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Two Fossil Fuel Producers in the Face of Climate Change: Mexico and the United States

The governments of Mexico and the United States are in charge of countries and economies based on fossil fuel. They are producers, exporters, and consumers of oil and gas that also have relatively little alternative energy. This is faithfully reflected in the energy mix data: in both countries, coal still represents a significant proportion (10 percent in the United States and 4 percent in Mexico). But the biggest problem is that oil and gas continue to represent the immense majority of their energy mix: 69 percent in the United States, and the even greater figure of 84 percent in Mexico. Alternative energies are barely larger than coal: in the United States,

hydroelectricity represents 2 percent; biofuels, 4 percent, and other renewables, 6 percent. In Mexico, hydroelectricity represents only 1 percent; biofuels, 6 percent, and other alternative sources, 3 percent. Nuclear power is also low: 9 percent in the U.S. and 2 percent in Mexico.¹ In both cases, we are looking at very conventional energy mixes, dominated by oil, and whose development has been throughout history — and even today — intimately linked to the massive production and consumption of this energy source, which, it must be said, they have always obtained at low cost in internationally comparative terms.

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protection of the environment, and the struggle against climate change are some kind of luxury reserved for developed countries. Despite this apparently big difference, in both countries, fossil fuel's still overwhelming weight seems to take precedence over environmental protection and the effective struggle against climate change.

This article looks at how much the two governments' different positions about climate change and the green economy may impact cooperation between them, and legally and practically, to what extent this could be an issue that could impede — or at least make more difficult — bilateral cooperation and even whether the latter is compatible or not with the U.S.-Mexico-Canada Agreement (USMCA).

The United States

Since Joe Biden was a candidate, he promised to work on climate legislation that has been dubbed the most ambitious of all time. Could this become a possible source of conflict on environmental issues with Mexico?

To achieve this end, Biden proposed creating a very broad infrastructure for generating and consuming renewable energy. Initially, there was talk of investing US\$2.3 trillion in infrastructure for this, and the proposal met with the opposition not only of Republicans but also with some Democratic representatives. The opposition stemmed both from what the package meant and how it was going to be paid for. Biden talked about human infrastructure that included modern public goods in the broadest sense, such as, for example, childcare for preschoolers, public services like broadband access, maintaining and subsidizing public schools, electric charging stations, etc. This kind of package is not acceptable for the opposition because they understand infrastructure in the more conventional sense, meaning basically bridges, highways, and other means of communication. With regard to where

the monies would come from for financing such an ambitious project, the idea was to introduce a tax on wealth that would involve taxing fifty-five large companies and 1 percent of the richest individuals.

Another part of the green reform involved an even more difficult issue to handle: subsidies for fossil fuels, which implies nothing less than dismantling the complex system of direct and indirect subsidies to fossil fuels and cutting off government support estimated at no less than US\$8.2 billion in tax breaks for 77 companies. Eliminating preferential treatment for oil, gas, and coal companies, created gradually over many years and historically reflecting the enormous power of the U.S. fossil fuel sector, is extremely difficult to accomplish. This is the case because of the enormous political weight these companies have as well as the complexity of the system of supports, which includes the most diverse tax breaks, legal loopholes, and legislation that allows fossil fuel corporations to dodge costs and avoid cleaning up what they pollute.²

Other green promises by Biden included re-joining the Paris Accord, which has already happened, and recuperating global climate-change leadership, which, however, is not easy to do given his country's very damaged reputation on the global stage in these matters. Regarding global commitments to reduce greenhouse gas emissions, the United States' goal is to reach net zero emissions by 2050, which presupposes a 50- 52 percent reduction vis-à-vis those of 2005 by 2030. To better understand this figure, we can add that it is almost double the climate goals set by President Obama. The current administration also aims to establish the way forward for achieving a coal-free electricity sector by 2035 and to create legal mechanisms that would ensure that no future administration could go back on this.

However, a great distance lies between what is on paper and reality. Until now, only executive decrees have been issued to reduce greenhouse gas emissions and US\$1.2 trillion approved for green infrastructure. What is notably lacking — and for the time being, it does not look probable that it can be achieved — is precisely the passage of the clean energy and social welfare legislation called Build Back Better, which would be the most important instrument for actually reaching the climate change goals proposed or the generation of renewable energy.

Biden has also implemented actions that clash head-on with fighting climate change. For example, he has urged oil-producing countries to increase production in order to

lower oil and gas prices; plus, he has not stopped pipeline construction projects, has approved oil drilling projects on public lands, and allowed fracking in the Gulf of Mexico. Despite Biden's vast radical green proposals, he is clearly under heavy pressure from the fossil fuel sector and because of the incessant appetite for oil in the current economy, all of which has made those proposals only inaccessible dreams up until now.

Mexico

Mexican President Andrés Manuel López Obrador (AMLO) has always been and continues to be the great defender of oil for Mexico, in the sense that he considers it the basis for national wealth and the inalienable property of the Mexican people; therefore, it must be the indisputable guarantor of national sovereignty. Despite the harsh criticisms from his political opponents that this is an outmoded view, surpassed by the overwhelming reality of climate change, the current Mexican administration considers that hydrocarbons must continue to be the center of the national economy and a secure source of well-being for Mexicans today and in the future.

