FINANCING AGREEMENT

between

THE EUROPEAN COMMUNITY

and

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

"European Technical Assistance Programme for Vietnam (ETV2)"
VNM/AIDCO/2002/0589

FINANCING AGREEMENT

*The European Community, hereinafter referred to as "**the Community**", represented by the Commission of the European Communities, hereinafter referred to as "THE COMMISSION", represented in turn by Commissioner Mr Chris Patten,*

of the one part, and

*The Socialist Republic of Vietnam, represented by the Government of Vietnam, hereinafter referred to as "**the Beneficiary**", represented by the Ministry of Planning and Investment, represented in turn by Minister Mr Vo Hong Phuc,*

of the other part,

HAVE AGREED AS FOLLOWS:

ARTICLE 1: FINANCING AGREEMENT, GENERAL TERMS AND CONDITIONS AND TECHNICAL AND ADMINISTRATIVE PROVISIONS.

The project described in Article 2 shall be implemented in accordance with the Financing Agreement, the General Terms and Conditions set out in Annex 1 and the Technical and Administrative Provisions in Annex 2. The Annexes form an integral part of this Agreement.

The Financing Agreement and the Technical and Administrative Provisions amend or supplement the General Terms and Conditions and, in the case of conflict, take precedence over the latter.

ARTICLE 2: NATURE AND PURPOSE OF THE OPERATION

THE COMMISSION shall provide a grant to contribute to the financing of the project referred to below:

Project number: ***VNM/AIDCO/2002/0589***

Title: ***"European Technical Assistance Programme for Vietnam (ETV2)"***

Hereinafter referred to as "the project" which is described in the Technical and Administrative Provisions in Annex 2.

ARTICLE 3: THE COMMUNITY'S COMMITMENT

The total cost of the project is estimated to be a maximum of 12.024.800 Euro (twelve million twenty four thousand eight hundred Euro).

The commitment of the Community is fixed at a maximum of 11.034.800 Euro (eleven million thirty four thousand eight hundred Euro), hereinafter referred to as the EC Grant.

This Financing Agreement is subject to an expiry date, after which any balance of funds remaining available under the EC Grant shall be automatically cancelled. THE COMMISSION may however, depending on the circumstances, agree to an appropriate extension of this expiry date, should such an extension be requested and properly justified by THE BENEFICIARY.

For the present project, the expiry date of the Financing Agreement is hereby set at 31st ***December 2008****.*

ARTICLE 4: THE BENEFICIARY'S COMMITMENT

The Beneficiary will make in-kind contributions to the Project to the counter-value of 990.000 Euro (nine hundred ninety thousand Euro) as indicated in the Technical and Administrative Provisions in Annex 2.

ARTICLE 5: CORRESPONDENCE

Correspondence relating to the implementation of this Agreement should be marked with the number and title of the project and be sent to:

(a) ***for the EUROPEAN COMMUNITY***
Commission of the European Communities,
EuropeAid Co-operation Office,
Direction D,
Rue de la Loi 200,
B-1049 Brussels, Belgium.
Through the:
Delegation of the Commisison of the European Communities,
The Metropole Centre,
56 Ly Thai To Street,
Hanoi, Vietnam.

(b) ***for the BENEFICIARY***

Mr. Vo Hong Phuc
Minister
Ministry of Planning and Investment
2, Hoang Van Thu Street
Hanoi, Vietnam
Tel. (844) 845 43 63
Fax. (844) 733 05 36

ARTICLE 6: ***ORIGINALS***

This Agreement shall be drawn up in triplicate, two for the Commission and one for the Beneficiary, the three texts being equally authentic.

ARTICLE 7: ***ENTRY INTO FORCE***

This Agreement shall enter into force on the date on which it is signed by the Parties. Any Party may rescind the Agreement by notifying the other Parties in writing. In that case, it shall continue to apply in respect of the obligations deriving from agreements or contracts concluded under this Agreement.

