/art-world/what-does-us-china-trade-deal-mean-for-art-tariffs-1732263>.

⁴⁹ Robin Brant, *China Anniversary: Beijing Celebrations Mark 70 Years of Communist Rule*, BBC NEWS (Oct. 1, 2019), <https://www.bbc.com/news/world-asia-china-49808078>.

1970s under the direction of “the architect of China,” Deng Xiaoping.⁵⁰ Despite implementing the one-child policy and ordering the crackdown on the Tiananmen Square protests that led to the infamous and bloody massacre (or as it’s known in China: the “June 4 Incident”), Time Magazine named Deng “Person of the Year” twice, in 1978 and 1985.⁵¹ Deng demonized Western forces as secretive, corrupt, and subversive threats to Communist ideals, while he simultaneously embraced foreign investment and established the state-managed, communist capital market that remains in place today.⁵² The largest single incident of poverty alleviation in world history occurred under, and because of, his leadership.⁵³ “Since 1999, more than 400 million Chinese people have been lifted from extreme poverty.”⁵⁴ The world was not prepared for China’s rapid rise to become the second most powerful economic power in just twenty-five years from relative isolation and overwhelming poverty.⁵⁵ But unlike other commodity-driven countries like Brazil (iron ore), Indonesia (rubber), or Russia (oil and gas), China had an unparalleled population, which was an estimated 1.4 billion in 2017,⁵⁶ and therefore had a comparative advantage in its abundant low-cost labor market, which employed 786 million people in 2017.⁵⁷ Beginning in 1978, Deng’s economic reform was characterized by its export-led growth model that managed double-digit growth rates as China became the world’s factory, which was accelerated further when it gained critical membership to the World Trade Organization (WTO) in 2001.⁵⁸

The WTO is an international organization whose purpose is to ensure trade flows smoothly, predictably, and as freely as possible by acting as a forum for negotiating trade agreements and settling trade disputes between its members.⁵⁹ Ironically, the biggest supporter of China becoming a WTO member was none other than the United States.⁶⁰ In 2000, the U.S. removed economic restrictions on China that had been in place for two decades as part of anti-Communist policy.⁶¹ The historic House of Representatives vote to pass legislation granting Permanent Normal Trading Relations (PNTR) with China had surprising

50 *Id.*

51 Jennifer Rosenberg, *Time’s ‘Person of the Year’ List*, THOUGHT CO. (Jan. 3, 2021), <https://www.thoughtco.com/times-man-of-the-year-list-1779824>.

52 Chris Buckley, *New Documents Show Power Games Behind China’s Tiananmen Crackdown*, N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/world/asia/china-tiananmen-crackdown.html>.

53 James Levinsohn, *U.S.-China Trade: The Economics Behind the Politics*, YOUTUBE (Feb. 20, 2018), <https://www.youtube.com/watch?v=jZ-7hh0a8TQ>.

54 *What Happened When China Joined the WTO?*, WORLD 101: GLOBAL ERA ISSUES, <https://world101.cfr.org/global-era-issues/trade/what-happened-when-china-joined-wto>.

55 Levinsohn, *supra* note 53.

56 *Population, Total: China, THE WORLD BANK*, <https://data.worldbank.org/indicator/SP.POP.TOTL?end=2018&locations=CN&start=1960&view=chart>.

57 Levinsohn, *supra* note 53.

58 Yang Yao, *China’s Export-Led Growth Model*, EAST ASIA FORUM (Feb. 27, 2011), <https://www.eastasiaforum.org/2011/02/27/chinas-export-led-growth-model/>.

59 *The WTO*, WORLD TRADE ORGANIZATION (last visited Apr. 27, 2021), https://www.wto.org/english/thewto_e/thewto_e.htm.

60 See Eric Schmitt & Joseph Kahn, *The China Trade Vote: A Clinton Triumph; House, in 237-197 Vote, Approves Normal Trade Rights for China*, N.Y. TIMES (May 25, 2000), <https://www.nytimes.com/2000/05/25/world/china-trade-vote-clinton-triumph-house-237-197-vote-approves-normal-trade-rights.html>.

61 *Id.*

bipartisan support.⁶² That vote granted China normal trading privileges in a “crowning foreign policy triumph” that reduced Chinese tariffs and removed economic barriers on industrial and agricultural products.⁶³ In the words of President Clinton, this momentous shift represented “an historic step toward continued prosperity in America, reform in China and peace in the world . . . it will open new doors of trade for America and new hope for change in China.”⁶⁴

The United States’ endorsement of China as an equal trading partner paved the way for China’s accession into the WTO in 2001.⁶⁵ But why was the U.S. so supportive of China’s rise as a competitive economic player? The U.S. believed membership in the WTO would inevitably lead to China becoming a democracy because, as President H.W. Bush said, “[n]o nation on Earth has discovered a way to import the world’s goods and services while stopping foreign ideas at the border.”⁶⁶ Yet current President Xi Jinping captured the reality that China has managed to reject democracy while becoming an even stronger communist economic superpower: “No force can ever stop the Chinese people and nation from marching forward.”⁶⁷ Since 2001, China’s economy has octupled to become the world’s second largest economy after the U.S.: China became the world’s largest exporter of goods in 2009, hit \$7,000 per capita GDP in 2013, and increased its trade with the U.S. from less than \$8 billion in 1986 to almost \$580 billion in 2016.⁶⁸

Deng’s “open door” economic reform also included new laws that were meant to attract foreign investors and secure legal protections for them in a stable environment.⁶⁹ One of the most impactful legal initiatives was the 1979 Joint Venture Law, which allowed foreign firms to establish a presence and operate in China through joint ventures with state partners, essentially functioning as limited liability companies.⁷⁰ This legislation opened the world to an untapped, exploding consumer market, and, in exchange, the Chinese government could obtain advanced technology, export manufactured goods at unprecedented rates, and pave “the road to the inevitable adoption of communism.”⁷¹ In fact, nearly 70% of about 1.9 million privately owned companies in China, both Chinese and foreign firms, have internal party organizations known as CCPs.⁷² While their legally-mandated presence in each firm is largely symbolic, there have been recent reports of political pressure to revise joint-venture agreements to increase party governance and direct control over internal investment operations and decisions.⁷³

62 *Id.*

63 *Id.*

64 *What Happened When China Joined the WTO?*, *supra* note 54.

65 Schmitt & Kahn, *supra* note 60.

66 Kurt M. Campbell & Ely Ratner, *The China Reckoning*, FOREIGN AFFAIRS (Mar./Apr. 2018), <https://www.foreignaffairs.com/articles/china/2018-02-13/china-reckoning>.

67 Brant, *supra* note 49.

68 *Id.*

69 Barbara Campbell Potter, *China’s Equity Joint Venture Law: A Standing Invitation to the West for Foreign Investment?*, 14 U. PA. J. INT’L BUS. L. 1, 5 (1993).

70 *Id.*

71 *Id.* at 2.

