

No. 33246

**BELGO-LUXEMBOURG ECONOMIC UNION
and
CHINA**

Agreement concerning the reciprocal promotion and protection of investments (with protocol). Signed at Brussels on 4 June 1984

Authentic texts: French, Dutch and Chinese.

Registered by the Belgo-Luxembourg Economic Union on 15 October 1996.

**UNION ÉCONOMIQUE
BELGO-LUXEMBOURGEOISE
et
CHINE**

Accord en matière de l'encouragement et de la protection réciproques des investissements (avec protocole). Signé à Bruxelles le 4 juin 1984

Textes authentiques : français, néerlandais et chinois.

Enregistré par l'Union économique belgo-luxembourgeoise le 15 octobre 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Belgium, acting both in its own name and on behalf of the Grand Duchy of Luxembourg, under the Convention establishing the Belgo-Luxembourg Economic Union, and

The Government of the People's Republic of China,

Desiring to create favourable conditions for the development of economic cooperation between the Contracting States and, in particular, for investments by nationals of either State in the territory of the other State,

Convinced that the conclusion, on the basis of equality and mutual interest, of an agreement concerning the promotion and protection of investments will be likely to stimulate initiatives by investors and will thus contribute to increased economic prosperity for the Contracting Parties,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

1. The term “investors” means,

With respect to the People's Republic of China:

(a) “Nationals”, namely any natural person who, according to Chinese law, has Chinese nationality;

(b) “Enterprises”, namely any economic organization constituted in conformity with Chinese law and having its seat in Chinese territory.

With respect to the Belgo-Luxembourg Economic Union:

(a) “Nationals”, namely any natural person who, according to Belgian or Luxembourg law, is regarded as a citizen of Belgium or Luxembourg;

(b) “Belgian or Luxembourg legal persons”, such as companies, institutions and foundations, as well as “associations” without legal personality, constituted in accordance with Belgian or Luxembourg law and having their registered offices in the territory of Belgium or Luxembourg.

2. The term “investments” means all property and assets invested or reinvested, in particular:

(a) Movable and immovable property, as well as all rights “in rem” such as mortgages, pledges, securities, usufruct and similar rights;

(b) Shares, partnership shares and any other types of holding;

¹ Came into force on 5 October 1986 by notification, in accordance with article 14.

(c) Debentures, titles to money or to any performance having an economic value;

(d) Copyrights, industrial rights, technical processes, registered trademarks, tradenames and goodwill;

(e) Concessions to prospect for, exploit and extract natural resources;

Provided that such property and assets, at the time of their investment, are invested in conformity with the laws of the Contracting Party in whose territory the investment is made.

No alteration of the juridical form in which the property and assets have been invested or reinvested shall affect their designation as “investments” within the meaning of this Agreement.

Article 2

1. Each Contracting Party shall, in conformity with its legislation, admit in its territory investments made by investors of the other Contracting Party and shall encourage such investments.

2. In accordance with its laws and regulations, each Contracting Party shall authorize the investors of the other Contracting Party to conclude and execute licensing contracts and commercial administration and technical assistance contracts.

Article 3

1. Direct or indirect investments made by investors of one of the Contracting Parties shall enjoy equitable treatment in the territory of the other Party.

2. Subject to the measures necessary to maintain public order and uphold the law, such investments shall enjoy protection and equitable treatment with respect to their administration, management, utilization and liquidation.

3. The treatment and protection provided for in paragraphs 1 and 2 of this article shall at least be equal to those enjoyed by the investors of third States.

4. Notwithstanding the provisions of the preceding paragraphs, the treatment and protection provided for in the said paragraphs shall not extend to the privileges which may be accorded by a Contracting Party under conventions concerning the establishment of a customs union, a free trade area or an economic community or as facilities connected with border trade.

Article 4

1. Each Contracting Party may take, in respect of investments made in its territory by investors of the other Party, expropriation or nationalization measures or any other measure having a similar effect, if required so to do by considerations of security or in the public interest, and provided that the following conditions are met:

(a) The measures are taken under due process of domestic law;

(b) They are not discriminatory in comparison with the measures taken in respect of the investors and investments of third States;

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

2. The compensation referred to in paragraph 1 (c) of this article shall be paid to investors in a convertible currency, freely transferred and disbursed without undue delay.

