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Tariff Shifts Creating Compliance Chaos For Energy Cos.

By **Keith Goldberg**

Law360 (March 10, 2025, 8:21 PM EDT) -- The unpredictability of President Donald Trump's tariff maneuvers is challenging energy companies' ability to comply with fluctuating mandates and making tariff violations more likely.

Not only has Trump used untested legal authority to aggressively wield tariffs against key U.S. trading partners, but he has also postponed tariffs just days after imposing them and vacillated on what goods they cover and when they should go into effect. That, combined with patchy compliance guidance from the administration, has left many companies unsure about the correct path forward and could ultimately delay projects or make them more expensive, trade lawyers told Law360.

"For the trading community, it is unusually difficult to be confident about whether any given import transaction is or is not dutiable," said Harry Clark, who leads the international trade and investment team at Orrick Herrington & Sutcliffe LLP.

The uncertainty can be summed up by the events of last week, which began with **Trump implementing tariffs** on imports from Mexico and Canada — with a lower rate for certain Canadian energy products — and ended with him **announcing an almost monthlong exemption** two days later for imports covered under the United States-Mexico-Canada Agreement.

The exemption was the second time **Trump postponed** the Mexico and Canada tariffs, but it didn't stop Canadian officials from taking retaliatory measures, including Ontario's imposition of a 25% electricity export tax on three U.S. border states **on Monday**. On April 2, Trump is expected to introduce tariffs on all countries, including Mexico and Canada, that have policies the administration deems discriminatory against American firms under his "Reciprocal Trade and Tariffs" policy, outlined in a Feb. 13 memorandum.

Attorneys say the on-off tariff landscape presents companies with two immediate compliance questions: Is a tariff temporarily paused, or does it remain in effect? And if it is in effect, does it cover the imported product in question?

Jonathan Stoel, the global co-head of the international trade and investment practice at Hogan Lovells, said that companies are having to figure out if products in their supply chain are indeed covered under the USMCA.

An energy-related example of this conundrum is figuring out whether the U.S. tariffs cover electricity imports from Canada. A White House spokesperson told Law360 that "all energy is included."

But historically, electricity has not been subject to tariffs. Not only is there legal precedent supporting this position, but there are practical obstacles to collecting tariffs on electricity, attorneys say.

"The challenge for the administration, and the challenge for the industry, is the fact there isn't a process established right now to track and assess tariffs on Canadian imports," said Bracewell LLP partner Andrew Shaw, who works on federal energy and environmental policy matters. "Electric energy is exempt from the current entry requirements for other tangible goods. They'd need to establish some kind of regime to track and assess electricity imports."

That uncertainty has led two regional grid operators with extensive connections to the Canadian electricity market — New York Independent System Operator and ISO New England — to petition the Federal Energy Regulatory Commission for authority to recoup any duties they are ultimately directed to pay. At the same time, both grid operators argued that electricity isn't covered by the tariffs, and if it is, that they aren't responsible for collecting any duties.

"We've been in touch with U.S. Customs and Border Protection and plan to reach out to the Treasury Department for clarity," ISO-NE spokesperson Randy Burlingame told Law360. "In the event regulations are filed, the ISO will seek to engage with the Treasury to argue that electricity should not be covered and, if it is, that the ISO should not be charged with collecting the duties."

Morgan Lewis & Bockius LLP international trade partner Katie Hilferty said that natural gas pipeline systems may also face questions about the timing of the tariffs, noting that actual gas flows into the U.S. precede when they're recorded for customs purposes.

"When you get into special types of commodities, it's ... 'How do you get into compliance?'" Hilferty said. "It's like a 'square peg into a round hole' situation."

Hilferty said the speed and unpredictability with which tariffs are being administered means companies need to be extra mindful of detailed compliance burdens, such as correctly valuing a product subject to tariffs, understanding the applicable rule of origin or figuring out the proper entry procedures for a product.

"There's a lot of different ways you can trip up," Hilferty said. "When the goalposts are being moved so that you're not spending a lot of time being able to think about these before things change, then you can trip up that much more easily."

Tariffs spark reexaminations and eventual adjustments of supply chains. For example, the additional solar duties imposed by Trump in his first term and continued by former President Joe Biden led to U.S. solar companies eventually shifting their supply chains out of China.

But that's even harder to do if companies don't know when, or if, tariffs will be imposed, attorneys say.

"You could try to move your plant to another country ... but are you going to do that now, when the Trump administration might rescind the tariffs in two weeks?" said Ken Rivlin, who co-heads the international trade and environmental and climate law groups at Allen Overy Shearman Sterling. "You're probably better off making a worst-case plan so you have it in the can, and continuing on and hoping you can manage it."

Stoel of Hogan Lovells said companies need to have multiple planning scenarios for adjusting their supply chains to the changing tariff regime. That includes accounting for the uncertain future of the Inflation Reduction Act and its bevy of clean energy and domestic manufacturing tax credits, he noted.

"No matter what option you take, you're looking at higher costs to supply," Stoel said. "At a very basic level, it's very difficult for folks to assess what pricing and costs are going to be. That kind of uncertainty just creates enormous pressure to pause things, or certainly not expand business."

Substantive guidance from the Trump administration that clarifies which goods are covered by the tariffs and answers importers' specific questions is needed, attorneys say.

"There have been a number of informal conversations, but things are moving so quickly it's impossible to get definitive guidance on most of these points," Rivlin said.

Hilferty of Morgan Lewis said that Customs and Border Protection has been very effective in promptly putting out general guidance for the tariff orders.

"On the flip side, if you have a specific factual situation, and you're reaching out to the agency via email, I have not seen very much movement," Hilferty said.

Trade attorneys say they're not throwing up their hands when it comes to advising companies on how to comply with the uncertain tariff environment. But they are offering more qualifiers with the legal landscape they paint for their clients.

"There has to be a general expectation that at some point, the dust settles on this, and we're doing business with a clear set of rules," Rivlin said. "At this point, it's a mix of legal advice and political prognostication."

--Additional reporting by Kevin Pinner, Dylan Moroses and Caroline Simson. Editing by Alanna Weissman.
