

PART 3
FACILITATION,
BILATERAL COOPERATION MEASURES AND
SETTLEMENT OF DISPUTES

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VII. Trade Facilitation (Customs and other Trade-related Procedures)

1. The Joint Study Group noted the importance of trade facilitation through the simplification and international harmonization of customs and other trade-related procedures, recognizing that:

- (1) trade facilitation has a similar effect to tariff reduction; and
- (2) it becomes more important to shorten the time required for export and import procedures as well as to secure their predictability, particularly as many companies are now establishing global supply chains.

2. In order to provide a better environment for business activities, both Japan and Mexico have undertaken various measures for trade facilitation including the simplification of customs procedures. The Joint Study Group identified and categorized the following areas of possible cooperation in order to provide the business community with a better environment that contributes to the strengthening of the economic relations between the two countries.

① Cooperation between the customs administrations of both countries

The World Customs Organization and other forums have developed various international standards and recommendations regarding the introduction of computer systems and simplification of customs procedures. Harmonizing existing customs procedures with these standards and recommendations, as far as possible, would enhance their simplicity, and efficiency.

In order to instrument trade facilitation while enhancing appropriate border controls, the customs administrations of both countries have implemented a risk management system based on clearance which categorizes cargoes into high-risk and low-risk and thereby allocates customs resources to controlling high-risk ones.

Furthermore, Japan Customs has adopted various trade facilitation measures, including an “Instant Import Permit Upon Arrival System,” for air cargoes (enabling the cargo release immediately after its arrival by applying for a pre-arrival examination scheme) and a “Simplified Declaration Procedure System” (enabling the release of cargo prior to the declaration for duty payment, applicable to parts of the consignments of high compliance importers).

On the other hand, Mexico Customs implemented a new program in early 2002, called the “Compliant Customs Taxpayer” program, the purpose of which is to reduce and simplify customs procedures for the imports and exports of companies identified as low-risk. This program is now on its first stage between Mexico and U.S. Customs.

The Joint Study Group shared the view that the cooperation between Japan and Mexico in the areas of exchange of information and harmonization of customs procedures to international standards etc, would enhance trade facilitation between the two countries.

② The reinforcement of Customs Clearance Capacity

The Japanese side pointed out that the congestion experienced by customs clearance at the border of the United States and Mexico often results in significant delays of cargo arrival, and that the delay is mostly caused by Mexico's insufficient infrastructure. The Japanese side also pointed out that this problem could be addressed through accelerating the ongoing process of computer networking inside Mexico Customs and increasing the number of lanes for customs clearance in Mexico.

Mexico has registered substantial changes in customs procedures. Last year Mexico introduced a new customs system which facilitates and makes more effective the foreign trade operations. This system is called the "Integral Automated Customs System Millennium 3 (SAAI M3)". With this system were introduced some new informative and technological elements that permit the redefinition of process in the customs operation and administration. In the same way, it seeks to reduce the corruption levels.

③ Utilization of information and communications technology

In order to promote paperless trading and one-stop services (the single window system) for trade-related procedures, including customs procedures, quarantine procedures and harbor procedures, the Joint Study Group recognized the possibility of further promoting trade facilitation by using information and communication technology, for example, the WCO Customs data model version 1.0, and the seamless data flow in trade-related procedures among private companies (e.g., a system that makes it possible to deliver electronically the necessary information for importation into Mexico from Japanese trade-related companies to their counterparts in Mexico, immediately after the goods are exported from Japan).

3. In order to identify concrete measures for further cooperation in the trade facilitation areas including the above-mentioned ones, the Joint Study Group recognized the possibility of establishing two expert groups: one comprising relevant public and private sectors of both countries to discuss issues related to trade facilitation between the two countries, and the other comprising the customs authorities of Japan and Mexico, to discuss customs-related issues.

