MINISTRY OF PLANNING AND INVESTMENT
OF SOCIALIST REPUBLIC OF VIETNAM

Hanoi, March 31, 2005

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam:

I

1. A loan in Japanese yen up to the amount of seventy-three billion eight hundred and fifty-four million yen (¥73,854,000,000) (hereinafter referred to as "the Loan I") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by Japan Bank for International Cooperation (hereinafter referred to as "the Bank") to implement the projects enumerated in Column 1 of the Annex A attached hereto (hereinafter referred to as "the Annex A") according to the allocation for each project as specified in Column 2 of the Annex A.

2. (1) The Loan I will be made available by loan agreements to be concluded between the Government of the Socialist Republic of Viet Nam and the Bank. The terms and conditions of the Loan I as well as the procedures for its utilization will be governed by the said loan agreements which will contain, inter alia, the rate of interest, the repayment period and the disbursement period enumerated respectively in Column 3, 4 and 5 of the Annex A.

(2) Each of the loan agreements mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the projects to which such loan agreements relate.

His Excellency
Mr. Norio Hattori
Ambassador Extraordinary
And Plenipotentiary of Japan

3. (1) The Loan I will be made available to cover payments to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in Column 1 of the Annex A, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan I may be used to cover eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex A.

II

1. A loan in Japanese yen up to the amount of six billion one hundred and forty-six million yen (¥6,146,000,000) (hereinafter referred to as "the Loan II") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by the Bank to implement the project enumerated in Column 1 of the Annex B attached hereto (hereinafter referred to as "the Annex B").

2. (1) The Loan II will be made available by a loan agreement to be concluded between the Government of the Socialist Republic of Viet Nam and the Bank. The terms and conditions of the Loan II as well as the procedures for its utilization will be governed by the said loan agreement which will contain, inter alia, the rate of interest, the repayment period and disbursement period enumerated in Column 3, 4 and 5 of the Annex B.

(2) The loan agreement mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the project to which such loan agreement relates.

3. The Loan II will be made available to cover credits to be extended by the State Bank of Viet Nam to the sub-borrowers under the Project.

4. (1) A part of the Loan II will be made available to cover payments to be made by the State Bank of Viet Nam to consultants of eligible source countries under such contracts as may be entered into between them for purchases of services required for the implementation of the project enumerated in Column 1 of the Annex B, provided that such purchases are made in such eligible source countries for services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

III

1. The respective disbursement periods enumerated in Column 5 of the Annex A and the Annex B may be extended with the consent of the authorities concerned of the two

Governments.

2. The Government of the Socialist Republic of Viet Nam shall ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II are procured in accordance with the guidelines for procurement of the Bank, which set forth, inter alia, the procedures of international competitive bidding to be followed except where such procedures are inapplicable or inappropriate.

3. With regard to the shipping and marine insurance of the products purchased under the Loan I or in connection with purchases of services under the Loan II, the Government of the Socialist Republic of Viet Nam shall refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

4. Japanese nationals whose services may be required in the Socialist Republic of Viet Nam in connection with the supply of the products and/or services mentioned in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II shall be accorded such facilities as may be necessary for their entry into the Socialist Republic of Viet Nam and stay therein for the performance of their work.

5. The Government of the Socialist Republic of Viet Nam shall exempt:

(a) the Bank from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on and/or in connection with the Loan I and the Loan II as well as interest accruing therefrom; and

(b) Japanese companies operating as suppliers, contractors and/or consultants from all duties and related fiscal charges imposed in the Socialist Republic of Viet Nam with respect to the import and re-export of their own materials and equipment needed for the implementation of the projects enumerated in Column 1 of the Annex A and the Annex B.

6. The Government of the Socialist Republic of Viet Nam shall take necessary measures to ensure that:

(a) the Loan I and the Loan II be used properly and exclusively for the projects enumerated in Column 1 of the Annex A and the Annex B; and

(b) the facilities constructed under the Loan I be maintained and used properly and effectively for the purposes prescribed in the present understanding.

