

COMUNICADO DE PRENSA

Comunicado No. 045

Ciudad de México, 20 de julio de 2022

México recibe solicitud para el inicio de Consultas por parte de Canadá

El Gobierno de México, a través de la Secretaría de Economía, ha recibido la solicitud para el inicio de Consultas por parte del Gobierno de Canadá con relación a la Ley de la Industria Eléctrica, de conformidad con lo establecido en el Artículo 31.2 (Ámbito de aplicación) y el Artículo 31.4 (Consultas) del Tratado entre México, Estados Unidos y Canadá (T-MEC).

Las consultas constituyen la etapa no contenciosa del mecanismo general de solución de controversias que prevé el T-MEC.

A partir de esta fecha, ambos gobiernos tienen un periodo de 75 días para solucionar la controversia durante esta etapa. En caso de no llegar a un acuerdo mutuamente satisfactorio sobre la correcta aplicación e interpretación de estas disposiciones, Canadá podrá solicitar el establecimiento de un panel para que decida sobre este asunto.

La solicitud de Consultas presentada por el gobierno de Canadá contiene ciertos elementos comunes con la solicitud presentada por Estados Unidos, por lo que México buscará mantener un proceso coordinado con ambos socios comerciales del T-MEC a efecto de discutir el alcance de dichas solicitudes.

La Secretaría de Economía, de acuerdo con el marco legal vigente, es la encargada de coordinar la defensa del Estado en este procedimiento.

El Gobierno de México externa su voluntad para alcanzar una solución mutuamente satisfactoria durante la etapa de consultas.

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COMUNICADO DE PRENSA

Comunicado No. 044

Ciudad de México, 20 de julio de 2022

México recibe solicitud de Estados Unidos para el inicio de Consultas

El Gobierno de México, a través de la Secretaría de Economía, ha recibido la solicitud para el inicio de Consultas por parte del Gobierno de Estados Unidos con relación a su política energética, de conformidad con lo establecido en el Artículo 31.4 (Consultas) del Tratado entre México, Estados Unidos y Canadá (T-MEC).

Las consultas constituyen la etapa no contenciosa del mecanismo general de solución de controversias que prevé el T-MEC.

A partir de esta fecha, ambos países tienen un periodo de 75 días para solucionar la controversia durante esta etapa. En caso de no llegar a un acuerdo mutuamente satisfactorio sobre la correcta aplicación e interpretación de estas disposiciones, Estados Unidos podrá solicitar el establecimiento de un panel para que decida sobre este asunto.

Esta es la cuarta vez que se utiliza el mecanismo general de solución de diferencia del Capítulo 31 del T-MEC. Desde la entrada en vigor del Tratado, Estados Unidos inició un procedimiento en contra de Canadá por la distribución de cupos en el sector lácteo; Canadá en contra de Estados Unidos por una medida de salvaguarda en materia de células fotovoltaicas; y México y Canadá en contra de Estados Unidos por la interpretación y aplicación de las reglas de origen en el sector automotriz.

La Secretaría de Economía, de acuerdo con el marco legal vigente, es la dependencia de la Administración Pública Federal encargada de coordinar la defensa del Estado mexicano.

El Gobierno de México externa su voluntad para alcanzar una solución mutuamente satisfactoria durante la etapa de consultas.

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Pursuant to Articles 31.2 and 31.4 of the *United States-Mexico-Canada Agreement* (USMCA), the United States requests consultations with Mexico with regard to various measures of Mexico that favor its state-owned electrical utility, Comisión Federal de Electricidad (CFE), and petroleum company, Petróleos Mexicanos (Pemex), and negatively impact U.S. companies operating in Mexico and U.S.-produced energy. These measures appear to breach Mexico's commitments under the USMCA.

