

that, if approved, in the short term, it would generate shortages, blackouts and increasingly expensive rates for Mexican families. This was pointed out, for example, by the *Confederación Patronal de la República Mexicana* (“COPARMEX”).⁴⁹

- On October 2021, about 20 Texas congressmen and senators sent a letter to U.S. Ambassador in Mexico, Ken Salzar, criticizing the changes proposed by AMLO. According to the media, the reform would cancel contracts under which 34 private plants sell power into the national grid, and declare “illegal” another 239 private plants that sell energy directly to corporate clients in Mexico.⁵⁰
- On October 17, 2021, the Chairman of the Energy Commission of the Chamber of Deputies, Manuel Rodríguez González, stated that the legislators will listen in Open Parliament to civil organizations, institutions, specialists, professionals and businessmen who wish to contribute. He pointed out that, based on these contributions, the legislators will analyze, debate, and

prepare the opinion to be submitted for consultation in the commissions.⁵¹

Mr. Manuel Rodríguez has received different criticisms from the forum. One of them is that the proposed Constitutional Energy Reform would be a violation of ratchet clauses which prevent States from eliminating a benefit previously granted in a trade agreement. Another strong one is that it would harm investors and investments; this argument has been mentioned by different newspapers.

- On November 3, 2021, a group of US congressmen sent a letter to Katherine Tai, U.S. Trade Representative, and Secretaries Blinken (Department of State), Raimondo (Department of Commerce), and Granholm (Department of Energy).⁵² They wrote to express their “grave” concern about reports of escalating effort by the Government of Mexico to exclude private companies from its energy sector in contravention to its international commitments, including the United States-Mexico-Canada Agreement (USMCA). They added that Mexico is blocking U.S.

⁴⁹ COPARMEX, *La propuesta de Reforma Constitucional en materia eléctrica afecta la libre competencia, daña a empresas, a los empleados y pega en los bolsillos de las familias*. See: <https://coparmex.org.mx/la-propuesta-de-reforma-constitucional-en-materia-electrica-afecta-la-libre-competencia-dana-a-empresas-a-los-empleados-y-pegas-en-los-bolsillos-de-las-familias/>

⁵⁰ Associated Press of U.S. News & World Report, *U.S. Congressmen Complain About Mexico Energy Changes*. See: <https://www.usnews.com/news/best-states/texas/articles/2021-10-20/us-congressmen-complain-about-mexico-energy-changes>

⁵¹ Cámara de Diputados, Nota N^o. 677 Garantizará Comisión de Energía Parlamento Abierto para el análisis de la reforma energética: Manuel Rodríguez. See:

<http://www5.diputados.gob.mx/index.php/camara/Comunicacion/Agencia-de-Noticias/2021/Octubre/17/677-Garantizará-Comisión-de-Energía-Parlamento-Abierto-para-el-análisis-de-la-reforma-energética-Manuel-Rodríguez>

⁵²

See: <https://es.scribd.com/document/536999085/House-GOP-Letter-on-Mexican-Energy-Sector>

private sector participation in Mexico's fuels markets. They also alleged that, according to the media:

- The Mexican government suspended the permits of several US-owned fuel storage terminals, while using the National Guard to force the closure of 23 fuel-related facilities, such as storage sites, and partial closures of 17 others.⁵³
- In June, Mexico's tax authority changed the General Rules for External Trade, banning companies from obtaining or renewing the three-year permits that are required for fuel terminals to serve as points of entry and exit for hydrocarbons.⁵⁴
- Mexico's tax authority suspended 82 companies in July from trading fuels over alleged fiscal violations.⁵⁵
- Between December 20, 2020, to July 15 alone, Mexico's Secretariat of Energy canceled 1,866 permits for the import and export of gasoline, diesel, LP gas, jet fuel, fuel oil and crude.⁵⁶
- As of September 20, just 97 of 1,954 permits issued to private companies were active in Mexico.
- On November 22, 2021, the CFE published a press release in which it criticized a note of a relevant newspaper in Mexico "El Financiero". The criticized note stated that the constitutional energy reform would harm 22 million USD. CFE stated that such note was unfounded and shared no data supporting the claim. CFE also added that there have been different events organized in which it was proved that the proposed energy reform does not violate any Mexican regulation nor any international agreement. The following is an extract of such note:⁵⁷

"... we would like to remind both Bloomberg and *El Financiero* that forums have already been held where it has been demonstrated that President Andrés Manuel López Obrador's reform initiative does not violate any Mexican legal statute or contravene any international trade agreement: it is within the framework of both the Constitution and the T-MEC."⁵⁸

