

Press release

The United States requests dispute settlement consultations with Mexico over its energy policy under the USMCA's provisions

The Office of the United States Trade Representative (USTR) announced today its request for dispute settlement consultations under Chapter 31 of the United States-Mexico-Canada Agreement (USMCA). The request relates to **public policy and regulatory actions by the Mexican State, which have negatively impacted U.S. companies in the energy sector in favor of the Federal Electricity Commission (CFE) and Petróleos Mexicanos (Pemex)**, the Mexican State-owned power electric and oil enterprises. [Canada indicated today](#) that it supports the United States' request and will launch its own consultations to address the issue.

The U.S. government claims that, since 2019, the energy policy of the current administration **violates disciplines to which the Mexican State committed in USMCA, particularly regarding chapters such as market access, investment and State-owned enterprises**. If an agreement is not reached, the next step would be the establishment of a dispute settlement panel, where Mexico risks facing trade reprisals. The Mexican Institute for Competitiveness (IMCO) considers that the success of USMCA depends on the willingness of all parties to comply with the spirit and letter of the Agreement.

Background

[USTR](#) specifically highlights a March 2021 amendment to the Electric Industry Law which **prioritizes CFE plants over private generators with a lower carbon footprint**, as well as the revocation and denials for new permits granted to private companies by the Energy Regulatory Commission (CRE) and the Ministry of Energy (Sener) for power generation, fuel storage, operation of service stations and fuels imports.

Additionally, it includes a December 2019 regulation that extends Pemex's deadline to comply with the Official Mexican Standard which establishes the maximum limits of sulfur content in automotive diesel (NOM-016-CRE-2016) and a June 2022 warrant from Sener to the National Center for Natural Gas Control (Cenagas) and the CRE which forces users of the natural gas transportation network to buy fuel from CFE.

Which provisions are being violated?

The violations to the Agreement pointed out by USTR include those referring to the following chapters:

- National treatment and market access (2.3 and 2.11), which determines that countries must **grant national treatment to merchandise from other member countries**.
- Investment (14.4), which **vetoed changes to government regulation that interfere with the original expectations provided to investors**.

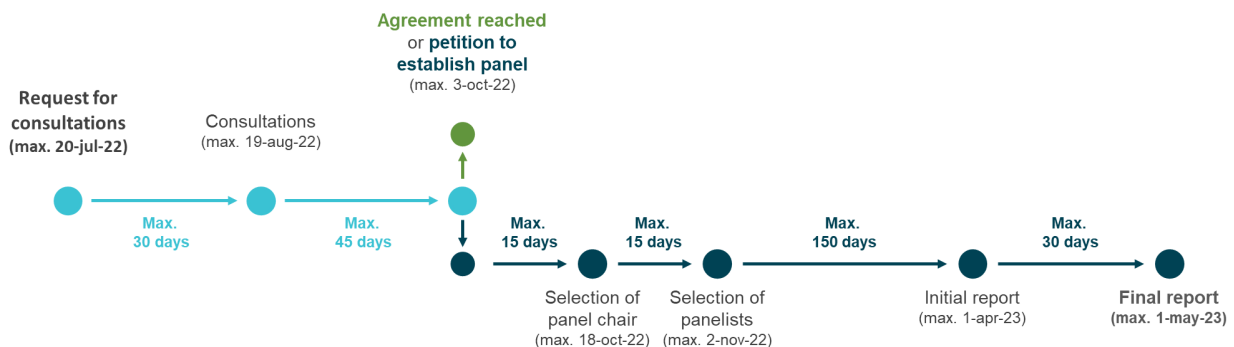
- State-owned enterprises (22.5.2), which decrees that **State-owned enterprises must grant national or foreign private companies treatment no less favorable than it accords to others.**
- Publication and administration (29.3), which establishes that the parties must implement their national legislation in a **uniform, impartial and reasonable manner.**

What's next?

The request for consultations triggers a process that grants a maximum of 75 days to resolve the matter, in which the consultations must be held no later than 30 days after the formal request is made. If an agreement is not reached during the consultation period, a dispute settlement panel may be requested. The panel would be made up of 3 or 5 panelists chosen from a list already pre-approved by the three member countries of the Agreement. **Once its members are chosen, the panel will have a period of no more than 150 days to issue an initial report, and then 30 days to present the final report, depending on which the countries will agree on a solution to the controversy.**

During the settlement process of the energy dispute, the [Ministry of Economy](#) will be in charge of coordinating a defense of the Mexican State.

Dispute settlement process under USMCA



Source: IMCO, with information from the United States-Mexico-Canada Agreement (USMCA). The timeline presented is subject to alterations in exceptional cases and suspension requests contemplated in Chapter 31 of USMCA.

The Mexican Institute for Competitiveness (IMCO) has repeatedly underlined the inconsistencies between the Mexican State's energy policy and its commitments to international trade agreements. These not only create obstacles for the potential to derive benefits from USMCA, but also put at risk the stability of the trade relationship between Mexico, the United States and Canada, and reduce competitiveness in the North American region.

IMCO is a non-partisan, non-profit research center dedicated to enriching public decision-making with evidence to advance towards a fair and inclusive Mexico.

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