

PRC, Norway Agreement on Mutual Protection of Investments

40050991e Beijing STATE COUNCIL BULLETIN in Chinese No 4, 1 Mar 87 pp 166-171

[Agreement Between the Government of the PRC and the Government of the Kingdom of Norway on the Mutual Protection of Investments (21 November 1984)—The Contracting Parties Have Informed Each Other of the Completion of Their Respective Domestic Legal Procedures. This Agreement Has Gone Into Effect as of 10 July 1985]

[Text] The Government of the PRC and the Government of the Kingdom of Norway (hereinafter referred to as "the contracting parties"), desiring to develop economic cooperation between the two countries on the basis of equality and mutual benefits, encourage investment by the nationals and companies of one contracting party in the territory of the other contracting party, and create favorable conditions for this purpose.

Have agreed as follows:

Article 1: Definitions

For the purposes of this agreement:

1. The term "investing" means assets permitted by either contracting party in accordance with its laws and regulations, including, in particular:

a. Movable and immovable property and other property rights such as mortgages, pledges, liens, usufruct, and other similar rights;

b. Shares, stock, and debentures of companies or interests in the property of such companies;

c. Claims to money or to any performance under contract having a monetary value;

d. Copyrights, industrial property rights (such as patents, trademarks and external designs of industrial products), know-how, and goodwill;

e. Concessions conferred by law or under contract permitted by law, including concessions to search for and exploit natural resources.

2. The term "returns" means profit, interest, dividends, and other legitimate income yielded by an investment.

3. The term "national" means:

a. In respect of the PRC, natural persons who have PRC nationality under the PRC Nationality Law.

b. In respect of the Kingdom of Norway, natural persons who have citizenship of the Kingdom of Norway in accordance with its law.

4. The term "companies" means:

a. In respect of the PRC, economic bodies incorporated and domiciled in the territory of the PRC in accordance with its laws.

b. In respect of the Kingdom of Norway, juridical persons and sole proprietors domiciled in the territory of Norway, or companies and associations, regardless of whether or not the liabilities of its partners, members or constituents are limited, and regardless of whether their activities are profit-oriented.

Article 2: The Scope of Application of the Agreement

This agreement shall be applicable to investments made by nationals or companies of the PRC in the territory of the Kingdom of Norway in accordance with its laws and regulations, and investments made by nationals or companies of the Kingdom of Norway in the territory of the PRC in accordance with its laws and regulations, both before and after the entry into force of this agreement.

Article 3: Promotion and Protection of Investment

Each contracting party shall encourage nationals or companies of the other contracting party to invest in its territory, and shall admit such investments in accordance with its laws and regulations, while according them fair and equitable treatment and protection. Such investments shall conform with the national goals of the contracting party where they are made, and shall come under the jurisdiction of its laws and regulations.

Article 4: Most-Favored-Nation Clause

1. Neither contracting party shall in its territory subject investments of nationals or companies of the other contracting party to treatment less favorable than that which it accords to investments of nationals or companies of any third country.

2. Nationals or companies of one contracting party, whose investments in the territory of the other contracting party suffer losses owing to war, other armed conflicts, a state of national emergency, or other similar event, shall be accorded treatment no less favorable than that accorded to nationals or companies of any third country as regards the relevant measures taken by the other contracting party.

3. The provisions in paragraphs 1 and 2 of this article shall not apply to:

a. The preference accorded to nationals or companies of any third country by the other contracting party in any existing or future customs union, free trade area, economic community, or international agreement and domestic legislation relating to taxation; and

b. The preference accorded to nationals or companies of any third country for the facilitation of frontier trade.

Article 5: Expropriation

1. If one contracting party is to subject the investments of nationals or companies of the other contracting party to expropriation, nationalization, or similar measures (hereinafter referred to as "expropriation"), it shall only do so under the following conditions:

a. For a public purpose and carried out in accordance with the legal procedures of the land;

b. Nondiscriminatory; and

c. Offer compensation.

2. Compensation shall be made without undue delay and shall be realizable and freely transferable. It shall amount to the value of the investment immediately before the expropriation, and shall include interest until the date of payment.

Article 6: Repatriation of Investment

1. Each contracting party shall, in accordance with its laws and regulations, allow nationals or companies of the other contracting party to transfer in convertible currency and without undue delay the following amounts in connection with investment:

a. Returns, commission, technical aids, and other legitimate income;

b. Proceeds resulting from the total or partial liquidation of an investment;

c. Repayments of loans related to an investment; and

d. The legitimate income of nationals of the other contracting party who are engaged in work related to an investment in the territory of one contracting party.

2. The treatment which one contracting party accords to nationals or companies of the other contracting party under the provisions of Paragraph 1 of this article shall not be less favorable than that which it accords to nationals or companies of any third country.

Article 7: Subrogation

If one contracting party makes payment to its national or company under an indemnity given in respect of an investment made in the territory of the other contracting party, the latter contracting party shall recognize the assignment to the former contracting party the relevant rights of the national or company indemnified and that the former contracting party is entitled to exercise such rights by subrogation. The rights subrogated by the former contracting party may not exceed the rights of the national or company indemnified.

Article 8: Settlement of Disputes Between the Contracting Parties

1. Disputes between the contracting parties concerning the interpretation or application of this agreement shall, as far as possible, be settled through friendly consultation.

