

No. 30406

—

**SPAIN
and
CHINA**

**Agreement on reciprocal encouragement and protection of
investments. Signed at Madrid on 6 February 1992**

Authentic texts: Spanish, Chinese and English.

Registered by Spain on 21 October 1993.

—————

**ESPAGNE
et
CHINE**

**Accord relatif à l'encouragement et à la protection récipro-
ques des investissements. Signé à Madrid le 6 février
1992**

Textes authentiques : espagnol, chinois et anglais.

Enregistré par l'Espagne le 21 octobre 1993.

AGREEMENT¹ ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE PEOPLE'S REPUBLIC OF CHINA

The Kingdom of Spain and the People's Republic of China, hereinafter referred to as "The Contracting Parties",

Desiring to encourage, protect and create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic cooperation between both countries,

Have agreed as follows:

ARTICLE 1

For the purpose of this Agreement,

1. The term "investments" means every kind of assets 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, including mainly:

a) movable and immovable property and other property rights such as mortgages, liens or pledges;

b) shares in companies or other forms of participation in companies;

c) a claim to money or to any performance having an economic value;

d) copyrights, industrial property, know-how and technological process;

e) concessions conferred by law or contract, including concessions to search for or exploit natural resources.

2. The term "investors" means:

in respect of the Kingdom of Spain:

a) natural persons who have nationality of the Kingdom of Spain according to its law;

¹ Came into force on 1 May 1993, i.e., the first day of the month following the date on which the Contracting Parties had notified each other (on 10 November 1992 and 15 April 1993) of the completion of their respective internal legal procedures, in accordance with article 13 (1).

b) economic entities established in accordance with the laws of the Kingdom of Spain and domiciled in its territory.

in respect of the People's Republic of China:

a) natural persons who have nationality of the People's Republic of China in accordance with its law;

b) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;

3. The term "return" means the amount yielded by investments, such as profits, dividends, interests, royalties or other legitimate income.

4. The term "territory" designates the land territory and territorial waters of each of the Contracting Parties. This Agreement shall also apply to investments made by investors of either Contracting Party in the exclusive economic zone and the continental shelf that extends outside the limits of the territorial waters of the other Contracting Party, over which they have or may have sovereign rights and jurisdiction for the purpose of prospecting, exploration and conservation of natural resources, pursuant to international law.

ARTICLE 2

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance and provide facilities for obtaining visa and working permit, within the framework of its law, to investors of the other Contracting Party in the territory of the Former in connection with activities associated with their investments, such as the execution of contracts related to manufacturing licences and technical, commercial, financial, administrative and consulting assistance.

ARTICLE 3

1. Investments made by investors 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 measure against the management, maintenance, use or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have

entered into with regard to investments of investors of the other Contracting Party.

2. The treatment and protection referred to in paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.

3. The treatment and protection as mentioned in paragraph 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State based on customs union, free-trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

4. In addition to the provisions of paragraph 2 of this Article, either Contracting Party shall accord treatment in accordance with the stipulations of its laws and regulations to the investments of investors of the other Contracting Party the same as that accorded to its own investors.

ARTICLE 4

1. Neither Contracting Party shall expropriate, nationalize or take similar measures, hereinafter referred to as expropriation, against investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

- a) in the public interest;
- b) under domestic legal procedure;
- c) without discrimination;
- d) against compensation.

2. The compensation mentioned in Paragraph 1, (d) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without undue delay.

ARTICLE 5

1. Investors 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 investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors 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 appropriate fair and non-discriminatory compensation.

3. Resulting payments under this Article shall be made in convertible currency, freely transferable and without undue delay.

ARTICLE 6

1. Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the transfer of their investments and returns held in the territory of the one Contracting Party, including:

a) profits, dividends, interests and other legitimate income;

b) amounts from total or partial liquidation of investments;

c) payments made pursuant to a loan agreement in connection with investment;

d) royalties in paragraph 1, d) of Article 1;

e) payments of technical assistance or technical service fee, management fee;

f) payments in connection with projects on contract;

g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting Party.

2. The transfers mentioned above shall be made at the prevailing exchange rate of the Contracting Party accepting investment on the date of transfer.

3. The transfers shall be made in freely-convertible foreign currencies within such a period as is normally required according to international financial practices and not later than six months.

4. The Contracting Party accepting the investment shall allow the investors of the other Contracting Party, or the companies in which they have invested, to have access to the official foreign-exchange market in a non-discriminatory manner so that the investors may purchase the necessary foreign currency to make the transfers pursuant to this Article.

5. Protection of those transfers under the present Agreement will only be granted when the investors have complied with the tax regulations in the Contracting Party accepting the investment.

6. The Contracting Parties agree to accord to transfers referred to in paragraph 1 of this article a treatment no less favourable than that accorded to transfers originated from investments made by investors of any third State.

ARTICLE 7

In the event that a Contracting Party has issued a financial guarantee relative to non-commercial risks connected with an investment made by an investor of that Contracting Party in the territory of the other Contracting Party, the latter shall accept the application of the principle of subrogation of the first Contracting Party in respect of the economic rights of the investors but not in respect of property rights, from the time when the first Contracting Party made a first payment charged to the guarantee issued.

This subrogation will make it possible for the first Contracting Party to be the direct beneficiary of all the payments for compensation of which the initial investor could be a creditor. In no event can a subrogation confer rights in respect of property, use, enjoyment or any other rights deriving from ownership of the investment without the pertinent authorizations having previously been obtained, pursuant to the current law on foreign investments in the Contracting Party in whose territory the investment was made.

ARTICLE 8

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment (s).

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the general principles of international law.

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

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

ARTICLE 9

1. A dispute between an investor of one Contracting Party and the other Contracting Party concerning an amount of compensation referred to in Article 4 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 investor 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;¹ or

d) the International Center for Settlement of Investment Disputes (ICSID) set up by the Convention on Settlement of Investment Disputes between States and Nationals of other States,² in case both Contracting Parties become member States of this Convention.

¹United Nations *Conference on the Carriage of Goods by Sea*, Hamburg, 6-31 March 1978, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees (A/CONF.89/14), New York 1981.

²United Nations, *Treaty Series*, vol. 575, p. 159.

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.

ARTICLE 10

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favorable treatment shall be applicable.

ARTICLE 11

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the Latter.

ARTICLE 12

1. The representatives of the two Contracting Parties shall hold meetings from time to time for the purpose of:

- a) reviewing the implementation of this Agreement;
- b) exchanging legal information and investment opportunities;
- c) resolving dispute arising out of investments;
- d) forwarding proposals on promotion of investment;
- e) studying other issues in connection with investment.

2. Where either Contracting Party requests consultation on any matters of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Madrid.

ARTICLE 13

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 have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investment made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Madrid on 25.12.1990 in the Spanish, Chinese and English languages, all of which being equally authentic.

For the Kingdom
of Spain:

A handwritten signature in black ink, slanted downwards from left to right. The signature is somewhat stylized and appears to be "Francisco Fernández Ordóñez".

1

For the People's Republic
of China:

A handwritten signature in black ink, consisting of several bold, sweeping strokes. The signature is "Quian Quichen".

2

¹ Francisco Fernández Ordóñez.

² Quian Quichen.