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Intellectual Property, Trade, and Technology Transfer Law: The United States and Mexico

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I. INTRODUCTION

This note will briefly discuss the role of intellectual property law in trade and the transfer of technology to developing countries. The majority of the note will examine in detail both the Mexican system of intellectual property law protection passed in 1976, and recent revisions to those laws. The adequacy of these revisions and their conformity to international legal standards will be explored in the context of United States and Mexican trade relations. Possible United States responses to the Mexican laws, including the future role of the General Agreement on Tariffs and Trade in mediating such disputes, will also be examined.

Intellectual property law is one of the major issues affecting both trade and the transfer of technology between developed and developing countries. Fair and comprehensive intellectual property laws are essential to the growth of all types of free trade, because laws which are overly restrictive or inadequate create a non-tariff trade barrier which discourages foreign technological investment. The intellectual property laws of Mexico have often been characterized as highly restrictive.

The United States has been particularly active in attempting to address the problem of inadequate foreign intellectual property laws. United States law states that a failure to provide "adequate and effective" protection of U.S. intellectual property rights by
another country is an actionable trade offense. In several recent instances, the United States has succeeded in bringing world attention to the problem of restrictive intellectual property law as a trade barrier, and has negotiated for changes in the intellectual property laws of developing countries. A notable exception to this active and effective policy of intervention by the United States has been its failure to take any action against the government of Mexico.

In 1976, Mexico passed a highly controversial law concerning patents and industrial property. This law limited the term of patents to only ten years, required local "linking" trademarks, and contained a number of other restrictive provisions. Ostensibly, the law was enacted to protect against various real or perceived abuses by foreign corporations and businesses. In practice, the law has proven to be difficult to administer and is the subject of considerable foreign opposition. This opposition is due, in part, to provisions of the law that arguably violate international patent agreements to which Mexico is a party.

In 1986, Mexico announced a proposed revision of this intellectual property law which rectified some, although not all, of the earlier law's unorthodox provisions. This proposal was later approved by the Mexican government, and took effect in January, 1987. The revision, keenly awaited in the United States, has not satisfied many of Mexico's United States-based critics. Mexico's other foreign investment and transfer of technology laws remain unchanged. These laws also affect trade relations and contain numerous restrictive provisions.
As a developing country, Mexico has particular concerns and public policy goals with respect to its intellectual property laws. Specifically, much of Mexican intellectual property law is conceived with the understanding that the primary beneficiaries of the law will be foreign investors seeking to transfer technology or use foreign trademarks. Many of the provisions of Mexican law which differ from corresponding United States law are motivated by public policy considerations, namely balancing domestic interests against the desire to attract foreign investment. For this reason, it is essential to consider the role of intellectual property law in developing nations, particularly with respect to trade and the transfer of technology, before considering specific provisions of Mexican law.

II. THE TRANSFER OF TECHNOLOGY AND INTELLECTUAL PROPERTY LAWS IN DEVELOPING COUNTRIES

The general problems of developing countries are well documented. Low economic growth rates and low standards of living are endemic, even in a relatively advanced developing country such as Mexico. Technological advancement is widely seen as the primary catalyst towards significant economic development. There are several means of such advancement, each of which has particular advantages and disadvantages. By adjusting the rights of the owners of the technology through intellectual property laws,

20 Mexico is a member of the “Group of 77,” a group of 77 United Nations countries which organized in 1964 at the United Nations Conference on Trade and Development (UNCTAD). The group represents the interests of developing countries in various international organizations. They now number over 120 nations. See Finnegans, A Code of Conduct Regulating International Technology Transfer: Panacea or Pitfall?, 61 J. Pat. Off. Soc’y 71 (1978); Adelman, How Much Can One Say in 27,000 Tons of Words?, Wall St. J., Jan. 11, 1983, at 34, col. 4.

21 See Creel & Wintringham, supra note 2.

22 See Hyde & Ramirez de la Corte, supra note 10, at 470 and infra note 97 and accompanying text. Such investment is also desirable for Mexico since it provides new technology and foreign capital.

23 For distinguishing characteristics of such countries, see C. Leibenstein, Economic Backwardness and Economic Growth 40–41 (1963).


25 R. Chudson, Transfer of Proprietary Technology to Developing Countries 6 (1981). Chudson lists the following mechanisms:

1. Joint ventures:
   - Majority foreign equity;
   - Minority foreign equity;
   - Equal foreign and local equity;

2. Contractual agreements:
   - Licenses;
   - Franchises;
   - Management contracts;
   - Technical-assistance contracts;
   - Production-sharing contracts;
   - Subcontracting contracts;
   - Engineering and consulting contracts;
   - Construction and start-up of “turn-key” plants.

3. Wholly foreign owned direct investments.
a developing country can seek to promote those methods of technological advancement which the government considers most advantageous.

The most desirable method is the use of local or native research and development.\textsuperscript{26} This eliminates payments of royalties outside the country, thus improving the balance of payments. It may also be better suited to the particular needs of the developing country than technology which was developed elsewhere.\textsuperscript{27} For example, native technology may make better use of local raw materials or climatic conditions.\textsuperscript{28} In addition, this sort of research and development builds an independent alternative to foreign technology, which may help the country to lessen its reliance on developed countries. In many cases, however, such local work is impractical or would duplicate work already done elsewhere. In such instances, the use of foreign technology is necessary or even desirable.\textsuperscript{29} Mexico, as well as other developing countries, uses intellectual property laws to give preference to and encourage the use of local research and invention.\textsuperscript{30}

The other methods of technological advancement involve technology transfers from developed countries. These transfers may take the form of imports of finished goods, licensing of patents or of unpatented information, or the construction of complete plants or subsidiaries of foreign companies.\textsuperscript{31} In all of these cases, the motive of the owner of the technology is usually to make a profit on the sale or royalties from the technology.\textsuperscript{32} The protection of this investment in the developing country is of paramount importance to the foreign investor. If the investment is not profitable or, worse yet, if the rights to the technology itself are lost, then future investment in the country and trade with it will suffer, usually to the developing country's detriment.\textsuperscript{33}

A number of laws are important in deciding whether to invest in or transfer technology to a particular developing country and in deciding which method of technology transfer to use. Import restrictions, tariffs, or duties may preclude the importation of finished goods.\textsuperscript{34} Similarly, local health, safety or environmental regulations may preclude the local manufacture of a product.\textsuperscript{35} The most significant laws in this area are Foreign Investment, Transfer of Technology, and Intellectual Property laws.

