December 28, 2020

Energy Industry Group Newsletter

Amendments to the agreement of foreign trade goods regulated by the Ministry of Energy

On December 26, 2020, the "Agreement that determines the goods subject to regulation by the Ministry of Energy upon importation and exportation" ("the Agreement") was published on the Federal Official Gazette.

The Agreement merges the goods subject to regulation by the Ministry of Energy ("SENER") upon their entry into or exit from Mexico, repealing two Agreements that regulated separately hydrocarbons and oil products, and nuclear fuel materials, radioactive materials, ionizing radiation generating equipment, and dual use equipment and goods.

The most relevant amendments are the following:

- It includes new concepts, such as:

» **Energy balance, defined as the relation between the supply of a certain oil product or hydrocarbon, composed by the production, imports and inventories, and its demand, made up of the sales to final users and self-consumption.**

» Oil product for initial filling, consisting of gasoline or diesel used to fill motors of new vehicles, which must comply with the technical requirements of the country of destination.

» Oil product for testing, consisting of gasoline, diesel or other oil products used to test motors.

- Requirements for short and long term permits of hydrocarbons and oil products:

» New requirements for the permits application, such as providing evidence that the applicant's activities are related to the object of the permit; indicate the use and final destination of the product; declare under oath the compliance with administrative, tax and customs obligations; etc. Some of these requirements were already part of the Sectorial Importers Registry or as part of the administrative practice.

» **Provide a monthly projection of the cost of importation, volume pretended to be imported/exported during the validity of the permit, and in case of export, provide evidence that this will not affect the supply within national territory.**

» For import, in case the applicant is holder of commercialization and/or distribution permits to sell gasoline, diesel or jet fuel to service stations or final users, he/she/it must demonstrate compliance with the obligations established in the Oil Products Minimum Storage Public Policy.

- » In case of natural gas in gaseous form export, the applicants must inform the gas pipelines logistics for its transportation, including origin points and destination, as well as entry points, and direction of flow.

- » If all documents and information are provided, but the requested volume is not justified, SENER is entitled to adjust it.

- » Specific requirements are established for permits related to oil products for initial filling and testing.

- » Short-term permits can be renewed for two times for the same period.

- Modifications to long term permits of hydrocarbons and oil products:

  - » **Long-term permits that used to be granted for 20 years are eliminated and replaced by 5-years permits, which are renewable for a single time for the same period.**

  - » In addition to the short-term permit requirements, **the applicant must prove that he/she/it has contractual commitments for at least 5 years and adequate or developing transport and/or storage infrastructure.**

- Request analysis and process:

  - » The energy balance analysis, the energy safety conditions, and guarantee of the hydrocarbon or oil product supply within national territory will be consider to grant or reject the permit.

  - » Once filed, SENER will have 5 business days to require further information and the applicant will have 10 business days to respond such requirement.

  - » **SENER shall answer the permit request in 12 business days and in case of lack of response it shall be considered as tacitly denied.**

- Validity, expiration and revocation of permits:

  - » Permit holders must file a monthly report, within the next ten business days after the end of each month, in terms the guidelines established in SENER's webpage.

  - » Short-term permits will expire after 30 calendar consecutive days of not being used and long-term permits (5 or 20 years) will expire if the holders do not exercise the permit's rights within a period of 365 calendar days.

  - » Expiration may be prevented if a justification for its lack of use is filed before its termination.

  - » Includes three new causes for revocation: (1) omission, alteration or declaration of false information related to the final use of the products; (2) declaring a false or non-existent name or tax domicile of the buyer or foreign recipient of the goods on the import/export declaration, invoices or permits; and (3) any unjustified lack of compliance with energy provisions against energy safety or sovereignty.

The Agreement establishes the following transitory regime for its coming into force:

- In general, it will come into force on December 28, 2020.

- The permits required for the goods classified on tariff codes 2710.12.99.02, 2710.19.99.05, 2711.12.01, 2711.13.01, 2711.14.01 and 2902.20.01, may be requested during the 60 days after the activities by SENER are reactivated. In the meantime, such goods may be imported without a permit.

- The requests filed before the Agreement's entry into force will be regulated by the legal provisions that were in force on the moment of its application.

- The permits and documents issued before its entry into force will be regulated by the legal provisions valid on the moment of its granting.

- The permits granted in terms of the abrogated Agreements will be valid until its expiration as long as the description of the goods in the permit is the same as the goods subject to customs clearance.

This newsletter was prepared by José Antonio Postigo Uribe (japostigo@sanchezdevanny.com), Guillermo Villasenor Tadeo (gvillasenor@sanchezdevanny.com), José Alberto Campos Vargas (jacampos@sanchezdevanny.com),

María Luisa Mendoza López (mmendoza@sanchezdevanny.com) y

Ernesto Vega Zaldivar (evega@sanchezdevanny.com)

Our Energy, Natural Resources and Environmental practice leads a larger Energy Industry Group comprised of a talented team of lawyers from several practice areas at the firm who specialize in the energy sector. As a multidisciplinary group, we are in a unique position to provide comprehensive and diverse legal advice on matters relevant to energy businesses.

Our Energy Industry Group provides full-service advice, including corporate, transactional, and M&A; public bidding; contractual; tax; regulatory; international trade; labor; dispute resolution; and corporate governance and regulatory compliance matters.

Sánchez Devanny is a leading Mexican law firm that provides **full-service legal advice** both to Mexican and international clients.We build enduring client relationships because we make every effort to understand our clients' businesses and expectations, to serve as an ally, and to provide **complete, accessible and personalized advice.**

Contact

Alfonso López Lajud
alopez@sanchezdevanny.com

Gerardo Prado Hernández
gph@sanchezdevanny.com

Guillermo Villasenor Tadeo
gvillasenor@sanchezdevanny.com

José Alberto Campos Vargas
jacampos@sanchezdevanny.com

José Antonio Postigo Uribe
japostigo@sanchezdevanny.com

Mexico City:
Av. Paseo de las Palmas #525 Piso 6
Col. Lomas de Chapultepec, 11000
Ciudad de México
T. +52 (55) 5029 8500

Monterrey:
José Clemente Orozco #335 Piso 4
Despacho 401 Col. Valle Oriente, 66269
San Pedro Garza García N.L.
T. +52 (81) 8153 390

Querétaro:
Blvd. Bernardo Quintana #7001 Torre 1
Oficina 1109 Col. Centro Sur, 76090
Querétaro, Qro.
T. +52 (442) 296 6400

Sánchez Devanny Eseverri S.C. @SanchezDevanny /sanchezdevannymx www.sanchezdevanny.com

Sánchez Devanny refers to Sánchez-Devanny Eseverri, S.C., a leading Mexican law firm that provides full-service legal advice both to Mexican and international clients.This publication contains general information only and is just for informative purposes. Sánchez Devanny is not rendering legal advice or services by means of this publication. To obtain legal advice or services and before making any decision or taking any action that may affect your business you should consult a qualified professional advisor.Sánchez Devanny provides legal services in the areas of Corporate and M&A; Corporate and Project Finance; International Trade and Customs; Real Estate, Infrastructure and Hospitality; Tax; Labor, Social Security and Immigration; Corporate Governance and Regulatory Compliance; Energy, Natural Resources and Environmental; Life Sciences; Intellectual Property, Entertainment and Sports Law; Litigation and Alternative Dispute Resolution; Antitrust; Financial Institutions and Services; Private Wealth Management and Estate Planning and Data Privacy and Information Technology to both public and private clients, especially in the automotive, retail, pharmaceutical, manufacturing, real estate and energy industries.