⁵³Jens Erik Gould, *Mexico shuts Monterra's Tuxpan fuel terminal*, Argus. See: <https://www.argusmedia.com/en/news/2255299-mexico-shuts-monterras-tuxpan-fuel-terminal>

⁵⁴Diario Oficial de la Federación, Séptima Resolución de Modificaciones a las Reglas Generales de Comercio Exterior para 2020. See: http://dof.gob.mx/nota_detalle.php?codigo=5620954&fecha=11/06/2021

⁵⁵Mario Álvarez, *Quita SAT 82 permisos para importar gasolina*, El Sol de México. See: <https://www.elsoldemexico.com.mx/finanzas/sat-suspende-permisos-a-ferrosur-y-repsol-para-importar-combustible-6982560.html>

⁵⁶ Patricia Tapia Cervantes, *Tercer Informe | Sólo sobrevive 5% de los permisos de importación de combustibles*, Forbes. See:

<https://www.forbes.com.mx/sobrevive-5-permisos-importacion-exportacion-combustibles/>

⁵⁷ CFE, see: <https://twitter.com/CFEmx/status/1463502915411210241?s=20>

⁵⁸ Free translation of the following text: "... *queremos recordarle tanto a Bloomberg como a El Financiero que ya se han realizado foros donde se ha demostrado que la iniciativa de reforma del presidente Andrés Manuel López Obrador no viola ningún estatuto jurídico mexicano ni contraviene ningún acuerdo comercial*

It is worth to notice that, to the date of issuance of this note, the latest information about this constitutional energy reform is that some congressmen declared that it might be discussed until April 2022. However, the Chairman of the Energy Commission of the Lower House replied that the discussion would start before December 15, 2021, and that it is the legislative process the one ending in April 2022.⁵⁹ Nevertheless, the process did not start on December 2021.

On December 31, 2021, the CRE published on the DOF the Ruling No. A/037/2021 (Criteria B).⁶⁰ This ruling amends the Ruling No. A/049/2017 (Criteria A). Both rulings set a criteria for the concept “own needs”, which is provided in article 22 of the LIE. Such article states as following:

“Article 22.- Isolated supply is understood as the generation or import of electric energy for the satisfaction of own needs or for export, without transmitting such energy through the National Transmission Network or through the General Distribution Networks. [...]”

internacional: está dentro del marco tanto de la Constitución como del T-MEC.”

⁵⁹ El Financiero, *No es falso, pero no es verdadero: ¿La reforma eléctrica se discutirá hasta 2022?* See: <https://www.elfinanciero.com.mx/nacional/2021/11/03/no-es-falso-pero-no-es-verdadero-la-reforma-electrica-se-discutira-hasta-2022/>

⁶⁰ *Diario Oficial de la Federación, Acuerdo Núm. A/037/2021 de la Comisión Reguladora de Energía mediante el cual se modifica el Acuerdo Núm. A/049/2017 por el que se emite el criterio de interpretación del concepto Necesidades Propias, establecido en el artículo 22 de la Ley de la Industria Eléctrica, y por el que se describen los aspectos generales aplicables a la actividad de Abasto Aislado. See:*

The Criteria B amends different items regulated by Criteria A, such as the following: (i) the definition of “Economic Interest Group”; (ii) establishes a limit to the installed capacity of the Power Plant operating under the isolated supply regime based on the demand of the Load Points served by such Power Plants; (iii) eliminates the “local generation” scheme; (iv) amends the conditions applicable for the injection and sale of surplus; (v) prohibits the Power Plants and/or Load Points operating under the isolated supply scheme, with or without interconnection to the national Electric System grid to coexist with Power Plants included in Grandfathered Interconnection Agreements; and (vi) eliminates the examples of business schemes for isolated supply set forth in the Criteria A.

The Criteria B was criticized for being a new setback for the industry in Mexico since, it was alleged, isolated supply schemes and local generation had become alternatives to reduce the energy costs of some major users and their exposure to regulatory risks.⁶³⁶⁴⁵

https://www.dof.gob.mx/nota_detalle.php?codigo=5639919&fecha=31/12/2021

⁶³ See: *Dentons, Nuevos Criterios para Proyectos de Abasto Aislado*, January 3, 2022. At: <https://dentons.lopez-velarde.com/en/insights/articles/2022/january/3/nuevos-criterios-para-proyectos-de-abasto-aislado>

⁶⁴ This should be considered as a non-exhaustive summary of some of the legal actions implemented or being implemented by Mexico. It should also not be considered as an opinion of FloresRueda Abogados or any of its lawyers with respect to the actions described. For specific advice, please contact the FloresRueda Abogados team directly.

⁶⁵ www.floresrueda.com

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