

IMPLEMENTING AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE UNITED MEXICAN STATES
PURSUANT TO ARTICLE 132 OF THE AGREEMENT
BETWEEN JAPAN AND THE UNITED MEXICAN STATES
FOR THE STRENGTHENING OF THE ECONOMIC PARTNERSHIP

Preamble

The Government of Japan and the Government of the United Mexican States (hereinafter referred to in this Agreement as "the Parties"),

In accordance with Article 132 of the Agreement between Japan and the United Mexican States for the Strengthening of the Economic Partnership (hereinafter referred to in this Agreement as "the Basic Agreement"),

HAVE AGREED as follows:

Article 1
Purpose and Definitions

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition law of each country through the development of a cooperative relationship between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition law of each country.

2. For the purposes of this Agreement:

- (a) the term "anticompetitive activities" means any conduct or transaction that may be subject to penalties or relief under the competition law of either country;
- (b) the term "competition authority(ies)" means:
 - (i) for Japan, the Fair Trade Commission; and
 - (ii) for the United Mexican States, the Federal Competition Commission;

- (c) the term "competition law(s)" means:
 - (i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) (hereinafter referred to in this Agreement as "the Antimonopoly Law") and its implementing regulations as well as any amendments thereto; and
 - (ii) for the United Mexican States, the Federal Law of Economic Competition of December 24, 1992 (hereinafter referred to in this Agreement as "the Federal Law of Economic Competition"), and the Regulations of the Federal Law of Economic Competition of March 4, 1998 as well as any amendments thereto; and
- (d) the term "enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to the application of the competition laws of its country, but shall not include:
 - (i) the review of business conduct or routine filings; and
 - (ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific sectors.

Article 2
Notification

1. The competition authority of each Party shall notify the competition authority of the other Party its enforcement activities that it considers may affect the important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party include those that:

- (a) are relevant to enforcement activities of the competition authority of the other Party;
- (b) are against a national or nationals of the country of the other Party, or against a company or companies incorporated or organized under the applicable laws and regulations in the territory of the country of the other Party;

- (c) involve mergers or acquisitions in which:
 - (i) one or more of the parties to the transaction; or
 - (ii) a company controlling one or more of the parties to the transaction,

is a company incorporated or organized under the applicable laws and regulations in the territory of the country of the other Party;
- (d) involve anticompetitive activities, other than mergers or acquisitions, substantially carried out in the territory of the country of the other Party;
- (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
- (f) involve relief that requires or prohibits conduct in the territory of the country of the other Party.

3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, the notification shall be given not later than:

- (a) in the case of the competition authority of Japan, the time it seeks production of documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and
- (b) in the case of the competition authority of the United Mexican States, once a notification of concentration is filed and as far in advance as is practically possible before the Commission renders its final decision.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to enforcement activities other than those related to mergers or acquisitions, the notification shall be given:

- (a) in the case of the competition authority of Japan, as far in advance of the following actions as is practically possible:
 - (i) the filing of a criminal accusation;

- (ii) the filing of a complaint seeking an urgent injunction;
 - (iii) the issuance of a recommendation or the decision to initiate a hearing; and
 - (iv) the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued; and
- (b) in the case of the competition authority of the United Mexican States: not later than the issuance of a notification in writing by the competition authority that it presumes nationals or companies are to be responsible for the violation of the Federal Law of Economic Competition and as far in advance of the adoption of a decision or a settlement as is practically possible, in accordance with Article 33 of the Federal Law of Economic Competition.

5. Notifications provided under this Article shall be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on the important interests of its Party.

Article 3 Cooperation in Enforcement Activities

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the country of the assisting competition authority and the important interests of the Party of the assisting competition authority, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the country of the competition authority and the important interests of the Party of the competition authority:

- (a) inform the competition authority of the other Party with respect to its enforcement activities involving anticompetitive activities that it considers may also have an adverse effect on competition in the territory of the country of the other Party;

- (b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anticompetitive activities that it considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and
- (c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

Article 4
Coordination of Enforcement Activities

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.

2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should take into account the following factors, among others:

- (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;
- (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which the competition authority of either Party can secure effective relief against the anticompetitive activities involved;
- (d) the possible reduction of cost to the Parties and to the persons subject to the enforcement activities; and
- (e) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.

3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.

4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the Party of the requested competition authority, inquiring whether persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of each Party may, at any time, limit or terminate the coordination of enforcement activities and pursue their enforcement activities independently.

Article 5

Cooperation Regarding Anticompetitive Activities in the Territory of the Country of One Party that Adversely Affect the Interests of the Other Party

1. If the competition authority of a Party believes that anticompetitive activities carried out in the territory of the country of the other Party adversely affect the important interests of the former Party, that competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the latter Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, may request that the competition authority of the latter Party initiate appropriate enforcement activities.

2. The request made pursuant to paragraph 1 above shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

Article 6

Avoidance of Conflicts over Enforcement Activities

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of penalties or relief sought in each case.