7. The Government of the Socialist Republic of Viet Nam shall, upon request, furnish the Government of Japan and the Bank with information and data concerning the progress of the implementation of the projects enumerated in Column 1 of the Annex A and the Annex B.

8. The two Governments shall consult with each other with respect to any matter that may arise from or in connection with the present understanding.

9. The Annex A and the Annex B shall form an integral part of the present Note.

I have further the honour to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of Your Excellency's Note in reply."

I have further the honour to confirm on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding and to agree that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force on the date of this Note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Vo Hong Phuc
Minister of Planning and Investment
of the Socialist Republic of Vietnam

Annex A

Column 1	Column 2	Column 3	Column 4	Column 5
Project	Maximum amount	Rate of interest	Repayment period	Disbursement period (from the effective date of the loan agreement)
1. New National Highway No. 3 and Regional Road Network Construction Project (Section Hanoi-Thai Nguyen)(I)	12,469 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	eight (8) years
2. Saigon East-West Highway Construction Project (IV)	19,071 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	five (5) years
3. Cai Mep-Thi Vai International Port Construction Project	36,364 million Yen	0.4%	thirty (30) years after the grace period of ten (10) years	ten (10) years
4. Ninh Binh II Thermal Power Plant Construction Project (I)	4,433 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	seven (7) years
5. Hai Phong City Environmental Improvement Project (I)	1,517 million Yen	0.75%	thirty (30) years after the grace period of ten (10) years	eight (8) years

Total amount: 73,854 million Yen

Annex B

Column 1	Column 2	Column 3	Column 4	Column 5
Project	Maximum amount	Rate of interest	Repayment period	Disbursement period (from the effective date of the loan agreement)
Small and Medium-Sized Enterprises Finance Project (II)	6,146 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	five (5) years

Total amount: 6,146 million Yen

Record of Discussions

In connection with the Exchange of Notes dated March 31, 2005, concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam (hereinafter referred to as "the Exchange of Notes"), the representatives of the Japanese Delegation and of the Vietnamese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II of the Exchange of Notes and paragraphs 1. and 2. of Japanese Note Verbale No.J.D.50/2005 dated March 31, 2005, it was a shared view of the two Delegations that:

(a) Japanese suppliers and contractors mean Japanese nationals or juridical persons incorporated and registered in Japan, and which have their appropriate facilities for producing or providing goods and services in Japan and actually conduct their business there;

(b) Japanese consultants mean Japanese nationals or juridical persons controlled by Japanese nationals; and

(c) notwithstanding sub-paragraphs (a) and (b) above, in cases where one or more suppliers, contractors or consultants of the Socialist Republic of Viet Nam form a joint venture with Japanese ones, such a joint venture will be regarded as a Japanese supplier, contractor or consultant provided that the lead partner of the said joint venture is a Japanese supplier, contractor or consultant and that the total share of work of Japanese ones in the said joint venture is more than fifty per cent (50%).

2. With regard to sub-paragraph (3) of paragraph 3. of Part I of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex A attached to the Exchange of Notes (hereinafter referred to as "the Annex A"), the representative of the Japanese Delegation stated that:

(a) such local currency requirements as general administrative expenses, interest during construction, taxes and duties, expenses connected to offices, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the said projects, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the loan mentioned in paragraph 1. of Part I of the Exchange of Notes (hereinafter referred to as "the Loan I"); and

(b) the procurement of products and/or services will be made in accordance with the procedures of competitive bidding except where such procedures are inapplicable or inappropriate.

