

No. 31058

**NEW ZEALAND
and
CHINA**

**Agreement on the promotion and protection of investments
(with exchange of notes). Signed at Wellington on 22 November 1988**

Authentic texts: English and Chinese.

Registered by New Zealand on 27 June 1994.

**NOUVELLE-ZÉLANDE
et
CHINE**

Accord relatif à l'encouragement et à la protection des investissements (avec échange de notes). Signé à Wellington le 22 novembre 1988

Textes authentiques : anglais et chinois.

Enregistré par la Nouvelle-Zélande le 27 juin 1994.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

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

DESIRING to create favourable conditions for greater economic cooperation between them and in particular for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party based on the principles of equality, non-discrimination and mutual benefit;

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

¹ Came into force on 25 March 1989, i.e., the thirtieth day from the date of the last of the notifications by which the Contracting Parties had informed each other of the completion of the required internal procedures, in accordance with article 17 (1).

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purposes of this Agreement:

(1) The term "investments" means all kinds of assets which have been invested in accordance with the laws of the Contracting Party receiving them 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 or claim to money or to any contract having a financial 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 concessions conferred by law or under contract including any concession to search for, cultivate, extract or exploit natural resources.
- (2) The term "returns" includes 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 Chinese citizen in accordance with the laws of the People's Republic of China;
 - (b) in respect of New Zealand, a person who is a New Zealand citizen in accordance with the laws of New Zealand.
- (4) The term "company" means:
- (a) in respect of the People's Republic of China, any company, economic entity or other juridical person incorporated or constituted in its territory in accordance with its laws;

(b) in respect of New Zealand, any company, partnership, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in New Zealand.

Article 2

Applicability of this Agreement

(1) This Agreement shall only apply to investments made in accordance with the laws and regulations of the Contracting Party in whose territory the investments are made.

(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 entry into force of this Agreement.

Article 3

Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions, consistent with its national objectives, for nationals and companies of the other

Contracting Party to make investments in its territory, subject to the laws and regulations of the Contracting Party in whose territory the investment is made.

(2) Investments to which Article 2 applies shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

(3) Each Contracting Party shall observe any obligations, whether general or specific, it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

(4) The two Contracting Parties shall to the extent possible encourage exchanges of information on relevant investment matters.

Article 4

Most Favoured Nation Provisions

(1) Neither Contracting Party shall in its territory subject investments 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;

(2) Neither Contracting Party shall in its territory subject the investment related activities of nationals and companies of the other Contracting Party involving the purchase, sale and transport of raw and secondary materials, energy, fuels and means of production and operation of all types to treatment less favourable than that accorded to the investment related activities carried out by nationals and companies of any third State. There shall be no impediment to the normal exercise of such activities provided they are carried out:

- (a) in accordance with the laws and regulations of the Contracting Party in whose territory the activities take place; and
- (b) in accordance with the provisions of this Agreement.

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 the future to such a regional arrangement; or
- (b) any arrangement with a third State or States in the same geographic 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 the domestic laws of each Contracting Party and the Agreement between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, done at Wellington on the 16th day of September 1986.¹

¹ Registered with the Secretariat of the United Nations on 1 December 1995 under No. I-32369.

Article 6
Expropriation

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

(2) The legality of any measure of expropriation may, at the request of the national or company affected, be reviewed by the competent courts of the Contracting Party taking the measures in the manner prescribed by its laws.

(3) Where a Contracting Party takes any measure of 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 permit 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, interest and other current income accruing from any investment;
- (b) the proceeds of the total or partial liquidation of any investments;
- (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, management and consultancy 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 directed to the protection of its essential security interests, or to the protection of public health or the prevention of disease 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 the nationals and companies that it has indemnified. The subrogated right or claim shall not be greater than the original right or claim of the said nationals or companies.

(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, in cases where the former Contracting Party elects not to exercise its subrogated rights or claims.

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 may, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, submit the dispute to the competent court of that Contracting Party.

