Webinar:

EXPLORING INTELLECTUAL PROPERTY ADVANCEMENTS WITHIN USMCA:

WHAT LIES AHEAD FOR BOOSTING MEXICAN INNOVATION CAPACITY?

POLICY BRIEF

Introduction

Mexico stands at a pivotal moment in its economic history. The country has achieved impressive economic growth in recent years, outpacing many of its peers. However, to fully capitalize on its potential and secure a prosperous future, Mexico must take deliberate steps to attract investment in innovative, high-value industries, particularly in the life sciences sector. By strengthening its intellectual property (IP) framework, particularly according to its obligations under the United-States-Mexico-Canada Agreement (USMCA), and creating a more conducive environment for innovation, Mexico can position itself as a premier destination for cutting-edge technology and research.

- The trend toward outsourcing operations to Mexico (i.e., nearshoring) presents a unique opportunity for Mexico to attract greater investment and technology transfer, particularly in the life sciences sector. Mexico can leverage its participation in the USMCA, to avail itself of the growing trend of companies seeking to relocate their operations closer to the United States.[1]
- While Mexico has performed solidly on innovation indicators such as the Global Innovation Index, it has yet to establish itself as an innovation leader. By implementing policies that protect intellectual property and foster further innovation, Mexico can join the ranks of the world's top economies.[2]
- By fully implementing its IP obligations under the USMCA, Mexico can create a more attractive environment for investment in innovative industries, including the life sciences. This, in turn, would help Mexico transition more workers from its large informal sector into the more productive and secure formal sector, improving the livelihoods of Mexican workers and contributing to the country's overall economic growth and stability.[3]

[1] *See* "Mexico economic outlook, 2023," Deloitte Insights, https://www2.deloitte.com/us/en/insights/economy/americas/mexico-economic-outlook.html, around figs. 6-7.
[2] *See, e.g.,* "Global Innovation Index 2023, Innovation in the face of uncertainty," WIPO, https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023-en-main-report-global-innovation-index-2023-16th-edition.pdf.
[3] *See* "Pharmaceutical Research and Manufacturers of America (PhRMA) Special 301 Submission 2024," PhRMA, https://phrma.org/resource-center/Topics/International/phrma-special-301-submission-2024, pp 195-204.

Mexico's Opportunity to Create More Jobs in the Innovation Industries

Mexico has enjoyed notable economic successes in recent years but also faces ongoing challenges that limit its great potential. By addressing these challenges and moving up the value chain to higher-productivity industries, particularly the life sciences, Mexico could supercharge its economic growth and development.

Mexico's economy has demonstrated several key strengths:[4]

- **It ranks 5th among G20 countries in annual GDP growth**, thanks largely to a manufacturing boom. In the first half of 2023, Mexico's GDP grew an impressive 3.7% year-over-year.
- **Private consumption has increased due to real wage growth and a strong labor market.** The minimum wage has risen substantially and is now more than double the U.S. federal minimum wage. Unemployment is at its lowest level since 2005.
- **Nearshoring trends have led to a resurgence in business confidence and private investment in Mexico**. Construction of new industrial facilities grew 19% in early 2023, a record high.
- As a result of the USMCA's increased regional content requirements for increasing the share of U.S. auto manufacturing done in North America, **Mexico has become the U.S.'s largest trading partner as of 2022**. Building factories in Mexico thereby allows duty-free exports of automobiles and many other products to the U.S.

Mexico is well-positioned to capitalize on the growing trend of nearshoring, as companies relocate offshored manufacturing operations closer to the United States. The country's proximity to the U.S., competitive labor costs, and participation in the USMCA make it an attractive destination for businesses looking to shorten supply chains and reduce risks.