3. With regard to the Loan I and the loan mentioned in paragraph 1. of Part II of Exchange of Notes (hereinafter referred to as "the Loan II"), the representative of the Japanese Delegation stated that any financial requirements of the projects enumerated in Column 1 of the Annex A and the Annex B attached to the Exchange of Notes exceeding the amount of the Loan I and the Loan II under the loan agreements mentioned in sub-paragraph (1) of paragraph 2. of Part I and sub-paragraph (1) of paragraph 2. of Part II of the Exchange of Notes, will be duly met by the Government of the Socialist Republic of Viet Nam to assure the smooth implementation of the said projects.

4. The representative of the Japanese Delegation stated that products procured from a Vietnamese manufacturing company invested in by one or more Japanese companies will be regarded as products procured from Japan, if they meet the following:

(a) not less than ten per cent (10%) of the shares of the Vietnamese manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above (or the company having the largest share among Japanese companies if more than one Japanese company meet the condition stated in (a) above) is the same as or greater than that of the shares held by any company of a third country.

5. With regard to paragraph 6. of Part III of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Socialist Republic of Viet Nam from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II of the Exchange of Notes; and

(b) the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which Japan Bank for International Cooperation (hereinafter referred to as "the Bank") will designate and to be paid at the Bank's expense, in order to ensure fairness and competitiveness of the procurement process, in case where the Bank considers such an audit to be necessary.

6. The representative of the Vietnamese Delegation stated that his Delegation had no objection to the above-mentioned statements by the Japanese Delegation.

Hanoi, March 31, 2005

Vo Hong Phuc
Minister of Planning and Investment
of the Socialist Republic of Viet Nam

Norio Hattori
Ambassador Extraordinary
and Plenipotentiary of Japan

EMBASSY OF JAPAN
HANOI

Hanoi, March 31, 2005

Excellency,

I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam:

I

1. A loan in Japanese yen up to the amount of seventy-three billion eight hundred and fifty-four million yen (¥73,854,000,000) (hereinafter referred to as "the Loan I") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by Japan Bank for International Cooperation (hereinafter referred to as "the Bank") to implement the projects enumerated in Column 1 of the Annex A attached hereto (hereinafter referred to as "the Annex A") according to the allocation for each project as specified in Column 2 of the Annex A.

2. (1) The Loan I will be made available by loan agreements to be concluded between the Government of the Socialist Republic of Viet Nam and the Bank. The terms and conditions of the Loan I as well as the procedures for its utilization will be governed by the said loan agreements which will contain, inter alia, the rate of interest, the repayment period and the disbursement period enumerated respectively in Column 3, 4 and 5 of the Annex A.

(2) Each of the loan agreements mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the projects to which such loan agreements relate.

His Excellency
Mr. Vo Hong Phuc
Minister of Planning and Investment
of the Socialist Republic of Vietnam

3. (1) The Loan I will be made available to cover payments to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in Column 1 of the Annex A, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan I may be used to cover eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex A.

II

1. A loan in Japanese yen up to the amount of six billion one hundred and forty-six million yen (¥6,146,000,000) (hereinafter referred to as "the Loan II") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by the Bank to implement the project enumerated in Column 1 of the Annex B attached hereto (hereinafter referred to as "the Annex B").

2. (1) The Loan II will be made available by a loan agreement to be concluded between the Government of the Socialist Republic of Viet Nam and the Bank. The terms and conditions of the Loan II as well as the procedures for its utilization will be governed by the said loan agreement which will contain, inter alia, the rate of interest, the repayment period and disbursement period enumerated in Column 3, 4 and 5 of the Annex B.

(2) The loan agreement mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the project to which such loan agreement relates.

3. The Loan II will be made available to cover credits to be extended by the State Bank of Viet Nam to the sub-borrowers under the Project.

