

Agreement Between the Government of the People's Republic of China and the Government of the Confederation of Switzerland on the Reciprocal Promotion and Protection of Investments

The Government of the People's Republic of China and the Government of the Confederation of Switzerland,

Desiring enhance the economic cooperation between the two countries,

Aspiring to create favourable conditions for investors of One Contracting Party to make investments in the territory of the Other Contracting Party,

Have agreed as follows:

Article 1 Definitions

For the purposes of this Agreement:

(1) "Investments" means every kind of asset approved as investment by the Contracting party accepting such investment in its territory in accordance with its laws and regulations in force at the time of accepting such investment and in particular, though not exclusively, includes:

- a. movable and immovable property and any other property rights such as mortgages, pledges, usufructs and other similar right;
- b. shares and stock in companies and interests of other forms in such companies;
- c. claims and claims to any performance having a financial value;
- d. copyrights, industrial property rights, Know-how and good-will; or,
- e. concessions including concessions to search for, extract and exploit natural resources.

Any changes in the form in which assets are invested shall not affect their character as investments.

(2) "Investors" means

- a. physical persons having nationality of either Contracting Party;
- b. any economic entities or juridical persons established in accordance with the law of either Contracting party and having seats in the territory of such Contracting party, or any economic entities or juridical persons directly or indirectly controlled by the former economic entity or juridical person.

Article 2 Promotion and Acceptance

One Contracting Party shall, with efforts, encourage investments of investors of the Other Contracting party in its territory and accept such investment in accordance with its law.

Article 3 Protection and Approval

1. One Contracting party shall accord protection in its territory to the investment made by the investor of the Other Contracting party in accordance with the law, and the returns derived from such investment shall also enjoy similar protection as the investment.
2. One Contracting party shall, according to its domestic legislation and with sympathy, review the applications required for approval and permission. for all activities of management, promotion, execution and necessary labour force associated with such investment.

Article 4 Treatment

1. Each Contracting party shall guarantee to investment of investors of the Other Contracting party fair and equitable treatment in its territory.
2. Either contracting party shall refrain from unfairly taking discriminatory measures or measures which may impair normal activities associated with execution or management of investments made by invertors of the Other Contracting party.
3. Each Contracting party shall, in its territory, assure investors of the Other contracting party with regard to their investments of the most favoured nation treatment.
4. The most, favoured nation treatment provided in paragraph 3 of this Article shall not apply to any advantages accorded to investments of investors of a third State by one Contracting party due top a member or associate member of free trade area, customs union or common market, neither to any advantages based on facilitating frontier or an agreement on the avoidance of double taxation.

Article 5 Respect for Obligations

Each Contracting party shall, at any time, assure investors of the Other contracting party with regard to investments of the respect for the obligations the former Contracting party has resumed.

Article 6 Transfer

Each contracting party shall permit investors of the Other Contracting party to transfer freely the following proceeds without undue delay, including:

- (1) profit, interest and other daily income;
- (2) payment provided under contract;
- (3) payment for management of an investment;
- (4) royalties derived from the rights in Article 1- (1) -d;
- (5) additional capital needed to maintain or increase investment;

(6) proceeds from the total or partial liquidation or sale of an investment including possibly increased value.

Article 7 Deprivation and Compensation

Neither contracting party shall subject investment in its territory of investors of the Other Contracting party to the measures except for public interests. Under nondiscrimination, in conformity with legal provision and against compensation shall be appropriate or tantamount to the value of an investment immediately before the measures of expropriation, nationalization and deprivation or other similar measures are taken or impending measures being to bring to bring about a result, The compensation shall be paid in a freely convertible currency without undue delay and be freely transferable between the two States of the Contracting parties.

Article 8 Investments Prior this Agreement

This Agreement shall also apply to either investments made by investors of the People's Republic of China in the territory of the Confederation of Switzerland in accordance with the legislation of the latter or investments made by investors of Switzerland in the territory of the people's Republic of China in accordance with the legislation of the Latter.

