

CUSTOMS

Assistance

**Agreement Between the
UNITED STATES OF AMERICA
and CHINA**

Signed at Washington April 9, 1999



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

CHINA

Customs: Assistance

*Agreement signed at Washington April 9, 1999;
Entered into force April 10, 2003.*

AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA REGARDING MUTUAL
ASSISTANCE IN CUSTOMS MATTERS

The Government of the United States of America and the Government of the People's Republic of China (hereinafter referred to as the "Parties"),

Considering that offenses against Customs laws are prejudicial to the economic, fiscal and commercial interests of their respective countries;

Considering the importance of assuring the accurate assessment of Customs duties and other taxes;

Recognizing the need for international cooperation in matters related to the enforcement and administration of the Customs laws;

Convinced that action against Customs offenses can be made more effective through cooperation between their Customs authorities,

HAVE AGREED as follows:

ARTICLE 1
DEFINITIONS

For the purposes of the present Agreement:

1. "Customs laws" shall mean all statutory and regulatory provisions enforced or administered by the Customs administrations of the Parties concerning the importation, exportation, or transit of goods.
2. "Customs administration" shall mean, in the United States of America, the United States Customs Service, and in the People's Republic of China, General Administration of Customs.
3. "Offenses" shall mean any violation or attempted violation of the Customs laws.

ARTICLE 2
SCOPE OF THE AGREEMENT

1. The Parties agree to provide each other mutual assistance through their Customs administrations to prevent, investigate and repress any offenses, in accordance with the provisions of the present Agreement. All assistance under the present Agreement by the requested Party shall be performed in accordance with its domestic law and within the competence and ability of its Customs administration.
2. Assistance, as provided for in this Agreement, shall also include, upon a Party's own initiative or request, all information apt to ensure the enforcement of the Customs laws and the accurate assessment of Customs duties and other taxes by the Customs administrations.
3. The Customs administrations of the Parties shall also seek to cooperate in:
 - a. the exchange of personnel and experts, which may include the posting of diplomatically accredited Customs attaches, when mutually beneficial for the purpose of advancing the mutual understanding of each other's Customs procedures and techniques;
 - b. initiating, developing or improving special training programs for their personnel;
 - c. the consideration and testing of new equipment or procedures; and
 - d. any other general administrative matters that may from time to time require joint actions by their Customs administrations.
4. In case the Customs administrations of the requested Party is not the appropriate agency to comply with a request for assistance, it shall transmit the request to the appropriate agency, and seek the cooperation of that agency. The requesting Customs administration shall be so advised. Compliance shall be within the discretion of the appropriate agency, which shall be under no obligation to reply to such a request.
5. This Agreement is intended to enhance and supplement mutual assistance practices

presently in effect between the Parties. No provisions in this Agreement may be interpreted in a manner that would restrict agreements and practices relating to mutual assistance and cooperation that are already in effect between the Parties.

6. Assistance as provided for in Paragraph 1 of this Article shall not extend to a request to arrest or detain persons or recover duties, taxes, fines or any other monies on behalf of the requesting Customs administration.

ARTICLE 3 COMMUNICATION OF INFORMATION

1. The Customs administrations of the Parties shall, on their own initiative or upon request, promptly furnish each other information which has come to light in the course of their normal enforcement activities and which gives good reason to believe that a serious customs offense will be committed in the territory of the other Party.

2. The Customs administration of one Party shall, on its own initiative or on request, communicate to the Customs administration of the other Party:

- a. information likely to be of assistance to their investigation and repression of an offense and particularly in connection with new means or methods of committing offenses;
- b. information involving the other Party in respect of sources of smuggling goods, routes of illegal trafficking as well as methods of committing smuggling activities in relation to cases exposed by one Party;
- c. observations and findings resulting from the successful application of new enforcement aids and techniques; and
- d. techniques and improved methods of processing passengers and cargo.

ARTICLE 4 VERIFICATION

1. At the request of the Customs administration of one Party, the Customs administration of the other Party shall communicate to that Customs administration information concerning the following matters:

- a. the authenticity of official documents produced in support of a Goods Declaration made to the Customs authorities of the requesting Party,
- b. whether goods exported from the territory of the requesting Party have been lawfully imported into the territory of the requested Party; and
- c. whether goods imported into the territory of the requesting Party have been lawfully exported from the territory of the requested Party.

2. The information stated in sub-paragraph b and c of Paragraph 1 of this Article shall, upon request, also contain the Customs procedure used for clearing the goods.

