CHANGING TRENDS IN THE CONTENT AND PURPOSE OF MEXICO’S INTELLECTUAL PROPERTY RIGHT REGIME

Alan S. Gutterman*

I. INTRODUCTION

Intellectual property matters have come to occupy an increasingly important place in the ongoing discussions regarding international trade and development. For example, over the last two years, debate has continued on a number of fronts: the negotiations on Trade Related Aspects of Intellectual Property Rights (TRIPs) in the context of the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT), the efforts of the United States Trade Representative (USTR) to make international intellectual property laws compatible with the perceived interests of the United States, and the continuing attempts by the World Intellectual Property Organization (WIPO) and others, including the European Communities (EC) to harmonize regional and international patent and industrial property law regimes.

The emerging dialogue on intellectual property matters is consistent with evolving trading patterns and recognizes the importance of technology in the new economic order being created by rapid geopolitical changes in so many parts of the world. As such, it should come as little surprise that the resolution of perceived uncertainties regarding the scope and content of international intellectual property laws often depends upon the ability of the participants to strike the delicate

* Chair of the Intellectual Property Subcommittee of the Committee on International Business Law of the American Bar Association’s Section of Business Law. Alan Gutterman has published several articles on various aspects of international technology transfer and is also active in ABA activities with respect to all aspects of business activity in developing nations, including the growth of capital markets.
balance between the desire of developed "technology rich" nations to enhance the degree of protection for their technical assets in foreign markets and the need of the developing nations to gain access to new technology in order for them to pursue economic growth and enhance the competitiveness of their firms and human resources.

Classical economic theory dictated that nations would compete in the international economy on the basis of their comparative advantage with respect to the two recognized primary factors of production: capital and labor. Under this model, developing nations would utilize their stock of comparatively inexpensive labor factors to produce simple goods and raw materials which would be traded for the capital-intensive goods of the developed nations. In the course of this trading pattern, the developing nations would accumulate the capital necessary to enhance the overall wealth and general welfare of its citizens and would produce increasingly sophisticated goods and services for sale in world markets.

However appealing the two factor model might be for simple analysis, it is clear that recent events dictate consideration of two new elements of production: natural resources, particularly oil and energy-related products, and new forms of technology capable of rapidly accelerating the process of developing new forms of goods and services. As a result, poorer nations, no longer able to depend upon their ability to achieve development as a result of their comparative cost advantages with respect to labor inputs, have felt compelled to adopt regulatory practices which enhance their ability to gain access to the technologies developed, at great expense, by the industrialized nations. In turn, the developed nations, recognizing the import of these technical capabilities and resources, have vig-

1 Rapid increases in oil prices during the early 1970s and early 1980s created a number of instant "capital-rich" nations. However, in large part these nations lacked the technical infrastructure necessary to develop the long-term production and manufacturing capabilities associated with the older industrialized nations.

2 For example, developing nations have implemented regulatory regimes regarding inbound technology transfers which require that local firms gain full access to the technologies of firms from industrialized nations, including the technical assistance necessary for full exploitation of the information in areas beyond the scope of the original contractual relationship. Also, developing nations tend to view the fruits of invention as social, rather than individual, resources. As such, their intellectual property regimes contain few of the guarantees or protections against misappropriation which tend to exist in the industrialized nations. Moreover, enforcement of the laws which have been adopted in many developing nations has tended to be sporadic and ineffectual.
orously resisted any measures or practices which gratuitously transfer technical capabilities to the developing world.\(^3\)

The experience of one of the United States' closest trading partners, Mexico, illustrates the tensions between "North" and "South" relating to the transfer of technology and the protection of related intellectual property rights.\(^4\) As recently as 1982, Mexico strengthened the restrictions on inbound technology transfers under its Law on the Control and Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks (the TTL),\(^5\) a law that was originally enacted in 1972 out of concerns among local policymakers that developed nations were practicing a form of "technological imperialism" in the negotiation and implementation of license and technology transfer agreements with firms in developing nations.\(^6\) The TTL mandates the prior registration and regulatory review of specified forms of licensing or technology transfer agreements between private firms\(^7\) as a condition of their effectiveness.\(^8\)

---

\(^3\) As noted below, the United States and other industrialized nations have argued strenuously in multilateral and bilateral negotiations for the enhancement of the protections offered to inventors and technology owners by the intellectual property regimes of the developing nations as well as for the improvement of local enforcement procedures. See, e.g., infra text accompanying notes 20-22.

\(^4\) Economic debate between the developed and developing nations is often described in terms of the geographic concentration of the industrialized nations in the northern hemisphere against poorer nations, such as those in South America and Africa, which tend to be located south of the equator.

\(^5\) Ley sobre el Control y Registro de la Transferencia de Tecnología y Uso y Exploitation de Patentes y Marcas, Diario Official (D.O.) Ch. 26, § 26.04 (as amended 1982) (Law on the Control and Registry of Technology Transfer and the Use and Exploitation of Patents and Trademarks) [hereinafter TTL]. The most recent amendments to the TTL were published in Mexico's Official Gazette on January 11, 1982, and became effective as of February 10, 1982.


\(^7\) Article 2 of the TTL sets forth the various agreements which are subject to the registration requirements, including agreements relating to technical assistance, patents, trademarks, tradenames, copyrights, know-how, and administrative services. Article 3 of the TTL sets forth various exceptions to the registration requirements. Licensing and technology transfer agreements which are subject to registration under the TTL are referred to herein as LTTAs.

\(^8\) Any LTTA which will have effect in Mexico must be submitted to the National Registry of Transfer of Technology (NRTT) for approval and registration. Payments made under a non-registered LTTA will not be eligible for a deduction by the payor for purposes of Mexican income tax laws, and a certification of registration from the NRTT is required in order to receive any benefits, incentives, assistance, or facilities provided in the plans and programs of the Mexican government. Other sanctions for the failure to register a LTTA or to otherwise comply with the terms
In practice, the administration of the TTL was similar to that of other developing nations, and prior regulations under the TTL were interpreted so as to place severe limitations on the compensation payable to foreign licensors under any LTTA, as well as to require that the licensee be granted broad rights with respect to the use of the transferred technology. In addition, the registration procedures were extremely slow and almost uniformly resulted in the denial of registration to any LTTA containing any one of a number of "restrictive" clauses, such as any requirement to maintain the confidentiality of trade secrets beyond the term of the LTTA, any limitations on the use of transferred technology, any requirement with respect to a mandatory grantback of improvements to the technology, and any restrictions on the sale of products manufactured with the transferred technology.\(^9\)

Due in part to the effect of the TTL, as well as other perceived deficiencies in Mexico's protection of all types of intellectual property rights and its regulation of foreign investment activities, the flow of foreign technology into the country was severely hampered. The lack of foreign investment interest, when combined with the inability of domestic firms to develop their own internal technical capabilities,\(^10\) led to internal pressures for liberalization of the government's attitude toward foreign participation in the economy. Moreover, a number of external factors, including the actions of the USTR and the general difficulties associated with indebtedness to foreign commercial banks,\(^11\)

---

\(^9\) As a general matter, the effect of the restrictions imposed by the Mexican government under the TTL was to require that the domestic licensee receive all rights and technical information necessary for the exploitation of the transferred technology beyond the term of the LTTA in products and markets not included within the scope of the original arrangement. In effect, the LTTA amounted to a sale, rather than a license, of the technology at rates which were severely restricted by the government.