SIGNATURES

In witness whereof, the undersigned representatives, duly empowered to this effect, have signed this Agreement.

Done at Brussels

(Date) 05. 03. 2003

FOR THE EUROPEAN COMMUNITY

Done at Hanoi

(Date) 18. 04. 2003

FOR THE BENEFICIARY

Annex 1: *General Terms and Conditions*
Annex 2: *Technical and Administrative Provisions*

ANNEX 1

GENERAL TERMS AND CONDITIONS

TITLE I - PROJECT FINANCING

ARTICLE 1: THE COMMUNITY'S COMMITMENT

The Community's commitment for the project, which is specified in the Financing Agreement, shall determine the level of the Community's contribution.

The Community's financial commitment must be implemented by the time limit specified for the project in the Financing Agreement.

ARTICLE 2: THE BENEFICIARY'S COMMITMENT

If the Financing Agreement stipulates that the implementation of the project requires the Beneficiary to make a financial contribution, disbursement of the Community contribution shall be conditional on the Beneficiary's obligations being fulfilled.

ARTICLE 3: COST OVERRUNS

Cost overruns are incurred where, at the time the contract is awarded or the estimate for a project is drawn up, the amount of a contract or estimate exceeds the initial budget.

Cost overruns are also incurred where, in the course of implementation of a contract or estimate, as a result of an increase in the volume of work or change or adjustment to the project, taking into account the known or likely impact of price variations, the costs provided for in the contract or estimate, including contingency reserves, are likely to be exceeded.

Any cost overruns shall be borne by the Beneficiary.

ARTICLE 4: COVERING COST OVERRUNS

Once it appears that cost overruns are likely to be incurred, the Beneficiary shall inform the Commission and notify them of the measures which he intends to take in order to cover such cost overruns, either by reducing the scale of the project or calling on his own resources.

If the project cannot be scaled down or the overruns cannot be covered by the Beneficiary's own resources, the Commission may, exceptionally, at the Beneficiary's

substantiated request, adopt an additional Community financing decision. If the request is approved, the relevant costs shall be financed, without prejudice to the relevant Community rules and procedures, by an additional contribution to be set by the Commission.

TITLE II - IMPLEMENTATION

ARTICLE 5: GENERAL PRINCIPLE

The project shall be implemented by the Beneficiary in close collaboration with the Commission in accordance with the provisions of this Agreement.

ARTICLE 6: HEAD OF DELEGATION

The Head of Delegation shall represent the Commission vis-à-vis the Beneficiary's government for the purposes of implementing this Agreement and in respect of the funds for which the Commission acts as authorising officer.

ARTICLE 7: DISBURSEMENT

1. Where appropriate, the Beneficiary shall authorise and validate any expenditure covered by this Agreement against appropriations committed by the Commission. The Beneficiary shall remain financially liable to the Commission until the Commission clears the operations for the execution of which the Beneficiary is responsible.

2. For payments in currencies other than that of the Beneficiary's national currency the Commission shall make direct payment for services provided.

3. For payments in the Beneficiary's national currency at least two accounts must be opened in the sole name of the project:

- one account in Euro or in the currency of a Member State of the Community;
- one account in the Beneficiary's national currency.

These accounts shall be opened in the Beneficiary's country with a commercial financial institution recognised by the Beneficiary and approved by the Commission.

4. The accounts referred to in paragraph 3 shall be replenished to meet actual cash requirements. Transfers shall be made in Euro or, exceptionally, in the currency of a Member State, and shall be converted into the Beneficiary's national currency as payments fall due at the exchange rate applying on the date of payment.

5. Interest on the deposits in the accounts referred to in paragraph 3 shall be used exclusively for the project. The interest, which should be entered under a separate heading in the accounts, and the charges on these accounts shall accrue to or be borne by the project. However, the Commission's prior approval is required before the interest can be used for the project.