4. (1) A part of the Loan II will be made available to cover payments to be made by the State Bank of Viet Nam to consultants of eligible source countries under such contracts as may be entered into between them for purchases of services required for the implementation of the project enumerated in Column 1 of the Annex B, provided that such purchases are made in such eligible source countries for services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

III

1. The respective disbursement periods enumerated in Column 5 of the Annex A and the Annex B may be extended with the consent of the authorities concerned of the two Governments.

reply confirming on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of Your Excellency's Note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

服部則夫

Norio Hattori
Ambassador Extraordinary
and Plenipotentiary of Japan

Annex A

Column 1	Column 2	Column 3	Column 4	Column 5
Project	Maximum amount	Rate of interest	Repayment period	Disbursement period (from the effective date of the loan agreement)
1. New National Highway No. 3 and Regional Road Network Construction Project (Section Hanoi-Thai Nguyen)(I)	12,469 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	eight (8) years
2. Saigon East-West Highway Construction Project (IV)	19,071 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	five (5) years
3. Cai Mep-Thi Vai International Port Construction Project	36,364 million Yen	0.4%	thirty (30) years after the grace period of ten (10) years	ten (10) years
4. Ninh Binh II Thermal Power Plant Construction Project (I)	4,433 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	seven (7) years
5. Hai Phong City Environmental Improvement Project (I)	1,517 million Yen	0.75%	thirty (30) years after the grace period of ten (10) years	eight (8) years

Total amount: 73,854 million Yen

Annex B

Column 1	Column 2	Column 3	Column 4	Column 5
Project	Maximum amount	Rate of interest	Repayment period	Disbursement period (from the effective date of the loan agreement)
Small and Medium-Sized Enterprises Finance Project (II)	6,146 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	five (5) years

Total amount: 6,146 million Yen

Record of Discussions

In connection with the Exchange of Notes dated March 31, 2005, concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam (hereinafter referred to as "the Exchange of Notes"), the representatives of the Japanese Delegation and of the Vietnamese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II of the Exchange of Notes and paragraphs 1. and 2. of Japanese Note Verbale No. J.D.50/2005 dated March 31, 2005, it was a shared view of the two Delegations that:

(a) Japanese suppliers and contractors mean Japanese nationals or juridical persons incorporated and registered in Japan, and which have their appropriate facilities for producing or providing goods and services in Japan and actually conduct their business there;

(b) Japanese consultants mean Japanese nationals or juridical persons controlled by Japanese nationals; and

(c) notwithstanding sub-paragraphs (a) and (b) above, in cases where one or more suppliers, contractors or consultants of the Socialist Republic of Viet Nam form a joint venture with Japanese ones, such a joint venture will be regarded as a Japanese supplier, contractor or consultant provided that the lead partner of the said joint venture is a Japanese supplier, contractor or consultant and that the total share of work of Japanese ones in the said joint venture is more than fifty per cent (50%).

2. With regard to sub-paragraph (3) of paragraph 3. of Part I of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex A attached to the Exchange of Notes (hereinafter referred to as "the Annex A"), the representative of the Japanese Delegation stated that:

(a) such local currency requirements as general administrative expenses, interest during construction, taxes and duties, expenses connected to offices, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the said projects, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the loan mentioned in paragraph 1. of Part I of the Exchange of Notes (hereinafter referred to as "the Loan I"); and

(b) the procurement of products and/or services will be made in accordance with the procedures of competitive bidding except where such procedures are inapplicable or inappropriate.

3. With regard to the Loan I and the loan mentioned in paragraph 1. of Part II of Exchange of Notes (hereinafter referred to as "the Loan II"), the representative of the

Japanese Delegation stated that any financial requirements of the projects enumerated in Column 1 of the Annex A and the Annex B attached to the Exchange of Notes exceeding the amount of the Loan I and the Loan II under the loan agreements mentioned in sub-paragraph (1) of paragraph 2. of Part I and sub-paragraph (1) of paragraph 2. of Part II of the Exchange of Notes, will be duly met by the Government of the Socialist Republic of Viet Nam to assure the smooth implementation of the said projects.

