

CHINA



Treaty Series No. 33 (1986)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the People's Republic of China
concerning the Promotion and Reciprocal
Protection of Investments

with

Exchanges of Notes

London, 15 May 1986

[The Agreement entered into force on 15 May 1986]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 1986*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
CONCERNING THE
PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China;

Desiring to create favourable conditions for investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiative of the nationals and companies and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement

(a) "investment" means every kind of asset accepted as investment by a Contracting Party in its territory in accordance with its laws and regulations, and in particular, though not exclusively, includes:

- (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) shares, stock and debentures of companies or interests in the property of such companies;
- (iii) claims to money or to any performance under contract having a financial value;
- (iv) copyrights, industrial property rights, know-how and goodwill;
- (v) business concessions conferred by law or under contract permitted by law; including concessions to search for, cultivate, extract or exploit natural resources.

The term "investment" includes investments existing at the date of entry into force of this Agreement; and a change in the form in which assets are invested does not affect their character as investments.

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees;

(c) "nationals" means:

- (i) in respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom and having the right of abode in the United Kingdom or in any territory to which this Agreement has been extended in accordance with the provisions of Article 10;

(ii) in respect of the People's Republic of China: physical persons who have nationality of the People's Republic of China in accordance with its laws;

(d) "companies" means:

(i) in respect of the United Kingdom: corporations, firms or associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement has been extended in accordance with the provisions of Article 10;

(ii) in respect of the People's Republic of China: corporations, firms or associations incorporated or constituted under the law in force in any part of the People's Republic of China.

(2) This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in the territorial sea or maritime zone or on the Continental Shelf where the other Contracting Party exercises its sovereignty or sovereign rights or jurisdiction.

ARTICLE 2

Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party for investment in its territory and, subject to its right to exercise powers conferred by its laws, shall admit such investment.

(2) Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy the most constant protection and security in the territory of the other Contracting Party. Each Contracting Party agrees that without prejudice to its laws and regulations, it shall not take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 3

Treatment of Investment

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to nationals or companies of any third State.

(3) In addition to the provisions of paragraphs (1) and (2) of this Article the Contracting Party shall to the extent possible, accord treatment in accordance with the stipulations of its laws and regulations to the investments of nationals or companies of the other Contracting Party the same as that accorded its own nationals or companies.

(4) The provisions in paragraphs (1) to (3) above shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from

- (a) any existing or future customs union or similar international agreement or agreement for facilitating frontier trade to which either of the Contracting Parties is or may become a party, or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 4

Compensation for Losses

(1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment no less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

(2) Without prejudice to paragraph (1) of this Article, nationals or companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from

- (a) requisitioning of their property by its forces or authorities, or
- (b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or reasonable compensation. Resulting payments shall be freely transferable.

ARTICLE 5

Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be expropriated, nationalised or subjected to measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against

reasonable compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal rate until the date of payment, shall be made without undue delay, be effectively realisable and be freely transferable. The national or company affected 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 Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee reasonable compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

ARTICLE 6

Repatriation of Investment and Returns

(1) Each Contracting Party guarantees to nationals or companies of the other Contracting Party the right to transfer freely to the country where they reside their investments and returns and any payments made pursuant to a loan agreement in connection with any investment.

(2) The right referred to in paragraph (1) above is subject to the right of each Contracting Party in exceptional balance of payment difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of profit, interest, dividends, royalties or fees; as regards investments and any other form of return, transfer of a minimum of 20 per cent a year is guaranteed.

(3) Transfers of currency shall be effected without delay in the convertible currency in which the capital was originally invested or another convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the national or company concerned, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange control regulations in force of the Contracting Party concerned.

(4) In respect of the People's Republic of China, transfers of convertible currency by a national or company of the United Kingdom under paragraphs (1) to (3) above shall be made from the foreign exchange account of the national or company transferring the currency. Where that foreign exchange account does not have sufficient foreign exchange for the transfer, the People's Republic of China shall permit the conversion of local currency into convertible currency for transfer, in the following cases:

- (a) proceeds resulting from the total or partial liquidation of an investment;
- (b) royalties derived from assets in Article 1 (1)(a)(iv);
- (c) payments made pursuant to a loan agreement in connection with any investment guaranteed by the Bank of China;

(7) profits, interest, capital gains, dividends, fees and any other form of return of a national or company specifically permitted by the competent authority of the People's Republic of China to carry out economic activities mainly in the territory of the People's Republic of China.

ARTICLE 7

Settlement of Disputes between a National or Company and a Host State

(1) A dispute between a national or company of one Contracting Party and the other Contracting Party concerning an amount of compensation which has not been amicably settled after a period of six months from written notification of that dispute shall be submitted to international arbitration.

(2) Where the dispute is referred to international arbitration, the national or company and the other Contracting Party concerned in the dispute may agree to refer the dispute either to:

- (a) an international arbitrator appointed by the parties to the dispute; or
- (b) an *ad hoc* arbitral tribunal to be appointed under a special agreement between the parties to the dispute; or
- (c) an *ad hoc* arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

(3) If after a period of three months after the dispute is referred to arbitration under paragraph (2) above there is no such agreement, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

(4) For the purposes of this Article a national or company includes a national or company referred to in Article 5(2).

ARTICLE 8

Disputes between the Contracting Parties

(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.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, 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 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 arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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. The tribunal shall determine its own procedure.

ARTICLE 9

Subrogation

(1) If one Contracting Party or its designated Agency makes a payment to its national or company under an indemnity given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the national or company indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the national or company indemnified. The former Contracting Party or its designated Agency may assume the obligations related to the investment.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the national or company indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

ARTICLE 10

Territorial Extension

At the time of signature of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 11

Entry into Force

This Agreement shall enter into force on the day of signature.

ARTICLE 12

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law accepted by the two Contracting Parties.

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

Done in duplicate at London this 15th day of May 1986 in the English and Chinese languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

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

Gordon Howe

郑拓彬
[ZHENG TUOBIN]