3. If one of the Contracting Parties expropriates the property and assets of an enterprise established in its territory in which investors of the other Party own capital shares or other participating bonds, the former Contracting Party shall apply the provisions of paragraphs 1 and 2 of this article to the investors of the latter Contracting Party, in proportion to the shares or other participating bonds owned by such investors.

Article 5

1. Each Contracting Party shall, in respect of investments made in its territory, guarantee the investors of the other Contracting Party the free transfer of their assets and, in particular, of:

(a) The returns from the investments, including profits, interest, capital gains, dividends and royalties, and all other returns and legitimate financial debt-claims;

(b) Compensation paid pursuant to article 4;

(c) The proceeds from the liquidation of all or part of the investments;

(d) The sums necessary to repay legally contracted loans.

2. The transfers referred to in the first paragraph of this article shall be effected without undue delay, after payment of the usual transfer charges and fees.

Article 6

1. The transfers referred to in articles 4 and 5 of this Agreement shall be effected on the basis of the exchange rate applicable on the date of transfer in the country in which the investment was made.

2. The exchange rate applied shall, in all cases, be equitable, taking into account the usual charges and fees that may be levied for foreign exchange transactions.

Article 7

If one of the Contracting Parties or a public body of that Party pays compensation to its investors under an indemnity it has given in respect of an investment, the other Contracting Party shall recognize the assignment of the rights of the investors indemnified to the Contracting Party or to the public body concerned.

By virtue of subrogation, the Contracting Party or the public body concerned may, on the same basis as the investors and within the limits of the rights thus assigned, exercise and enforce the rights of the said investors and the claims relating thereto.

With regard to the rights assigned, either Contracting Party may enforce against the other Contracting Party subrogated into the rights of the investors indemnified the counter-claims to which it was entitled in respect of the said investors.

Article 8

This Agreement shall not prevent investors from taking advantage of more favourable provisions contained in the laws and regulations of the Contracting Party

in whose territory their investments are located or in international agreements to which the Contracting Parties are parties.

Article 9

Investments may be the subject of private contracts between the investors of each Contracting Party.

Each Contracting Party shall respect the obligations it undertakes with regard to the investors of the other Contracting Party.

Such private contracts and obligations shall be in conformity with the legislation of the Contracting Party in whose territory the investment is made, and with the provisions of this Agreement.

Article 10

1. Investors of one Contracting Party shall give written notification of any investment dispute, accompanied by a sufficiently detailed memorandum to the other Contracting Party. Disputes shall, as far as possible, be settled amicably, in conformity with the laws and regulations of the Contracting Party in whose territory the investment was made.

2. The disputes referred to in paragraph 1 of this article shall be within the competence of the internal jurisdiction of the country in which the investment was made.

3. By derogation from paragraph 2 of this article, and, if no amicable settlement has been reached within six months from the date of the written notification mentioned in paragraph 1 of this article, disputes concerning the amount of compensation due in the case of expropriation or nationalization measures or any other similar measure affecting the investments may, be submitted as the investor chooses:

(a) To the internal jurisdiction of the Contracting Party in whose territory the investment was made; or

(b) Directly to international arbitration, to the exclusion of any other recourse.

Article 11

With respect to all matters governed by this Agreement, the investors of each Contracting Party shall enjoy, in the territory of the other Contracting Party, the treatment accorded the most-favoured nation.

Article 12

1. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement shall be settled preferably by consultation between the Contracting Parties through the diplomatic channel.

If the dispute cannot be settled through such consultation, it shall be submitted to a Joint Commission consisting of representatives of both Parties. This Commission shall be convened upon the request of the most diligent Party and shall meet without undue delay.

2. If the Joint Commission is unable to settle the dispute, it shall be submitted, upon the request of one of the Contracting Parties and within six months from the

date on which that Party informs the other Party thereof in writing, to a special arbitral tribunal.

3. The special arbitral tribunal shall be composed of three judges. Within two months following the written notification of the request for arbitration, each Contracting Party shall appoint a judge. Within two months of their appointment, these two judges shall nominate a third judge who shall be a national of a third State with which the Contracting Parties maintain diplomatic relations. The third judge shall act as Chairman of the tribunal and shall be appointed by both Contracting Parties.