72 Michael Martina, *Exclusive: In China, the Party’s Push for Influence Inside Foreign Firms Stirs Fears*, REUTERS (Aug. 24, 2017, 3:08 AM), <https://www.reuters.com/article/us-china-congress-companies/exclusive-in-china-the-partys-push-for-influence-inside-foreign-firms-stirs-fears-idUSKCN1B40JU>.

73 *Id.*

While the U.S. had hoped joining the WTO would force China to comply with its policies regarding intellectual property rights and tariffs, China has used the international platform to its benefit and fully integrated into the global economy.⁷⁴ Gaining WTO membership meant China was allowed to receive the regular “most favored nation” tariffs which run at 3% or 4% instead of 37%, which meant exported Chinese goods became significantly cheaper.⁷⁵ China’s questionable practices have resulted in forty-three WTO cases filed against it, of which twenty-three were filed by the U.S.⁷⁶ But WTO membership also meant that China could file cases against the U.S., and it has filed nine cases since 2003.⁷⁷ The most recent WTO ruling predates the current trade war but will make a large impact on the current power struggle: China can impose tariffs up to \$3.6 billion on U.S. goods due to the U.S. government’s violation of anti-dumping rules regarding Chinese products.⁷⁸ For reference, the U.S.-China Trade War began in July 2018 and is still ongoing as of January 2020. The U.S. has imposed exclusive tariffs on \$550 billion worth of Chinese goods, and China has imposed exclusive tariffs on \$185 billion worth of U.S. goods.⁷⁹

III. THE MODERN INTERNATIONAL MARKET AND THE ROLE OF ART

A. ART AS CULTURAL PROPERTY

In 1776, Adam Smith highlighted the importance of investing in culture to enhance an individual’s and a nation’s wealth in his book *An Inquiry Into the Nature and Causes of the Wealth of Nations*.⁸⁰ By investing in tangible commodities such as books, statues, paintings, and jewels, one could continuously expand one’s wealth.⁸¹ Similarly, “[n]oble palaces, magnificent villas, great collections of books, statues, pictures and other curiosities, are frequently both an ornament and an honour, not only to the neighbourhood, but to the whole country to which they belong.”⁸² One danger of cultural property classification is that cultural objects, including art, become tradable commodities that are valued by their transactional mobility rather than their intangible contextual and historical significance.⁸³ This categorization of national cultural heritage authorizes exportation of cultural goods that can be

74 *Id.*

75 Levinsohn, *supra* note 53.

76 *WTO Cases Brought by the United States Against China*, U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION (Apr. 2019), https://www.uscc.gov/sites/default/files/WTO%20Cases%20Brought%20by%20the%20United%20States%20against%20China_4.30.19.pdf.

77 *Id.*

78 Brendan Murray & Shawn Donnan, *China Wins WTO Case to Sanction \$3.6 Billion in U.S. Trade*, BLOOMBERG (Nov. 1, 2019, 11:05 AM), <https://www.bloomberg.com/news/articles/2019-11-01/wto-approves-3-6-billion-in-chinese-trade-sanctions-on-u-s>.

79 Dorcas Wong & Alexander Chipman Koty, *The U.S.-China Trade War: A Timeline*, CHINA BRIEFING (Aug. 25, 2020), <https://www.china-briefing.com/news/the-us-china-trade-war-a-timeline/>.

80 *See generally* ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (1776).

81 *Id.* at 271.

82 *Id.*

83 Bargher, *supra* note 48, at 192–93.

monetarily priced as products within international trade, which “divides itself into source nations and market nations.”⁸⁴

Source nations, such as Egypt, Mexico, Greece, and India, are those that are “rich in cultural artifacts beyond any conceivable local use” and whose “supply of desirable cultural property exceeds the internal demand.”⁸⁵ Market nations, like the United States, France, Switzerland, Japan, and Scandinavia, are wealthy and encourage importation from source nations because internal demand vastly exceeds the supply.⁸⁶ Typically, source nations are economically poor and depend upon international trade but often have some of the most restrictive retention schemes to prevent the exportation (and exploitation) of their national cultural heritage.⁸⁷ Notably, some nations can be both a source nation and a market nation, within which China falls squarely because China’s cultural heritage is subject to strict retention schemes according to state legislation and bilateral treaties but is simultaneously a major product of the national push for cultural exportation over the past few decades. Cultural nationalists believe the wealth of a nation is inextricably linked to its cultural property and that “a cultural object’s presence in the country is necessary to maintain the nation’s welfare and identity.”⁸⁸

Cultural internationalists, on the other hand, believe that cultural property is not linked to one national jurisdiction but rather to all of humanity, escaping the notions of traditional property rights.⁸⁹ This internationalist perspective characterizes the most amenable and broad definition of cultural property as stated in the United Nations Educational, Scientific and Cultural Organization Convention of 1970 (“UNESCO”). The 1970 UNESCO Convention’s definition of cultural property is “the legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations.”⁹⁰ It further includes “movable heritage such as sculptures, paintings, coins and manuscripts” under its definition of tangible cultural heritage.⁹¹ The 1954 and 1999 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict defined cultural property as “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular . . . of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest.”⁹² The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects defined cultural property as “those which, on religious or secular grounds, are of importance for archaeology, prehistory,

84 John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT’L L. 831, 832 (1986).

85 *Id.*

86 *Id.*

87 *Id.*

88 Bargher, *supra* note 48, at 194.

89 *Id.*

90 Magdalena Pasikowska-Schnass, *Cultural Heritage in EU Policies*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE (June 2018), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS_BRI\(2018\)621876_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS_BRI(2018)621876_EN.pdf).

91 *Id.*

92 Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 1, May 14, 1954.

history, literature, art or science.”⁹³ This perspective emphasizes the importance of preservation over retention and repatriation because “many art-rich countries simply cannot afford to take care of all of their cultural property.”⁹⁴

Most countries have ratified or modified the 1970 UNESCO Convention for their own legislations and China is no exception. In addition to using the UNESCO definition of cultural heritage, China expressly includes as part of its protected cultural relics “valuable works of art and handicraft articles dating from various historical periods.”⁹⁵ China’s primary laws regarding cultural property are the 2002 Law and the 1997 Criminal Law.⁹⁶ Similar to how the U.S. finds its authority to regulate trade in its Constitution, China’s authority to regulate trade is found in Article 22 of its 1982 Constitution which “protects places of scenic and historical interest, valuable cultural monuments and relics and other important items of China’s historical and cultural heritage.”⁹⁷ This broad definition of national cultural property is further categorized into “valuable” and “ordinary” cultural relics with accompanying levels of protection.⁹⁸ China has entered into several bilateral agreements with other nations, including the U.S., to promote its repatriation and protection of cultural heritage. However, it is frequently criticized for its lack of adequate authenticity standards and lack of criminal enforcement in the illegal cultural property trade.⁹⁹

The U.S. allows for liberal exportation of its cultural property while simultaneously protecting it. It did not ratify the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, but it did enact several regulations prohibiting importation of stolen and illegally trafficked cultural property. For example, the U.S. ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and incorporated the UNESCO Convention definition of cultural property into domestic law through the enactment of the Convention on Cultural Property Implementation Act (“CPIA”).¹⁰⁰ Additionally, Congress regulates imports and exports of cultural property under the Commerce Clause.¹⁰¹ Once the U.S. identifies an object as “cultural property,” it gains special legal status that confers certain protections and

93 International Institute for the Unification of Private Law, Convention on Stolen or Illegally Exported Cultural Objects art. 2, June 24, 1995.

