



U.S., Canada, Mexico to begin technical consultations on energy disputes

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Officials from the U.S., Canada and Mexico this week will sit down for an initial technical-level meeting on parallel disputes launched last month over Mexico's energy policies -- an issue former Mexican officials say poses a challenge to one of the Mexican president's most abiding political views.

Mexican Economy Minister Tatiana Clouthier last week said the three countries would begin consultations on the disputes -- one [launched by the U.S.](#) on July 20 and another by Canada the following day -- during a virtual meeting on Tuesday morning, according to a report by the Spanish-language news site [Dinero en Imagen](#). The Mexican Economy Ministry's international legal officer Orlando Pérez will lead Mexico's delegation, Clouthier said. At least one other meeting will take place in Mexico City in about 10 days, according to the report.

Deputy U.S. Trade Representative Jayme White and Mexican Under Secretary for International Trade Luz Maria de la Mora also are [scheduled to meet](#) on Tuesday.

The U.S.' request for consultations came after more than a year of calls from lawmakers and industry representatives in the fossil fuel and renewable energy sectors urging the Biden administration to address concerns that policies pushed by Mexican President Andrés Manuel López Obrador were unfair to foreign companies. The Mexican president has pushed to reverse reforms that opened Mexico's energy sector beginning in 2013 -- and that were reflected in Mexico's obligations under the trade agreement, according to [Mexico's chief negotiator](#) for USMCA.

López Obrador has defended his policies as critical to ensuring Mexico's "energy sovereignty," a message he underscored last month when he announced plans to deliver a speech about the issue on Sept. 16, Mexico's Independence Day.

"We are going to carry out the commemorative military parade and there we are going to establish our position on this matter, but we are not going to give in because it is a matter of principle, it has to do with our sovereignty," he said during a July 22 [press conference](#), according to an information translation of his remarks.

Former Mexican officials said the president's message about sovereignty taps into symbolism long attached to the country's energy sector.

Mexico's expropriation of foreign oil companies in 1938, less than two decades after the country obtained its independence from Spain, "looms large in Mexican history as a key moment when Mexico asserted its sovereignty," Antonio Ortiz-Mena, former head of economic affairs at the Mexican Embassy in the U.S., told *Inside U.S. Trade*.

But Ortiz-Mena, now a senior vice president at Albright Stonebridge Group, said López Obrador's policies had little in common, from a practical point of view, with reforms that nationalized the energy sector during the last

century -- which he characterized as “pragmatic, non-ideological solutions” to specific problems such as concerns about labor violations by U.S. and British companies in the oil sector.

López Obrador’s energy policies, he contended, are “a solution looking for a problem,” sparking trade disputes and making it “very, very difficult” for Mexico to comply with its commitments under the Paris Agreement.

In its request for consultations, the U.S. raises concerns about a 2021 amendment to Mexico’s Electric Power Industry Law that prioritizes state-run electricity plants over cleaner, privately run alternatives, as well as “delays, denials, and revocations of U.S. companies’ abilities to operate in Mexico’s energy sector”; actions taken by the Mexican government regarding the use of Mexico’s natural gas transportation service; and a five-year extension granted in 2019 to the state-owned energy company, and not to other companies, to comply with new sulfur content requirements, as described in the request. Canada’s [request](#) focuses more narrowly on the 2021 amendment and barriers to private companies’ abilities to operate in Mexico.

López Obrador has contended his policies do not violate the trade agreement and pointed to Chapter 8 of USMCA to defend that claim. Chapter 8 consists of a single article recognizing Mexico’s ownership of hydrocarbons and the country’s “sovereign right to reform its Constitution and its domestic legislation.”

Ortiz-Mena, however, described Chapter 8 as “more of a symbolic statement” meant to assure the Mexican government its constitution would be respected.

“Legally, you don’t need to say what they said there,” he contended, saying trade agreements must always be consistent with the constitutions of the countries that are party to them.

In an Aug. 18 op-ed in [El Sol de Mexico](#), Mexican Senator Gustavo Madero, who belongs to the opposition PAN party, similarly contended that neither Mexico’s ownership of hydrocarbons nor its authority to modify its constitution were under dispute by the U.S. or Canada.

Madero called López Obrador’s response to the disputes “worrying,” saying the Mexican president had not addressed the actual concerns lodged by Mexico’s North American partners.

Aristeo Lopez, a former Mexican Embassy official who served as lead negotiator of the investment and government procurement chapters in USMCA, told *Inside U.S. Trade* that Mexico’s obligations under the agreement with regard to its energy sector were meant to “mirror” the country’s 2013 energy reforms. Lopez now serves as a special legal consultant at the law firm Clark Hill.

Mexico, he noted, made similar commitments during Trans-Pacific Partnership negotiations -- obligations the country remains bound to under the successor Comprehensive and Progressive Agreement for TPP.

In his op-ed, Madero warned that policies pushed by Mexican president could lead to trade disputes with other partners, saying there was “inherent risk of replications with other treaties we have signed with other countries and regions,” according to an informal translation.

Lopez and Ortiz-Mena contended that resolving the USMCA disputes could prove more challenging politically than technically -- and noted that several of the concerns raised by the U.S. could be resolved without legislative action in Mexico.

In addition, Lopez said, the 2021 amendment to Mexico’s Electric Power Industry Law has been facing numerous challenges in Mexico’s courts. As a result, the legislation has yet to be fully implemented. -- *Margaret Spiegelman* (m Spiegelman@iwpnews.com)

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