VIII. Standard and Conformity Assessment

1. The Joint Study Group shared the view that it was important to ensure that the application of any standard, technical regulation or conformity assessment procedure to safety, the protection of human, animal or plant life or health, the environment, consumer protection or quality, does not create an unnecessary obstacle to trade between Japan and Mexico. The Study Group considered important that both countries reaffirm with respect to each other their existing rights and obligations under the Agreement on Technical Barriers to Trade (TBT Agreement) of World Trade Organization.
2. The Japanese side pointed out the following problems in the Official Mexican Standards (NOMs: Normas Oficiales Mexicanas) as a factor that may impede smooth commercial transactions and pointed out the necessity of their improvement. The Japanese side explained that the improvement of the NOMs system and its operation in order to facilitate trade was a request from the Japanese business sector and stressed the need for its early and effective realization.

- ① Such details as font size and designs in the Spanish language labeling and other displays are rigidly regulated.
- ② It is inconvenient that there are no official testing stations that could conduct conformity assessments in Tijuana and other places where many Japanese affiliated corporations are doing business and a high volume of cross-border trade takes place.

The Mexican side explained that its Federal Law of Metrology and Standardization provides transparent procedures for the elaboration and application of standards, technical regulations, and conformity assessment procedures in accordance with the Technical Barriers to Trade Agreement of WTO. Regarding the specific points raised by the Japanese counterpart, the Mexican side added that these NOMs are consistent with international standards, and that sufficient official testing stations are located along the northern border of the country. Mexico gave information to the Japanese delegation about the official testing stations distributed in Tijuana and Ciudad Juarez.

3. The Mexican side expressed a concern relative to its agricultural export to Japan that: i) Japan has established specific procedures for “organic” products certification. ii) This regulation is applied by Japan and is neither homologous nor harmonized with other current procedures in other markets as are conducted in the European Union or the United States. iii) For the moment, this specific regulation in Japan constitutes a technical barrier for the access of certain agricultural products.

The Japanese side explained that: i) The Japan’s standard and certification procedures for organic products are established in conformity with the CODEX guidelines which are an international standard. ii) The regulation on “organic” labeling is implemented based on the law of JAS on an equal basis for both imported and domestic products in a non-discriminatory manner. Thus, JAS system does not constitute any barrier against the access of Mexican organic products. Japanese side also presented an actual case of Mexican organic products sold in Japan with the JAS label.

4. The Joint Study Group shared the view that it is important for the Japanese and Mexican standards authorities to continue their cooperation efforts in the areas of technical regulations, standards and conformity assessments. In order to promote the cooperation between both countries effectively, it is important as a first step to understand more in detail each other’s system of technical regulations, standards and conformity assessments through the need-oriented information exchange. Such

cooperation could lead to further collaboration in the areas of technical regulations, standards and conformity assessments.

IX. Competition Policy

1. As globalization progresses and the economic relationship between Japan and Mexico is further strengthened, the needs for regulations against anti-competitive activities that may hamper trade and investment between the two countries will increase. In fact, in 2001, the Federal Competition Commission of Mexico resolved eight merger cases involving Japanese agents in Mexico.
2. The Joint Study Group shared the view that a cooperation mechanism on competition policy between Japan and Mexico would contribute to legal stability and, in consequence, to the facilitation of trade and investment. The Joint Study Group pointed out the need to build up a framework of competition policy, including the following elements.
 - (1) Japan and Mexico should take measures, which each party considers appropriate, against anti-competitive activities of the business sector.
 - (2) Taking into account the possibility of the greater need for regulations against anti-competitive activities that may hamper trade and investment between the two countries, Japan and Mexico should study measures to promote cooperation between the competition policy authorities of both countries (notification, cooperation and coordination, for example), in order to implement the competition policy framework of both countries effectively and smoothly, as well as to foster a common understanding on more effective ways to address anti-competitive business activities.

The Joint Study Group expressed the view that Mexico and Japan should consider the possibility of including competition policy issues in a possible FTA.