94 Bargher, *supra* note 48, at 196.

95 PEOPLE’S REPUBLIC OF CHINA, NATIONAL REPORT ON THE IMPLEMENTATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY 3 (2011-2015), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Chine.pdf.

96 Jason M. Taylor, *The Rape and Return of China’s Cultural Property: How Can Bilateral Agreements Stem the Bleeding of China’s Cultural Heritage in a Flawed System?*, 3 LOY. U. CHI. INT’L L. REV. 233, 243 (2006).

97 XIANFA art. 22, § 1 (1982) (P.R.C.).

98 Taylor, *supra* note 96, at 246.

99 Tong Mingkang, *Cultural Heritage Conservation in China*, THE GETTY CONSERVATION INST. (Spring 2016), https://www.getty.edu/conservation/publications_resources/newsletters/31_1/practices_achievements.html.

100 Patty Gerstenblith, *The Legal Framework for the Prosecution of Crimes Involving Archaeological Objects* 64 U.S. ATT’YS’ BULL. 5, 9 (2016).

101 U.S. CONST. art. I, § 8 (“The Congress shall have the Power to ... regulate Commerce with foreign Nations.”).

privileges.¹⁰² Domestically, the U.S. has many federal statutes protecting and defining its own cultural property, including the National Historical Preservation Act of 1996, the American Antiquities Preservation Act of 1982, the National Stolen Property Act, the Archaeological Resources Protection Act of 1979, and the Native American Graves Protection and Repatriation Act of 1990.¹⁰³ In 2016, the Cultural Property Advisory Committee (“CPAC”) was created under the Protect and Preserve International Cultural Property Act to aid foreign nations seeking to protect their cultural heritage from importation.¹⁰⁴ Protected objects that fall within those statutory scopes are primarily those categorized under American national heritage, often owned and controlled by the government on federal land, or related to an historical government interest, such as the Statue of Liberty, the Smithsonian Institutes’ collections, and the Liberty Bell.¹⁰⁵

Most countries enforce extensive restrictions on cultural property exportation; however, outside of limited exceptions regarding archaeological objects removed from federal or Native American lands and protected wildlife, the U.S. does not place restrictions on cultural property exportation.¹⁰⁶ The U.S. and Switzerland are the principal exceptions to enforcing strict prohibitions and limitations on exporting their own national cultural property.¹⁰⁷ “US national policy generally favours free export of cultural material and thus its legal system does not specifically regulate the export of cultural material.”¹⁰⁸

To understand the strategic legislative design behind this decision, one must look to the history of U.S. export policies. The U.S. Neutrality Laws of 1935 had enacted export controls only on weapons before World War Two (WWII).¹⁰⁹ After WWII, when the U.S.S.R. was gaining international power and control, the Export Administration Act of 1949 (EAA) was passed as the economic liberalization and foundation of the U.S.’s modern export system that expanded the regulation of imports and exports beyond weapons.¹¹⁰ The EAA embodied America’s burgeoning power on the world stage and its rejection of isolationism by opening free trade of commodities between its European allies and denying the importation of Communist goods.¹¹¹ The President had broad authoritative scope to restrict any goods that threatened domestic stability or the U.S.’s technological and military superiority.¹¹² That language is eerily reminiscent of President Trump’s rationale of stabilizing the U.S. economy and protecting American manufacturing and technological superiority as the dominant world power in the ongoing trade war with China. A nation’s cultural heritage embodies its international political and socio-economic power. Importation of certain commodities thus symbolizes the importation of a nation’s ideologies and an explicit embargo on a nation is a foreign policy statement. For example,

¹⁰² Gerstenblith, *supra* note 100.

¹⁰³ Richard Darwell, *Art Law: Restrictions on the Export of Cultural Property and Artwork*, IBA ART, CULTURAL INSTITUTIONS & HERITAGE LAW COMMITTEE 128 (Nov. 2017).

¹⁰⁴ *Id.* at 128–29.

¹⁰⁵ Bargher, *supra* note 48, at 200.

¹⁰⁶ Darwell, *supra* note 103, at 129.

¹⁰⁷ Merryman, *supra* note 84, at 832.

¹⁰⁸ Darwell, *supra* note 103, at 128.

¹⁰⁹ Bargher, *supra* note 48, at 197–98.

¹¹⁰ *Id.* at 198.

¹¹¹ *Id.*

¹¹² *Id.*

in 1980, the Carter administration embargoed the U.S.S.R. for its human rights violations when the Soviet Union's military intervened in Afghanistan.¹¹³

B. ART AS POWER

In the late 1980s, leading American political scientist and scholar Joseph S. Nye, Jr. coined the term “soft power” as “the ability of a country to persuade others to do what it wants without force or coercion.”¹¹⁴ The U.S. has dominated as a world power for decades because of its hard and soft power: “the ability to coerce others as well as the ability to shape their long-term attitudes and preferences” through its export of entertainment, ideals, and culture.¹¹⁵ Nye further noted:

In essence, power is nothing more than the ability to affect others to get what you want, and that requires a set of tools. Some of these are tools of coercion or payment, or hard power, and some are tools of attraction, or soft power. For individuals, charisma (emotional appeal), vision, and communication are key soft-power skills; for nations, soft power is embodied in their culture, values, and legitimate policies.¹¹⁶

Essentially, Nye is saying that a country's likeability and attractiveness through its perceived ideologies, social, and cultural norms are a major factor in shaping international economics and politics.¹¹⁷

The U.S. wielded the soft power of art as a weapon during the Cold War. Joseph Stalin, as the *de facto* leader of the U.S.S.R.'s Communist Party, had standardized the Soviet Union's ideology so that education, language, industrial production, and art all conformed to the political ideal.¹¹⁸ Most importantly, Stalin's “socialist realist” aesthetic was the antithesis of the American abstract expressionist movement, which at first was deemed Communist until the Central Intelligence Agency (C.I.A.) weaponized it against the U.S.S.R.¹¹⁹ Under the “International Program,” the Museum of Modern Art's government-laden board of directors in New York strategically loaned pieces to European entities to create thirty-three full international exhibits dedicated to the American abstract expressionist movement.¹²⁰ Ironically, the C.I.A. embraced the very art that was created in political protest and rejection of the dominant American aesthetic at the time as a proliferation of American values like freedom of speech,

113 *Id.*

114 Joseph S. Nye & G. John Ikenberry, *Soft Power: The Means to Success in World Politics*, FOREIGN AFFAIRS (June 2004), <https://www.foreignaffairs.com/reviews/capsule-review/2004-05-01/soft-power-means-success-world-politics>.