Nearshoring can bring significant gains to Mexico, including increased foreign investment, specialized jobs, manufacturing output, and innovation and productivity. While most of the nearly $30 billion in direct investment in 2023 went to existing projects, experts suggest the largest

[4] "Mexico economic outlook, 2023," Deloitte, before fig. 1.

nearshoring investments are yet to come, indicating a promising future as more companies establish a presence in the country.[5]

However, Mexico also faces ongoing economic challenges:

- **Productivity growth has been minimal over the past two decades, remaining at around $20 per hour worked since 2005**, with manufacturing seeing only a 10% productivity gain in that time. Greater investments in infrastructure, skills development, and other productivity-enhancing areas would accelerate growth.
- **Over half of Mexican workers are employed informally**. Informality depresses overall productivity, limits tax revenue, and leaves workers without important protections and benefits. Creating more formal sector jobs is crucial.
- **Despite recent gains, poverty and inequality remain high**. The poverty rate stood at nearly 44% in 2020, with the pandemic pushing an additional 3.8 million people into poverty between 2018 and 2020. Reducing these persistently high levels is key for inclusive growth.[6]

Becoming a Technology Leader

Beyond being a manufacturing hub, Mexico's strengths create an opportunity for more innovation through both technology-intensive foreign investment and homegrown startups, generating more formal innovation economy jobs.

The Mexican economy would gain from policies that support its emerging startup ecosystem. Mexico demonstrates an average GDP to privately held startup valuation ratio but has room for improvement.[7] It has Kavak, a leading e-commerce unicorn, but could benefit from more such companies. The potential exists: Mexico City ranks as a top five middle-income innovation cluster,[8] suggesting the ability to attract more innovators to Mexican cities.

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[5] "Mexico economic outlook, 2023," Deloitte, before fig. 6.

[6] "Why Mexico's economy underperforms," The Economist (2022), https://www.economist.com/the-americas/2022/03/19/why-mexicos-economy-underperforms?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=CjwKCAjwrIixBhBbEiwACEqDJTR_prO4Vo2ppAt2NmEWhwd_dagEkd_VD7v4_tjVapop5NjSwIT0FRoCgy0QAvD_BwE&gclsrc=aw.ds.

[7] "Global Innovation Index 2023," WIPO, pp 60-61.

[8] "Global Innovation Index 2023," WIPO, pp 71-72.

The life sciences sector, spanning pharmaceuticals, biotech, and medical devices, represents a particularly strong opportunity. As a high-value industry that generates exports, skilled jobs, and R&D, attracting more life sciences investment would help shift workers to the formal economy, boost productivity and establish Mexico as Latin America's innovation leader.

Strengthening Key Institutions in the Innovation Ecosystem

To realize these innovation gains, Mexico could strengthen key institutions underpinning its innovation ecosystem. While Mexico is Latin America's 3rd strongest innovation economy, it still underperforms its potential on global indices.[9] Enhancing its institutions and business climate could unlock more innovation. In particular, reinforcing intellectual property (IP) rights would incentivize life sciences investment.

The U.S. Chamber of Commerce's International IP Index highlights that recent amendments to Mexico's Industrial Property Law implemented some USMCA provisions, that efforts are underway to improve IP commercialization through partnerships, and that IP processes are being streamlined and harmonized.[10]

However, the Index notes weaknesses in Mexico's innovation-related IP framework, particularly in the life sciences. Most notably, Mexico has not fully implemented its USMCA obligation to provide an effective mechanism to enforce pharmaceutical patents and resolve disputes.[11] The Index finds biopharmaceutical patent dispute resolution is often delayed and ineffective, with the life sciences' IP protection overall considered "partial and ambiguous."[12] Mexico also still needs to implement patent term restoration to compensate for regulatory delays by 2025, as required under the USMCA.[13]

[9] "Global Innovation Index 2023," WIPO, pp 18, 23, 51, 58.
[10] "International IP Index, 2024 Twelfth Edition," U.S. Chamber of Commerce Global Innovation Policy Center, https://www.uschamber.com/intellectual-property/2024-ip-index#:~:text=The%20U.S.%20Chamber's%20International%20IP%20Index%20(IP%20Index)%20creates%20a,intellectual%20property%20(IP)%20standards, p 253.
[11] "International IP Index," GIPC, p 256.
[12] "International IP Index," GIPC, p 253.
[13] PhRMA Special 301 Submission 2024, p 198.

