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Recent Import and Export Regulations in Mexico Double Down on Favoritism of Pemex

In the final days of December, Mexico issued new regulations that limit the ability of private companies to import and export fuel and hydrocarbons. Then, in the first week of this year, Mexico's President, Mr. Lopez Obrador, announced his plans to eliminate autonomous industry regulators altogether, and have the relevant ministries absorb their functions. These developments are consistent with Mr. Lopez Obrador's expressed goal of reversing Mexico's 2013 energy liberalization reform and returning Mexican state owned entities Pemex and CFE to their dominant position in the market.

Mr. Lopez Obrador has openly declared his protectionist plan for the energy sector. In a July 2020 memorandum, he instructed ministries and regulators "not to export oil; extract only what we need for our refineries, and stop importing gasoline and diesel," to "stop granting permits or concessions to private entities in the energy sector," and asked that industry regulators created under previous administrations "adjust to the new economic and energy policies, and join efforts with the Ministry of Energy, Pemex, and CFE to rescue the oil and electricity industries for the nation." Mexico's most recent actions further these goals.

NEW LIMITATIONS ON FUEL EXPORTS AND IMPORTS IN MEXICO

In December 2020, Mexico's Ministry of Energy ("SENER") implemented a new regulation to limit private companies' ability to import and export fuel and hydrocarbons. This regulation, which expands SENER's discretionary power to grant or deny import and export permits, replaced the prior regulation that SENER passed in December 2014, shortly after Mexico's 2013 energy liberalization reform.

Under the regulation, the issuance and supervision of export and import permits must be oriented toward the government's public policy goals for the energy industry, including energy security and sovereignty, sustainability, supply and market diversification. The issuance of permits must be subject to SENER's views regarding national supply and demand. Permit applicants are required to detail the volume of expected sales and demonstrate that any exports will not impact the country's supply. In addition, permits will now be granted for five years (rather than 20 years under the previous regulation) with the possibility to renew just once.

These new requirements will limit export rights and will likely impact the economics of long-term projects. The regulation has been criticized by industry analysts and other governmental agencies. Mexico's antitrust watchdog (COFECE), for example, has indicated that curtailing import and export permits would lessen incentives to invest and would reaffirm Pemex's dominant position.

On January 11, 2021, the U.S. Secretaries of State, Energy, and Commerce sent a letter to their Mexican counterparts noting that "recent regulatory actions by the Mexican government have created significant uncertainty about Mexico's regulatory processes, especially regarding the energy sector" that "raise concerns regarding Mexico's commitments under the USMCA."

ELIMINATION OF SPECIALIZED REGULATORS

In the first week of January 2021, Mexico's President, Andrés Manuel López Obrador, announced that his administration will propose a reform that would eliminate a number of autonomous and specialized regulators – a move that would give free reign to the relevant ministries to implement policies with no oversight. A few days later, the Director of Mexico's electric utility, CFE, Manuel Bartlett, said that the energy regulators could be absorbed by the Energy Ministry. In his view, the Energy Regulatory Commission ("CRE") and the Federal Hydrocarbons Commission ("CNH") could be eliminated and their work would be carried out by the Energy Ministry.

These new actions compound the challenges faced by industry players in Mexico since Mr. Lopez Obrador took office. Companies have faced a variety of problems due to the government's protectionist policy, including arbitrary shutdowns at pumps for minor or alleged infractions, and increasing delays in permit issuance for gasoline stations and storage facilities.

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Mexico is signatory to a number of investment treaties in which it has made commitments to respect the rights of foreign private investors through several substantive protections. As the U.S. Secretaries of State, Energy, and Commerce have observed, Mexico's recent actions are concerning in light of Mexico's renewed obligations under the USMCA and other investment treaties to which Mexico is a party.

Investors in the energy sector in Mexico should consider the implications of international investment treaties and the protections they provide to foreign investors, while they continue to operate in Mexico under the current environment.

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