115 *Id.*

116 Diane Coudu, *Smart Power*, HARVARD BUSINESS REVIEW (Nov. 2008), <https://hbr.org/2008/11/smart-power>.

117 Eleanor Albert, *China's Big Bet on Soft Power*, COUNCIL ON FOREIGN RELATIONS (Feb. 9, 2018), <https://www.cfr.org/background/chinas-big-bet-soft-power>.

118 Michael McBride, *How Jackson Pollock and the CIA Teamed Up To Win The Cold War*, MEDIUM (Oct. 15, 2017), <https://medium.com/@MichaelMcBride/how-jackson-pollock-and-the-cia-teamed-up-to-win-the-cold-war-6734e40f5b14>.

119 *Id.*

120 *Id.*

individualism, and capitalism through art exportation.¹²¹ That Cold War C.I.A. operation led to artists like Pollock, De Kooning, and Rothko becoming renowned household names in the U.S. and abroad, selling some of the most expensive pieces in history, and resulting in the abstract expressionist movement embodying America itself.

Globalization has often been synonymous with “Americanization” or “Westernization” due to the hard and soft economic, social, and political influence the U.S., along with other Western European nations, has had on the rest of the world. However, as much as America is perceived as the dominant “Western Imperialist,” it is important to remember that

For every McDonald's in Japan, there must be at least a hundred sushi bars in the United States; for every Kentucky Fried Chicken in China, there must be thousands of Chinese restaurants in the United States. And for every Andy Warhol or Helen Frankenthaler in East Asian art collections, there are thousands of Chinese and Japanese scrolls in American museums.¹²²

China is no stranger to controlling the soft power of cultural ideology, largely through government funded propaganda campaigns, and in 2007 publicly prioritized a national plan to promote “the greatness of Chinese culture in general and the historical significance of the Middle Kingdom” to complement its rise as an economic superpower.¹²³ Under the 2013 “Belt and Road Initiative,” it is estimated that China is investing approximately \$10 billion annually on soft power alone to improve its international image that is marred by its repressive, state-infiltrated political system that continues to censor its citizens, crack down on any political dissonance, and violate international human rights laws.¹²⁴ This national PR campaign spans educational, cultural, lingual, and media initiatives that include literature, film, music, sports, pandas, and art.¹²⁵

Despite China’s best efforts, significant monetary investment, and economic incentives, China is struggling to be globally likeable, and unsurprisingly, there was overwhelming dislike and distrust in Western democratic countries.¹²⁶ While the U.S. has managed to combine its hard and soft power to influence other nations under what Nye terms “smart power,” China’s ever-tightening authoritarian political system falls under “sharp power,” which is predicated on “distraction and manipulation” rather than attraction and persuasion.¹²⁷ China’s failure to exert soft power effectively stems from the words versus actions of the country’s leaders. For example, China’s major push for Hollywood deals and international media outlet expansions directly contradicts its foreign film restrictions and bans such as the 2018 law that “specifically requires that

¹²¹ *Id.*

¹²² Warren I. Cohen, *Art Collecting as International Relations: Chinese Art and American Culture*, 1 J. AM.-EAST ASIAN REL. 409, 433 (1992).

¹²³ Joseph S. Nye, *China's Soft Power Deficit*, WALL ST. J. (May 8, 2012), <https://www.wsj.com/articles/SB10001424052702304451104577389923098678842>.

¹²⁴ Albert, *supra* note 117.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

programs should not feature actors with tattoos [or depict] hip hop culture, sub-culture (non-mainstream culture) and dispirited culture (decadent culture).”¹²⁸ This means countries like South Korea, whose two largest trading partners are China and the U.S., can no longer export one of its biggest and fastest-growing products to China: K-Pop.¹²⁹

Dominating the international art market is an appealing avenue for elevating China’s soft power to attract the world’s wealthiest collectors. However, government-owned and operated art museums and auction houses do not necessarily lead to organic, thriving artistic developments. To create “a successful arts sector—it requires an interested audience, talent, and knowledge in areas ranging from curation to promotion” in a dynamic and artistically free environment.¹³⁰ While China may have the requisite domestic, viable, and growing art collector climate, “there is a certain sense of artificiality that cannot be ignored” in the Chinese art sector itself.¹³¹

C. ART AS AN ECONOMIC DRIVING FORCE

The trade of cultural property impacts millions of people in private and public sectors. In 2017 and 2018, the global art and antiques market employed roughly 3 million people and there were 310,700 businesses operating within the sector.¹³² In the gallery and dealer sector, 2.7 million people were employed throughout 296,550 businesses.¹³³ In 2018, the auction sector employed 281,325 people globally throughout 14,150 businesses.¹³⁴ In the first half of 2019 alone, global auction sales reached \$5.55 billion dollars.¹³⁵ Christie’s global revenue was estimated at \$7 billion, and Sotheby’s global revenue was estimated at \$1.03 billion in 2018.¹³⁶ In 2018, the global art trade spent \$20.2 billion on external support services directly linked to their businesses, which added 375,030 jobs.¹³⁷ The global art world spent \$4.8 billion on art fairs, and \$3.2 billion on advertising and marketing.¹³⁸ Although the \$67 billion art industry is comparatively smaller than other luxury industries, such as the \$500 billion global luxury car market, the economic impact of one art sale induces disproportionately more spending in ancillary services and businesses that generate revenues, employment, and fiscal government benefits.¹³⁹

One major factor shaping the economics of the art industry is the rapid growth of high net worth individuals globally.¹⁴⁰ In 2018, there were an

128 Casey Quackenbush & Aria Chen, “Tasteless, Vulgar and Obscene”: China Just Banned Hip-Hop Culture and Tattoos From Television, TIME MAGAZINE (Jan. 22, 2018), <https://time.com/5112061/china-hip-hop-ban-tattoos-television/>.

129 *Id.*

130 Laura Grunberg, *Contemporary Art and Soft Power: Lessons From Southern China*, THE DIPLOMAT (Apr. 12, 2018), <https://thediplomat.com/2018/04/contemporary-art-and-soft-power-lessons-from-southern-china/>.

131 *Id.*

132 MCANDREW, *supra* note 5, at 374.

133 *Id.*

134 *Id.*

135 S. Lock, *Art Market: Statistics and Facts* (Nov. 1, 2019), <https://www.statista.com/topics/1119/art-market/>.

136 *Id.*

137 MCANDREW, *supra* note 5, at 375.

138 *Id.*

139 *Id.* at 376.

