Agreement between the Republic of Austria and the People's Republic of China on Promotion and Mutual Protection of Investments

The People's Republic of China and the Republic of Austria,

Desiring to develop economic cooperation between the two countries;

Recognizing that the encouragement and reciprocal protection of investments will be conducive to the growth of such investments and hence make greater contribution to the development of economic relations between the two countries;

Through the negotiations between the representatives of the two Governments,

Have agreed as follows;

Article 1.

For the purpose of this Agreement:

(1) The term "investment" means every kind of asset permitted by either Contracting Party in accordance with its laws in force, including, in particular:

a) Movable and immovable property and other property rights such as mortgages, pledges, usufruct or other similar right;

b) Shares of companies and the other forms of interests in such companies;

c) Claims to money creating a financial value or claims to any performance having a financial value;

d) Copyrights, industrial property rights, technical process, know-how, trade names, and,

e) Concessions to search for, and exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(2) The term "returns" means profit, dividends, interest and the other legitimate income yielded by an investment.

(3) The term "investors" means

In respect of the Republic of Austria,

(1) Physical persons who have nationality of the Republic of Austria;

(2) Juridical persons and organizations or associations legally established in accordance with the law of the Republic of Austria and domiciled in the territory of the Republic of Austria, regardless of whether they are in possession of a juridical person status or not;

(3) Juridical persons and organizations or associations regardless o f whether they possess a juridical person status or not, and domiciled in a third country, in which the above-defined investors in sections (1) and (2) have essential interests.

In respect of the People's Republic of China,

a) Physical persons who have nationality of the People's Republic of China;

b) Juridical persons and organizations or associations legally established in accordance with the law of the People's Republic of China and domiciled in the territory of the People's Republic of China, regardless of whether they are in possession of a juridical person status or not;

c) Juridical person and organizations or associations regardless of whether they possess a juridical person status or not, and domiciled in a third country, in which the above-defined investors in sections (1) and (2) have essential interests.

Article 2.

(1) Either Contracting Party shall encourage investment in its territory by investors of the other Contracting Party and permit such investment in accordance with its laws and regulations.

(2) Either Contracting Party shall accord to such investment at all times fair and equitable treatment.

(3) The investment permitted under paragraph 1 above and its returns shall be fully protected. Such protection shall also be applicable to reinvestment and its returns.

Article 3.

(1) Neither Contracting Party shall in its territory subject investments of investors of the other Contracting Party to treatment less favorable than that accords to investment of investors of any third country.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party as regards their activities associated with investments such as, in particular, maintenance, maivtevavce, use and disposal of their investments to treatment less favourable than that accords to investors of any third country.

(3) The treatment as stated above does not apply to:

- The preference accorded to investors of a third country by either Contracting Party based on customs union, free trade area or an economic community to which that Contracting Party is a member;

- The preference accorded to investors of a third country by either Contracting Party based on an agreement for the avoidance of double taxation or arrangement relating to taxation that Contracting Party has concluded;

- The preference accorded to investors of a third country by either Contracting Party for facilitating frontier trade.

(4) Without prejudice to the legislation on the joint venture with foreign equity participation and foreign wholly-owned enterprises, either Contracting Party shall guarantee not to take discriminatory measures against the joint ventures in which the investors of the other Contracting Party participates and investments the investors of the other Contracting Party have made.

Article 4.

(1) Investment of investors of either Contracting Party shall not be expropriated or subjected to measures having a similar effect in the territory of the other Contracting Party except for a public purpose, under the legal procedure and against compensation. Such compensation shall amount to the value of the investment expropriated immediately before the expropriation becomes public knowledge. Such compensation shall be made without undue delay, be convertible and freely transferable.

(2) Where one Contracting Party expropriates the assets of a national or company in which the investor of the other Contracting Party holds equity and which are deemed as the assets of the investor of that other Contracting Party under Paragraph 3 of Article 1 of this Agreement, the provisions of Paragraph 1 of this Article shall apply so as to ensure appropriate compensation to the said investor.

(3) Investors of one Contracting Party, whose investment or joint ventures in which such investors own shares in the territory of the other Contracting Party suffer losses owing to war, other armed conflict, a state of national emergency or other similar event, shall be accorded treatment no less favorable than that accorded to investors of any third country as regards the relevant measures taken by the other Contracting Party.

