

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE ON THE PROMOTION AND PRO- TECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Republic of Singapore (each hereinafter referred to as a "Contracting Party"),

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by nationals and companies of one State in the territory of the other State based on the principles of equality and mutual benefit;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both States;

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of this Agreement:

1. The term "investment" means every kind of asset permitted by each Contracting Party in accordance with its laws and regulations, including, though not exclusively, any:

- (a) Movable and immovable property and other property rights such as mortgage, usufruct, lien or pledge;
- (b) Share, stock, debenture and similar interests in companies;
- (c) Title to money or to any contract having an economic value;
- (d) Copyright, industrial property rights (such as patents for inventions, trade marks, industrial design), know-how, technical processes, trade names and goodwill; and
- (e) Business concession conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources.

2. The term "returns" means monetary returns yielded by an investment including any profit, interest, capital gain, dividend, royalty or fee.

3. The term "national" means:

- (a) In respect of the People's Republic of China a person who is a citizen of the People's Republic of China according to its laws;
- (b) In respect of Singapore, any citizen of Singapore within the meaning of the Constitution of the Republic of Singapore.

4. The term "company" means:

- (a) In respect of the People's Republic of China, a company or other juridical person incorporated or constituted in its territory in accordance with its laws;

¹ Came into force on 7 February 1986, i.e., the thirtieth day from the date of the last of the notifications (effected on 13 December 1985 and 8 January 1986) by which each Contracting Party informed the other of the fulfilment of its required internal procedures, in accordance with article 16(1).

- (b) In respect of Singapore, any company, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in the Republic of Singapore.

Article 2. APPLICABILITY OF THIS AGREEMENT

1. This Agreement shall only apply:

- (a) In respect of investments in the territory of the People's Republic of China, to all investments made by nationals and companies of the Republic of Singapore which are specifically approved in writing by the competent authority designated by the Government of the People's Republic of China and upon such conditions, if any, as it shall deem fit;
- (b) In respect of the investments in the territory of Singapore, to all investments made by nationals and companies of the People's Republic of China which are specifically approved in writing by the competent authority designated by the Government of the Republic of Singapore and upon such conditions, if any, as it shall deem fit.

2. The provisions of the foregoing paragraph shall apply to all investments made by nationals and companies of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 3. PROMOTION AND PROTECTION OF INVESTMENT

1. Each Contracting Party shall encourage and create favourable conditions for nationals and companies of the other Contracting Party to make in its territory investments that are in line with its general economic policy.

2. Investments approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

Article 4. MOST FAVOURED NATION PROVISIONS

Subject to Articles 5, 6 and 11, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals and companies of any third State.

Article 5. EXCEPTIONS

1. The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the nationals and companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals and companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- (a) Any regional arrangement for customs, monetary, tariff or trade matters (including a free trade area) or any agreement designed to lead in future to such a regional arrangement; or
- (b) Any arrangement with a third State or States in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

2. The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

Article 6. EXPROPRIATION

1. Neither Contracting Party shall take any measure of expropriation, nationalization or other measures having effect equivalent to nationalization or expropriation against the investment of nationals or companies of the other Contracting Party unless the measures are taken for any purpose authorised by law, on a non-discriminatory basis, in accordance with its laws and against compensation which shall be effectively realisable and shall be made without unreasonable delay. Such compensation shall, subject to the laws of each Contracting Party, be the value immediately before the expropriation, nationalization or measure having effect equivalent to nationalization or expropriation. The compensation shall be freely convertible and transferable.

2. The legality of any measure of expropriation, nationalization or other measures having effect equivalent to nationalization or expropriation may at the request of the national or company affected, be reviewed by the competent court of the Contracting Party taking the measures in the manner prescribed by its laws.

3. Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation as specified therein to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 7. COMPENSATION FOR LOSSES

Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

Article 8. REPATRIATION

1. Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer, in accordance with its laws and regulations and on a non-discriminatory basis, of their capital and the returns from any investments, including:

- (a) Profits, capital gain, dividends, royalties, interests and other current income accruing from any investment;
- (b) The proceeds of the total or partial liquidation of any investment;
- (c) Repayments made pursuant to a loan agreement in connection with investments;

- (d) Licence fees in relation to the matters in Article 1(1)(d);
- (e) Payments in respect of technical assistance, technical service and management fees;
- (f) Payments in connection with contracting projects;
- (g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the former Contracting Party.

2. Nothing in paragraph (1) of this Article shall affect the free transfer of compensation paid under Article 6 of this Agreement.

Article 9. EXCHANGE RATE

The transfers referred to in Articles 6 to 8 of this Agreement shall be effected at the prevailing market rate in freely convertible currency on the date of transfer. In the absence of such a market rate the official rate of exchange shall apply.

Article 10. LAWS

For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 11. PROHIBITIONS AND RESTRICTIONS

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

Article 12. SUBROGATION

1. In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own nationals and companies in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals and companies. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

2. Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its nationals and companies shall not affect the right of such nationals and companies to make their claims against the other Contracting Party in accordance with Article 13.

Article 13. INVESTMENT DISPUTES

1. Any dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation resulting from expropriation, nationalization, or other measures having effect equivalent to nationalization or expropriation mentioned in Article 6 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national or company concerned, it may be submitted to an international arbitral tribunal established by both parties.