140 Martinique, *supra* note 6.

estimated 42.2 million global millionaires, with roughly 4.5 million emerging from China.¹⁴¹ It's no surprise that the majority of art sales took place in the U.S., which dominates the world's top 1% wealth holders at 39% of that top 1%, followed by China at 9%, then the U.K. at 6%.¹⁴² Most art collectors fall above the \$100,000 bracket, which is about 479 million people globally (about 10% of all adults) and is expected to reach 567 million over the next few years, mostly from the U.S. and China.¹⁴³ The collective wealth of millionaires could total more than \$180 trillion by 2023.¹⁴⁴ There were a record-breaking 2,208 billionaires in 2018, with a combined net worth of \$9.1 trillion.¹⁴⁵ The U.S. also led this sector with 35% of billionaire wealth, but China followed with a close 17% share, with Japan trailing at 17%.¹⁴⁶ The amount of billionaires is expected to surpass 3,000 by 2023, dominated by the U.S. and China.¹⁴⁷ Emerging economies have accounted for 22% growth in ultra-high net worth individuals (UHNWIs) since 2000.¹⁴⁸

A thriving national cultural heritage also promotes tangible and intangible economic benefits such as education, tourism, and cultural capital. Cultural internationalists believe there should be complete liberalization of cultural exportation to ensure the best preservation of the objects important for all of humanity.¹⁴⁹ Regulated cultural commodity exportation can allow source nations to maintain their cultural capital while profiting from those economic benefits of increased tourism, art transactions, and a more prominent national footprint.¹⁵⁰ However, strict export regulation and embargoes can increase market nation demand by restricting source nation supply, thereby reducing legal methods of obtaining certain objects in high demand and incentivizing the emergence of illicit black markets.¹⁵¹ Although some market nations have established art and antiquities criminal enforcement units, law enforcement in source nations often lack the financial resources to track and capture perpetrators in the art and antiquities market where more serious crimes are prioritized.¹⁵² Additionally, the sheer volume of cultural objects that must be inspected by customs officials reduces the authenticity scrutiny and legal assurance of all imported items.¹⁵³

The rapid rise of wealthy and influential private collectors, who are largely unregulated in their personal purchases of cultural property, has coincided with the illegal international art and antiquities black market to become a multi-billion operation. It is also widely-known to involve complex global criminal

141 MCANDREW, *supra* note 5, at 328.

142 *Id.* at 325.

143 *Id.*

144 *Id.* at 328.

145 *Id.* at 331.

146 *Id.* at 331–32.

147 *Id.* at 332.

148 *Id.* at 330.

149 Bargher, *supra* note 48, at 201.

150 *Id.* at 201–02.

151 *Id.*

152 Simon Mackenzie, *Identifying and Preventing Opportunities for Organized Crime in the International Antiquities Market*, in ORGANISED CRIME IN ART AND ANTIQUITIES 151, 161 (Stefano Manacorda ed., 2009).

153 Luca Manfredi & Bridget Murray, *Trafficking of Illicit Art and Antiquities to Asian and Oceanic Markets*, J. CULTURAL HERITAGE CRIME (Oct. 12, 2018), <https://www.journalchc.com/2018/10/12/trafficking-of-illicit-art-and-antiquities-to-asian-and-oceanic-markets/>.

networks¹⁵⁴ and even directly fund terrorist organizations.¹⁵⁵ For example, Southern Italian mafia organizations such as the Cosa Nostra, Ndrangheta and Camorra groups use their territorial influence to control important Italian archeological sites to launder their other criminal activity profits through the illicit art trade.¹⁵⁶ The art and antiquities black market poses a particular threat to Italian cultural heritage because Italy has comparatively more restrictive cultural heritage exportation laws than other European countries and has an overabundance of highly desirable antiquities.¹⁵⁷ In 2017, Italy lifted some of its strict export restrictions for a more liberalized free trade market for post-war artists in an attempt to deter national illicit art trade.¹⁵⁸

The illegal art market is subject to the same market forces of the legal international trade except it doesn't play by the same rules. Just as how the legal art world depends on countless players for a successful market, the illegal trade also relies on a network of traffickers, officials, and dealers to smuggle, forge, and sell licenses, certifications, and cultural artifacts.¹⁵⁹ The art and antiquities illegal market is now as lucrative as the black market for counterfeit goods, weapons, and drugs.¹⁶⁰ Illegal cultural objects and their accompanying documentation can be forged, stolen, and manipulated into exact replicas of the original artefacts that are then sold through legitimate dealers and auction houses to foreign markets.¹⁶¹

IV. THE IMPACT OF THE TRADE WAR ART TARIFFS

A. PRIVATE PARTIES: AUCTION HOUSES AND INDIVIDUAL COLLECTORS

1. Auction Houses

There are three methods for foreign firms to directly invest in China: the Equity Joint Venture (EJV) (discussed above in regards to the 1979 Joint Venture Law), the contractual or cooperative joint venture (CJV), or the wholly foreign-owned enterprise (WFOE).¹⁶² Christie's is the only WFOE auction house to operate without a local partner under the EJV or CJV.¹⁶³ A WFOE is the least popular method and rarely established in China because it is deemed

¹⁵⁴ *Id.*

¹⁵⁵ Sam Pineda, *Tackling Illicit Trafficking of Antiquities and its Ties to Terrorist Financing*, U.S. DEP'T OF STATE (June 20, 2018), <https://blogs.state.gov/stories/2018/06/20/en/tackling-illicit-trafficking-antiquities-and-its-ties-terrorist-financing> (experts agree that the illegal looting, smuggling, and trafficking of art and antiquities in conflict areas such as Syria and Iraq have been a steady source of income for terrorist groups).

¹⁵⁶ *Id.*; Manfredi & Murray, *supra* note 153.

¹⁵⁷ Pineda, *supra* note 155.

¹⁵⁸ Giulia Cipollini, *Italy Eases Export Rules for Post-War Works*, WITHERS WORLDWIDE (Sept. 1, 2017), <https://www.withersworldwide.com/en-gb/insight/italy-eases-export-rules-for-post-war-works>.

¹⁵⁹ *Id.*; Manfredi & Murray, *supra* note 153.

¹⁶⁰ Cipollini, *supra* note 158.

¹⁶¹ *Id.*

¹⁶² Potter, *supra* note 69, at 11–12.

