

No. 20871

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**UNITED STATES OF AMERICA  
and  
CHINA**

**Exchange of notes constituting an agreement relating to investment guarantees (with related notes and related letter and statement dated 7 October 1980). Beijing, 30 October 1980**

*Authentic texts of the Exchange of notes and related notes: English and Chinese.*

*Authentic text of the related letter and statement: English.*

*Registered by the United States of America on 1 March 1982.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
CHINE**

**Échange de notes constituant un accord relatif à la garantie des investissements (avec notes connexes et lettre connexe et déclaration en date du 7 octobre 1980). Beijing, 30 octobre 1980**

*Textes authentiques de l'Échange de notes et des notes connexes : anglais et chinois.*

*Texte authentique de la lettre connexe et de la déclaration : anglais.*

*Enregistré par les États-Unis d'Amérique le 1<sup>er</sup> mars 1982.*

# EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND CHINA RELATING TO INVESTMENT GUARANTEES

## I

### EMBASSY OF THE UNITED STATES OF AMERICA BEIJING

Note No. 438

October 30, 1980

#### Excellency:

I have the honor to refer to conversations which have recently taken place on the basis of equality and mutual benefit between representatives of the Government of the United States of America and of the Government of the People's Republic of China relating to investments in the People's Republic of China and to investment insurance (including reinsurance) and investment guaranties which are administered by the Overseas Private Investment Corporation ("OPIC"), an independent government corporation organized under the laws of the United States of America. On behalf of the Government of the United States of America, I also have the honor to confirm the following understandings reached as a result of those conversations:

*Article 1.* As used herein, the term "Coverage" shall refer to any investment insurance (including reinsurance) against loss from political risk or to any investment guaranty which is issued in accordance with this Agreement by OPIC or by any successor United States Government agency, OPIC and any such successor being hereinafter referred to as the "Issuer" to the extent of its interest as insurer or reinsurer in any Coverage.

*Article 2.* The procedures set forth in this Agreement shall apply only with respect to Coverage of investments relating to projects or activities approved by the Government of the People's Republic of China.

*Article 3.* (a) If the Issuer makes payment to any investor under Coverage, the Government of the People's Republic of China shall, subject to the provisions of article 4 hereof, recognize the transfer to the Issuer of any currency, credits, assets, or investment on account of which payment under such Coverage is made, as well as the succession of the Issuer to any right, title, claim, or cause of action existing, or which may arise, in connection therewith, subject to existing legal obligations.

(b) The Issuer shall assert no greater rights than those of the transferring investor with respect to any interests transferred or succeeded to under this paragraph. The Government of the United States of America does, however, reserve its rights to assert a claim in its sovereign capacity under international law.

*Article 4.* To the extent that the laws of the People's Republic of China partially or wholly invalidate or prohibit the acquisition from a covered investor of any interest in any

<sup>1</sup> Came into force on 30 October 1980, the date of the note in reply, in accordance with the provisions of the said notes.

property within the territory of the People's Republic of China by the Issuer, the Government of the People's Republic of China shall permit such investor and the Issuer to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the People's Republic of China.

*Article 5.* Amounts in the lawful currency of the People's Republic of China, including credits thereof, acquired by the Issuer by virtue of such Coverage shall be accorded treatment by the Government of the People's Republic of China no less favorable as to use and conversion than the treatment to which such funds would be entitled in the hands of the covered investor. Such amounts and credits shall be freely available for use by the Government of the United States of America to meet its expenditures in the territory of the People's Republic of China. Such amounts and credits may also be transferred by the Issuer to any person or entity agreed by the Government of the People's Republic of China for use by such person or entity in the territory of the People's Republic of China.

*Article 6. (a)* Any dispute between the Government of the United States of America and the Government of the People's Republic of China regarding the interpretation of this Agreement or which, in the opinion of one of the Governments, involves a question of public international law arising out of any investment or project or activity relating to such investment for which Coverage has been issued shall be resolved, insofar as possible, through negotiations between the two Governments. If at the end of three months following the request for negotiations the two Governments have not resolved the dispute by agreement, the dispute, including the question of whether such dispute presents a question of public international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with article 6(b).