Mexico is one of the few countries to have fully enacted examples of each of these three types of laws.\textsuperscript{36} These Mexican laws and the relationship between each of them will be examined in more detail below. In general, the trend in many countries appears

\textsuperscript{26} Mossinghoff, supra note 2, at 245.
\textsuperscript{27} Id. at 245–46.
\textsuperscript{28} The sale of bottled infant feeding formula to countries without access to sterile nipples or bottles is a well-publicized example of this. Stories of electronic units melting in hot, tropical climates have also been cited. Note, North-South Transfer, supra note 24, at 208–09.
\textsuperscript{29} Chudson, supra note 25, at 6.
\textsuperscript{30} In the revision to the Law on Inventions, a new Ministry has been created solely to assist Mexican inventors. See infra note 180 and accompanying text.
\textsuperscript{31} See supra note 25.
\textsuperscript{32} Blair, North/South, supra note 13, at 307; Feinrider, UNCTAD Transfer of Technology Code Negotiations: West and East Against the Third World, 30 BUFFALO L. REV. 753, 759 (1981).
\textsuperscript{33} Mossinghoff, supra note 2, at 245.
\textsuperscript{34} Blair, Overview of Licensing and Technology Transfer, 8 N.C. J. INT'L L. & COM. REG. 167 (1983) [hereinafter Blair, Overview].
\textsuperscript{35} The cost of patent protection may also preclude local manufacturing. Extensive patent coverage can be very expensive. At present, it costs several thousand dollars per patent in each country. Many inventions require multiple patents for protection. Id. at 169–70.
\textsuperscript{36} Radway, Doing Business in Mexico: A Practical Legal Analysis, 14 INT'L LAW. 361 (1980).
to be toward increased regulation by governments of foreign investment and technology through such laws.\(^{37}\) If properly administered, these laws may help to curb potential abuses by foreign investors,\(^{38}\) while maintaining a desirable rate of foreign investment and technology transfer.

Relations between foreign investors and developing nations have not been entirely cordial. Foreign investors have been guilty of importing inappropriate technology, writing overly restrictive licensing agreements, and charging excessive royalties or fees.\(^{39}\) For their part, the developing nations have argued that they have a right to necessary technology regardless of their ability to pay for it.\(^{40}\) The United Nations Conference on Trade and Development (UNCTAD) Draft Code for the Transfer of Technology and New Economic Order are concrete expressions of the developing nations' desire to acquire technology on a non-profit basis.\(^{41}\) It is unlikely, though, that the developed countries will voluntarily forgo their investment in research and their capitalist orientation in this lucrative area.\(^{42}\)

In many developing countries, the primary means of regulation and protection of foreign technological investment is through intellectual property laws.\(^{43}\) It has been argued by some economists that intellectual property laws serve merely to grant an undesirable monopoly to foreign companies in some of these developing countries.\(^{44}\) A majority of commentators seem to accept the importance of intellectual property laws in protecting and encouraging investment.\(^{45}\)

There are four primary areas of intellectual property law protection: patents,\(^{46}\) trademarks,\(^{47}\) copyrights,\(^{48}\) and trade secrets.\(^{49}\) These forms of protection are somewhat

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\(^{38}\) Blair, North/South, supra note 13, at 307.

\(^{39}\) For a list of such practices see id. at 307–08.

\(^{40}\) Id. at 307.


\(^{42}\) The return on investment from technology transfer to developing countries is usually quite high. Feinrider, supra note 32, at 759.

\(^{43}\) UNCTAD Periodic Report, supra note 37, at 1.


\(^{45}\) See, e.g., Creel & Wintringham, supra note 2, at 256.

\(^{46}\) Patents are legitimate monopolies, granted by the state to inventors of new (novel) and useful inventions, for a limited time, in return for the public disclosure (or use) of their inventions.

\(^{47}\) A trademark is a word, name, symbol or device used by a manufacturer or merchant to identify his or her goods. 15 U.S.C. § 1127 (1984).

\(^{48}\) Copyright is the exclusive right granted to artists and authors to publish or copy their works or to choose a publisher. It is often applied now to computer software and chips.

\(^{49}\) A trade secret is “any formula, pattern, device or compilation of information which is used in one's business and which gives him an advantage over competitors who do not know or use it.” RESTATEMENT (SECOND) OF TORTS § 757 comment b (1977). See also Uniform Trade Secrets Act § 1 (1980); Klitzke, Uniform Trade Secrets Act, 64 MARQ. L. REV. 277 (1980).
interrelated, and it is possible for a single item to be protected by two or more of these. For example, the Coca-Cola bottle's shape is a trademark. Its appearance might also be copyrighted and, if there were some novel and useful aspect to its design (easier to hold, etc.), that might be patentable. For most technology transfers, the patent, trade secret, and trademark laws are more important than the copyright laws (which primarily apply to artistic works). An exception is computer software, which is often protected by a copyright.50

Patent systems serve much the same function in both developing and developed countries.51 However, in developing countries, a vast majority of the patents issued are granted to foreign businesses or individuals for the purpose of protecting technology developed elsewhere, usually to protect a future investment.52 For this reason, an effective patent law is crucial in both attracting and protecting foreign investors.53

Trademark laws also serve to safeguard foreign investment. The product recognition provided by a trademark is essential to the successful marketing of a company's goods in other countries.54 In fact, "trademarks have been frequently described as a company's most important and valuable asset."55 Consequently, a company will be reluctant to invest in a country where its trademark may be counterfeited, lost, or stolen, unless that country's laws give it strong and enforceable rights against trademark infringers.56

Developing countries frequently do not recognize trade secret protection, and will not prosecute offenders for theft or misappropriation of industrial secrets.57 Other developing countries limit the duration of trade secret protection to some specified term of years, often through provisions in technology transfer laws.58 This is a serious problem for companies using this form of protection. If patent, trademark, or copyright protection is lost in a particular country, then rights in other countries are not affected.59 If a trade secret becomes public in any country, then rights to that secret are lost worldwide.60