\(^10\) The January 10, 1990 issue of *El Financiero*, the Mexico City financial newspaper, noted that ""[o]nly 30 percent of the technology contracts during the last six years were with foreign companies because of the complicated bureaucratic red tape and the legal loopholes, even though government policy was to encourage acquisition of productive advancements."

\(^11\) Like its brethren in the other oil producing nations, Mexico enjoyed the benefits...
dictated a thorough reconsideration of past policies in a number of areas and led to the enactment of wholesale changes in the laws relating to the protection and transfer of intellectual property.\(^\text{12}\)

In addition to the various legal changes, discussions have been initiated between commerce officials in the United States and their counterparts in Mexico relating to technical support and the exchange of information in the areas of patent and trademark regulation, bilateral trade and investment and the promotion of quality enhancement in Mexican industries.\(^\text{13}\) Mexico has also become an active participant in the TRIPs negotiations. While it remains to be seen what the practical effect of these changes will be on the nation's ability to attract inbound technology transfers, the recent measures have prompted the USTR to take note of Mexico's recognition "that the adequate and effective protection of intellectual property rights will contribute to Mexico's economic interests and is a vital asset in fostering creativity and inventiveness in Mexico."\(^\text{14}\)

Its geographical proximity to the United States, as well as the developing nature of its economy, makes an analysis of recent changes in Mexico's intellectual property laws important for a number of reasons. In this article, we begin with an examination of the broad international initiatives regarding intellectual property matters which have been undertaken over the last several years by WIPO, the GATT, and the USTR. The next section focuses upon the recent changes to the regulations implementing the TTL and ancillary issues regarding the protection offered by Mexico's patent and copyright laws. Finally,


the article closes with a few thoughts on the future of Mexico’s efforts to liberalize its intellectual property laws and the lessons that might be applied to the ongoing dialogue in the aforementioned forums.

II. INTERNATIONAL INTELLECTUAL PROPERTY INITIATIVES

A. Introduction

As noted above, intellectual property matters have played an increasingly important role in the conduct of international trade negotiations over the last few years, a trend which has led to the inclusion of intellectual property provisions in a number of trade statutes and regulations enacted in the United States. Spirited debate between developed and developing nations has occurred as part of the various harmonization efforts initiated by the GATT, with respect to various trade-related aspects of intellectual property, and by WIPO, with respect to the protection of patents and industrial property rights. Moreover, partially in response to certain perceived shortcomings in the various multilateral negotiations, countries such as the United States have continued their own bilateral initiatives in the area of intellectual property rights with a number of nations, including Mexico.

The policies of any nation, such as Mexico, with respect to the development, importation, and use of technology and related information, in the form of “know-how” and associated intangible assets, is clearly a function of its own set of ideological values with respect to the integrity of individual rights in the process of innovation.
Moreover, the economic interests of the nation will also dictate the manner in which regulatory tools are developed. However, it is no longer possible for any nation, even the United States, to ignore the actions of its trading neighbors in an area as important as intellectual property. As such, the balance of this section describes the international environment for trade in various forms of technology.

B. Harmonization of Intellectual Property Law Regimes

The WIPO Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions has been working on a patent harmonization treaty which is to be finalized in 1991. As has been the case for a number of years, the United States continues to harbor doubts regarding its participation in any harmonization efforts, particularly as it might relate to its willingness to accept "first-to-file" requirements, the "prior act" effect of applications and the eighteen month publication period.\(^\text{18}\) Also, general concerns remain with respect to the willingness of several nations to provide patent protection in all technical fields, to initiate procedures calculated to effect the prompt examination of applications for patent protection and, finally, to vigorously enforce and broadly interpret the scope of granted patents.\(^\text{19}\)

As the WIPO discussions continue, broader negotiations have been conducted as part of the current Uruguay Round discussions. These so-called TRIPs negotiations have been punctuated by persistent disputes between the developed and developing nations as to whether WIPO or the GATT should have final responsibility for international intellectual property matters. Developing nations, who have a built-in majority in WIPO, have urged that the role of the GATT should be limited, while developed nations have argued that the GATT is the natural arena for intellectual property discussions in light of the importance of technology to world trade and the enforcement capabilities that have been built into the GATT over the years.\(^\text{20}\) As a result, the TRIPs negotiations have sometimes been less than effective in moving toward a worldwide intellectual property regime.

---


\(^{19}\) Id.

As the Uruguay Round draws to a close at the end of 1990, a number of efforts have been made to reach some consensus among the developed and developing nations. For example, the EC issued a proposed draft agreement in April 1990 and the United States, Japan, Switzerland and a group of developing nations all put forth their own latest proposals at the May 1990 meeting of the TRIPs working group. A number of other nations, including Mexico, have also tabled proposals during the last part of 1989 and the early months of 1990. The EC would have its draft agreement incorporated into the GATT as an annex, which would require the approval of two-thirds of the ninety-seven members of the GATT, while others would have any TRIPs agreement adopted in the form of a code or protocol, which would not require adherence by a majority of GATT members and would only be valid among those members who actually elect to become signatories thereto.

The proposed EC draft agreement provides for a broad definition of the matters that would be subject to protection, including patents, copyrights, trademarks, industrial designs, trade secrets, computer programs, chipboard circuit layouts and geographical appellations of origin. Patents would be protected for at least twenty years and copyright and semiconductor layouts would be protected for ten years. The EC draft agreement also contains general provisions and standards to be followed by all GATT members, sets forth enforcement procedures, and would ban unilateral actions by members such as those available in the United States under the Special 301 provisions described below. In an attempt to calm the fears of the developing nations, the annex would be monitored by a joint group from the GATT and WIPO to be established under the GATT.