*(b)* The arbitral tribunal for resolution of disputes pursuant to article 6(a) shall be established and function as follows:

- (i) Each Government shall appoint one arbitrator; these two arbitrators shall designate a President by common agreement who shall be a citizen of a third state and be appointed by the two Governments. The arbitrators shall be appointed within two months, and the President within three months of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-General of the United Nations to make the necessary appointment or appointments, and both Governments agree to accept such appointment or appointments;
- (ii) The arbitral tribunal shall base its decision on the applicable principles and rules of public international law. The arbitral tribunal shall decide by majority vote. Its decision shall be final and binding;
- (iii) Each Government shall pay the expense of its arbitrator and of its representation in the proceedings before the arbitral tribunal; the expenses of the President and the other cost shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt regulations concerning the costs, consistent with the foregoing;
- (iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

*Article 7.* The two Governments, desiring reciprocity, agree that, in the event the Government of the People's Republic of China is authorized under its laws to issue coverage for investments in any project or activity within the United States of America under a program similar to the investment incentive program to which this Agreement relates, there shall be, upon the request of either Government, an exchange of notes to make applicable, with respect to such investments made in the United States of America, provisions equivalent to those of this Agreement.

*Article 8.* Upon receipt of a note of confirmation from Your Excellency on behalf of the Government of the People's Republic of China indicating that the foregoing provisions are acceptable, this note and your reply thereto shall constitute an agreement between

our two Governments on this subject, and enter into force on the date of your reply. This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of a request for the termination of the Agreement. In such event, the provisions of the Agreement with respect to Coverage issued while the Agreement was in force shall remain in force for the duration of such Coverage, but in no case longer than twenty years after the denunciation of the Agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

[Signed]

LEONARD WOODCOCK  
Ambassador of the United States  
to the People's Republic of China

His Excellency Zhang Wenjin  
Vice-Minister of Foreign Affairs  
Beijing, People's Republic of China

## II

[CHINESE TEXT — TEXTE CHINOIS]

### 中华人民共和国外交部

(80)部美大字第1149号

美利坚合众国驻中华人民共和国特命全权大使伍德科克先生  
阁下

阁下：

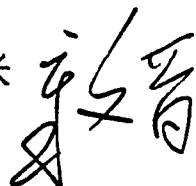
我荣幸地收到了你一九八〇年十月三十日的照会，  
全文如下：

“我荣幸地提及美利坚合众国政府和中华人民共和国政府的代表，最近在平等互利的基础上举行的关于在中华人

我荣幸地代表中华人民共和国政府确认，同意上述来照内容。

顺致最崇高的敬意。

中华人民共和国外交部副部长



一九八〇年十月三十日于北京

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

MINISTRY OF FOREIGN AFFAIRS

PEOPLE'S REPUBLIC OF CHINA

Beijing, October 30, 1980

Note No. (80) Bu Meida 1149

Excellency:

I have the honor to acknowledge the receipt of your note of October 30, 1980, which reads:

[See note I]

On behalf of the Government of the People's Republic of China, I have the honor to confirm our agreement to the contents of the above note.

Please accept, Excellency, the renewed assurances of my highest consideration.

ZHANG WENJIN  
Vice-Minister of Foreign Affairs  
People's Republic of China

His Excellency Leonard Woodcock  
Ambassador Extraordinary and Minister  
Plenipotentiary of the United States of America  
to the People's Republic of China  
Beijing, People's Republic of China

<sup>1</sup> Translation supplied by the Government of the United States.

<sup>2</sup> Traduction fournie par le Gouvernement des Etats-Unis.

## RELATED NOTES

## I

## EMBASSY OF THE UNITED STATES OF AMERICA

October 30, 1980

Excellency:

I have the honor to refer to the Investment Incentive Agreement between the Government of the United States of America and the Government of the People's Republic of China, effected by an exchange of notes on October 30, 1980 (the "Agreement"), relating to investment insurance and investment guaranties which are administered by the Overseas Private Investment Corporation ("OPIC").

Article 2 of the Agreement states that the procedures set forth in the Agreement shall apply only with respect to coverage of investments relating to projects or activities approved by the Government of the People's Republic of China. I wish to confirm my understanding that, for purposes of article 2 of the Agreement, the procedure for approval by the Government of the People's Republic of China shall be as follows:

(1) Approval of a project or activity by the Foreign Investment Commission ("FIC") shall constitute approval by the Government of the People's Republic of China for purposes of article 2 of the Agreement. After a project or activity has received such approval, investment insurance or guaranties issued by OPIC for investments which are related to such project or activity shall be governed by the procedures set forth in the Agreement. Such related investments include the following:

- (a) Equity investments and loans by investors in projects or activities approved by FIC;
- (b) Loans from financial institutions to projects or activities approved by FIC; and
- (c) Transfer of technology, service and management agreements with projects or activities approved by FIC.