ARTICLE 5
ASSESSMENT OF DUTIES

1. The Customs administration of one Party may, for the purpose of assuring the accurate assessment of import or export duties and other taxes, request the Customs administration of the other Party for assistance, if it has good reason to believe that a Customs offense has been committed in its territory.
2. The Customs administration of the requested Party shall, in accordance with its domestic laws, promptly provide the requesting Party with all files, documents and other materials at its disposal in respect of the value, classification, origin and disposition of the goods for Customs purposes.

ARTICLE 6
SPECIAL SURVEILLANCE

At the request of the Customs administration of one Party, the Customs administration of the other Party shall, within the limits of its domestic law and to the extent of its competence and ability, maintain special surveillance for a special period over:

- a. particular persons who are engaged or suspected of being engaged in offenses against the Customs law of the requesting Party;
- b. particular goods which are in connection with or suspected of being in connection with offenses against the Customs law of the requesting Party; and
- c. particular means of transport used to or suspected of being used to commit offenses against the Customs law of the requesting Party,

and shall communicate a report thereon to the Customs administration of the requesting Party.

ARTICLE 7
INVESTIGATION

Upon the request of the Customs administration of one Party, the Customs administration of the other Party shall, subject to its domestic law, conduct all necessary investigations, verifications, or inspections in connection with matters specified in this Agreement, including the questioning of experts, witnesses, and persons suspected of having committed an offense. Where, by domestic law, the requested Customs administration is not competent to conduct the investigation, verification, or inspection, it may provide the assistance requested within the limits of its competence and ability.

ARTICLE 8
DISPOSAL OF FORFEITED PROPERTY

The Parties agree:

- a. to dispose of property, proceeds or instrumentalities forfeited as a result of the

assistance provided for under this Agreement, in accordance with the domestic law of the Party in control of the property, proceeds or instrumentalities;

- b. that either Party may transfer forfeited property or instrumentalities, or the proceeds of their sales to the other Party, to the extent permitted by their respective domestic law, upon such terms as may be agreed.

ARTICLE 9 FORM AND SUBSTANCE OF REQUEST FOR ASSISTANCE

1. Requests pursuant to the present Agreement shall be made in writing and accompanied by documents necessary for the execution of such requests. When required because of the urgency of the situation, oral requests may be accepted, but shall be promptly confirmed in writing.
2. Requests pursuant to Paragraph 1 of this Article shall include the following information:
 - a. the authority making the request;
 - b. the nature of the proceedings;
 - c. the object of and the reason for the request;
 - d. the names and addresses of the parties concerned in the proceedings, if known;
 - e. a brief description of the matter under consideration and the legal elements involved; and
 - f. the time limit for replying to the request and the requirements for methods of communication.
3. Requests shall be made in either the English or the Chinese language.
4. In the event that a request fails to meet requirements as set forth in this Article, the requesting Customs administration may be allowed to revise it or supplement it.

ARTICLE 10 EXECUTION OF REQUESTS

1. The requested Customs administration shall take all reasonable measures, within its competence and ability, to execute the request.
2. The requested Customs administration shall comply with a request to follow a certain procedure, unless that procedure would conflict with its domestic law or normal practice in force in the country of the requested Party.
3. The requesting Customs administration shall, if it so requests, be advised of the time and place of the action to be taken in response to the request so that such action may be coordinated.

ARTICLE 11
ORIGINALS OF FILES, DOCUMENTS AND OTHER MATERIALS

1. The Customs administrations of the Parties shall, upon request, provide documentation relating to transportation and shipment of goods showing value, disposition and destination of those goods.
2. Upon specific request, copies of files, documents and other materials shall be appropriately authenticated. Originals of such files, documents and other materials shall be requested only in cases where authenticated copies would be insufficient.
3. Originals of files, documents and other materials which have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of third parties relating thereto shall remain unaffected.
4. When permitted under the domestic law of the requested Party, the Customs administration of the requested Party may authorize its employees to appear as experts in administrative proceedings in the territory of the requesting Party and to produce such files, documents or other materials or authenticated copies thereof, as may be considered essential for the proceedings.

ARTICLE 12
USE OF INFORMATION, DOCUMENTS AND OTHER MATERIALS

1. Information, documents and other materials received in the course of mutual assistance shall be used only by the Customs administration of the receiving Party for the purposes specified in this Agreement.
2. Such information, documents, and other communications shall not be transferred to other agencies or be used for other purposes including for use as evidence in administrative or judicial proceedings except with the expressed consent of the Customs administration which furnished them.