50 UNCTAD, Periodic Report, supra note 37, at 2–4.
51 Creel & Wintringham, supra note 2, at 256. See also Note, International Patent Cooperation: The Next Step, 16 CORNELL INT'L L. J. 229 (1983). Patents are important in encouraging research and invention, protecting against public disclosure of these inventions, and in promoting general technological and economic development. Creel & Wintringham, supra note 2, at 256.
52 Wilner, The Transfer of Technology to Latin America, 14 VAND. J. TRANSNAT'L L. 269 (1981); Note, North-South Transfer, supra note 24, at 207. See also infra note 97.
53 See supra notes 6 and 7.
54 Mossinghoff, supra note 2, at 244.
55 Id. at 244 n.57; Creel & Wintringham, supra note 2, at 294. Mossinghoff notes that if the Coca-Cola company were to lose all their other assets overnight, they could easily borrow money on the security of the trademark "Coca-Cola" alone. Mossinghoff, supra note 2, at 244 n.57.
56 Id. See also infra note 66.
57 Because trade secrets do not expire, many developing countries dislike the use of trade secret protection and refuse to take steps to protect them. Note, North-South Transfer, supra note 24, at 219 n.61.
58 The ten year limitation of the Mexican Law on the Transfer of Technology is an example of this. See infra note 86.
59 This is the doctrine of independence of patents. See Blair, North/South, supra note 13, at 310–11.
60 If one learns a trade secret through proper means, such as publication in literature, then one may use it. Thus a publication in any country is usually sufficient to eliminate a trade secret. Uniform Trade Secrets Act § 1 comment (1980).
In addition, trade secrets may not be suitable for protection by any other method. Since companies in developed countries use trade secret protection extensively, this is a substantial impediment to technology transfer and investment in countries which do not recognize trade secrets. Even in countries that do recognize trade secrets, careful measures must be taken by investors in order to ensure that the secrets are not stolen or disclosed.

Foreign investors are especially wary of losing their exclusive rights to intellectual property because of the unorthodox intellectual property law of a particular country. Fortunately, there is some degree of uniformity in the patent systems of most developing countries, in part because nearly all belong to one or more of the several international patent conventions. Trademark laws are somewhat less uniform, perhaps reflecting the perception of many developing countries that trademarks are primarily an exploitative device. Copyright laws are also quite uniform, although some are ill-suited to the needs of the countries themselves. Laws regarding computer software and biotechnology are in the formative stages and vary from country to country, but are generally gaining support.

It is primarily in those countries in which patent and other intellectual property laws vary most from the broad international standards mentioned above that the laws become a problem or even a barrier to foreign investment. Ironically, this occurs most often when such laws are used to regulate foreign technology and investment or to serve ideological purposes other than intellectual property protection. In these situations, international uniformity is abandoned in favor of the encouragement or regulation of the particular form of foreign investment. It is in Mexico and the other Latin American countries where this use of intellectual property laws is most often legislated. A close examination of the Mexican laws is therefore useful, as they exemplify the problems involved in the efforts of developing countries to control their foreign technological investment.

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61 Id.
62 See Blair, Overview, supra note 34 at 174; M. JAGER, TRADE SECRET LAW HANDBOOK (1982); R. MILGRAM, BUSINESS ORGANIZATIONS: TRADE SECRETS (1982).
63 Efforts to maintain secrecy which are "reasonable under the circumstances" must be made. These vary with the nature and importance of the secret, but may be quite extensive. Uniform Trade Secrets Act § 1 comment (1980).
64 Creel & Wintringham, supra note 2, at 294.
65 These include the Paris Convention, the World Intellectual Property Organization (WIPO), the Patent Cooperation Treaty (PCT), and the International Patent Bureau. For details on these organizations and agreements, see Creel & Wintringham, supra note 2, at 265–73.
66 Ball, Attitudes of Developing Countries to Trademarks, 74 TRADEMARK REP. 160 (1984); The Role of Trademarks in Developing Countries, UNCTAD, U.N. Doc. TD/B/C.6/A.C.3/3 Rev. 1 (1979). Trademarks are seen as adding no value to the product, raising costs to consumers, and benefitting primarily the foreign corporations owning the trademarks.
68 UNCTAD, Periodic Report, supra note 37, at 2–4. Generally patent protection is used for biotechnology and copyright protection of software.
69 Blair, North/South, supra note 13, at 308–10.
III. Previous Mexican Laws Relating to Intellectual Property and the Transfer of Technology

Mexico is the third largest trading partner of the United States. By the end of 1974, United States companies and citizens had invested almost three billion dollars in Mexico, representing over seventy-five percent of all foreign investment in that country. Mexican-U.S. relations, then, are of enormous financial importance to both countries.

To a United States reader, Mexican laws sometimes appear to vest a great deal more power in the government than in foreign investors. This is, in part, a reflection of the "Calvo doctrine," which is incorporated into a number of intellectual property and other laws in Latin American countries including Mexico. According to that doctrine, foreigners are subject to the laws of the country in which they invest. The foreign country making the investment must abstain from any interference in the conduct of the domestic state within its borders, including the right of that state to compensate others for their dealings with that state. The operation of a Calvo clause or law does not necessarily deprive other countries of their rights under international law. The Latin American countries and Mexico have expressly accepted this doctrine through legislation for nearly a century. Perhaps to a greater degree than some other developed or developing countries, these Latin American countries may resist outside influence to alter their conduct and laws in a way that would be inconsistent with this doctrine.

Mexico has a number of interrelated laws governing foreign investment and the transfer of foreign technology. The Law on Inventions and Trademarks has recently been revised, and the provisions of that law will be examined in some detail. To fully understand the restrictive nature of foreign technological investment in Mexico, it is important to briefly review two other important pieces of Mexican legislation: the Law to Promote Mexican Investment and to Regulate Foreign Investment, and the Law on Transfer of Technology. These two laws sharply restrict the scope and price of any investment in or technology transfer to Mexico, including the use of patents or trademarks.

The Foreign Investment Law was intended to encourage the growth of local Mexican industry without eliminating foreign investment. Generally, the law provides that no more than forty-nine percent of a Mexican business enterprise may be controlled by foreign investors. Several sectors of industry are closed to foreign investment or other...
The acquisition of land and property by foreign companies must be authorized by the Ministry of Foreign Relations, and is subject to Mexican law. The law contains a general clause which subjects foreign investors to Mexican law and requires investors to agree not to invoke their government's protection in connection with their investment. The National Commission for Foreign Investment is empowered to make certain exceptions to the law's investment limits when a number of specifically delineated factors are present.

Of even more significance to United States investors with patents or other intellectual property is the Technology Transfer Law. All agreements involving a transfer of technology (whether foreign or domestic) must be registered with the National Registry for the Transfer of Technology within sixty days. Trademarks and technical or administrative assistance are within the scope of this law. Failure to register such an agreement will render it unenforceable.

