

FINANCE

Investment Guaranties

**Agreement Between the
UNITED STATES OF AMERICA
and the PEOPLE'S REPUBLIC
OF CHINA**

**Effected by Exchange of Notes
Signed at Beijing October 30, 1980**

with

Related Notes

and

**Related Letter and Statement
Signed at Beijing October 7, 1980**



PEOPLE'S REPUBLIC OF CHINA

Finance: Investment Guaranties

*Agreement effected by exchange of notes
Signed at Beijing October 30, 1980;
Entered into force October 30, 1980.
With related notes.
And related letter and statement
Signed at Beijing October 7, 1980.*

*The American Ambassador to the Chinese Vice Minister of Foreign
Affairs*

EMBASSY OF THE
UNITED STATES OF AMERICA

Note No. 438

BEIJING, October 30, 1980

EXCELLENCY:

I have the honor to refer to conversations which have recently taken place on the basis of equality and mutual benefit between representatives of the Government of the United States of America and of the Government of the People's Republic of China relating to investments in the People's Republic of China and to investment insurance (including reinsurance) and investment guaranties which are administered by the Overseas Private Investment Corporation ("OPIC"), an independent government corporation organized under the laws of the United States of America. On behalf of the Government of the United States of America, I also have the honor to confirm the following understandings reached as a result of those conversations:

ARTICLE 1

As used herein, the term "Coverage" shall refer to any investment insurance (including reinsurance) against loss from political risk or to any investment guaranty which is issued in accordance with this Agreement by OPIC or by any successor United States Government agency, OPIC and any such successor being hereinafter referred to as the "Issuer" to the extent of its interest as insurer or reinsurer in any Coverage.

"Coverage" includes guaranty

ARTICLE 2

The procedures set forth in this Agreement shall apply only with respect to Coverage of investments relating to projects or activities approved by the Government of the People's Republic of China.

approval required

ARTICLE 3

(a) If the Issuer makes payment to any investor under Coverage, the Government of the People's Republic of China shall, subject to the provisions of Article 4 hereof, recognize the transfer to the Issuer of any currency, credits, assets, or investment on account of which payment under such Coverage is made, as well as the succession of the Issuer to any right, title, claim, or cause of action existing, or which may arise, in connection therewith, subject to existing legal obligations.

(b) The Issuer shall assert no greater rights than those of the transferring investor with respect to any interests transferred or succeeded to under this paragraph. The Government of the United States of America does, however, reserve its rights to assert a claim in its sovereign capacity under international law.

ARTICLE 4

To the extent that the laws of the People's Republic of China partially or wholly invalidate or prohibit the acquisition from a covered investor of any interest in any property within the territory of the People's Republic of China by the Issuer, the Government of the People's Republic of China shall permit such investor and the Issuer to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the People's Republic of China.

ARTICLE 5

Amounts in the lawful currency of the People's Republic of China, including credits thereof, acquired by the Issuer by virtue of such Coverage shall be accorded treatment by the Government of the People's Republic of China no less favorable as to use and conversion than the treatment to which such funds would be entitled in the hands of the covered investor. Such amounts and credits shall be freely available for use by the Government of the United States of America to meet its expenditures in the territory of the People's Republic of China. Such amounts and credits may also be transferred by the Issuer to any person or entity agreed by the Government of the People's Republic of China for use by such person or entity in the territory of the People's Republic of China.

ARTICLE 6

(a) Any dispute between the Government of the United States of America and the Government of the People's Republic of China regarding the interpretation of this Agreement or which, in the opinion

of one of the Governments, involves a question of public international law arising out of any investment or project or activity relating to such investment for which Coverage has been issued shall be resolved, insofar as possible, through negotiations between the two Governments. If at the end of three months following the request for negotiations the two Governments have not resolved the dispute by agreement, the dispute, including the question of whether such dispute presents a question of public international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with Article 6(b).

(b) The arbitral tribunal for resolution of disputes pursuant to Article 6(a) shall be established and function as follows:

(i) Each Government shall appoint one arbitrator; these two arbitrators shall designate a President by common agreement who shall be a citizen of a third state and be appointed by the two Governments. The arbitrators shall be appointed within two months and the President within three months of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary General of the United Nations to make the necessary appointment or appointments, and both Governments agree to accept such appointment or appointments.

(ii) The arbitral tribunal shall base its decision on the applicable principles and rules of public international law. The arbitral tribunal shall decide by majority vote. Its decision shall be final and binding.

