

Agreement Between the Government of the People's Republic of China and the Belgian-Luxembourg Economic Union on the Reciprocal Promotion and Protection of Investments

The Government of the People's Republic of China and the Government of the Kingdom of Belgium, on behalf of the Government of the Grand Duchy of Luxembourg based on the Convention pertinent to the creation of the Belgian Luxembourg Economic Union, and in its own name.

Desiring to develop economic cooperation between the two Contracting Parties, especially to create favourable conditions for investment by nationals of one Contracting party in the territory of the other Contracting Party.

Recognising that the conclusion of an agreement on the encouragement and protection of such investments on the basis of equality and mutual benefit will stimulate the initiative of investors so as to contribute to the increase of prosperity in both States.

Have agreed as follows:

Article 1

For the purposes of this Agreement:

1. "Investors" means

in respect of the People's Republic of China:

(1) "Nationals" means physical persons who possess nationality of China accordance with the Chinese legislation.

(2) "Enterprises" means economic organizations established in accordance with Chinese law and having seats in the territory of China.

in respect of the Belgian-Luxembourg Economic Union:

(1) "Nationals" means physical persons who are deemed as the citizens accordance with the legislation of Belgium or Luxembourg;

(2) Juridical persons such as corporations, organizations, foundations and partnerships without the status of juridical persons of Belgium or Luxembourg which are established in accordance with the law of Belgium or Luxembourg and having seats in the territory of Belgium or Luxembourg.

2. "Investments" means every kind of asset or property used as investment or reinvestment, in particular, though not exclusively, includes:

(1) movable, or immovable property and any other property rights such as mortgages, liens, pledges, usufructs and other similar rights;

(2) shares, stock and interests of other forms;

(3) debentures, claims or claims to any performance having a financial value;

(4) copyrights, industrial property rights, technical process, registered trademarks, trade names and goodwill; or,

(5) concessions to search for, extract or exploit natural resources.

The above asset or property used as investment shall be in conformity with the laws of the Contracting Party accepting the investment.

Any change in the form in which assets or property are invested does not affect their character as "investments" defined in this Agreement.

Article 2

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

2. Each Contracting Party shall permit, in accordance with its laws and regulations, investors of the other Contracting Party to conclude and execute licensing contracts, business management contracts or technical assistant contracts.

Article 3

1. Direct or indirect investment made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy equitable treatment.

2. Protection and equitable treatment shall be accorded as regards management, operation, use or liquidation of the above said investment unless necessary measures should be taken for the maintenance of public order and in defense of the State law.

3. The treatment and protection provided in paragraphs 1 and 2 of this Article shall not be less favourable than that enjoyed by investors of a third State.

4. Notwithstanding the provisions of the above Paragraphs the treatment and protection mentioned in the above paragraphs shall oblige one Contracting Party to extend any preference resulting from the agreement on the establishment of customs union, free trade area or economic union or for facilitating frontier trade.

Article 4

1. Neither Contracting Party shall in its territory take the measure of expropriation, nationalization or other similar measures on the investment of the investor of the other Contracting Party except for the necessity of security and public interest under the following conditions:

(1) measures are taken pursuant to the domestic legal procedure;

(2) measures are non-discriminatory if compared with the measures taken against the investment or investor of a third State;

(3) rules on the payment of compensation are provided.

2. Afore-said compensation in section (3) of paragraph 1 of this Article shall be paid a convertible currency without undue delay to the investor, and be freely transferable.

3. If one Contracting party expropriates, in its territory, the asset or property of an enterprise, of which an investor of the other Contracting Party possesses capital shares or participating interests of other forms, the former Contracting Party shall apply the provisions of Paragraphs 1 and 2 of this Article to such shares or the participating interests of other forms possessed by such investor of the latter Contracting Party.

Article 5

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of property invested in the territory of the former Contracting Party especially:

(1) returns including profits, interest, capital gains, dividends, royalties, other legitimate incomes and financial claims;

(2) proceeds as compensation paid under Article 4;

(3) proceeds resulting from the total or partial liquidation of an investment;

(4) payment for a normal loan.

2. The above transfer of this Article shall be made without undue delay, but with the payment of routine tax and commissions.

Article 6

1. The transfers mentioned in Articles 4 and 5 of this Agreement shall be made at the rate of exchange applicable on the date of transfer in the Contracting Party accepting the investment.