ARTICLE 13
CONFIDENTIALITY

1. Information, documents and other materials received by either Party in the course of mutual assistance shall, upon request of the supplying Party, be treated as confidential. The reasons for such a request shall be stated.
2. Such information, documents or other materials obtained or communicated under this Agreement shall be afforded in the receiving country the same protection in respect of confidentiality and official secrecy as applies in that country to the same kind of information, documents and other materials obtained in its own territory.
3. Nothing in this Agreement shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or fundamental principles of law of the requesting party in a criminal prosecution. The Customs Administration of the

requesting Party shall notify the Customs Administration of the requested Party in advance of any such proposed disclosure.

ARTICLE 14
EXEMPTION FROM ASSISTANCE

1. If one Party considers that the assistance sought would infringe upon its sovereignty, security, public policy or other national interests, it may decline to afford that assistance or give it subject to certain conditions or requirements.
2. In the event that the request cannot be complied with, the requesting Party shall be promptly notified of that fact, and provided a statement of the reasons and circumstances which might be of importance for the further pursuit of the matter.
3. Assistance may be postponed by the requested Party on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if assistance can be given subject to such terms or conditions as the requested Party may require.

ARTICLE 15
COSTS

1. The Parties shall normally waive all claims for reimbursement of costs incurred in the execution of any assistance under the present Agreement, with the exception of expenses for experts, and costs of interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

ARTICLE 16
IMPLEMENTATION OF THE AGREEMENT

1. The Parties agree, that their Customs administrations shall:
 - a. communicate directly and identify the points of contact for the purpose of dealing with matters in connection with the present Agreement;
 - b. after consultation, issue any internal administrative directives necessary for the implementation of the present Agreement; and
 - c. endeavor by mutual accord to resolve problems or doubts arising from the interpretation or implementation of the Agreement.
2. The Parties agree that meetings may be held between the representatives of their Customs administrations, on an annual basis for the first five years following the execution of the Agreement for the purpose of reviewing the implementation of the Agreement. The

meetings shall take place, if necessary, at Commissioner levels on an alternate basis. The date and the agenda of such meetings shall be agreed upon by their Customs administrations sufficiently in advance.

ARTICLE 17
ENTRY INTO FORCE AND TERMINATION

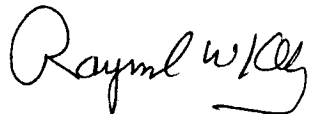
1. The Parties shall notify one another by an exchange of diplomatic notes that all necessary national legal requirements for entry into force have been fulfilled. This Agreement shall enter into force on the ninetieth (90) day following the date of receipt of the last notification.

2. This Agreement is concluded for unlimited duration, but each Party may, at any time, request its termination by serving a written notice through diplomatic channels to the other Party. The present Agreement shall cease to be in force on the ninetieth (90) day following the date of the other Party's receipt of the notice of termination.

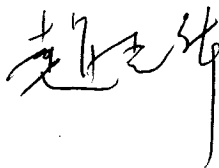
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, on the ninth day of April, 1999, in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA:



美利坚合众国政府和中华人民共和国政府 关于海关互助的协定

美利坚合众国政府和中华人民共和国政府（以下简称“双方”），
考虑到违反海关法的行为有损于两国的经济、财政和贸易利益；
考虑到正确计征关税及其他税的重要性；
认识到在海关法的执行和实施方面进行国际合作的必要性；
确信两国海关间的合作将使查缉违反海关法行为的行动更为有效；
议定如下：

第一条

定义

在本协定中，

（一）“海关法”系指由双方海关当局执行或实施的关于进口、出口或转运的一切法律和法规；

（二）“海关当局”，在美利坚合众国方面系指美利坚合众国财政部海关署，在中华人民共和国方面系指中华人民共和国海关总署；

（三）“违法”系指任何既遂或未遂的违反海关法的行为。

第二条

协定范围

一、双方同意，依据本协定各条款并通过双方海关当局相互提供协

助，以防止、调查和惩处违反海关法的行为。本协定规定的所有协助均应由被请求一方遵照其国内法律，在其海关当局的权限和能力的范围内予以实施。

二、本协定所规定的协助亦包括一方主动或应请求向另一方提供可能有助于其确保海关法的实施及正确计征关税和其他税的情报。

三、双方亦应寻求在下列方面进行合作：

(一) 人员和专家的交流，包括设立经过外交任命的海关专员，以有益于相互间对各自采用的海关手续和技术的了解；

(二) 提出、制订或改进人员培训的具体方案；

(三) 新设备或新手续的研究或测试；

(四) 其他需双方海关当局采取联合行动的一般性行政事务。

四、如被请求方海关当局非系执行一项协助请求的合适部门，该海关当局应将该项请求转送有关部门并谋求该部门的合作。此情况应通知请求方海关当局。是否执行该项请求由该合适部门自行确定，但无对此项请求进行答复的义务。