4. The representative of the Japanese Delegation stated that products procured from a Vietnamese manufacturing company invested in by one or more Japanese companies will be regarded as products procured from Japan, if they meet the following:

(a) not less than ten per cent (10%) of the shares of the Vietnamese manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above (or the company having the largest share among Japanese companies if more than one Japanese company meet the condition stated in (a) above) is the same as or greater than that of the shares held by any company of a third country.

5. With regard to paragraph 6. of Part III of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Socialist Republic of Viet Nam from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II of the Exchange of Notes; and

(b) the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which Japan Bank for International Cooperation (hereinafter referred to as "the Bank") will designate and to be paid at the Bank's expense, in order to ensure fairness and competitiveness of the procurement process, in case where the Bank considers such an audit to be necessary.

6. The representative of the Vietnamese Delegation stated that his Delegation had no objection to the above-mentioned statements by the Japanese Delegation.

Hanoi, March 31, 2005

Norio Hattori
Ambassador Extraordinary
and Plenipotentiary of Japan

Vo Hong Phuc
Minister of Planning and Investment
of the Socialist Republic of Viet Nam

SOCIALIST REPUBLIC OF VIETNAM
MINISTRY OF PLANNING AND INVESTMENT

No. 2064 /BKH-KTĐN

Hanoi, 31 March 2005

The Ministry of Planning and Investment of the Socialist Republic of Vietnam presents its compliments to the Embassy of Japan and has the honour to acknowledge the receipt of the latter's Note Verbale No. J.D. 50/2005 dated 31 March, 2005.

The Ministry of Planning and Investment has further the honour to inform the Embassy that the proposal set forth in the Note Verbale is acceptable to the Government of the Socialist Republic of Vietnam.

The Ministry of Planning and Investment avails itself of this opportunity to renew to the Embassy of Japan the assurances of its highest consideration.

Vice Minister

To: Embassy of Japan
Hanoi – Vietnam

BỘ KẾ HOẠCH VÀ ĐẦU TƯ
CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM

Số: 2064 /BKH-KTĐN

Hà Nội, ngày 31 tháng 3 năm 2005

Bộ Kế hoạch và Đầu tư nước Cộng hòa Xã hội Chủ nghĩa Việt Nam kính chào Đại sứ quán Nhật Bản tại Việt Nam và xin trân trọng xác nhận việc nhận được Công hàm của Đại sứ quán Nhật Bản tại Việt Nam số J.D. 50/2005 ngày 31 tháng 3 năm 2005.

Bộ Kế hoạch và Đầu tư xin trân trọng thông báo với Đại sứ quán rằng đề xuất đề cập trong Công hàm nói trên là chấp nhận được đối với Chính phủ Cộng hoà Xã hội Chủ nghĩa Việt Nam.

Nhân dịp này, Bộ Kế hoạch và Đầu tư nước Cộng hòa Xã hội Chủ nghĩa Việt Nam xin gửi đến Đại sứ quán Nhật Bản tại Việt Nam lời chào trân trọng./.

BỘ KẾ HOẠCH VÀ ĐẦU TƯ

Trần Xuân Kiên

THỨ TRƯỞNG

Kính gửi: Đại sứ quán Nhật Bản tại Việt Nam

BỘ NGOẠI GIAO

Số : 98 /2005 /LPQT

SAO Y BẢN CHÍNH

Hà Nội, ngày 28 tháng 10 năm 2005

TL. BỘ TRƯỞNG BỘ NGOẠI GIAO
KT. Vụ trưởng Vụ Luật pháp và Điều ước quốc tế
Phó Vụ trưởng

Nguyễn Thị Hoàng Anh

Nơi nhận :

