Tokyo, June 6, 2017

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 thirty-eight billion four hundred and eighty-two million yen (¥38,482,000,000) (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 the Japan International Cooperation Agency (hereinafter referred to as "JICA") for the purpose of implementing the Maritime Security and Safety Capacity Improvement Project (hereinafter referred to as "the Project").

2. (1) The Loan will be made available by a loan agreement to be concluded between the Government of the Socialist Republic of Viet Nam and JICA. The terms and conditions of the Loan as well as the procedures for its utilization will be governed by the said loan agreement, within the scope of the present understanding, which will contain, inter alia, the following principles:

(a) The repayment period will be thirty (30) years after the grace period of ten (10) years;

(b) The rate of interest will be nought point one per cent (0.1%) per annum;

His Excellency
Mr. Nguyen Chi Dung
Minister of Planning and Investment
of the Socialist Republic of Viet Nam

with the guidelines for procurement of such, which are

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, in accordance with the relevant laws of the Socialist Republic of Viet Nam, 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. (1) The Government of the Socialist Republic of Viet Nam shall exempt JICA 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.

(2) The Government of the Socialist Republic of Viet Nam shall ensure that import tax, value added tax and special consumption tax imposed in the Socialist Republic of Viet Nam on Japanese companies operating as suppliers, contractors and/or consultants with respect to import of materials and equipment necessary for the implementation of the Project are borne by the executing agency of the Project.

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

(a) to ensure that the Loan be used properly and exclusively for the Project;

(b) to ensure and maintain the safety of persons engaged in the implementation of the Project and of the general public of the Socialist Republic of Viet Nam in maintaining and using the products purchased under the Loan;

(c) to ensure that the products purchased under the Loan be maintained and used properly and effectively for the purpose prescribed in the present understanding;

(d) to ensure that products purchased under the Loan are used properly and exclusively for the purpose of enhancing capacity of the Socialist Republic of Viet Nam for maritime security, and not for military purposes; and

(e) not to transfer to any person not an officer of the Government of the Socialist Republic of Viet Nam, nor to any other government, title to or possession of products purchased under the Loan without the prior written consent of the Government of Japan.

9. While ensuring fair treatment of sources of information and data, the Government of the Socialist Republic of Viet Nam shall, upon request, furnish the Government of Japan and JICA with:

(a) information and data concerning the progress of the implementation of the Project; and

(b) any other information, including information on corrupt practice, related to the Project.

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

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.

梅田邦夫

Kunio Umeda
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Socialist Republic
of Viet Nam

Record of Discussions

In connection with the Notes exchanged between the Government of the Socialist Republic of Viet Nam and the Government of Japan on June 06,2017, concerning a Japanese loan up to thirty-eight billion four hundred and eighty-two million yen 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, paragraph 1 of the Japanese Note Verbale No. J.F.569/2017 dated June 06,2017, and the Vietnamese Note Verbale No. 4554/BKHDT-KTDN dated June 06,2017, 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;

(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%); and

(d) notwithstanding sub-paragraph (a) above, in cases where a subsidiary incorporated in a country or region other than Japan is included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances, such a subsidiary will be regarded as a Japanese supplier or contractor.

2. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, paragraph 2 of the Japanese Note Verbale, and the Vietnamese Note Verbale mentioned in paragraph 1 above, it was a shared view of the two Delegations that:

(1) 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 companies 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 or region.

(2) products procured from a manufacturing company in a developed country or region other than Japan will be regarded as products procured from Japan if it is a subsidiary included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances.

(3) products procured from a manufacturing company invested in by one or more Japanese companies and located in one of the developing countries and territories listed in the List of Recipients of Official Development Assistance approved by the Development Assistance Committee of the Organization for Economic Co-operation and Development other than the Socialist Republic of Viet Nam, will be regarded as products procured from Japan, if they meet the following:

(a) not less than one third (1/3) of the shares of the manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above is the same as or greater than that of the shares held by any company of a country or region other than Japan and the country or the territory where the manufacturing company is located.

3. With regard to paragraph 2 of the Japanese Note Verbale and the Vietnamese Note Verbale mentioned in paragraph 1 above, it was a shared view of the two Delegations that:

(a) any services provided by a company of a country or region other than Japan which forms a joint venture with a Japanese company will not be regarded as services provided by a Japanese company; and

(b) services provided by a subsidiary in a country or region other than Japan included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances will be regarded as services provided by a Japanese company.

4. 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 project mentioned in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Project"), 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 agency and housing, not directly related to the implementation of the Project, 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 bidding except where such procedures are inapplicable or inappropriate.

5. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the Project exceeding the amount of the Loan under the loan agreement 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 Project.

6. With regard to paragraph 8 of the Exchange of Notes:

(a) the representative of the Japanese Delegation stated that 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;

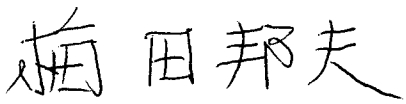
(b) the representative of the Japanese Delegation stated that the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which the Japan International Cooperation Agency (hereinafter referred to as "JICA") will designate and to be paid at JICA's expense, in order to ensure fairness and competitiveness of the procurement process; and

(c) the representative of the Vietnamese Delegation confirmed that the products and services purchased under the Loan shall not be utilized for military purposes.

7. The representative of the Vietnamese Delegation stated that the Vietnamese Delegation had no objection to the statements by the Japanese Delegation mentioned in paragraphs 4, 5 and 6.



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