(2) For purposes of article 2 of the Agreement, any project or activity approved by the Administrative Commissions for Special Economic Zones of concerned provinces in accordance with Chinese legislation shall be deemed as approval by the Chinese Government.

(3) In case of a project or activity which does not require the approval set forth in (1) or (2) above, upon request by the Government of the United States of America, FIC shall as soon as possible advise it of the appropriate agency or instrumentality of the Government of the People's Republic of China to issue such approval on behalf of the Chinese Government and shall inform the United States Government of the decision of such agency or instrumentality for purposes of article 2 of the Agreement.

I would be grateful for your confirmation that this is also your understanding.  
Accept, Excellency, the renewed assurances of my highest consideration.

[Signed]

LEONARD WOODCOCK  
Ambassador of the United States  
to the People's Republic of China

His Excellency Zhang Wenjin  
Vice-Minister of Foreign Affairs  
Beijing, People's Republic of China

## II

[CHINESE TEXT — TEXTE CHINOIS]

### 附件

美利坚合众国驻中华人民共和国特命全权大使伍德科克先生  
阁下

阁下：

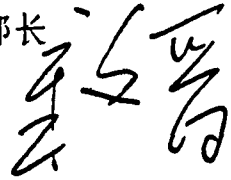
我荣幸地提及我们两国政府间关于鼓励投资的协议与你今日的来函，全文如下：

“我荣幸地提及一九八〇年十月三十日生效的美利坚合众国政府和中华人民共和国政府关于投资保险和投资保证的鼓励投资协议(以下称“协议”)，该保险和保证是由海外私人投资公司执行的。

该协议第二条规定：‘本协议的规定只适用于经中华人民共和国政府批准的项目或活动有关的投资的承保范围。’我谨确认关于协议第二条由中华人民共和国政府批准的程序的理解如下：

顺致最崇高的敬意。

中华人民共和国外交部副部长



一九八〇年十月三十日于北京

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

Beijing, October 30, 1980

Excellency:

I have the honor to refer to the Investment Incentive Agreement between our two Governments and to your letter of today's date which reads:

[*See related note I*]

On behalf of the Government of the People's Republic of China, I have the honor to confirm our agreement to the contents of the above letter.

Please accept, Excellency, the renewed assurances of my highest consideration.

ZHANG WENJIN  
Vice-Minister of Foreign Affairs  
People's Republic of China

His Excellency Leonard Woodcock  
Ambassador Extraordinary and  
Minister Plenipotentiary of  
the United States of America  
to the People's Republic of  
China  
Beijing, People's Republic of China

<sup>1</sup> Translation supplied by the Government of the United States.

<sup>2</sup> Traduction fournie par le Gouvernement des Etats-Unis.



## RELATED LETTER

October 7, 1980

Dear Mr. Chen:

In connection with our discussions relating to the Investment Incentive Agreement covering the procedures for the operation of the investment insurance programs of the Overseas Private Investment Corporation ("OPIC"), you have inquired as to whether the issuance by OPIC of investment insurance covering losses resulting from war, revolution, and insurrection would create an obligation for the Government of the People's Republic of China. I wish to inform you that the issuance of such coverage would not obligate the Government of the People's Republic of China to reimburse the insured investor or OPIC for losses resulting from war, revolution, or insurrection.

Sincerely yours,

[Signed]

PAUL R. GILBERT  
Vice-President and General Counsel  
Overseas Private Investment Corporation

Mr. Chen Shuzhi  
Vice-President  
Chinese International Trust  
and Investment Corporation  
Beijing, China

STATEMENT OF PAUL R. GILBERT, VICE-PRESIDENT AND GENERAL  
COUNSEL, OVERSEAS PRIVATE INVESTMENT CORPORATION,  
REGARDING U.S.-CHINA INVESTMENT INCENTIVE AGREEMENT,  
MADE ORALLY TO CHINESE DELEGATION ON OCTOBER 4,  
1980, AND DELIVERED BY HAND ON OCTOBER 7, 1980

With respect to article 7 of the Agreement, the Government of the United States of America wishes to inform the Government of the People's Republic of China that the United States Government interprets article 7 to mean that an exchange of notes taking action contemplated by article 7 will be subject to the legal requirements in the United States of America for taking such action, including any necessary implementing legislation.

[Signed]

PAUL R. GILBERT  
Vice-President and General Counsel  
Overseas Private Investment Corporation