- Văn phòng Quốc hội (để báo cáo),
- Văn phòng Chủ tịch nước (để báo cáo),
- Văn phòng Chính phủ (để báo cáo),
- Văn phòng Chính phủ (để đăng Công báo),
- Bộ Kế hoạch và Đầu tư,
- Bộ Tài chính,
- Bộ Thương mại,
- Ngân hàng Nhà nước Việt Nam,
- Ủy ban nhân dân thành phố Hồ Chí Minh,
- Ủy ban nhân dân thành phố Hải Phòng,
- Ủy ban nhân dân tỉnh Thái Nguyên,
- Ủy ban nhân dân tỉnh Ninh Bình,
- Đại sứ quán Việt Nam tại Nhật Bản,
- Vụ Châu Á 1, Bộ Ngoại giao,
- Vụ Tổng hợp kinh tế, Bộ Ngoại giao,
- Vụ Hợp tác kinh tế đa phương, Bộ Ngoại giao,
- Vụ Luật pháp và Điều ước quốc tế, Bộ Ngoại giao,
- Lưu trữ, Bộ Ngoại giao.✓

Công hàm trao đổi giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Nhật Bản về việc Chính phủ Nhật Bản cung cấp khoản tín dụng ưu đãi trị giá 80 tỷ Yên có hiệu lực từ ngày 31 tháng 3 năm 2005.

EMBASSY OF JAPAN
HANOI

Hanoi, March 31, 2005

Excellency,

I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam:

I

1. A loan in Japanese yen up to the amount of seventy-three billion eight hundred and fifty-four million yen (¥73,854,000,000) (hereinafter referred to as "the Loan I") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by Japan Bank for International Cooperation (hereinafter referred to as "the Bank") to implement the projects enumerated in Column 1 of the Annex A attached hereto (hereinafter referred to as "the Annex A") according to the allocation for each project as specified in Column 2 of the Annex A.

2. (1) The Loan I will be made available by loan agreements to be concluded between the Government of the Socialist Republic of Viet Nam and the Bank. The terms and conditions of the Loan I as well as the procedures for its utilization will be governed by the said loan agreements which will contain, inter alia, the rate of interest, the repayment period and the disbursement period enumerated respectively in Column 3, 4 and 5 of the Annex A.

(2) Each of the loan agreements mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the projects to which such loan agreements relate.

His Excellency
Mr. Vo Hong Phuc
Minister of Planning and Investment
of the Socialist Republic of Vietnam

3. (1) The Loan I will be made available to cover payments to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in Column 1 of the Annex A, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan I may be used to cover eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex A.

II

1. A loan in Japanese yen up to the amount of six billion one hundred and forty-six million yen (¥6,146,000,000) (hereinafter referred to as "the Loan II") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by the Bank to implement the project enumerated in Column 1 of the Annex B attached hereto (hereinafter referred to as "the Annex B").

2. (1) The Loan II will be made available by a loan agreement to be concluded between the Government of the Socialist Republic of Viet Nam and the Bank. The terms and conditions of the Loan II as well as the procedures for its utilization will be governed by the said loan agreement which will contain, inter alia, the rate of interest, the repayment period and disbursement period enumerated in Column 3, 4 and 5 of the Annex B.

(2) The loan agreement mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the project to which such loan agreement relates.

3. The Loan II will be made available to cover credits to be extended by the State Bank of Viet Nam to the sub-borrowers under the Project.

4. (1) A part of the Loan II will be made available to cover payments to be made by the State Bank of Viet Nam to consultants of eligible source countries under such contracts as may be entered into between them for purchases of services required for the implementation of the project enumerated in Column 1 of the Annex B, provided that such purchases are made in such eligible source countries for services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

III

1. The respective disbursement periods enumerated in Column 5 of the Annex A and the Annex B may be extended with the consent of the authorities concerned of the two Governments.

2. The Government of the Socialist Republic of Viet Nam shall ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II are procured in accordance with the guidelines for procurement of the Bank, which set forth, inter alia, the procedures of international competitive bidding to be followed except where such procedures are inapplicable or inappropriate.