X. Intellectual Property Rights (IPRs)

1. Production and distribution of counterfeit products and pirated goods has recently become a serious problem and the export of IPR infringing products to third countries has worsened the damage and given serious impact on corporations of many countries. This gives rise to an internationally important issue for each country to cooperate and reinforce the border measures to prevent the flow of IPR infringing products. On this point, the Joint Study Group shared the view that it is important for both Japan and Mexico to make efforts to strengthen their own enforcement of IPRs and to cooperate in this area.
2. Taking into account the growing importance of the protection of IPRs, the Joint Study Group recognized the need to cooperate between Japan and Mexico through the exchange of available information on:
 - Activities regarding nationwide cultivation of awareness of the function of IPR protection systems and importance of the protection of IPRs;
 - Improvement of the IPR protection systems and their operation;
 - Enforcement of IPRs; and
 - Automation of the intellectual property administration process in order to enhance efficiency.

XI. Improvement of the Business Environment

1. The Joint Study Group pointed out the following problems with regard to the business environment.

(1) Changes to the system of rules affecting business activities

The study group recognized that frequent and sudden changes to the system of rules concerning business activities affect the business operations due to the time that firms take to adapt to new circumstances, and that transparency is key in the modifications of such rules. Especially, the Japanese side expressed that their companies doing business in Mexico consider that predictability in the system of rules concerning business activities in Mexico is important to enhance the trade and investment relationship between Japan and Mexico. The Joint Study Group shared the view that it would be important for the governments of Japan and Mexico to regularly exchange information on the changes to their respective legal systems which have significant impact on business activities and to make them transparent.

(2) Labor relations

① In the Joint Study Group, the Japanese side recognized that wages in Mexico have risen, especially in the area along the border with the United States, as the Mexican economy has grown, and showed its concern that this is gradually eroding Mexico's competitiveness as a manufacturing center and stated that the labor reform, including legal reform, should be essential for the expansion of investment from Japan.

The Mexican side explained that the government is seeking to create conditions in Mexico to attract more and better investment from abroad, not on the basis of cheap labor, but by fostering a New Labor Culture in which business and labor can work together to increase productivity and competitiveness through training and worker participation in the transformation of productive processes. The Mexican side invited Japanese firms to contribute in this effort.

The Mexican side also pointed out that the Mexican government is promoting discussions for labor law reform in the so called Central Decision Making Table composed of business and labor representatives, with the government acting only as facilitator of the process. Thereafter any initiative to be agreed upon must be submitted to Congress for consideration and approval.

② The Study Group shared the view that increasing labor productivity (human resource development, labor education) is also important for improving the business environment and promoting new Mexican labor policies. The following problems were identified:

- i) The difficulty in employing and retaining middle-level executives and engineers limits the scope of corporate activities. There is an urgent need for human resource development.
- ii) The very high rate of rotation of workers has made it difficult to secure a stable labor force.

The Mexican side agreed that one of the most important factors as regards competitiveness is the existence of qualified human resources. In order to attain quality growth, it is of vital importance to promote quality training and technical assistance in a timely way to update productive processes, distribution and commercialization, and it is essential to involve workers and employers together in this endeavour, to identify problems and solutions and to propose strategies for growth and expansion.

On this respect, the Mexican side showed their interest in the possibility of cooperation on human resource development and training, especially in such areas as technology and IT. The Mexican side is also interested in exchanging information about systems of normalization and certification of labor competencies, experiences in social dialogue, and legislation and labour administration in both countries.

(3) Security Conditions

The Japanese side expressed its concern in relation to security conditions in some cities of Mexico and to the cost implications of contracting private security services for the operation of firms.

The Joint Study Group shared the view that it is important for the Government of Mexico to continue working to solve the security problems.

(4) Regulatory Reform

The Joint Study Group pointed out that the regulatory framework is a key element to maintain a healthy economy, open to the global markets and foreign investment. It stressed that regulatory reform promotes elimination of unnecessary barriers to trade and investment, boosting in that way economic growth, and job creation, lower prices to consumers, competitiveness and innovation.

During the meetings of the Joint Study Group, the following concerns were identified by the Mexican side in relation to the Japanese regulatory framework:

- ① the lack of transparency of the rulemaking and administrative adjudication processes; and
- ② the so called “co-regulation”, or sharing of regulatory functions between government and industry or other bodies, that may limit competition and create trade and investment barriers.

The Mexican side proposes that, given the importance of regulatory reform to keep a healthy, open and strong bilateral economic relation, a bilateral mechanism to discuss regulatory issues that may affect trade and investment flows could be established. The participation of the private and academic sectors could be considered in such mechanism.”