Article 9 More Favourable Treatment.

If the present or future legislation of one Contracting party or international arrangements signed by one Contracting party provide more favourable treatment to investments of the Other Contracting party than that provided by this Agreement such treatment shall prevail.

Article 10 Subrogation

1. If one Contracting party provides final indemnity against non-commercial risk to its investor with regard to the investment made in the territory of the Other Contracting Party and makes a payment to such investor under indemnity, the Other Contracting party shall recognize acquirement of the rights and claims of such investor by the Former Contracting party by virtue of subrogation.

2. However, the rights or claims shall not exceed the original rights or claims of such investor by virtue of subrogation, neither prejudice all the original rights or claims of such investor Other Contracting Party has acquired.

Article 11 Arbitration between two Contracting Parties

1. Disputes between the Contracting Parties on the interpretation or application of the provisions of this Agreement shall be settled though diplomatic channel.

2. A dispute between the Contracting Parties, if not settled through amicable consultation within six months, may be submitted to an arbitral tribunal at the request of either Contracting Party.

3. Such an arbitral tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member of the tribunal, and these two members shall then select a

national of a third State having diplomatic relations with the two Contracting Parties who shall be appointed Chairman of the tribunal by the two Contracting Parties.

4. Failing the appointment of member,(s) within two months from the date on which one Contracting party gives a written notification of request for arbitration or no agreement is reached on the selection of a chairman of the tribunal by the two members within the months. Thereafter: of their appointments either Contracting party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either Contracting party or if he is otherwise prevented from discharging the said function the member of the Court next in seniority who is not a national of either Contracting Party shall be invited to make the appointment.

5. The tribunal shall reach its awards in accordance with the provisions of this Agreement, other agreements between the Contracting Parties and the general principles of international law.

6. The tribunal shall decide its own procedure.

7. The tribunal shall make its decision in a majority of votes. Its decision is final and shall be observed by the two Contracting Parties. The tribunal shall interpret its decision at the request of either Contracting Party.

8. Each Contracting Party shall bear the cost of its appointed member in the arbitral proceedings, the cost of the Chairman in performance of his function and the other costs shall be borne in equal parts by the two Contracting Parties.

Article 12 Arbitration between the Contracting Party and Investor

1. If a dispute between one Contracting party and an investor of the Other Contracting Party cannot amicably be settled within six months the investor may submit the following dispute to international arbitration:

(1) a dispute on the matter of compensation mentioned in Article 7 of this Agreement:

(2) any other dispute on the matter of this Agreement agreed by the two parties to the dispute for submission to international arbitration.

2. An international arbitration tribunal shall be constituted for each individual case. Each party shall appoint a member of the tribunal in the absence of any other arrangement within two months from the date on which a written notification for arbitration has been given by one party to the other and these two members shall within two more months after their appointments agree on an appointment of a national of a third State having diplomatic relations with the two Contracting Parties as Chairman of the tribunal. If any member has not been appointed within the period specified above the President of the International Court of Justice shall be invited to make the appointment. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the member of the court next in seniority who is not a national of either Contracting Party shall be invited to make the appointment.

3. Each party to the dispute shall bear the cost of his appointed member of the tribunal. The cost of the Chairman and his remuneration in discharging his function shall be borne in equal parts by the two parties.

4. The tribunal shall work out its rules of procedure under the guidance of the Convention on the Settlement of investment Disputes between States and Nationals in accordance with the provisions of this Agreement.

5. The tribunal shall make its decision by a majority of votes, and the decision is final and shall be observed.

Article 13 Annex

The protocol and exchange of notes attached to shall be an integral part of this Agreement.

Article 14 Entry into Force, Continuation and Termination

1. This Agreement shall enter into force from the date on which the two Governments have informed each other of the accomplishment of the domestic legal procedure required for bringing into effect an international agreement.