¹⁶³ Jason Chow, *Christie's Breaks Mold in China*, WALL ST. J. (Apr. 9, 2013), <https://www.wsj.com/articles/SB10001424127887323550604578412080199152360>.

the most capitalist and government-restricted enterprise that prevents technology transfers, party equity, profits and involvement (control).¹⁶⁴ Additionally, most or all WFOE products must be exported using Chinese technology and equipment in operations and must be considered beneficial to the country's economy.¹⁶⁵ Christie's independence as a WFOE is conditioned upon certain license deal restrictions, including a prohibition on trading Chinese cultural relics that predate 1911 or objects the government deems are vital to Chinese culture.¹⁶⁶ Goods that fall into that restricted category are not only those that were included in the initial U.S. tariff, but are also considered the most valuable collectibles in the Chinese market.¹⁶⁷

Although the U.S. is positioned to maintain its dominant role as the epicenter of global wealth and the leading art market, the rise of China's wealth will directly influence its art market development and global foothold. As part of its Belt and Road Initiative that designated "culture" as a strategic industry, China successfully encouraged new generations of art collectors to invest in their own private collections and create private galleries, built 3,500 public art museums by 2012 (for comparison, the U.S. typically creates 20-30 new museums per year), and enacted policies that led to the establishment of six of the top ten global auction houses that are both privately-owned, such as China Guardian, and state-owned, such as Poly International.¹⁶⁸ A major concern surrounding the vast and precipitous growth and demand in China is the authenticity standards and the legitimacy of acquisition, particularly from conflict regions where stolen antiquities can fund terrorist organizations.¹⁶⁹ While countries like the U.S. and U.K. have closed their markets on Middle Eastern conflict antiquities due to the looting and trafficking crisis of war, the Chinese government is trying to fill that demand and its recently constructed empty museums with art.¹⁷⁰ Poly International is not only the world's third largest auction house after Sotheby's and Christie's but also government-owned and one of the world's largest arms traders with a history of past transgressions for illegal arms shipments that caused the U.S. to sanction the company for violating the Iran, North Korea, and Syria Nonproliferation Act.¹⁷¹

China maintains a tightly regulated and heavily monopolistic domestic market that restricts foreign firms' access while actively promoting Chinese companies to expand overseas.¹⁷² The strict regulatory environment and uncertainty surrounding the trade war has caused several foreign firms to shutter their galleries and auction houses in China. These Chinese firms are operating with essentially no foreign competition domestically because only Christie's has been authorized to conduct independent sales in mainland China or Hong Kong without a local Chinese partnership.¹⁷³ Moreover, only Chinese-owned auction

164 Potter, *supra* note 69, at 13.

165 *Id.*

166 Chow, *supra* note 163.

167 *Id.*

168 Deborah Lehr & Katie Paul, *The Potential Dark Side of China's Art and Antiquities Boom*, THE DIPLOMAT (Aug. 12, 2016), <https://thediplomat.com/2016/08/the-potential-dark-side-of-chinas-art-and-antiquities-boom/>.

169 *Id.*

170 *Id.*

171 *Id.*

172 Deborah M. Lehr, *China's Art Market Is Booming—But Not For Foreigners*, THE DIPLOMAT (Feb. 25, 2017), <https://thediplomat.com/2017/02/chinas-art-market-is-booming-but-not-for-foreigners/>.

173 *Id.*

houses are allowed to trade cultural heritage antiquities and collectibles that predate 1911, which are considered to be the most valuable pieces among Chinese clientele.¹⁷⁴ While governments have traditionally been major patrons of art through direct funding or various tax incentives, too much regulation or taxes can stagnate growth and natural financial and cultural exchanges.¹⁷⁵ The most successful art markets are those with the most freedom and flexibility to trade while protecting investors with high transactional standards and preventing criminal activity.

2. *Art Collectors*

One major counterargument is that this tariff only impacts the top 1% of the world's elite who can afford to purchase these discretionary luxury items for their own private collections. If a collector can afford a multi-million-dollar painting, what's an extra 15-25% added onto the purchase price? In fact, one Chinese dealer disagreed that the tariff would significantly affect the global art market because the Chinese art and antiques market is largely traded regionally or domestically.¹⁷⁶ Since other countries like Singapore, Switzerland, and France often tax art imports around 5.5% to 8%, a tariff of 10% would not deter most collectors or dealers.¹⁷⁷ But a 10% tariff is not the proposed 15% or even 25% tariff. Notably, many of these pieces date back hundreds, if not thousands, of years ago and are already largely restricted from being imported into the U.S. under various bilateral treaties protecting cultural heritage. Admittedly, the U.S. is a relatively small importer of Chinese art and antiquities (\$408 million sales in North America was a mere 6% out of the global total of \$7.1 billion), but that means the smaller market in the U.S. will feel an even greater disproportionate negative impact by the tariffs. Additionally, one of the main problems this tariff exacerbates is the "slow turnover of inventory in the art trade and that a tariff would mean greater capital outlays by dealers."¹⁷⁸

Most importantly, these counterarguments overlook the integral role these transactions play within international relations. "Collecting art from a foreign country is an attribute of power" and "virtually every act in the movement of art between cultures has political implications."¹⁷⁹ Generally, "citizens of powerful countries...have greater opportunity to travel, have more money with which to buy, more space in which to display."¹⁸⁰ The influential rise of Chinese citizens' consumer power was reflected in Shanghai's coveted crowning as "the place to be for contemporary art" in 2017.¹⁸¹ Kelly Ying, a 30-something year old art collector and co-founder of Shanghai art fair ART021 summed up the radical revolution of Chinese collectors: "Fifteen years ago, the rich flocked to luxury goods, especially designer brands, to announce themselves. Nowadays, the elite

174 Chow, *supra* note 163.

175 MCANDREWS, *supra* note 5, at 391.

176 Sussman, *supra* note 23.

177 *Id.*

178 Reyburn, *supra* note 14.

179 Cohen, *supra* note 122, at 433.

180 *Id.*

181 Jiaying Fan, *Why Shanghai, China Is The Place To Be For Contemporary Art*, CONDE NAST TRAVELER (Mar. 9, 2017), <https://www.cntraveler.com/story/why-shanghai-china-is-the-place-to-be-for-contemporary-art>.

have art. If you are someone who's anyone, you are an art collector."¹⁸² The growing Chinese middle class has established and cultivated an environment for art collection as an investment. "A sense of national pride in promoting Eastern aesthetics . . . is aligned with the growing cultural understanding of the Chinese and Asian buyers."¹⁸³

China's art market is the second largest in the world and its growing class of consumers is driving global art trends, quickly closing the price gap between Western and Chinese art, and scooping up Western and Asian pieces equally for their museums and private collections.¹⁸⁴ Major Chinese collectors include billionaires such as art couple Liu Yiqian and Wang Wei, Lin Han, Wanwan Lei, Adrian Cheng, Kelly Ying, David Chau, Wang Jianlin, Alan Lau, Joseph Lau, and several other tastemakers who are molding the Chinese art ecosystem. These individuals are breaking world records for auction price purchases, establishing educational art institutes, backing Chinese artists, and establishing art galleries and art fairs to showcase Asian art, and many of them are under the age of 40.¹⁸⁵ Maturing generations of art collectors who were born after the 1970s economic reform under Deng Xiaoping were raised with a more international perspective, were granted access to higher education, and are now transforming what it means to be a modern art collector. "Their wealth, sophisticated educational background and overseas exposure have reinvented the culture of collecting in China."¹⁸⁶ When art collecting is viewed as a form of international relations, the political significance of Chinese ownership of Western masterpieces coupled with their rapid collection and repatriation of Chinese contemporary and antiquated art cannot be ignored.¹⁸⁷

However, it should not necessarily be perceived as a negative that Chinese collectors are the influential tastemakers reorienting the focus of the international art market. For most of the late eighteenth and early nineteenth centuries, the American appreciation of Chinese art and culture was limited to its main exports of tea, silk, and porcelain chinaware, and many Chinese artists produced art that was tailored to the Western gaze because it was deemed more "exotic" and therefore more valuable for trade.¹⁸⁸ Additionally, when international demand for Asian antiquities boomed in the early 1900s, China lost much of its cultural heritage to looters amidst domestic political strife when there were no cultural property export laws in place to protect its national treasures from being taken.¹⁸⁹

182 *Id.*

183 David Ho, *How Collectors of Luxury Chinese Art Could Be Hurt By Donald Trump's Trade War with China*, STYLE (Sept. 9, 2019), <https://www.scmp.com/magazines/style/tech-design/article/3025892/how-collectors-luxury-chinese-art-could-be-hurt-donald>.

