

Bad Ideas, poorly executed

- The new administration will have to live with the current Constitution that defines the energy model in detail (21 "transitional" articles, in addition to the corresponding constitutional articles).
- There is no qualified majority in the Senate to make a constitutional change, and USMCA limits the changes that can be made to reverse an opening in the energy sector.
- Regulatory disputes are being resolved by the judiciary or in a negotiation (such as in pipelines or exploration and production contracts).
- Relevant actors such as Governors, COFECCE and Trade Partners are using or considering legal / trade instruments to review regulatory measures.
- This process will be lengthy but will result in the vaccination of the reform for projects in operation or in construction.
- However, this political noise has a negative effect on the promotion of future investments or on the largest premium that investments will require given the increase in regulatory risk.

Do technical and autonomous regulators contribute to society?



Regulatory bodies are in the public interest and the governing body of the State in several sectors, including energy



Technical and autonomous regulators give certainty to investment, promote economic development and job creation.



With accountability, the autonomous bodies justify the effectiveness of their actions and the benefits to society.

"With great powers come great responsibilities"

Stan Lee



Regulators consider the legitimate interests of different parties (consumers, public and private energy companies).

"No one was very happy, that means it was a good deal"

Tyrion Lannister¹



Technical-economic regulators take complex decision-making (they can be "blamed" by political actors).

1/ "Game of Thrones". 8th Season, Chapter 6.

Morena initiative to merge CRE, IFT and COFECE into INMECOB

On 06/10/20, Senator Ricardo Monreal (Morena) presented a reform initiative to the Constitution to create the National Institute of Markets and Competition for Welfare (INMECOB), as an autonomous body that merges, on an argument of austerity, the Federal Telecommunications Institute (IFT), the Federal Commission for Economic Competition (COFECE) and the Energy Regulatory Commission (CRE).

- **It would not recognize the relevance of competition policy as a regulatory policy watch dog.**
- **Specialization would be lost, and more uncertainty would be generated for the functioning of the markets (case of merger of regulators in 2013 in Spain has not been successful).**
- **Autonomous constitutional bodies would lose independence by eliminating required experience requirements and knowledge exams for appointment, as well as being appointed by the Executive on a Senate proposal.**
- **The proposal is not consistent with the USMCA Chapter 18 requirement to have an independent telecommunications regulatory body.**

Morena has not enough votes to make a constitutional change. Fireworks. Monreal withdrew it on 06/14/20.

Prosener 2020-2024 (06/15/20)

The Program is integrated by 27 priority strategies and 151 action points mandatory for the governmental dependencies, energy regulators and state productive companies. The program will be implemented by SENER. It is focused mainly in policies to empower PEMEX and CFE as “guarantors” of the energy sovereignty. The priority objectives are:

I. Reach energy self-sufficiency to meet the demand with national production.

- Enhancing exploration activities in territories with proven reservoirs and extraction in non-complex fields.
- Increasing the hydrocarbon and oil petroleum facilities to decrease importations. The investment is mainly directed to rehabilitate the existing six refineries and the construction of Dos Bocas.
- Rehabilitation of the petrochemical complexes to rise the production of natural gas and ethanol. The private entities may participate in the petrochemical entering model contracts negotiated with the government.
- Produce electricity through national renewal sources. The government is going to improve hydropower plants of CFE.
- One specific action (1.5.2): Review of the current electricity generation permits to align them to the new energy policy.
- Other action (1.6.7): review the contracts from the “Long Term Auctions on Electricity”.

II. PEMEX and CFE as guarantors of national energy sovereignty

- The document justifies the annulment of asymmetric regulation by CRE to state firsthand sales’ prices and in storage terminals mandatory for PEMEX and the modification to the tariffs charged by CFE.

III Transmission of Technology and scientific knowledge.

- To enhance the programs focused in the national industry’s scientific development. The Ministry is willing to encourage them to attend PEMEX and CFE technological needs for the transition towards renewable energies.

IV. Increase efficiency and sustainability levels in the production and use of energies.

- The main objective is to enhance the transport infrastructure to meet the demand of natural gas in Yucatán, Quintana Roo and Campeche.

VI. Strengthen the national energy sector to promote Mexico’s development to cover its basic needs harnessing its resources through state, social and private companies.

- Implies that PEMEX will invest mainly in exploration activities to find new reservoirs and increase oil reserves.

The North American Free Trade Agreement and the Energy Sector



- In September 2018, Jesús Seade (now Undersecretary for North America in Mexico's Ministry of Foreign Affairs, who's in charge of trade negotiations) asked Robert Lighthizer to remove the trilaterally agreed Energy chapter on Energy in March 2018. Instead of the Energy chapter, the then representative of the then president-elect, requested the incorporation of a new "declarative" annex of Mexico, titled "Recognition of the Mexican State's direct, inalienable, and imprescriptible ownership of hydrocarbons," which states that Mexico can reform its constitution and legislation whenever it likes and that hydrocarbons in the subsoil are owned by the Nation.
- As a result of this amendment, a paragraph was added in the NAFTA General Provisions stating that, with respect to the Investment, Cross-Border Trade in Services, State Enterprises and Market Access chapters, Mexico undertakes to give a treatment no less favorable than that which it has committed to give to other countries in any treaty or trade agreement it has previously ratified. This drafting includes the Comprehensive and Progressive Trans-Pacific Partnership Treaty TPP-11 and those of the World Trade Organization.
- Investors in the United States of America and Canada who wish to propose a violation of NAFTA (T-MEC or USMCA) on energy may report an expropriation or repudiation of investment based on the measures covered by TPP-11, which included in the annexes to the Hydrocarbons Act, the Electricity Industry Act, the Mexican Petroleum Act and the Federal Electricity Commission Act.

Lighthizer: U.S. ready to tackle biotech, labor issues with Mexico

Energy?

By Sabrina Rodriguez

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U.S. Trade Representative Robert Lighthizer said on Wednesday he expects the United States will have to use the USMCA's new state-to-state dispute settlement mechanism to force Mexico to start approving imports of agricultural biotechnology products.

"My own sense is that this is one of those issues where the administration down there has a strong view, and I think the only way we're going to get that to change is first by consultation and then by an action," Lighthizer said at the annual trade policy agenda hearing before the House Ways and Means Committee.

"I personally believe it's going to be one of those things where we're going to file a state-to-state dispute settlement," he added.

Lighthizer also highlighted that the U.S. and Mexico are "ready to go" with the new rapid response labor mechanism, that is aimed at handling labor complaints in both countries.

Why it matters: Mexico's Environment Ministry under President Andrés Manuel López Obrador hasn't approved import permits for biotech products even though they're in compliance with Mexican law. And that has barred U.S. companies' access to the Mexican market since López Obrador took office in December 2018.

Lighthizer's remarks signal a major issue already brewing with Mexico ahead of the entry into force of the USMCA on July 1. Lighthizer acknowledged a dispute case might be necessary as it appears to be a "philosophical problem" with the Mexican government.

"When [the USMCA] does go into effect, we will take action early and often when there are problems," he said.