2. If a dispute cannot be thus settled within 6 months it shall, at the request of either contracting party, be submitted to an arbitration tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: Each contracting party shall appoint an arbitrator, and these two arbitrators shall agree upon a national of a third country which has diplomatic ties with the contracting parties as chairman to be appointed by the contracting parties. The arbitrators shall be appointed within 2 months from the date on which either contracting party informs its counterpart of its intention to submit the dispute to an arbitral tribunal, and the chairman shall be appointed within 4 months.

4. If within the periods specified in Paragraph 3 the 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 the 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 or the member of the International Court of Justice next in seniority shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of vote. Such decision shall be binding on the contracting parties. Each contracting party shall bear the cost of its own arbitrator and of its representation in the arbitral proceedings. The cost of the chairman in discharging his arbitral duties shall be borne in equal parts by the contracting parties.

6. The arbitral tribunal shall determine its own procedure.

Article 9: Entry into Force, Duration, and Termination

1. This agreement shall enter into force 30 days from the date when the contracting parties inform each other in writing of the completion of domestic procedures necessary for the entry into force of this agreement.

2. This agreement shall remain in force for a period of 15 years, and shall continue in force until either contracting party gives written notice of termination to the other contracting party at the end of the 14th year.

3. At the end of the 15-year period, either contracting party may notify the other contracting party in writing of its intention to terminate this agreement, but this agreement shall continue in force for another year after the notice of termination.

4. In respect of investments made while this agreement is in force, the other provisions of this agreement shall continue to be in effect for a period of 15 years after the date of termination of this agreement.

Done in duplicate at Beijing on 21 November 1984 in the Chinese, Norwegian, and English languages, all three texts being equally authoritative. In the event of disagreements over interpretation, the English text shall prevail.

For the Government of the PRC

Zhao Ziyang (Signed)

For the Government of the Kingdom of Norway

Kare Willoch (Signed)

Protocol

On signing the agreement between the Government of the PRC and the Government of the Kingdom of Norway concerning the Mutual Protection of Investments, the undersigned plenipotentiaries of the two contracting parties have agreed on the following provisions as an integral part of the agreement.

1. "Investment" as defined in Paragraph 1 of Article 1 shall include investments, under the control of nationals or companies of one contracting party, made by juridical persons of a third country in the territory of the other contracting party in accordance with the laws and regu-

lations of the latter. The relevant provisions of this agreement shall be applicable only when such investments are expropriated by the other contracting party and when the third country is not eligible to or has relinquished its claims for compensation.

2. a. Re "expropriation" as defined in Article 5, if an expropriated national or company of one contracting party considers the expropriation to be in contravention of the laws of the contracting party taking the expropriatory measure, the competent legislative or judiciary authorities of the contracting party taking the expropriatory measure may, at the request of the said national or company, review the case of the expropriation.

b. In the event of disagreement over the amount of compensation, the expropriated national or company of one contracting party may carry out consultation with the other contracting party taking the expropriatory measure.

c. If within 6 months of the commencement of consultation agreement has not been reached, the amount of compensation say, at the request of the expropriated national or company of one contracting party, be reviewed by the competent law court of the other contracting party taking the expropriatory measure or by an international arbitral tribunal.

d. The aforesaid international arbitral tribunal shall be constituted for individual cases in the following way: Each contracting party shall appoint an arbitrator, and these two arbitrators shall jointly appoint as chairman of the tribunal a national of a third country which has diplomatic relations with the contracting parties. The arbitrators shall be appointed within 2 months of the date on which either contracting party informs its counterpart of its intention to submit the dispute to an arbitral tribunal, and the chairman shall be appointed within 4 months.

If within the periods specified in the aforesaid provision the necessary appointments have not been made, either contracting party may, in the absence of any other agreement, request the president of the Institute of Arbitration of the Stockholm Chamber of Commerce to make the necessary appointments.

The arbitral tribunal shall determine its own procedures with reference to the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" signed at Washington on 18 March 1965. The decision of the arbitral tribunal shall be final and binding and shall be enforced in accordance with domestic legislation. The arbitral tribunal shall state the basis of its decision and shall give reasons at the request of either contracting party.

Each contracting party shall bear the cost of its own appointed arbitrator and of its representation in the arbitral proceedings. The cost of the chairman in discharging his arbitral duties shall be borne in equal parts by the contracting parties.

3. Other disputes between one contracting party and a national or company of the other contracting party concerning an investment shall be settled through local relief channels in accordance with the laws and regulations of the former contracting party. However, this provision shall not preclude the procedures to be taken by the contracting parties under the provisions of Article 8 in respect of disputes over the interpretation or application of this agreement.

4. This agreement shall also be applicable to investments of nationals or companies of one contracting party in the maritime zones or on the continental shelf where the other contracting party exercises sovereignty, sovereign rights, or jurisdiction.

Done in duplicate at Beijing on 21 November 1984 in the Chinese, Norwegian, and English languages, all three texts being equally authoritative. In the event of disagreement over interpretation, the English text shall prevail. For the Government of the PRC

Zhao Ziyang (Signed)

For the Government of the Kingdom of Norway

Kare Willoch (Signed)