EMBASSY OF JAPAN
HANOI

Hanoi, March 31, 2004

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 a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam :

1. A loan in Japanese yen up to the amount of seventy-nine billion three hundred and thirty million yen (¥79,330,000,000) (hereinafter referred to as "the Loan") 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 the list attached hereto (hereinafter referred to as "the List") according to the allocation for each project as specified in the List.

2. (1) The Loan 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 as well as the procedures for its utilization will be governed by the said loan agreements which will contain, inter alia, the following principles :

a) The repayment period will be twenty (20) years after the grace period of ten (10) years with regard to the projects mentioned in 1, 5, 6 and 8 of the List, thirty (30) years after the grace period of ten (10) years with regard to the projects mentioned in 2, 3 and 4 of the List and twenty-eight (28) years after the grace period of twelve (12) years with regard to the project mentioned in 7 of the List;

b) The rate of interest will be one and three-tenths per cent (1.3%) per annum with regard to the projects mentioned in 1, 5, 6 and 8 of the List and seventy-five-hundredths percent (0.75%) per annum with regard to the projects mentioned in 2, 3, 4 and 7 of the List; and

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

c) The disbursement period will be three (3) years with regard to the project mentioned in 3 of the List; six (6) years with regard to the projects mentioned in 2, 5, 6 and 8 of the List, seven (7) years with regard to the project mentioned in 4 of the List and eight (8) years with regard to the projects mentioned in 1 and 7 of the List from the dates of coming into force of the relevant loan agreements.

(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.

(3) The respective disbursement period mentioned in sub-paragraph (1) (c) above may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan shall be made available to cover payments already made and/or to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as have been and/or may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in the List, 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 may be used to cover eligible local currency requirements for the implementation of the projects enumerated in the List.

4. 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 are procured in accordance with the guidelines for procurement of the Bank, which set forth, inter alia, the procedures of international tendering to be followed except where such procedures are inapplicable or inappropriate.

5. With regard to the shipping and marine insurance of the products purchased under the Loan, 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.

6. 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 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.

7. 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 as well as interest accruing therefrom ;

(b) Japanese companies operating as suppliers, contractors, and/or consultants from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam with respect to the income accruing from the supply of products and/or services to be provided under the Loan; and

(c) 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 the List.

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

(a) the Loan be used properly and exclusively for the projects enumerated in the List; and

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

9. 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 the List.

10. The two Governments shall consult with each other in respect of any matter that may arise from or in connection with this understanding.

I should be grateful if Your Excellency would confirm the foregoing understanding on behalf of the Government of the Socialist Republic of Viet Nam.

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

List

		(Maximum amount in million yen)
1.	O Mon Thermal Power Plant Unit No.2 Construction Project	27,547
2.	Dai Ninh Hydropower Project (III)	19,142
3.	Power Sector Loan	3,190
4.	Thac Mo Hydropower Station Extension Project	5,972
5.	Transport Sector Loan for National Road Network Improvement	9,534
6.	Red River Bridge Construction Project (III)	2,415
7.	Hanoi-Ho Chi Minh City Railway Line Bridges Safety Improvement Project	8,222
8.	Dong Nai and Baria-Vung Tau Provinces Water Supply Project (II)	3,308
	Total	79,330

Record of Discussions

In connection with the Exchange of Notes dated March 31, 2004, 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 (hereinafter referred to as "the Exchange of Notes"), the representatives of the Vietnamese Delegation and of the Japanese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, Vietnamese Note Verbale No.1820 BKH/KTDN dated March 31, 2004, and paragraphs 1 and 2 of Japanese Note Verbale No.J.D.35/2004 dated March 31, 2004. it was a shared view of the two Delegations that:

(a) suppliers and contractors of eligible source countries mean nationals of the eligible source countries or juridical persons incorporated and registered in those countries, and which have their appropriate facilities for producing or providing goods and services in those countries and actually conduct their business there;
(b) consultants of eligible source countries mean nationals of the eligible source countries or juridical persons controlled by nationals of those countries; 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 from 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 the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects enumerated in the list attached to the Exchange of Notes (hereinafter referred to as "the List"), the representative of Japanese Delegation stated that :

(a) such requirements of local currency as general administrative expenses, interest during construction, taxes and duties, expenses concerning office, 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 the Exchange of Notes (hereinafter referred to as "the Loan"); and
(b) the procurement of products and/or services will be made in accordance with the procedures of competitive tendering except where such procedures are inapplicable or inappropriate.

3. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the projects enumerated in the List exceeding the amount of the Loan under the loan agreements mentioned in sub-paragraph (1) of paragraph 2 of the

b) The rate of interest will be one and three-tenths per cent (1.3%) per annum with regard to the projects mentioned in 1, 5, 6 and 8 of the List and seventy-five-hundredths percent (0.75%) per annum with regard to the projects mentioned in 2, 3, 4 and 7 of the List; and

c) The disbursement period will be three (3) years with regard to the project mentioned in 3 of the List; six (6) years with regard to the projects mentioned in 2, 5, 6 and 8 of the List, seven (7) years with regard to the project mentioned in 4 of the List and eight (8) years with regard to the projects mentioned in 1 and 7 of the List from the dates of coming into force of the relevant loan agreements.

