MINISTRY OF PLANNING AND INVESTMENT
OF SOCIALIST REPUBLIC OF VIETNAM

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

Hanoi, March 22, 2000

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 twenty-one billion three hundred and seven million yen (¥21,307,000,000) (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 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 :

His Excellency
Mr. Takeshi Nakamura
Ambassador Extraordinary and Plenipotentiary of Japan
to the Socialist Republic of Viet Nam

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

(ii) The rate of interest will be one per cent (1.0%) per annum;

(b) Notwithstanding sub-paragraphs (a) above, where a part of the Loan is made available to cover payments to consultants of the projects enumerated in the List, the rate of interest of the said part will be seventy-five-hundreds percent (0.75%) per annum; and

(c) The disbursement period will be seven (7) years 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 project to which such loan agreement relates.

(3) The 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 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 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 will 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 will 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.

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 will refrain from imposing any restrictions that may hinder fair and free competition of 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 will 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 will exempt :

VU LUAT PHAP VA DIEU UOC QUOC TE
- BO NGOAI GIAO

(1) 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 ;

(2) Japanese companies operating as suppliers, contractors, and/or consultants from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on the income accruing from the supply of products and/or services required for the implementation of the projects enumerated in the List; and

(3) Japanese companies operating as 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 required for the implementation of the projects enumerated in the List.

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

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

(2) 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 will, 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 will consult with each other in respect of any matter that may arise from or in connection with the foregoing 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.

Tran Xuan Gia
Minister of Planning and Investment
of the Socialist Republic of Vietnam

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

Record of Discussions

In connection with the Exchange of Notes dated March 22, 2000, 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 Japanese Delegation and of the Vietnamese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, 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 the mentioned countries, and which have their appropriate facilities for producing or providing the goods and services in those countries and actually conduct their business there; and

(b) consultants of eligible source countries mean nationals of the eligible source countries or juridical persons controlled by nationals of the mentioned countries.

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 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

VU LUAT PHAP VA DIEU UOC QUOC TE
- BO NGOAI GIAO

manufacturing 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 manufacturing company; and

(b) The proportion of the shares held by a Japanese manufacturing company is the same as or greater than that of the shares held by a company of a third country.

5. The representative of the Japanese Delegation stated that the eligible nationality for contractors of sub-contract directly under any prime contract to be concluded for the implementation of the projects enumerated in the List will be Japan and the Socialist Republic of Viet Nam, and that the eligible nationality for contractors of further sub-contract may be all countries and areas.

6. With regard to paragraph 4 of the Exchange of Notes, the representative of the Japanese Delegation stated that the executing agencies of the Socialist Republic of Viet Nam are encouraged to reduce the number of tender packages to the extent possible for greater efficiency in procurement.

7. 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 make sure that ex-post procurement audit be carried out periodically by independent auditors to ensure fairness and competitiveness of the procurement process.

8. The representative of the Vietnamese Delegation stated that his delegation had no objection to the statements by the Japanese Delegation mentioned in 2 and 7 above.

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

Tran Xuan Gia
Minister of Planning and Investment
of the Socialist Republic of Vietnam

Takeshi Nakamura
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Socialist Republic of Viet Nam

EMBASSY OF JAPAN
HANOI

Hanoi, March 22, 2000

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

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 twenty-one billion three hundred and seven million yen (¥21,307,000,000) (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 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) (i) The repayment period will be thirty (30) years after the grace period of ten (10) years ;

(ii) The rate of interest will be one per cent (1.0%) per annum;

His Excellency
Mr. Tran Xuan Gia
Minister of Planning and Investment
of the Socialist Republic of Viet Nam

(b) Notwithstanding sub-paragraphs (a) above, where a part of the Loan is made available to cover payments to consultants of the projects enumerated in the List, the rate of interest of the said part will be seventy-five-hundreds percent (0.75%) per annum; and

(c) The disbursement period will be seven (7) years 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 project to which such loan agreement relates.

(3) The 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 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 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 will 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 will 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.

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 will refrain from imposing any restrictions that may hinder fair and free competition of 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 will 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 will exempt :

(1) 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 ;

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ - BỘ NGOẠI GIAO

(2) Japanese companies operating as suppliers, contractors, and/or consultants from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on the income accruing from the supply of products and/or services required for the implementation of the projects enumerated in the List; and

(3) Japanese companies operating as 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 required for the implementation of the projects enumerated in the List.

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

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

(2) 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 will, 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 will consult with each other in respect of any matter that may arise from or in connection with the foregoing 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.

Takeshi Nakamura
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Socialist Republic of Viet Nam

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

LIST

	(Maximum Amount in Million Yen)
1. Hai Phong Port Rehabilitation Project (II)	13,287
2. Binh Bridge Construction Project	8,020
Total :	21,307

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

Record of Discussions

In connection with the Exchange of Notes dated March 22, 2000, 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 Japanese Delegation and of the Vietnamese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, 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 the mentioned countries, and which have their appropriate facilities for producing or providing the goods and services in those countries and actually conduct their business there; and

(b) consultants of eligible source countries mean nationals of the eligible source countries or juridical persons controlled by nationals of the mentioned countries.

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 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

VU LUAT PHAP VA DIEU UOC QUOC TE - BO NGOAI GIAO

manufacturing 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 manufacturing company; and

(b) The proportion of the shares held by a Japanese manufacturing company is the same as or greater than that of the shares held by a company of a third country.

5. The representative of the Japanese Delegation stated that the eligible nationality for contractors of sub-contract directly under any prime contract to be concluded for the implementation of the projects enumerated in the List will be Japan and the Socialist Republic of Viet Nam, and that the eligible nationality for contractors of further sub-contract may be all countries and areas.

6. With regard to paragraph 4 of the Exchange of Notes, the representative of the Japanese Delegation stated that the executing agencies of the Socialist Republic of Viet Nam are encouraged to reduce the number of tender packages to the extent possible for greater efficiency in procurement.

7. 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 make sure that ex-post procurement audit be carried out periodically by independent auditors to ensure fairness and competitiveness of the procurement process.

8. The representative of the Vietnamese Delegation stated that his delegation had no objection to the statements by the Japanese Delegation mentioned in 2 and 7 above.

VU LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

Takeshi Nakamura
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Socialist Republic of Viet Nam

Tran Xuan Gia
Minister of Planning and Investment
of the Socialist Republic of Vietnam

BỘ NGOẠI GIAO

Số : 22/LPQT

SAO Y BẢN CHÍNH
(Để thực hiện)

Hà Nội, ngày 28 tháng 03 năm 2000

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

Đỗ Hoà Bình

VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
- BỘ NGOẠI GIAO

Nơi nhận :

- Văn phòng Chính phủ (để báo cáo),
- Bộ Kế hoạch và Đầu tư,
- Bộ Tài chính,
- Bộ Thương mại,
- Ngân hàng Nhà nước Việt Nam,
- Tổng cục Hải quan,
- Đại sứ quán Việt Nam tại Nhật Bản,
- Vụ Châu Á I,
- Vụ LPQT,
- Lưu trữ.

Ghi chú : *Công hàm trao đổi giữa Chính phủ nước Cộng hoà Xã hội chủ nghĩa Việt nam và Chính phủ Nhật Bản về khoản tín dụng 21,307 tỷ Yên của Chính phủ Nhật Bản dành cho Chính phủ Việt Nam trong khuôn khổ Chương trình tín dụng đặc biệt* bắt đầu có hiệu lực từ ngày 22 tháng 3 năm 2000.