4. If the special arbitral tribunal has not been constituted within four months following the written notification of the request for arbitration, and if no other arrangement has been reached between the Contracting Parties, either Party may invite the President of the International Court of Justice to nominate the judge or judges who remain to be appointed.

If the President of the International Court of Justice is a national of one of the Contracting Parties, or is unable for other reasons to make such nomination, the Vice-President may be invited to replace him or her.

If the Vice-President is a national of one of the Contracting Parties, or is unable for other reasons to make such nomination, the most senior member of the International Court of Justice who is not a national of either Contracting Party may be invited to make the necessary nomination, and so forth.

5. The special arbitral tribunal shall determine its own rules of procedure. It shall rule not only on the basis of the provisions of this Agreement, but also in accordance with the other international instruments governing this subject to which the Parties are parties and in accordance with the generally recognized principles of international law.

The tribunal shall reach its decisions by a majority of votes; its decisions shall be final and binding on the Contracting Parties. The special arbitral tribunal shall, upon the request of either Contracting Party, provide explanations of the decision it has reached.

6. Each Contracting Party shall bear the costs of the appointment of its judge. The expenses incurred in the appointment of the third judge and the costs of the functioning of the tribunal shall be borne in equal parts by the Contracting Parties.

Article 13

This Agreement shall also apply to investments made prior to its entry into force, either by Chinese investors in the territory of the Kingdom of Belgium or of the Grand Duchy of Luxembourg, or by Belgian or Luxembourg investors in the territory of the People's Republic of China, provided that such investments were effected in conformity with the laws and regulations in force in the countries in which they were made.

Article 14

1. This Agreement shall enter into force on the thirtieth day following the date on which the Contracting Parties notify one another that they have completed the national formalities required in their respective countries. It shall remain in force for a period of 10 years.

2. This Agreement shall be renewed for an indefinite period, unless one of the Contracting Parties informs the other Party in writing of its intention to terminate it, at least one year prior to the expiration of the period stipulated in paragraph 1 of this article.

3. Following the expiration of the initial period of validity of this Agreement, either Contracting Party may decide at any time to terminate it, provided that it gives the other Party at least one year's written notice thereof.

4. With respect to investments made prior to the date of expiration of this Agreement, the provisions of this Agreement shall remain in force for 10 years from the date of expiration.

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

DONE at Brussels, on 4 June 1984, in duplicate, in the French, Dutch and Chinese languages, the three texts being equally authentic.

For the Belgo-Luxembourg
Economic Union:
WILLY DE CLERCQ
Deputy Prime Minister,
Minister of Finance
and Foreign Trade

For the Government
of the People's Republic of China:
ZHANG JINGFU
State Councillor
Chairman of the State
Economic Commission

PROTOCOL RELATING TO THE AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS SIGNED AT BRUSSELS ON 4 JUNE 1984

In order to facilitate the implementation of the Agreement between the Belgo-Luxembourg Economic Union and the People's Republic of China concerning the reciprocal promotion and protection of investments, hereinafter referred to as "the Agreement", the Government of the Kingdom of Belgium, acting both in its own name and on behalf of the Government of the Grand Duchy of Luxembourg, and the Government of the People's Republic of China have agreed on the following provisions:

Article 1

For the purposes of article 4 of the Agreement, if investors of one of the Contracting Parties own capital shares in a foreign company which is not Belgian, Luxembourg or Chinese and which itself owns capital shares in a company of the other Contracting Party, the latter Contracting Party shall apply article 4, paragraphs 1 and 2, of the Agreement to the aforesaid investors, shareholders in the foreign company in question.

This provision shall be applicable only in cases where the said company, or the State of that company, is not entitled to assert a right to indemnification or where that State renounces its claim to the indemnification provided for.

Article 2

The compensation referred to in article 4 of the Agreement shall correspond to the value of the property and assets invested on the day immediately preceding the date of the expropriation, or on the day on which the expropriation became public knowledge.

Such compensation shall be paid in the currency agreed upon with the investors at the time of the investments, and, failing that, in any other convertible currency.

The compensation shall be calculated on the basis of the exchange rate applicable in the Contracting Party in whose territory the investments were made on the date on which the expropriation measures were taken, or, should the case arise, on the date on which those measures became public knowledge.