(iii) Each Government shall pay the expense of its arbitrator and of its representation in the proceedings before the arbitral tribunal; the expenses of the President and the other cost shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt regulations concerning the costs, consistent with the foregoing.

(iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

ARTICLE 7

The two Governments, desiring reciprocity, agree that, in the event the Government of the People's Republic of China is authorized under its laws to issue coverage for investments in any project or activity within the United States of America under a program similar to the investment incentive program to which this Agreement relates, there shall be, upon the request of either Government, an exchange of notes to make applicable, with respect to such investments made in the United States of America, provisions equivalent to those of this Agreement.

ARTICLE 8

Upon receipt of a note of confirmation from Your Excellency on behalf of the Government of the People's Republic of China indicating that the foregoing provisions are acceptable, this note and your reply thereto shall constitute an Agreement between our two

Governments on this subject, and enter into force on the date of your reply. This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of a request for the termination of the Agreement. In such event, the provisions of the Agreement with respect to Coverage issued while the Agreement was in force shall remain in force for the duration of such Coverage, but in no case longer than twenty years after the denunciation of the Agreement.

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

LEONARD WOODCOCK

Leonard Woodcock
*Ambassador of the United States
to the People's Republic
of China*

His Excellency

ZHANG WENJIN

*Vice Minister of Foreign Affairs
Beijing, People's Republic of China*

第 八 条

上述内容，如蒙阁下代表中华人民共和国政府复照确认，本照会和你的复照即成为我们两国政府间关于此问题的一项协议，并自你复照之日起生效。本协议应一直有效，但如一方政府以照会通知另一方政府要求终止本协议，则本协议自收到该照会之日起六个月后终止。在此情况下，对于本协议有效期内的承保范围，本协议条款在该承保范围期限内继续有效，但在任何情况下均不得超过自终止本协议之日起二十年的期限。”

我荣幸地代表中华人民共和国政府确认，同意上述来照内容。

顺致最崇高的敬意。

中华人民共和国外交部副部长

一九八〇年十月三十日于北京

作如下：

(一)双方政府各委任一名仲裁员，再由该两名仲裁员共同协商选定一名仲裁庭庭长，庭长应是第三国国民，并经两国政府委任。仲裁员应在收到任何一方提出仲裁要求之日起的两个月内予以委任，庭长在三个月内予以委任。如果在上述期限内未能作出委任，又无任何其他协议，任何一方政府可以请求联合国秘书长作出必要的委任。两国政府同意接受上述一项或数项委任。

(二)仲裁庭根据国际公法适用的原则和规定并根据多数票作出裁决，其裁决应是最终的，并具有约束力。

(三)各方政府应各自负担其仲裁员和仲裁过程中自己方面的费用，庭长费用和其他支出应由两国政府平均负担。仲裁庭可按照上述规定制订有关费用的规则。

(四)对于一切其他事宜，仲裁庭应制订自己的程序。

第七 条

两国政府根据互惠的要求，同意在中华人民共和国政府经依法授权在美利坚合众国境内按照相当于本协议有关的鼓励投资计划承保任何项目或活动中的投资时，经任何一方政府的要求，应就在美利坚合众国境内的这种投资相互换文，以使同本协议相等的条款得以适用。

益，中华人民共和国政府应允许该投资者和承保者作出适当安排，将上述利益转移给中华人民共和国法律所允许占有此项利益的实体。

第 五 条

承保者根据承保范围得到的中华人民共和国法定货币的款项，包括债权，中华人民共和国政府对其使用和兑换方面所给予的待遇不应低于这些资金在被保险的投资者手中时可享有的待遇。这些货币和债权应让美利坚合众国政府自由取得，以偿付其在中华人民共和国境内的开支，或转移给中华人民共和国政府所同意的任何个人或实体，在中华人民共和国境内使用。

第 六 条

一、美利坚合众国政府和中华人民共和国政府对本协议的解释发生争议，或任何一方政府认为这种争议由于已在承保范围内保险的投资或与这种投资有关的项目或活动引起国际公法问题时，两国政府应尽可能通过谈判解决。如果在提出谈判要求的三个月后，两国政府未能解决争议，经任何一方政府提出，应按照本条第二款，将争议包括这种争议是否引起国际公法问题提交仲裁庭。

