

May 5, 2021

The Honorable Anthony Blinken  
Secretary of State  
Department of State  
2201 C Street NW  
Washington, DC 20520

The Honorable Gina Raimondo  
Secretary of Commerce  
Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20230

The Honorable Jennifer Granholm  
Secretary of Energy  
Department of Energy  
1000 Independence Avenue SW  
Washington, DC 20585

Ambassador Katherine Tai  
United States Trade Representative  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Secretary Blinken, Secretary Granholm, Secretary Raimondo, and Ambassador Tai,

In the last 25 years, North American energy markets have become more and more intertwined and interdependent. Canada and Mexico remain our largest energy export partners, a fact solidified by the United States-Mexico-Canada Agreement (USMCA), which preserves and encourages continued trade flows and capital investments in energy between the three signatories. Unfortunately, we have seen continued efforts by Mexican President Andres Manuel Lopez Obrador's administration to undermine that agreement and discriminate against US investors in violation of commitments made by Mexico in both NAFTA and USMCA.

In a June 2020 [letter](#) to the previous Administration, API outlined discriminatory actions taken by the Mexican government; but recently President Lopez Obrador has increased such actions - in both scope and severity - to change the fundamentals of the energy sector in Mexico. President Lopez Obrador has spearheaded major amendments to two laws--the Power Industry Law and the Hydrocarbons Law--to change market rules in favor of Petroleos Mexicanos (PEMEX) and Comision Federal de Electricidad (CFE) and against private companies. The common denominator of both laws is to hinder new private investment in the energy sector as well as destroy the value of already operating private assets in violation of Mexico's commitments under both NAFTA and USMCA. For more information on these two measures and other problematic recent actions specific examples on permits and other investor concerns, please see the updated Annex of Examples of Discrimination against API Member Companies in Mexico enclosed.

These targeted actions against API member companies likely contravene Mexico's USMCA commitments to accord non-discriminatory treatment with respect to the trade in goods (Article 2.3), investment (Article 14.4), and the sales and purchases of state-owned enterprises and designated monopolies (Article 22.4). These actions also appear to violate additional rules related to investment, including the minimum standard of treatment (Article 14.6), and they could also result in unlawful indirect expropriations (Article 14.10).

We encourage you to continue engaging diplomatically with President Lopez Obrador and your cabinet-level counterparts in Mexico's agencies to urge the Government of Mexico to uphold its USMCA commitments to treat U.S. investors and U.S. exporters fairly. Additionally, we ask that you include these violations as a top discussion item for the

upcoming Free Trade Commission meeting that Ambassador Tai and Mexican Secretary of Economy Tatiana Clouthier agreed to when they spoke in March.

USMCA was negotiated to strengthen the trading partnership between the U.S., Mexico, and Canada by creating a positive environment for trade, investment, and operations for all parties involved, bringing immense benefits to energy consumers in the United States and Mexico. Moreover, a stronger regional collaboration on energy is critical for boosting economic growth, continuing to create jobs in the three countries, and consolidating North America's global competitiveness. API has and continues to support USMCA as a basis to develop the mutual benefits a strong trade agreement can deliver. We look forward to hearing from you and engaging closely on these issues.

Thank you for your recognition of U.S. energy leadership and the importance of global energy export markets. Please do not hesitate to contact me regarding this matter.

Sincerely,



Michael J. Sommers  
President & CEO

Enclosure: *Annex of Examples of Discrimination against API Member Companies in Mexico [Updated]*

## **Annex: Examples of Discrimination against API Member Companies in Mexico [Updated]**

API member companies, as foreign private sector investors in Mexico's energy market, are facing the following examples of discrimination:

- *The Mexican legislature passed reforms to the Power Industry Law that modify the dispatch rules to put CFE power generating plants at the top of the dispatch order, instead of the less costly and less polluting private units, which include significant U.S. investments. Electricity will become more expensive and more polluting: Mexico's PEMEX has an oversupply of fuel oil, which the government plans to use at CFE's power plants, since they have not been able to sell it in international markets. Environmental organizations estimate the impact of the new Power Industry Law as an increase in CO2 emissions of 15-20% and in SO2 emissions of 150%. There is 5.7 GW worth of wind and 2.8 GW of solar development projects that are currently considered stranded assets, which were expected to become operational before 2024.*
- *The Mexican legislature also passed reforms to the country's Hydrocarbons Law, which like the reforms to the Power Industry Law give preference to PEMEX to the disadvantage of private investment. These reforms grant discretionary powers to the government to suspend or revoke permits across the fuels value chain and institutes retroactive and compulsory storage obligations, and additionally generating legal uncertainty affecting long term investment projects.*
  - *The reforms also reassert the government's right to take over privately-held facilities and turn their operations over to Pemex if the government suspends or revokes their permits.*
  - *The reforms contain two additional worrisome clauses regarding permits:*
    - *(1) If the Ministry of Energy (SENER) or the downstream regulator (CRE) do not grant an explicit approval for a permit assignment within the required 90-day period, the permit will be deemed as denied; and*
    - *(2) SENER and CRE will be able to suspend or potentially cancel existing permits claiming an imminent threat to national security, energy security, or the economy. These terms are very vaguely defined, giving the regulators enormous latitude.*
  - *Additionally, the reform is eliminating the Asymmetric Regulation to PEMEX from the Hydrocarbons Law. As an example, pricing regulation was designed to be in place until PEMEX's market share decreased to 70%. COFECE, Mexico's antitrust authority, issued a formal opinion suggesting not eliminating such regulation since the market has not reached competitive levels. This allows PEMEX to use its dominant position in an unfairly and opaquely undercut the pricing of foreign competitors, giving the company a significant advantage in downstream pricing.*
- *The Mexican government eliminated 20-year import export permits for hydrocarbons, leaving U.S. investors the opportunity to apply for only one-year, or in some cases five-year, permits. Additionally, it increased the types of products that require import and export permits, changes the procedures for filing for those permits, and amended the requirements for obtaining those permits. These actions severely hinder efforts by U.S. companies to build out retail networks.*
- *U.S. investor enterprises carrying out retail marketing of gasoline and diesel in Mexico are facing increasing difficulties in getting permitting approval for all processes and activities related to gasoline and diesel retail stations, as CRE prolongs administrative processes for permits to transfer legal ownership that are by regulation required to be granted within 90 days. Moreover, CRE also requests additional information to issue the permits*

that is not required in the regulations, until the point of denying such permits to the companies, after several delays.

- The same enterprises face discrimination in regulations. Examples include:
  - Standards inspections by the Consumer Protection Bureau/Bureau of Weights and Standards (Procuraduría Federal del Consumidor - PROFECO), which has been shutting down pumps at US enterprise gas stations for minor or non-existent infractions for pump and hose reliability and for measurement accuracy. In addition, PROFECO has conducted routine inspections of compliant facilities with the coercive presence of the National Guard.
  - Non level playing field in enforcement of fuels regulation NOM-016-CRE-2016, where PEMEX receives waivers while fuel importers must meet the regulatory specifications (e.g., low sulfur diesel and summer gasoline vapor pressure).
- U.S. investor enterprises are also being affected by the requirement effective July 1, 2020, known as the Compulsory Stock Obligation (Política Pública de Almanecimiento de Petrolíferos). This program requires a minimum of five days' fuels storage requirement. Initially, the spirit of this Policy was to promote infrastructure investments by the private sector, but it became problematic because participants in the industry have not been able to materialize these investments and develop new storage facilities due to unjustified delays in granting the required permits by Government Authorities. Additionally, state-owned PEMEX owns and operates most of the certified storage capacity and has not been willing to yield storage space through the ticketing market and open seasons.
- U.S. investor enterprises importing fuels from refineries in the United States are experiencing delayed, rejected, and/or restricted permit issuance for imported gasoline and diesel by the Ministry of Energy.
- U.S. investor enterprises that are constructing new facilities are experiencing significant delays for outstanding infrastructure permits and concessions from the Ministry of Energy, the Environmental Hydrocarbons Agency (ASEA), the Environmental Ministry (SEMARNAT), and the CRE, which has resulted in stopping the construction of those facilities.