五、本协定旨在加强和补充双方目前正在实施的相互协助。本协定中的任何规定均不可被解释为对双方目前已经实施的互助与合作协议及实践的限制。

六、依据本条第一款所提供的协助不得扩大到代请求方海关当局逮捕或扣押人犯，或返还税款、罚款或其他款项。

第三条

情报交换

一、一方海关当局应主动或应请求向另一方海关当局迅速提供其在正常执法活动中发现并有理由确信，在另一方境内将发生严重违反海关法行为的情报。

二、一方海关当局应主动或应请求向另一方海关当局提供关于下列事宜的情报：

(一) 可能有助于调查和惩处某一违反海关法行为的情报，特别是关于新的作案手段或方法的情报；

(二) 一方海关当局查获的涉及另一方案件的有关私货来源、非法贩运路线以及新的从事走私活动方法的情报；

(三) 因成功地采用新的执法设备和技术而获得的观察资料或调查结果；

(四) 验放货物和旅客行李的技术及改进后的方法。

第四条

核查

一、经一方海关当局请求，另一方海关当局应向请求方海关当局通报关于下列事项的情况：

(一) 作为附件随货物申报单递交给请求方海关当局的官方文件是否真实；

(二) 从请求方境内出口的货物是否合法运入被请求方境内；

(三) 运到请求方境内的货物是否系从被请求方境内合法出口。

二、经请求，本条第一款第二、三项所述情况应包括验放货物所适用的海关手续。

第五条
关税计证

一、一方海关当局，如确信在其境内发生了违法行为，可请求另一方海关当局予以协助，以保证进出口关税和其他税的正确计征。

二、被请求方海关当局应根据其国内法的规定，尽快向请求方海关当局提供其所掌握的与货物的价格、归类、原产地及处置有关的档案、文件和其他资料。

第六条
特别监视

经一方海关当局请求，另一方海关当局应在其国内法律允许的范围
内，并在其权限和能力所及的情况下就下列各种情事进行一定时期的
特别监视，并向请求方海关当局提出监视报告：

- (一) 参与或涉嫌参与违反请求方海关法活动的特定人员；
- (二) 与或涉嫌与违反请求方海关法活动有关的特定货物；
- (三) 用于或涉嫌用于违反请求方海关法活动的特定运输工具。

第七条
调查

应一方海关当局的请求，另一方海关当局应在其国内法律允许的范

围内，就本协定所涉事项进行必要的调查、核实或检查，包括询问专家、证人及违反海关法行为的嫌疑人。如根据国内法的规定，被请求方海关当局无权从事上述调查、核实或检查，则该海关当局可在其权限和能力的范围内提供所请求的协助。

第八条

没收财产的处置

双方同意：

（一）依据对财产、收益和工具拥有控制权一方的国内法律处置因提供本协定所规定的协助而没收的财产、收益和工具；

（二）在双方国内法律允许的范围内，任何一方可按双方商定的条件，将没收的财产、工具或因出售上述财产和工具所获得的收益转交给另一方。

第九条

请求的形式和内容

一、根据本协定所提请求应以书面形式提出，并应随附执行上述请求所需的文件。如遇紧急情况，可接受口头请求，但请求方海关当局应立即以书面形式加以确认。

二、根据本条第一款所提出的请求应包括以下内容：

（一）提出请求的海关当局；

（二）程序的性质；

- (三) 请求的事项和理由;
- (四) 已知程序涉及各方的姓名和地址;
- (五) 请求事项和相关法律要点的简要陈述;
- (六) 请求的答复时限和对联络方式的要求。

