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STATE COUNCIL BULLETIN

No 28, 10 Nov; No 29, 20 Nov 1986

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CHINA

STATE COUNCIL BULLETIN

No 28, 10 Nov; No 29, 20 Nov 1986

[Translation of the tables of contents and selected items from ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO published in Beijing.]

CONTENTS

Issue No 28

State Council Circular on the Reform of the System of Road Traffic Management (7 October 1986) [Not translated]	
Circular of the State Council General Office on the Circulation of the Views of the State Economic Commission on the Further Development of Offshore Islands (14 October 1986) [Not translated]	
Views of the State Economic Commission on the Further Development of Offshore Islands (Summary) (17 September 1986).....	1
Agreement Between the Government of the PRC and the Government of the United Kingdom of Great Britain and Northern Ireland on the Promotion and Protection of Mutual Investment (15 May 1986).....	4
Agreement Between the Government of the PRC and the Belgium-Luxemburg Economic Union on the Encouragement and Protection of Mutual Investment (4 June 1984).....	15
Protocol of the Agreement Between the Government of the PRC and the Belgium-Luxemburg Economic Union on the Encouragement and Protection of Mutual Investment Signed in Brussels on 4 June 1984 (4 June 1984).....	22

Condolence Message to the Leaders of Mozambique From General Secretary Hu Yaobang, President Li Xiannian and Premier Zhao Ziyang on the Death of President Machel (21 October 1986) [Text published in FBIS-CHI-86-204, 22 Oct 86 p 1]

Provisional Regulations of the State Economic Commission, the State Planning Commission, the Ministry of Finance, the State Bureau of Materials and Equipment, the Ministry of Communications, the Ministry of Public Security, the State Administration for Industry and Commerce, the People's Bank of China, the China Petrochemical Corp, and the China Automotive Industry Corp Governing the Scrapping of Overage Motor Vehicles (17 September 1986) [Not translated]

State Council Approval of a Request by the Guangdong Provincial People's Government To Establish Tongshi City (12 June 1986) [Not translated]

State Council Approval of a Request by the Heilongjiang Provincial People's Government To Establish Jingbohu City (1 July 1986) [Not translated]

State Council Approval of a Request by the Nei Monggol Autonomous Regional People's Government To Abolish Tongliao County and Include It in Tonglia City (21 July 1986) [Not translated]

State Council Approval of a Request by the Heilongjiang Provincial People's Government To Abolish Zhaodong County and Establish Zhaodong City (8 September 1986) [Not translated]

State Council Approval of a Request by the Jiangsu Provincial People's Government To Abolish Guanghua District of Changzhou City (8 September 1986) [Not translated]

Issue No 29

Regulations on the Safety Supervision and Control of Civilian Nuclear Facilities (Promulgated by the State Council on 29 October 1986) [Not translated]

Circular of the General Offices of the CPC Central Committee and the State Council on the Circulation of the "Provisional Regulations on Enhancing the Role of Retired Technological Personnel" (6 October 1986) [Not translated]

Provisional Regulations of the Organization Department of the CPC Central Committee, the Propaganda Department of the CPC Central Committee, the United Front Work Department of the CPC Central Committee, the State Science and Technology Commission, the Ministry of Labor and Personnel, the China Association for Science and Technology, and the General Political Department of the PLA, on Enhancing the Role of Retired Technological Personnel (19 September 1986) [Not translated]

Message From General Secretary Hu Yaobang and President Li Xiannian
to Chissano Congratulating Him on His Election as Mozambique's
President and President of the Mozambique Liberation Front
(4 1986) [Summary published in FBIS-CHI-86-213, 4 Nov 86 p I 1]

Premier Zhao Ziyang's Congratulatory Message to Director General M'Bow
on the Occasion of the 40th Anniversary of the Establishment of the
UNESCO (3 November 1986)..... 26

Table of Simplified Chinese Characters [Not translated]

ECONOMIC COMMISSION'S VIEWS ON DEVELOPING OFFSHORE ISLANDS

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 10 Nov 86 pp 821-823

[Views of the State Economic Commission on the Further Development of Offshore Islands (Summary) (17 September 1986)]

[Text] China has some 6,500 offshore islands stretching from south to north for thousands of miles. They form a natural protective screen for our coastal defense. The islands and their surrounding waters are rich in aquatic, mineral, maritime space, and maritime energy resources, as well as a unique kind of tourist resources. The maritime economy is an important component part of the national economy. Islands are "island bridges" that link the sea with the mainland; they are seaborne bases for maritime exploration and are, therefore, of important strategic significance. Following the implementation of the policy of opening to the outside world, the role of the offshore islands as windows is becoming more and more manifest. In particular, with the frequent contacts between the island inhabitants along the southeastern coast and the Taiwan compatriots, the development of the offshore islands and the production and livelihood of the people there also will have an important effect on the return of Taiwan to the motherland.

China has more than 400 offshore islands with permanent inhabitants. In recent years, the islands have seen fairly rapid development, and the conditions of production and people's livelihood have improved. However, due to the late start and poor foundation, development has been very uneven. Many islands have still been unable to cast off their backwardness and poverty. The common problems are: First, the system of management is not suited to the specific conditions on the islands. The policies and measures for production are usually copied from the mainland, as a result of which the strong points of the islands cannot be truly developed. In some localities, the leadership does not pay sufficient attention to the islands and does not put their development on the agenda. Second, the basic conditions of production and livelihood are poor. There is a shortage of water, electricity, and fuel, and piers and safety ports are lacking. People have difficulties with communication, seeking medical treatment, sending their children to school, and going in and out of the islands. Third, there is a lack of trained personnel and the cadres and staff cannot keep their mind on their work.