二、本条第一款所述为解决争议的仲裁庭的组成和工

——以下均称为“承保者”——承保的投资政治风险保险(包括再保险)或投资保证,其利益程度以作为承保范围内的保险者或再保险者为限。

第 二 条

本协议的规定只适用于经中华人民共和国政府批准的项目或活动有关的投资的承保范围。

第 三 条

一、如果承保者根据承保范围向投资者支付赔款,除了本协议第四条的规定外,中华人民共和国政府应承认因上述支付而转移给承保者的任何货币、债权、资产或投资,并承认承保者继承的任何现有或可能产生的权利、所有权、权利要求或诉讼权,但承保者应受投资者尚存法律义务的约束。

二、对根据本条规定而转移或继承的任何利益,承保者不应要求比作出转移的投资者可享有的更大权利。但美利坚合众国政府保留以其主权地位按照国际法提出某项要求的权利。

第 四 条

中华人民共和国法律如部分或全部废止或禁止承保者在中华人民共和国境内取得被保险的投资者的任何财产利

*The Chinese Vice Minister of Foreign Affairs to the American
Ambassador*

中华人民共和国外交部

(80)部美大字第1149号

美利坚合众国驻中华人民共和国特命全权大使伍德科克先生阁下

阁下：

我荣幸地收到了你一九八〇年十月三十日的照会，全文如下：

“我荣幸地提及美利坚合众国政府和中华人民共和国政府的代表，最近在平等互利的基础上举行的关于在中华人民共和国境内进行投资以及投资保险(包括再保险)和保证的会谈。这种投资保险和保证由根据美利坚合众国的法律而设立的独立的政府公司——海外私人投资公司执行。我并荣幸地代表美利坚合众国政府确认作为这些会谈成果而达成的下列谅解：

第 一 条

本协议中的“承保范围”，系指根据本协议由海外私人投资公司或继承该公司的美利坚合众国政府的任何机构

TRANSLATION

Ministry of Foreign Affairs
People's Republic of China

Beijing October 30, 1980

Note No. (80) Bu Meida 1149

His Excellency
Leonard Woodcock
Ambassador Extraordinary and
Minister Plenipotentiary of
the United States of America
to the People's Republic of
China
Beijing, People's Republic of
China

Excellency:

I have the honor to acknowledge the receipt of your
note of October 30, 1980, which reads:

[For the English language text, see pp. 1-4 .]

On behalf of the Government of the People's Republic
of China, I have the honor to confirm our agreement to the
contents of the above note.

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

Zhang Wenjin
Vice Minister of Foreign Affairs
People's Republic of China

[RELATED NOTES]

EMBASSY OF THE
UNITED STATES OF AMERICA

October 30, 1980

EXCELLENCY:

I have the honor to refer to the Investment Incentive Agreement between the Government of the United States of America and the Government of the People's Republic of China, effected by an exchange of notes on October 30, 1980 (the "Agreement"), relating to investment insurance and investment guaranties which are administered by the Overseas Private Investment Corporation ("OPIC").

Article 2 of the Agreement states that the procedures set forth in the Agreement shall apply only with respect to coverage of investments relating to projects or activities approved by the Government of the People's Republic of China. I wish to confirm my understanding that for purposes of Article 2 of the Agreement, the procedure for approval by the Government of the People's Republic of China shall be as follows:

(1) Approval of a project or activity by the Foreign Investment Commission ("FIC") shall constitute approval by the Government of the People's Republic of China for purposes of Article 2 of the Agreement. After a project or activity has received such approval, investment insurance or guaranties issued by OPIC for investments which are related to such project or activity shall be governed by the procedures set forth in the Agreement. Such related investments include the following:

(a) equity investments and loans by investors in projects or activities approved by FIC;

(b) loans from financial institutions to projects or activities approved by FIC; and

(c) transfer of technology, service and management agreements with projects or activities approved by FIC.

(2) For purposes of Article 2 of the Agreement, any project or activity approved by the Administrative Commissions for Special Economic Zones of concerned provinces in accordance with Chinese legislation shall be deemed as approval by the Chinese Government.

(3) In case of a project or activity which does not require the approval set forth in (1) or (2) above, upon request by the Government of the United States of America, FIC shall as soon as possible advise it of the appropriate agency or instrumentality of the Government of the People's Republic of China to issue such approval on behalf of the Chinese Government and shall inform the United States

*Letter to
clarify
process
FIC*

FIC"

Government of the decision of such agency or instrumentality for purposes of Article 2 of the Agreement.

I would be grateful for your confirmation that this is also your understanding.