The proposal from the United States is similar in format to that of the EC, although substantive differences remain with respect to a number of issues. For example, the United States remains opposed to the EC's stringent appellation of origin standards and proposed

---

21 See Doi, The GATT TRIPs Negotiations, 3 CAL. INT'L L. SEC. NEWSL. No. 2 at 6 (June 1990).
22 Id. The EC's efforts to integrate intellectual property matters into the overall GATT framework have been met by strong opposition from developing and "newly-industrialized" nations, including Mexico, as well as Chile, India, Korea and Colombia. See 4 World Intell. Prop. Rep. (BNA) No. 5, at 100 (May 1990).
23 See Doi, supra note 21, at 5.
24 Id. at 6.
25 Id.
tougher criteria for the protection of industrial designs.\textsuperscript{26} In addition, the EC and the United States would apply different regimes with regard to the scope of patent protection,\textsuperscript{27} copyright provisions,\textsuperscript{28} compulsory licensing\textsuperscript{29} and enforcement proceedings.\textsuperscript{30} However, the developed nations, including Japan,\textsuperscript{31} appear to have reached general agreement on the broad content of any agreement that might come out of the TRIPs negotiations.

The position taken by the developed nations focuses upon a number of perceived deficiencies in the intellectual property laws of developing nations, including Mexico. In particular, clear pressure is building with respect to broadening the definition of patentable products and extending the term of patent protection. Developed nations also want limitations on technology "leakage" created by compulsory licensing schemes, inadequate enforcement mechanisms and the inability of foreign transferors to extract restrictions from licensees on the use and disclosure of trade secrets and related technical "know-how."

While the reaction of the developing nations continues to be mixed, it would appear that any final agreement must include a set of transitional rules designed to ease the perceived burden of compliance for developing nations. For example, Australia, New Zealand, Hong Kong and the Nordic countries have each proposed transitional rules including: a single cut-off date by which signatories to the TRIPs agreement would ensure their conformity with the agreement; different

\textsuperscript{26} Id.

\textsuperscript{27} Although the EC proposal would extend patentability to pharmaceutical products, an item of particular concern to the EC, it would not include animal and plant varieties, items which are slated for protection under the proposal from the United States. See 4 World Intell. Prop. Rep. (BNA) No. 5, at 100 (May 1990). See also Doi, \textit{supra} note 21, at 6.

\textsuperscript{28} The EC believes that copyright protection should be similar to that included in the Berne Convention while the United States supports the extension of existing protection to include computer programs as literary works. See 4 World Intell. Prop. Rep. (BNA) No. 5, at 100 (May 1990).

\textsuperscript{29} The EC is opposed to compulsory licensing, arguing that it creates a trade distortion under the GATT. The United States seeks a clear definition of those circumstances, which it does believe should be strictly limited, under which compulsory licensing may be imposed. Under no circumstances would the United States permit compulsory trademark licensing. See \textit{id}.


\textsuperscript{31} Japan has proposed that GATT actively monitor activities in five areas: patents, trademarks, designs, geographical indications and copyrights. Significantly, Japan's proposal does not contemplate protection of trade secrets, a position which is consistent with domestic practices that have often been a point of dispute with the United States. See Doi, \textit{supra} note 21, at 6.
cut-off dates for nations in different stages of economic development; individual schedules for compliance; and different transitional provisions for different parts of the agreement. Various other proposals have stressed the need to integrate the TRIPs agreement with the Paris and Berne Conventions.

For its part, Mexico's proposal in the context of the TRIPs negotiations is symbolic of its continuing desire to effectively balance the need to protect intellectual property rights with the need to protect the public interest and the nation's overall economic development objectives. For example, Mexico's proposal included a number of special provisions for developing nations: a shorter term for patent protection, with the possibility of extension in certain circumstances; transitional arrangements to enable developing countries to adjust to the agreement; legal assistance for countries that want to improve their intellectual property systems; and financial and technical assistance designed to enable developing nations to modify their domestic patent and trademark systems.

C. The USTR and "Special 301" Activities

While multilateral discussions have continued, the United States has pursued its own bilateral initiatives in the area of intellectual property rights. On May 25, 1989, the USTR, with the advice of the

---

32 See id. at 8.
33 Switzerland has proposed that joint working groups from the GATT and the Paris and Berne Conventions be established to promote the future progress of any TRIPs agreement. Another proposal circulated by the less-developed countries also made reference to the need to integrate any TRIPs agreement with the Paris and Berne Conventions and such other WIPO agreements as the 1989 Semiconductor Chip Treaty. This proposal was endorsed by Argentina, Brazil, Chile, China, Columbia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay. Id. at 6.
34 See 4 World Intell. Prop. Rep. (BNA) No. 3, at 62 (Mar. 1990). Generally, Mexico favored a twenty year limit for patent protection, provided that in exceptional cases the scope of this obligation might be restricted as a result of economic and social objectives in the subject country. As described infra at notes 98-105 and accompanying text, proposed changes in Mexico's own patent laws appear to be consistent with its initiative in the TRIPs negotiations. Id.
35 See 4 World Intell. Prop. Rep. (BNA) No. 3, at 62 (Mar. 1990). The approach taken by Mexico is similar to that of Brazil, one of the earliest critics of the inclusion of intellectual property matters in the GATT discussions. Brazil has sought to insure that any TRIPs agreement recognized, and did not impede the progress of individual nations with respect to, national development objectives, the need for developing nations to have access to new technology and the need for free and legitimate trade competition. Brazil has also encouraged each of the GATT participants to seek greater cooperation with respect to international technology transfers arrangements. See id. at 17.
Interagency Trade Policy Staff Committee, the Patent and Trademark Office and the Copyright Office, released the results of its initial survey of intellectual property laws and market access issues in various nations. The review, which was conducted under the so-called "Special 301" provisions of the 1988 Trade Act, focused upon whether the surveyed nations met the standards for protection of intellectual property set forth in the then-current proposals of the United States tabled at the TRIPs negotiations.

While the USTR concluded that none of the surveyed nations fully satisfied the aforementioned standards, it was decided that no "priority foreign countries" would be identified under Section 182 of the Trade Act of 1974, as amended. Instead, a new non-statutory procedure was implemented which singled out twenty-five nations for special attention due to intellectual property practices or market barriers that were of concern to the USTR. Of those nations, seventeen were placed on a "Watch List" and the remaining eight, including Mexico, were placed on a "Priority Watch List." Nations on the Watch List were to be the subject of increased efforts by the USTR to resolve any problems. However, Priority Watch List nations were to be the subject of accelerated action plans to be pursued over the 150 days following the announcement of the List.

