

AGREEMENT BETWEEN JAPAN AND THE SOCIALIST REPUBLIC OF VIETNAM FOR THE LIBERALIZATION, PROMOTION AND PROTECTION OF INVESTMENT

Japan and the Socialist Republic of Vietnam,

Desiring to further promote investment in order to strengthen the economic relationship between the two countries;

Intending to further create favorable conditions for greater investment by investors of one country in the Area of the other country;

Recognizing the growing importance of the progressive liberalization of investment for stimulating initiative of investors and for promoting prosperity in both countries; and

Recognizing that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Have agreed as follows:

Article 1.

For the purposes of this Agreement,

(1) The term "investor" means with respect to a Contracting Party:

(a) A natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or

(b) A legal person or any other entity constituted or organized under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government owned or controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association and organization.

(2) The term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

(a) An enterprise (being a legal person or any other entity constituted or organized under the applicable laws and regulations of a Contracting Party, whether or not for profit, and whether private or government owned or controlled, and includes a company, corporation, trust, partnership, sole proprietorship, branch, joint venture, association and organization);

(b) Shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

(c) Bonds, debentures, loans and other forms of debt, including rights derived therefrom;

(d) Rights under contracts, including turnkey, construction, management, production or revenuesharing contracts;

(e) Claims to money and to any performance under contract having a financial value;

(f) Intellectual property rights, including trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or appellations of origin, and undisclosed information;

(g) Concession rights including those for the exploration and exploitation of natural resources; and

(h) Any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Investments include the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(3) The term "Area" means with respect to a Contracting Party (a) the territory of that Contracting Party; and (b) the exclusive economic zone and the continental shelf with respect to which that Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

Article 2.

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to its own investors and their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments (hereinafter referred to as "investment activities").

2. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords in like circumstances to investors of any third country and to their investments with respect to investment activities.

Article 3.

Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favorable than the treatment which it accords in like circumstances to its own investors or investors of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 4.

1. Neither Contracting Party shall impose or enforce, as a condition for investment activities in its Area of an investor of the other Contracting Party, any of the following requirements:

- (a) To export a given level or percentage of goods or services;
- (b) To achieve a given level or percentage of domestic content;
- (c) To purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;
- (d) To relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (e) To restrict sales of goods or services in its Area that investments of that investor produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;
- (f) To appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (g) To transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when the requirement (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or (ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization;
- (h) To locate the headquarters of that investor for a specific region or the world market in its Area;
- (i) To achieve a given level or value of research and development in its Area; or
- (j) To supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Contracting Party.

2. The provisions of paragraph 1 above do not preclude either Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Contracting Party, on compliance with any of the requirements set forth in paragraph 1 (f) through (j) above.

Article 5.

1. Notwithstanding the provisions of Article 2 or 4, each Contracting Party may adopt or maintain any measure not conforming with the obligations imposed by Article 2 or 4 (hereinafter referred to as an "exceptional measure") in the sectors or with respect to the matters specified in Annex 1 to this Agreement.

2. Each Contracting Party shall, on the date on which this Agreement comes into force, notify the other Contracting Party of all existing exceptional measures in the sectors or with respect to the matters specified in Annex 1. Such notification shall include information on the following elements of each exceptional measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of the exceptional measure; (c) legal source of the exceptional measure; (d) succinct description of the exceptional measure; and (e) purpose of the exceptional measure.

3. In cases where a Contracting Party adopts any new exceptional measure in the sectors or with respect to the matters specified in Annex 1 after the entry into force of this Agreement, such Contracting Party shall, prior to the entry into force of the exceptional measure or, in exceptional circumstances, as soon thereafter as possible:

(a) Notify the other Contracting Party of the elements of the exceptional measure as set out in paragraph 2 above; and paragraph 2 above; and

(b) Hold, upon request by that other Contracting Party, consultations in good faith with that other Contracting Party with a view to achieving mutual satisfaction.

Article 6.

1. Notwithstanding the provisions of Article 2 or 4, each Contracting Party may maintain any exceptional measure, which exists on the date on which this Agreement comes into force, in the sectors or with respect to the matters specified in Annex II to this Agreement.

2. Each Contracting Party shall, on the date on which this Agreement comes into force, notify the other Contracting Party of all existing exceptional measures in the sectors or with respect to the matters specified in Annex II. Such notification shall include information on the following elements of each exceptional measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of the exceptional measure; (c) legal source of the exceptional measure; (d) succinct description of the exceptional measure; and (e) purpose of the exceptional measure.