6. At regular intervals, and, at least once every quarter, the Beneficiary shall send the Commission a statement of actual expenditure and revenue, together with supporting documents. These documents and all accounts shall be kept for five years following the last date of payment.

ARTICLE 8: PAYMENT PROCEDURES

1. Payments to contractors shall be made in Euro, directly by the Commission, for contracts made out in Euro. Payments for contracts in the Beneficiary's national currency shall be made in this currency.

2. Contracts signed under this Agreement shall be eligible for payment only if they have been concluded before the date of expiry for activities under this Agreement. The last payment for such contracts must be effected no later than the final date for financial commitments set in Article 3 of the Financing Agreement.

TITLE III - AWARD OF CONTRACTS

ARTICLE 9: GENERAL RULE

Notwithstanding Articles 12 and 13, works and supply contracts shall be awarded after open invitations to tender and service contracts shall be awarded after restricted invitations to tender.

ARTICLE 10: ELIGIBILITY

1. Tendering procedures for works, supply and service contracts shall be open on equal terms to all natural and legal persons of the Member States of the Community and to all natural and legal persons of the Beneficiary country.

2. For jointly financed projects, the Commission, treating each case on its own merits, may agree to allow nationals of countries other than the partner countries concerned to bid for tenders and contracts. In such instances, firms from third countries shall be eligible only if there are reciprocal arrangements.

ARTICLE 11: EQUALITY OF CONDITIONS

The Commission and the Beneficiary shall take the necessary steps to ensure the widest possible participation on equal terms in tendering procedures and in works, supply and service contracts financed by the Community.

To this end they shall:

- ensure invitations to tender are published far enough ahead in the Official Journal of the European Communities and the official gazette of the Beneficiary's country;

- remove any discriminatory practice or technical specifications which could prevent wide participation, on equal terms, by any natural or legal person referred to in Article 10.

ARTICLE 12: WORKS AND SUPPLY CONTRACTS

Works and supply contracts shall be awarded on the basis of the general terms and conditions applying to such contracts and approved by the Commission.

Exceptionally, in urgent cases or where the nature, small scale or particular features of certain work or supplies warrant, the Commission or the Beneficiary, with the Commission's agreement, may authorise:

- contracts to be awarded on an open invitation to tender restricted to tenderers from particular geographical areas;
- contracts to be awarded on restricted invitation to tender;
- contracts to be concluded by direct agreement;
- contracts to be performed by direct labour.

ARTICLE 13: TENDER DOSSIER

1. For works and supply contracts, the Beneficiary shall submit the tender dossiers for the Commission's approval before invitations to tender are issued. On the basis of the decisions approved, and in close collaboration with the Commission, the Beneficiary shall issue invitations to tender, receive and assess tenders, and select the successful tenderer.

2. The Commission shall always be represented when tenders are opened. The Commission has the right to be present, as an observer when the tenders are assessed.

3. The Beneficiary shall submit the results of the scrutiny of the tenders and the name of the proposed contractor to the Commission for approval. With the Commission's prior approval the Beneficiary shall sign contracts, riders thereto and estimates and shall notify the Commission thereof. The Commission shall, if necessary, make individual commitments for contracts, riders thereto and estimates. Individual commitments shall take precedence over commitments under the Financing Agreement.

ARTICLE 14: SERVICE CONTRACTS

1. As a general rule, service contracts shall be prepared, negotiated and concluded by the Commission on the Beneficiary's behalf.

2. The Commission shall draw up, if necessary after prequalification, a short list of candidates on the basis of criteria which guarantee the qualifications, professional experience and independence of bidders, and their availability for the operation in question.

3. If express provision is made in the Agreement, the responsibilities referred to in paragraph 1 shall be delegated to the Beneficiary with the Commission's approval and under a representative's supervision. In that case the general specifications for public service contracts financed by the European Community shall apply.