Priority Watch List members can be removed from the List at any time that the objectives of the United States are achieved, which can take the form of satisfactory progress in the areas referred to in the accelerated action plan for that nation. Specific concerns raised by
the USTR with respect to Mexico included the need for improvements to the scope and content of patent protection, particularly accelerated phasing-in of product patent protection, and constructive participation by Mexico in multilateral intellectual property negotiations. The USTR downgraded Taiwan, Korea and Saudi Arabia to the Watch List on November 1, 1989, and a similar change to Mexico’s status was announced on January 24, 1990. Other countries remaining on the Priority Watch List as of that date included Brazil, India, the People’s Republic of China and Thailand.

D. Conclusion

It would appear that the world will continue to experience pressures for broad harmonization of intellectual property laws, particularly in the area of patents and industrial property rights. The speed and breadth of the resultant changes depends, to some extent, on the willingness of the United States to accede to the trends implicit in the WIPO discussions and, perhaps of greater importance, the willingness of the developed nations to assist their less-developed neighbors in constructing an intellectual property infrastructure capable of utilizing transferred technology and vigorously protecting the rights of domestic and foreign inventors.

Changes in Mexico’s intellectual property laws should be analyzed in light of the content and tone of its proposal in the TRIPs negotiations. Many developing nations might be willing to reform their attitudes and regulations, thereby providing the industrialized nations with the enhanced protection which they seek, if recognition is given to the time needed for transition and an effort is made to educate government administrators on all aspects of market development, not just in the intellectual property area, but also in a number of allied disciplines: education, agriculture, capital market development, antitrust and fiscal policies.

Still another important factor in the changes which have been occurring in Mexico has been the pressure exerted by the USTR. While the USTR has stressed the need for significant progress to be made in the TRIPs negotiations, a number of trade and industry representatives have suggested that the United States must continue to emphasize bilateral negotiations as the best way to achieve mean-

42 See id.
44 Id. at 84, 85.
ingful multilateral agreements. The United States is clearly well-positioned to exercise significant leverage over the Mexican economy and has a strong and vital interest in the nation's development and internal security.

III. Recent Changes in Mexico's Intellectual Property Laws

A. Introduction

As noted above, Mexico has recently moved to implement two significant changes in its intellectual property regime. First, the government announced the adoption of new regulations to the TTL (the "New Regulations") in January 1990 which appear to eliminate a good number of the apparent impediments to inbound technology transfers which existed under prior interpretations of the TTL. Second, Mexico appears ready to implement a number of changes to its own patent laws which are consistent with the requirements of the USTR and the preferences of the developed nations put forth in the TRIPs negotiations and at the WIPO meetings.46

B. The New Regulations

In striking contrast to the historically burdensome process associated with the registration and review of an LTTA, the New Regulations grant broad authority to the NRTT to approve any LTTA which benefits the nation in any one of the following ways: generates new employment; improves the technical qualifications of local personnel; provides access to foreign markets; permits local manufacture of new products, particularly substitution of imports; improves the foreign currency balance; reduces per unit production costs, as measured in constant pesos; develops local suppliers; uses environmentally sound technology; or promotes domestic research and development.47

45 Reglamento de la ley sobre el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas, Diario Oficial (D.O.) (Published Jan. 11, 1990) (Regulation on the Law of Control and Registry of Technology Transfer and the Use and Exploitation of Patents and Trademarks) [hereinafter New Regs.]. The regulations relating to the implementation of the TTL arise under the broad authority granted to the NRTT under article 9 of the TTL, including the discretion to determine the conditions upon which LTTA’s will be approved for registration.


47 New Regs. art. 53, § II. Article 53 also requires that the license declare before the Ministry of Commerce and Industrial Development ("MCID"), under oath, that
The New Regulations also substantially broaden the flexibility of the parties to contract for the terms of the technology transfer without interference by the NRTT.\textsuperscript{48}

The New Regulations went into effect as of January 10, 1990 and required the cancellation of all then-current LTAs unless the licensees re-registered the agreements.\textsuperscript{49} In order to best understand the effect of the New Regulations, the following discussion sets forth some of the key features of the prior policies of the NRTT with respect to the review and registration of LTAs and the prospective impact of some of the relevant changes on future technology transfers.

1. Compensation

As noted above, for many years the NRTT would closely scrutinize the amount of compensation to be paid under the LTA and, ultimately, would often require a reduction in the amount payable to the licensor under the LTA.\textsuperscript{50} In evaluating the level of compensation to be received under an LTA, an effort was made to calculate the "total flow of payments" during the life of the agreement, including the formula stipulated in the LTA for making such payments, the term of the LTA, and the dates on which payments were to be made, and then the amount of compensation was compared to similar domestic and foreign agreements.\textsuperscript{51}

The NRTT conducted an economic evaluation of the effect that the LTA would have upon the operations of the licensee and the Mexican industry taken as a whole. In doing so, the NRTT utilized cost-benefit analysis, net present value and internal rate of return and elicited substantial amounts of technical and financial information from the parties.\textsuperscript{52} The NRTT focused upon the effect that the


\textsuperscript{49} See New Regs. Third Transitory Provision. All prior regulations under the TTL, which had been in place since November 25, 1982, were terminated as of January 10, 1990, as were any conditions imposed under such prior regulations. See New Regs. First and Second Transitory Provisions.

\textsuperscript{50} The NRTT usually objected to royalty payments for technical know-how that exceeded a range of three to six percent and in the case of trademark licenses the NRTT limited royalty payments to the range of one-half to one percent.


\textsuperscript{52} See 3 L. Eckstrom, LICENSING IN FOREIGN AND DOMESTIC OPERATIONS 26-122.2 (1986 rev.) (specifically Chap. 26: Licensing in Mexico) (hereinafter Eckstrom).
licensee's receipt and use of the technology would have on the pricing, supply and quality of goods in the domestic market, as well as the expected trade balance and currency exchange benefits to the nation as a whole.\footnote{See \textit{id.} at 26-122.2, 26-122.3.} Also, the NRTT's technical evaluation stressed an analysis of the quality of the transferred technology,\footnote{For example, the NRTT would closely review the LTTA to insure that payments were only made for intellectual property rights which were "in force" and, as such, might have reduced the compensation when the transferred technology appeared to consist of rights which had lapsed or expired or which had become invalid. The NRTT would also inquire as to whether the technology which was the subject of the LTTA had become obsolete or outdated and any payment for the use of a patent or trademark which had not been issued, but for which an application had been filed, was conditioned upon issuance of such patent or trademark. See 3 World Intell. Prop. Rep. (BNA) No. 10, at 215 (Oct. 1989).} the ability of the licensee to properly absorb the technology and the effect of the LTTA on research and development, technology for suppliers, training and related activities.\footnote{See Eckstrom, supra note 52, ch. 26: Licensing in Mexico, at 26-122.4 and generally ch. 26A: \textit{The Role of Trademark Use and Registration Under Mexican Law}. This type of analysis is typical of the activities of regulators in a variety of nations, including developed nations such as Japan, which require the filing and review of contracts and agreement relative to inbound technology transfers. The information collected under these procedures can be utilized for a number of purposes, including administrative guidance of competitive activities among domestic firms.}

