Informe de Estimación Nacional de Comercio 2024 sobre Barreras al Comercio Exterior

MÉXICO

MEXICO

TRADE AGREEMENTS

The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA maintains the zero tariffs that were in place among the three countries under the North American Free Trade Agreement and modernized the agreement to include strong, enforceable labor and environmental obligations, ground-breaking provisions to combat non-market practices, and provisions covering small and medium-sized enterprises (SMEs).

IMPORT POLICIES

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Mexico continues to provide insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven border enforcement of Mexican standards and labeling rules. Some goods are still not allowed to be imported at all ports of entry. Restricting goods to certain ports has made it difficult for U.S. exporters to arrange for transportation and logistics, especially for electronic commerce purchases from U.S. SME exporters.

The USMCA prohibits arbitrary limits on the number of ports at which a customs broker may operate. Yet, Article 161 of Mexico's Customs law limits a broker to operate at four ports if the broker is not part of a customs agency. The United States continues to urge Mexico to amend the law to allow brokers to operate at any port where the broker is able to perform its duties.

The USMCA also requires that Mexico implement a periodic payment option for express delivery shipments, which Mexico had not done as of December 2023.

On January 1, 2022, Mexico imposed a new requirement for a "complement" to the existing electronic waybill requirement on transportation services. Any shipment transported within Mexico over federal roads must be accompanied by an electronic waybill "complement" that contains up to 140 data elements about the shipment. On December 31, 2023, Mexico began enforcing the requirement. The United States continues to monitor Mexico's implementation of this requirement.

Medical Devices, Supplies, and Pharmaceuticals

Industry continues to report delays of 18 months to 24 months for adjudication of sanitary registrations and import permit applications. Overall, the regulatory environment has shown minor improvements, but more structural changes need to be made to facilitate registration in Mexico. Although the Federal Commission for Protection Against Sanitary Risks (COFEPRIS) continues to work through its backlog, companies that try to register U.S. Health and Human Services Food and Drug Administration (FDA)-approved products in Mexico continue to report delays of more than a year. Regulatory delay remains a primary barrier to entering the Mexican market for medical devices and pharmaceuticals. COFEPRIS reportedly continues to be understaffed, with insufficient capacity to grant sanitary registrations and conduct factory inspections to issue good manufacturing practices certifications within the established timeframes. COFEPRIS is in the process of implementing reliance mechanisms for approvals and inspections and, as part of these efforts, continues to hold technical regulatory discussions with the FDA to identify opportunities to improve its review process.

Glyphosate

Mexico's Secretariat of the Environment and Natural Resources has rejected import permits for glyphosate-containing chemical products. Mexico has not provided an opportunity for public comment, submitted notifications to the World Trade Organization (WTO), or provided scientific evidence for the rejections. Glyphosate remains registered for use in Mexico.

Separately, on January 1, 2021, a decree that called for the phaseout of the use of glyphosate and glyphosate-containing products by January 31, 2024, entered into force. A subsequent decree, published on February 13, 2023, extended the phaseout deadline to March 31, 2024. During the phaseout period, Mexico's National Council of Humanities, Sciences and Technology has been tasked with studying, developing, and promoting alternatives to glyphosate. Furthermore, the decree prohibits Mexico from using glyphosate in any government-sponsored programs during the phaseout period. Mexico is implementing import quotas for glyphosate and glyphosate-containing products. On March 1, 2023, COFEPRIS reduced the quota for imports of glyphosate by 50 percent, to 4,131 tons of formulated glyphosate and 314 tons of technical glyphosate.

The United States continues to press Mexico to grant import permits for glyphosate and glyphosate-containing products, consistent with the fact that glyphosate remains registered for use in Mexico.

Pesticides and Agricultural Chemicals

U.S. companies continue to report significant delays in receiving the necessary registration and marketing approvals from COFEPRIS for certain pesticides and agricultural chemicals. These delays appear to impact both applications for registration and applications for reregistration, sometimes involving only administrative updates such as changing the company's address. Companies report COFEPRIS is not granting registration renewals for many pesticide molecules. Consequently, some license holders have lost their registrations and the ability to import pesticides and agricultural chemicals.

Chemical and Petrochemical Products

On October 23, 2023, Mexico issued a decree that immediately placed new import restrictions on over 60 chemical and petrochemical products. On June 6, 2023, Mexico published a separate measure expanding the scope of coverage of certain existing import and export requirements to 58 new chemical and petrochemical products and creating additional requirements for companies importing or exporting in scope products. The United States continues to monitor Mexico's implementation of these new requirements.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Dairy Products

The United States continues to be concerned about Mexico's proposed modifications to Mexican Official Standard NOM-223 on cheese conformity assessment procedures, NOM-222 on milk powder, and NOM-

181 on yogurt. The United States has requested that Mexico consider changes to its overly burdensome informational requirements and conformity assessment scheme, including by basing them on international standards. In 2023, the United States once again raised concerns regarding the cheese conformity assessment procedures in the WTO at every meeting of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and the WTO Council for Trade in Goods.