The Registry will not permit the registration of agreements that contain any of the various provisions the Registry considers objectionable. Because excessive licensing fees

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79 Foreign Investment Law, arts. 4, 5. The following sectors of the economy are closed to foreign investment by article 4:
1. Petroleum and other hydrocarbons
2. Basic petrochemicals
3. Exploitation of radioactive minerals or nuclear energy
4. Mining
5. Electricity
6. Railroads
7. Telegraph and wireless communication
8. Others prohibited by other laws
Several other sectors are also restricted, including: forestry; domestic air, automotive, and marine transport; gas distribution; secondary petrochemical production; and automotive parts manufacture.

80 Foreign Investment Law, art. 3 n.67.
81 Radway, supra note 36, at 363 n.26.
82 Foreign Investment Law, art. 13. For a list of 18 factors which the National Commission will consider see Note, Caveat Investor, supra note 70, at 118–19.
83 Technology Transfer Law, art. 4 n.80.
84 Id. at art. 2 n.80.
85 Id. at art. 6.
86 Id. at art. 4 n.80. The following are defined as unacceptable:
1. Transfer of technology freely available in Mexico;
2. Excessive price or other consideration which is unduly burdensome on the economy of Mexico;
3. Regulation by the supplier of the technology of the administration of the transferee;
4. Grantbacks of patents, trademarks, innovations or improvements;
5. Limitations upon research and development;
6. Tie-ins;
7. Prohibitions against export of licensee's goods or services against the best interests of Mexico;
8. Prohibitions on the use of complimentary technology;
9. Obligations to sell only to the licensor;
10. Permanent use of licensor's personnel.
11. Limitations on production or pricing of licensed goods;
12. Unreasonable term of duration of licensing agreement (over ten years).
See Note, Caveat Investor, supra note 70, at 121 n.94.
or royalties are one of the prohibited conditions, the government essentially has the power to set prices for the purchase of technology at whatever level it feels is reasonable. 

In accordance with the Calvo doctrine, agreements which provide for resolutions of disputes in foreign tribunals or according to foreign laws are also unacceptable. Other provisions, such as the prohibition on export restrictions, may also constitute a problem for owners of technology. A rejection decision may be appealed to the Registry, and, if necessary, to the Mexican federal courts.

Whether or not the tests set forth in the Foreign Investment and Transfer of Technology laws are imposed, intellectual property protection is crucial to investment and trade with Mexico. Without such protection, investors could permanently lose their investment in and their rights to technology or trademarks in Mexico. Such protection is currently provided primarily by the ten-year old Mexican Law on Inventions and Trademarks. Although several provisions of this law have been amended or revised, it is helpful to review the original laws before considering the recent changes.

The Law on Inventions was introduced by President Echeverria in December of 1975. It was promoted by Echeverria and his Industry Secretary, Jose Sainz, as an aid to Mexico's industrial development. Sainz characterized the law as part of a “new international order” which would eliminate inventor’s rights and the monopoly privilege of patents in favor of collective interest and the right of nations to economic independence. He observed that ninety-two percent of all Mexican patents were being obtained by foreigners and only eight percent by Mexicans. Thus, he maintained that the patent system was favoring foreign, industrialized nations more than Mexico. The Law was enacted with little debate or modification in February, 1976.

The result of the passage was that the Law on Inventions significantly diminished the rights of inventors and trademark owners. Four types of products and processes including alloys, pharmaceuticals, chemicals, and biological inventions were declared totally non-patentable. Three other types of products were denied patent protection and offered only a non-exclusive certificate of invention. Such a certificate is also

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87 Radway, supra note 36, at 369, lists a table showing the reasons for rejection of various agreements during the first seven years of the law. Over 85% of the rejections were for excessive royalties. Brill, Transfers of Technology in Mexico, 4 DEN. J. INT’L L. & POL. 51, 54 (1974), notes that the Mexican government generally uses 3% of the sales of the licensee as the upper limit for royalties. This figure is often significantly below the world price for the same technology.

88 Technology Transfer Law, art. 7, n.80.

89 Since exports cannot be restricted, a licensor may find himself competing in trade abroad with similar or identical products from his own licensees.

90 Technology Transfer Law, art. 14 n.80.

91 See supra notes 5 and 7.

92 See supra note 10.


94 Hyde & Ramirez de la Corte, supra note 10, at 469.

95 Id. at 469–70.

96 Id. at 470.

97 Id.

98 Id. at 470–71.

99 Law on Inventions, art. 10; Hyde & Ramirez de la Corte, supra note 10, at 472. These categories combined made up nearly half the patents in Mexico under the older law.

100 Law on Inventions, art. 65; Hyde & Ramirez de la Corte, supra note 10, at 472. The three categories for which only certificates of invention are available are:

1. Processes to obtain or apply alloys, chemicals or pharmaceuticals.
available for any other patentable invention as an alternative to a patent. This concept, borrowed from Soviet law, does not confer an exclusive right or monopoly on the use of the invention, but does confer the right to receive royalties from any other party who uses it.

The Law on Inventions also reduced the term of patents to only ten years. This ten-year term contrasts with the old Mexican law requirement of fifteen years, as well as the seventeen year requirement of the United States. It has been suggested by some United States commentators that the term was reduced to correspond with the maximum permitted length of a technology transfer agreement, and to reflect the rapid changes in modern technology. The effect of the law, however, was to substantially lessen the value of a Mexican patent and consequently create potential problems for United States licensors.

In addition to reducing the term of patents, the Law on Inventions placed increased obligations upon patent holders. Among the most troubling of these requirements are the laws regarding the exploitation of patents. Exploitation is the active use of a patent including the production of the patented invention, licensing of the invention, or other significant usage. These laws allow the Mexican government to exploit patents themselves or to require that a license be granted to a third party if the patent owner does not adequately exploit the patent.

Most countries other than the United States have some requirement that patents be used or exploited. The requirements of the Mexican Law on Inventions in this area are unusually stringent. Exploitation must begin within three years from the date of the issuance of the patent and must be demonstrated or proven by the patent owner. Importation of a patented product does not constitute exploitation.