Although the NRTT retains the authority under the TTL itself to reject LTTAs where the proposed compensation is excessive in light of the quality of the acquired technology or constitutes an unjustified burden on the national economy or the particular licensee,\footnote{TTL art. 16, § II (repealed by New Regs. 1990).} the New Regulations contain no specific restrictions on the matter. Therefore, it appears that the NRTT will no longer interfere with negotiated royalties. Moreover, the New Regulations provide a mechanism for domestic firms to challenge a registration proceeding in those cases where the transferred technology can be supplied on a cost-effective basis without recourse to foreign suppliers.\footnote{Article 50 of the New Regulations permits local firms to object to the registration of an LTTA upon a showing that (i) they are able to provide the technology upon similar terms and conditions as those of the foreign supplier, (ii) the technology offered has been tested and proved on an industrial scale, and (iii) the technology is essentially similar to that which is the object of the LTTA. \textit{id.}}

2. Technology Guarantees

The New Regulations continue to place limitations on the licensor's ability to limit its responsibilities with respect to the quality and
results of the transferred technology. For example, the LTTA may not contain any provision abrogating the responsibility of the licensor for defects in the transferred technology, the inability of the licensee to use the transferred technology for production purposes, or for structural or functional errors in industrial plants built or developed under the LTTA which are attributable to defects in technical information supplied by the licensor.

3. Licensor Obligations

Previously, the licensor was required to explicitly assume responsibility for any possible infringement of third-party rights by the licensed technology. However, the New Regulations will permit the registration of an LTCA which does not contain such an undertaking if: the LTCA does not contain a payment obligation on the part of the licensee; the licensor presents a copy of the industrial or intellectual property certificates registered in Mexico; and the licensor agrees to share the cost of any proceedings arising out of any such third-party claims and to render its assistance and participation in such proceedings.

4. Technical Assistance

Traditionally, the terms of any LTCA would require that the licensor provide additional technical assistance to the licensee in connection with the transfer and use of the subject technology. As a result, the NRTT would carefully review the compensation paid to the licensor with respect to the technical assistance, particularly when no specific allocations were made in the LTCA. Moreover, when

---

58 TTL art. 15, § XIII. The repealed (1982) TTL prohibited registration ofLTAs in which the licensor did not guarantee the quality and results of the transferred technology. Id.

59 New Regs. art. 48. However, Article 49 of the New Regulations provides a limited exception from the requirement of quality guarantees in those cases where no royalties or payments are to be made under the LTCA and the LTCA states that the licensor will not be liable for claims arising out of the licensee’s own failure to adhere to the licensor’s technical instructions.

60 TTL art. 15, § XII.

61 New Regs. art. 47.

62 The NRTT established specific guidelines relating to the evaluation of technical assistance arrangements. The NRTT took into consideration the following factors when evaluating the nature of “technical assistance” to be provided under the LTCA: the scope or extent of the technical assistance furnished to the licensee; the degree of complexity of the manufacturing process; the “age” of the products and processes
technical assistance was to be provided, the NRTT sought to ensure that the duration of the LTTA was sufficient to permit the licensee to adequately assimilate the transferred knowledge from the licensor.63

The New Regulations provide a strong indication that the NRTT will no longer closely scrutinize technical assistance arrangements and, in fact, a fair number of such agreements would be exempted from the registration process. For example, advisory or consulting services to be rendered abroad, even if supplied by foreign companies to Mexican companies, would not be subject to registration and approval.64 Moreover, advisory or consulting services of less than six months duration in a given year would also require no prior approvals, although a notification should be filed with the NRTT.65

5. Supply Conditions

As a general matter, the licensee may not be obligated to purchase commodities exclusively from one supplier designated by the licensor when other sources are available in the national or international market.66 However, the LTTA may include exclusive supply provisions in situations where no economic detriment is created to the licensee or when such an arrangement is necessary to protect the legitimate intellectual property rights of the licensor.67

which were to be the subject of the technical assistance; and the dynamics of the technical change and position of the licensor in the industry sector and field involved. As for business administration and operating services, the NRTT considered the following factors: the sector in which such services were to be used; the requirements of the licensee; and the type and scope of the service. In all cases, payments for these types of services were to be evaluated on the basis of the economic benefit to the licensee, rather than the costs incurred by the licensor. 3 World Intell. Prop. Rep. 215 (1989); see generally Eckstrom, supra note 52, at ch. 26: Licensing in Mexico.

---

64 See New Regs. art. 17.
65 See New Regs. art. 19.
66 New Regs. art. 38.
67 Among the exceptions specified in Article 38 of the New Regulations are circumstances where: the supplies are provided at competitive prices and at standards of quality comparable to those generally available to the licensee from other sources; the obligation to purchase supplies is financially beneficial to the licensee; trademark rights are involved and the licensor agrees to supply certain items for the exclusive purpose of quality control which is necessary for the maintenance of the prestige or image of the products; or there is a proven risk to the licensor of the indirect disclosure of trade secrets to third parties if the items supplied do not originate from a source supplied by the licensor. Id.
6. **Exclusive Sales Arrangements**

As a general matter, the licensee cannot be required to sell its entire production to an entity designated by the licensor, although an exception is available in those cases where the obligation is limited to a particular export market and the designation of an exclusive buyer is financially beneficial to the licensee.

7. **Production or Pricing Limitations**

The LTTA may not place any limitations on the licensee's volume of production, such as restrictions on the licensee's ability to continue manufacturing products following the expiration of the LTTA, or impose sale or resale prices on domestic or export production. However, the New Regulations do permit the licensor to impose limitations on the licensee's ability to utilize the technology for manufacturing purposes following the termination of the LTTA if the agreement is terminated due to a default by the licensee, or the technology is protected by then-existing intellectual property rights. It is also possible for the licensor to impose minimum production volume requirements on the licensee in those cases where the license is exclusive.