3. With regard to the shipping and marine insurance of the products purchased under the Loan I or in connection with purchases of services under the Loan II, the Government of the Socialist Republic of Viet Nam shall refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

4. Japanese nationals whose services may be required in the Socialist Republic of Viet Nam in connection with the supply of the products and/or services mentioned in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II shall be accorded such facilities as may be necessary for their entry into the Socialist Republic of Viet Nam and stay therein for the performance of their work.

5. The Government of the Socialist Republic of Viet Nam shall exempt:

(a) the Bank from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on and/or in connection with the Loan I and the Loan II as well as interest accruing therefrom; and

(b) Japanese companies operating as suppliers, contractors and/or consultants from all duties and related fiscal charges imposed in the Socialist Republic of Viet Nam with respect to the import and re-export of their own materials and equipment needed for the implementation of the projects enumerated in Column 1 of the Annex A and the Annex B.

6. The Government of the Socialist Republic of Viet Nam shall take necessary measures to ensure that:

(a) the Loan I and the Loan II be used properly and exclusively for the projects enumerated in Column 1 of the Annex A and the Annex B; and

(b) the facilities constructed under the Loan I be maintained and used properly and effectively for the purposes prescribed in the present understanding.

7. The Government of the Socialist Republic of Viet Nam shall, upon request, furnish the Government of Japan and the Bank with information and data concerning the progress of the implementation of the projects enumerated in Column 1 of the Annex A and the Annex B.

8. The two Governments shall consult with each other with respect to any matter that may arise from or in connection with the present understanding.

9. The Annex A and the Annex B shall form an integral part of the present Note.

I have further the honour to propose that this Note and Your Excellency's Note in

reply confirming on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of Your Excellency's Note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

服部則夫

Norio Hattori
Ambassador Extraordinary
and Plenipotentiary of Japan

Annex A

Column 1	Column 2	Column 3	Column 4	Column 5
Project	Maximum amount	Rate of interest	Repayment period	Disbursement period (from the effective date of the loan agreement)
1. New National Highway No. 3 and Regional Road Network Construction Project (Section Hanoi-Thai Nguyen)(I)	12,469 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	eight (8) years
2. Saigon East-West Highway Construction Project (IV)	19,071 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	five (5) years
3. Cai Mep-Thi Vai International Port Construction Project	36,364 million Yen	0.4%	thirty (30) years after the grace period of ten (10) years	ten (10) years
4. Ninh Binh II Thermal Power Plant Construction Project (I)	4,433 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	seven (7) years
5. Hai Phong City Environmental Improvement Project (I)	1,517 million Yen	0.75%	thirty (30) years after the grace period of ten (10) years	eight (8) years

Total amount: 73,854 million Yen

Annex B

Column 1	Column 2	Column 3	Column 4	Column 5
Project	Maximum amount	Rate of interest	Repayment period	Disbursement period (from the effective date of the loan agreement)
Small and Medium-Sized Enterprises Finance Project (II)	6,146 million Yen	1.3%	twenty (20) years after the grace period of ten (10) years	five (5) years

Total amount: 6,146 million Yen

Record of Discussions

In connection with the Exchange of Notes dated March 31, 2005, concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam (hereinafter referred to as "the Exchange of Notes"), the representatives of the Japanese Delegation and of the Vietnamese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II of the Exchange of Notes and paragraphs 1. and 2. of Japanese Note Verbale No.J.D.50/2005 dated March 31, 2005, it was a shared view of the two Delegations that:

(a) Japanese suppliers and contractors mean Japanese nationals or juridical persons incorporated and registered in Japan, and which have their appropriate facilities for producing or providing goods and services in Japan and actually conduct their business there;

(b) Japanese consultants mean Japanese nationals or juridical persons controlled by Japanese nationals; and

(c) notwithstanding sub-paragraphs (a) and (b) above, in cases where one or more suppliers, contractors or consultants of the Socialist Republic of Viet Nam form a joint venture with Japanese ones, such a joint venture will be regarded as a Japanese supplier, contractor or consultant provided that the lead partner of the said joint venture is a Japanese supplier, contractor or consultant and that the total share of work of Japanese ones in the said joint venture is more than fifty per cent (50%).