2. In any event applicable rate of exchange shall be equitable, including normal tax and commissions collected for exchange formalities.

Article 7

If one Contracting Party or its public Agency makes a payment to its investor under an indemnity granted in respect of an investment the other Contracting Party or its public Agency of all the rights of the investor indemnified.

The Contracting Party or its public Agency shall be entitled to execute in the name of the investor and within the scope of the assigned the rights and related claims of such investor by virtue of subrogation.

The other Contracting Party may make counter-claims, origination in the investor on the former Contracting Party to the assigned rights.

Article 8

This Agreement shall not impair the enjoyment by investors of a more favourable treatment provided in the laws and regulations of one Contracting Party where the investment is located or the international agreements in which both Contracting Parties participate.

Article 9

Investors of either Contracting Party may make investments under special contracts.

Each Contracting Party shall observe any obligation it may have entered into with investors of the other Contracting Party.

The above special contracts or obligations shall be in conformity with the laws of the Contracting Party accepting the investment and the provisions of this Agreement.

Article 10

1. Any dispute arising from an investment shall be notified in writing by the investor of one Contracting Party to the other Contracting Party with a detailed memorandum attached.

The dispute shall be, as far as possible, amicably settled under the condition of respect for the laws and regulations of the Contracting Party accepting such investment.

2. The dispute mentioned in paragraph 1 of this Article above shall be subject to jurisdiction of the State where the investment is located.

3. As an exception of Paragraph 2 above a dispute which arises from an amount of compensation for expropriation, nationalization or other similar measures and has not been settled within six months from date of notification may, as the investor prefers referred for settlement either to:

(1) a judicial body of the Contracting Party accepting the investment, or,

(2) an international arbitration without resort to any other means.

Article 11

Investors of one Contracting Party shall enjoy the most favoured nation treatment in the territory in the of the other Contracting Party in respect of all the matters subject to this Agreement.

Article 12

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through the diplomatic channel.

If a dispute cannot thus be settled it shall be submitted to the joint committee consisting of representatives of both Contracting Parties. Such committee shall convene a meeting without undue delay at the earlier request of the Contracting Party.

2. If a dispute cannot thus be settled by the joint committee within six months of a written notification to one Contracting Party it shall upon the request of either Contracting Party be submitted to an ad hoc arbitral tribunal.

3. Such arbitral tribunal shall consist of three members. Within two months of a written notification of request for arbitration, each Contracting Party shall appoint one member, and these two members shall within two months after their appointments, select a national of a third State which has diplomatic relations with two Contracting Parties as third member of tribunal. Such member shall be appointed Chairman of the tribunal by the two Contracting Parties.

4. If within four months of the written notification of the request for arbitration, the ad hoc tribunal has not been constituted either Contracting Party may, in the absence of any other arrangement between the two Contracting Parties, invite the President is national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-president shall be invited to make the necessary appointments.

If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall determine its own procedure and reach its decision in accordance with the provisions of this Agreement, international agreements in which both Contracting Parties have participated dealing with such matters, and generally recognized principle of international law.

The tribunal shall make its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal shall interpret its decision at the request of either Contracting Party.

6. Each Contracting Party shall bear the cost of its appointed members of the tribunal. The advanced payment of the Chairman and the remaining costs in the arbitral proceedings shall be borne in equal parts by both Contracting Parties.

Article 13

This Agreement shall also apply to investments made by investors of China in the territory of the Kingdom of Belgium or the Grand Duchy of Luxembourg in accordance with the laws and regulations in force of the Kingdom of Belgium or the Grand Duchy of Luxembourg, as well as to investments made by investors of Belgium or Luxembourg in the territory of the People's Republic of China in accordance with the laws and regulations in force of the People's Republic of China.

Article 14

1. This Agreement shall come into force on the thirtieth day from the date on which the Contracting Parties have informed each other of the fulfillment of the internal legal procedures and remain in force for a period of ten years.

2. The Agreement shall continue to be in force indefinitely in the absence of a written notification for the termination of this Agreement by either Contracting Party to the Other one year before its expiration as provided in Paragraph 1 of this Article.

3. After the expiry of the first ten-year period, this Agreement may be terminated by either Contracting Party after one year's written notice at least has been given to the other Contracting Party.