3. Each Contracting Party shall endeavor to progressively reduce or eliminate the exceptional measures notified pursuant to paragraph 2 above. paragraph 2 above.

4. Neither Contracting Party shall, after the entry into force of this Agreement, adopt any new exceptional measure in the sectors or with respect to the matters specified in Annex II.

5. The provisions of paragraph 4 above shall not be construed so as to prevent a Contracting Party from amending or modifying any existing exceptional measure, provided that such amendment or modification does not decrease the conformity of the exceptional measure, as it existed immediately before the amendment or modification, with the provisions of Article 2 or 4.

6. In cases where a Contracting Party makes such amendment or modification, the Contracting Party shall, prior to the entry into force of the exceptional measure or, in exceptional circumstances, as soon thereafter as possible:

(a) Notify the other Contracting Party of the elements of the exceptional measure as set out in paragraph 2 of this Article; and paragraph 2 of this Article; and

(b) Provide, upon request by that other Contracting Party, particulars of the exceptional measure to that other Contracting Party.

7. Notwithstanding the provisions of paragraph 4 of this Article, each Contracting Party may, in exceptional financial, economic or industrial circumstances, adopt any exceptional measure in the sectors or with respect to the matters specified in Annex II, provided that such Contracting Party shall, prior to the entry into force of the exceptional measure:

(a) Notify the other Contracting Party of the elements of the exceptional measure as set out in paragraph 2 of this Article; paragraph 2 of this Article;

(b) Provide, upon request by that other Contracting Party, particulars of the exceptional measure to that other Contracting Party;

(c) Allow that other Contracting Party reasonable time to make comments in writing;

(d) Hold, upon request by that other Contracting Party, consultations in good faith with that other Contracting Party with a view to achieving mutual satisfaction; and

(e) Take an appropriate action based upon the written comments made pursuant to sub-paragraph (c) of this paragraph or the results of the consultations held pursuant to sub-paragraph (d) above.

Article 7.

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect investment activities.

2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1 above.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

Article 8.

Each Contracting Party shall, in accordance with its applicable laws and regulations, give sympathetic consideration to applications for the entry, sojourn and residence of a natural person having the nationality of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain therein for the purpose of investment activities.

Article 9.

1. Each Contracting Party shall accord to investments in its Area of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

2. Neither Contracting Party shall expropriate or nationalize investments in its Area of investors of the other Contracting Party or take any measure tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) upon payment of prompt, adequate and effective compensation; and (d) in accordance with due process of law.

3. Compensation shall be equivalent to the fair market value of the expropriated investments immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time until the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currencies as defined in the Articles of Agreement of the International Monetary Fund, at the market exchange rate prevailing on the date of expropriation.

4. Without prejudice to the provisions of Article 14, the investors affected shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation for a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

Article 10.

An investor of a Contracting Party, which has suffered loss or damage relating to its investment activities in the Area of the other Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that other Contracting Party, shall be accorded by that other Contracting Party, as regards restitution, indemnification, compensation or any other settlement, treatment no less favorable than that which it accords to its own investors or to investors of any third country, whichever is more favorable to the investor.

Article 11.

If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or contract of insurance given in respect of investments of such investor in the Area of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its

designated agency of any right or claim of such investor on account of which such payment is made and shall recognize the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as its predecessor in title. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, the provisions of paragraph 2 to 4 of Article 9 and Article 12 shall apply mutatis mutandis.

Article 12.

1. Each Contracting Party shall ensure that all payments relating to investments in its Area of an investor of the other Contracting Party may be freely transferred into and out of its Area without delay. Such transfers shall include, in particular, though not exclusively:

- (a) The initial capital and additional amounts to maintain or increase investments;
- (b) Profits, interest, capital gains, dividends, royalties and fees;
- (c) Payments made under a contract including a loan agreement;
- (d) Proceeds of the total or partial sale or liquidation of investments;
- (e) Payments made in accordance with Article 9 and 10; Article 9 and 10;
- (f) Payments arising out of the settlement of a dispute under Article 14; and Article 14; and
- (g) Earnings and remuneration of personnel engaged from the other Contracting Party in connection with investments.

2. Neither Contracting Party shall prevent transfers from being made without delay in freely convertible currencies at the market rate of exchange existing on the date of the transfer.

3. Notwithstanding paragraph 1 and 2 above, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) Bankruptcy, insolvency or the protection of the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or penal offenses; or
- (d) Ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 13.

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Contracting Party may make with respect to any matter affecting the operation of this Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as President by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the further period of thirty days referred to in the provisions of paragraph 2 above, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party. paragraph 2 above, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.

