Agreement on Reciprocal Encouragement and Protection of Investments Between the People's Republic of China and the Kingdom of the Netherlands

The Government of the People's Republic of China and the Government of the Kingdom of the Netherlands (each hereinafter referred to as "Contracting Party"),

Desiring to extend and intensify the economic relation and to encourage investments, through the creation of stable and favourable conditions for such investments, on the basis of the principle of respect for sovereignty, of equality and to the mutual benefit of both countries,

Have agreed as follows:

Article 1.

For the purpose of the present Agreement:

(a) The term "investments" shall mean all kinds of assets which have been invested in accordance with the laws and regulations of the Contracting Party accepting the investment, including mainly:

(i) Movable and immovable property as well as any other rights in rem in respect of every kind of asset;

(ii) Rights berived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) Title to money and other assets and to any performance having an economic value;

(iv) Rights in the field of intellectual property, industrial property, technical processes, know-how and goodwill;

(v) Rights conferred by law, including rights to prospect, explore and extract natural resources and rights to acquire part of the products thereof.

The investments made by an investor of either Contracting Party within the territory of the other Contracting Party shall also include the investments made by the investors of that Contracting Party within the maritime areas and continental shelf where the other Contracting Party exercises sovereign rights or jurisdiction according to applicable international law recognised by both Contracting Parties.

(b) The term "investor" shall mean with regard to either Contracting Party:

(i) A natural person having the nationality of that Contracting Party in accordance with its law;

(ii) A partnership without juridical personality or a legal person constituted in accordance with laws and regulations of that Contracting Party, and domiciled in the territory of that Contracting Party

Article 2.

Each Contracting Party shall, within the framework of its laws and regulations, permit and encourage investments, within its territory, by investors of the other contracting Party.

Article 3.

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

2. The treatment as mentioned in paragraph 1 of this Article shall not be less favourable than that accorded to investors of any third State.paragraph 1 of this Article shall not be less favourable than that accorded to investors of any third State.

3. Each Contracting Party shall protect the investments in its territory made by the investors of the other Contracting Party and shall ensure their safety.

4. The treatment as mentioned in paragraphs 1 and 2 of this Article shall not include any advantages accorded to investors of a third State by the other Contracting Party based on agreements relating to customs unions, economic unions, or similar institutions, or on agreements for the avoidance of double taxation.paragraphs 1 and 2 of this Article shall not include any advantages accorded to investors of a third State by the other Contracting Party based on agreements relating to customs unions, economic unions, or similar institutions, or on agreements for the avoidance of double taxation.

5. With respect to the treatment mentioned in paragraphs 1 and 2 of this Article a difference may be made between investors investing in free trade zones or engaged in frontier trade and investors not investing in such zones or not engaged in such trade. With respect to taxes, fees, charges and to fiscal deductions and exemption, the treatment as mentioned in paragraphs 1 and 2 of this Article shall not include any advantages accorded to investors of a third State by the other Contracting Party based on reciprocity with that State.paragraphs 1 and 2 of this Article a difference may be made between investors investing in free trade zones or engaged in frontier trade and investors not investing in such zones or not engaged in such trade. With respect to taxes, fees, charges and to fiscal deductions and exemption, the treatment as mentioned in paragraphs 1 and 2 of this Article shall not include any advantages accorded to investors of a third State by the other Contracting Party based on reciprocity with that State.

Article 4.

Each Contracting, Party shall authorize the free transfer, in accordance with its relevant laws and regulations, without undue restrictions and undue delay, to the country of the other Contracting Party and in the currency of that country or freely convertible currency, of payments relating to investment activities and in particular of the following items:

(a) Profits, interests, dividends and other income;

(b) Funds necessary

(i) For the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or

(ii) To replace capital assets in order to safeguard the continuity of an investment;

(c) Additional funds necessary for the development of an investment;

(d) Earnings of employees of an investor or an enterprise in which the investor has invested;

(e) The proceeds of liquidation of capital;

(f) Funds in repayment of loans;

(g) Management fees;

(h) Royalties.

Article 5.

1. If one of the Contracting Parties expropriates, nationalises or takes other similar measures against an investment of an investor of the other Contracting Party, the following conditions shall be complied with:

(a) The measures are taken in the public interest and under legal procedure;

(b) The measures are not discriminatory;

(c) The measures are accompanied by provisions for the payment of compensation.

2. The compensation mentioned in paragraph 1 (c) of this Article shall be equivalent to the value of the expropriated investment when the expropriation was announced and shall include interest until the date of payment. The compensation shall be convertible, freely transferable and paid without undue delay.

Article 6.

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

Article 7.

Each Contracting Party shall respect any undertaking which it may have given to the investor of the other Contracting Party.

The undertaking mentioned above shall be in conformity with the legislation of the Contracting Party concerned and the provisions of this Agreement.

Article 8.

1. If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognised by the other Contracting Party.

2. The insurer or re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise. The subrogation does not affect any right the other Contracting Party may have with regard to the investor.

Article 9.

1. Disputes between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall, if possible, be settled amicably.

2. If such disputes cannot be settled according to the provisions of paragraph 1 of this Article within a period of six months from the date either party requested amicable settlement and the parties have not agreed to any other dispute settlement procedures the investor concerned may choose one or both of the following means of resolution:paragraph 1 of this Article within a period of six months from the date either party requested amicable settlement and the parties have not agreed to any other dispute settlement procedures the investor concerned may choose one or both of the following means of resolution:

(a) File complaint with and seek relief from the competent administrative agency of the Contracting Party receiving the investment;

(b) File suit with the competent court of law of the Contracting Party receiving the investment.