ARTICLE 15: PROCEDURES APPLYING TO LOCAL CONTRACTS

The procedures for service, supply and works contracts in the Beneficiary country are set out in the Technical and Administrative Conditions to the Agreement.

ARTICLE 16: CRITERIA FOR THE SELECTION OF CONTRACTORS

For each operation the Commission and the Beneficiary shall ensure that the tender selected is the economically most advantageous in terms of the price of the services provided, costs, technical value, qualifications and guarantees provided by tenderers, and the type of the works or supplies and the conditions of performance. These criteria must be mentioned in the tender document and the notice of contract award.

TITLE IV - PERFORMANCE OF THE CONTRACT

ARTICLE 17: ESTABLISHMENT AND RIGHT OF RESIDENCE

Natural and legal persons participating in tendering and works, supply or service contracts shall be granted equal and provisional right of establishment and residence in the Beneficiary's country where this is justified by the nature of the contract. This right shall remain valid for one month after the contractor is selected.

Contractors and natural persons and members of their family whose services are required for the contract shall enjoy similar rights for the duration of the contract up to one month following the final acceptance of work performed under the contract.

ARTICLE 18: ORIGIN OF SUPPLIES

The supplies required for the performance of works, supply and service contracts must originate in countries allowed to participate pursuant to Article 10, unless an exception is authorised by the Commission.

ARTICLE 19: TAX AND CUSTOMS ARRANGEMENTS

1. No tax, duties or other charges shall be financed from the Community's contribution.

2. In context of the co-operation, the Beneficiary government shall apply to contracts financed by the Community tax and customs arrangements no less favourable than those applied to the most-favoured State or most-favoured international organisation.

ARTICLE 20: FOREIGN EXCHANGE ARRANGEMENTS

The Beneficiary's government shall undertake to authorise the import or acquisition of foreign exchange required for implementation of the project. It shall also undertake to apply its national rules on foreign exchange on a non-discriminatory basis to the countries authorised to participate pursuant to Article 10.

ARTICLE 21: INTELLECTUAL PROPERTY

If studies are financed under this Agreement the Commission and the Beneficiary shall be entitled to use the data contained in such studies, and to publish it or pass it on to third parties.

ARTICLE 22: DISPUTES BETWEEN THE BENEFICIARY AND CONTRACTOR

1. Without prejudice to paragraph 2 any disputes which arise between the Beneficiary and a contractor, during implementation of a contract financed by the Community shall be settled in accordance with the conciliation and arbitration rules of the International Chamber of Commerce in Paris.

2. The Beneficiary shall undertake to reach agreement with the Commission before a final position is taken on any request for compensation, irrespective of whether it is justified, from the contractor. If no agreement can be reached, the Commission shall not provide a financial commitment for any amounts granted unilaterally including those by the Beneficiary.

TITLE V - GENERAL AND FINAL PROVISIONS

ARTICLE 23: VISIBILITY

The project shall be implemented in such a way to ensure maximum visibility for the European Community's involvement at all times. Actions of communication and information shall be determined in close collaboration with the EC Delegation.

Special attention shall be devoted to implementing these rules at events and in all public or official written material connected with the project. Objects, equipment and documentation connected with the project shall carry the European Community flag with the text in the language of the Beneficiary. The symbols identifying the European Community shall be of the same size and appearance as any symbols identifying the Beneficiary, should the latter be present.

ARTICLE 24: AUDITING OF ACCOUNTS

1. The Commission shall have the right to send its own agents or authorised representatives to undertake any technical, accounting or financial assignments it may consider necessary to monitor the implementation of the project.

2. The Court of Auditors, in the accomplishment of its responsibilities under the Treaty establishing the European Community, shall have the right to undertake a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the project and on the spot.

3. The Beneficiary shall be notified if agents appointed by the Commission or the Court of Auditors are sent to the project site.