In the spirit of the directive of the central leading comrades on developing the offshore islands, we have made a preliminary survey on the situation of the offshore islands of certain provinces and held a national symposium on work relating to offshore islands in May of this year. Recently, we have

carried out study in conjunction with the State Planning Commission, the State Science and Technology Commission, the Ministry of Agriculture, Animal Husbandry, and Fisheries, the Ministry of Finance, the State Oceanography Bureau, the General Staff Headquarters, the General Logistics Department, the Navy, and other relevant departments and units. The following is a report on some views on the further development of the offshore islands:

1. In work relating to the offshore islands, economic construction should take precedence. The offshore islands border on the fishing grounds and are the front windows to be opened to the outside world. Efforts must be made to turn the superior aquatic resources to good account by doing a good job in fishing, breeding, and processing of aquatic products, and to develop outer-sea fishing. At the same time, it is necessary to actively develop diversified undertakings and develop salt production, transport, mining, fruit and vegetable production, animal husbandry, and tourism according to local conditions. Where conditions are present, efforts should be made to develop the maritime economy in depth and breadth. The offshore islands should be built into beautiful, affluent, and civilized places.

2. It is necessary to do a good job of investigating and carrying out planning. Due to social, historical, geographical, and other reasons, the offshore islands have developed into a special type of economic zone. For a long time, we have had very little understanding of the peculiarity of the island economy and have not carried out any systematic investigations and study. Thus, the opening up and utilization of the offshore islands have just started. Coastal provinces, autonomous regions, and centrally governed cities should, in the light of the actual conditions of their respective offshore islands and on the basis of investigations into the social, economic, maritime environment, natural resources, and other aspects of the offshore islands, draw up overall plans of development and incorporate them into their long-term and annual plans for social and economic development for systematic implementation. For the immediate future, priority should be given to those islands with permanent inhabitants. Certain uninhabited islands which have the conditions and are more worthy of development should also gradually be utilized.

3. In view of the special conditions of the offshore islands, it is necessary to formulate appropriate policies and measures. China has many offshore islands and their development is very uneven. All localities must earnestly carry out investigations and study, further rationalize economic relations, and formulate policies and measures that conform with the actual conditions of the offshore islands in respect of funds, loans, taxation, grain purchases and marketing, distribution and supply of commodities, and so on, by first tackling the stumbling blocks to the development of the island economy. Efforts must be made to strengthen lateral economic links with the mainland and actively import trained personnel and technology into the offshore islands. The island economy must be full of vigor and vitality before the cadres and staff will feel contented working on the offshore islands.

4. Opening to the outside world is an important measure in the development of the offshore islands. In recent years, the policy of opening to the outside world has been gradually implemented in our coastal regions. Although the offshore islands are in the forefront of the opening zone, and some of them

already have, or basically have, the conditions for opening up, they are still in a fairly closed-off state. The people's governments of the coastal provinces, autonomous regions, and centrally governed cities must carry out further investigations and study, put forward concrete suggestions and policies for the opening of the offshore islands to the outside world by proceeding from reality and seeking truth from facts, and report these to the State Council for examination and approval.

5. Preferential policies should be adopted to help the poverty-stricken offshore islands shake off their poverty and achieve affluence. Because of limited land space, the offshore islands have to rely on the mainland for most of their production and livelihood needs. Here, the same item of construction may cost more than it does on the mainland; and the same level of income entails more expenditure than it does on the mainland. Judging from the preliminary survey, the poverty-stricken population of our offshore islands (with the exception of Hainan Island) is concentrated in the territory of Fujian Province and in the eastern part of Guangdong Province. These islands should be incorporated into the scope of the national plan for the development of poverty-stricken areas and given support out of the development funds in support of the economically less-developed areas. The funds should be allocated with the township as the operating unit. Efforts should be made to help those poverty-stricken townships which have not solved the problem of feeding their people, shake off their poverty and become affluent.

6. We must continue to develop the role of the garrison troops in developing the offshore islands. For many years, the garrison troops have made considerable contributions toward the development of the offshore islands. We should continue to implement the principle of army men and people joining hands in developing and defending the islands and speed up the development of the offshore islands.

7. Leadership must be strengthened. The development of the offshore islands involves many disciplines and many departments and therefore requires unified planning, overall arrangement, and comprehensive coordination. The people's governments of various coastal provinces, autonomous regions, and centrally governed cities must put the development of the offshore islands on their agenda, assign a comprehensive department to undertake the work of organization and coordination, and study and solve problems encountered in the course of development. The State Council departments concerned must also take the development of offshore islands as part of their work and give positive assistance.

Please give your comments on whether or not the above views are appropriate.

/8309
CSO: 4005/649

PRC, UK SIGN ACCORD ON MUTUAL PROTECTION OF INVESTMENTS

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 10 Nov 86 pp 823-832

[Agreement Between the Government of the PRC and the Government of the United Kingdom of Great Britain and Northern Ireland on the Promotion and Mutual Protection of Investments--The Chinese and British Sides Concurred in Accordance With the Relevant Provisions of This Agreement That the Agreement Should Enter Into Force on the Date of Signature. This Agreement Was Signed on 15 May 1986 and Entered Into Force on the Same Date]

[Text] The Government of the PRC and the Government of the United Kingdom of Great Britain and Northern Island,

Desiring to create favorable conditions for investments by the nationals and companies of either contracting party in the territory of the other contracting party,

Recognizing that the encouragement and mutual protection of such investments on the basis of an international agreement will serve to stimulate the enthusiasm of the nationals and companies in their operations and will promote the prosperity of both countries,

Have agreed as follows:

Article 1: Definitions for the Purpose of This Agreement

1. A. "Investment" means all assets of investments as permitted by each contracting party in accordance with its laws and regulations and in particular, but not exclusively:

- (1) Movable and immovable property, as well as other real property rights such as mortgages, liens, and collaterals;
- (2) Shares, stocks, and bonds or an interest in the property of that company;
- (3) Claims to money or claims to deeds of financial value resulting from a contract;
- (4) Royalties, industrial property rights, know-how, and goodwill;

(5) Business concessions conferred by law or by contract, if permitted by law, including the concessions related to prospecting, cultivating, extracting, and exploiting natural resources.

