

**AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE GOVERNMENT OF BARBADOS
CONCERNING THE ENCOURAGEMENT AND RECIPROCAL
PROTECTION OF INVESTMENTS**

The Government of the People's Republic of China and the Government of Barbados (hereinafter referred to as the Contracting Parties).

Desiring to create favourable conditions for greater investment by investors in the territories of the Contracting Parties;

Recognising that the reciprocal encouragement, promotion and protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Desiring to intensify the economic co-operation of both States on the basis of equality and mutual benefit;

Hereby agree as follows:

Article 1 Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) movable and immovable property and any other property rights such as mortgages, liens and pledges;

(b) shares, stocks, debentures and any other kind of participation in companies;

(c) claims to money or to any other performance under contract having an economic value;

(d) intellectual property rights, goodwill, technical processes and know-how; and

(e) concessions conferred by law or under contract, including concessions to search for or exploit natural resources.

2. The term "investors" means

(a) in respect of the People's Republic of China:

(i) natural persons who have the nationality of the People's Republic of China in accordance with its laws;

(ii) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;

(b) in respect of Barbados:

(i) natural persons who have the nationality of Barbados in accordance with its laws; or

(ii) any enterprise incorporated or duly constituted in accordance with the applicable laws of Barbados and domiciled in the territory of Barbados.

Who makes an investment in the territory of the other Contracting Party.

3. The term "domiciled"

(a) in the People's Republic of China means having the economic entities effectively managed and controlled in that territory; and

(b) in Barbados means having the enterprise effectively managed and controlled in that territory

4. The term "local administrative review procedure" means the administrative procedures through which an investor of a Contracting Party may obtain a local administrative remedy in the territory of the other Contracting party.

5. The term "returns" means the amounts yielded by investments such as profits, dividends, interest, royalties or other legitimate income.

Article 2 Promotion of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visas and work permits to nationals of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments.

Article 3 Protection of Investments

1. Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

2. The treatment and protection referred to in paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a Third State.

3. The treatment and protection as mentioned in paragraph 1 and 2 of this Article shall not include preferential treatment accorded by the other Contracting Party to investments of investors of a Third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

Article 4 Expropriation

1. Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory unless the expropriation is done:

- (a) in the public interests;
- (b) in accordance with domestic legal procedure.
- (c) without discrimination;
- (d) against compensation;

2. The compensation mentioned in paragraph 1 (d) of this Article shall be equivalent to the market value of the expropriated investments immediately before the expropriation or impending expropriation became public knowledge. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognized principles of valuation taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. The compensation shall include interest at a current commercial lending rate applicable to the currency in which the investment was originally made from the date of expropriation until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

3. Any investor affected by the expropriation shall have a right under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 2 of this Article.

4. Where a Contracting Party expropriates the assets of a company which was incorporated or constituted under the law in force in any part of its own territory, and in which investors of other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 to 3 of this Article are applied to the extent necessary to guarantee reasonable compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares.

Article 5 Compensation for Losses

Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war, state of national emergency, insurrection, riot or other similar event, shall be accorded by the latter Contracting Party, if it takes relevant measures, treatment no less favourable than that accorded to investors of any Third State.

Article 6 Guarantee

1. Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the transfer of investments and returns held in its territory, including:

- (a) profits, dividends, interest and other legitimate income;
- (b) amounts from total or partial liquidation of investments;
- (c) payments made pursuant to a loan agreement in connection with investment;
- (d) royalties paid in respect of matters referred to in paragraph 1 (d) of Article 1;
- (e) payments for technical assistance or technical service and management fees;

(f) payments in connection with projects on contract;

(g) earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.

2. The transfers mentioned above shall be made at the prevailing exchange rate of the Contracting party accepting the investment on the date of transfer.

Article 7 Principle of Subrogation

Where one Contracting Party or its Agency has granted any financial guarantee against non-commercial risks in regard to an investment by an investor in the territory of the other Contracting Party, the latter shall recognize the transfer of the rights or claims of the investor to the former Contracting Party or its Agency by virtue of the Principle of Subrogation when payment has been made under this guarantee by the former Contracting Party or its Agency.

Article 8 Disputes Concerning Interpretation or Application of Agreement

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through the diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall comprise three arbitrators. Within two months from the date on which either Contracting party receives written notice of a request for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. The two arbitrators shall, within a further period of two months, together select a third arbitrator who is a national of a Third State which has diplomatic relations with both Contracting parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President of the Court is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its decision in accordance with the provisions of this Agreement and the principles of international law recognised by both Contracting Parties.

6. The tribunal shall reach its decision by a majority of votes. The decision shall be final and binding on both Contracting Parties. The tribunal shall, upon the request of either Contracting Party, explain the reasons for its decision.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9 Settlement of Investment Disputes

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting party shall, as far as possible, be settled amicably through negotiations between the investor and the other Contracting Party.

2. If any dispute referred to in paragraph 1 of this Article cannot be settled within six months following the date on which the written notification of the dispute has been received by one party from the other party to the dispute, the investor shall have the right to choose to submit the dispute for resolution by international arbitration to one of the following for a:

(a) the International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18 1965; or

(b) an arbitral tribunal to be set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary-General of ICSID;

3. Notwithstanding paragraph 2, the Contracting Party may require the investor to exhaust the local administrative review procedure before the submission of the dispute to international arbitration. The provision of this paragraph shall not apply if the investor has resorted to the procedure specified in paragraph 10 of this Article.

4. The arbitral tribunal referred to in paragraph 2(b) of this Article shall, with respect to the procedure, follow the Arbitration Rules of UNCITRAL.

5. Any arbitration under paragraph 2 shall be held in a State that is a party to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. The arbitral tribunal shall decide the issues in dispute in accordance with the provisions of this Agreement, the law of the Contracting Party accepting the investment and applicable rules of international law.

7. Any arbitral awards rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of the award and provide in its territory for the enforcement of the award.

8. In any proceeding involving an investment dispute, a Contracting party shall not assert as a defence, counterclaim, right of set-off or for any other reason that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract; but the Contracting Party may require written consent that the insurer or guarantor who has paid or will pay the compensation to the investor agrees that the investor exercise the right of claim for compensation under the procedure specified by the provisions of this Article.

9. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

10. The investors of each Contracting Party shall have a right of access to the competent courts of the other Contracting Party for exercising adjudicatory authority in any dispute. If the investor has resorted to the procedure specified in this paragraph, paragraph 2 of this Article shall not apply, unless the court refers the matter to international arbitration.

Article 10 Application of Other Rules

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

Article 11 Application of Agreement

This Agreement shall apply to investments, which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12 Meetings

1. The representatives of the Contracting Parties shall hold meetings if the circumstances so warrant, for the purpose of:

- (a) reviewing the implementation of this Agreement;
- (b) exchanging information about legal matters and investment opportunities;
- (c) resolving disputes arising out of investments;
- (d) forwarding proposals on promotion of investment; and
- (e) studying other issues in connection with investments.

2. Where the Contracting Parties agree to consultation on any matters referred to in paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation shall be held in a mutually agreed location.

Article 13 Entry into Force

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Bridgetown on the 20th day of July, 1998 in the Chinese and English languages, both texts being equally authentic

Qian Qichen

Owen S.Arthur

Vice-Premier of the State Council

Prime Minister

For the Government of

For the Government of Barbados

The People's Republic of China