4. To this end the Beneficiary:

- shall undertake to provide any information or documents requested, and to take any measures to facilitate the work of persons undertaking such audits;

- shall keep the dossiers and accounts required to identify the work, supplies or services financed under this Agreement and the supporting documents relating to local expenditure in accordance with the best accounting practice;

- shall assist the Court of Auditors, in the accomplishment of its responsibilities under the Treaties establishing the European institutions, in auditing the project's accounts, if necessary, on the spot;

- shall ensure the Commission's representatives can inspect any accounting or other documents relating to projects financed under this Agreement and shall assist the Court of Auditors in monitoring the use made of Community funds.

ARTICLE 25: CONCILIATION

1. Any matter relating to the implementation or interpretation of this Agreement shall give rise to consultation between the Beneficiary and the Commission. This procedure may, if necessary, lead to this Agreement being amended.

2. If any obligation under the Agreement is not met, the Commission may suspend financing after consulting the Beneficiary.

3. The Beneficiary may decide to withdraw wholly or partially from the project with the Commission's approval.

4. Any decision taken by the Commission to suspend financing or by the Beneficiary to withdraw totally or partially from a project shall be notified to all Parties in writing.

ARTICLE 26: ARBITRATION

Any dispute between the Community and the Beneficiary, arising from the implementation of this Agreement which is not settled by common accord by the Parties in due time, shall be settled by arbitration, in accordance with the Permanent Court of Arbitration's Optional Rules for Arbitration involving International Organisations and States (The Hague).

ARTICLE 27: NOTIFICATION – ADDRESSES

Any communication or agreement between the Parties shall be recorded in writing giving the number and title of the project. This shall be sent by letter to the authorised addressee at the latter's address. In emergencies, communications by fax, telegram or telex shall be allowed provided they are immediately confirmed by letter. The addresses shall be set out in the Financing Agreement.

ANNEX 2:

Technical and Administrative Provisions

Beneficiary:	GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM
Title:	European Technical Assistance Programme for Vietnam (ETV2)
Project no:	VNM/AIDCO/2002/0589

1. OBJECTIVES

1.1 Overall Objectives

The overall objective of the European Technical Assistance Programme for Vietnam (ETV2) is to improve economic and social development in Vietnam during its period of transition to a market economy. This is to be achieved by facilitating better decision making in the public and private sector, and the development of clear, rational, transparent policies, strategies, plans and legislation through a strengthening of policy/legislation making capacity and of means of implementation.

1.2 Project Purpose

The specific purposes of the project are:

- To enhance capacity for raising domestic revenue at the Ministry of Finance for all major revenue sources at all levels;
- To strengthen policy making and to develop and apply related tools for implementation;
- To improve auditing/accounting and insurance legislation and develop related standards in line with international ones;
- To improve information management, monitoring systems and statistical analysis at the Ministry of Planning;
- To create confidence in the process of Measuring, Standardisation, Testing and Quality.

1.3 Main Results

- Increased revenue raising capacities as a consequence of an improved policy making process;
- Effective taxation / custom laws and procedures and a fair and equitable tax collecting system;
- The completion of legal frameworks for accounting, auditing and insurance in accordance with international standards;
- Accurate statistical analysis, forecasting and monitoring to support policy decision making process;
- A legal framework for standards and quality assurance in line with international standards; establishment of national normative corpus completed.

1.4 Location

The project will be implemented primarily in the Socialist Republic of Vietnam, with some activities that could take place in Europe or South-East Asia.

1.5 Logical Framework

Initial Logical Framework for the overall project is annexed hereby as Attachment A, while initial Logical Frameworks for the project's components are annexed as Attachment B. These may be updated or adapted in the Overall Work Plan, to which they will then be annexed, without necessitating an amendment to the Financing Agreement, but cannot change the project's purpose.

2. PROJECT DESCRIPTION

The project is composed of six components. Component 1-5 will be jointly tendered and implemented by one European consulting company. Component 6 will be tendered separately and implemented by a European consulting company.