The term "investment" covers all investments that are in existence on the day of the entry into force of this agreement; changes in the form of assets invested shall not change the nature of the investment.

B. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties, and fees.

C. "Nationals" means:

(1) In respect of the PRC: Physical persons deriving their status as nationals of the PRC from the law of the PRC.

(2) In respect of the United Kingdom: Physical persons deriving their status as nationals of the United Kingdom from the law in force in the United Kingdom, and have the right of residence in the United Kingdom, or have the right of residence in any territory where the extension clause stipulated in Article 10 of the present agreement is applicable.

D. "Companies" means:

(1) In respect of the PRC: Corporations, firms, or associations incorporated or constituted under the law in force in any part of the territory of the PRC.

(2) In respect of the United Kingdom: Corporations, firms, or associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory where the extension clause stipulated in Article 10 of the present agreement is applicable.

2. This agreement shall also apply to investments made by nationals or companies of one contracting party in the territorial sea, submarine areas, or continental shelf over which the other contracting party exercises sovereignty, sovereign rights or jurisdiction.

Article 2: Promotion and Protection of Investments

1. Each contracting party shall encourage investments made in its territory by nationals or companies of the other contracting party and shall create favorable conditions for this purpose; it shall also have the right to exercise the power vested by law to accept such investments.

2. Investments of nationals or companies of either contracting party shall at all times be accorded equitable and reasonable treatment and shall enjoy sustained 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 adopt any discriminatory measures against the management, maintenance, use, enjoyment, or disposal of investments made by nationals or companies of the other contracting party in its territory. Each contracting party shall observe any obligation it may have entered into with regard to investments by nationals or companies of the other contracting party.

Article 3: Treatment of Investment

1. Neither contracting party shall in its territory subject investments made by nationals or companies of the other contracting party, or returns on such investments, to treatment less favorable than that which it accords to investments or returns of nationals or companies of any third state.

2. Neither contracting party shall in its territory subject nationals or companies of the other contracting party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to nationals or companies of any third state.

3. Subject to clauses 1 and 2 of this article, each contracting party shall, as far as possible, accord the same treatment to investments by nationals or companies of the other contracting party as that which it accords to its own nationals or companies in accordance with its laws and regulations.

4. The provisions of clauses 1 to 3 above shall not be construed to mean that each contracting party has the obligation to accord to nationals or companies of the other contracting party treatment, benefits, or privileges pursuant to the following:

A. Any existing or future customs unions or similar international agreements or agreements aimed at facilitating border trade which either contracting party has already entered into or shall enter into; and

B. Any international agreement or agreement wholly or mainly relating to taxation, or any domestic legislation wholly or mainly relating to taxation.

Article 4: Compensation for Losses

1. Nationals or companies of a 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, or riot in the territory of the other contracting party, shall be accorded by the latter contracting party treatment no less favorable than that which the latter contracting party accords to nationals or companies of any third state.

2. Without prejudice to Clause 1 of this article, losses incurred by nationals or companies of one contracting party in the territory of the other contracting party in situations referred to in the aforementioned clause shall, if accountably by:

(1) The requisition of their property by the army or authorities of the other contracting party;

(2) The damage of their property by the army or authorities of the other contracting party for reasons other than military actions or unavoidable circumstances,

Be restored or given equitable compensation. Payments arising thereof shall be freely transferable.

Article 5: Expropriation

1. Investments by nationals or companies of either contracting party shall not be expropriated, nationalized, or subjected to measures having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other contracting party except for a public purpose related to internal needs of the expropriating party. Such compensations shall amount to the value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at an appropriate rate until the date of payment, and shall be made without undue delay, be effectively realizable, and be freely transferable. The national or company affected shall, in accordance with the laws of the expropriating party, have the right to ask the judicial or other independent organs to promptly review its case and the value of its investment in line with the principle stipulated in this clause.

2. Where a contracting party expropriates the assets of a company which is incorporated or constituted under the law 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 Clause 1 of this article are applied to the extent necessary to guarantee compensation in respect of their investment to the owners of these shares.

Article 6: Repatriation of Investment and Returns

1. Each contracting party guarantees that nationals or companies of the other contracting party have the right to freely transfer back to their country of residence their investments and returns, as well as any payments in respect of loan agreements concluded in connection with the investments.

2. The rights referred to in Clause 1 above shall be subject to the fact that, in the special eventuality of its having difficulty in international payments and within a given period, each contracting party has the right to exercise equitably and in good faith the powers conferred by its laws. However, such powers shall not be exercised in the prevention of the transfer of profits, interest, dividends, royalties, and remuneration, and the transfer of at least 20 percent of investments and any form of returns each year shall be guaranteed.