If the patent is not exploited after this three year period or if certain other conditions are not satisfied, then third parties may apply to the Bureau of Inventions and Trademarks for a compulsory license to exploit the patent. The patent owner is afforded the opportunity to post a bond to secure his performance. If he does not do so, then a hearing is held by the Bureau to determine whether the compulsory license should be granted. If it is, then the National Registry for the Transfer of Technology will be consulted to set the terms of the licensing agreement. The patent owner or licensee

2. Inventions related to nuclear energy.
3. Antipollution apparatus or related inventions.

Law on Inventions, arts. 65, 80; Hyde & Ramirez de la Corte, supra note 10, at 472.
Law on Inventions, arts. 67, 71; Hyde & Ramirez de la Corte, supra note 10, at 472.
Law on Inventions, art. 40; Hyde & Ramirez de la Corte, supra note 10, at 473.
Technology Transfer Law, art. 7; Hyde & Ramirez de la Corte, supra note 10, at 473.
The shorter term lessens the period that an inventor may maintain his exclusive license, and may result in increased export competition in countries where the product is not patented.
Cree & Wintringham, supra note 2, at 285–86.
Id. at 285–88.
Law on Inventions, arts. 41, 42; Hyde & Ramirez de la Corte, supra note 10, at 474.
Law on Inventions, art. 43; Hyde & Ramirez de la Corte, supra note 10, at 474.
Law on Inventions, arts. 41, 50; Hyde & Ramirez de la Corte, supra note 10, at 474.
Law on Inventions, art. 50; Hyde & Ramirez de la Corte, supra note 10, at 474.
Law on Inventions, art. 52; Hyde & Ramirez de la Corte, supra note 10, at 475.
Law on Inventions, art. 52; Hyde & Ramirez de la Corte, supra note 10, at 475.
may petition to modify these terms. The patent owner is also obliged to provide technical information and know-how to enable the licensee to exploit the patent.

Despite the safeguards built into these provisions, their overall effect may be the licensing of patents in a manner and for a price contrary to the wishes of the patent owner. The patent owner's rights are usurped in a manner which has no counterpart in United States law. Moreover, if the patent owner ceases exploitation for any reason (e.g., unprofitability) or fails to exploit the patent in sufficient volume, then he is in a position to lose his exclusive rights to the invention in Mexico. Even if the patent is exploited, the Ministry of Patrimony and Industrial Development may grant a "public benefit license" if it feels that the public health, national defense or other public policy concern warrants such a license. Although notice and the opportunity for a hearing are provided, this may merely be consolation to a company whose rights are taken against their wishes.

If the patent is not exploited after three years and no one applies for a compulsory license, then the patent will be considered as having lapsed. Once again, no justifications are permissible for this failure to exploit the patent.

In many ways, the changes to the Mexican trademark laws were even more restrictive and troublesome to foreign inventors than the changes to the patent laws. As with patents, the term of trademarks was reduced, in this case from ten to five years. Registration could be renewed for additional five year periods. However, continuous use of the trademark in Mexico must be proven by the trademark owner to the satisfaction of the Bureau of Inventions and Trademarks. Failure to fulfill this requirement after three years will result in the cancellation of the trademark. No exceptions to this non-use requirement are listed in the law. Thus a trademark owner who, due to of production difficulties, acts of God or other problems is unable to use his mark despite good faith, may still lose his rights to the mark.

The Ministry of Patrimony and Industrial Development was granted sweeping powers under the Law of Inventions. It may require a trademark owner who manufactures several similar products (e.g., Chevrolets and Buicks) to identify them with a single trademark. As with patents, the Ministry may grant compulsory licenses for the use of trademarks. A mark may be cancelled if the trademark owner uses it improperly with respect to the price or quality of the goods. In addition, the Ministry may require

115 Law on Inventions, art. 53; Hyde & Ramirez de la Corte, supra note 10, at 475.
116 Law on Inventions, arts. 57, 73.
117 Law on Inventions, arts. 52, 56; Hyde & Ramirez de la Corte, supra note 10, at 475.
118 Royalties are provided for such a license in a manner analogous to a compulsory license. No similar provision exists in United States patent law.
119 Law on Inventions, art. 48; Hyde & Ramirez de la Corte, supra note 10, at 474. Lapsing, in this context, is the withdrawal of the monopoly granted by the patent, i.e., an effective early expiration of the patent.
120 Law on Inventions, art. 50 n.108.
121 Law on Inventions, art. 112; Hyde & Ramirez de la Corte, supra note 10, at 476.
122 Law on Inventions, arts. 139, 140; Hyde & Ramirez de la Corte, supra note 10, at 476.
123 Law on Inventions, art. 117; Hyde & Ramirez de la Corte, supra note 10, at 476.
124 Lanahan, supra note 71, at 210.
125 Law on Inventions, art. 116; Hyde & Ramirez de la Corte, supra note 10, at 476.
126 Law on Inventions, art. 132; Hyde & Ramirez de la Corte, supra note 10, at 477.
127 Law on Inventions, art. 150; Hyde & Ramirez de la Corte, supra note 10, at 477.
or prohibit the use of trademarks in any or all fields of economic activity.\textsuperscript{128} This last power is particularly upsetting to United States commentators.\textsuperscript{129} If the Minister decides for any reason (no standards are provided by the law) that it is desirable, he may eliminate the use of all trademarks in Mexico simply by publishing a notice in the \textit{Official Gazette}.\textsuperscript{130} The amount of discretion and power afforded by the latter provision appears to be far greater than necessary to protect the country’s interests.\textsuperscript{131}

By far the most controversial provision in the Law on Inventions is the requirement of mandatory “linking” trademarks.\textsuperscript{132} This requires that products manufactured in Mexico and sold under a foreign mark must also bear a Mexican trademark of equal size and prominence, owned wholly by a Mexican national.\textsuperscript{133} This requirement was primarily intended to protect Mexican licensees.\textsuperscript{134}

From the standpoint of the foreign trademark owner there are a number of serious objections to this requirement. Some trademarks (e.g., the shape of a Coca-Cola bottle) do not lend themselves to the use of a linking mark.\textsuperscript{135} There is an obvious and considerable expense in producing specially marked or packaged goods for the Mexican market.\textsuperscript{136} If more than one local mark is used, there is also a danger that the mark may be seen as being used generically (e.g., Sanchez-Coca-Cola, Lopez-Coca-Cola, etc.).\textsuperscript{137} Finally, the local licensee enjoys a “free ride” on the goodwill and reputation of the foreign trademark. If the license is terminated, the foreign company no longer has any control over a local mark that the public may associate with them.\textsuperscript{138}

Fortunately, this provision of the Law on Inventions was never put into practice. In 1978, shortly before the new law was to become effective, the government granted a one-year extension for compliance.\textsuperscript{139} Additional one-year extensions have been granted every year since then.\textsuperscript{140} The Mexican government has never fully clarified the reason