三、请求应以英文或中文的形式提出。

四、如提出的一项请求不符合本条所规定的要求，可允许请求方海关当局对其进行修改或补充。

第十条 **请求的执行**

一、被请求方海关当局应在其权限和能力范围内采取一切合理的措施执行请求。

二、被请求方海关当局应按请求方海关当局的要求遵循特定程序，除非该程序与被请求方国内法律或通常作法相抵触。

三、如请求方海关当局要求，被请求方海关当局应将为执行协助请求而采取行动的时间及地点通知请求方海关当局，以使该行动得以协调。

第十一条 **档案、文件和其他资料的原件**

一、经请求，双方海关当局应向对方提供有关货物运输及发运的单证，此类单证应标明货物的价格、处置及指运地。

二、经特别请求，上述档案、文件和其他材料的复印件应以适当的方式予以证明。只有在经证明的复印件法律效力不足的情况下，才应要求提供档案、文件和其他材料的原件。

三、所递交的档案、文件和其他资料的原件应及早予以退还；被请求方或第三方对上述材料的权利应不受影响。

四、被请求方海关当局可在其国内法律允许的情况下，授权其雇员在请求方境内进行的行政程序中以专家的身份出现，并出具可能被认为对上述程序至关重要的档案、文件或其他材料，或经过证明的上述文件的复印件。

第十二条

情报、文件和其他资料的使用

一、在实施互助过程中所获得的情报、文件和其他资料应仅供获取方海关当局用于本协定所规定的目的。

二、非经提供方海关当局明示同意，上述情报、文件及其他资料不得移交其他部门或移作他用，包括在行政或司法程序中作为证据使用。

第十三条

保密

一、经提供方海关当局请求，任何一方海关当局应将依据本协定实施互助过程中所获取的情报、文件和其他资料视为机密。此项请求的理由应予以说明。

二、依据本协定所获取的任何情报、文件和其他资料，其机密性和公务上的保密性均应得到获取国在本国境内取得的同类情报、文件和其他资料应受到的相同程度的保护。

三、本协定的任何条款均不妨碍请求方在其宪法或法律基本原则下的义务范围内，在刑事诉讼中使用或披露资料。请求方海关当局应将任何此种披露事先通知被请求方海关当局。

第十四条

协助的免除

一、如一方认为，请求给予的协助将侵犯其主权、安全、公共政策或其他国家利益，则该方可以拒绝提供该项协助或在满足一定条件或要求的情况下给予协助。

二、如该项请求无法执行，被请求方应尽快将此情况通知请求方，并就其原因及对进一步处理该项事宜可能具有重要意义的情况作出说明。

三、如被请求方认为提供协助将妨碍一项正在进行的调查、起诉或程序，则可推迟给予协助。在此种情况下，被请求方应与请求方商定是否可在满足被请求方可能提出的条件下提供协助。

第十五条

费用

一、除专家费用和因提供非政府雇员的翻译人员所产生的费用外，

双方一般应放弃对因执行本协定而产生的费用获得补偿的要求。

二、如执行该请求需要或将需要支付巨额或特别性质的费用，双方应协商确定执行该项请求的条件及有关费用负担的办法。

第十六条

协定的执行

一、双方同意，双方海关当局应：

（一）进行直接联系并各自指定联络官处理与本协定有关的事宜；

（二）在协商后，颁布执行本协定所需要的内部行政指令；

（三）采取协商一致的办法解决本协定在解释或执行中所产生的问题或疑问。

二、为审议本协定的执行情况，双方同意其海关当局的代表应在本协定生效后的第一个五年期间举行年度会议。如有必要，可轮流在两国举行署长级会晤。会晤的时间和日程应由双方海关当局在会议召开前足够时间内商定。

第十七条

生效和终止

一、双方应通过外交照会相互通知业已完成为使本协定生效所需要的国内法律程序。本协定将自收到后一方通知之日后第九十天起生效。

二、本协定长期有效。任何一方可在任何时候通过外交途径书面通知对方要求本协定终止。本协定将自另一方收到该协定终止通知书第

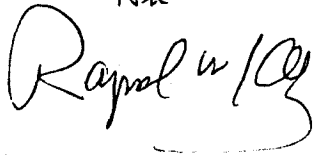
九十天起失效。

兹有下列经双方政府正式授权的全权代表在本协定上签字，以昭信守。

本协定于一九九九年四月九日在华盛顿签订，共两份，每份均用英文和中文写成，两种文本同等作准。

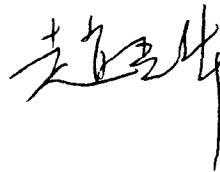
美利坚合众国政府

代表

Handwritten signature in cursive script, appearing to read "Rappal" followed by a flourish.

中华人民共和国政府

代表

Handwritten signature in Chinese characters, appearing to be "赵毅" (Zhao Yi).