Local Specific Absorption Testing Requirements

The United States continues to express concerns with regulations that Mexico's telecommunications regulator, the Federal Telecommunications Institute (IFT), published in 2020 pursuant to Technical Provision IFT-012-2019 that pose a barrier to trade for mobile telecommunications products by requiring in-country testing for Specific Absorption Rates and reference out-of-date standards from the International Electrochemical Commission/Institute of Electrical and Electronics Engineers and the International Commission on Non-Ionizing Radiation Protection. The requirements include duplicative testing and may cause delays, as Mexico has a limited number of accredited facilities able to perform the required tests. The United States continued to press Mexico, including on the margins of the 2023 WTO TBT Committee meetings, to use the latest testing standards and to include testing to these standards in the scope of the Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment.

Sanitary and Phytosanitary Barriers

Fresh Potatoes

Since 2003, the United States has sought access for fresh potatoes to all of Mexico, beyond a 26-kilometer zone along the U.S.–Mexico border outside of which imports were not permitted. In April 2021, the Supreme Court of Mexico affirmed the authority of Mexico's regulatory agency to expand access for U.S. fresh potatoes. Subsequently, in 2021, Mexico completed the regulatory steps necessary for access for U.S. fresh potatoes to cities with populations over 100,000 people. In May 2022, the United States began shipping fresh potatoes to Mexico beyond the 26-kilometer zone. The United States is monitoring the situation to ensure transparent and predictable access for U.S. exporters and that requirements are based on science.

Products of Agricultural Biotechnology

Mexico's Biosafety Law requires COFEPRIS to decide on a complete application for authorization covering the importation and sale of genetically engineered (GE) products within six months of receipt. The United States has expressed serious concerns that certain decisions on applications were not based on science and were subject to significant delays.

On February 13, 2023, the Mexican Government published a decree that bans the use of GE corn in tortillas and dough and instructs Mexican Government agencies to gradually substitute—*i.e.*, restrict and eventually ban—the use of GE corn in all products for human consumption and for animal feed. In March 2023, the United States requested and held technical consultations with Mexico regarding its measures concerning GE products under the USMCA Sanitary and Phytosanitary Measures Chapter, but the consultations did not resolve the matter. In June 2023, the United States requested and held dispute settlement consultations with Mexico regarding its measures under the USMCA Dispute Settlement Chapter, but these consultations also failed to resolve the matter. On August 17, 2023, the United States established a USMCA dispute settlement panel challenging the aforementioned measures reflected in Mexico's February 13, 2023 decree on the basis that these measures are not based on science and undermine the market access Mexico agreed to provide in the USMCA. A final panel report is expected at the end of 2024.

Genetically Engineered Cotton

Mexico rejected applications for cultivation of GE cotton in 2019 and 2020. No applications were submitted in 2021 and 2022. In 2023, companies submitted three applications for experimental field trials of new GE cotton varieties. Mexico had not decided on these applications as of December 2023. GE cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health. The United States continues to press Mexico to reconsider rejected applications, complete its approval procedure without undue delay, and use a science- and risk-based approval process.

INTELLECTUAL PROPERTY PROTECTION

Mexico was listed on the Watch List in the 2023 Special 301 Report. Obstacles to U.S. trade in intellectual property (IP) intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and online markets. As broadband access increases, so has online piracy, and stakeholders report that Mexico has one of the highest rates of music and video game piracy in the world. Overall criminal enforcement of IP rights, including online, continues to be characterized by weak coordination among federal, state, and municipal officials; limited resources for prosecutions; the lack of sustained investigations targeting suppliers of counterfeit and pirated goods and services; and the lack of sufficient penalties to deter violations. Brand owners also face bad faith trademark registrations, making it important for companies to register their trademarks early. Moreover, rights holders continue to express concern about the length of administrative and judicial patent and trademark infringement proceedings and the persistence of continuing infringement while cases remain pending. The Tepito market in Mexico City, the La Cuchilla market in Puebla, and the La Pulga Río market in Monterrey are listed in the 2023 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) for selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in 2020, Mexico and the European Union (EU) concluded negotiations on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains concerned about the EU practice of negotiating product-specific IP outcomes as a condition of market access and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. In a USMCA side letter, Mexico confirmed that market access of U.S. products is not restricted in Mexico due to the mere use of certain individual cheese terms. Mexico has a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

In 2020, Mexico enacted a new Federal Law for the Protection of Industrial Property and amended its Federal Copyright Law and Federal Criminal Code with a view to complying with various provisions of the USMCA and strengthening IP protection. Mexico is still in the process of drafting regulations for both the Federal Law for the Protection of Industrial Property and the Federal Copyright Law amendments, and the lack of regulations is creating uncertainty for the creative and innovative sectors looking to protect and enforce their IP.