(5) Energy and Resources

The Joint Study Group expressed concerns regarding the high cost of the electrical power supply in Mexico and called for the Mexican Government's continued efforts for the reduction of electrical power supply costs and Japanese cooperation to the possible extent, in order to facilitate the smooth expansion of investment in Mexico.

The Joint Study Group shared the view that the points mentioned below in Chapter XIV. "Other Bilateral Cooperation Measures" (1), are also important to help establish a proper environment for business with a view to promoting investments in Mexico.

(6) Environment

The Joint Study Group pointed out that because of the serious air pollution (NOx) problems in Mexico City, there are environmental concerns that make it difficult to attract capable people to work in Mexico, resulting in a situation that is detrimental to Mexico's international competitiveness. Furthermore, it was pointed out that, although there are regulations stipulating that products that contain materials specified with a view to controlling environmental pollution, must be transported to designated locations for disposal, there are not enough corporations and operators who can provide this service, which makes it difficult in practice to dispose of such products and materials in the appropriate manner.

At the Joint Study Group meetings, the Mexican side explained the measures taken by the Mexican Government for addressing environmental problems, including the "Pro Air Program for the Metropolitan Zone of Mexico's Valley." The Joint Study Group also acknowledged that Japan and Mexico had been carrying out considerable cooperation projects in the field of environmental protection.

The Joint Study Group shared the view that, for ensuring an appropriate business environment to facilitate investment, and for promoting economic development giving due considerations to the environment, it is important for Japan to proceed with its cooperation with Mexico, where necessary, making use of its technologies, in order to redress the environmental issues facing Mexico. These include ensuring a proper supply of water, controlling air pollution and disposing of waste products, in addition to the issues mentioned above.

(7) Accounting

The Joint Study Group shared the view that it would be useful for both countries to collaborate in improving their accounting systems.

(8) Others

The Joint Study Group recognized the efforts made in Mexico to improve the business environment and pointed out that it should continue to work in the following areas in order to further improve such environment:

- ① Telecommunication systems and postal service.
- ② Water supply and sewage systems.
- ③ The electrical power supply
- ④ Transportation infrastructure such as roads, ports and harbors.

2. The Joint Study Group shared the view that the improvement of the bilateral business environment, including the above mentioned issues is essential for promoting bilateral trade and investment. The Joint Study Group proposed that a mechanism could be established to discuss ways and means, including the prioritization of the aforementioned areas in their efforts and cooperation, to improve the bilateral business environment.

XII. Fostering supporting industries

1. At present, Mexico does not have such parts supply centers as those present in China or Southeast Asian countries. A weak supply chain represents a considerable obstacle to the growth of assembly operations and does not contribute to long-term investments in the country. Such a lack of supporting industries in Mexico may pose a serious problem in the future. Accordingly, the need for fostering support industries and a parts supply network in Mexico hereafter was pointed out at meetings of the Joint Study Group.

2. At the Joint Study Group meetings, the Japanese side pointed out that in order to foster supporting industries in Mexico it is most important for Mexico to improve its business environment by facilitating finance, extending education for the improvement of labor skills and to resolve domestic labor problems. Such efforts would also promote Japanese investment and the corporate presence in the Mexican market.
The Joint Study Group proposed that, in addition to the measures mentioned above, both countries should take steps toward the implementation of cooperation programs as stated below, among others, in order to support Japanese firms in entering the Mexican market as supporting industries, and developing Mexican supporting industries as well.
 - (1) The enhancement of effective linkage among relevant organizations and the optimization of various on-going cooperation projects of Japanese governmental financial institutions, through the "Small- and Medium-Size Enterprises Forum," which was started in October 2001 under an initiative of the governmental and private sectors of both countries.
 - (2) Continuation of joint projects promoted by JETRO and Mexico's Ministry of Economy to foster supporting industries (including efforts to promote small- and medium-size businesses, and to support business-matching between small- and medium-sized enterprises of both countries).

