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NAFTA

Mexico Energy Sector Safe From Possible NAFTA Change: Lawyers



By Nushin Huq

Mexico's new energy laws have opened up the oil and natural gas market to international investors, and Mexican officials, think tanks and the attorneys who advise industry are cautiously optimistic that potential new negotiations over NAFTA terms will leave the energy sector untouched.

On the campaign trail President-elect Donald Trump vowed to renegotiate the free trade deal, focusing on the imports of manufactured goods from Mexico, but the North American Free Trade Agreement contains an entire section on energy. The U.S. imports crude oil from Mexico, as well as Canada, and exports a substantial volume of refined products and natural gas to Mexico. Trade agreement changes could potentially affect this market.

Renegotiations of NAFTA in the energy sector might make the agreement consistent with current energy laws in Mexico, Miguel Noyola, partner at Baker McKenzie LLP, told Bloomberg BNA. Noyola's practice specializes in foreign investment and international joint ventures, mergers and acquisitions, particularly in Mexico and Latin America.

Chapter six of NAFTA deals with energy and petrochemicals, and it reflects the general regulations of the Mexican energy industry at the time the agreement was put into place, Noyola said. When NAFTA was signed, the energy industry in Mexico was essentially state run, but new laws in 2013 have opened up the energy industry to foreign investments.

"NAFTA has lagged behind all of the development and changes that Mexico has enacted," Noyola said. "So perhaps the issue around the renegotiations of NAFTA in the energy sector will be to make NAFTA consistent with what the reality of the rules and laws and investment possibilities are today. I'm confident that will be addressed in a broad NAFTA negotiation as it affects the energy industry."

Needs Foreign Investment

Even if a renegotiation of NAFTA resulted in restrictions placed on Mexico in other industries, the Mexican government probably wouldn't try and reciprocate that by limiting or restricting foreign investment, Benjamin Torres-Barron, who leads the energy, mining and infrastructure practice in Mexico for Baker McKenzie LLP, told Bloomberg BNA.

"It would be certainly shooting ourselves in the foot given the specific need of the energy industry," Torres-Barron said. "Mexico is a country right now that needs a lot of assistance in terms of developing power and hydrocarbons."

In Mexico and U.S. trade balances in the energy industry, the U.S. benefits as a net exporter, selling more refined products and natural gas than the amount of crude it imports from Mexico. Pipeline capacity for natural gas exports from the U.S. into Mexico is currently 7.3 billion cubic feet per day (Bcf/d), according to the Energy Information Administration. Over the next three years, the EIA expects that capacity into Mexico will double.

On the other hand, not only does Mexico need refined products, such as gasoline, and natural gas from the U.S. to fuel its manufacturing sector and replace fuel oil and coal-generating power plants, it also needs foreign investment to construct its burgeoning energy infrastructure.

"I don't think the discussions will be around duties and tariffs in respect to imports and exports of energy-related products, whether it's gasoline, diesel or natural gas, because today Mexico is a net importer and U.S. is a net exporter of those products," Noyola said.

Pipeline Capacity Expands

The Mexican government and energy sector is continuing to expand the capacity of pipelines between the U.S. and Mexico and isn't concerned about changes to NAFTA affecting the energy sector, Francisco de Rosenzweig, Mexico's d negotiator for the 12-nation Trans-Pacific Partnership, told Bloomberg BNA.

Snapshot

- Potential changes to NAFTA "energy chapter" mostly updates to reflect current laws, international trade attorney says
- Rhetoric might cause uncertainty for investors, so Mexican officials need to be vocal, think tank representative says

"At the end, if for any reason the foreign trade policy changes, you already have the pipelines and licensed contracts," Rosenzweig said. "It's not as if you can just move these pipelines. I am not aware of any kind of concern that could limit the exchange of those agreements."

"I think that the Mexican energy sector will be successful regardless of any changes that are taking place in the North America sphere," Cesar Hernandez Ochoa, undersecretary for electricity at Mexico's Energy Ministry, told Bloomberg BNA.

In electricity, for example, the projects are long term and based on project finance mechanisms, such as the 20-year contracts in the renewable energy auctions, Hernandez said. Those are very stable revenue streams. In the oil and gas sector, oil is an international commodity, and now that the energy laws in Mexico have changed, it's a sector that will be resilient "even with all the noise we are seeing with NAFTA," Hernandez said.

"If you see the two top auctions for clean energy, there was U.S. investment, but it was a minor part of the investment—we had Chinese, U.K., Spain, France, Germany, Belgium, competing and winning bids," Hernandez said. "We don't think those investors will stop participating in those processes."

Baker McKenzie's Noyola agrees. He pointed to Mexico's recent auction for deep-water oil exploration rights and the international interest that it drew. Not only were there bids from U.S. companies, like Exxon Mobil Corp., but from energy companies from all over the world.

"We saw that the Chinese oil companies got two major plots assigned to them," Noyola said. "So I think there's going to be a lot greater diversification of potential investors in this industry."

Ignoring Rhetoric

Trump's rhetoric about NAFTA and the uncertainty it created in the Mexican economy is what concerns Juan Pardinás, director general of Mexican Institute for Competitiveness, a Mexico-based think tank. Pardinás doubts there will be much to change in any part of the NAFTA agreement, but he said the government should explain that to quell any nervousness from foreign investors.

"What the government should do is present evidence that the policy options on NAFTA are quite limited," Pardinás told Bloomberg BNA.

'Uncharted Water.'

Potential renegotiations of NAFTA could be a "win-win" situation for the energy industry on both sides of the U.S.-Mexico border, Noyola said. While there might be some posturing by both countries in their negotiation process in some form that might affect other industries, the energy sector might be one area where both countries see opportunity.

"That might allow for them to facilitate around tougher issues, like manufacturing or auto," Noyola said. "We're in uncharted water, we need to be able to adapt, but in the energy sector, I see that the end result will be a better U.S.-Mexico regulatory framework. Because there are win-win opportunities."

With assistance from Emily Pickrell in Mexico City.

To contact the reporter on this story: Nushin Huq in Houston at nhuq@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

Contact us at <http://www.bna.com/contact-us> or call 1-800-372-1033

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