4. The arbitration board shall within a reasonable period of time reach its decisions by a majority of votes. Such decisions shall be final and binding.

5. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his or her duties and the remaining costs of the arbitration board

shall be borne equally by the Contracting Parties.

Article 14.

1. For the purposes of this Article, an investment dispute is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Agreement with respect to investments of investors of that other Contracting Party.
2. Any investment dispute shall, as far as possible, be settled amicably through consultation between the parties to the investment dispute.
3. If any investment dispute cannot be settled through such consultation within three months from the date on which the investor requested the consultation in writing, the investment dispute shall at the request of the investor concerned be submitted to either:
 - (1) Conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965 so long as the Convention is in force between the Contracting Parties, or conciliation or arbitration under the Additional Facility Rules of the International Center for Settlement of Investment Disputes so long as the Convention is not in force between the Contracting Parties; or
 - (2) Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.
4. A Contracting Party which is a party to an investment dispute shall give its consent to the submission of the investment dispute to international conciliation or arbitration referred to in paragraph 3 above in accordance with the provisions of this Article.
5. The decision of arbitration shall be final and binding upon both parties to the investment dispute. This decision shall be executed by the applicable laws and regulations concerning the execution of decision in force in the country in whose Area such execution is sought.
6. So long as an investor of either Contracting Party is seeking judicial or administrative settlement in the Area of the other Contracting Party or arbitral decision in accordance with any applicable previously agreed dispute settlement procedures, concerning an investment dispute, or in the event that a final judicial settlement on such dispute has been made, such dispute shall not be submitted to arbitration referred to in the provisions of this Article.
7. In case of a legal person or any other entity referred to in sub-paragraph (b) of paragraph (1) of Article 1 of either Contracting Party is owned or controlled by investors of the other Contracting Party on the date on which such legal person or any other entity makes a request to the former Contracting Party to submit the investment dispute to conciliation or arbitration, such legal person or any other entity of the former Contracting Party shall be treated for the purposes of the provisions of this Article as a legal person or any other entity referred to in sub-paragraph (b) of paragraph (1) of Article 1 of such other Contracting Party.
8. Nothing in this Article shall be construed so as to prevent an investor from seeking judicial or administrative settlement in the Area of the Contracting Party which is a party to an investment dispute.

Article 15.

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 10, each Contracting Party may:
 - (a) Take any measure which it considers necessary for the protection of its essential security interests;
 - (i) Taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or
 - (ii) Relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;
 - (b) Take any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security;
 - (c) Take any measure necessary to protect human, animal or plant life or health; or
 - (d) Take any measure necessary for the maintenance of public order. The public order exceptions may be invoked only

where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 10, that Contracting Party shall not use such measure as a means of avoiding its obligations.

3. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 of this Article, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 10, that Contracting Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Contracting Party of the following elements of the measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of the measure; (c) legal source of the measure; (d) succinct description of the measure; and (e) purpose of the measure.

4. Notwithstanding the provisions of paragraph 1 of Article 2, each Contracting Party may prescribe special formalities in connection with investment activities of investors of the other Contracting Party in its Area, provided that such special formalities do not impair the substance of the rights of such investors under this Agreement.

Article 16.

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under paragraph 1 of Article 2 relating to cross-border capital transactions and Article 12:

(a) In the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) In cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1 above:

(a) Shall be consistent with the Articles of Agreement of the International Monetary Fund so long as the Contracting Party taking the measures is a party to the said Articles;

(b) Shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above;

(c) Shall be temporary and shall be eliminated as soon as conditions permit; and

(d) Shall be promptly notified to the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 17.

1. Notwithstanding any other provisions of this Agreement, a Contracting Party may adopt or maintain prudential measures with respect to financial services, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise providing financial services, or to ensure the integrity and stability of its financial system.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations.

Article 18.

1. Nothing in this Agreement shall be construed so as to derogate from the rights and obligations under multilateral agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

2. Nothing in this Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments treatment accorded to investors of any third country and their investments by virtue of multilateral agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

3. The Contracting Parties shall give due consideration to the adequate and effective protection of intellectual property rights and shall promptly consult with each other for this purpose at the request of either Contracting Party. Depending on

the results of the consultation, each Contracting Party shall, in accordance with its applicable laws and regulations, take appropriate measures to remove the factors which are recognized as having adverse effects to the investments.

Article 19.