XIII. Trade and investment promotion

1. The Joint Study Group shared the view that it is important to continue to implement projects such as the following programs that are jointly conducted by JETRO, the Mexican Ministry of Economy, and BANCOMEXT, in order to strengthen trade and investment.
 - Hosting of or participation in trade fairs and exhibitions in order to promote trade and investment between the two countries, including foreign investment promotion fairs in Japan.
 - Hosting of seminars with a view to promoting the mutual flow of exports and investments between Japan and Mexico.
 - Exchanges of experts and trainees in the fields of trade, investment, and marketing.
 - Organizing business meetings / trade and investment missions.
2. The Joint Study Group shared the view that it is important to continue to provide and exchange information in the following ways between JETRO and the Mexican Ministry of Economy in order to promote trade and investment between the two countries.
 - Confirmation of which goods and services can be exported between the two countries by exchanging corporate directories for each industrial sector.
 - Exchange of information to confirm opportunities for investment and information on the establishment of joint venture businesses between the two countries.
 - Exchange of information on various trade and investment activities.
 - Exchange of information on technical regulations and criteria in industry and commerce related to goods and services that are effectively transacted, or which are thought of as possible to be transacted, between the two countries.
 - Exchange of information about the factors affecting trade and investment, and improvements to market access that are brought about by such factors.

XIV. Other Bilateral Cooperation Measures

(1) Energy Cooperation

The Joint Study Group recognized the importance of ongoing cooperation in the energy sector between relevant Japanese entities, such as the Japan International Cooperation Agency (JICA), and their Mexican counterparts.

The Joint Study Group highly valued the existing cooperation between Japan and Mexico within the framework of APEC in such fields as energy conservation, development of renewable energy sources, and energy forecasting/modeling. The group agreed to the importance of continuously implementing such cooperations.

The Joint Study Group acknowledged that, under the framework of cooperation between Japan and Mexico, efforts have been undertaken to develop natural resources in Mexico, including through a study on the Chicontepec sedimentary basin and the promotion of successful cases such as the Tizapa Mine and the Rey de Plata Mine.

The Joint Study Group shared the view that, in order to create an appropriate business environment for the facilitation of investment promotion, it is important to promote energy conservation, consideration of the environment in the electric power generation process, and the development of renewable energy, such as solar power and wind power.

The Mexican side expressed their interest in expanding institutional collaboration, promoting greater exchanges of information and experts, and strengthening joint work regarding the diversification of energy consumption and production towards cleaner sources -such as natural gas-, and in the electric, nuclear, and other related sectors. The Japanese side expressed that they would examine these proposals after more detailed information had been provided by the Mexican side, although they could not guarantee the result.

The Mexican side stressed the benefits of stronger commercial links between Mexico and Japan in the area of crude oil, as Mexico is one of the world's top crude oil producers and a reliable supplier. Commercialization contracts with Mexico grant transparent and uniform treatment to all of its clients. Mexico also underlined the upgrading of the Mexican refineries, as well as the investment plans in several producing fields, which will allow PMI/PEMEX to market an additional volume of lighter grades, like Isthmus and Olmeca. These grades are ad hoc for processing in Japanese refineries, as they have less sulfur content than Maya crude oil, Mexico's current main export grade. The Japanese side pointed out the importance of further communication between Japanese companies and their Mexican counterparts considering the commercial nature of crude oil transactions.

(2) Cooperation in the Agriculture and Fisheries Sectors

The Joint Study Group recognized the importance of promoting mutual understanding on rural development, agricultural policies, and technical cooperation, in light of the actual state of the agricultural sector in both countries.

In the Joint Study Group, the Mexican side expressed their hope that cooperation would be promoted with regard to Mexican agriculture in terms of technology, capital and quarantine measures. The areas

which Mexico considered as a priority to allocate cooperation activities within the agricultural sector are as follows:

- Strategic planning and formation of technical cooperation projects;
- Organization of producers;
- Training in aspects of trading and commerce of agricultural products;
- Training on normalization and standards, sanitary and phytosanitary aspects, and regulations affecting agricultural products;
- Workshops on the development of joint ventures and strategic alliances between Mexican producers and Japanese investors, at productive projects within the agricultural sector.
- Promotion of activities to stimulate the participation of universities and research centers in joint projects, exchanges of experts, researchers and students, scholarship programs for students, and residential research programs for experts from both countries.

