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FEATURED Q&A

Is Bribery Just a Cost of Doing Business in Mexico?

Q Executives of Wal-Mart de México allegedly bribed officials with more than $24 million over the past several years to speed up expansion in Mexico, *The New York Times* reported April 21. According to the report, the retailer failed to notify law enforcement of the evidence its investigators had uncovered, instead shutting down the internal probe. The retailer said it is aggressively investigating the allegations. What do the allegations say about the state of doing business in Mexico? Is bribery a widespread cost of doing business in the country? Are Mexican laws and other regulations, such as the U.S. Foreign Corrupt Practices Act, proving to be inadequate?

A Andrés Rozental, member of the *Advisor* board, president of Rozental & Asociados in Mexico City and senior fellow at the Brookings Institution: "The Wal-Mart scandal is deeply disturbing and shows an unfortunate, yet undeniable, facet of doing business in Mexico when companies—either domestic or foreign—participate in corrupting government officials in order to 'accelerate' or 'facilitate' permit issuance or other legal requirements. Since it takes two to tango, both the corruptors and the corrupted share equal blame for this state of affairs. The U.S. Foreign Corrupt Practices Act probably makes it more difficult for American companies to make payoffs abroad, but evidence shows that it doesn't deter those who find ways to hide their activities through third parties, or 'gestores.' Many foreign companies also engage in these illegal practices, especially in—but not limited to—developing countries. Recently, there has been a spate of similar incidents involving multinational companies in Mexico, although none of the magnitude that the Wal-Mart accusations indicate. What is most worrying is the official reaction by the Mexican government after *The New York Times* broke the Wal-Mart story; it was to the effect that, since

Continued on page 3

Venezuela Should Withdraw From OAS Rights Body: Chávez

Venezuela should withdraw from the Inter-American Human Rights Commission of the OAS, President Hugo Chávez said Monday. Chávez made the statements before signing a new labor law and returning to Cuba for more cancer treatment. See brief on page 2.

Photo: Venezuelan Government.

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NEWS BRIEFS

Colombia's Santos Accuses FARC of Kidnapping French Journalist

Colombian President Juan Manuel Santos on Monday accused Revolutionary Armed Forces of Colombia, or FARC, guerrillas of kidnapping a French journalist who disappeared last weekend and demanded the reporter be released immediately, the Associated Press reported. Freelance reporter Romeo Langlois, 35, was accompanying soldiers and police who were destroying cocaine laboratories when they were attacked by rebels Saturday.

Venezuela Should Withdraw From OAS Human Rights Body: Chávez

Venezuela should pull out of the Inter-American Human Rights Commission, the human rights arm of the Organization of American States, President Hugo Chávez said in a televised speech Monday, BBC News reported. The commission is "a tool that the U.S. uses against us," he said. The IAHRC has been critical of human rights conditions in Venezuela. On Monday, Chávez also approved a new labor law that includes shortening the work week to 40 from 44 hours. He then flew back to Cuba where he has been undergoing cancer treatment.

América Móvil Offers Concessions in Effort to Overturn $1 Bn Fine

Mexican cell phone service provider **América Móvil** said Monday it would cut fees it charges rivals and provide customers calls to other networks for no additional charge in an effort to convince the country's antitrust regulators to overturn a $1 billion fine, Bloomberg News reported. The penalty was assessed a year ago for monopolistic practices. The antitrust agency is scheduled to vote today on whether to uphold, overturn or reduce the fine.

Political News

Mexican Lawmakers Approve Compensation for Drug War Victims

Mexico's Congress on Monday approved a measure to compensate victims of the country's brutal drug war. The legislation, which the Chamber of Deputies passed after last week's approval by the Senate, now goes to President Felipe Calderón for his signature. The legislation calls for compensation for killings as well as for people who were wounded or kidnapped, regardless of whether they are innocent civilians or members of drug gangs, the Associated Press reported. The measure, which would also cover related crimes such as extortion, would create a national victims' registry and allocate money for their compensation. Assets seized from drug cartels would provide some of the money for the compensation fund. Payments to victims could be as high as 1 million pesos ($77,000 each). The fund will initially have $20.5 million, the Chamber of Deputies' Justice Committee head, Humberto Benitez Trevino, told Agence France-Presse. Approximately 70,000 people may be compensated from the fund, he said. The legislation also requires authorities to work to locate kidnapping victims who still may be alive and identify the remains of the dead, the AP reported. Family members of victims often complain that the police do little to help find the missing. Some 50,000 people have been killed since Calderón launched his offensive against the cartels after taking office in December 2006. Among those watching from the gallery as the Chamber of Deputies approved the measure was poet Javier Sicilia, who became an activist after his son and seven of his friends were killed in March 2011, AFP reported.