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in paragraphs 2, 3 and 4 of this Article.
2. Article 1, 3, 7, 9, 22 and 23 shall apply to taxation measures.
3. Article 13 and Article 14 shall apply to disputes under paragraph 2 above.
4. Article 20 shall apply to taxation measures regarding matters set out in paragraph 2 of this Article. Article 20 shall apply to taxation measures regarding matters set out in paragraph 2 of this Article.

Article 20.

1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as "the Committee") with a view to accomplishing the objectives of this Agreement.

The functions of the Committee shall be:

- (a) To discuss and review the implementation and operation of this Agreement;
 - (b) To discuss the exceptional measures adopted or maintained pursuant to Article 5 for the purpose of encouraging favorable conditions for investors of the Contracting Parties;
 - (c) To review the exceptional measures maintained, amended, modified or adopted pursuant to Article 6 for the purpose of contributing to the reduction or elimination of such exceptional measures; and
 - (d) To discuss any other investment-related matters concerning this Agreement.
2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning or the attainment of the objectives of this Agreement.
 3. The Committee shall be composed of representatives of the Contracting Parties. The Committee shall determine its own rules of procedure to carry out its functions.
 4. The Committee may establish sub-committees and delegate specific tasks to such sub-committees. The Committee, upon mutual consent of the Contracting Parties, may hold joint meetings with the private sectors.
 5. Unless otherwise decided by the Contracting Parties, the Committee shall meet once a year, and otherwise at the request of either Contracting Party.

Article 21.

The Contracting Parties recognize that it is inappropriate to encourage investment by investors of the other Contracting Party by relaxing environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of the other Contracting Party.

Article 22.

1. In fulfilling the obligations under this Agreement, each Contracting Party shall take such reasonable measures as may be available to it to ensure the observance of this Agreement by local governments in its Area.
2. Each Contracting Party reserves the right to deny to an investor of the other Contracting Party that is a legal person or any other entity referred to in sub-paragraph (b) of paragraph (1) of Article 1 and its investments the benefits of this Agreement, if investors of any third country own or control that investor of that other Contracting Party and that investor of that other Contracting Party has no substantial business operations in the Area of that other Contracting Party under whose laws it is constituted or organized.
3. The provisions of paragraph 2 of Article 2 shall not be construed so as to oblige a Contracting Party to extend to investors

of the other Contracting Party and their investments any preferential treatment resulting from its membership of a free trade area, a customs union, an international agreement for economic integration or a similar international agreement.

Article 23.

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2 below. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the Area of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.
2. A Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.
3. In respect of investments acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.
4. This Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.
5. The Annexes to this Agreement shall form an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Tokyo, on this fourteenth day of November, 2003, in the Japanese, Vietnamese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR JAPAN: Yoriko Kawaguchi

FOR THE SOCIALIST REPUBLIC OF Vietnam: Vo Hong Phuc

Annex I. EXCEPTIONAL SECTORS OR MATTERS TO ARTICLE 2 AND ARTICLE 4

JAPAN

1. Fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf
2. Explosives manufacturing industry
3. Aircraft industry
4. Arms industry
5. Nuclear energy industry
6. Space industry
7. Electricity utility industry
8. Gas utility industry
9. Broadcasting industry
10. Freight forwarding business industry
11. Financial services (deposit insurance)
12. The maintenance, designation or elimination (including privatization) of a public monopoly

13. The maintenance, establishment or disposal (including privatization) of a state enterprise

14. Subsidies

15. Land transaction

Treatment referred to in paragraph 2 of Article 2 (most-favored-nation treatment) shall be accorded in the sectors or matters specified in 2 to 14 (other than 10).

SOCIALIST REPUBLIC OF VIET NAM

1. Broadcasting, television

2. Production, publication of cultural products

3. Oil and gas exploitation, and precious mineral mining

4. Fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf

5. Timber exploitation of natural forest

6. Production of arm, ammunition and explosives

7. Gambling

8. Ownership, utilization of land and house

9. Operation of river ports, seaports and airports

10. Share purchasing of the state-owned enterprise

11. Subsidies

Treatment referred to in paragraph 2 of Article 2 (most-favored-nation treatment) shall be accorded in the sectors or matters specified in 1 to 11.