The Japanese side expressed their view that further study and political dialogue would be necessary to prioritize cooperation areas in the future, and some areas required direct cooperation between the private sectors of both countries. The Mexican side stated the need for harmonization with respect to the conditions of sanitary and phytosanitary measures, and expressed their recognition that it was important to exchange information and to proceed with consultations between experts of both sides when specific issue arise. It was pointed out from the Japanese side that the conditions of sanitary and phytosanitary measures are technical issues and that, as has been the case in the past, it will be important to address specific issues through consultations between scientific experts from both sides hereafter.

(3) Science and Technology

The Joint Study Group shared the view that Science and Technology is a possible area for cooperation in the future, taking into account the following points:

- The fact that the accelerated growth and transformation of knowledge in the last 50 years, and the role played by science and its technological developments and applications, became one of the most important sources of economic, social, political and cultural change. It is expected that this dynamic will become even more central to societies and economies in the twenty-first century, leading to what has been called the information age and the era of digital economy.
- Given the growing communication networks, among researchers and scholars from different parts of the world based on the Internet, a number of new scientific communities, electronic journals, scientific conferences and other means for the production and communication of new knowledge, have developed at an accelerated rate.
- The Joint Study Group acknowledged that the following activities are already taking place in order to further accelerate interchange in this area:
 - i) exchange of academics, researchers and experts,
 - ii) strengthening of relations between the universities of both countries, and
 - iii) preparation of an international symposium for further collaboration between the academics, research institutes and think-tanks of Japan and Mexico.

(4) Others

In the Joint Study Group, interest was expressed in the following points in order to promote trade and investment:

- In order to overcome geographical and time-related constraints, efforts should be made to establish a base for the development of electronic trading between Japan and Mexico as an instrument for the expansion of trade between Japan and Mexico.
- Cultural, language-related, and artistic interaction will promote mutual understanding and encourage a sense of closeness between our two countries and will also have a positive impact on the expansion of trade and investment. Taking into consideration this fact, it would be useful to explore the possibility of promoting investment in audiovisual services and other services that can help spread such positive impacts.

The Joint Study Group proposed that, in order to promote technical cooperation, the various programs in technical sectors currently being conducted jointly by JETRO and the Mexican Ministry of Economy should continue. The same should be done with the activities conducted between JICA and Authorities concerned of the Mexican Government under the Agreement on Technical Cooperation between the Government of Japan and Mexico whose success is widely acknowledged. The programs aforementioned should be developed in accordance with the principles of co-participation, cost sharing and post operational self sufficiency in the implementation of each project.

XV. Consultation and Settlement of Disputes

Concerning dispute settlement, three different systems are provided for in NAFTA: (a) government-to-government disputes regarding the interpretation and application of agreement overall, (b) individual-to-government disputes related to anti-dumping and countervailing duties determinations, and (c) investors-to-state disputes concerning investment issues. Under these arrangements, investors, who incur any damages because of the violation of investment provisions in NAFTA, can seek a remedy under international arbitration. In the EU-Mexico FTA, a dispute settlement clause for government-to-government disputes concerning overall agreements is provided for, while the dispute settlement clause about investors-to-state is provided for in respective bilateral investment agreements between Mexico and each EU member country. On the other hand, in the Japan-Singapore New-Age Economic Partnership Agreement, systems for avoidance and settlement of disputes are provided for with regard to government-to-government disputes concerning the interpretation and application of overall agreements on the one hand, and investors-to-state disputes concerning investment issues, on the other.

At meetings of the Joint Study Group, it was pointed out that efficient dispute settlement is important for enterprises, and that it is necessary to guarantee a legal framework for solving disputes between enterprises and governments.

Members of the Joint Study Group concurred that, in concluding any FTA between Japan and Mexico, it would be necessary to provide a dispute settlement mechanism, based on the regional and multilateral experience of both countries, in order to ensure effective solutions utilizing international dispute settlement procedures for any disputes arising between the two countries.

[END]