(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.

(3) The respective disbursement period mentioned in sub-paragraph (1) (c) above may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan shall be made available to cover payments already made and/or to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as have been and/or may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in the List, 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 may be used to cover eligible local currency requirements for the implementation of the projects enumerated in the List.

4. 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 are procured in accordance with the guidelines for procurement of the Bank, which set forth, inter alia, the procedures of international tendering to be followed except where such procedures are inapplicable or inappropriate.

5. With regard to the shipping and marine insurance of the products purchased under the Loan, 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.

6. 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 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.

7. 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 as well as interest accruing therefrom ;

(b) Japanese companies operating as suppliers, contractors, and/or consultants from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam with respect to the income accruing from the supply of products and/or services to be provided under the Loan; and

(c) 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 the List.

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

(a) the Loan be used properly and exclusively for the projects enumerated in the List; and

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

9. 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 the List.

10. The two Governments shall consult with each other in respect of any matter that may arise from or in connection with this understanding.

I should be grateful if Your Excellency would confirm the foregoing understanding on behalf of the Government of the Socialist Republic of Viet Nam."

I have further the honour to confirm on behalf of the Government of the Socialist Republic of Viet Nam the understanding set forth in Your Excellency's Note.

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

List

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1.	O Mon Thermal Power Plant Unit No.2 Construction Project	27,547
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(a) suppliers and contractors of eligible source countries mean nationals of the eligible source countries or juridical persons incorporated and registered in those countries, and which have their appropriate facilities for producing or providing goods and services in those countries and actually conduct their business there;
(b) consultants of eligible source countries mean nationals of the eligible source countries or juridical persons controlled by nationals of those countries; 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 from 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 the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects enumerated in the list attached to the Exchange of Notes (hereinafter referred to as "the List"), the representative of Japanese Delegation stated that :

(a) such requirements of local currency as general administrative expenses, interest during construction, taxes and duties, expenses concerning office, 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 the Exchange of Notes (hereinafter referred to as "the Loan"); and
(b) the procurement of products and/or services will be made in accordance with the procedures of competitive tendering except where such procedures are inapplicable or inappropriate.

3. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the projects enumerated in the List exceeding the amount of the Loan under the loan agreements mentioned in sub-paragraph (1) of paragraph 2 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 8 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 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 statements by the Japanese Delegation mentioned in paragraphs 2, 3, 4 and 5 above.

Hanoi, March 31, 2004

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Hanoi, March 31, 2004

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

Norio Hattori
Ambassador Extraordinary
and Plenipotentiary of Japan

MINISTRY OF PLANNING AND INVESTMENT
OF SOCIALIST REPUBLIC OF VIETNAM

Hanoi, March 31, 2004

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 a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam :

1. A loan in Japanese yen up to the amount of seventy-nine billion three hundred and thirty million yen (¥79.330,000,000) (hereinafter referred to as "the Loan") 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 the list attached hereto (hereinafter referred to as "the List") according to the allocation for each project as specified in the List.

2. (1) The Loan 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 as well as the procedures for its utilization will be governed by the said loan agreements which will contain, inter alia, the following principles :

a) The repayment period will be twenty (20) years after the grace period of ten (10) years with regard to the projects mentioned in 1, 5, 6 and 8 of the List, thirty (30) years after the grace period of ten (10) years with regard to the projects mentioned in 2, 3 and 4 of the List and twenty-eight (28) years after the grace period of twelve (12) years with regard to the project mentioned in 7 of the List;

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

BỘ NGOẠI GIAO

Số : 53 /2004 /LPQT

SAO Y BẢN CHÍNH

Hà Nội, ngày 12 tháng 7 năm 2004

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



Nguyễn 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 và đăng Công báo)
- Bộ Kế hoạch và Đầu tư,
- Bộ Tài chính,
- Bộ Công nghiệp,
- Bộ Quốc phòng,
- Bộ Giao thông - Vận tải,
- Bộ Nông nghiệp và Phát triển Nông thôn,
- Bộ Tài nguyên và Môi trường,
- Ngân hàng Nhà nước Việt Nam,
- Đại sứ quán Việt Nam tại Nhật Bản,
- Vụ Châu Á 1, Bộ Ngoại giao,
- Vụ Tổng hợp Kinh tế, 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 cho Chính phủ Việt Nam khoản tín dụng ưu đãi thuộc tài khóa 2003 trị giá 79,33 tỷ Yên, có hiệu lực từ ngày 31 tháng 3 năm 2004.