\textsuperscript{128} Law on Inventions, art. 125; Hyde & Ramirez de la Corte, \textit{supra} note 10, at 476; Lanahan, \textit{supra} note 71, at 121.
\textsuperscript{129} See, e.g., Lanahan, \textit{supra} note 71, at 121.
\textsuperscript{130} \textit{Id}.
\textsuperscript{131} \textit{Id}.
\textsuperscript{132} Law on Inventions, arts. 127, 128; Hyde & Ramirez de la Corte, \textit{supra} note 10, at 477. The Spanish word used is “vinculada” which means roughly “linked” or “tied,” but does not have an exact English equivalent. Vargas, \textit{Major Innovations Regarding Trade and Service Marks in the Newly Revised Mexican Law on Inventions and Marks—A Mexican Perspective}, 66 \textit{TRADEMARK REP.} 188, 196 (1976), suggests that hyphenated trademarks are not necessary. Lanahan, \textit{supra} note 71, at 212, disputes this conclusion.
\textsuperscript{133} Law on Inventions, art. 127; Hyde & Ramirez de la Corte, \textit{supra} note 10, at 477.
\textsuperscript{134} The Mexican Secretary of Industry indicated six reasons for the new law:
\begin{enumerate}
\item To avoid long-term commitments for royalties, thus affecting the trade balance.
\item To avoid excessive advertising, investment, or quality control costs or increases in royalty payments.
\item To avoid requiring the purchase of parts or supplies from the licensor.
\item To allow Mexican goods to be sold overseas.
\item To protect the licensee when the license expires.
\item To help make Mexican exports competitive in world markets.
\end{enumerate}
\textit{Vargas, supra} note 132, at 200.
\textsuperscript{135} Lanahan, \textit{supra} note 71, at 212.
\textsuperscript{136} \textit{Id}.
\textsuperscript{137} Ball, \textit{supra} note 66, at 165 n.26.
\textsuperscript{138} \textit{Id}. at 165.
\textsuperscript{139} \textit{Id}. at 166.
\textsuperscript{140} \textit{Id}.
for these extensions,\textsuperscript{141} however, the recent revision to the trademark law has made these linking marks optional.\textsuperscript{142} A reasonable supposition might be that the practical objections to the linking requirement were considered as having some merit. There have also been some questions concerning the legality of the Mexican requirements with respect to international law.\textsuperscript{143}

A small number of other trademark provisions of the Law on Inventions have been considered objectionable by some commentators.\textsuperscript{144} First, the permission of the licensor of a mark is not necessary for a licensee to bring suit based on the mark, even if the licensor considers the suit inadvisable.\textsuperscript{145} As a result, a licensor could find himself in an expensive lawsuit which he never wished to enter. Second, another provision permits the joint licensee-licensor use of marks. This could lead to legal difficulties, particularly if the license is terminated or if the licensor's goods are imported into Mexico.\textsuperscript{146} The time for responding to a rejection of an application is only fifteen to forty-five days.\textsuperscript{147} This may not provide adequate time for a reasoned response to the Ministry, particularly for a foreign firm. Finally, a number of products would seem to permit only one trademark name per product. Many well known items have several trademarks associated with them (e.g., Coca-Cola's bottle, logo, etc.) and would seem to violate these provisions.\textsuperscript{148}

The Mexican Law on Inventions was expressly intended to narrowly circumscribe the rights of United States and other foreign investors, and it does so in an effective and unambiguous fashion. The new revisions to this law were intended to rectify the flaws which the Mexican administration perceived in the former law. The adequacy of these reforms will be examined in the following section.

\textbf{IV. Revisions of Mexican Law Concerning Inventions and Trademarks}

In October, 1986, Mexican authorities submitted a draft bill to the Senate for the amendment of the 1976 Law on Inventions. This bill was approved by the Senate and then sent to and approved by the Chamber of Representatives.\textsuperscript{149} It went into effect on January 17, 1987.\textsuperscript{150}

There are several significant changes in Mexico's intellectual property laws. Much of the law, however, remains essentially the same, particularly with respect to trademarks.\textsuperscript{151} What changes have been made are also primarily evolutionary, and do not break new ground or violate the spirit of the earlier law.

\textsuperscript{141} \textit{Id.}

\textsuperscript{142} Becerril, \textit{supra} note 16, at 3.

\textsuperscript{143} Article 6 of the Paris Convention requires that countries accept duly registered foreign trademarks in their original form, subject to a few minor exceptions. The linking requirements would impose a substantial change on these marks. \textit{See infra} notes 157-58 and accompanying text.

\textsuperscript{144} \textit{See, e.g.,} Lanahan, \textit{supra} note 71, at 220.

\textsuperscript{145} Law on Inventions, art. 132; Lanahan, \textit{supra} note 71, at 220.

\textsuperscript{146} Lanahan, \textit{supra} note 71, at 220.

\textsuperscript{147} \textit{Id.}

\textsuperscript{148} \textit{Id.} Some commentators have also noted that this provision is internally inconsistent with the linking requirement which would put at least two marks on a product.

\textsuperscript{149} 33 PAT. TRADEMARK & COPYRIGHT J. (BNA) 317 (1987).

\textsuperscript{150} \textit{Id.}

\textsuperscript{151} Becerril, \textit{supra} note 16, at 3.
With respect to patents, the term for both patents and certificates of invention has been increased to fourteen years.\(^{152}\) This is still a shorter period than under either pre-1976 Mexican law, or United States law. In addition, process patents are now available for most of the products for which patents were formerly not obtainable.\(^{153}\) This includes \textit{processes} to make alloys, pharmaceuticals, and pesticides. Chemical products, pesticides, and biotechnology remain unpatentable but will be patentable ten years after the bill has become law (i.e., 1997).\(^{154}\) Some local pressure to reduce this transition period to five years was unsuccessful.\(^{155}\) Certificates of invention have been abolished except in the case of biotechnological processes and processes to make foodstuffs for human consumption.\(^{156}\)

Several provisions of the former Law on Inventions were in violation of the terms of the International Convention for the Protection of Industrial Property, commonly referred to as the Paris Convention.\(^{157}\) The Paris Convention is a union of nearly ninety nations, including Mexico, which have agreed to several common provisions in order to protect international patent applicants.\(^{158}\) The revisions have altered these terms to bring them into accord with the standards. Specifically, the provision with regard to the lapsing of patents now provides that no patent may be declared as lapsed before two years after the grant of the first compulsory license.\(^{159}\) Patents are still subject to compulsory licensing after three years. Partial priorities are now accepted in conformity with the Paris Convention as well.\(^{160}\)