Other IP challenges include inconsistent patent enforcement, insufficient protection for regulatory data generated for government approval of biologics, and slow resolution of IP disputes. This limits Mexico's attractiveness for R&D-intensive industries.

Indeed, inadequate patent enforcement, lack of data protection, and regulatory delays deter life sciences investors.[14] One study found biopharmaceutical innovators face market access delays in Mexico of over 1,500 days due to regulatory barriers and weak IP protections.[15]

Implementing USMCA Commitments for Economic Gains

Mexico can address many of these gaps by implementing its USMCA commitments on IP and regulatory issues.

On IP, a priority is establishing an effective enforcement system for pharmaceutical patents under USMCA Article 20.50 and Annex 20-A. While publishing follow-on therapeutic product applications online is a positive step, Mexico could operationalize a more robust public-notice mechanism through added regulations, such as:

- Confirming all relevant patents, including use patents, are subject to the mechanism.
- Requiring the national patent office, the Mexican Institute of Industrial Property (IMPI), to inform patent holders that the regulatory approval authority, the Federal Commission for the Protection Against Sanitary Risk (COFEPRIS), has received an application for a possibly infringing follow-on product and to share IMPI's preliminary determinations on such a possibility.
- Providing patent holders an opportunity to present evidence to IMPI before a final decision is made.

These steps would prevent approval of infringing pharmaceutical products and boost innovator confidence.

[14] PhRMA Special 301 Submission 2024, pp 195-196.
[15] Salieri, G. and Fuentes, F., "Biopharmaceutical Innovation in Mexico: At the Crossroads," Fundacion IDEA, 2016, available at http://geneva-network.com/article/biopharmaceutical-innovation-mexicocrossroads/.

Providing better regulatory protections for data associated with both small molecules and biologics, as required by Articles 20.48 and 20.49, is also critical. Regulatory data protections (RDP) incentivize development of novel therapies by preventing competitors from relying on innovator's test data. Enacting RDP legislation would fulfill Mexico's commitment.[16]

Other priorities include clarifying that the experimental-use "*Bolar* exemption" under Article 20.47 applies solely to allow generics to gather data for regulatory approval, and implementing patent term restoration by 2025 to compensate for patent examination and regulatory delays.[17]

On the regulatory side, COFEPRIS could ensure timely, fair, and transparent processes for reviewing new medicines under Article 12.F.6.4, clear its backlog, and could meet USMCA timeframes going forward. Transparent and consistent government procurement processes that value innovation are also needed.[18] Finally, adopting fair and reasonable pharmaceutical pricing procedures, developed with stakeholder input, would meet Article 29.7.

The impetus for swift USMCA implementation is underscored by the July 2026 "joint review" of the agreement under Article 34.7, where each party must confirm whether it wishes to extend the USMCA.

The joint review creates a positive incentive for Mexico, as the U.S. is seeking to strengthen medical supply chains with regional partners providing strong IP protection and open market access. Timely USMCA compliance would position Mexico to profit from these initiatives.

By following through on its USMCA commitments and creating a world-class IP and regulatory environment, Mexico can successfully attract more life sciences investment and create productive formal sector jobs, cementing its status as Latin America's innovation leader. Realizing these economic gains is a key opportunity for Mexico.

Conclusion

Mexico has a significant opportunity to leverage both its existing economic strengths and the nearshoring trend to become a hub for innovation and high-value life sciences investment. By enhancing its intellectual property protections and regulatory environment in line with its USMCA

[16] PhRMA Special 301 Submission 2024, p 199.
[17] PhRMA Special 301 Submission 2024, p 200.
[18] PhRMA Special 301 Submission 2024, p 201.

obligations, Mexico can shift more workers into formal innovation economy jobs, boost productivity, and become Latin America's undisputed innovation leader. Successfully implementing the USMCA would make Mexico an even more attractive destination as the U.S. seeks to strengthen regional supply chains. The potential economic gains make it a key imperative for Mexico to act swiftly to strengthen its innovation ecosystem, particularly as the 2026 USMCA review approaches. With focused efforts, Mexico stands poised to realize a more innovative, prosperous, and inclusive economic future.

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