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

LEONARD WOODCOCK

Leonard Woodcock
*Ambassador of the United States
to the People's Republic
of China*

His Excellency
ZHANG WENJIN
*Vice Minister of Foreign Affairs
Beijing, People's Republic of China*

(一)经外国投资管理委员会批准的项目或活动中投资者的股份投资和贷款；

(二)金融机构给外国投资管理委员会批准的项目或活动的贷款；

(三)与外国投资管理委员会批准的项目或活动达成的技术转让、服务和管理协议。

二、为执行本协议第二条，根据中国的立法经有关省经济特区管理委员会批准的任何项目或活动，视为中国政府批准。

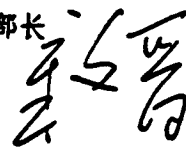
三、对不需外国投资管理委员会批准的项目或活动，经美利坚合众国政府的要求，外国投资管理委员会应尽快通知美国政府关于代表中华人民共和国政府进行这类审批的中国政府的适当部门或机构，并应协助海外私人投资公司得知该部门或机构关于本协议第二条规定作出的决定。

如蒙你确认上述理解，我不胜感谢。”

我荣幸地代表中华人民共和国政府确认，同意上述来函内容。

顺致最崇高的敬意。

中华人民共和国外交部副部长



一九八〇年十月三十日于北京

附件

美利坚合众国驻中华人民共和国特命全权大使伍德科克先生
阁下

阁下：

我荣幸地提及我们两国政府间关于鼓励投资的协议与你今日的来函，全文如下：

“我荣幸地提及一九八〇年十月三十日生效的美利坚合众国政府和中华人民共和国政府关于投资保险和投资保证的鼓励投资协议(以下称“协议”)，该保险和保证是由海外私人投资公司执行的。

该协议第二条规定：‘本协议的规定只适用于经中华人民共和国政府批准的项目或活动有关的投资的承保范围。’我谨确认关于协议第二条由中华人民共和国政府批准的程序的理解如下：

一、经外国投资管理委员会批准的项目或活动即构成第二条中所规定的中华人民共和国政府的批准。在某一项目或活动得到这种批准后，海外私人投资公司为与该项目或活动有关的投资所承保的投资保险或保证，应受本协议规定的程序的约束。这些有关投资包括下列各项：

TRANSLATION

Beijing October 30, 1980

His Excellency
Leonard Woodcock
Ambassador Extraordinary and
Minister Plenipotentiary of
the United States of America
to the People's Republic of
China
Beijing, People's Republic of
China

Excellency:

I have the honor to refer to the Investment Incentive Agreement between our two Governments and to your letter of today's date which reads:

[For the English language text, see pp. 11-12.]

On behalf of the Government of the People's Republic of China, I have the honor to confirm our agreement to the contents of the above letter.

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

Zhang Wenjin
Vice Minister of Foreign Affairs
People's Republic of China

[RELATED LETTER]

October 7 , 1980

Mr. Chen Shuzhi
Vice President
Chinese International Trust
and Investment Corporation
Beijing, China

Dear Mr. Chen:

In connection with our discussions relating to the Investment Incentive Agreement covering the procedures for the operation of the investment insurance programs of the Overseas Private Investment Corporation ("OPIC"), you have inquired as to whether the issuance by OPIC of investment insurance covering losses resulting from war, revolution, and insurrection would create an obligation for the Government of the People's Republic of China. I wish to inform you that the issuance of such coverage would not obligate the Government of the People's Republic of China to reimburse the insured investor or OPIC for losses resulting from war, revolution, or insurrection.

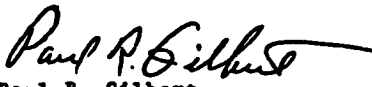
Sincerely yours,



Paul R. Gilbert
Vice President and General Counsel
Overseas Private Investment Corporation

STATEMENT OF PAUL R. GILBERT, VICE PRESIDENT AND GENERAL
COUNSEL, OVERSEAS PRIVATE INVESTMENT CORPORATION, REGARDING
U.S. - CHINA INVESTMENT INCENTIVE AGREEMENT, MADE ORALLY TO
CHINESE DELEGATION ON OCTOBER 4, 1980 AND DELIVERED BY HAND ON
OCTOBER 7, 1980

With respect to Article 7 of the Agreement, the Government of the United States of America wishes to inform the Government of the People's Republic of China that the United States Government interprets Article 7 to mean that an exchange of notes taking action contemplated by Article 7 will be subject to the legal requirements in the United States of America for taking such action, including any necessary implementing legislation.


Paul R. Gilbert
Vice President and General
Counsel
Overseas Private Investment
Corporation

TIAS 9924