12-5-2007

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Mexico Worried about China's Request to Patent Maguey, Nopal Products

by LADB Staff
Category/Department: Mexico
Published: 2007-12-05

Mexico's efforts to protect its culture and heritage took an interesting turn when a major agricultural group accused Chinese and Japanese entrepreneurs of attempting to steal intellectual-property rights for maguey and nopal cacti. The concern is based on reports that entrepreneurs from the two Asian countries were trying to obtain patents from the European Union (EU) on various products manufactured from maguey and nopal, but it is not clear whether the requests involved intellectual-property rights on varieties of those plants.

While a trade conflict between Mexico and China is opening on one front, the two countries resolved another dispute after the Asian nation agreed in late November to eliminate tax subsidies said to be giving Chinese exports to Mexico and the US an unfair advantage. China agreed to drop the subsidies in negotiations with Mexico and the US, rather than face a prolonged investigation through the World Trade Organization (WTO).

Agriculture group raises red flag about patent requests

The Confederacion Nacional Campesina (CNC) sounded the alarm about the nopal and maguey after learning that Chinese and Japanese businesses had filed a request with the EU in Brussels to obtain patents on 49 products developed using the two plants, including pharmaceuticals, textiles, food items, and cosmetics. The CNC's concern was directed particularly at China, known to mass-produce counterfeit handicrafts, furniture, and other traditional items. Many of these products are smuggled into Mexico and sold as traditional "Mexican" items (see SourceMex, 2003-09-17).

Nopal and maguey growers are concerned that China is planning to use the same tactics to ship products to the US market via Mexico. "Chinese businesses are cultivating 5,000 hectares of cactus in greenhouses and plan to send processed products to Mexico for eventual shipment to the US market," said Ciro Rios Lara, director of the Union Nacional de Productores de Maguey y el Nopal, which is affiliated with the CNC. "This type of triangulation is going to hurt our producers."

The CNC concerns prompted the Chamber of Deputies to intervene, passing a unanimous resolution urging President Felipe Calderon's administration to take action to protect Mexico's propriety rights to the native cacti. "All that we ask is that the government use all the legal tools at its disposal to protect our rights relative to other countries like China and Japan, which want to economically exploit these plants of Mexican origin," said the resolution's sponsor, Deputy Cesar Duarte of the opposition Partido Revolucionario Institucional (PRI).

Mexican Agriculture Secretary Alberto Cardenas acknowledged the concerns in Mexico but said he has not received any direct communications from the EU regarding the Chinese and Japanese patent requests in relation to maguey and nopal.
Rios Lara asked the government to invoke international-protection laws, including those dealing with rules of origin, to prevent maguey and nopal from foreign exploitation. Otherwise, he said, these plants could suffer the same fate as beans and poinsettias. These plants originated in Mexico but other countries are profiting from their production. Another plant that originated in Mexico but is produced in greater quantities overseas is vanilla (see SourceMex, 2006-02-01).

Mexico's patent office (Instituto Mexicano de Propiedad Industrial, IMPI) said, however, that Mexican and international protocols do not allow patents on any plants or vegetables, including their biological or genetic material. "The only possibility of obtaining a patent in this situation is if the plant has been modified genetically, which give it traits that are different from the original specimen," said IMPI.

Hector Gonzalez, a specialist on patents and intellectual property, said the Chinese and Japanese entrepreneurs would also have difficulty obtaining patents on maguey and nopal plants in the EU or any other jurisdiction. "It is not possible because of international patent laws," Gonzalez told the official news agency Notimex.

The patent expert said the intellectual-property battle, therefore, would concern products developed from nopal and maguey. "Any product derived from a plant can be the object of intellectual-property protection," said Gonzalez. Gonzalez recommended that Mexico focus on strengthening the intellectual-property rights for products already produced from maguey and nopal. Mexico already has strong rules-of-origin protections for tequila, which is produced from the agave cactus, a close relative of maguey (see SourceMex, 1997-10-29, 2002-06-19 and 2006-01-25).

