

PROTOCOL

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the People's Republic of China and the United Mexican States, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I With reference to the term “fixed base”

It is understood that for tax purposes, the fixed base will be treated in accordance with the principles that apply to permanent establishment.

II With reference to the term “interest”

It is understood that the term “interest” also includes other income treated as income from money lent by the taxation law of the Contracting State in which the income arises, provided the income is from debt-claim of some kind. In case of divergence of interpretation, the Contracting States shall resort to mutual agreement procedure.

III With reference to Articles 11 and 12

For the purpose of the provisions in the second sentence of paragraph 7 of Article 11 and the second sentence of paragraph 5 of Article 12, if the loan or the royalty is incurred by the head office of the enterprise and the amount in question affects several permanent establishments or fixed bases situated in different countries, then the interest or royalty, as the case may be, shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated, but only so much of the interest or royalty payment as is borne by such permanent establishment or fixed base.

IV With reference to Article 25

For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

V With respect to anti-abuse of the Agreement

The provisions of this Agreement shall not prevent a Contracting State from applying its provisions regarding thin capitalisation, controlled foreign corporation (in the case of Mexico, preferential tax regimes) and back to back loans.

VI With respect to limitation on benefits

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Agreement to relief from taxation in the other Contracting State unless:

(a) (i) more than 50% of the beneficial interest in such person (or in the case of a company more than 50% of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

- (A) individuals who are residents of one of the Contracting States;
- (B) companies as described in subparagraph 1(b); and
- (C) one of the Contracting States, its political subdivisions or local authorities; and

(ii) in the case of relief from taxation under Articles 10 (dividends), 11 (interests), and 12 (royalties), not more than 50% of the gross income of such person is used to make payments of dividends, interest and royalties to persons who are other than persons described in clauses (A) through (C) of subparagraph (a)(i), whether directly or indirectly; or

(b) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.

2. Paragraph 1 shall not apply if the establishment, acquisition and maintenance of such a person and the conduct of its operations did not have as a principal objective the purpose of obtaining benefits under the Agreement.

3. For the purposes of paragraph 1(b), the term "a recognized stock exchange" means:

(a) the Mexican Stock Exchange Market (Bolsa Mexicana de Valores) in the case of Mexico;

(b) the Shanghai Stock Exchange and the Shenzhen Stock Exchange in the case of China;

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of paragraphs 1, 2 or 3, the competent authorities of the Contracting States shall consult each other.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Mexico City this twelfth day of September of two thousand and five in the Chinese, Spanish and English languages, all texts being equally authentic. In the case of divergence in the interpretation of this Agreement, the English text shall prevail.

For the Government of the
People's Republic of China

For the Government of the
United Mexican States