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Our father used to say that people usually worry about the wrong things in life — so, to be safe, we advise our clients to worry about everything.

This turns out to be especially good advice for collectors of Chinese antiquities, who are now faced with controversial new U.S. Customs and Border Protection regulations ostensibly intended to curtail the looting of Chinese cultural patrimony. Our concern here: In trying to curb the illicit trade in Chinese artifacts — clearly a laudable goal — the U.S. government has inadvertently created a minefield for legitimate collectors, dealers and scholars.

The new restrictions stem from a memorandum of understanding (MOU) between the United States and China that became effective days before the end of President Bush's term. The MOU is extremely broad, covering Chinese antiquities from the Paleolithic Period (75,000 B.C.) through the end of the Tang Dynasty (907 A.D.), together with wall art and monumental sculptures that are at least 250 years old. Such works may now be legally imported into the United States only if China issues a valid

export certificate or if they left China before January 16, 2009, the effective date of the restrictions. The MOU does not apply to any antiquities that were exported from China before that date.

Clients who were worried about complying with the new regulations started calling us in mid-January. John, for instance, is a longtime collector and sometime art dealer living in New York. He faxed us a list of his recent purchases, and we responded by considering each work in turn.

The Tang horse that he bought in Paris last year, currently on loan to a European museum, could be legally imported into the United States because John had a clear paper trail showing that it had left China before January 16, 2009. Based on our discussions with U.S. Customs, we advised John that this type of paper trail should be "verifiable," which generally means having appropriate documents on letterhead with good contact information in the event of questions by U.S. Customs officials. John was relieved to hear that the import restrictions are not retroactive — a fact that many collectors fail to realize.

*Of Particular Import*

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The stainless-steel rock by contemporary artist Zhan Wang that was sitting in a Shanghai warehouse was also unaffected by the new regulations because it was less than 250 years old. But John's Tang funerary pot posed a trickier problem, since it was currently with a Hong Kong dealer.

"Does U.S. Customs view Hong Kong as inside or outside China?" John asked.

The answer seems to be outside, and works may be imported into the U.S. if accompanied by a declaration that they were located outside mainland China — such as in Hong Kong — before January 16, 2009. Hong Kong's status is especially important since it is still a center of the international trade in Chinese antiquities and a place where Sotheby's and Christie's have regularly held large auctions of antiquities. All indications are that these auctions will continue.

We next turned to a pre-Tang jade belt buckle. It happened to be in a Beijing warehouse, so it fell squarely within the new import restrictions and could not be legally imported into the United States without a Chinese export license.

"Where do I get this license?" asked John.

The answer, according to Dong Baohua, vice director general of China's State Administration of Cultural Heritage, is one of 14 state-level agencies throughout China that were established to review applications for exports of cultural property and issue licenses. "These state agencies independently exercise their authority in reviewing and approving

applications for import and export of cultural property in accordance with laws," Baohua explains. "Signs will be marked on and licenses will be issued to items of cultural property permitted for export after review and approval procedures are completed." Although this sounds reasonable in theory, in practice longtime dealers in the field are skeptical that such permits will be issued in accordance with the guidelines — if at all. Experienced buyers will continue to rely on reputable local mainland dealers to obtain the necessary export paperwork.

We advised John to get duplicates of his export permit and to keep one original. Otherwise, a Chinese or U.S. official could walk off with his only permit and leave him with no way to prove — perhaps years later when he wants to sell the piece — that his art had been properly exported from China or imported into the U.S.

One clear indication that Chinese export restrictions are connected to larger political issues comes in the wake of the controversial February 2009 auction at Christie's Paris of two 18th-century animal fountain heads. The bronze heads were taken from Beijing's Old Summer Palace in 1860 when allied British and French armies sacked the palace. (In an interesting historical sidelight, the troops were commanded by Lord Elgin, the son of the seventh Lord Elgin, who had removed important sculptures from the Parthenon, in Athens, which are now in the British Museum and which Greece wants back.)

Beijing strenuously objected to the sale of the bronze heads, but the consignor, Pierre Bergé (Yves Saint Laurent's

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longtime partner), thumbed his nose at China — which turned out to be a mistake. The winning Chinese bidder for the pieces publicly reneged on the purchase in protest, and as further payback, China declared that it would single out "heritage items" bought at auction from Christie's, or imported or exported by Christie's personnel, for special inspection and detailed verification of ownership history. Clearly, these measures will not help the auction house's efforts to do business in mainland China.

John's next question was on the mark. "Assuming I import works not covered by the restrictions or somehow manage to get Chinese export licenses for works that are covered, what assurance do I have that U.S. Customs officials will know enough not to seize my art?"

We understood his concerns. The MOU states that the United States "shall use its best efforts to improve the ability of its Customs officers to recognize Chinese archaeological material," but given that most people (including Customs officials) probably can't tell a ceramic Tang horse from a glass of Tang orange drink, problems with imports are perhaps inevitable. Customs officials do seem committed to addressing this issue. Still, hiring an experienced international shipper for Chinese antiquities is now absolutely essential.

One approach we have recently — and successfully — used for clients is submitting detailed information to U.S. Customs on the provenance of Chinese antiquities (including supporting documentation) and obtaining unofficial government consent before even attempting to import the works. In this

way, we have so far avoided any difficulty at the border.

The mou raises an even greater worry for those in the field: Given the cloud over Chinese antiquities created by the new restrictions, will scholars want to enter this area going forward, will museums want to acquire or display these works, and will dealers wish to continue the trade — even for art legally imported into the United States? And given that China itself is by far the world's largest market for Chinese antiquities and other countries are not bound by the MOU, will U.S. import restrictions do anything at all to address the problem of pillaged art?

Many argue that the only beneficiaries of the Customs restrictions are the Chinese government and its army, which will even more tightly control the trade in antiquities — not to mention American lawyers who will be needed to unravel the regulations. And that is worrisome indeed.

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