184 Liz Flora, *Discover the Top Chinese Art Collectors and What They Really Buy*, ARTNET NEWS (May 5, 2015), <https://news.artnet.com/exhibitions/discover-top-chinese-art-collectors-really-buy-294601>.

185 Vivienne Chow, *How A New Generation of Chinese Art Collectors Are Taking on the World*, THIS WEEK IN ASIA (Sept. 5, 2017), <https://www.scmp.com/week-asia/society/article/2109781/how-new-generation-chinese-art-collectors-are-taking-world>.

186 *Id.*

187 Cohen, *supra* note 122, at 409.

188 *Id.* at 409-410 (explaining that much of the imported goods during that time were "chinoiserie: Chinese artisans attempting to satisfy Western tastes for something Chinese, but not *too* Chinese. Other items...were brought back as curiosities, exotica; much of the Chinese painting acquired by Americans...was...produced to order to foreigners").

189 *Id.* at 429.

Despite the East Asian art exhibitions in most American museums during the early 20th century, Chinese art did not fit the desired visual realism of the period and therefore often failed to meet Western standards.¹⁹⁰ Additionally, the perception of China as a politically repressive and regressive nation that rejected Western ideals reduced the value of Asian art in the purses of ethnocentric American consumers.¹⁹¹

Generalized contempt for Asians affected perceptions of Asian art. It was different, it was Asian, it was therefore inferior . . . to accept the aesthetic values, artistic conventions, and symbols of another culture, to accept the work of its artists as something more than exotica or curiosities, is to grant dignity to that other culture To accept East Asian art as real art was a step toward accepting East Asians as real people.¹⁹²

It wasn't until WWII that American collectors truly began distinguishing and collecting Chinese art at a time when systemic anti-Japanese sentiment was at its peak.¹⁹³ Unfortunately, the influx of Chinese art to the West during and post-WWII was largely due to the chaos of armed conflict that resulted in the looting of many East Asian collections.¹⁹⁴ But this flow of Eastern and Western art was abruptly ceased due to the emerging concerns of Communism following the Chinese civil war and underlying the U.S.-China political tensions of the Korean War.¹⁹⁵ During the Korean War, the U.S. military strategy included economic warfare tactics that prohibited the import of any Chinese good, including Chinese art.¹⁹⁶ Despite the influential push by major art institutions and American collectors like John D. Rockefeller III and Avery Brundage, there were no art imports from China until the 1970s when political tensions finally thawed.¹⁹⁷ Today, that modern cultural transference flows both ways: “as American power grew in East Asia, more and more art could be found in the United States. As that power ebb[s], some of the art flow[s] back with it” and “the volume of the flow reflects [that shift in] power.”¹⁹⁸

B. PUBLIC PARTIES: ART FAIRS AND MUSEUMS

1. Art Fairs

One of the art sectors most heavily impacted by the trade war are the smaller art galleries and art fairs that specialize in Chinese art and cater to the middle-market. Art fairs offer a bridge between the more private world of luxury art auctions and the smaller, local galleries because the general public is invited to view and purchase art from across the world. The owner of one contemporary

¹⁹⁰ *Id.* at 412–13.

¹⁹¹ *Id.* at 413.

¹⁹² *Id.* at 412–413.

¹⁹³ *Id.* at 429.

¹⁹⁴ *Id.* at 430.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 430–31.

¹⁹⁷ *Id.* at 431.

¹⁹⁸ *Id.* at 433.

Chinese art gallery, Chambers Fine Art, said, “[i]f there is a 25 percent tariff on that, it would make our lives extremely difficult. Nearly all of the artists Chambers shows are Chinese, and the majority of them live and work inside China.”¹⁹⁹ In the spirit of cities competing to host the Olympics, art fairs are continuing to explode on the world stage to the point of “Fairtigue.”²⁰⁰ With almost 300 art fairs globally in 2019, host cities are clamoring to become the next cultural capital for the art world in an ever-more saturated market.²⁰¹ Host cities bring together artists, collectors, curators, dealers, and galleries to connect and transact with the goal of boosting the city’s image as a destination for the major art market.²⁰² Those that successfully attract crowds also benefit from the art fairs’ ancillary tourism and hospitality revenues. Not only is the art fair market over-saturated, but smaller gallerists are often disadvantaged because the fairs “disproportionately benefit the top players over the midsize and little guys, who often pay similar amounts to participate but offer less expensive work.”²⁰³

Although some collectors are deterred by the overarching “soft power” political agendas of art fairs that are increasingly homogenizing the artistic forums amidst the modern “experiential economy,” these exhibitions will continue to play a vital role both economically and politically.²⁰⁴ Throughout history, international art fairs and exhibitions have always represented “opportunities to enhance other means of obtaining political ends,” including generating general goodwill and positive publicity; however, over time, more diplomats and statesmen are becoming private collectors, and government agencies are recruiting museum curators, art historians, area specialists, and art dealers more frequently for intelligence work or for their assistance in more intricate, covert diplomatic missions.²⁰⁵

2. Museums

Unlike the periodic art fairs and exhibitions that reflect the art market’s trade and commercialization, art museums embody the enduring academic, historical, cultural, and political narrative of a particular society. American museums contribute \$50 billion to the domestic economy annually, employ more than 726,000 people, and receive more visitors annually than all major sporting events and theme parks combined.²⁰⁶ These permanent institutions are perceived to be more trustworthy and reliable sources of history than schools, the

199 Eileen Kinsella, *The New “Trade-War Tax” on Chinese Art Has US Dealers Up in Arms*, ARTNET NEWS (Aug. 13, 2018), <https://news.artnet.com/art-world/art-world-proposed-china-tariffs-1331231>.

200 Julia Halperin & Tim Schneider, *Are We At “Peak Art Fair”? Collectors and Advisors Say They’re Hitting Their Saturation Point—and Something’s Got to Give*, ARTNET NEWS (Mar. 11, 2019), <https://news.artnet.com/market/art-fair-saturation-1484986>.

201 *Id.*

202 Y-Jean Mun-Delsalle, *The Art Fair Boom Is Forever Changing the Way the Art Market Does Business*, FORBES MAG. (Apr. 7, 2016, 10:51 AM), <https://www.forbes.com/sites/yjeanmundelsalle/2016/04/07/the-art-fair-boom-is-forever-changing-the-way-the-art-market-does-business/#446cad716c64>.