SERVICES BARRIERS

Electronic Payments Services

The United States continues to closely monitor developments with respect to Mexico's evolving policy framework for electronic payment service suppliers. Aspects of the existing policy framework limit the ability of U.S. electronic payment service suppliers to supply their complete suite of value-added services, including fraud protection, and differentiate themselves in the marketplace. On September 14, 2023, Mexico's Federal Economic Competition Commission identified barriers to competition in the card payment processing market and issued recommendations to Mexico's Central Bank—Banxico—and the National Commission for Banking and Securities to restore conditions for competition. As Mexico considers updating its regulations, the United States continues to urge Mexico to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with Mexico's USMCA obligations.

Mexico issued regulations in 2021 relating to the use of cloud service suppliers by electronic payment fund institutions. The United States continues to be concerned by the length, complexity, and uncertainty of the approval process for electronic payment fund institutions that seek to use secure, U.S.-based cloud computing services, raising questions about the extent to which the approvals are tacitly being conditioned on using local computing facilities.

Telecommunications Services

Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants still must compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a "preponderant economic agent" by the IFT. The entrenched position maintained by this dominant supplier, particularly regarding the mobile services market, demonstrates the continued need for vigilant enforcement by the IFT of the regulations it adopted to address that supplier's status as a preponderant economic agent. Statements by the Mexican President concerning the intention to eliminate the IFT raise significant concerns regarding Mexico's continued compliance with its USMCA obligations.

The cost of spectrum in Mexico is one of the highest in Latin America. Although Mexico assigns spectrum licenses through competitive auctions, it imposes a substantial annual fee based on the amount of spectrum held by each licensee. This approach is out of sync with international best practices and is in part responsible for the relative failure of Mexico's most recent auction (IFT-10), where only 3 of 41 blocks of spectrum received any bids. It also appears that the structure of Mexico's annual spectrum fee may advantage the dominant supplier and has led another supplier to return to the Government of Mexico all the spectrum it had been awarded. The Government of Mexico dismissed several proposals to lower the costs made by the IFT and the private sector. The United States continues to press Mexico to consider changes to its rules that would lower overall costs for spectrum and address the market power of the dominant supplier.

INVESTMENT BARRIERS

Energy Sector

Since December 2018, Mexico has pursued an energy policy centered on reinstating the primacy of its state-owned electric utility, the Federal Electricity Commission (CFE), and oil and gas company, Mexican Petroleum (PEMEX). Mexico has undertaken various measures to achieve this aim. For example, in March 2021, Mexico amended its Electric Power Industry Law so that its grid operator will prioritize for dispatch to Mexico's grid CFE-generated electricity over electricity generated by all private competitors, irrespective of cost or environmental impact.

Certain actions or inactions by Mexico have also been curtailing the ability of private companies to participate effectively, if at all, in Mexico's energy sector. They include delaying, denying, or failing to act on applications for new permits or permit modifications; suspending or revoking existing permits; and otherwise blocking private companies' ability to operate renewable energy facilities (such as wind and solar installations), import and export electricity and fuel, store or transload fuel, and build or operate retail fuel stations.

In addition, in December 2019, Mexico's energy regulator granted PEMEX—but not other companies, including U.S. companies—a five-year extension to comply with maximum sulfur content requirements under its fuel standard in certain parts of Mexico, which otherwise require the sale of ultra-low sulfur diesel fuel throughout the country. Without the extension, PEMEX would have had to purchase ultra-low sulfur diesel imported from the United States or upgrade its facilities to produce ultra-low sulfur diesel in sufficient quantities.

In June 2022, Mexico's Secretary of Energy notified the Energy Regulatory Commission and the National Natural Gas System Operator of a change in policy that would require, among other things, that users of Mexico's gas transportation network demonstrate that they source natural gas from PEMEX or CFE.

Multiple U.S. companies have reported exiting Mexico's energy market as a direct consequence of these measures.

In July 2022, the United States requested consultations with Mexico under USMCA Chapter 31 regarding these measures. In 2023, the United States engaged with Mexico in these consultations on specific and concrete steps Mexico must take to address the concerns set out in the consultations request.

Mining Sector

The Government of Mexico passed legislation in April 2022 amending the national mining law to establish greater state control over the country's lithium resources. The amendments place responsibility for the exploration, exploitation, and utilization of Mexico's lithium under the exclusive control of a newly created state-owned lithium company, LitioMx, and prohibit concessions, licenses, contracts, permits, and authorizations to nonpublic entities to undertake those activities. The amendments also open the door to declaring other minerals as "strategic resources" that would require greater state control in the future. The Mexican Government was still drafting implementing measures for the amendments as of December 2023. The United States continues to monitor Mexico's implementation of these amendments.

Restricted Sectors

Mexico restricts foreign investment in certain sectors under the Foreign Investment Law. Foreign ownership is capped at 49 percent for express delivery companies and land for agricultural, livestock, and forestry purposes, as well as port administration services. Certain other sectors, such as transportation infrastructure, are closed to foreign participation.

SUBSIDIES

Export Subsidies

On October 11, 2023, Mexico issued a decree that establishes nationwide tax benefits for investment in certain export sectors. Specifically, the decree provides for the accelerated deduction of expenditures in certain new fixed assets and the additional deduction of training expenses. The United States has expressed concerns about the provision of benefits that are contingent upon the export or sale for export of products.

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