2. With regard to sub-paragraph (3) of paragraph 3. of Part I of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex A attached to the Exchange of Notes (hereinafter referred to as "the Annex A"), the representative of the Japanese Delegation stated that:

(a) such local currency requirements as general administrative expenses, interest during construction, taxes and duties, expenses connected to offices, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the said projects, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the loan mentioned in paragraph 1. of Part I of the Exchange of Notes (hereinafter referred to as "the Loan I"); and

(b) the procurement of products and/or services will be made in accordance with the procedures of competitive bidding except where such procedures are inapplicable or inappropriate.

3. With regard to the Loan I and the loan mentioned in paragraph 1. of Part II of Exchange of Notes (hereinafter referred to as "the Loan II"), the representative of the Japanese Delegation stated that any financial requirements of the projects enumerated in Column 1 of the Annex A and the Annex B attached to the Exchange of Notes exceeding the amount of the Loan I and the Loan II under the loan agreements mentioned in sub-paragraph (1) of paragraph 2. of Part I and sub-paragraph (1) of paragraph 2. of Part II of the Exchange of Notes, will be duly met by the Government of the Socialist Republic of Viet Nam to assure the smooth implementation of the said projects.

4. The representative of the Japanese Delegation stated that products procured from a Vietnamese manufacturing company invested in by one or more Japanese companies will be regarded as products procured from Japan, if they meet the following:

(a) not less than ten per cent (10%) of the shares of the Vietnamese manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above (or the company having the largest share among Japanese companies if more than one Japanese company meet the condition stated in (a) above) is the same as or greater than that of the shares held by any company of a third country.

5. With regard to paragraph 6. of Part III of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Socialist Republic of Viet Nam from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3. of Part I and sub-paragraph (1) of paragraph 4. of Part II of the Exchange of Notes; and

(b) the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which Japan Bank for International Cooperation (hereinafter referred to as "the Bank") will designate and to be paid at the Bank's expense, in order to ensure fairness and competitiveness of the procurement process, in case where the Bank considers such an audit to be necessary.

6. The representative of the Vietnamese Delegation stated that his Delegation had no objection to the above-mentioned statements by the Japanese Delegation.

Hanoi, March 31, 2005

Vo Hong Phuc
Minister of Planning and Investment
of the Socialist Republic of Viet Nam

Norio Hattori
Ambassador Extraordinary
and Plenipotentiary of Japan

EMBASSY OF JAPAN
HANOI

No.J.D.50 /2005

The Embassy of Japan presents its compliments to the Ministry of Planning and Investment of the Socialist Republic of Viet Nam and has the honour to refer to sub-paragraph (2) of paragraph 3. of Part I and sub-paragraph (2) of paragraph 4. of Part II of the Exchange of Notes dated March 31, 2005, concerning a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam.

The Embassy has further the honour to propose that the scope of eligible source countries mentioned in the said sub-paragraph will be as follows:

1. The eligible source countries are all countries and areas.

2. Notwithstanding paragraph 1. above, the eligible source country for Cai Mep-Thi Vai International Port Construction Project (hereinafter referred to as "the Project") is Japan.

3. Notwithstanding paragraph 2. above, products and/or services excluding consulting services procured from countries other than Japan will be eligible for financing under the loan for the Project if the combined costs of products procured from Japan are not less than thirty per cent (30%) of the total price of the contract(s) of products and services excluding consulting services required for the implementation of the Project.

4. Notwithstanding paragraph 2. above, consulting services partly supplied by consultants of countries other than Japan will be eligible for financing under the loan for the Project if the nationality of prime contractor(s) of the said consulting services is Japan.

Hanoi, March 31, 2005

AMBASSADE DU JAPON
日本国大使館
VIET NAM

To: Ministry of Planning and Investment
The Socialist Republic of Viet Nam