AGREEMENT

BETWEEN

THE GOVERNMENT OF

THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF

THE PEOPLE'S REPUBLIC OF CHINA

FOR

THE PROMOTION AND PROTECTION

OF INVESTMENTS

The Government of the Republic of India and the Government of the People's Republic of China (hereinafter referred to as the "Contracting Parties");

Desiring to create conditions favourable for fostering greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiatives and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

(a) "investor" means any national or company of a Contracting Party;

(i) "nationals" mean persons of either Contracting Party deriving their status as nationals of that Contracting Party from its laws in force.

(ii) "Companies" mean corporations, firms and associations incorporated or constituted or established in the territory of either Contracting Party under its laws in force.

(b) "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other similar forms of participation in a company;

(iii) rights to money or to any performance under contract having a financial value;

(iv) intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;

(v) business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals;

(c) “returns” mean the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(d) "territory" means the territory of each Contracting Party including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Contracting Party has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force and International Law including the 1982 United Nations Convention on the Law of the Sea.

ARTICLE 2
Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

ARTICLE 3
Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

ARTICLE 4
National Treatment and Most-Favoured-Nation Treatment

(l) Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own investors or investments of investors of any third State.

(2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

(3) The provisions of paragraph (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs unions, or similar international agreement to which it is or may became a party, or

(b) any matter pertaining wholly or mainly to taxation. Such taxation matters shall be governed by the Agreement between the Republic of India and the People's Republic of China for Avoidance of Double taxation of 18-7-1994.

ARTICLE 5*
Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as " expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall

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* For better understanding of this Article, it shall be interpreted as per the shared understanding in the Protocol annexed to this Agreement.

be made without unreasonable delay, be effectively realizable and be freely transferable.

(2) The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

(3) 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 investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6
Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

ARTICLE 7
Repatriation of Investment and Returns

(1) Investors of either Contracting Party shall, after performing their obligations as required by the laws of the host

Contracting Party, be able to transfer their capital and returns without undue delay, including:

(a) Capital and additional capital amounts used to maintain and increase investments;

(b) Net operating profits including dividends and interest;

(c) Repayments of any loan including interest thereon, relating to the investment;

(d) Payment of royalties and services fees relating to the investment;

(e) Proceeds from sales of their shares;

(f) Proceeds received by investors in case of sale or partial sale or liquidation;

(g) The earnings of nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party;

(h) Payments in connection with projects on contracts.

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

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

ARTICLE 8

Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment, covered under this Agreement, by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims, the other Contracting Party shall recognise that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

ARTICLE 9
Settlement of Disputes Between an Investor and a Contracting Party

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) Any such dispute which has not been amicably settled within a period of six months may, if both parties to the dispute agree, be submitted:

(a) for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies if available; or

(b) to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.

(3) Should the Parties fail to agree on a dispute settlement procedure provided under paragraph (2) of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to Arbitration. The Arbitration procedure shall be as follows:

(a) If the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, such a dispute shall be referred to the Centre; or

(b) If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings of ICSID; or

(c) to an ad hoc arbitral tribunal, by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

(i) The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting party.

(ii) The parties shall appoint their respective arbitrators within two months.

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement.

(iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(4) The Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic review procedure before the dispute is submitted for international conciliation under Article 9(2)(b) or arbitration under Article 9(3).

ARTICLE 10
Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiations.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, 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 two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select, subject to the approval of the two Contracting Parties, a national of a third State to act as Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (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 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 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 decisions 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 in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

ARTICLE 11

Entry and Sojourn of Personnel

A Contracting Party shall, subject to its applicable laws and regulations relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

ARTICLE 12

Applicable Laws

Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

ARTICLE 13

Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

ARTICLE 14
Exceptions

Nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.

ARTICLE 15
Entry into Force

This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled.

ARTICLE 16
Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year after the date of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on this 21st day of November 2006 in two originals each in the Hindi, Chinese and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

For the Government of the Republic of India	For the Government of the People's Republic of China
(KAMAL NATH)	(BO XILAI)
Minister of Commerce & Industry	Minister of Commerce

Protocol to the Agreement between the Republic of India and the People's Republic of China on Promotion and Protection of Investments

On the signing of the Agreement between the Republic of India and the People's Republic of China on Promotion and Protection of Investments, the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement .

I. Ad Article 4, Paragraphs 1 & 2

1. In respect of the People's Republic of China, Paragraphs 1& 2 of Article 4 do not apply to:

(a) any existing non-conforming measures maintained within its territory;
(b) the continuation of any non-conforming measure referred to in sub-paragraph (a);
(c) an amendment to any non-conforming measure referred to in sub-paragraph (a) to the extent that the amendment does not increase the non-conformity of the measures, as it existed immediately before the amendment, with those obligations.

The non-conforming measures shall be capped at the current level and it will be endeavoured to progressively remove the non-conforming measures.

2. In this respect the People's Republic of China shall accord to the investors of the Republic of India treatment not less favourable than that accorded to the investors of any third State.

II. Ad Article 7

1. With regard to People's Republic of China:

(a) Article 7, paragraph (1) (c) will apply provided that a loan – agreement has been registered with the relevant foreign exchange administration authority;

(a) Article 7 paragraph (1)(f) will apply provided that the transfer shall comply with the relevant formalities stipulated by the present Chinese laws and regulations relating to foreign exchange control;

(b) to the extent that the formalities mentioned in (a) & (b) are no longer required according to the relevant provisions of Chinese law, Article 7 shall apply without restrictions.

2. In this respect the People's Republic of China shall accord to the investors of the Republic of India treatment not less favourable than that accorded to the investors of any third State.

3. These formalities shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

III. Ad Article 5

With regard to the interpretation of expropriation under Article 5, the Contracting Parties confirm their shared understanding that :

1. A measure of expropriation includes, apart from direct expropriation or nationalization through formal transfer of title or outright seizure, a measure or series of measures taken intentionally by a Party to create a situation whereby the investment of an investor may be rendered substantially unproductive and incapable of yielding a return without a formal transfer of title or outright seizure.

2. The determination of whether a measure or a series of measures of a Party in a specific situation, constitute measures as outlined in paragraph 1 above requires a case by case, fact based inquiry that considers, among other factors:

i. the economic impact of the measure or a series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that expropriation or nationalization, has occurred;

ii. the extent to which the measures are discriminatory either in scope or in application with respect to a Party or an investor or an enterprise;

iii. the extent to which the measures or series of measures interfere with distinct, reasonable, investment-backed expectations;

iv. the character and intent of the measures or series of measures, whether they are for bona fide public interest purposes or not and whether there is a reasonable nexus between them and the intention to expropriate.

3. Except in rare circumstances, non-discriminatory regulatory measures adopted by a Contracting Party in pursuit of public interest, including measures pursuant to awards of general application rendered by judicial bodies, do not constitute indirect expropriation or nationalization.

For the Government of the Republic of India	For the Government of the People's Republic of China
(KAMAL NATH)	(BO XILAI)
Minister of Commerce & Industry	Minister of Commerce