Article 3

With regard to the People's Republic of China, the transfers referred to in article 5, paragraph 1, of the Agreement shall be made by the investors from their foreign currency account in China, in conformity with the currency control regulations of the People's Republic of China.

In accordance with those regulations, the Chinese Government may, if the balance of the said account is not sufficient to make the required transfers, allow the conversion of local currency into a freely convertible currency with a view to transferring:

(a) The assets referred to in article 5, paragraph 1 (a), of the Agreement with respect to enterprises in China, joint or otherwise, authorized specifically by the

competent authorities of the People's Republic of China to sell their products or perform services mainly within the country;

(b) The assets referred to in article 5, paragraph 1 (b), of the Agreement;

(c) The sums referred to in article 5, paragraph 1 (c) of the Agreement;

(d) The sums necessary to repay loans legally contracted by the investors, provided that the Bank of China has given a prior guarantee of transfer in respect of those loans.

Article 4

In Belgium or the Grand Duchy of Luxembourg, the exchange rate referred to in article 6, paragraph 1, shall depend on the type of transaction to which the transfer requests relate.

Article 5

With regard to the portion of the risk not covered by the indemnity referred to in article 7 of the Agreement, the provisions of articles 4 and 10 of the Agreement and article 6 of this Protocol shall apply.

Article 6

1. In conformity with article 10, paragraph 3, of the Agreement, it is agreed that disputes concerning the amount of compensation due in the case of expropriation or nationalization measures or any other similar measure may be submitted to an arbitral tribunal.

2. The arbitral tribunal shall be constituted for each case as follows:

- Each party to the dispute shall appoint one arbitrator;
- The two arbitrators shall agree upon a third arbitrator who shall be a national of a third country with which the Contracting Parties maintain diplomatic relations. This third arbitrator shall act as Chairman of the arbitral tribunal;
- The arbitrators shall be appointed no more than two months, and the Chairman no more than four months, after the written notification of the request for arbitration by one of the parties to the dispute to the other party. If the arbitral tribunal is not constituted within the aforesaid periods, either party to the dispute may invite the Chairman of the Institute of Arbitration of the Stockholm Chamber of Commerce to nominate the arbitrator or arbitrators who remain to be appointed.

3. The arbitral tribunal shall determine its own rules of procedure. However, the tribunal may, according to the preference expressed by the investor in the request for arbitration, determine its rules of procedure with reference to the arbitration rules of the Institute of Arbitration of the Stockholm Chamber of Commerce or those of the International Centre for the Settlement of Investment Disputes, in accordance with the Convention on the Settlement of Investment Disputes Between States and Nationals of other States, opened for signature at Washington on 18 March 1965.¹

4. The arbitral tribunal shall reach its decisions by a majority of votes. Its decisions shall be final and binding on the parties to the dispute. Each Contracting

¹United Nations, *Treaty Series*, vol. 575, p. 15.

Party shall undertake to enforce the decision in conformity with its national legislation.

5. The arbitral tribunal shall rule on the basis of the national legislation of the Contracting Party which is a party to the dispute in whose territory the investment is located, including the rules concerning conflicts of laws, on the basis of the provisions of the Agreement, on the basis of the terms of any private agreement which may have been concluded with regard to the investment, and on the basis of the generally recognized principles of international law adopted by the Contracting Parties.

6. Each party to the dispute shall bear the costs of the appointment of its arbitrator and of its representation before the arbitral tribunal. The expenses incurred in the appointment of the Chairman and the costs of the functioning of the tribunal shall be borne in equal parts by the parties to the dispute.

Article 7

The treatment and protection of investments referred to in article 3, paragraphs 1 and 2, of the Agreement shall be no less favourable than those provided for in the generally recognized principles and rules of international law adopted by the Contracting Parties.

Article 8

This Protocol shall enter into force at the same time as the Agreement between the Belgo-Luxembourg Economic Union and the People's Republic of China concerning the reciprocal promotion and protection of investments, of which it is an integral part.

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

DONE at Brussels, on 4 June 1984, in duplicate, in the French, Dutch and Chinese languages, the three texts being equally authentic.

For the Belgo-Luxembourg
Economic Union:

WILLY DE CLERCQ
Deputy Prime Minister,
Minister of Finance
and Foreign Trade

For the Government
of the People's Republic of China:

ZHANG JINGFU
State Councillor
Chairman of the State
Economic Commission