While protection is not available for most plants, the Consejo Regulador del Tequila (CRT) has succeeded in obtaining special protection for the agave azul (blue agave), used to manufacture tequila. The CRT was able to obtain a special designation with the government's plant-registry office (Servicio Nacional de Inspeccion de Semillas y Variedades Vegetales) because agave azul is the only plant that can be used to make the premium tequilas, CRT officials said. The final product, tequila, is also protected in China, as the Chinese government agreed last year to recognize the rules of origin for tequila. This means that any tequila sold in China will have originated in Mexico and will carry the name tequila on the bottle.

According to the CRT, tequila exports to China have increased significantly in recent years, totaling 105,000 liters in the first six months of 2006. This represents a fivefold increase relative to the same period in 2005. Mexico negotiated access for tequila and other products to China following a series of bilateral meetings that started in October 1994, which were a prelude to an agreement for Mexico to support China's membership in the WTO. China's recognition of the intellectual-property rights of tequila was a key condition for Mexico's support (see SourceMex, 2001-01-19 and 2001-08-09).

**China negotiates solution to subsidy dispute with Mexico, US**

Mexico has had a stormy trade and economic relationship with China in recent years, even after the Asian country was accepted into the WTO. The explosive growth of the informal economy in Mexico is linked to the illegal importation of textiles, toys, electronics, and other products from China, which are often sold on the black market in Mexican cities (see SourceMex, 2003-05-14 and 2004-12-08).
The dispute has even spilled over to the maquiladora sector, with Mexican officials accusing China of offering unfair incentives to lure assembly plants away from Mexico (see SourceMex, 2002-07-17 and 2002-11-13). In August of this year, Mexico joined the US in filing a complaint with the WTO alleging that China illegally subsidizes domestic industries through tax reductions, the largest trade case yet against the Chinese government. The two countries, which requested a special WTO panel to investigate the complaint, accused China of using tax rebates as an export subsidy, which violates WTO rules. The tax breaks give an unfair competitive advantage to Chinese exports for goods such as steel and wood products. "China had agreed to dismantle those aid programs when it joined the WTO in 2001, said Stephen Norton, a spokesperson for the office of the US Trade Representative (USTR).

China responded that the complaint filed by Mexico and the US was based on a "huge misunderstanding" and also motivated by political agendas in the two countries. Even while China and the US, and to some extent Mexico, presented an acrimonious stance in public, officials were engaged in negotiations behind the scenes. These talks bore fruit in late November, when China reached an agreement with the US and Mexico to eliminate the tax breaks and other subsidies.

"This agreement represents a step forward for the economic interests of Mexico as well as a tool to improve our commercial relations with China," the Secretaria de Economia (SE) said in a prepared statement. "The SE will continue to defend the interests of Mexican producers and exporters in the framework of the global system of trade." The reaction in the US was similar to the one in Mexico. "This outcome represents a victory for US manufacturers and their workers," USTR Susan Schwab said. "The agreement also demonstrates that two great trading nations can work together to settle disputes to their mutual benefit."

China's response was to downplay the agreement, which it said makes very few changes to its policies. Sun Zhenyu, China's ambassador to the WTO, said most of the rules challenged by the US and Mexico in the WTO subsidy dispute "have already expired or will expire as of January next year." Mexico is also set to conduct a review on whether to reduce or eliminate existing countervailing duties against China as part of its commitment to the WTO. The revisions were scheduled to begin on Dec. 11. "All the countervailing duties are subject to revision," said Hugo Perezcano, who heads the division of the SE that deals with trade agreements.

The SE is facing pressure from at least one industry group to leave some of the subsidies intact. The Camara Nacional de la Industria del Vestido (CNIV) argues that the duties should remain in place for textiles and apparel because China continues to engage in unfair trade practices that hurt Mexican producers. "We are not going to allow [the government] to lower or eliminate the countervailing duties to China," said CNIV president Simon Feldman. Feldman said the quotas, which are as high as 533% for some items, have helped Mexican producers remain competitive in the face of increasing imports.

Still, the CNIV official raised concern that Chinese apparel continues to enter the Mexican market as contraband products. Bootleg clothing imported from China and other countries accounts for 55% of domestic sales, causing annual losses of about 9 billion pesos (US$842 million) for the industry, said
Feldman. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on Dec. 5, reported at 10.84 pesos per US$1.00]

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