8. **Administrative and Operational Service Agreements**

While the TTL requires the registration of LTTEAs relating to the provision of administrative and operational services by the licensor to the licensee, the New Regulations have created a significant exception by limiting the review procedures to agreements in which the licensee delegates to the licensor powers that affect the decision-making or management of the licensee. In turn, registration will be denied to LTTEAs which assign to the licensor the power or authority

---

68 TTL art. 15, § VII.
69 New Regs. art. 43.
70 TTL art. 15, § IX.
71 New Regs. arts. 44 and 45.
72 New Regs. art. 45.
73 TTL art. 2(j).
74 New Regs. art. 16. It has been estimated that management services contracts that did not involve top management of the licensee constituted approximately eighty percent of the administrative services agreements registered under the TTL in prior years, which in turn represented thirty-five percent of the total registered LTTEAs. See Frandsen, *supra* note 6, at 4.
to regulate or intervene directly or indirectly in the management of the licensee.\textsuperscript{75}

9. \textit{Franchise Agreements}

The New Regulations cover not only LTAs, but also the use of "franchise agreements," which refer to any agreements where the licensor (i) grants to the licensee the right to use or exploit a trademark or tradename, and (ii) transfers technical know-how or supplies technical assistance to the licensee, such as plans, diagrams, models, instructions, formulae, specifications and technical assistance of any kind, so that the licensee may produce or sell goods or render services in a uniform manner, with the same operative, commercial and administrative procedures of the licensor.\textsuperscript{76} Franchisers will be permitted to submit a model franchise agreement for approval and, once such approval has been obtained, register on a biannual basis the names of new franchisees, rather than seeking separate approval for each new franchising arrangement.\textsuperscript{77}

10. \textit{Licensee Activities}

Prior to the enactment of the New Regulations, a LTTA could not contain any obligation on the part of the licensee to assign the title to, or ownership of, any trademarks or patents developed by the licensee during the term of the LTTA, and could not obligate the licensee to assign to the licensor its own trademarks or patents if the LTTA were terminated upon any default by the licensee.\textsuperscript{78} However, one of the main changes in the New Regulations was the ability of the parties to an LTTA to provide for limited grantbacks to the licensor, provided that the exchange of information is reciprocal or accrues to the benefit of the licensee,\textsuperscript{79} a trend which reflects the

\textsuperscript{75} New Regs. art. 34. However, certain exceptions exist: (i) when the LTTA refers to the use of trademarks or tradenames and the intervention of the licensor is directed solely to maintaining the level of quality and prestige of the licensed products; (ii) when there is a provisional right granted to the licensor to review the licensee's accounting books solely for the purpose of verifying the amount of royalties; or (iii) when a provisional agreement is reached with the licensor in connection with the duration of the LTTA to enhance the use of the transferred technology within the licensee. \textit{Id.}

\textsuperscript{76} New Reg. art. 23.

\textsuperscript{77} New Regs. arts. 24-26.

\textsuperscript{78} TTL article 15, § II.

\textsuperscript{79} New Regs. art. 35 provides that, for purposes of TTL art. 15, § II, a "benefit" to the licensee will be deemed to exist when a preferential right is covenanted with the licensor pursuant to which the licensor will negotiate any improvements as may be developed by the licensee on the same conditions as those offered by third parties.
hopes of government officials regarding the development of a domestic research and development capability.

11. Research and Development

The New Regulations retain the historical restrictions on any attempt to preclude the licensee from undertaking its own research and development programs in connection with new products during or after the term of the LTTA.\textsuperscript{80} Moreover, the licensee cannot be prevented from making any improvements to the transferred technology which are incorporated into products developed by the licensee,\textsuperscript{81} provided that important exceptions have been created which honor existing intellectual property rights of the licensor or any agreement between the parties which restrict the ability of the licensee to make improvements utilizing technical elements or "know-how" which is to be kept confidential under the terms of the LTTA.\textsuperscript{82}

12. Complimentary Technologies

The New Regulations expand the ability of a licensor to place restrictions on the use of third-party technologies by the licensee, although the licensor will still be precluded from placing restrictions on the ability of the licensee to manufacture products that are not the subject of the specific LTTA, whether or not third-party technologies are utilized in the manufacturing process.\textsuperscript{83} The New Regulations make it clear that restrictions may be placed on the use of third-party technologies when their use would damage the prestige or image of a trademark licensed as part of the LTTA or the purpose of the restriction is to prevent the disclosure to third parties of confidential information provided by the licensor under the LTTA.\textsuperscript{84}

13. Export Limitations

Any number of purported limitations on the export activities of the licensee will still be precluded under the New Regulations, including the following: any prohibition on exports to a specified geographic area, unless the licensor has previously granted exclusive rights to third parties in the specified area or the licensor has reserved the area for its own exclusive sales activities; any obligation that the

\textsuperscript{80} New Regs. art. 36.
\textsuperscript{81} TTL art. 15, § III and New Regs. art. 36.
\textsuperscript{82} New Regs. art. 37.
\textsuperscript{83} TTL art. 15, § VI and New Regs. art. 41.
\textsuperscript{84} New Regs. art. 42.
licensee export only through the licensor, except when the licensor is capable of marketing the products more favorably than the licensee; any requirement that the licensor grant its prior consent to export transactions; or any restrictions on the volume of exports.\(^8\)

14. **Exclusive Distribution Arrangements**

As a general matter, the licensee cannot be obligated to enter into an exclusive sales or distribution agreement with the licensor, although an exception may be permitted if the licensor demonstrates that it has an adequate distribution system and commercial prestige such that the licensor would be able to carry out the marketing of the products on better terms than the licensee.\(^8\)

15. **Term and Confidentiality**

Under prior practice, the term of the LTTA, as well as the duration of any confidentiality provisions, was restricted to a maximum of ten years.\(^7\) However, the New Regulations allow the licensor to impose ongoing confidentiality provisions, not to exceed ten years, in those cases where the LTTA has been amended in connection with the licensor's transfer of improvements in the transferred technology which enhance the production, quality and competitiveness of the products produced under the LTTA. Confidentiality obligations extending beyond the term of the LTTA may also be imposed when the transferred technology is protected by existing intellectual property rights, the obligation relates to technology which is outside of the business purposes of the licensee or a defined risk exists that the technical knowledge will be disclosed to third parties.\(^8\)

16. **Governing Law**

The LTTA should be governed by Mexican law\(^9\) and the venue of the Mexican courts, although arbitration is acceptable if it is

\(^8\) TTL art. 15, § V and New Regs. arts. 40 and 41.

\(^7\) TTL art. 15, § X.

\(^8\) TTL art. 15, § XI precludes the licensor from obligating the licensee to maintain the confidentiality of the technical information supplied under the LTTA beyond the term of the LTTA. TTL art. 16, § III precludes the establishment of LTTA's with an "excessively long duration," and goes on to state that in no case may the terms exceed a ten-year compulsory period for the licensee.

\(^8\) New Regs. art. 46.