I. The Electric Power Industry Law, As Amended

1. In March 2021 Mexico amended its Electric Power Industry Law to require its grid operator Centro Nacional de Control de Energía (CENACE) to prioritize in various ways electricity produced by CFE over private competitors in dispatching electricity into Mexico's grid. This prioritization is accomplished through a number of provisions, operating separately or in conjunction, including: (1) Article 26, which requires that CENACE prioritize dispatch of power generated by plants "owned by State agencies, entities, or enterprises"; (2) Article 4(VI), which "guarantee[s], in the first instance" electricity contracts of a type that only CFE can hold or enter into; and (3) Articles 101 and 108(V), which call on CENACE to "determine the allocation and dispatch" of electricity based on broad, undefined criteria. The Electric Power Industry Law, as amended, is reflected in legal instruments that include the following, operating separately or collectively:

- (a) The Electric Power Industry Law;¹
- (b) Draft decree initiative by which several provisions of the Electric Power Industry Law are reformed and others are appended;²
- (c) Decree amending and adding various provisions of the Electric Power Industry Law (March 9, 2021)³ and any implementing regulations;
- (d) Decision of the Mexican Supreme Court announced April 7, 2022 in Unconstitutionality Action 64/2021 and all votes.⁴

¹ Ley de la Industria Eléctrica, Nueva Ley publicada en el Diario Oficial de la Federación el 11 de agosto de 2014, Última reforma publicada DOF 11-05-2022, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LIElec.pdf>.

² Presidenta de la Mesa Directiva del Congreso General de los Estados Unidos Mexicanos, Iniciativa con proyecto de decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica, http://archivos.diputados.gob.mx/portaIHCD/archivo/INICIATIVA_PREFERENTE_01FEB21.pdf

³ Diario Oficial de la Federación, DECRETO por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica (Mar. 9, 2021), https://www.dof.gob.mx/nota_detalle.php?codigo=5613245&fecha=09%2F03%2F2021.

⁴ See Suprema Corte de Justicia de la Nación, Sentencia, Acción de inconstitucionalidad 64/2021 & Votos concurrentes y particulares que formula la Ministra Ana Margarita Ríos Farjat, Voto parcialmente disidente que formula la Ministra Loretta Ortiz Ahlf, Voto particular y concurrente que formula el Ministro Juan Luis González Alcántara Carraancá, Voto particular que formula la Señora Ministra Norma Lucía Piña Hernández, Voto Concurrente que formula la Señora Ministra Yasmín Esquivel Mossa, Voto concurrente que formula el Ministro Presidente Arturo Zaldívar Lelo de Larrea, Voto concurrente que formula el Señor Ministro Alberto Pérez Dayá, Voto Particular y concurrente que formula el Ministro Alfredo Gutiérrez Ortiz Mena, Voto particular que formula el Señor Ministro Jorge Mario Pardo Rebolledo, Voto particular y concurrente que formula el Ministro Javier Laynez Potisek, Voto particular que formula el Señor Ministro Luis María Aguilar Morales, <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=281693>; Índice, Contenido

2. This measure appears to be inconsistent with several provisions of the USMCA. First, the measure appears to be inconsistent with Article 2.3 of the USMCA because Mexico has failed to accord national treatment to U.S. goods in accordance with Article III of the *General Agreement on Tariffs and Trade 1994* (GATT 1994). Second, the measure appears to be inconsistent with Article 14.4 of the USMCA because Mexico has failed to accord to U.S. investors and their investments treatment that is no less favorable than that it accords, in like circumstances, to Mexican investors and their investments.⁵

II. Inaction, Delays, Denials, and Revocations of Private Companies' Abilities to Operate in Mexico's Energy Sector

3. Mexico is engaging, or has engaged, in action or inaction which hinders the ability of private companies to operate in Mexico's energy sector. These measures include: delaying, denying or failing to act on applications for new permits or permit modifications; suspending or revoking existing permits; or otherwise blocking private companies' ability to:

- (a) Operate renewable energy facilities, such as wind and solar installations;
- (b) Import and export electricity and fuel;
- (c) Store or transload fuel; and
- (d) Build or operate retail fuel stations.