(3) If a dispute involving the amount of compensation resulting from expropriation referred to 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 procedures specified in paragraph (2) of this Article.

(4) The international arbitral tribunal referred to above shall be 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 President of the International Bank for Reconstruction and Development 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 1965.¹

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

(8) The decision of the arbitral tribunal shall be final and binding on both parties.

(9) The arbitral tribunal shall state the basis for its decision and, if requested by either party, shall state further reasons in support of its decision.

(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 be held in a recognised arbitration centre agreed on by the parties or if

¹United Nations, *Treaty Series*, vol. 575, p. 159.

agreement has not been reached within 45 days of the appointment of the final member of the arbitral tribunal in accordance with the provisions of this Agreement, the tribunal shall decide by majority vote.

(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 otherwise unable to make the necessary appointments, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party, or if he is otherwise unable to make the necessary appointments, the next most senior Member of the International Court of Justice who is not a national of either Contracting Party and who is able to make the necessary appointments may be invited to do so.

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

(6) The tribunal's decision shall be final and binding on the Contracting Parties.

(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 higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both Contracting 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 or companies 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.

Article 16

Territorial Application

This Agreement shall not apply to the Cook Islands, Niue and Tokelau unless the Contracting Parties have exchanged notes agreeing the terms on which this Agreement shall so apply.

Article 17

Entry into Force, Duration and Termination

(1) Each Contracting Party shall notify the other Contracting Party of the fulfilment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the 30th day from the date of the notification of the later Contracting Party.

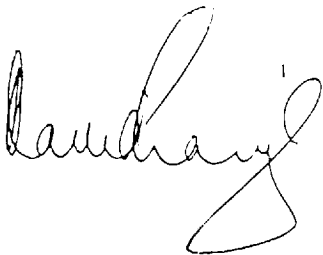
(2) This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless after the expiry of the initial period of fourteen years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice 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 16 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 *Wellington* on *22 November 1988* in duplicate, in the English and Chinese languages, both texts being equally authentic.

For the Government
of New Zealand:



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



¹ David Lange.

² Li Peng.

EXCHANGE OF NOTES

I

PRIME MINISTER

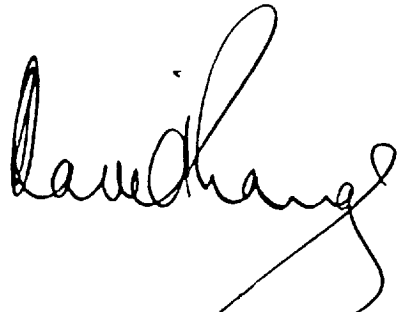
Wellington, 22 November 1988

Your Excellency,

I have the honour to refer to the Agreement between the Government of New Zealand and the Government of the People's Republic of China concerning the Promotion and Protection of Investments (hereinafter referred to as "the Investment Agreement") signed today and to propose that in the event that 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 1965 (hereinafter referred to as "the Convention") that our two Governments enter into a supplementary agreement concerning the categories of disputes between a national or company of one Contracting Party and the other Contracting Party to be submitted to the International Centre for the Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention. This supplementary agreement, in the form of an Exchange of Notes, would form an integral part of the Investment Agreement.

If this proposal is acceptable to the Government of the People's Republic of China, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's reply.

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



[DAVID LANGE]
Prime Minister

His Excellency Premier Li Peng
Premier of the State Council
People's Republic of China

Wellington, 22 November 1988

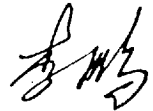
Your Excellency,

I have the honour to acknowledge the receipt of your Note of today's date which reads as follows:

[See note I]

I have the further honour to confirm that the proposal in Your Excellency's Note is acceptable to the Government of the People's Republic of China and therefore agree that Your Excellency's Note and this Note in reply shall constitute an agreement between our two Governments which shall enter into force on today's date.

Please accept the assurances of my highest consideration.



[LI PENG]
Premier of the State Council
People's Republic of China

The Right Honourable David Lange
Prime Minister of New Zealand