The fund would provide compensation regardless of whether victims were innocent civilians or gang members.

Economic News

Brazil's Rousseff Calls on Banks to Lower Interest Rates

Interest rates that private commercial banks charge customers are still too high, despite the central bank's actions to cut the country's benchmark interest rate, President Dilma Rousseff said Monday, *The Wall Street Journal* reported. "It is inadmissible that Brazil, which has one of the most solid and profitable financial systems, continues to have some of the highest interest rates in the world," Rousseff said in a televised speech. In August, the central bank began cutting its benchmark Selic rate, reducing it from 12.5 percent to 9 percent. But Rousseff said the rates that banks charge their customers remain stubbornly high. The average interest rate customers paid on all loans in March was 37.3 percent, the central bank said last week. Individual borrowers paid an average of 44.4 percent and businesses paid 27.7 percent on average, the central bank added. High taxes, a high cost of labor and difficulty in receiving payments on bad loans make lending in Brazil more costly than in other parts of the world, banks argue. But Rousseff said the central bank's rate cuts as well as economic stability and a "vast majority" of Brazilians who pay back their loans as scheduled make it inexplicable for banks to maintain high interest rates for their customers. "The financial sector...can't explain this perverse logic to Brazilians," she said. State-run banks **Caixa Econômica Federal** and **Banco do Brasil** have led the way in cutting rates, and private banks should follow, she said. The government-run banks cut their interest rates last month, saying they wanted to boost market share. Consumers should demand more favorable interest rates from banks and do business with banks "that offer better conditions," Rousseff added in her speech on Monday.

Rousseff

File Photo: Brazilian Government.

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Company News

Chilean Supreme Court Ruling Halts Goldcorp Project

Chile's highest court has upheld the suspension of a needed permit for **Goldcorp**'s El Morro copper and gold project, halting the Canadian firm's work on the project, Reuters reported Monday. A lower appeals court had suspended the Vancouver-based company's environmental permit for the $3.9 billion project in February amid opposition to the project by an indigenous agricultural group. The Supreme Court's upholding of the ruling on Friday led Goldcorp to halt work on El Morro. Goldcorp owns 70 percent of the project, while **New Gold Inc.** owns the rest. The companies had planned for the project to begin production in 2017, with output of some 200 million pounds of copper and more than 210,000 ounces of gold annually. Mining projects in Chile have been encountering mounting resistance from residents demanding improved environmental protections and a larger share of the wealth produced by mining. In order to proceed with the El Morro project, Goldcorp now would have to seek the consent of local communities for the project and then submit the project again for environmental approval, said the Supreme Court and the country's environmental agency. The company originally submitted its environmental impact report in November 2008 and received approval for it in March 2011. The courts revoked the permit, saying that environmental authorities did not properly consult with affected indigenous groups.

Goldcorp now must consult with local communities and submit the project again to environmentral authorities.

Featured Q&A

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this case apparently only involved bribes paid to local or state officials, not federal ones, there was nothing for the national authorities to formally investigate. Bribery is not solely a Mexican issue. In China, India, Brazil, Russia and South Africa—the so-called BRICS countries so much in vogue these days—corrupt practices are equally tolerated and sometimes even encouraged. The OECD and other organizations have helped promulgate global anti-corruption rules, but there is always the temptation for individuals and companies to sidestep tedious bureaucracies, or slow-moving procedures, to have things move more expeditiously. The Wal-Mart case, if the allegations are proven, will surely act as a deterrent to others, but probably won't end corruption per se."