3. Transfers of currency shall be made without undue delay in the convertible currency in which the investment has been made, or in any convertible currency agreed upon by the investor and the contracting party concerned. Unless otherwise agreed upon by the national or company concerned, the transfer shall

be made in accordance with the foreign exchange control regulations in force in the contracting party concerned at the official rate of exchange at the date of transfer.

4. In respect of the PRC: Transfers of convertible currency by nationals or companies of the United Kingdom pursuant to clauses 1 to 3 above shall be made through the foreign exchange deposit accounts of the nationals or companies making the transfer. If there is insufficient foreign exchange in that foreign exchange deposit account for the transfer, the PRC shall agree to the conversion of the local currency into convertible currency and its subsequent transfer in respect of:

- 1) The proceeds of total or partial liquidation of the investment;
- 2) Fees pursuant to property referred to in Section (4), Clause A of Article 1;
- 3) Payments made in respect of loan agreements concluded for investment purposes with the Bank of China acting as the guarantor;
- 4) The profits, interest, capital gains, dividends, remuneration, and other forms of returns of that national or company with special authorization from the competent organ of the PRC to carry out its main economic activities in the territory of the PRC.

Article 7: The Settlement of Disputes Between a National or Company and the Host Country

1. If a dispute between the national or company of one contracting party and the other contracting party involving the amount of compensation resulting from expropriation cannot be settled in a friendly way within 6 months of the submission of written notification, it shall be put to international arbitration.

2. If a dispute is put to international arbitration, the national or company concerned and the other contracting party may decide by mutual consent to submit the dispute to:

- A. An international arbiter appointed by the parties to the dispute;
- B. A special arbitral tribunal appointed pursuant to a special agreement concluded between the parties to the dispute;
- C. A special arbitral tribunal constituted in accordance with the arbitral regulations of the UN Committee on International Trade Laws.

3. If an agreement cannot be reached on any options within 3 months of the submission of the dispute to arbitration in accordance with Clause 2 above, the parties to the dispute have the obligation to submit the dispute to arbitration in accordance with the arbitral regulations of the UN International Trade Laws Committee in force at the given time. Both parties to the dispute may agree in writing to revise these regulations.

4. The nationals or companies referred to in this article shall include the nationals or companies referred to in Clause 2 of Article 5.

Article 8: Disputes Between the Contracting Parties

1. Disputes between the contracting parties concerning the interpretation and application of this agreement should, as far as possible, be settled through diplomatic channels.

2. If a dispute between the contracting parties cannot be settled in this way, it shall, upon the request of either contracting party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: Within 2 months of the receipt of the request for arbitration, each contracting party shall appoint one member of the tribunal. These two members shall then select a national of a third state, who on approval by the contracting parties shall be appointed chairman of the tribunal. The chairman shall be appointed within 2 months from the date of appointment of the other two members.

4. If within the period specified in Clause 3 of this article the necessary appointments have not been made, either contracting party may, in the absence of any other agreement, invite the president of the International Court of Justice to make any necessary appointments. If the president is a national of either contracting party or if he is otherwise prevented from discharging the said function, the vice president shall be invited to make the necessary appointments. If the vice president is a national of either contracting party, or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either contracting party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both contracting parties. Each contracting party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne equally by the contracting parties. The arbitral tribunal determines its own procedure.

Article 9: Subrogation

1. If a contracting party or its designated agent makes payment to its own nationals or companies under a guarantee it has accorded in respect of an investment in the territory of the other contracting party, the latter contracting party shall recognize the assignment, whether under the law or pursuant to a legal transaction in that country, of all the rights and claims by the guaranteed nationals or companies to the former contracting party, and that the former contracting party is entitled by virtue of subrogation to exercise the same rights and enforce the same claims as those of the guaranteed nationals or companies.

2. The rights and claims secured by a contracting party or its designated agent through subrogation and the treatment in respect of payment enjoyed through the exercise of such rights and claims shall, under all circumstances, be the same as the treatment in respect of the investment and its returns accorded to the guaranteed nationals or companies in accordance with this agreement.

3. Payments received by a contracting party or its designated agent pursuant to the exercise of rights and claims accrued shall be at the free disposal of that contracting party to pay for its expenses in the territory of the other contracting party.

Article 10: The Extension of Territory

At the time of the signature of this agreement or at any time thereafter, the contracting parties may, by means of an exchange of notes, agree to apply the extension clause stipulated in this agreement to territories whose international relations are the responsibility of the Government of the United Kingdom.

Article 11: Entry Into Force

This agreement shall enter into force upon signature.

Article 12: Duration and Termination

This agreement shall remain in force for a period of 10 years, and shall continue in force thereafter 12 months from the date either contracting party notifies in writing the other contracting party of its intention to terminate this agreement. In respect of investments made during the period when this agreement is in force, the provisions of this agreement shall remain in force for a further period of 15 years from the date of determination, and this shall not prejudice the subsequent application of general international laws and regulations accepted by the contracting parties.

In witness thereof, the undersigned, duly authorized by their respective governments thereto, have signed this agreement.

Done in duplicate in London on 15 May 1986, in the Chinese and English languages, both texts being equally authentic.

Zheng Tuobin [6774 2148 1755]
For the Government of the PRC
(signed)

Geoffrey Howe,
For the Government of the
United Kingdom and Northern Ireland
(signed)

His Excellency Minister Zheng Tuobin,
Ministry of Foreign Economic Relations and Trade of the People's Republic
of China,

Your Excellency,

It is my honor to refer you to the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Promotion and Mutual Protection of Investment (hereinafter referred to as "Investment Agreement") signed today, and suggest that once the People's Republic of China becomes a participant of the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States" (hereafter referred to as "Convention") signed in public at Washington on 18 March 1965, the Government of the United Kingdom and the Government of the People's Republic of China shall reach a supplementary agreement on the mediation or arbitration of disputes between a contracting party and the nationals or companies of the other contracting party to the Investment Agreement over investments made in its territory. The said supplementary agreement shall take the form of exchange of notes and shall form an integral part of the Investment Agreement.