4. Each of these measures appear to be inconsistent with several provisions of the USMCA.

5. First, they appear to be inconsistent with Article 2.3 of the USMCA because they provide treatment less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

6. Second, they appear to be inconsistent with Article 14.4 of the USMCA because Mexico is failing to accord to U.S. investors and their investments treatment that is no less favorable than that it accords, in like circumstances, to Mexican investors and their investments.

de la versión taquigráfica de la sesión pública ordinaria del pleno de la suprema Corte de Justicia de la Nación, Celebrada el Jueves 7 de Abril de 2022, <https://www.scjn.gob.mx/sites/default/files/versiones-taquigraficas/documento/2022-05-09/7%20de%20abril%20de%202022%20-%20Versi%C3%B3n%20Definitiva3.pdf>; Suprema Corte de Justicia de la Nación, Comunicados de Prensa No. 125/2022 (Apr. 7, 2022), Tribunal Pleno de la SCJN concluye discusión de acción de inconstitucionalidad promovida en contra de reforma a la Le de la Industria Eléctrica, <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6845>

⁵ Pursuant to Article 32.11 of the USMCA, with respect to obligations in Chapter 14 (Investment) and Chapter 22 (State-Owned Enterprises and Designated Monopolies), Mexico may not adopt or maintain a measure not consistent with the least restrictive measures that Mexico may adopt or maintain under another covered trade or investment agreement.

7. Third, they appear to be inconsistent with Article 2.11 of the USMCA because, and to the extent, they prohibit or restrict imports or exports of a good.

8. Fourth, they appear to be inconsistent with Article 22.5.2 of the USMCA because the relevant administrative body is not exercising its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.

9. Fifth, they appear to be inconsistent with Article 29.3 of the USMCA because Mexico is not administering its laws in a consistent, impartial, and reasonable manner.

III. Postponement of Requirement to Supply Ultra-Low Sulfur Diesel for Pemex Only

10. In December 2019, Mexico's Energy Regulatory Commission (*Comisión Reguladora de Energía*, or CRE) issued a regulation granting only Pemex a five-year extension to comply with maximum sulfur content requirements under its applicable automotive diesel fuel standard, which as of December 2018 required ultra-low sulfur diesel to be sold throughout Mexico. This measure is reflected in legal instruments that include the following, operating separately or collectively:

- (a) Energy Regulatory Commission, Resolution of the Energy Regulatory Commission that grants Pemex Industrial Transformation an extension to the term for compliance with the specification of sulfur content in automotive diesel, provided for in the official Mexican standard NOM-016-CRE-2016, quality specifications for petroleum products, Resolution No. RES/1817/2019 (Dec. 18, 2019);⁶
- (b) AGREEMENT whereby the Energy Regulatory Commission issues the Mexican Official Standard NOM-016-CRE-2016, Quality Specifications for Petroleum Products (Aug. 29, 2016);⁷
- (c) AGREEMENT of the Energy Regulatory Commission that modifies the Official Mexican Standard NOM-016-CRE-2016, Specifications for the quality of

⁶ Comisión Reguladora de Energía, Resolución de la Comisión Reguladora de Energía que otorga a Pemex Transformación Industrial una ampliación al plazo para el cumplimiento de la especificación de contenido de azufre en el diésel automotriz, previsto en la norma oficial Mexicana NOM-016-CRE-2016, especificaciones de calidad de los petrolíferos, Resolución Num. RES/1817/2019 (Dec. 18, 2019), <https://drive.cre.gob.mx/Drive/ObtenerResolucion/?id=YzQ0YmNmYmMtMzEyYS00ZDI5LTE5NjYzLTg5NTZmNjFIOTg4YQ==>.

⁷ Diario Oficial de la Federación, ACUERDO por el que la Comisión Reguladora de Energía expide la Norma Oficial Mexicana NOM-016-CRE-2016, Especificaciones de calidad de los petrolíferos (Aug. 29, 2016), http://www.dof.gob.mx/nota_detalle.php?codigo=5450011&fecha=29/08/2016#gsc.tab=0.

petroleum products, based on article 51 of the Federal Law on Metrology and Standardization (June 26, 2017).⁸

11. Mexico's measure appears to be inconsistent with several provisions of the USMCA. First, the measure appears to be inconsistent with Article 2.3 of the USMCA because Mexico has failed to accord national treatment to U.S. goods in accordance with Article III of the GATT 1994. Second, the measure appears to be inconsistent with Article 22.5.2 of the USMCA because, by granting state-owned enterprise Pemex such an extension, CRE has not exercised its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.

