

2022 – 1 International Trade

USMCA AND THE ENERGY POLICIES CONTROVERSY IN MEXICO

On July 20, 2022, within the framework of the United States-Mexico-Canada Agreement (USMCA), the United States Trade Representatives and the Ministry of International Commerce of Canada, filed a request for the settlement of disputes in relation to energy policies of the Mexican Government, which have favored both the Federal Electricity Commission (CFE), and Petróleos Mexicanos (PEMEX) to the detriment of American and Canadian companies in that sector, thus, violating various commitments agreed by the countries through said trade agreement.

In that regard, the consultation procedure constitutes the non-contentious stage of the general dispute settlement mechanism provided for by the USMCA, by which all three countries must make ministerial approaches to resolve the dispute raised. If a satisfactory solution is not reached, the United States and Canada could request an independent panel to determine whether the controversial policies are in violation of the USMCA, and if Mexico could face trade sanctions.

That said, the request filed by the United States and Canada stated that the energy policy established by the Mexican Government has discouraged investment in the matter, in addition to contravening the principle of national treatment, establishing differentiated and less favorable conditions for goods from that country compared to similar ones from Mexico, among others.

Thus, the Ministry of Economy informed that the requests filed by the United States and Canada contain certain common elements, hence, the goal is to maintain a coordinated process with both trading partners in order to find a solution to the dispute.

CDMX +52 (55) 5257 7000 Monterrey +52 (81) 8478 9200 Queretaro +52 (44) 2229 1797 New York +1 (212) 223 4434 Houston +1 (832) 240-3759 Madrid +34 680 708 204

SUBSCRIBE



More publications

www.chevez.com



In the specific case of the United States, its Trade Representative argue that the violations of the USMCA made by the Mexican Government are manifested concretely in the following policies or documents:

A) Reform to the Electricity Industry Law published in the Official Gazette of the Federation on March 9, 2021.

They state that said Reform grants more favorable and preferential treatment to the energy produced by the CFE to the detriment of private energy producers. The latter, by changing the order of dispatch in the Wholesale Electricity Market in favor of the plants belonging to the productive company of the State.

B) Omissions, delays, rejections, and revocations of permits for private companies to operate in the energy sector.

They state that the Mexican authorities perform a series of measures aimed at delaying, denying, or revoking permits to those companies that request to operate renewable energy sources, import or export electricity and fuels, store or transport fuels, as well as build or operate gasoline sales stations.

C) Extension of term in favor of PEMEX to comply with the specification of sulfur in the commercialization of automotive Diesel.

They state that only PEMEX was granted a 5-year extension to comply with NOM-016-CRE-2016 on oil quality specifications, which establishes maximum sulfur values for the sale of automotive Diesel in Mexico, discriminating against other market participants.

D) Gas supply and transport policies carried out by CENAGAS.

They state that the official letter SENER.100/195/2022 through which National Center for the Control of Natural Gas (CENEGAS) may only authorize any service request if users verify that they have natural gas supply contracts with CFE, violates the USMCA by providing for differential and less favorable treatment of products from other market participants.



Thus, the United States and Canada consider that several measures in Mexico's energy policy are inconsistent with the provisions of the USMCA, considering that these have largely blocked U.S. and Canadian investment in clean energy infrastructure in the country.

Under these terms, the United States, Canada, and Mexico have a period of 75 days to resolve the dispute during the consultation stage, and if a common agreement is not reached, the United States and Canada could request the establishment of an independent panel to decide whether the Mexican Government's energy policy is contrary to the USMCA, and if so decided, impose trade sanctions to Mexico.

Finally, the Mexican Government declared through the Ministry of Economy that it had received the requests of the United States and Canada for the initiation of consultations, expressing its will to reach a mutually satisfactory solution for both parties.

* * * * *

Mexico City
July 2022

This Informative Flash contains information of a general nature and is not intended to include any interpretation of what is commented herein, so it should not be considered applicable with respect to a particular case or under specific circumstances. The information contained herein is valid on the date of issue of this communication; however, we do not warrant that the information will continue to be valid on the date it is received or at any other later date. Therefore, we recommend requesting confirmation about the implications in each particular case..

Support Information

LEGAL NOTICE

ALL RIGHTS RESERVED ©2022, CHEVEZ, RUIZ, ZAMARRIPA Y CIA, S.C., AVENIDA VASCO DE QUIROGA #2121, 4° PISO, COLONIA PEÑA BLANCA SANTA FE, DELEGACIÓN ÁLVARO OBREGÓN, MEXICO CITY, MEXICO.

All the content (publications, trademarks and Reservations of Rights) shown above is the property of CHEVEZ, RUIZ, ZAMARRIPA Y CIA, S.C., which is protected by the Federal Copyright Law, the Federal Law on the Protection of Industrial Property and the International Treaties to which the Mexican State is a party.

Any unauthorized use by any means known or to be known, whether in written, digital or printed form, will be punished and prosecuted in accordance with the applicable legislation. It is forbidden to copy, edit, reproduce, distribute or any other form of exploitation, by any means, without the written authorization of CHEVEZ, RUIZ, ZAMARRIPA Y CIA, S.C.