In Mexico, a public political discussion is taking place about whether AMLO's energy policy violates the USMCA or not. At the same time, we can see certain pressure from U.S. businesspersons and legislators stemming from López Obrador's proposal for a constitutional reform to limit private participation in electricity generation to 46 percent. The explicit aim of this bill is to favor Mexico's Federal Electricity Commission (CFE), the government company traditionally in charge of the sector. The same reform would also eliminate autonomous energy regulators, making it possible to cancel previously existing contracts; and some speculate that the CFE's plants that mainly use fossil fuels could be the priority over plants that use renewable energy, most from the private sector and many owned by foreign companies. For these reasons, the reform's critics maintain that the differentiated treatment for Mexican and foreign companies could violate the USMCA.

Legal experts maintain that the reform to the Law on the Electricity Industry does violate the USMCA because the treaty's Chapter 22, specifically relating to the non-discriminatory treatment for state-owned companies — in this case the Federal Electricity Commission —, implies that a

monopoly position in the market cannot be used through anti-competitive practices in a market that would negatively affect trade or investment. Foreign investment from the United States or Canada could be exposed to the violation of the obligation to protect investments established in USMCA Chapter 14, above all the principle of fair, equitable treatment and that referring to indirect expropriation or equivalent measures.³

To analyze whether Mexico's energy policy violates the USMCA, we have to look at two laws, the Electrical Industry Law (LIE) and the Hydrocarbon Law (LH). Critics maintain that these 2 pieces of legislation change the market conditions in favor of Pemex and the CFE, creating an unfair advantage for the public sector, with the potential for limiting both domestic and foreign investment in the terms established in USMCA Articles 25 and 28, which refer to free competition. This is due to the fact that the energy sector was not excluded during the treaty renegotiations. The detractors of the LIE say it opens up the possibility for a monopoly in the electricity sector, making hydroelectric and fossil fuel energy a priority for the CFE; for that reason, they consider it imposes a change in the order electricity is sent to nodes, clearly favoring fossil-fuel-based energy. The Ministry of Energy (Sener) defends its orientation arguing that the reason for the law is to free the CFE from the straitjacket of having to purchase electricity even if it does not require it; that is, it is a measure for savings in the public interest.

With regard to the Hydrocarbon Law, those who oppose it say that its Articles 57 and 59 allow the government to "temporarily occupy, intervene in, and suspend" contracts and licenses, as well as take them over completely. In addition, ambiguity in the law's wording can spark the fear of expropriation given that it speaks of "imminent danger" that could affect "national security," giving the Sener discretionary powers.

In addition to these objections, the LIE is objected to based on climate change: critics maintain that it violates Article 133 of Mexico's Constitution and international

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climate change treaties. Among them are the United Nations Framework Convention on Climate Change, the Rio Declaration on the Environment and Development, the Kyoto Protocol, and the Paris Accords, precisely because this would imply that Mexico would not fulfill its emission reduction commitments.

Finally, despite the two countries' initial premises being very different, both, for very different reasons, continue to base their kind of development on a predominantly fossil fuel sector. This clearly shows how difficult it is to change the energy mix so that it does not depend on fossil fuels and create very strong political and social interests, whether this is manifested by the opposition, like in the United States, or by those in office, such as the Mexican case today. In both cases, the commitments and real possibilities of reducing greenhouse gas emissions and fighting this form of climate change are hampered. It is a real possibility that some regulations or articles of the law in Mexico may come into conflict with the USMCA, but the treaty itself has mechanisms for conflict resolution. The fact is that in both

countries, the federal government is facing serious difficulties. However, fortunately, there are also lower-scale levels of decision-making, such as the states, cities, and the sub-national regions, that can cooperate and advance on climate change issues. ■■

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Notes

- 1 Natural Resources Canada, 2020, *Energy Fact Book 2020-2021*, https://www.nrcan.gc.ca/sites/nrcan/files/energy/energy_fact/energy-factbook-2020-2021-English.pdf; U.S. Energy Information Administration, 2020, "U.S. Primary energy consumption by source and sector, 2020," [https://www.eia.gov/energyexplained/us-energy-facts/#:~:text=Download%20image%20U.S.%20primary%20energy,natural%20gas%2034%25%20petroleum%2035%25](https://www.eia.gov/energyexplained/us-energy-facts/#:~:text=Download%20image%20U.S.%20primary%20energy,natural%20gas%2034%25%20petroleum%2035%25;); SENER, 2020, "Balance Nacional de Energía 2019," https://www.gob.mx/cms/uploads/attachment/file/618408/20210218_BNE.pdf.
- 2 Antal, Edit, "Solución verde a la crisis y liderazgo climático," in Paz Consuelo Márquez-Padilla, ed., *La democracia rescatada* (Mexico City: CISAN, 2022), p. 98.
- 3 Ana Karen de la Torre, "Los argumentos legales en contra de la reforma energética de AMLO," in LexLatin, March 31, 2021, <https://lexlatin.com/entrevistas/los-argumentos-legales-en-contra-de-la-reforma-energetica-de-amlo>.



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