IV. Actions Regarding the Use of Mexico's Natural Gas Transportation Service

12. In June 2022, Mexico's Secretary of Energy sent an official letter to the heads of Mexico's Energy Regulatory Commission (CRE) and National Natural Gas Control Center (*Centro Nacional de Control del Gas Natural*, or CENAGAS) announcing an energy policy and "supply guarantee strategy" that would incentivize or require current or future users of Mexico's natural gas transportation service to source natural gas from CFE or Pemex and would impose restrictions on the importation of U.S. natural gas. This letter includes statements that (1) "require" CENAGAS to "demand" that users or those interested in using Mexico's natural gas transportation service prove "that they receive the supply of Natural Gas from any of the productive companies of the State or its subsidiaries or affiliates", (2) "require" CENAGAS to "demand" that "[a]t those points where CFE, its productive companies, or subsidiaries have reserved capacity in the upstream transportation systems, contracting with them shall be given precedence," (3) "urge" CRE "to carry out the necessary actions so that the licensees of the activities under its supervision adjust to the energy policy criteria established [in the June 2022 letter]," (4) require CRE to "modify ex officio" the terms and conditions for CENAGAS "in order to reflect the public policy criteria established by means of [the June 2022 letter]," and (5) establish that CENAGAS "shall apply" the actions referred to in the official letter for "provision of a new service or any request to grant or add new routes to existing contracts." This measure is reflected in legal instruments that include the following, operating separately or collectively:

- (a) Secretary of Energy, Official Letter No. SENER.100/195/2022 - Natural Gas Transportation and Storage System Strategy, Secretariat of Energy (June 13, 2022),⁹ and any implementing regulations;
- (b) National Natural Gas Control Center (CENAGAS), Official Letter No. CENAGAS-DG/0014/2022 (March 22, 2022);

⁸ Diario Oficial de la Federación, ACUERDO de la Comisión Reguladora de Energía que modifica la Norma Oficial Mexicana NOM-016-CRE-2016, Especificaciones de calidad de los petrolíferos, con fundamento en el artículo 51 de la Ley Federal sobre Metrología y Normalización (June 26, 2017), http://dof.gob.mx/nota_detalle.php?codigo=5488031&fecha=26/06/2017#gsc.tab=0.

⁹ Oficina de la C. Secretaria de Energía, Oficio No. SENER.100/195/2022 (June 13, 2022), <https://boletin-gestor.cenagas.gob.mx/gestioncomercial/tcps/SENER.100-195-2022.pdf>.

- (c) Energy Regulatory Commission (CRE), Terms and Conditions for the Provision of Services of the Independent Management Permit of the Integrated National Natural Gas Transportation and Storage System number G/21317/GES/2018,¹⁰ and any modifications.

13. This measure appears to be inconsistent with Article 2.3 of the USMCA because it provides treatment to imported products that is less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use, for example, by incentivizing or requiring users of Mexico's natural gas transportation service to source natural gas from CFE or Pemex. This measure also appears to be inconsistent with Article 2.11 of the USMCA because it is a prohibition or restriction on the importation of a good of the United States destined for Mexico, for example, by requiring users of Mexico's natural gas transportation service to contract with CFE or its subsidiaries to utilize their reserved natural gas transportation capacity.

¹⁰ Título de permiso, De Gestión Independiente Del Sistema Nacional Del Sistema Nacional De Transporte Y Almacenamiento Nacional Intergrado de Gas Natural, G/21317/GES/2018, Otorgado Al Centro Nacional De Control Del Gas Natural (June 28, 2018), http://boletin-gestor.cenagas.gob.mx/gestioncomercial/regulacion/titulo/G_21317_GES_2018%20Permido%20Definitivo.pdf.