\(^9\) TTL art. 7.
subject to the rules of an internationally recognized institution.90

The New Regulations set forth the only reasons for the rejection of an LTTA, thereby limiting a good deal of the discretion formerly exercised by the NRTT to impose conditions under inbound technology transfers even when a specific clause of the TTL had not been violated.91 Perhaps most importantly, the New Regulations are clearly designed to enhance protection for registered industrial and intellectual property rights and, accordingly, foreign licensors should give serious consideration to seeking domestic patent rights and registering trademarks in Mexico.

The New Regulations also appear to signal a shift in the government’s focus regarding inbound technology transfers since they assign to the MCID a number of new functions in the area of technology development of Mexican industry. For example, in order to promote the modernization of Mexico’s industrial plant and facilities, the government will gather and disseminate general data regarding royalty trends and potential sources of new technology.92 The government will also consider its own alliances with domestic and foreign institutions, both public and private, relating to the technological development of Mexican industries93 and will attempt to solicit financial and material contributions from private industry to local research centers.94

While it appears that Mexico is attempting to improve its legal regime with respect to LTTAs, as well as initiating changes to its overall research and development policies, concern remains regarding

90 The NRTT has no authority to make or issue any decisions with respect to the compliance of the parties with the terms of the LTTA and registration may only be cancelled pursuant to the terms of a valid court order. New Regs. art. 14.
91 New Regs. art. 52.
92 New Regs. art. 30 provides that the Ministry of Commerce and Industrial Development (“MCID”), which administers the NRTT, will actively promote the technological modernization of national companies through the publication of information designed to assist them in making decisions with regard to the selection, contracting, adaptation or assimilation of technology. New Regs. art. 31 enumerates the information to be disseminated by the MCID, including the following: foreign and domestic sources for technology; payment trends for the transfer of technology and related services; negotiation strategies; methodologies for the assimilation of new technologies and the design of research and development programs; contractual mechanisms for the transfer and development of technology; and institutions which are able to provide support to the technological modernization of domestic firms.
93 New Regs. art. 32 provides that the MCID may execute cooperation, coordination and collaboration agreements with public or private national or foreign institutions.
94 New Regs. art. 33.
a number of matters. For example, while the New Regulations appear to liberalize existing practices, the TTL remains in effect and no guarantee exists regarding the content of any future revisions to the implementing regulations. Also, foreign firms will still be required to register LTTAs, even if approval is virtually guaranteed, thereby exposing transferors to the risks of disclosure associated with any filing with a public agency. Finally, the manner in which Article 53 of the New Regulations will be interpreted is still uncertain and foreign firms must consider the possibility that the LTTA may be nullified and all protections voided if satisfactory proof of the existence of one of the specified benefits is not presented.

C. Proposed Amendments to Mexico's Patent Law

Most observers have long believed that real progress with respect to Mexico's intellectual property regime would only occur upon the completion of further amendments to Mexico's Invention and Trademark Law (ITL), which was last amended in 1987. Any changes to the ITL require the approval of the Mexican Congress rather than administrative action. However, commentators believe that current regulations are too discretionary and that improvements will only come from the promulgation of consistent guidelines in the statute itself. As noted above, one of the USTR's initial concerns in the "Special 301" accelerated action plan with respect to Mexico was the need to improve the adequacy of patent protection.

In January 1990, Mexico announced its intention to consider broad amendments to the ITL, many of which represented positions which were consistent with the desires of the developed nations in the WIPO and TRIPs negotiations. Among the matters to be covered in the proposed legislation are the following:

1. An extension of the patent term to twenty years from the date of filing, a change that would bring Mexican law into conformity

---

95 New Regs. art. 53 applies to LTTAs which do not otherwise qualify for any of the other exceptions under the TTL or the New Regulations. Accordingly, by drafting the LTTA in a manner which satisfies the various exceptions, the parties may avoid the uncertainties associated with the review process under Article 53.


97 Id.


with the WIPO proposals.
2. A broad expansion of the types of items for which patent protection would be available to include alloys, chemical and pharmaceutical products and biotechnology processes. The patentability of pharmaceuticals has been an extremely sensitive issue to many developing nations due to their concerns regarding the effect that such protection would have on the availability of drugs and medicines.
3. A limit on the grant of compulsory licenses to cases of a critical lack of a patented product or a notorious abuse by the patentee.
4. An increase of the term of a trademark registration, including provisions permitting variations in the manner of use of the trademark without a resultant lapse of the original registration.
5. Strengthened protection for trade secrets, including an adequate definition and sanctions against unfair competition resulting from misappropriation of a trade secret.
6. Modernization of the Patent and Trademark Office, including simplification of various procedures.

The intent of the new legislation is to provide foreign technology suppliers and investors with a greater degree of certainty regarding the application of Mexico's intellectual property laws and the degree of protection available for technical information sent into Mexico as part of the investment and production process. It is still unclear whether the draft changes to the ITL will be introduced in the Mexican Congress this year, although it is likely that the matter will be considered during the September 1st to December 31st ordinary session of that body. In the interim, United States officials have asked trade

100 Id.
101 Id. Under current law, the failure to prove that a patent has been worked within three years from the date of grant will make the patent available for compulsory licensing and the patent will lapse two years after the grant of the first compulsory license. In order to maintain trademark registrations in force it is necessary to prove that the mark has been used within three years of the date of grant. Use may be proven only through direct sales by the trademark owner or through sales by a licensee, however in those cases where use is to be proven by licensee sales it is necessary for a registered-user agreement to be registered with the NRTT and against each trademark registration at the Mexican Patent and Trademark Office, which registration should be continuously updated to delete trademarks that are no longer in use and to add newly registered trademarks. Similar updating amendments should be made to the LTTA. Eckstrom, supra note 52, at Chapter 26A: The Role of Trademark Use and Registration Under Mexican Law.
103 Id.
104 Id.
association representatives in Mexico for further information on, and specific examples of, the proposed changes in the ITL\(^\text{105}\) and, as noted above, consultations have been undertaken between commerce department officials in each nation with respect to the implementation of some of the proposed changes.