If the Government of the People's Republic of China accepts this proposal, it is my honor to suggest that this letter and Your Excellency's letter of reply which accepts this proposal shall constitute an agreement between our two governments and shall enter into force on the date of Your Excellency's letter of reply.

I avail myself of this opportunity to renew to you the assurance of my high consideration.

(Geoffrey Howe)
Secretary of State for Foreign and
Commonwealth Affairs of the United
Kingdom of Great Britain and Northern
Ireland,
London, 15 May 1986

Sir Geoffrey Howe,
Secretary of State for Foreign and Commonwealth Affairs
of the United Kingdom of Great Britain and Northern Ireland,

Your Excellency,

I have the honor of receiving your letter today, the content of which reads:

"It is my honor to refer to you the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Promotion and Mutual Protection of Investment

(hereinafter referred to as 'Investment Agreement') signed today, and suggest that once the People's Republic of China becomes a participant of the 'Convention on the Settlement of Investment Disputes Between States and Nationals of Other States' (hereinafter referred to as 'Convention') signed in public at Washington on 18 March 1965, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China shall reach a supplementary agreement on the mediation or arbitration of disputes between a contracting party and the nationals or companies of the other contracting party to the Investment Agreement over investments made in its territory. The said supplementary agreement shall take the form of exchange of notes and shall form an integral part of the Investment Agreement.

"If the Government of the People's Republic of China accepts this proposal, it is my honor to suggest that this letter and Your Excellency's letter of reply which accepts this proposal shall form an agreement between our two governments and shall enter into force on the date of Your Excellency's letter of reply."

It is my honor to affirm that the Government of the People's Republic of China accepts the proposal in Your Excellency's letter and agrees that Your Excellency's letter and this letter shall constitute an agreement between our two governments and shall enter into force today.

I avail myself of this opportunity to renew to you the assurance of my high consideration.

Zheng Tuobin (signed)
Minister of the Ministry of Foreign
Economic Relations and Trade of the
People's Republic of China,
London, 15 May 1986

His Excellency Minister Zheng Tuobin,
Ministry of Foreign Economic Relations and
Trade of the People's Republic of China,

Your Excellency,

It is my honor to refer to you the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Promotion and Mutual Protection of Investments (hereinafter referred to as "Investment Agreement") signed today.

As provided in Clause 1 A under Article 1 of the Investment Agreement, the term "investment" covers all investments that are in existence on the day of the entry into force of the Investment Agreement. It is my honor to propose that investments in respect of which the nationals or companies of the other contracting party have ceased to exercise their control or other powers, or

have ceased to obtain income and pay out or receive benefits on the day of entry into force of this Investment Agreement, shall not apply to this Investment Agreement.

If the Government of the People's Republic of China accepts this proposal, it is my honor to suggest that this letter and Your Excellency's letter of reply which accepts this proposal shall constitute an agreement between our two governments and as an integral part of the Investment Agreement, shall enter into force on the day of Your Excellency's letter of reply.

I avail myself of this opportunity to renew to you assurances of my high consideration.

(Geoffrey Howe)
Secretary of State for Foreign and
Commonwealth Affairs of the United
Kingdom of Great Britain and Northern
Ireland,
London, 15 May 1986

Sir Geoffrey Howe,
Secretary of State for Foreign and Commonwealth Affairs
of the United Kingdom of Great Britain and Northern Ireland

Your Excellency,

I have the honor of receiving your letter today, the content of which reads:

"It is my honor to refer to you the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Promotion and Mutual Protection of Investments (hereinafter referred to as 'Investment Agreement') signed today.

"As provided in Clause 1 A under Article 1 of the Investment Agreement, the term 'investment' covers all investments that are in existence on the day of the entry into force of the Investment Agreement. It is my honor to propose that investments in respect of which the nationals or companies of the other contracting party have ceased to exercise their control or other powers, or have ceased to obtain income and pay out or receive benefits on the day of entry into force of this Investment Agreement shall not apply to this Investment Agreement.

"If the Government of the People's Republic of China accepts this proposal, it is my honor to suggest that this letter and Your Excellency's letter of reply which accepts this proposal shall constitute an agreement between our two governments and, as an integral part of the Investment Agreement, shall enter into force on the day of Your Excellency's letter of reply."

It is my honor to affirm that the Government of the People's Republic of China accepts the proposal in Your Excellency's letter and agree that Your Excellency's letter and this letter shall constitute an agreement between our two governments and shall enter into force today.

I avail myself of this opportunity to renew to you the assurances of my high consideration.

Zheng Tuobin (signed)
Minister of the Ministry of Foreign
Economic Relations and Trade of the
People's Republic of China,
London, 15 May 1986

/8309

CSO: 4005/649

PRC, BELGIUM-LUXEMBURG ECONOMIC UNION INVESTMENT PACT SIGNED

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 10 Nov 86 pp 833-838

[Agreement Between the Government of the PRC and the Belgium-Luxemburg Economic Union on the Mutual Encouragement and Protection of Investment--the Government of the PRC and the Belgium-Luxemburg Economic Union Has Exchanged Diplomatic Notes Affirming That Respective Legal Procedures Necessary for the Application of This Agreement Had Been Taken. This Agreement Entered Into Force on 5 October 1986]

[Text] The Government of the PRC and the Government of the Kingdom of Belgium--in its own name and, in accordance with the Special Pact on the Establishment of the Belgium-Luxemburg Economic Union, on behalf of the Government of the Grand Duchy of Luxembourg.