Annex II. EXCEPTIONAL SECTORS OR MATTERS TO ARTICLE 2 AND ARTICLE 4

JAPAN

1. Primary industry related to agriculture, forestry and fisheries (except those covered by Annex I)

2. Mining industry

3. Oil industry

4. Biological preparations manufacturing industry

5. Leather and leather products manufacturing industry

6. Heat supply industry

7. Water supply and waterworks industry

8. Telecommunications industry

9. Railway transport industry

10. Omnibus industry

11. Water transport industry

12. Air transport industry

13. Security industry

14. Registration of aircraft in the national register and matters arising from such registration

15. Matters related to or arising from the nationality of ship, and the acquisition of ship or of any interest in ship

Treatment referred to in paragraph 2 of Article 2 (most-favored-nation treatment) shall be accorded in the sectors or matters specified in 1 to 15 (other than 12).

SOCIALIST REPUBLIC OF VIET NAM

1. Horizontal matters (applied to all sectors and sub-sectors of this Annex)
2. Legal services
3. Accounting, auditing and book keeping services
4. Taxation services
5. Advertising services
6. Value-added telecommunication services
7. Basic telecommunication services
8. Voice telephone services including fix local, long distance and international
9. Construction, installation, operation and maintenance of telecommunication equipment
10. Audio visual service
11. Insurance services
12. Banking and other financial services
13. Real estate business
14. Travel agencies and tours operators services
15. Transportation services
16. Processing of paper, vegetable oil, milk, cane sugar, wood processing (except projects using imported wood)
17. NPK fertilizer, beer and cigarettes
18. Manufacturing and assembling of automobiles
19. Distribution services
20. Electricity and domestic air transport

Treatment referred to in paragraph 2 of Article 2 (most-favored- nation treatment) shall be accorded in the sectors or matters specified in 1 to 20.

Agreed Minutes

The undersigned wish to record the following understanding which was reached during the negotiations for the Agreement between Japan and the Socialist Republic of Viet Nam for the Liberalization, Promotion and Protection of Investment (hereinafter referred to as "the Agreement") signed today:

1. Both Contracting Parties confirm their understanding in respect of Article 2 of the Agreement that each Contracting Party is obliged to accord to investors of the other Contracting Party and to their investments the better of the treatment required by paragraphs 1 and 2 of Article 2, which is the more favorable to such investors or such investments.
2. Both Contracting Parties confirm their understanding in respect of Articles 2 and 18 of the Agreement that:
 - (a) Article 2 applies to intellectual property rights of investors, and accordingly, that each Contracting Party shall accord to investors and their investments of the other Contracting Party no less favorable treatment than the one accorded to investors of any third country (e.g., United States of America) and their investments; and
 - (b) Any bilateral agreement (e.g., Agreement between the Socialist Republic of Vietnam and the United States of America on Trade Relations) is excluded from "multilateral agreements in respect of protection of intellectual property rights" provided for in paragraph 2 of Article 18.

3. Both Contracting Parties confirm their understanding in respect of Article 6 of the Agreement that neither Contracting Party shall invoke the provisions of its internal laws and regulations as justification for its failure to perform its obligations not to adopt any new exceptional measure in the sectors or with respect to the matters specified in Annex II.

4. Both Contracting Parties confirm their understanding in respect of Article 19 of the Agreement that, when considering the issues of whether a taxation measure effects an expropriation, the following elements should be borne in mind:

(a) The imposition of taxes does not generally constitute expropriation. The introduction of a new taxation measure, taxation by more than one jurisdiction in respect of specific investments, or a claim of excessive burden imposed by a taxation measure are not in themselves indicative of an expropriation.

(b) A taxation measure will not be considered to constitute expropriation where it is generally within the bounds of internationally recognized tax policies and practices. Taxation measures aimed at preventing the avoidance or evasion of taxes should not generally be considered to be expropriatory.

(c) While expropriation may be constituted even by measures applying generally (e.g., to all taxpayers), such a general application is in practice less likely to suggest an expropriation than more specific measures aimed at particular nationalities or individual taxpayers. A taxation measure would not be expropriatory if it was in force and was transparent when the investment was undertaken.

5. Both Contracting Parties confirm their understanding in respect of Article 22 of the Agreement that:

(a) A free trade area, a customs union and an international agreement for economic integration are normally understood: to fulfill the requirements provided for in Article XXIV of the General Agreement on Tariffs and Trade 1994, Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, if a Contracting Party is a Member of the World Trade Organization; and to contain the elements analogous to such requirements, if a Contracting Party is not a Member of the World Trade Organization;

(b) From the point of view of sub-paragraph (a) above, the Agreement between the Socialist Republic of Vietnam and the United States of America on Trade Relations does not constitute "a free trade area, a customs union, an international agreement for economic integration or a similar international agreement" provided for in paragraph 3 of Article 22 in any sense, whereas the Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership constitutes "a free trade area, a customs union, an international agreement for economic integration or a similar international agreement".