2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the important interests of the former Party, the latter Party shall endeavor to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anticompetitive activities of conduct or transactions occurring in the territory of the country of the Party conducting the enforcement activities as compared to conduct or transactions occurring in the territory of the other country;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;

- (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors in the territory of the country of the Party conducting the enforcement activities;
- (d) the extent to which the anticompetitive activities substantially lessen competition in the market of each country;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws and regulations of the country of the other Party, or the policies or important interests of that other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective penalties or relief can be secured by the enforcement activities of the Party against the anticompetitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same private persons, either natural or legal, would be affected.

Article 7
Technical Cooperation

1. The Parties agree that it is in their common interest for their competition authorities to work together in technical cooperation activities related to competition law enforcement and competition policy.

2. The cooperation activities may include, within their competition authorities' reasonably available resources, the following:

- (a) exchange of competition authorities' personnel for training purposes;

- (b) participation of competition authorities' personnel as lecturers or consultants at training courses on competition law and policy organized or sponsored by each other's competition authority; and
- (c) any other form of technical cooperation as the competition authorities of the Parties may agree.

Article 8
Transparency

The Competition authorities of both Parties shall:

- (a) promptly inform the competition authority of the other Party of any amendment of competition laws and any adoption of new laws and regulations of its country that control anticompetitive activities;
- (b) provide, as appropriate, the competition authority of the other Party with copies of its publicly-released guidelines or policy statements issued in relation to the competition laws of its country; and
- (c) provide, as appropriate, the competition authority of the other Party with copies of its annual reports and/or any other publication that are made generally available to the public.

Article 9
Consultations

1. The competition authorities of the Parties shall consult with each other, upon the request of either competition authority, with respect to any matter which may arise in connection with this Agreement. The requests for consultation shall indicate the reasons for the request and whether any procedural time limits or other constraints require that such consultations be expedited.

2. The competition authorities of the Parties shall meet, upon the request of either competition authority. Consultations undertaken under this paragraph may refer to, *inter alia*, the following matters:

- (a) the exchange of information on their current enforcement efforts and priorities in relation to the competition law of each country;
- (b) the exchange of information on economic sectors of common interest;

- (c) the discussion of policy changes that they are considering; and
- (d) the discussion of other matters of mutual interest relating to the application of the competition law of each country.

Article 10
Confidentiality of Information

1. Information, other than publicly available information, received by a Party or a competition authority pursuant to this Agreement:

- (a) shall only be used by the receiving Party or the receiving competition authority for the purpose specified in paragraph 1 of Article 1, unless the Party or the competition authority providing the information has approved otherwise;
- (b) shall not be communicated to a third party or other authorities, unless the competition authority providing the information has approved otherwise;
- (c) shall not be communicated to a third party, unless the Party providing the information has approved otherwise; and
- (d) shall not be used in criminal proceedings carried out by a court or a judge of the country of the receiving Party.

2. In the event that information provided by a Party to the other Party pursuant to this Agreement, except publicly available information, is needed for presentation in criminal proceedings carried out by a court or a judge of the country of the latter Party, that latter Party shall submit a request for such information to the former Party through the diplomatic channel or other channel established in accordance with the law of the country of the former Party.

3. Notwithstanding sub-paragraph (b) of paragraph 1 above, unless otherwise notified by the competition authority providing the information, the competition authority receiving the information pursuant to this Agreement may communicate the information to a relevant law enforcement authority of the Party of the competition authority, for the purpose of competition law enforcement.

4. Each Party shall, consistent with the laws and regulations of the country of the Party, maintain the confidentiality of any information provided to it in confidence by the other Party pursuant to this Agreement.

5. Each Party may limit the information it provides to the other Party when the other Party is unable to give the assurance requested by the former Party with respect to confidentiality or with respect to the limitations of purposes for which the information will be used.

6. Notwithstanding any other provision of this Agreement, neither Party is required to provide information to the other Party if such provision is prohibited by the laws or regulations of the country of the Party possessing the information or such provision would be incompatible with its important interests. In particular, the Government of Japan shall not be required to provide "trade secrets of entrepreneurs" covered by the provisions of Article 39 of the Antimonopoly Law to the Government of the United Mexican States, except for those provided in accordance with the provisions of paragraph 4 of Article 4 of this Agreement and with the consent of the entrepreneurs concerned.

Article 11 Communications

Unless otherwise provided for in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under Article 2 and requests under paragraph 1 of Article 5, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

Article 12 Miscellaneous

1. Detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties.

2. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

3. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

4. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under other international agreements or arrangements or under the laws of the country.

Article 13
Final Provisions

1. This Agreement shall be implemented by the Parties in accordance with the Basic Agreement and the laws and regulations in force in the countries of the respective Parties and within the available resources of their competition authorities.

2. The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

3. This Agreement shall enter into force on the same date of the entry into force of the Basic Agreement and shall remain in force as long as the Basic Agreement remains in force. The Parties shall, at the request of either Party, consult with each other as to whether to amend this Agreement.

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

DONE at Mexico City, on this seventeenth day of September, 2004, in duplicate in the Japanese, Spanish and English languages, being equally authentic. In case of differences of interpretation, the English text shall prevail.

For the Government of
Japan:

小泉純一郎

For the Government of
the United Mexican States:

Fox