3. Disputes concerning the amount of compensation to be paid when measures of expropriation, nationalisation or other similar measures have been taken which cannot be settled according to the provisions of paragraph 1 of this Article within a period of six months from the date either party requested amicable settlement shall if the investor so wishes be submitted either to the competent court of law of the Contracting Party receiving the investment or to international arbitration.paragraph 1 of this Article within a period of six months from the date either party requested amicable settlement shall if the investor so wishes be submitted either to the competent court of law of the Contracting Party receiving the investment or to international arbitration.

Article 10.

The present Agreement shall also apply to investments which have been made prior to its entry into force by investors of the one Contracting Party in the territory of the other Contracting Party in accordance with the law and regulations in force of the Contracting Party concerned.

Article 11.

Either Contracting Party may propose the other Party to consult on any matter affecting the operation of the present Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 12.

Nothing in the present Agreement shall prevent any enjoyment of more favourable treatment accorded to the investor of a Contracting Party, derived from the laws and regulations of the other Contracting Party in whose territory the investments were made.

Article 13.

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by means of consultations or diplomatic negotiations.

2. If such disputes cannot be settled according to the provision of paragraph 1 of this Article, within a reasonable lapse of time, they shall, upon the request of either Party, be submitted to an ad hoc arbitration tribunal.paragraph 1 of this Article, within a reasonable lapse of time, they shall, upon the request of either Party, be submitted to an ad hoc arbitration tribunal.

3. Such an ad hoc tribunal shall be composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is a national of a third State which has diplomatic relations with both Parties.

4. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after invitation from the other Party to make such an appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

5. If the two arbitrators are unable to reach agreement, within two months following their appointment, on the choice of the third arbitrator, and in the absence of any other arrangement between the Contracting Parties, either Party may invite the President of the International Court of Justice to make the necessary appointment.

6. If, in the cases provided for in the fourth and fifth paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party, the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

7. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

8. Before the tribunal decides, it may at any stage of the proceeding propose to the Parties that the dispute be settled amicably. The tribunal shall reach its award based upon the provisions of this present Agreement, the relevant domestic laws, the agreements both Contracting Parties have concluded and the generally recognised principles of international law.

9. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

When the tribunal reaches its decision, it shall state the legal basis of its award and, upon request of either Contracting Party, provide the considerations leading to it.

10. Each Contracting Party shall bear the costs of the arbitrator appointed by itself. The cost of the chairman and the relevant costs of the ad hoc tribunal shall be borne in equal parts by both Contracting Parties.

Article 14.

As regards the Kingdom of the Netherlands the present Agreement shall apply to the part of the Kingdom in Europe only.

Article 15.

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures legally required therefore in their respective countries have been complied with and shall remain in force for a period of 10 years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of 5 years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement the forgoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

Done in duplicate at The Hague in the Chinese, Dutch and English languages, the three texts being equally anthentic, on this 17th day of June 1985. In case of difference of interpretation the English text will prevail.

For the Government of the People's Republic of China (Wu Xue qian)

For the Government of the Kingdom of the Netherlands (H. van den Broek)

On signing the Agreement on reciprocal encouragemen t and protection of investments between the People's Republic of China and the King dom of the Netherlands, the authorized representatives of both Contracting Part ies have agreed upon the following provisions, which constitute an integral part of th is Agreement:

1. AD Article 1 The term "investments" mentioned in Article 1 (a) i ncludes investments of legal persons of a third State which are owned or controlled by i nvestors of one Contracting Party and which have been made in the territory of the other Contracting Party in accordance with the laws and regulations of the latter. The relevan t provisions of this Agreement shall apply to such investments only when such third Stat e has no right or abandons the right to claim compensation after the investments have be en expropriated by the other Contracting Party. This Agreement shall also apply to reinvestments ma de by investors of one Contracting Party in the territory of the other Contracting Par ty and in accordance with the laws and regulations of the Party.

2. AD Article 3 Activities associated with investments means the op eration, management, maintenance, use, enjoyment or disposal of those investments by the investor.

3. AD Article 9 (1) If an investor in accordance with paragraph 3 o f Article 9 chooses to submit a dispute to international arbitration the dispute sh all be referred to an ad hoc arbitration tribunal. (2) Such an ad hoc tribunal shall be composed of th ree members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a nat ional of either Contracting Party. Arbitrators shall be appointed within two months of the receipt of the request for arbitration. The chairman shall be appointed within three months after the date of appointment of the second arbitrator. (3) If the appointments are not made in the time sp ecified, either party may invite the President of the Arbitration Institute of the Chamb er of Commerce of Stockholm to make the required appointment or appointments. (4) The tribunal shall determine its own procedure with reference to the Convention on the Settlement of Investment Disputes between State s and National of other States opened for signature at Washington on 18 March 1965 (5) The tribunal shall deside on the basis of the p rovisions of the present Agreement, the relevant domestic laws and the principles of in ternational law accepted by both Contracting Parties. (6) The tribunal shall reach its decision by a majo rity of votes. Such decision shall be final and binding on the parties. The tribunal shal l state the legal basis of its award and, upon request of either party, provide the considera tions leading to it. (7) Each party shall bear the costs of the arbitrat or appointed by itself. The cost of the chairman and the relevant costs of the tribunal sha ll be borne in epual parts by both parties.

Done in duplicate at The Hague in the Chinese, Dutc h and English languages, the three texts being equally authentic, on this 17th day of June 1985. In case of difference of interpretation the English text will prevail.