SCHEDULE

PROTOCOL AMENDING 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 FORTHE RECIPROCAL AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China;

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the reciprocal avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, signed at Beijing on 26th July 1984 (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE 1

Sub-paragraph (a) of paragraph (1) of Article 2 of the Agreement shall be deleted and replaced by the following:

"(a) in the People's Republic of China:

(i) the individual income tax;

(ii) the income tax for enterprises with foreign investment and foreign enterprises; and

(iii) the local income tax;

(hereinafter referred to as "Chinese tax");".

ARTICLE 2

Sub-paragraph (i) of paragraph (l) of Article 3 of the Agreement shall be deleted and replaced by the following:

"(i) the term "competent authority" means, in the case of China, the State Administration of Taxation or its authorised representatives, and in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives.".

ARTICLE 3

Paragraph (1) of Article 4 of the Agreement shall be deleted and replaced by the following:

"(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of head office or effective management, place of incorporation or any other criterion of a similar nature.".

ARTICLE 4

(1) Sub-paragraph (a) of paragraph (3) of Article 12 of the Agreement shall be deleted and replaced by the following:

"(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, or any patent, trade-mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how); and".

(2) In paragraph (3) of Article 13 of the Agreement, the following words shall be deleted:

"including the use of, or the right to use, information concerning industrial, commercial or scientific experience,".

ARTICLE 5

(1) Paragraphs (3), (4) and (5) of Article 23 of the Agreement shall be deleted and replaced by the following:

"(3) Subject to paragraph (4) of this Article, for the purpose of paragraph (2) of this Article, the term "Chinese tax payable" shall be deemed to include any amount which would have been payable as Chinese tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under any of the following provisions of Chinese law:

(a) Articles 7, 8, 9, 10, 19(1), 19(3) and 19(4) of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and Articles 73, 75 and 81 of the Detailed Rules and Regulations for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises where the exemption from or reduction of tax so granted is for the purpose of promoting new industrial, commercial, scientific, educational or other development in China, so far as they were in force on, and have not been modified since, the date of signature of the Protocol amending this Agreement signed at Beijing on 2nd September 1996, or have been modified only in minor respects so as not to affect their general character; or

(b) any other provision which may subsequently be made granting an exemption from or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

(4) Relief from United Kingdom tax by virtue of paragraph (3) shall not be given:

(a) where income or profits in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that paragraph arise or accrue more than ten years after the date on which the Protocol to this Agreement referred to in that paragraph enters into force;

(b) in respect of income or profits from any source if that income or those profits arise in a period beginning more than ten years, or more than thirteen years if the income or profits arise from an infrastructure project, agricultural, forestry or animal husbandry projects or projects in remote underdeveloped areas, after the exemption or reduction referred to in that paragraph was first granted in respect of that source whether that period began before or after the entry into force of that Protocol.

(5) The period referred to in paragraph (4)(a) may be extended by agreement between the competent authorities of the Contracting States.

(6) For the purposes of paragraphs (1) and (2) of this Article profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

(7) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if

the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.".

(2) Where Article 23(3) of the Agreement as it was before its amendment by this Protocol would have afforded greater relief from tax than is due under that provision as so amended, it shall continue to have effect in relation to dividends paid to a company which is a resident of the United Kingdom by a company which is a resident of China out of income or profits arising during any period before this Protocol entered into force.

ARTICLE 6

(1) Each of the Contracting States shall notify through the diplomatic channel to the other the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect in both Contracting States in respect of profits, income and capital gains arising on or after 1st January 1995.

(2) This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article 30 of the Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.
Done in duplicate at Beijing this 2nd day of September 1996 in the Chinese and English languages, both texts being equally authoritative.

Jeremy Hanley
For the Government of the United Kingdom
of Great Britain and Northern Ireland:

Xiang Huai Cheng
For the Government of the People's Republic of China: