AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES REGARDING THE APPLICATION OF THEIR COMPETITION LAWS

The Government of the United States of America and the Government of the United Mexican States (hereinafter referred to as "Parties");

Having regard to their close economic relations and cooperation within the framework of the North American Free Trade Agreement ("NAFTA");

Noting that the sound and effective enforcement of their competition laws is a matter of importance to the efficient operation of markets within the free trade area and to the economic welfare of the Parties' citizens;

Having regard to their commitment in Chapter 15 of NAFTA to the importance of cooperation and coordination among their competition authorities to further effective competition law enforcement in the free trade area;

Recognizing that coordination of enforcement activities under the Parties' competition laws may, in appropriate cases, result in a more effective resolution of the Parties' respective concerns than would be attained through independent action;

Further recognizing that technical cooperation between the Parties' competition authorities will contribute to improving and strengthening their relationship;

Noting that from time to time differences may arise between the Parties concerning the application of their competition laws to conduct or transactions that implicate the important interests of both Parties;

Noting further their commitment to give careful consideration to each other's important interests in the application of their competition laws; and

Having regard to the growing cooperation between the Parties in matters relating to competition law, including the 1995 Recommendation of the Council of the OECD Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade, the 1998 Recommendation of the Council of the OECD Concerning Effective Action Against Hard Core Cartels, and the Communiqué issued at the Panama Antitrust Summit Meeting in October 1998;

Have agreed as follows:

Article I

PURPOSE AND DEFINITIONS

1. The purposes of this Agreement are to promote cooperation, including both enforcement and technical cooperation, and coordination between the competition authorities of the Parties, to avoid conflicts arising from the application of the Parties' competition laws, and to minimize the impact on their respective important interests of any differences that may arise.

2. For the purposes of this Agreement, the following terms shall have the following definitions:

(a) "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of a Party;

(b) "Competition authority(ies)" means

(i) for the United Mexican States, the Federal Competition Commission;

(ii) for the United States of America, the United States Department of Justice and the Federal Trade Commission;

(c) "Competition law(s)" means

(i) for the United Mexican States, the Federal Law of Economic Competition of December 24, 1992, except for Articles 14 and 15, and the Regulations of the Federal Law of Economic Competition of March 4, 1998, except for article 8;

(ii) for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11) and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition,

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

(d) "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provision thereof. Each Party shall promptly notify the other of any amendments to its competition laws.

Article II

NOTIFICATION

1. Each Party shall, subject to Article X(1), notify the other Party in the manner provided by this Article and Article XII with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily require notification include those that:

(a) are relevant to enforcement activities of the other Party;

(b) involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in substantial part in the territory of the other Party;

(c) involve mergers or acquisitions in which

- one or more of the parties to the transaction, or
- a company controlling one or more of the parties to the transaction,

is a company incorporated or organized under the laws of the other Party or of one of its States;

(d) involve conduct believed to have been required, encouraged or approved by the other Party;

(e) involve remedies that expressly require or prohibit conduct in the territory of the other Party or are otherwise directed at conduct in the territory of the other Party; or

(f) involve the seeking of information located in the territory of the other Party.

3. Notification pursuant to this Article shall ordinarily be given as soon as a Party's competition authorities become aware that notifiable circumstances are present, and in any event in sufficient time to permit the views of the other Party to be taken into account.

4. When the competition authorities of a Party request that a person provide information, documents or other records located in the territory of the notified Party, or request oral testimony in a proceeding or participation in a personal interview by a person located in the territory of the notified Party, notification shall be given:

(a) if compliance with a request for written information, documents or other records is voluntary, at or before the time that the request is made;

(b) if compliance with a request for written information, documents or other records is compulsory, at least seven (7) days prior to the request, (or, when seven (7) days' notice cannot be given, as promptly as circumstances permit); and

(c) in the case of oral testimony or personal interviews, at or before the time arrangements for the interview or testimony are made.

5. Notification that would otherwise be required by this Article is not required with respect to telephone contacts with a person where:

(a) that person is not the subject of an investigation,

(b) the contact seeks only an oral response on a voluntary basis (although the availability and possible voluntary provision of documents may be discussed), and

(c) the other Party's important interests do not appear to be otherwise implicated, unless the other Party requests such notification in relation to a particular matter.

6. Notification is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new issues bearing on the important interests of the other Party, or the other Party requests otherwise in relation to a particular matter.

7. The Parties acknowledge that officials of either Party may visit the territory of the other Party in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

8. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests, and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved. Notifications concerning a proposed conditioned approval, consent order or decree shall either include or, as soon as practicable be followed by, copies of the proposed conditioned approval, order or decree and any competitive impact statement relating to the matter.

9. Each Party shall also notify the other whenever its competition authorities intervene or otherwise publicly participate in a regulatory or judicial proceeding that is not an enforcement activity if the issue addressed in the intervention or participation may affect the other Party's important interests. Such notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

Article III

ENFORCEMENT COOPERATION

1. (a) The Parties acknowledge that it is in their common interest to cooperate in the detection of anticompetitive activities and the enforcement of their competition laws to the extent compatible with their respective laws and important interests, and within their reasonably available resources.

(b) The Parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities.

2. The Parties will consider adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their competition laws.

3. Each Party's competition authorities will, to the extent compatible with that Party's laws, enforcement policies and other important interests:

(a) assist the other Party's competition authorities, upon request, in locating and obtaining evidence and witnesses, and in obtaining voluntary compliance with requests for information, in the requested Party's territory;

(b) inform the other Party's competition authorities with respect to enforcement activities involving conduct that may also have an adverse effect on competition within the territory of the other Party;

(c) provide to the other Party's competition authorities, upon request, such information within its possession as the requesting Party's competition authorities may specify that is relevant to the requesting Party's enforcement activities; and

(d) provide the other Party's competition authorities with any significant information that comes to their attention about anticompetitive activities that may be relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

Article IV

COORDINATION WITH REGARD TO RELATED MATTERS

1. Where both Parties' competition authorities are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities. In such matters, the Parties may invoke such mutual assistance arrangements as may be in force from time to time.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Parties' competition authorities shall take into account the following factors, among others:

(a) the effect of such coordination on the ability of both Parties to achieve their respective enforcement objectives;

(b) the relative abilities of the Parties' competition authorities to obtain information necessary to conduct the enforcement activities;

(c) the extent to which either Party's competition authorities can secure effective relief against the anticompetitive activities involved;

(d) the possible reduction of cost to the Parties and to the persons subject to enforcement activities; and

(e) the potential advantages of coordinated remedies to the Parties and to the persons subject to the enforcement activities.

3. In any coordination arrangement, each Party's competition authorities shall seek to conduct their enforcement activities consistently with the enforcement objectives of the other Party's competition authorities.

4. In the case of concurrent or coordinated enforcement activities, the competition authorities of each Party shall consider, upon request by the competition authorities of the other Party and where consistent with the requested Party's enforcement interests, ascertaining whether persons that have provided confidential information in connection with those enforcement activities will consent to the sharing of such information between the Parties' competition authorities.

5. Either Party's competition authorities may at any time notify the other Party's competition authorities that they intend to limit or terminate coordinated enforcement and pursue their enforcement activities independently and subject to the other provisions of this Agreement.

Article V

COOPERATION REGARDING ANTICOMPETITIVE ACTIVITIES IN THE TERRITORY OF ONE PARTY THAT ADVERSELY AFFECT THE INTERESTS OF THE OTHER PARTY

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest to seek relief against anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect its important interests, the first Party may request that the other Party's competition authorities initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authorities are able to provide.

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

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

Article VI

AVOIDANCE OF CONFLICTS

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

3. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interest would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

(a) the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;

(b) the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;

(c) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;

(d) the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;

(e) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;

(f) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;

(g) the location of relevant assets;

(h) the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and

(i) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or conditioned approvals resulting from such activities, would be affected.

Article VII

TECHNICAL COOPERATION

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 policy. These activities may include, within their competition agencies' reasonably available resources and to the extent authorized by their respective laws: exchanges of information pursuant to Article III of this Agreement; exchanges of competition agency personnel for training purposes at each other's competition agencies; participation of competition agency personnel as lecturers or consultants at training courses on competition law and policy organized or sponsored by each other's competition authorities; and such other forms of technical cooperation as the Parties' competition authorities agree are appropriate for purposes of this Agreement.

Article VIII

CONSULTATIONS

1. Either Party may request consultations regarding any matter relating to this Agreement. The request for consultations shall indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each Party shall consult promptly when so requested with the view to reaching a conclusion that is consistent with the principles set forth in this Agreement.

2. Consultations under this Article shall take place at the appropriate level as determined by each Party.

3. During consultations under this Article, each Party shall provide to the other as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of the matter that is the subject of consultations. Each Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.

Article IX

PERIODIC MEETINGS

Officials of the Parties' competition authorities shall meet periodically to:

(a) exchange information on their current enforcement efforts and priorities in relation to their competition laws;

(b) exchange information on economic sectors of common interest;

(c) discuss policy changes that they are considering; and

(d) discuss other matters of mutual interest relating to the application of their competition laws and the operation of this Agreement.

Article X

CONFIDENTIALITY OF INFORMATION

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible consistent with that Party's laws, (i) maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement, and (ii) oppose any application by a third party for disclosure of such confidential information. .

Article XI

EXISTING LAWS

Nothing in this Agreement shall require a Party to take any action, or to refrain from acting, in a manner that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective States.

Article XII

COMMUNICATIONS UNDER THIS AGREEMENT

Communications under this Agreement may be carried out directly between the competition authorities of the Parties. Requests under Articles V(2) and VIII(1) shall, however, be confirmed in writing through customary diplomatic channels.

Article XIII

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

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

DONE at Mexico City, in duplicate, this eleventh day of July, 2000, in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES: