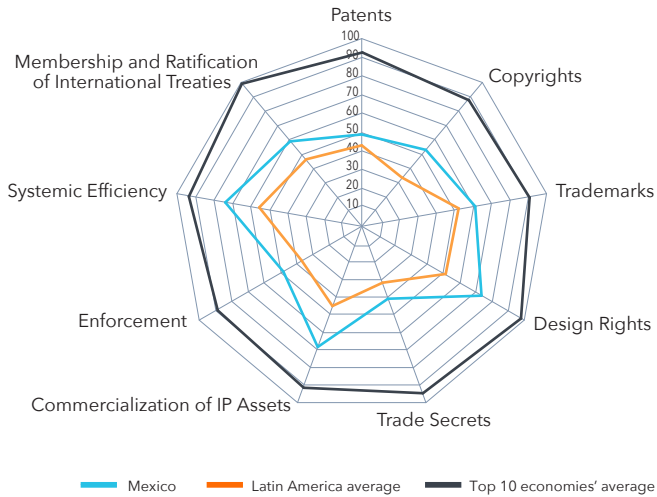
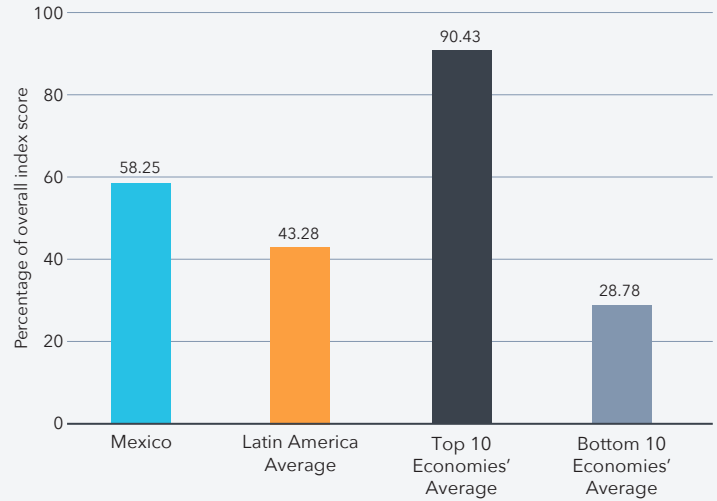


Category Scores



Overall Score in Comparison



STRENGTHS & WEAKNESSES

KEY AREAS OF STRENGTH

- ✓ Industrial Property Law 2020 amendments implement some provisions of USMCA
- ✓ Federal Law on Copyright 2020 amendments implement many provisions of USMCA
- ✓ Term of protection for industrial design rights extended to 25 years
- ✓ Efforts to ease ability to commercialize IP assets and develop public-private partnerships, particularly for public research organizations and universities
- ✓ Dedicated endeavor to streamline IP review process and criminal justice system and harmonize to international standards
- ✓ Efforts to increase awareness of importance of IP rights

KEY AREAS OF WEAKNESS

- ✗ Partial and ambiguous protection for life sciences IP
- ✗ Gaps in enforcement against online piracy
- ✗ Significant gaps in application of remedies, such as severe delays and difficulty securing adequate damages
- ✗ Inadequate border measures for trade-related infringement of IP rights

INDICATOR SCORES

INDICATOR	SCORE	INDICATOR	SCORE
Category 1: Patents, Related Rights and Limitations	4.49	Category 6: Commercialization of IP Assets	4.17
1. Term of protection	1.00	26. Barriers to market access	0.50
2. Patentability requirements	0.50	27. Barriers to technology transfer	0.50
3. Patentability of CILs	0.00	28. Registration and disclosure requirements of licensing deals	1.00
4. Plant variety protection	0.74	29. Direct government intervention in setting licensing terms	1.00
5. Pharmaceutical-related enforcement	0.25	30. IP as an economic asset	0.50
6. Legislative criteria and active use of compulsory licensing	1.00	31. Tax incentives for the creation of IP assets	0.67
7. Pharmaceutical patent term restoration	0.00	Category 7: Enforcement	3.43
8. Membership of a Patent Prosecution Highway	0.50	32. Physical counterfeiting rates	0.42
9. Patent opposition	0.50	33. Software piracy rates	0.51
Category 2: Copyrights, Related Rights, and Limitations	3.79	34. Civil and procedural remedies	0.50
10. Term of protection	0.79	35. Pre-established damages	1.00
11. Exclusive rights	0.50	36. Criminal standards	0.75
12. Injunctive-type relief	0.25	37. Effective border measures	0.00
13. Cooperative action against online piracy	0.50	38. Transparency and public reporting by customs	0.25
14. Limitations and exceptions	0.50	Category 8: Systemic Efficiency	3.75
15. Digital rights management	0.50	39. Coordination of IP rights enforcement	0.50
16. Government use of licensed software	0.75	40. Consultation with stakeholders during IP policy formation	0.75
Category 3: Trademarks, Related Rights, and Limitations	2.50	41. Educational campaigns and awareness raising	1.00
17. Term of protection	1.00	42. Targeted incentives for the creation and use of IP assets for SMEs	0.75
18. Protection of well-known marks	0.50	43. IP-intensive industries, national economic impact analysis	0.75
19. Exclusive rights, trademarks	0.50	Category 9: Membership and Ratification of International Treaties	4.25
20. Frameworks against online sale of counterfeit goods	0.50	44. WIPO Internet Treaties	1.00
Category 4: Design Rights, Related Rights, and Limitations	1.50	45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.75
21. Industrial design term of protection	1.00	46. Patent Law Treaty and Patent Cooperation Treaty	0.50
22. Exclusive rights, industrial design rights	0.50	47. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	0.00
Category 5: Trade Secrets and the Protection of Confidential Information	1.25	48. Membership of the Convention on Cybercrime, 2001	0.00
23. Protection of trade secrets (civil remedies)	0.50	49. The Hague Agreement Concerning the International Registration of Industrial Designs	1.00
24. Protection of trade secrets (criminal sanctions)	0.50	50. Post-TRIPS FTA	1.00
25. Regulatory data protection term	0.25		
TOTAL: 29.13			

SPOTLIGHT ON THE NATIONAL IP ENVIRONMENT

Past Editions versus Current Scores

Mexico's overall score has increased substantially from 54.38% (27.19 out of 50) in the eighth edition to 58.25% (29.13 out of 50) in the ninth edition. This reflects score increases on indicators 11, 13, 15, 20, 28, and 50.

Patent Rights, Related Rights, and Limitations

2. Patentability requirements; and 3. Patentability of computer-implemented inventions (CIIs):

Historically, it has been difficult for rights-holders to obtain protection for computer programs, software, and CIIs in Mexico. Article 19, section 3.4 of the old Industrial Property Law excluded computer programs as patentable subject matter. Historically, there have been examples of patents being granted for CIIs in Mexico, but these are few and far between, and claims often needed to involve a hardware component. Legal practice and available patent statistics suggest that both the number of applications and patents granted for software and computer-related patents by the IMPI have been low. For example, looking at patent statistics housed by WIPO between 1980 and 2018, there were a total of 9,373 published patent applications (patent publications by technology) under the categories "Computer technology" and "IT methods for management." This compares to 299,582 total applications published during this period, or 3.13% of the total. Statistics for the number of patents granted, not only applied for, show an even lower proportion of computer-related applications granted patent protection. Looking again at statistics housed by WIPO on the number of patents granted by technology during the same time period shows a total of 1,456 patents granted under the categories "Computer technology" and "IT methods for management." This compares to a total number of 56,202 patents granted for all technologies, or

2.59% of the total number of patents granted. Local legal analysis suggests that, while the situation has evolved over the years, and the IMPI does not always reject CII applications; the success of a given application is largely dependent on showing how a given piece of software interacts and acts in concert with computer hardware. On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA) formally took effect in all three countries. Relevant provisions of the USMCA are clear that patents should be granted for all inventions. Article 20.36 states that "each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application." Neither computer programs nor software are excluded per se under sub-sections 2 and 3. However, Mexico's implementing law, the revised Industrial Property Law, does not offer the same level of clarity. Instead, like the old IP Law, Article 47(5) explicitly excludes "computer programs" as patentable subject matter. At the time of research, no implementing regulations or revised patent guidelines had been issued. The USMCA's language on patentable subject matter is quite clear. Full implementation and application of these requirements in Mexican law and practice will result in an increase in score on both indicators 2 and 3. The Index will continue to monitor these developments in 2021.

