

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE GOVERNMENT OF THE RE-
PUBLIC OF TAJIKISTAN FOR THE PROMOTION AND RECIP-
ROCAL PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Republic of Tajikistan, hereinafter referred to as the "Contracting Parties",

Desiring to promote, protect and create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party,

On the basis of the principles of respect for each other's sovereignty, equality and mutual advantage,

With a view to developing economic cooperation between the two States,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

1. The term "investment" means every kind of asset invested in the territory of the Contracting Party receiving the investment in accordance with its legislation, including in particular:

- (a) Movable and immovable property and property rights;
- (b) Shares or any other form of participation in a business enterprise or company;
- (c) Claims to money and claims to obligations having a financial value;
- (d) Intellectual property rights, industrial property rights and rights in respect of know-how and technology;
- (e) Rights, conferred by law or under contract, to undertake economic activity, including in particular the rights to search for and exploit natural resources.

2. The term "investor" means with regard to each Contracting Party:

- Natural persons who are citizens of that Contracting Party in accordance with its laws;
- Enterprises and companies constituted under the law in force in the territory of that Contracting Party;

provided that that natural person, enterprise or company is competent, in accordance with the laws of that Contracting Party, to make investments in the territory of the other Contracting Party.

¹ Came into force on 19 February 1994, i.e., 30 days after the Contracting Parties had notified each other (on 17 September 1993 and 20 January 1994) of the completion of the required formalities, in accordance with article 12 (1).

3. The term “returns” means the amounts yielded by an investment and includes, in particular but not exclusively, profit, dividends, interest and licence fees.

4. The term “territory” means:

— The territory of the People’s Republic of China and the territory of the Republic of Tajikistan.

Article 2

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

2. Each Contracting Party, shall, in accordance with its laws, assist citizens of the other Contracting Party in obtaining visas and work permits in connection with investments made in its territory.

Article 3

1. Each Contracting Party shall accord in its territory equitable treatment and protection to investments of investors of the other Contracting Party and to activities related to such investments.

2. The treatment mentioned in paragraph 1 of this article shall be no less favourable than the treatment that it accords to investments of investors of any third State or to activities related to such investments.

3. The provisions of paragraphs 1 and 2 of this article shall not apply to any privileges or advantages that the Contracting Party accords or shall in future accord to investors of any third State or their investments on the basis of:

— Its participation in a free-trade area, a customs or economic union, a mutual economic assistance organization, or an international agreement that provides for privileges and advantages similar to those accorded by the Contracting Party to participants in the aforementioned organizations and which entered into force before the date of signature of this Agreement;

— An international taxation agreement or any other arrangement relating to taxation;

— A border-trade agreement.

Article 4

1. Investments of investors of either Contracting Party made in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to other measures the effects of which would be similar to nationalization or expropriation (hereinafter referred to as “expropriation”), unless such measures are taken in the public interest, in accordance with the procedure established by law, are not discriminatory and are accompanied by compensation.

2. The compensation provided for in paragraph 1 of this article shall be calculated on the basis of the real value of the investments on the day immediately preceding the day on which the decision concerning expropriation was taken or became public knowledge.

Such compensation shall be paid without undue delay and be convertible and freely transferable from the territory of one Contracting Party to the territory of the other Contracting Party.

3. If the investments of investors of one Contracting Party suffer losses in the territory of the other Contracting Party owing to war, a state of emergency, civil unrest or other similar circumstances, the Contracting Party in whose territory the investments were made shall, in the event that it takes measures to compensate for losses or takes other relevant measures, accord to such investors treatment no less favourable than that which it accords to investors of any third State.

Article 5

Each Contracting Party shall, in accordance with its laws, guarantee to investors of the other Contracting Party, after the discharge by them of all tax obligations, the transfer of funds in connection with the investments, including:

- (a) Returns, as defined in article 1, paragraph 3, of this Agreement;
- (b) Funds arising from the total or partial liquidation of the investments;
- (c) Payments made under credit agreements relating to the investments;
- (d) Payments for technical assistance, technical services and managerial experience;
- (e) Salary and other remuneration received by citizens of the other Contracting Party for labour and services performed in connection with the investments made in the territory of the first Contracting Party at the rates provided for under its laws;
- (f) Payments for the performance of contractual work.