Desiring to develop economic cooperation between the contracting parties, and in particular to create favorable conditions for the nationals of a contracting party to make investment in the territory of the other contracting party,

Recognizing that the signing of an agreement on the encouragement and protection of investment on the basis of equality and mutual benefits shall stimulate the enthusiasm of investors and hence contribute toward the economic prosperity of the contracting parties,

Have agreed as follows:

Article 1

For the purpose of this agreement:

1. "Investors" means:

In respect of the PRC:

(1) "Nationals," that is, natural persons deriving their status as nationals of China from Chinese laws;

(2) "Enterprises," that is, economic bodies incorporated under Chinese laws with residence in the territory of China.

In respect of the Belgium-Luxemburg Union:

(1) "Nationals," that is, natural persons who are considered to be citizens of Belgium or Luxemburg under Belgian or Luxemburg laws;

(2) "Belgian or Luxemburg juridical persons" incorporated under Belgian or Luxemburg laws with residence in the territory of Belgium or Luxemburg, such as companies, institutions, foundations, or "partnerships" without the status of juridical person.

2. "Investment" means all kinds of assets and property used in investment or reinvestment and in particular, but not exclusively:

(1) Property movable or immovable as well as other real property rights, such as mortgages, collaterals, liens, usufruct, and similar rights;

(2) Shares, stock, and other forms of participation;

(3) Debentures, creditor's rights, or claims to deeds having a financial value;

(4) Copyright, industrial property right, technological process, trademarks, reputation and goodwill;

(5) Concessions related to the prospecting, excavation, and refining of natural resources.

However, the application of the above-mentioned assets and property in investment shall conform to the laws of the contracting party which admits the investment.

Changes in the legal form of the assets or property invested or reinvested shall not affect the nature of "investment" as referred to in this agreement.

Article 2

1. Each contracting party shall admit the investment by the investors of the other contracting party in accordance with its legislation and encourage such investments.

2. Each contracting party shall, in accordance with its laws and regulations, permit the investors of the other contracting party to sign and implement contracts in respect of licensing, commercial management, and technical assistance.

Article 3

1. Investments, direct or indirect, made by investors of either contracting party in the territory of the other contracting party shall be accorded equitable treatment.

2. Unless necessary measures are taken for the purpose of maintaining public order and defending the law, the above-mentioned investments shall be accorded protection as regards their management, operation, use, or liquidation, and shall be accorded equitable treatment.

3. The treatment and protection referred to in clauses 1 and 2 of this article shall not be less favorable than the treatment and protection accorded to a third state.

4. The provisions of the above clauses notwithstanding, the treatment and protection referred to in the above clauses shall not cover preferential treatment accorded by either contracting party in accordance with treaties on the establishment of custom unions, free trade zones and economic communities, or for the purpose of facilitating border trade.

Article 4

1. Each contracting party may, in consideration of security reasons or public needs, subject the investment made by the investors of the other contracting party in its territory to expropriation, nationalization, or similar measures, provided that:

- (1) The measures are adopted in accordance with its legal procedures;
- (2) They are not discriminatory compared to measures taken against the investment and investors of a third state.
- (3) They are accompanied by provisions for the payment of compensation.

2. The compensation referred to in Section (3), Clause 1 of this article shall be paid in convertible currency to the investors without undue delay and shall be freely transferable.

3. If a contracting party expropriates the assets and property of an enterprise which is incorporated in its territory, and in which the investors of the other contracting party own capital shares or have some other form of participation, the first-mentioned contracting party shall ensure that the provisions of clauses 1 and 2 of this article are applied to the shares or other forms of participation owned by the investors of the other contracting party.

Article 5

1. Each contracting party shall ensure the free transfer of property invested in its territory by the investors of the other contracting party, and in particular, but not exclusively:

- (1) Returns of investment, including profits, interest, capital gains, dividends, royalties, as well as other legal income and financial claims;
- (2) Payments of compensation amounts resulting from the implementation of Article 4;

(3) The proceeds of total or partial liquidation of the investment;

(4) The amounts necessary for the reimbursement of normal loans.

2. The transfer referred to in Clause 1 of this article shall be allowed without undue delay but shall be required to pay the usual taxes and transfer fees.

Article 6

1. The transfer referred to articles 4 and 5 shall be made at the rate of exchange in force on the side of the contracting party admitting the investment on the date of transfer.

2. In all circumstances, the rate of exchange to be applied shall be equitable and shall include the usual taxes and fees charged for conversion.

Article 7

If a contracting party or its public organ makes payments of compensation to investors of its own country under a guarantee it has accorded in respect of an investment, the other contracting party shall recognize the assignment of the rights of the compensated investors to the first-mentioned contracting party or its public body.

Each contracting party or its public body shall, in the name of the investors and within the limits of the assignment of rights, exercise by virtue of subrogation the rights of the original investors and the related claims.

In respect of the above-mentioned assignment of rights, the other contracting party may put forward to the first-mentioned contracting party, which acts as the subrogator, its counterclaims to the investors.

Article 8

This agreement shall not prevent the investors from enjoying more preferential provisions accruing under the laws and regulations of the contracting party in whose territory their investment is situated or under international agreements entered into by the contracting parties.

Article 9

Investors of either contracting party may make investments under special contracts.