(4) The investor in entitled to request the competent authority of the Contracting Party taking expropriatory measures to review the legality of the expropriation.

(5) The investor is entitled to request the competent authority of the Contracting Party taking the expropriatory measures or an international arbitration tribunal to review the amount of compensation for the expropriation.

(6) The investors of either Contracting Party shall enjoy the most-favoured nation treatment in the territory of the other Contracting Party in respect of the matters provided in this Article.

Article 5.

Either Contracting Party shall guarantee to investors of the other Contracting Party free transfer of the proceeds related to their investments, mainly;

a) Capital or additional funds that are necessary to maintain the operation of or to increase the investment;

b) Returns;

c) Repayment of loans similar to shares provided by investors;

d) Royalties and other fees derived from the rights as defined in section (4) of Paragraph 1 of Article 1;

e) Proceeds resulting from the sale of total or partial liquidated investment;

f) Compensation mentioned in Paragraph 1 of Article 4.

Article 6.

If one Contracting Party or its designated agency makes a payment to its investors under an indemnity given in respect of an investment made in the territory of the other Contracting Party, the other Contracting Party shall recognise the assignment to the former Contracting Party by law or by legal transactions of all the rights or claims of the investor and the subrogation of the former Contracting Party to such rights or claims without prejudice to the rights of the former Contracting Party provided in Article 10. However, the rights or claims the former Contracting Party are subrogated to shall not exceed the original rights or claims to which such investor was entitled. The other Contracting Party can make counter-claim to the rights or claims to which the former Contracting Party is subrogated. As regards the transfer of payments to be made by the former Contracting Party by virtue of such claim assignment, the provisions of Articles 4 and 5 shall apply respectively.

Article 7.

(1) In the absence of approval given by the competent authority of the Contracting Party receiving the investment to any other arrangement made between the parties concerned, the transfer mentioned in Articles 4, 5 and 6 of this Agreement shall be made without undue delay in the currency agreed upon by the parties concerned at the actual rate applicable on the date of transfer.

(2) The rate of exchange mentioned above shall correspond to the cross rate obtained from those rates which would be applied by the international Monetary Fund on the date of transfer for conversion of the currencies concerned into Special Drawing Rights.

Article 8.

(1) Where the general or specific terms contained in the legislation of either Contracting Party or obligations undertaken under international law existing at present or established thereafter between the Contracting Party that are not found in this Agreement but that provide a more favorable treatment to the investment of investors of the other Contracting Party such terms shall prevail.

(2) Each Contracting Party shall observe any contractual obligations it may have entered into with the investors of the other Contracting Party in respect of its approved investments in its territory.

Article 9.

The Agreement shall also apply to investments that have, prior to this Agreement coming into force, been undertaken by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations.

Article 10.

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled through friendly consultations.

(2) If such a dispute cannot thus be settled within six months it shall, at the request of either Contracting Party, be submitted

to an arbitration tribunal.

(3) Such an ad hoc arbitration tribunal shall be constituted as follows; each Contracting Party shall appoint an arbitrator, and these two arbitrators shall agree upon a national of a third country which has diplomatic relations with both Contracting Parties as the Chairman to be appointed by the Governments of the two Contracting parties. Arbitrators shall be appointed within two months from the date on which either Contracting party has informed its counterpart of its intention to submit the dispute to an arbitration, and the Chairman be appointed within two months thereafter.

(4) If, within the periods specified in Paragraph 3 above, the 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 member of the International Court of Justice in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitration tribunal shall make its decision on the basis of this Agreement, other arrangements concluded between the Contracting Parties and general principles of International law. Such decision shall be reached by a majority of votes, and shall be final and binding.

(6) Each Contracting Party shall bear the cost of its own appointed arbitrator and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne equal parts by the Contracting Parties concerned.

(7) The arbitration tribunal shall determine its own procedure.

Article 11.

(1) This Agreement shall enter into force one month from the day when the Contracting parties have informed each other in writing that the necessary domestic procedures required for the bringing into force of this Agreement are fulfilled. It shall remain in force for a period of ten years and continue in force until twelve months after its expiration from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party.

(2) In respect of investments made whilst the Agreement is in force, the provisions from Article 1 to 10 shall continue to be in effect with respect to such investments for a period of fifteen years after the date of termination of this a Agreements.Article 1 to 10 shall continue to be in effect with respect to such investments for a period of fifteen years after the date of termination of this a Agreements.