The provisions of this paragraph shall not apply if the national or company concerned has resorted to the procedure specified in the paragraph (2) of this Article.

4. The international arbitral tribunal mentioned above shall be especially constituted in the following manner: each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint a third arbitrator as Chairman. The arbitrators shall be appointed within two months and the Chairman within four months from the date on which one party concerned notifies the other party of its submission of the dispute to arbitration.

5. If the necessary appointments are not made within the period specified in paragraph (4), either party may, in the absence of any other agreement, request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

6. The arbitral tribunal shall, apart from what is stated below, determine its own arbitral procedures with reference to the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States", done at Washington on 18 March, 1965.

7. The tribunal shall reach its decision by a majority of votes.

8. The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award.

9. The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party.

10. Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

11. The arbitration shall, as far as possible, be held in Singapore.

12. The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article 14 where a dispute concerns the interpretation or application of this Agreement.

Article 14. DISPUTES BETWEEN THE CONTRACTING PARTIES

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

2. If any such dispute cannot be settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be the Chairman of the tribunal, appointed by agreement of the Contracting Parties.

3. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

4. If the tribunal shall not have been constituted within four months of receipt of the request 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 or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.

5. The tribunal shall reach its decision by a majority of votes.

6. The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

7. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a high proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

8. Apart from the above the tribunal shall establish its own rules of procedure.

Article 15. OTHER OBLIGATIONS

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement result in a position entitling investments by nationals of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its laws additional to those specified in this Agreement entered into by the Contracting Party, its nationals or companies with nationals or companies of the other Contracting Party as regards their investments.

Article 16. ENTRY INTO FORCE, DURATION AND TERMINATION

1. Each Contracting Party shall notify the other Contracting Party of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement. The Agreement shall enter into force on the thirtieth day from the date of the notification of the later Contracting Party.

2. This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless, after the expiry of the initial period of fourteen years, either Contracting Party notifies in writing the other Contracting

Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 15 shall remain in force for a further period of fifteen years from that date.

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

DONE at Beijing on 21st November 1985, in duplicate, in the English and Chinese languages, both texts being equally authentic.

[Signed]

LEE HSIEN LOONG
For the Government
of the Republic of Singapore

[Signed]

WEI YUMING
For the Government
of the People's Republic of China

EXCHANGES OF LETTERS

I a

Date: 21st November, 1985

Excellency,

With reference to Article 8 of the Agreement between the Government of the Republic of Singapore and the Government of the People's Republic of China concerning the Promotion and Protection of Investments signed by us today, I have the honour to confirm our understanding that if the nationals and companies of the Republic of Singapore, who have invested in the People's Republic of China, are unable to make the free transfer referred to in paragraph (1) of Article 8 as a result of the requirements of the laws and regulations of the People's Republic of China governing such transfer, they may make an application to the competent authority of the Government of the People's Republic of China and such authority shall give the most favourable consideration and provide all possible assistance to enable the transfer to be made.

Please let me have your confirmation that the above correctly sets out the understanding between the two parties.

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

For and on behalf of the Government
of the Republic of Singapore:

[Signed]

LEE HSIEN LOONG

His Excellency Mr. Wei Yuming
Vice-Minister
Ministry of Foreign Economic Relations and Trade
People's Republic of China

II a

Date: 21st November, 1985

Excellency,

I have the honour to acknowledge receipt of your letter dated 21st November, 1985 which reads as follows:

[See letter I a]

I confirm the above understanding between the two parties.

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

For and on behalf of the Government
of the People's Republic of China:

WEI YUMING

His Excellency Brig-Gen (Res) Lee Hsien Loong
Minister of State
Ministry of Trade and Industry
Republic of Singapore

I b

Date: 21st November, 1985

Excellency,

With reference to Article 13 of the Agreement between the Government of the Republic of Singapore and the Government of the People's Republic of China concerning the Promotion and Protection of Investments signed today, I have the honour to state that it is the understanding between the parties that as soon as the Government of the People's Republic of China becomes a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March, 1965¹ ("the Convention") the Contracting Parties shall promptly enter into negotiations on the possibility to expand the area of investment disputes which may be submitted for conciliation and arbitration by the International Centre for Settlement of Investment Disputes established by the Convention. In relation to the expanded area agreed upon between the Contracting Parties following such negotiations, the People's Republic of China shall accord the Republic of Singapore treatment no less favourable than that which would be accorded by it in the same circumstances to any other State. The new provision agreed upon between the Contracting Parties shall replace Article 13.

Please let me have your confirmation that the above correctly sets out the understanding between the two parties.

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

For and on behalf of the Government
of the Republic of Singapore:

[Signed]

LEE HSIEN LOONG

His Excellency Mr. Wei Yuming
Vice-Minister
Ministry of Foreign Economic Relations and Trade
People's Republic of China

II *b*

Date: 21st November, 1985

Excellency,

I have the honour to acknowledge receipt of your letter dated 21st November, 1985 which reads as follows:

[See letter I b]

I confirm the above understanding between the two parties.

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

For and on behalf of the Government
of the People's Republic of China:

WEI YUMING

His Excellency Brig-Gen (Res) Lee Hsien Loong
Minister of State
Ministry of Trade and Industry