D. Concerns Regarding Copyright Law Enforcement

As part of its Special 301 review, the USTR received a comprehensive report from the International Intellectual Property Alliance (IIPA)\(^\text{106}\) on twelve “problem” countries, including Mexico, where the IIPA felt that the United States was incurring significant trade losses\(^\text{107}\) due to piracy and market access barriers.\(^\text{108}\) The IIPA updated its report in early 1990 and has vigorously expressed its concerns to the USTR regarding what are perceived to be significant problems regarding Mexico’s enforcement of its own copyright laws, particularly in light of the close proximity of Mexico to the United States. Specific concerns appear to be as follows:

1. Trade losses due to piracy of sound recordings, movies and software in Mexico exceeded $100 million in 1989, including approximately $80 million in the software industry.\(^\text{109}\) It has been estimated that the ratio of legitimate to illegitimate software programs is approximately one-to-seven in a country that already has

\(^{105}\) *Id.*

\(^{106}\) The IIPA is an umbrella organization formed in 1984 and consisting of eight trade associations, each of which in turn represents a significant segment of the copyright industry in the United States. The IIPA consists of the Computer Software and Services Industry Association, the American Film Marketing Association, the Association of American Publishers, the Business Software Alliance, the Computer and Business Equipment Manufacturers Association, the Motion Picture Association of America, the National Music Publishers’ Association and the Recording Industry Association of America. By their own estimation, the industries in the IIPA collectively generated over $270 billion in revenues in 1988, an amount that approximated 5.7 percent of the GNP of the United States for that year. See 4 World Intell. Prop. Rep. (BNA) No. 4, at 84 (Apr. 1990).

\(^{107}\) The IIPA estimated that the book and journal publishing, film and video, music and record and computer software industries were responsible for over $13 billion in surplus to the United States trade balance in 1988. See *Id.*

\(^{108}\) The IIPA’s report, which was released in April 1989, was entitled “Trade Losses Due to Piracy and Other Market Access Barriers Affecting the U.S. Copyright Industries,” and attempted to quantify United States trade losses in each of the designated countries, to identify statutory and administrative deficiencies in the copyright regime and to recommend appropriate remedies for the specified deficiencies. See *Id.*

an installed PC base of about 500,000.\textsuperscript{110}  
2. Record piracy levels were over 50 percent in 1989 and, although Mexico is a member of the Rome and Geneva Phonograms Conventions, there is no express protection for sound recordings. There is little enforcement effort and a widespread parallel import problem exists from Mexico through the United States border. Until the end of 1989, Mexican officials had been unwilling to negotiate with the United States regarding various aspects of the content and enforcement of its copyright laws relating to sound recordings.\textsuperscript{111}  
3. Video piracy is at the 50 percent level, although recent progress has been made regarding the unauthorized retransmissions of United States programs by Mexican cable stations.\textsuperscript{112} In addition, a number of other market barriers exist which impede entry of the United States motion picture industry into Mexico.\textsuperscript{113}

IV. CONCLUSION

Mexico has clearly done a great deal over the last two years to alleviate some of the concerns of foreign licensors and to ease the regulatory burdens confronting foreign firms that might be considering an investment in Mexico. The government has also been responsive to the specific requests of the USTR with respect to strengthening the degree of statutory protection under the nation’s patent laws. However, any optimism must be tempered by the uncertainties surrounding future interpretation of the newly-enacted legislation, as well as the fact that Mexico continues to harbor the concerns of many developing nations. Moreover, Mexico has yet to demonstrate the will and resources necessary to address the concerns of foreign trade association representatives in the copyright arena.

Whatever the future might hold, the following concepts are worthy of reinforcement:

\textsuperscript{110} Id. Entering 1990, software programs were not specifically covered by the Mexican Copyright Law, although a draft amendment has been put forward which includes specific coverage and increased fines and jail terms. Id. at 87.

\textsuperscript{111} See 4 World Intell. Prop. Rep. (BNA) No. 4, at 86 (Apr. 1990). Negotiations were finally scheduled for early 1990 and trade association representatives were urging United States negotiators to push for increases in penalties for infringement and for express protection of sound recordings in the copyright law for a full term of 50 years. See Id.


\textsuperscript{113} For example, other problems include prohibitions against imports of dubbed films, controlled admission prices, a 50 percent screen quota and the failure to make available to the United States movie companies a 1.5 percent statutory authors’ royalty from theatrical exhibitions. See Id.
1. For the time being, Mexico has abandoned any attempt to intervene in commercial negotiations between domestic and international firms with respect to the value or quality of transferred technology. As such, it becomes incumbent upon domestic entrepreneurs to begin to develop their own internal capabilities regarding technology assessment and utilization.

2. In light of the trends regarding compensation, the transfer of "know-how" and technical assistance becomes an essential part of any particular LTTA, as well as the overall technological program of the nation. Mexico has recognized this trend by dispensing with a good deal of the regulation formerly associated with LTTAs covering management and advisory services. It would appear that any consensus regarding a regional or global intellectual property regime must include a mechanism which insures that developed nations will assist developing nations in the enhancement of their national technological resources, including the regulatory procedures associated with the registration and review of statutory intellectual property rights.

3. Mexico appears to be dedicated to facilitating the dissemination of information regarding technological trends throughout its domestic industrial structure. Activities of this type have become commonplace in a number of recently "developed" nations, most notably in Japan. However, the effect and implementation of these policies remains to be seen and mechanisms will need to be created to improve the nation's own internal ability to undertake and complete meaningful commercial research and development.

4. The New Regulations, as well as the amendments to the ITL, recognize the requirements of the developed nations for enhanced protection of intellectual property rights, although in many instances the transferor must be able to demonstrate that the particular restriction is necessary to protect a vital competitive interest. The extended term of patent protection, as well as the ability of the licensor to impose confidentiality provisions of greater duration, are important steps, even though the benefits under the New Regulations are conditioned upon a transfer of improvements in the technology or perfection of statutory intellectual property rights.

5. Mexico has stated its intent to strengthen the degree of protection to be provided to trade secrets. If such actions are taken, transferors from developed nations, particularly the United States, will be provided with some degree of comfort regarding the protection of valuable technical information to be transferred to Mexican firms in order to facilitate the use of statutory rights. However, it remains to be seen whether the requisite enforcement mechanisms will, or can, be developed, both judicially and in the context of the day-to-day practices of Mexican firms.
6. Finally, in attempting to reduce the regulatory burdens associated with LTTAs, as well as by permitting the parties to agree upon recognized, modern dispute-resolution mechanisms, Mexican authorities have thrust their own entrepreneurs into the marketplace of global technology. Their success depends, in no small part, upon the development of all segments of Mexican industry, the improvement and education of the labor force, the development of the domestic financial sector and the growing sophistication of the management skills of industry leaders.

What the foregoing means for firms in the United States is still uncertain. At a minimum, sufficient change has occurred such that firms should spend the time to assess new business opportunities in Mexico, including the need to seek statutory protection of intellectual property rights. Firms should also assess the feasibility of creating investment opportunities with Mexican managers with whom the firm is willing to expend the time and effort necessary to provide the technical and financial assistance which is necessary for the development of Mexican industry and the success of the particular venture. The geographical proximity of Mexico, as well as the demographic trends in many parts of the American Southwest, make strategic relationships with Mexico a key component of any long-term business plan of a United States firm intent on taking advantage of the international markets for goods, services and technology.