203 Halperin & Schneider, *supra* note 204.

204 Halperin & Schneider, *supra* note 204 (noting that a significant portion of dealers’ annual turnovers and sales occur at these events, and that these exhibitions remain useful tools for collectors, advisors, curators, and even the artists themselves who gain exposure and its accompanying financial rewards).

205 Cohen, *supra* note 122, at 433-34.

206 AM. ALL. OF MUSEUMS, *Museum Facts & Data*, <https://www.aam-us.org/programs/about-museums/museum-facts-data/>.

government, and the media.²⁰⁷ Cultural internationalists favor museums because they preserve and provide access to humanity's collective cultural property, foster important cross-cultural understanding, and educate the general public.²⁰⁸

However, most American museums are non-profits that depend heavily upon government funding and private donations to operate, not unlike many of the museums in China.²⁰⁹ Despite academic objectivity, art museums are inescapably "complex reflections of the cultures that produced them, including their politics, social structures, and systems of thought."²¹⁰ Western museums were historically "tool[s] of colonialism" that showcased the "exotic riches and curiosities" of other cultures according to its rewritten narrative of society's development and progress that often culminated in a nation-centric apex.²¹¹

Art museums encompass the "political concepts of power, legitimacy and ideology."²¹² Take, for example, the largest and most visited museum in the world: The Louvre in Paris, France. It has about 9.3 million visitors annually.²¹³ It was established as a royal salon curated by, and for, the king of France.²¹⁴ During the French Revolution, taking control of and destroying the art in royal palaces, churches, and other government sites symbolized the democratization of the nation as the people transformed private royal galleries into highly visible, accessible public museums.²¹⁵ "A political ideology is not merely a series of assertions; it is a multi-media aesthetic surround" and there is no better place to immerse oneself in a nation's principles than in a museum.²¹⁶

V. CONCLUSION

There is a delicate balance between the nationalist cultural property theory dedicated to protecting a nation's cultural heritage and the internationalist cultural property theory that emphasizes preserving these objects for the betterment of humanity.²¹⁷ The capacious internationalist definitions of state and international statutes discussed above serve to protect the diversity of culturally significant objects that comprise a nation, its history, and its people. However, these conventions fail to address the necessary protection of cultural property under traditional armed conflict where looting, destruction, unlawful possession,

207 *Id.*

208 *Id.*

209 See ASS'N OF ART DIRECTORS, *Art Museums by the Numbers* (2018), <https://aamd.org/sites/default/files/document/Art%20Museums%20by%20the%20Numbers%202018.pdf>.

210 Elizabeth Rodini, *A Brief History of the Art Museum*, KHAN ACAD., <https://www.khanacademy.org/humanities/approaches-to-art-history/understanding-museums/a/a-brief-history-of-the-art-museum-edit>.

211 *Id.*

212 CLIVE GRAY, *MUSEUMS AS POLITICAL INSTITUTIONS* 150 (2015).

213 Courtney Stanley, *The 15 Most Visited Museums in the World*, CULTURE TRIP (June 27, 2019), <https://theculturetrip.com/north-america/usa/articles/the-15-most-visited-museums-in-the-world/>.

214 Elizabeth Rodini, *Museums and Politics: The Louvre, Paris*, KHAN ACAD., <https://www.khanacademy.org/humanities/approaches-to-art-history/understanding-museums/a/museums-politics-louvre>.

215 *Id.*

216 Crispin Sartwell, *Art and Politics*, AM. SOC'Y FOR AESTHETICS (2010), <https://aesthetics-online.org/page/SartwellPolitics>.

217 Bargher, *supra* note 48, at 195.

and illegal trafficking of art permeate. Shouldn't the protection of art be extended under modern economic warfare conditions?

Traditional warfare and economic warfare share the common goal of defeating one's opponent, and the terminology of a trade war reflects the military strategy of the battlefield. Sun Tzu's infamous book, *The Art of War*, argued that "using economic instead of martial means is a superior method of defeating one's enemies."²¹⁸ Current and future warfare will be "fought on the field of trade, capital markets, and finance"²¹⁹ where society and its citizens are the target. As British military historian Nicholas Lambert explained, "economic warfare target[s] the enemy's society by deranging its national economy with the object of rapidly undermining the legitimacy of and domestic support for the enemy state"²²⁰ In economic warfare, consumers are the target.

Cultural property is weaponized, especially in economic or ideological warfare, and is a direct reflection of a nation's foreign policy. Countries vying for power use their art industries as a form of soft power to export their political ideologies and identities. This paper prompts deeper contemplation of what constitutes cultural property and the inherent transactional value of important tangible objects. It touches on how imposing tariffs on art is a symbolic rejection of a nation's culture, history, and socio-political identity, which reveals historical xenophobic discrimination and places a steep toll on essential cross-cultural understanding. Additionally, the more restrictive trade regulation, the more likely illicit art trade will emerge and pose a major risk to the preservation of original art.

Most antiquities and art that fall within the scope of these tariffs are imported from other European nations, not China. Chinese art and antiquities dating from centuries ago do not threaten the modern manufacturing, IP theft, or military strategy that President Trump attempted to protect in his imposed trade war tariffs. The current trade war is reminiscent of the anti-communist rhetoric of the Cold War while simultaneously missing its main target: China's economy. These tariffs only benefit the Chinese collectors who are not subject to the punitive tax and can further monopolize and shift the art world's focus from New York and London to Hong Kong and Shanghai as the new epicenters of art and culture. These tariffs damage the global art trade, American collectors, museums, gallerists, and the public. By erecting such a high barrier as to effectively prohibit the importation of certain significant and irreplaceable Chinese artwork, U.S. foreign policy is choosing to reject Chinese ideologies at the expense of its own citizens and economy. But maybe that is the exact point of President Trump's nationalist economic foreign trade policy because, as American military strategist Alfred Thayer Mahan said, "To bring the pressure of war to bear upon the whole population, and not merely upon the armies in the field, is the very spirit of modern warfare."²²¹

218 Matthew McCaffrey, *The Political Economy of The Art of War*, COMPARATIVE STRATEGY 6 (2014).

219 Aaron Klein, *Economic Warfare: Four Takeaways from Being in China When the Trade War Started*, BROOKINGS INST. (July 31, 2018), <https://www.brookings.edu/blog/up-front/2018/07/31/economic-warfare-four-takeaways-from-being-in-china-when-the-trade-war-started/>.

220 NICHOLAS LAMBERT, BRITS-KRIEG: THE STRATEGY OF ECONOMIC WARFARE, in UNDERSTANDING CYBER CONFLICT: 14 ANALOGIES 125 (George Perkovitch & Ariel E. Levite eds., 2017.), <https://carnegiendowment.org/2017/10/16/brits-krieg-strategy-of-economic-warfare-pub-73403>.

221 *Id.*