2. The Agreement shall remain in force for a period ten years and continue to be in force for two more years and so forth in the absence of a written notification of termination by either Contracting Party to the other twelve months before its expiration.

3. The provisions from Article 1 to 13 shall continue to apply to investments made whilst the Agreement is in force after the date of the termination of the Agreement.

Done in duplicate at Beijing on November 12, 1986 in the Chinese and French languages, both texts being equally authoritative.

(Zheng Tuobin)

(Pierre Aubert)

For the Government of the People's
Republic of China

For the Government of the
Confederation of Switzerland
(Informal Translation)

Protocol

On signing the Agreement between the Government of the People's Republic of China and the Government of the Confederation of Switzerland on the Reciprocal Promotion and

Protection of Investments, the undersigned plenipotentiaries of the two Contracting Parties have agreed on the following provisions:

1. "Investors" in Article 1-(2) -b in the Agreement excludes economic entities or juridical persons established by Swiss (Chinese) investors in the territory of China (Switzerland) in accordance with the legislation of China (Switzerland).

However, investments made by Swiss (Chinese) investors in economic entities or juridical persons established by such investors in the territory of China (Switzerland) and in accordance with the legislation of China (Switzerland) and the activities of implementation and operation associated with such investments shall enjoy protection provided by the Agreement.

In respect of investment made by an economic entity or juridical person controlled by a Swiss (Chinese) investor and seated in a third State, if such investor has received compensation for expropriation under the agreement on promotion and protection of investments between the People's Republic of China and such third State, the right shall not be executed according to Article 7 to this Agreement.

2. The two Contracting Parties have reached following arrangement on the wording "unfairly taking discriminatory measures" mentioned in paragraph 2 of Article 4.

Due to the difference in economic and legal systems between the two countries and necessity of the development of national economy in the People's Republic of China Swiss investors shall not require a same treatment enjoyed by Chinese investors in all aspects. However, the Chinese Government shall pay attention to a fair treatment on the whole to be accorded to Swiss investors.

3. "Normal Activities associated with execution or management of investments made by investors of the Other Contracting Party" in the territory of the one Contracting Party mentioned in paragraph 2 of Article 4 means the activities stipulated in the approved investment document or in conformity with the law of the One Contracting Party.

4. In respect of the People's Republic of China the obligations mentioned an Article 5 mean that the competent authority of the People's Republic of China has document to an investor of Switzerland with regard to his investment in official document such as approved investment document.

5. In respect of the People's Republic of China, free transfer in Article 6 means as follows:

(1) "Free transfer" shall be made from the foreign exchange account of a joint venture or foreign enterprise in which an investor participates in accordance with the foreign exchange control regulations in force at the time of signing the investment agreement.

(2) Where that foreign exchange account does not have sufficient foreign exchange for the transfer, the Chinese Government shall convert local currency into necessary convertible currency with consideration of investor's choice of the currency in the following cases:

(a) proceeds in Article 6 (1) provided that such venture or enterprise is specifically approved by the competent authority of the Chinese Government to sell its products or service in non-convertible currency:

(b) necessary payment in Article 6 (2) which must be guaranteed by a Chinese organization authorized by the Bank of China or the Administration of exchange control;

(c) payment in Article 6 (3) approved in advance by the competent authority of the People's Republic of China if it is not included in an investment agreement,

(d) proceeds mentioned in Article 6 (4) ,(5) and (6).

(3) The following transfer shall not be deemed as undue delay:

The transfer mentioned in Article 6 is completed within 90 days from the date on which the competent authority has received the application for transfer; the transfer mentioned in Article 7 and 10 is completed within 180 days from the date on which the competed authority has received the application for transfer.

Done in duplicate at Beijing on 12th November, 1986, in the Chinese and Franch languages, both texts being equally authoritative.

(Zheng Tuobin)

(Pierre Aubert)

For the Government of the People's
Republic of china

For the Government of the
Confederation of Switzerland
(Informal Translation)