

# **AGREEMENT BETWEEN THE BELGIUM-LUXEMBOURG ECONOMIC UNION AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the People's Republic of China, on the one hand,

And

The Government of the Kingdom of Belgium,

Acting both in its own name and in the name

Of the Government of the Grand-Duchy of Luxembourg,

By virtue of existing agreements,

The Walloon Government,

The Flemish Government,

And the Government of the Region of Brussels-Capital, on the other hand (hereinafter referred to as "the Contracting Parties"),

Desiring to strengthen their economic cooperation by creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party; recognizing that the reciprocal encouragement, promotion and protection of such investment will be conducive to stimulating business initiative of the investors and will increase prosperity in both Contracting Parties; desiring to intensify the cooperation of both Contracting Parties on the basis of equality and mutual benefits;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement,

1. The term "investors" shall mean : a) In respect of the People's Republic of China, natural persons who have nationality of the People's Republic of China in accordance with the laws of the People's Republic of China. legal entities, including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of the People's Republic of China and have their seats in the People's Republic of China; i) Natural persons who have nationality of the People's Republic of China in accordance with the laws of the People's Republic of China.

ii) Legal entities, including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of the People's Republic of China and have their seats in the People's Republic of China;

b) In respect of the Kingdom of Belgium or the Grand-Duchy of Luxembourg, i) The "nationals", i.e. any natural person who, according to the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg, is considered as a citizen of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg;

ii) The "companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg and having its registered office in the territory of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg.

2. 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 as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights;

b) Shares, corporate rights and any other kind of shareholdings in companies;

c) Claims to money or to any other performance having an economic value associated with an investment;

d) Copyrights, industrial property rights, technical processes, trade names, know-how and goodwill;

e) Concessions granted under law or under contract permitted by law, including concessions to explore, cultivate, extract or exploit natural resources.

Changes in the form in which assets have been invested or reinvested shall not affect their designation as "investments" for the purpose of this Agreement.

3. The term "returns" shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees.

4. The term "territory" shall apply to: a) The territory of the People's Republic of China (including the territorial sea and air space above it) as well as any area beyond its territorial sea within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with Chinese law and international law;

b) The territory of the Kingdom of Belgium and to the territory of the Grand-Duchy of Luxemburg, as well as to the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters of the Kingdom of Belgium upon which it exercises, in accordance with international law, its sovereign rights and its jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall accept such investments in accordance with its legislation.

2. All investments made by investors of one Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party.

3. Investments of the investors of either Contracting Party shall enjoy the constant protection and security in the territory of the other Contracting Party.

4. Without prejudice to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.

## **Article 3. National Treatment and Most Favoured Nation**

1. Each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favourable than that accorded to the investments and associated activities by its own investors.

2. Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favourable than that accorded to the investments and associated activities by the investors of any third State.

3. The provisions of Paragraphs 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

a) Any customs union, free trade zone, economic union, common market or any other form of regional economic organisation and any international agreement resulting in such unions;;

b) Any international agreement or arrangement relating wholly or mainly to taxation;

c) Any arrangements for facilitating small scale frontier trade in border areas.

## **Article 4. Deprivation and Limitation of Ownership**

1. Each Contracting Party undertakes not to adopt any measure of expropriation or nationalisation or any other measure having the effect of directly or indirectly dispossessing the investors of the other Contracting Party of their investments in its territory.

2. If reasons of public purpose, security or national interest require a derogation from the provisions of paragraph 1, the following conditions shall be complied with:

- a) The measures shall be taken under domestic legal procedures;
- b) The measures shall not be discriminatory;
- c) The measures shall be accompanied by provisions for the payment of compensation.

3. Such compensation shall amount to the actual value of the investments on the day before the measures were taken or became public.

Such compensation shall be paid in any convertible currency. It shall be paid without undue delay and shall be freely transferable. It shall bear interest at the normal commercial rate from the date of the determination of its amount until the date of its payment. 4. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, at least equal to that which the latter Contracting Party grants to the investors of the most favoured nation.

## **Article 5. Transfers**

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer of all payments relating to an investment, including more particularly:

- a) Amounts necessary for establishing, maintaining or expanding the investment;
- b) Amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licences, franchises, concessions and other similar rights;
- c) Returns from investments;
- d) Proceeds from the total or partial liquidation of investments;
- e) Earnings of nationals of the other Contracting Party who work in connection with an investment in its territory;
- f) Compensation paid pursuant to Article 4.

2. The transfer mentioned above shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

## **Article 6. Subrogation**

If one Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a) The assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investor to the former Contracting Party or to its designated agency, as well as,
- b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the same extent as the investor.

## **Article 7. Other Obligations**

1. If an issue relating to investments is covered both by this Agreement and by the national legislation of one Contracting Party or by international conventions, existing or to be subscribed to by the Contracting Parties in the future, the investors of the other Contracting Party shall be entitled to avail themselves of the provisions that are the most favourable to them.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-à-vis investors of the other Contracting Party shall be observed.