A Jon French, director of security consulting firm Problem Solvers Group in Mexico City: "Like a lot of other places around the globe, there is corruption and fraud in Mexico, particularly at lower levels, for government permits. But this is no excuse, as a multinational business abroad must operate to a higher standard. Most do, particularly because of the painful consequences of being caught contravening the U.S. Foreign Corrupt Practices Act (FCPA). Bribery is not the cost of doing business in Mexico, as most multinationals can and do successfully operate here without bribery payments. In fact, it is admirable that most multinationals live up to the same high ethical standards, whether at corporate headquarters in the United States or in their operations abroad. And it is precisely because of this reputation that multinationals abroad are subjected to less pressure for 'expediting' fees for government permits. Government bureaucrats know that these companies just do not pay for such blatantly illicit expenditures. As a consequence, multinationals can be victims of a tardy approval process, but in most cases, because they can represent important investments into the local economy, the delays are minor and not out of the ordinary. Lastly, Mexican laws and enforcement are inadequate because the rule of law is a work in progress here. But the extraterritoriality of the United States' FCPA is well known to U.S. and European multinationals, particularly with the recent reminders from the multimillion-dollar fines levied by the U.S. Department of Justice against well-known multinationals."

A Tapen Sinha, professor of risk management at the Instituto Tecnológico Autónomo de México and professor at the University of Nottingham Business School: "Most Latin American countries are not known for being free of corruption. The only country in the region in the top 30 of Transparency International's Corruption Perception Index is Chile. Even among the Latin American countries, Mexico is one of the most corrupt. In the 2011 index, Mexico ranked at 100, along with Malawi, Madagascar and Indonesia. There are legendary cases of corruption in Mexico. Raúl Salinas, the brother of the then-president, suddenly became very rich. The police chief of Mexico City, with a salary of $200 a month, built a multimillion dollar fortress for himself at the edge of Mexico City. A school teacher, known as 'el professor,' built a multimillion dollar empire out of his meager salary. There are an untold number of

> "The problem is that every layer of government in Mexico, virtually everywhere in the country, is corrupt."
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> — *Tapen Sinha*

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Featured Q&A

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smaller cases. The problem is that every layer of government in Mexico, virtually everywhere in the country, is corrupt. In order to set up any business anywhere, people have to pay bribes. And for every peso of bribe paid, a slice is shared at different levels of the municipal, state and federal levels. Given the scale and speed at which Walmex grew in Mexico, there is no way it could not have not bribed anyone. It is part of the Mexican political fabric. There is a well-known quote in Mexico: 'A politician who is poor is a poor politician.' "

John A. Detzner, of counsel to Neville Peterson LLP: "The recent Wal-Mart de México allegations say less about business in Mexico and more about increased enforcement of anti-corruption laws worldwide. All countries—including Mexico—have anti-corruption laws, and they will always face the challenge of enforcing those laws effectively. Transparency International's most recent 'Corruption Perception Index' ranks Mexico at 100 out of 183 countries—certainly not a positive ranking, but 11 other countries are tied with Mexico and 72 additional countries are perceived to be more corrupt. In general, the index reflects a perception of significant corruption in all but a handful of countries throughout the world. None of this is news. The news is the trend in recent years of increased enforcement and the reason for that increased enforcement: a growing recognition of the unacceptable harm that corruption causes to business, economies and democratic governance. The problem of corruption may never be solved entirely, but increasingly it is being addressed. In this case, the problem is being addressed in both Mexico and the United States. The announced investigations will review alleged actions by municipal and state officials in Mexico, and alleged actions by officials of Wal-Mart de México and its parent company in the United States. As always, time will tell. In the meantime, the adequacy of current anti-corruption laws may be debated, but their impact through enforcement already has been felt by companies in both countries."

Ruben Olmos, partner at Global Policy Strategies in Washington: "Corruption has been Mexico's Achilles' heel and a key impediment to boosting competitiveness in the global economy. However, in recent years, there have been important steps toward cutting government red tape and thus the corruption that comes with it. The executive branch and Congress have worked together at the federal level and some states have followed by creating legislation that promotes greater transparency and accountability, especially when it comes to government contracts. The private sector, both local and foreign, also has a big responsibility and is required to observe the same standard that is usually demanded of the government. The so-called 'Wal-Mart-gate' is a reminder that in order for Mexico to continue to attract investors, in a fragile and uncertain environment given the current security factor, it is fundamental to hear new ideas and proposals by the presidential candidates on how they would tackle this problem. Front-running presidential candidate Enrique Peña Nieto of the PRI recently said an independent governmental anti-corruption commission is needed to root out the bribes and payoffs. While U.S. investors are responsible for complying with regulations such as the U.S. Foreign Corrupt Practices Act, they should encourage their in-country management to act responsibly and comply with Mexico's laws. Partners are supposed to work together."

The Advisor *welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.*

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