The requirement that compulsory licensors provide technical support to licensees has been abolished.\(^{161}\) If the information in the specification is the best knowledge of the licensor, then it will be considered adequate.\(^{162}\) Finally, the Mexican Patent Office will accept Spanish translations of patent novelty examinations completed in countries belonging to the Patent Cooperation Treaty or the European Patent Office.\(^{163}\) This would include the United States, which is a party to the Patent Cooperation Treaty.\(^{164}\)

The trademark provisions of the Law on Inventions were not greatly effected by the revisions. As mentioned above, the use of linking marks has been made optional rather than mandatory.\(^{165}\) Marks which are regarded as notorious\(^{166}\) are now protected

\(^{152}\) Law of Inventions, art. 40, 67; Becerril, supra note 16, at 3.
\(^{153}\) Law of Inventions, art. 10; Becerril, supra note 16, at 1–2.
\(^{154}\) Law of Inventions, art. 10; Becerril, supra note 16, at 2.
\(^{155}\) Becerril, supra note 16, at 2.
\(^{156}\) Law of Inventions, art. 65; Becerril, supra note 16, at 2.
\(^{157}\) Law of Inventions, art. 48; Becerril, supra note 16, at 3.
\(^{158}\) Id.
\(^{159}\) Law of Inventions, art. 36; Fraction II; Becerril, supra note 16, at 3.
\(^{160}\) Law of Inventions, arts. 57, 73; Becerril, supra note 16, at 2.
\(^{161}\) Law of Inventions, art. 17; Becerril, supra note 16, at 3.
\(^{162}\) Law of Inventions, art. 20; Becerril, supra note 16, at 2. For information on these treaties, see supra note 65.
\(^{163}\) The United States was one of 35 founding signatories to the PCT on June 19, 1970. The PCT allows the filing of a single international patent application. See Creel and Wintringham, supra note 2, at 267–68.
\(^{164}\) Law of Inventions, arts. 127, 128; Becerril, supra note 16, at 4.
\(^{165}\) Notorious marks are those which are so well-known and widely recognized (\textit{e.g.} Coca-Cola, Rolex) that their original ownership would be unquestioned.
against registration by parties other than the original owner. 167 Numerals, however, are now non-registrable unless they are graphically distinctive. 168 In addition, combinations of words are not registrable as marks unless the combination together is not descriptive of the product. 169 A trademark like “Goodbar” for a candy bar would probably be disallowed since the product is a bar which is presumably good. A combination like “Seadog” for dog food would likely be permitted as this combination does not describe the product in any way. The amendments also close a loophole in the old law which was used to avoid paying the extremely high reregistration fee for a lapsed trademark. 170 Previously, the practice was to voluntarily cancel the trademark and refile. Now, voluntary cancellations incur the same reregistration fee as extinguished or lapsed marks. 171

A trademark may now be cancelled for monopolistic or other unfair trade practices by the trademark owner. 172 However, the compulsory licensing provisions have been made less broad. A compulsory license will now only be granted if necessary to prevent unemployment in a national emergency, or if the trademark owner engages in the unfair trade practices mentioned above. 173 The amendments also restrict the possibility of nullification of trademarks for a failure of the authorities to grant registration. 174 Conversely, the power of the Ministry to eliminate any or all trademarks in particular areas of commerce has not been altered or restricted.

The revisions contain several miscellaneous provisions. First, they validate powers of attorney granted under foreign systems of law in connection with patents. 175 Second, they also contain a number of provisions strengthening the civil and criminal penalties for patent and trademark infringement. 176 For the first time, the violation of a trade secret has been made a criminal offense. 177 As discussed above, the recognition of trade secret protection is a substantial and necessary change for foreign investors. 178 The seizure of infringing goods has also been authorized. 179 Third, there are a number of provisions to assist Mexican inventors. These include the establishment of a Department of Technological Development to assist in filing applications and to provide much needed grants for research and development. These provisions pertain solely to Mexican nationals. 180

It should also be noted that Mexico has passed a law placing computer software under copyright protection. 181 Thus, the problem of computer protection was not directly addressed in the revision to the patent laws. However, many countries, including the

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167 Law of Inventions, art. 91; Fraction XIX; Becerril, supra note 16, at 4.
168 Law of Inventions, art. 91; Fraction VI; Becerril, supra note 16, at 4.
169 Law of Inventions, art. 91; Fraction V; Becerril, supra note 16, at 3.
170 Law of Inventions, art. 99. This fee is twenty times the ordinary fee.
172 Law of Inventions, art. 125; Becerril, supra note 16, at 4.
174 Law of Inventions, art. 147; Fraction I; Becerril, supra note 16, at 5.
175 Becerril, supra note 16, at 5.
176 Law of Inventions, arts. 211, 213; Becerril, supra note 16, at 5–6.
177 Law of Inventions, art. 211; Fraction IX; Becerril, supra note 16, at 5.
178 See supra notes 57–63 and accompanying text.
179 Law of Inventions, art. 223b; Becerril, supra note 16, at 6.
181 UNCTAD, Periodic Report, supra note 37, at 16.
United States, also offer patent protection for certain kinds of software. The continued omission of such protection in Mexico has led to some United States protest.\textsuperscript{182}

While the majority of the revisions to the Law on Inventions constitute needed improvements in the Mexican intellectual property law system, the changes are by no means radical ones. The response of the United States to these laws, then, must be considered.

V. United States and Mexican Intellectual Property Laws

The United States has recently expressed a strong commitment to the principles of free trade. This commitment is embodied in section 301 of the Free Trade Act of 1974.\textsuperscript{183} The Act provides that, should the President determine that an act, policy, or practice of a foreign country is unjustifiable or unreasonable, he shall take all appropriate and feasible action to secure the correction of that act or policy. The 1984 Amendments to section 301 specifically provide that the denial of "adequate and effective" protection of United States intellectual property rights constitutes such an unreasonable action.\textsuperscript{184} The United States Trade Representative has discretion to recommend an appropriate course of action to the President.\textsuperscript{185} Such action must be taken within one year after the initiation of any investigation.\textsuperscript{186}

An investigation under this section was initiated in October of 1985 against the government of Korea.\textsuperscript{187} According to U.S. Trade Representative Clayton Yeuter, "Korean Laws appear to deny effective protection for U.S. intellectual property."\textsuperscript{188} Among the problem areas cited were the non patentability of foodstuffs and chemical compounds and the limitation to process patents for chemicals and pharmaceuticals.\textsuperscript{189} In response to the investigation, the Korean government agreed in July, 1986, to sweeping revisions of their intellectual property laws to ensure adequate protection.\textsuperscript{190}

The initiation of a similar investigation into the Mexican system of intellectual property protection would seem to be warranted by many of the same concerns that prompted the Korean investigation. Several U.S. lawmakers have urged such action against Mexico.\textsuperscript{191} One senator\textsuperscript{192} has characterized the failure of the then-proposed Mexican reforms to offer immediate product patent protection and the short fourteen year term as an "unacceptable response,"\textsuperscript{193} which would violate the Free Trade Act of 1974.

