

BIÊN BẢN GHI NHỚ

AGREED MINUTES

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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".

Tokyo, November 14, 2003

FOR THE GOVERNMENT
OF JAPAN:

川 口 順 子

FOR THE GOVERNMENT
OF THE SOCIALIST REPUBLIC
OF VIET NAM:

V Hong Phuc