2.1 Activities

The overall project period (4 years) and related activities can be divided into three phases, an inception phase of three months, the main operational phase and the phasing out.

In order to achieve the agreed and expected results, activities will comprise, in general:

1. Collecting, analysing and processing of data/info from various sources (tax, customs, central statistics office (GSO), trade, regional/local government, chamber of commerce (VCCI) etc.)
2. Reviewing existing laws and regulations, checking for inconsistencies, problem areas and assessing public reaction (especially regarding legal, administrative changes)
3. Discussing problem areas with the private sector, tax paying public, business organisations, industry, importers etc: improving dialogue and info exchange
4. Conducting workshops/seminars, on topics related both to policy analysis, and to the dissemination (Public Relations) of new policies and legal provisions
5. Assuring effective functioning of the Steering Committees and secretariats
6. Conducting on the job training for counterparts, secretariat staff and more formal training on policy analysis for larger groups of officials at the concerned Ministries and other administrations
7. Preparing notes, memos, discussion papers, studies on critical and urgent issues.
8. Assisting open and effective dialogue between the various ministries and regional/local governments.
9. Recruiting qualified Short Term Experts (STE) and Local Experts, assuring good preparation, and providing optimum and relevant inputs and sound follow-up.
10. Publishing and distributing results of studies, new legislation, procedures etc. in co-operation with organisations working directly with the private sector (e.g. Vietnam Chamber of commerce and Industry)
11. Developing and effectively applying a sound Monitoring and Evaluation System.

In order that its objectives can be fully achieved, the programme is divided into six project components:

- Component 1: Fiscal Policy and Legal Advisory Services
- Component 2: Taxation
- Component 3: Customs
- Component 4: Accounting, Auditing, Insurance
- Component 5: Statistical Analysis, Policy Tools
- Component 6: Standards and Quality Control

Specific activities listed by component are:

Component 1:

- Undertaking legal and policy needs analysis and producing a strategic plan.
- Identifying technical revenue collection and legal issues for discussion, problem-solving, and decision-making.
- Design management, organisation and administration guidelines.
- Mobilisation and effective utilisation of the services and advice provided by long-term advisers and short-term experts.
- Performing technical and legal needs analysis regarding local and regional taxes/revenue sources and proposing improvements for inter-governmental fiscal relations.
- Identifying legal tax potentials, proposing improvements for increased utilisation of potentials.
- Initiating an overall review of efficiency and effectiveness of fiscal systems. Developing criteria for measuring performance for tax and custom apparatus.
- Carrying out a study on equity and incidence of revenue system.

Component 2 + 3:

- Establishing stable and comprehensive legal frameworks.
- Drafting laws in keeping with international standards.
- Producing subsidiary legislation, regulations and procedures.
- Carrying out priority projects.
- Putting management and operational planning systems in place.
- Developing and testing methods and systems for revenue projections/forecasting.
- Putting operational systems in place.

Component 4:

- Enhancing capacity to conduct sound policy research and application at the Department for Accounting Policies and the Department of Banking and Financial Institutions of the Ministry of Finance.
- Preparing and applying effective and sound laws/regulations, policies, and standards in accounting, auditing and insurance at the Ministry of Finance.
- Preparing decrees for the implementation of the law on accounting for business enterprises and on the implementation of the law on accounting for administrative units;
- Assisting in continually preparing and publishing accounting as well as auditing standards in line with international standards and suitable for Vietnamese management and the tendency to economic integration to obtain international recognition
- Preparing and issuing guidelines on accounting and auditing standards;
- Supporting the activities of the National Council of Accounting (NCA);
- Re-developing a training curriculum for accounting and auditing.
- Assisting the institutional development of the Insurance Supervision Division, by developing an early warning system, together with processes and methods for recovering payments; developing regulation(s) on state management in supplying over-the-border services; developing reports on legal and financial aspects of capital requirements based on risks; building models of insurance management authority: framework of organisation.