

**CRE's Opinion on the Cross-border Marketing of Hydrocarbons,
Petroleum Products and Petrochemicals in Mexico.**

by Carlos A. Chavez.

On December 2016, the Mexican Energy Regulatory Commission (“CRE”) published a series of opinions and theoretical cases (the “Opinions”) that answer several common inquiries that arose since the issuance of the new rules and guidelines that regulate the marketing activities of hydrocarbons, petroleum products and petrochemicals (the “Products”) in Mexico, which in principle require from a permit to be granted by the CRE, following the compliance of certain requirements.

These Opinions delve into and complement the CRE's decision A/034/2016 dated August 10, 2016, through which the Commission interpreted for administrative purposes the scope of articles 49 of the Hydrocarbons Law and 19 of the Regulations of the activities set forth in Title Third of the Hydrocarbons Law, and specifically explain the scope of the ninth recital of such decision, in which the CRE studies the case wherein the marketing offer of the Products is carried out outside of Mexican territory or by a foreign company.

To clarify the aforementioned case and in order to determine the cases in which a foreign or Mexican company shall require a marketing permit to be granted by the CRE (the “Permit”) in transactions in which a cross-border element is in place for the sale or delivery of the Products, the CRE published a list of Q&A's which led to the following conclusions:

I. Foreign Companies

1. A foreign company shall not require a Permit for the sale and transfer of the ownership of the Products to a User (a “Permit-holder”) or an End User (a “Consumer”) prior to the entry of the Product into Mexican territory, since the transfer of the ownership and physical delivery is carried out outside of Mexican territory and no transportation, storage or distribution services are hired or solicited, an neither is the foreign company providing added value services within Mexico.
2. A foreign company shall not require a Permit for the sale of the Products to a Permit-holder or Consumer prior to the import of such Products when such Permit-holder or Consumer hires a Permit-holding third-party to take the custody and carry out the transport of the Products from the import site to the delivery site or from the receipt site to the export sites; this, since the sold Products are delivered outside of Mexican territory and the foreign company is not hiring or soliciting transport, storage or distribution services, nor providing added value services within Mexican territory.

3. A foreign company located in Mexico shall not require a Permit in order to purchase the Products for their export from a Mexican Permit-holding company. Nevertheless, the export shall be carried out by a Mexican subsidiary holding an export permit.
4. A foreign company shall not require a Permit in order to enter into a transaction in another country to supply another foreign company of a Product which will be delivered, in the first place, in another country and eventually in Mexico through subsequent transactions, since the first transaction and transfer of the Product between the foreign companies is being carried out outside of Mexican territory, and for the Product to be delivered to Mexican territory, such foreign companies are not soliciting or hiring transport, storage or distribution services, nor providing added value services within Mexican territory.
5. A foreign company shall not require a Permit in order to offer and sell the Products to a Permit-holder or Consumer when the Products are transferred and delivered in Mexican national waters or in a Mexican port, prior to their import, since the Product is not deemed to formally be within Mexican territory, and thus, the transaction is not materialized within such territory.
6. A foreign company shall not require a Permit in order to offer and sell the Products to a Permit-holder or Consumer, when the transfer of ownership and of the Products is carried out in a bonded warehouse (*recinto fiscalizado*) and the foreign company contracts the service of storage in a bonded warehouse, since the Product is not formally within Mexican territory, given that it has not been imported yet; therefore, the storage of such Product is also considered to be virtually outside of Mexican territory. Nevertheless, the activity of storage in a bonded warehouse requires a storage permit to be granted by the CRE.
7. A foreign company shall require a Permit in order to sell the Products to a Permit-holder or Consumer with a Mexican delivery site through the hiring of logistics services from the import site to the delivery site, because the activity being materialized within Mexican territory is indeed marketing addressed to a User or an End User.

II. Mexican Companies

1. A Mexican company shall not require a Permit in order to acquire the Products to be delivered within Mexican territory for their export from a Permit-holder.
2. A Mexican company shall not require a permit in order to offer and sell the Products to a foreign company, provided that the transfer and delivery of the Product is carried out onboard a vessel located in a Mexican port, once the Product has been exported, since the transfer of the property and of the Product is carried out subsequent to its export, even if the vessel is located within Mexican national waters, thus, the transaction is not formally deemed to be materialized within Mexican territory.
3. A Mexican company shall require a Permit in order to sell and deliver the custody and property of the imported Products to a Permit-holder or Consumer in any location within Mexican territory.

Please send any comments or questions to info@jata.mx. The author is a Senior Associate of JATA – J.A. Treviño Abogados. JATA is a Mexican law firm with offices at Monterrey, Mexico and Houston, Texas.

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