Each contracting party shall honor its commitments to investors of the other contracting party.

The above-mentioned special contracts and commitments shall accord with the laws of the contracting party admitting the investment and with the provisions of this agreement.

Article 10

1. Any disputes related to investments shall be communicated in writing by investors of a contracting party to the other contracting party and shall be accompanied by a detailed memorandum.

Disputes should, as far as possible, be settled in a friendly manner under the premise of respecting the laws and regulations of the contracting party admitting the investment.

2. Disputes referred to in Clause 1 of this article are subject to the legal jurisdiction of the country where the investment is situated.

3. As an exception to Clause 2, when a friendly settlement cannot be reached within 6 months of the date of the notification in writing referred to in Clause 1 of this article, disputes related to the amounts of compensation for expropriation, nationalization, or other similar measures may, at the discretion of the investors:

(1) Be submitted to the judiciary of the contracting party which admits the investment for settlement;

(2) Or be directly submitted to an international arbitral tribunal without resorting to other means.

Article 11

In respect of all matters covered by this agreement, investors of either contracting party shall enjoy the most-favored nation treatment in the territory of the other contracting party.

Article 12

1. Disputes between the contracting parties concerning the interpretation and application of this agreement should, as far as possible, be settled through negotiations between the contracting parties through diplomatic channels.

If a dispute cannot be settled through negotiations, it should be submitted to a mixed committee which comprises representatives of the contracting parties. This committee shall hold its meeting upon the request of the contracting party which first put forward the request. The meeting shall be held without undue delay.

2. If a dispute cannot be settled by the mixed committee, it shall, upon the request of either contracting party and within 6 months of the date of its notification in writing to the other contracting party, be submitted to a special arbitral tribunal.

3. The special arbitral tribunal shall be made up of three arbitrators. Each contracting party shall appoint its arbitrator within 2 months from the date

when the request for arbitration was communicated in writing. Within 2 months of their appointment, the two arbitrators shall appoint the third arbitrator who is a national of a third state which shall have diplomatic relations with both contracting parties. The last-mentioned shall be the chairman of the arbitral tribunal and shall be appointed by both contracting parties.

4. If the special arbitral tribunal is not formed within 4 months from the date when the request for arbitration was communicated in writing, either contracting party may, in the absence of any other arrangement, request the president of the International Court of Justice to appoint the necessary arbitrator(s).

If the president of the International Court of Justice is a national of either contracting party or if he is otherwise prevented from discharging this function, the vice president may be invited in his place.

If the vice president is a national of either contracting party or if he is otherwise prevented from discharging this function, the member of the International Court of Justice next in seniority who is not a national of either contracting party shall be invited to discharge this function.

5. The special arbitral tribunal shall determine its own procedures and regulations and shall make its decisions in accordance with the provisions of this agreement, international agreements related to such matters entered into by both contracting parties, and the principles of universally acknowledged international laws.

The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the contracting parties. The special arbitral tribunal shall state the basis of its decision upon the request of either contracting party.

6. Each contracting party shall bear the cost of its arbitrator. Payments advanced to the third arbitrator and the operating cost of the arbitral tribunal shall be borne equally by the contracting parties.

Article 13

This agreement shall also apply to investments made by Chinese investors in the territory of the Kingdom of Belgium or the Grand Duchy of Luxemburg in accordance with the laws and regulations in force in the Kingdom of Belgium or the Grand Duchy of Luxemburg, as well as investments made by Belgian or Luxemburg investors in the territory of the PRC in accordance with the laws and regulations in force in the PRC prior to the date of its entry into force.

Article 14

1. This agreement shall enter into force on the 30th day from the date the contracting parties notify each other of the completion of their respective domestic legal procedures, and shall remain in force for a period of 10 years.

2. This agreement shall in force indefinitely if neither contracting party notifies the othering party in writing of its intention to terminate this agreement 1 year prior to the expiry of the period of validity mentioned in C of this article.

3. After the expiry of the period of validity of this agreement, either contracting party may, ne, decide to terminate this agreement, but it must notify in writiner contracting party of its intention at least 1 year beforehand.

4. In respect of investie prior to the date when this agreement terminates, the provisiis agreement shall remain in force for a further period of 10 yehat date.

Done in duplicate at Br 4 June 1984, in the Chinese, French, and Dutch languages, all three teequally authentic.

For the Government of t

For the Belgium-Luxemburg Economic Union

Zhang Jingfu [1728 0513

(De ke lai ke) [1795 0344 5490 0344]

(Signed)

(Signed)

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CSO: 4005/649

PRC, BELGIUM-LUXEMBURG ECONOMIC UNION INVESTMENT PROTOCOL

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 10 Nov 86 pp 838-841

[Protocol of the Agreement Between the Government of the PRC and the Belgium-Luxemburg Economic Union on the Mutual Encouragement and Protection of Investment Signed in Brussels on 4 June 1984]

[Text] For the convenience of the implementation of the agreement between the Government of the PRC and the Belgium-Luxemburg Economic Union on the Mutual Encouragement and Protection of Investment (hereinafter referred to as "Agreement"), the Government of the PRC and the Government of the Kingdom of Belgium--in its own name and on behalf of the Grand Duchy of Luxemburg, have agreed as follows:

Article 1

In respect of Article 4 of the "Agreement," if an investor of either contracting party owns capital shares in a company which is neither in China nor Belgium or Luxemburg, and that company owns capital shares in a company of the other contracting party, the latter contracting party shall apply clauses 1 and 2 of Article 4 to the above-mentioned investors who are shareholders of the foreign company concerned.