## **Article 8. Settlement of Investment Disputes**

1. When a legal dispute arises between an investor of one Contracting Party and the other Contracting Party, either party to the dispute shall notify the other party to the dispute in writing.

As far as possible, the parties to the dispute shall endeavour to settle the dispute through consultations, if necessary by seeking expert advice from a third party, or by conciliation between the Contracting Parties through diplomatic channels. 2. If the dispute cannot be settled through consultations within six months from the date it has been notified by the party to the dispute, each Contracting Party consents to the submission of the dispute, at the investor's choice:

a) To the competent court of the Contracting Party that is a party to the dispute;

b) To the International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965.

Once the investor has submitted the dispute to the competent court of the Contracting Party concerned or to the ICSID, the choice of one of the two procedures shall be final.

3. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

## **Article 9. Disputes between the Contracting Parties Relating to the Interpretation or Application of this Agreement**

1. Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. In the absence of a settlement through diplomatic channels, the dispute shall be submitted to a joint commission consisting of representatives of the Contracting Parties; this commission shall convene without undue delay at the request of either Contracting Party.

3. If the joint commission cannot settle the dispute within six months, the latter shall be submitted, at the request of either Contracting Party, to an arbitration tribunal set up as follows for each individual case:

a) Such tribunal comprises of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal.

b) If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, 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 is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

c) The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

d) The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

3. 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 tribunal shall be borne in equal parts by the Contracting Parties.

## **Article 10. Transition**

1. This Agreement substitutes and replaces the Agreement between the Government of the People's Republic of China and the Belgium-Luxembourg Economic Union on the Reciprocal Promotion and Protection of Investments, signed on 4th June, 1984 in Brussels.

2. The present Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute or any claim concerning an investment which was already under judicial or arbitral process before its entry into force. Such disputes and claims shall continue to be settled according to the provisions of the Agreement of 1984 mentioned in paragraph 1 of this Article.

## **Article 11. Entry Into Force and Duration**

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 necessary therefor have been fulfilled and remain in force for a period of ten years.
2. This Agreement shall continue to be in force unless either Contracting Party has given a written notice to the other Contracting Party to terminate this Agreement one year before the expiration of the initial ten year period or at any time thereafter.
3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 9 shall continue to be effective for a further period of ten years from such date of termination.
4. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for entry into force of the present Agreement.

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

DONE at Beijing, on June 6th 2005, in two original copies, each in the Chinese, French, Dutch and English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

For the Government of the People's Republic of China, For the Belgium-Luxemburg Economic Union:

The Government of the Kingdom of Belgium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxemburg,

The Walloon Government,

The Flemish Government,

And the Government of the Region of Brussels-Capital:

Zhang Zhigang Karel De Gucht

## **PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE BELGIUM-LUXEMBURG ECONOMIC UNION ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

On the signing of the Agreement between the Government of the People's Republic of China and the Belgium-Luxemburg Economic Union on the Reciprocal Promotion and Protection of Investments, the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement:

The term "investments" mentioned in paragraph 2 of Article 1 includes investments of legal persons of a third State which are owned or controlled by investors 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 relevant provisions of this Agreement shall apply to such investments only when such third State has no right or abandons the right to claim compensation after the investments have been expropriated by the other Contracting Party.

Ad Article 3

With regard to the People's Republic of China, paragraph 1 of Article 3 does not apply to:

- (a) Any existing non-conforming measures maintained within its territory;

(b) The continuation of any such non-conforming measure;

(c) Any amendment to any such non-conforming measure to the extent that the amendment does not increase the non-conformity of these measures. The People's Republic of China will take all appropriate steps in order to progressively remove the non-conforming measures.

#### Ad Article 5

1. With regard to the People's Republic of China, the transfer referred to in Article 5 of this Agreement shall comply with relevant formalities stipulated by the present Chinese laws and regulations relating to exchange control.

2. In this respect the People's Republic of China shall accord to the investors of the Belgium-Luxembourg Economic Union treatment not less favourable than that accorded to the investors of any third State.

3. These formalities shall not be used as a way of avoiding the Contracting Party's commitments or obligations under this Agreement.

4. The provisions of Article 5 of this Agreement shall not affect the rights and obligations with respect to exchange restrictions that either Contracting Party has or may have as a member to the International Monetary Fund.

#### Ad Article 8

It's mutually understood that the People's Republic of China requires that the investor concerned exhausts the domestic administrative review procedure specified by the laws and regulations of the People's Republic of China, before submission of the dispute to international arbitration under Article 8, paragraph 2. The People's Republic of China declares that such a procedure will take a maximum period of three months.

DONE at Beijing, on June 6th 2005, in two original copies, each in the Chinese, French, Dutch and English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

For the Government of the People's Republic of China, For the Belgium-Luxembourg Economic Union:

The Government of the Kingdom of Belgium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxemburg,

The Walloon Government,

The Flemish Government, and the Government of the Region of Brussels-Capital:

Zhang Zhigang Karel De Gucht