4. The provisions of this Agreement shall continue in effect for a period of ten year after the date of termination with respect to investments made whilst the Agreement is in force.

In witness whereof the undersigned, duly authorized thereto by their respective Government, have signed this Agreement.

Done in duplicate at Brussels on 4th June, 1984, in the Chinese, French and Dutch languages, both texts being equally authoritative.

(Zhang Jinfu)	(De Clercq)
For the Government of the People's Republic of China	For the Belgian-Luxembourg Economic Union (Informal Translation)

Protocol on the Agreement Between the Government of the People's Republic of China and the Belgian-Luxembourg Economic Union on the Reciprocal Promotion and Protection of Investments

With a view to facilitating the implementation of the Agreement between the Government of the People's Republic of China and the Belgian-Luxembourg Economic Union on the Reciprocal Promotion and Protection of Investments (hereinafter referred to as "the Agreement"), the Government of the People's Republic of China and the Government of the Kingdom of Belgium, on behalf of the Government of the Grand Duchy of Luxembourg and in its own name,

Have agreed as follows:

Article 1

For the implementation of Article 4 of the Agreement, if an investor of one Contracting Party possesses capital shares in a company of a State other than China, Belgium or

Luxembourg, and such company possesses capital shares in a company of the other Contracting Party such other Contracting Party shall apply to the investor as a share-holder of a foreign company Paragraphs 1 and 2 of Article 4 of the Agreement.

However, the above provision shall only be applied whenever such foreign company or its home State is not qualified for compensation or the said State abandons the right to request compensation.

Article 2

The compensation mentioned in Article 4 of the Agreement shall be tantamount to the value one day before the expropriation or the day of the announcement of expropriation of the assets and property which have been invested.

Such compensation shall be paid in a currency agreed upon with the investor, or in any other convertible currency in the absence of such agreement.

Such compensation shall be calculated at the exchange rate of the Contracting Party accepting the investment applicable on the date of the expropriatory measure being taken or announced if necessary.

Article 3

In respect of the People's Republic of China, the transfer under Paragraph 1 of Article 5 in the Agreement shall be made from the foreign exchange account of the investor opened in China in accordance with the regulations for exchange control of the People's Republic of China.

Where that foreign exchange account does not have sufficient foreign exchange for necessary transfer the Chinese Government shall under the regulations permit the conversion of local currency into convertible currency for transfer, in the following cases:

(1) in respect of the said assets mentioned in Article 5-1, (1) in the Agreement the enterprises established in China, whether they are joint ventures or otherwise, are specifically approved by the competent authority of China to sell mainly their products domestically or provide service;

(2) assets under to in Article 5-1, (2) in the Agreement;

(3) proceeds under Paragraph 1 (3) of Article 5 in the Agreement;

(4) Payment made pursuant to a loan concluded with the investor but guaranteed for transfer by the Bank of China in advance.

Article 4

In respect of the Kingdom of Belgium or the Grand Duchy of Luxembourg the foreign exchange rate mentioned in Paragraph 1 of Article 6 of the Agreement shall be decided according to the category of business relating to the application for transfer.

Article 5

The portion of an investment which is not indemnified in Article 7 of the Agreement shall apply to the provisions of Articles 4 and 10 of the Agreement and Article 6 of this Protocol.

Article 6

1. A dispute on an amount of compensation for expropriation, nationalization or other similar measures may, under Paragraph 3 of Article 10 of the Agreement, be submitted to an arbitral tribunal.

2. Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

3. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce or Arbitration Rules of the International Centre of Settlement of Investment Disputes (ICSID) established under Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature on March 18, 1965, at Washington.

4. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

5. The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of the Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

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

Article 7

The treatment and protection referred to in Paragraph 1 and 2 of Article 3 in the Agreement shall not be less favourable than that contained in the generally recognized principles and rules of international law accepted by both Contracting Parties.

Article 8

This Protocol shall enter into force simultaneously with the Agreement between the Government of the People's Republic of China and the Belgian-Luxembourg Economic

Union on the Reciprocal Promotion and Protection of Investments, as an integral part of the Agreement.

Done in duplicate at Brussels on 4th Jun, 1984, in the Chinese, French and Dutch languages, both texts being equally authoritative.

(Zhang Jinfu)	(De Clercq)
For the Government of the People's Republic of China	For the Belgian-Luxembourg Economic Union (Informal Translation)