Article 6

The transfer of funds in accordance with articles 4 and 5 of this Agreement shall be made at the official rate of exchange applicable on the date of transfer in the Contracting Party in whose territory the investments were made.

Article 7

This Agreement shall apply to all investments made after 1 January 1985.

Article 8

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

2. If a dispute cannot thus be settled within six months from the date on which the dispute was initiated by one Contracting Party, it shall, at the request of either Contracting Party, be submitted to an *ad hoc* arbitral tribunal.

3. An arbitral tribunal shall consist of three arbitrators and be constituted in the following way: within two months of the receipt by one Contracting Party of written notification by the other Contracting Party that the dispute has been submitted to arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within two months from the date on which the second arbitrator is appointed, select a third arbitrator who shall be a citizen of a third State having

diplomatic relations with both Contracting Parties and who shall, with the consent of the Contracting Parties, be appointed chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of receipt of written notification that the dispute has been submitted to the arbitral tribunal, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a citizen of either Contracting Party or if he is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall establish its own rules of procedure. The tribunal shall take its decisions in accordance with the provisions of this Agreement and the universally recognized principles and standards of international law.

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

7. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 9

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning the amount of compensation in the event of expropriation may 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 one arbitrator, and those two arbitrators shall select as chairman a citizen of a third State that has diplomatic relations with both Contracting Parties. The first two arbitrators shall be appointed within two months, and the chairman shall be selected within four months, from the date of written notification that the dispute has been submitted to arbitration. If the arbitral tribunal has not been constituted within the specified periods, either party to the dispute may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make any necessary appointments.

3. The arbitral tribunal shall establish its own rules of procedure. It may, in determining such procedure, follow the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce as a guide.

4. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and shall be binding on both parties to the dispute. Each Contracting Party shall implement the decision of the arbitral tribunal in accordance with its own domestic legislation.

5. The arbitral tribunal shall reach its decision in accordance with the provisions of this Agreement, the legislation of the Contracting Party in whose territory the investments were made, including its conflict norms, and the universally recognized principles and standards of international law.

6. Each party to the dispute shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

Article 10

If one Contracting Party, in accordance with its own legislation or with an international agreement to which the two Contracting Parties are parties, accords investments of investors of the other Contracting Party or an activity related to such investments treatment more favourable than that provided for under this Agreement, the more favourable treatment shall be applied.

Article 11

1. Representatives of the two Contracting Parties shall, when necessary, hold meetings in order to:

- (a) Consider questions relating to the application of this Agreement;
- (b) Exchange information on legal questions relating to investments and on opportunities for investment;
- (c) Resolve disputes that arise in connection with investments;
- (d) Examine other questions relating to investments;
- (e) Consider proposals regarding possible amendments or additions to this Agreement.

2. If either Contracting Party proposes that consultations be held on any question covered by paragraph 1 of this article, the other Contracting Party shall reply without delay, and the consultations shall be held alternately in Beijing and Dushanbe.

Article 12

1. This Agreement shall enter into force 30 days after the day on which the Contracting Parties notify each other in writing that they have completed the relevant formalities under their legislation, and shall be valid for a period of five years.

2. This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of its termination at least one year before the expiry of the period indicated in paragraph 1 of this article.

3. Upon expiry of the initial five-year period, either Contracting Party may terminate this Agreement at any time by notifying the other Contracting Party in writing of its intention. Such notification shall enter into force 12 months from the date of its receipt by the other Contracting Party.

4. With regard to investments made before the date of termination of this Agreement, the provisions of articles 1 to 11 shall remain in force for 15 years from the date of termination of this Agreement.

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

DONE at Beijing on 9 March 1993, in duplicate in the Chinese, Tajik and Russian languages, all texts being equally authentic.

For the Government
of the People's Republic
of China:

LI LANQING

For the Government
of the Republic of Tajikistan:

SAMADOV