DONE at Beijing on 12 September 1985, in two originals, each in German and English Chinese language, each text being equally authentic.

For the Republic of Austria:

Norbert Steger

For the People's Republic of China:

Zheng Tuobin

Protocol

At the time of the signing of the Agreement between the Republic of Austria and the People's Republic of China on the promotion and mutual protection of investments, the undersigned Plenipotentiaries also made the following agreements, which form an integral part of the Agreement:

To Article 2

Investments made in accordance with the law of a Contracting Party by investors in the areas in which the former Contracting Party exercises sovereign powers or sovereignty also enjoy full protection under this Agreement.

To Article 3

a) The "less favorable treatment" within the meaning of Article 3 (2) or as "discriminatory measures" within the meaning of Article 3 (4) are, in particular, the restriction on the purchase of raw materials and auxiliary materials, energy, production and operating materials and measures with a similar effect.

b) Measures of a Contracting Party shall not be regarded as "discriminatory measures" within the meaning of Article 3 paragraph 4,

- Taken for reasons of public security and public order or public health or morality,

- Which are made on the basis of economic priorities, provided that they are not particularly aimed at investors from the other party or against joint ventures involving investors from the other party.

c) For persons to act in connection with the making and carrying out of an investment in the territory of the other party, the other party will, within the framework of its legislation, issue visas as soon as possible and, if necessary, apply for an employment permit Check benevolently and quickly decide on them.

To Article 4

a) Where an investor of a Party has an overriding interest in a legal person, entity or association, whether legal or otherwise, of a third State, Article 4 (1) shall apply to that investor of either Party even if the other Party invests in them expropriated legal entity, organization or association of the third state. However, the provisions relating to compensation shall only apply if that legal person, organization or group of the third State or the third State itself is not entitled to claim compensation or the third State waives that right.

b) The international arbitration tribunal referred to in Article 4, paragraph 5, shall be formed on a case-by-case basis, with each side appointing a member and both members agreeing to chair the nationals of a third country with which both parties have diplomatic relations. Within two months after the investor has informed the other party that he intends to submit the dispute to an arbitral tribunal, the members shall be appointed within two months. Failure to comply with any other agreement may result in each side requesting the chairman of the Arbitration Tribunal of the Stockholm Chamber of Commerce to make the necessary appointments. The arbitral tribunal establishes its procedural rules by applying the procedural rules of the Convention of March 18, 1965 on the settlement of investment disputes between states and nationals of other states. The court decides by majority vote; the decision is final and binding; it is enforced under domestic law. The decision must indicate the basis on which it was made; it must be justified at the request of one side or the other. Each side bears the cost of its member and its representation in the arbitration; the costs of the chairman and other costs are borne equally by both sides.

To Article 5

The expression "Each Party shall guarantee the investors of the other Party the free transfer of payments in connection with an investment" in accordance with Article 5 means, with regard to the People's Republic of China:

(1) Compensation payments in accordance with Article 5 lit. f will be freely transferred in convertible currency with the guarantee of the relevant Chinese government authorities.

(2) a) Payments in accordance with Article 5 lit. a-e will be transferred from foreign currency account of the Joint Undertaking or from the foreign currency account of the enterprise with foreign capital only, as long as the foreign exchange regulations of the People's Republic of China do not provide for more favorable regulations.

b) If such a company does not have sufficient foreign currency in its account for payments under lit. 2 (a) of this point, the GOC will provide the foreign exchange required for the transfer in the following cases:

- For payments under Article 5 lit. a, lit. d and lit. e;

- For payments under Article 5 lit. c, if the Bank of China has granted a guarantee;

- For payments under Article 5 lit. b. if a joint venture or a company with exclusively foreign capital, with the special approval of a competent government agency, also discontinues its production against a currency that is not freely convertible.

To Article 7, Paragraph 1

A "transfer without undue delay" within the meaning of Article 7 (1) shall be deemed to take place within a time limit normally required to comply with the transfer options. The period begins with the submission of a corresponding application and may in the cases of Article 5 lit. a-e three months and in the cases of Article 5 lit. f do not exceed six months.

DONE at Beijing on 12 September 1985, in two originals, each in German and English Chinese language, each text being equally authentic).

For the Republic of Austria:

Norbert Steger

For the People's Republic of China:

Zheng Tuobin