Both Korea and Mexico are preferred trading partners of the United States under the Generalized System of Preferences (GSP).\textsuperscript{194} In this program, developing countries

\textsuperscript{182} 32 PAT. TRADEMARK & COPYRIGHT J. (BNA) 737 (1986).
\textsuperscript{184} Id.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
\textsuperscript{187} 30 PAT. TRADEMARK & COPYRIGHT J. (BNA) 646 (1985).
\textsuperscript{188} Id.
\textsuperscript{189} Id. Note that, even with the new revisions, the same problems exist in Mexican patent law.
\textsuperscript{190} 32 PAT. TRADEMARK & COPYRIGHT J. (BNA) 268 (1986).
\textsuperscript{191} 32 PAT. TRADEMARK & COPYRIGHT J. (BNA) 609 (1986).
\textsuperscript{192} Senator Frank Lautenburg (D-N.J.).
\textsuperscript{193} 32 PAT. TRADEMARK & COPYRIGHT J. (BNA) 609 (1986).
may export some goods to the United States free of duty.\textsuperscript{195} Those critical of the Mexican laws have suggested that, unless there are significant changes, an appropriate response would be to substantially restrict the trade benefits afforded Mexico under the GSP.\textsuperscript{196} Since Mexican import duties are already quite high and there is no special preference given to United States goods, a reciprocal increase in duties by Mexico would be unlikely.

In January, 1987, the U.S. Congress did reduce Mexico’s GSP benefits by approximately sixteen percent, or $200 million.\textsuperscript{197} This action was taken primarily as a result of trade deficits, and not because of the intellectual property laws \textit{per se}.\textsuperscript{198} In fact, South Korea, a country that revised its intellectual property laws in response to U.S. pressure, received a larger cut in their GSP benefits than did Mexico.\textsuperscript{199} Despite this action, further GSP cuts might still be an effective bargaining tool in seeking further revisions to Mexico’s intellectual property laws.

Another possible means of negotiating changes in Mexico’s laws might be to initiate talks through the Commission on Commerce and Trade.\textsuperscript{200} This is a special commission established by President Reagan and President Lopez-Portillo in 1981 to improve cooperation and help resolve trade issues between the United States and Mexico.\textsuperscript{201} Sector working groups have already been established under the Commission in specific areas of industry, including automobiles and electronics.\textsuperscript{202} A group could easily be established for the purpose of discussing United States trade concerns with respect to the Mexican intellectual property laws.

Until recently, Mexico was not a member of GATT.\textsuperscript{203} In fact, it was the only major trading country which was not a member.\textsuperscript{204} On March 18, 1980, Mexico postponed its membership indefinitely.\textsuperscript{205} Several reasons have been suggested for Mexico’s failure to join GATT. These include a fear of export or similar restrictions, the belief that oil wealth would obviate the necessity of joining and, ironically, suspicion over the apparent eagerness of the United States to have Mexico join the agreement.\textsuperscript{206} In October, 1986, Mexico reconsidered its earlier position and joined GATT as its ninety-second member.\textsuperscript{207} The decision of Mexico to join was backed enthusiastically by the United States. United States Ambassador Michael Samuels described Mexico’s accession as “a new page in our trade relations.”\textsuperscript{208}

Now that Mexico is a member of GATT, it is bound to abide by that organization’s decisions. Thus, it is interesting to note that at the 1985 meeting of GATT in Uruguay,

\begin{footnotesize}
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\item \textsuperscript{195} \textit{Id.}
\item \textsuperscript{196} 32 \textsc{Pat. Trademark \\ \\ Copyright J.} (BNA) 609 (1986). Senator Lautenberg was quoted as supporting such action.
\item \textsuperscript{197} \textit{Wall St. J.}, Jan. 5, 1987, at 4, col.1.
\item \textsuperscript{198} \textit{Id.}
\item \textsuperscript{199} \textit{Id.}
\item \textsuperscript{200} \textsc{Int’l Trade Administration, U.S. Dept. of Commerce, Foreign Economic Trends and Their Implications for the United States} 6 (1982).
\item \textsuperscript{201} \textit{Id.}
\item \textsuperscript{202} \textit{Id.}
\item \textsuperscript{203} \textsc{U.S. Dept. of Commerce, Overseas Business Reports: Marketing in Mexico} (1981).
\item \textsuperscript{204} \textit{Id.}
\item \textsuperscript{205} \textit{Id.}
\item \textsuperscript{206} Purcell, \textit{Mexico-U.S. Relations: Big Initiative Can Cause Big Problems}, 60 \textsc{Foreign Aff.} 379 (1981).
\item \textsuperscript{208} \textit{Id.}
\end{itemize}
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the United States succeeded in having intellectual property placed on the agenda as a trade barrier issue for further study.\textsuperscript{209} The United States hopes to use GATT to help enforce international patent conventions and settle disputes related to the interpretations of these international rules.\textsuperscript{210} The trade in counterfeit goods was also targeted as a subject for enforcement.\textsuperscript{211}

An action under Section 301 of the Trade Act, a termination of GSP preferences, an international agreement through GATT, or a discussion through the Commission on Commerce and Trade could all be used effectively to encourage positive changes in the Mexican Law on Inventions. Even with the recent reforms, Mexican intellectual property law is clearly inadequate to ensure complete protection for United States inventors and investors.

VI. Conclusion

Mexico is a developing country, with limited resources and a tremendous need for modernization and new technology. Mexico's laws courageously attempt to maximize the utility of technology transfers, and minimize their cost to Mexico. Unfortunately, in doing so, they have created obstacles to investment sufficient to bar much-needed trade, technology and investment from entering Mexico. By pressing for additional reforms, the United States would, in the long run, effect changes that might increase trade and the transfer of technology, thereby enriching and aiding the economies and citizens of both the U.S. and Mexico.

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\textsuperscript{209} \textit{32 Pat. Trademark & Copyright J.} (BNA) 571 (1986).
\textsuperscript{210} \textit{Id.}
\textsuperscript{211} \textit{32 Pat. Trademark & Copyright J.} (BNA) 737 (1986).