This provision shall apply only when that foreign company or the country to which it belongs is not in a position to claim compensation, or if that country renounces its rightful claim to compensation.

Article 2

The compensation mentioned in Article 4 of the "Agreement" shall be equivalent to the value of the asset and property invested 1 day prior to the expropriation or on the date the expropriation is announced.

The above-mentioned compensation shall be made in the currency agreed upon by the investors on the date investment is made. In the absence of such an agreement, it shall be made in any other convertible currency.

The above-mentioned compensation shall be made at the rate of exchange in force on that side of the contracting party which admits the investment on the date the measure of expropriation is taken, or, if necessary, on the date such a measure is announced.

Article 3

The transfer mentioned in Clause 1 of Article 5 of the "Agreement," in respect of the PRC, means that the investors shall make the transfer from their foreign exchange deposit accounts in accordance with the foreign exchange control regulations of the PRC.

According to that regulation, the Chinese Government may allow the investors to change the Chinese currency into convertible currency if the balance of their foreign exchange deposit accounts is not sufficient to cover the following necessary transfers:

- (1) The property mentioned in Clause 1 under Article 5 of the "Agreement," of enterprises incorporated in China, whether they be joint ventures or otherwise, which have been specially authorized by the competent Chinese organs to mainly market their products or provide service in China;
- (2) Property mentioned in Section (2) under Clause 1 of Article 5 of the "Agreement";
- (3) Amounts mentioned in Section (3) under Clause 1 of Article 5 of the "Agreement";
- (4) Amounts needed to make reimbursements for normal loans entered into by the investors, but prior guarantee for the transfer has to be obtained from the Bank of China.

Article 4

The rate of exchange mentioned in Clause 1, Article 6 of the "Agreement" shall, in respect of the Kingdom of Belgium or the Grand Duchy of Luxemburg, be determined in accordance with the category of business related to the transfer application.

Article 5

As regards risks which are not covered by guarantees mentioned 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 accordance with Clause 3 of Article 10 of the "Agreement," disputes relating to expropriation, nationalization or other similar measures may be submitted to an arbitral tribunal.
2. The arbitral tribunal shall be constituted for each individual dispute in the following way:

Each party concerned shall appoint an arbitrator.

The two arbitrators shall appoint a third arbitrator who is a national of a third state which shall have diplomatic relations with the contracting parties. That third arbitrator shall be the chairman of the tribunal.

The first two arbitrators shall be appointed within 2 months and the chairman within 4 months from the date when one party concerned notifies in writing the other party of its submission of the dispute to arbitration.

3. The arbitral tribunal shall determine its procedures and regulations. However, when determining its procedures and regulations, the arbitral tribunal may, in accordance with the preference indicated by the investors in their request for arbitration, refer to the arbitral regulations of the International Arbitration Institute of the Stockholm Chamber of Commerce or the arbitral regulations of the "International Center for the Settlement of Investment Disputes" set up as a result of the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States" signed in public at Washington on 18 March 1965.

4. The arbitral tribunal shall reach its decision by a majority of votes. The decision shall be final and binding on the parties concerned. The contracting parties undertake to implement the decision in accordance with their domestic laws.

5. When making its decision, the arbitral tribunal shall base itself on the domestic laws, including its regulations concerning the law of conflict, of the contracting party which admits the investment and which is party to the dispute, on the provisions of the "Agreement" and the terms of the special investment contracts concerned, as well as on the principles of international laws which are universally acknowledged and accepted by both contracting parties.

6. Each party concerned shall bear the cost of its own arbitrator and its representation. The payment advanced to the chairman of the arbitral tribunal and the operating expenses of the arbitral tribunal shall be borne equally by the parties concerned.

Article 7

The treatment and protection of investment referred to in clauses 1 and 2 of Article 3 of the "Agreement" shall not be less favorable than the treatment and protection contained in the principles and regulations of international laws which are universally acknowledged and accepted by the contracting parties.

Article 8

This protocol shall enter into force at the same time as the Agreement Between the Government of the PRC and the Belgium-Luxemburg Economic Union on the Mutual Encouragement and Protection of Investment and shall form an integral part of the agreement.

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

For the Government of the PRC

For the Belgium-Luxemburg Economic Union

Zhang Jingfu [1728 0513 1133]

(De ke lai ke) [1795 0344 5490 0344]

(signed)

(signed)

/8309

CSO: 4005/649

ZHAO ZIYANG CONGRATULAM ON UNESCO ANNIVERSARY

Beijing STATE COUNCIL Chinese No 29, 20 Nov 86 p 860

["Premier Zhao Ziyang's Telegram to Director General M'Bow on the Occasion of the Anniversary of the Establishment of UNESCO"]

[Text] Director General M'Bow
UNESCO
Paris

On the occasion of the anniversary of the establishment of UNESCO, on behalf of the Chinese people, and in a personal capacity, I wish to offer you my warm congratulations.

Over the last 40 years UNESCO has made positive contributions in promoting the development of scientific, cultural, and journalistic interchange between and among particularly developing countries, and in promoting international cooperation between these regions. I hope that in the new situation, UNESCO will sum up its experiences and improve its work, so that it can make greater contributions to promoting development and safeguarding

The cooperation between UNESCO and the Chinese Government has developed steadily and the Chinese Government is satisfied at this. I wish to take this opportunity to reaffirm the Chinese Government's will, as in the past, to actively support UNESCO's efforts in its sphere of responsibility.

Zhao Ziyang
Premier of the People's Republic of China

3 November 1986

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CSO: 4005/650

- END -

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