5. Pharmaceutical-related patent enforcement and resolution mechanism:

While a 2003 Presidential Decree introduced a basic system for early adjudication of disputes relating to biopharmaceutical patent infringement and the marketing of a follow-on product, as noted over the course of the past nine editions of the Index, this has never represented an effective or transparent pathway because the patent holder receives no notification of infringing issues and is not formally involved in the adjudication process. Furthermore, the regulatory enforcement pathway has historically been

limited to substance and formulation patents only; use patents have not been included. In practice, resolution of patent disputes is delayed and often ineffective, whether through administrative or judicial routes. Industry sources suggest that, historically, where cases of infringement have been brought, substantial delays at both the administrative and judicial levels have hindered rights-holders' ability to secure damages effectively (reaching a total of about 10 years on average). Some reform proposals have been introduced over the course of the Index, but they have failed to sufficiently address the shortcomings of the existing system, with some instead compounding the existing deficiencies. For example, in 2019, modifications to the Health Law were proposed by the Mexican Senate. Under the proposed system, only one patent could be listed per each new chemical entity, and patents for biologics would not be considered. If adopted, this reform would further devalue the existing linkage regime and rights-holders' ability to enforce their patents. Mexico is bound through both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and USMCA to introduce a more comprehensive and practical system of biopharmaceutical patent enforcement. Article 20.50 of the USMCA provides a clear requirement that the contracting parties provide "a system to provide notice to a patent holder or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use ... [and] adequate time and sufficient opportunity for such a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies." Mexico's revised Industrial Property Law, which implements the USMCA, does not contain any legal provisions relating to the existing linkage regime. Transitional paragraph (5) of the law simply states that the IMPI shall "participate" with the Mexican Federal Commission for Protection

against Sanitary Risks (COFEPRIS) "in the establishment of the corresponding technical collaboration mechanism for inventions in the field of allopathic drugs." At the time of research, no new regulations or laws had been passed. A proposal for a revised linkage regime was put forth by the Chamber of Deputies in fall 2020. Unfortunately, this proposal does not incorporate the requirements of the USMCA and would not address the deficiencies in the current system. The USMCA's language on the requirements for an effective pharmaceutical-related patent enforcement and resolution mechanism is quite clear. Full implementation and application of these requirements in Mexican law and practice will result in a score increase on this indicator. The Index will continue to monitor these developments in 2021.

7. Patent term restoration for pharmaceutical products: Mexican law has historically not provided any restoration of patent term lost due to regulatory review periods for biopharmaceutical products. Article 20.46 of the USMCA requires that contracting parties make "available an adjustment of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process." The term of restoration is dependent on the type of mechanism used. Footnote 40 of the agreement describes that this can be a two-year additional *sui generis* protection or up to a five-year period of adjustment. Mexico's revised Industrial Property Law does not contain reference to a period of restoration or additional *sui generis* protection for delays caused by the drug registration and marketing approval process. Article 126 of the law provides the possibility of obtaining an adjustment to the term of protection only in the case of unreasonable delays at the IMPI as part of patent prosecution. Any adjustment period is available only if the processing of a patent application takes longer than five years and the delay is directly attributable to the IMPI. As with indicator 5 and the introduction of an effective

biopharmaceutical linkage system, the USMCA is clear on the requirement that contracting parties should make available a period of restoration due to delays caused by the market review process for biopharmaceuticals. Full implementation and application of these requirements in Mexican law and practice will result in a score increase on this indicator. The Index will continue to monitor these developments in 2021.

Copyrights, Related Rights, and Limitations

11. Legal measures which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including Web hosting, streaming, and linking); 13. Availability of frameworks that promote cooperative action against online piracy; and 15. Digital rights management (DRM) legislation: As has been noted over the course of the Index, Mexico has historically had one of the more challenging copyright environments in the OECD, lacking in both substantive IP rights and enforcement against online and hard goods copyright piracy. The Federal Law on Copyright sets out standard exclusive rights of reproduction, public transmission, use, distribution, and sale, but has not included provisions or mechanisms that are more specific to addressing internet or online infringement. Up until now, proposed copyright reforms have not been successful. These include the Döring Act (2012), which sought to introduce a warning system for users and raise penalties to more deterrent levels. While amendments that would introduce a notice-and-takedown system and penalties for online infringement were shelved, some steps were taken in 2016 to enhance prosecution for online piracy. The USMCA contains several provisions that would strengthen standards of copyright protection in Mexico, including with regards to digital rights management and technological protection measures, cable and satellite piracy, and the introduction of a notice-and-takedown regime. On

July 1, 2020, amendments to the Federal Law on Copyright were published, incorporating many of the most important copyright provisions of the USMCA. Overall, the amendments strengthen the level of protection for copyrighted works in Mexico, extending this protection to the internet and the digital environment. Specific changes include (1) a new notification system whereby ISPs are obliged to act expeditiously and remove suspected content upon receiving a notification (Articles 114 and 232); (2) robust DRM and TPM provisions outlawing the use, manufacture, sale, importation, distribution, or otherwise offering to the public of circumvention devices and technologies (Article 232); and (3) making illegal the use, manufacture, import, or other form of distribution of satellite signal decoders (Article 145). These are positive developments and have resulted in score increases on indicators 11, 13, and 15. However, some parts of the amendments remain unclear. For example, with respect to potential ISP liability for infringing content, Article 114(8) is quite clear that ISPs will not be responsible for any damages caused by potential copyright infringement as long as they act expeditiously and in good faith to remove infringing content and take measures to prevent the same infringing content from reappearing. However, in the same article, sub-section V, the law states that the “inability of an Internet Service Provider to meet the requirements set forth in this article by itself does not generate liability for damages for violations of copyright and related rights protected by this Law.” For any notification system to be effective in addressing online infringement, the responsibilities and legal expectations for each affected party must be clear. At the time of research, no implementing regulations or further guidance had been issued. The Index will continue to monitor these developments in 2021.

Trademarks, Related Rights, and Limitations

20. Availability of frameworks that promote cooperative private action against online sale of counterfeit goods:

Like in many other economies, online shopping and retail is increasing in Mexico in line with the spread of broadband and mobile telephone connectivity. Up until 2020, there was no regulatory or administrative framework for rights-holders to effectively address the sale of counterfeit goods and infringement of trademark rights online. Only some online merchants, including eBay and Mercado Libre, have had in place specific notice-and-takedown mechanisms giving rights-holders the ability to alert them directly of potential infringements. Mexico's revised Industrial Property Law contains a new mechanism whereby injunctive-style relief can be obtained directly from the IMPI in respect of online violations. Specifically, Article 344 sub-sections VII and VIII give the IMPI the power to "order the alleged offender or third parties to suspend, block, remove content or cease acts that constitute a violation of this Law through any virtual, digital or electronic means, known or to be known." As a result of the introduction of these new powers in the online space, the score on this indicator has increased by 0.25.

Trade Secrets and the Protection of Confidential Information

23. Protection of trade secrets (civil remedies); and 24. Protection of trade secrets (criminal sanctions): Unlike many emerging markets included in the Index, Mexico has had a statutory definition and both civil and criminal remedies in place for the protection of trade secrets and confidential information for decades. Specifically, trade secrets and the protection of confidential information are governed under three Mexican laws: the Industrial Property Law in relation to trade secrets in general and the remedies against a breach thereof; the Civil Law when considering a breach of a con-

tractual relationship and a claim for damages; and the Federal Criminal Code when considering the disclosure of trade secrets as criminal offences in connection with the Industrial Property Law. The USMCA contains clear provisions on the protection of trade secrets and confidential information. Section I defines the meaning of trade secrets and misappropriation and outlines the civil and criminal remedies that contracting parties should make available. The revised Industrial Property Law, which implements the USMCA, includes some positive changes that incorporate these provisions. For example, Articles 163 and 402 now incorporate fuller definitions of misappropriation and potential criminal conduct, respectively. These new provisions complement and improve the existing statute. As has been noted over the course of the Index, IP rights-holders have long faced a challenge in effectively enforcing their IP rights, trade secrets included, in Mexico. Although relevant IP laws provide for administrative and civil remedies, including provisional measures, damages, and seizure of goods, in practice, it is difficult to secure remedies for infringement. There is a multilayer system for IP enforcement, which usually begins with an administrative action by the IMPI and then moves to the courts. Altogether, the process is complex, costly, and lengthy for rights-holders and often does not result in effective enforcement. Local legal analysis suggests that administrative proceedings before IMPI usually take between 18 and 24 months but can take up to five years. For trade secrets specifically, the enforcement environment has been found to be difficult. For instance, in the OECD's Trade Secret Protection Index, Mexico scores substantially lower on categories pertaining to enforcement than to legal definitions and remedies available. The Index will continue to monitor the ability of rights-holders to effectively protect their trade secrets and confidential information in 2021.

Commercialization of IP Assets and Market Access

28. Registration and disclosure requirements of licensing deals:

Historically, the registration of licenses with the IMPI was required for the license to have effect against third parties. Local legal analysis suggests that the registration process was not overly burdensome, and it was possible to submit a shorter version of the licensing contract with confidential information omitted. This was amended by Mexico's accession to the USMCA, and the requirement to register licenses for patents and trademarks is now entirely voluntary as per the revised Industrial Property Law. As a result, the score on this indicator has increased by 0.25.

Membership and Ratification of International Treaties

50. Post-TRIPS FTA: On July 1, 2020, the USMCA formally took effect in the United States, Canada, and Mexico. Although weakened by the parties in December 2019, the agreement still contains many important post-TRIPS IP components. As a result of this agreement coming into effect in Mexico, the score on this indicator has increased by 0.5.