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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trump's Tariff Moves Put Energy Cos. In Scramble Mode

By **Keith Goldberg**

Law360 (February 7, 2025, 8:44 PM EST) -- President Donald Trump's aggressive use of tariffs in the early weeks of his administration has roiled the energy industry's long-term planning, and the fast-changing environment has companies scrambling to insulate themselves from potential financial hits.

The blanket 25% tariffs Trump imposed on goods from Canada and Mexico are on hold for now, but trade attorneys tell Law360 that hasn't eased energy companies' concerns, especially as tariffs Trump imposed on China have gone into effect and sparked retaliation, and rumors of more tariffs against entities including the European Union continue to swirl.

Given the frequently long timelines of energy investment and project development, companies at least want some medium-term certainty on what the tariff landscape will look like, said Norton Rose Fulbright partner Stefan Reisinger, who previously worked on trade at the U.S. State Department. But with the tariff picture seemingly changing on a daily basis — Trump on Friday said he would soon announce a new slate of reciprocal tariffs — many companies have little choice but to be in reactive mode, Reisinger said.

"All the extensions, imposing tariffs or suspending the tariffs for a month, that's the part where you can't do anything," Reisinger said. "You're sort of paralyzed until you understand what the landscape is going to be tomorrow, and six months from now."

Attorneys say energy companies are poring over their contracts to see if they're financially exposed to tariffs, and whether that burden can be shared with their counterparties. They're also looking at their supply chains to see where tariffs could bite and explore ways to route around them.

And energy companies will have to ramp up their lobbying game with both the administration and Congress, whether it's seeking product exclusions or lowering tariff rates.

"Right now these companies need to be ... trying to allocate the costs to counterparties and building these into contracts," said Josh Zive, a senior principal at Bracewell LLP who works on trade. "But engaging with the Trump administration is important, so that they understand that there is a path by which they can synchronize their energy and economic policies, but it's going to require them to not apply the tariffs to these energy products."

Attorneys say a major issue confronting many energy companies is that their contracts don't specifically address tariffs and who shoulders that risk.

"There's a bit of a panic right now about who's going to actually be responsible for paying ... for these tariffs in the event they're imposed," Reisinger said.

Reisinger said many renewable energy companies that went through the tariffs and duties Trump imposed on solar equipment and other materials in his first term put tariff-specific language in their contracts. But many other companies are still relying on traditional changes-in-law provisions, which may not sufficiently protect them, he said.

"A lot of these changes-in-law provisions are worded rather broadly, and they don't necessarily capture very specific language about increased tariffs," Reisinger said. "It may be a situation where the person responsible for paying the duties to the U.S. government ... was not negotiated."

Generic changes-in-law provisions might also not allow parties to terminate the contract if they're shouldering too much of the tariff cost, Reisinger said.

Zive of Bracewell said developers of energy infrastructure projects, which have significant front-end investments and timing requirements, could have an especially hard time accounting for tariffs in their contracts, given the uncertain status of tariffs like the ones proposed for Canadian and Mexican goods.

"Just the lack for being able to plan for it is where you're feeling some of the pain right now," Zive said. "I think the fear is delay, or at a minimum, the cost goes up. And does that lead to either cancellations [or] delays, or how does that trickle down to consumers?"

Attorneys say the uncertainty will encourage many energy companies to reconfigure their supply chains or manufacturing operations, similar to what the solar industry did during the first Trump administration. For example, Reisinger said oil and gas companies that either blend petroleum in Canada or send the raw materials to the U.S. for blending might look to send the products to areas not covered by the potential tariffs, as long as the U.S. isn't the petroleum's final destination.

But tariff uncertainty also means energy companies will hesitate to embark on wholesale relocation of their supply chains or manufacturing facilities, which can be multiyear, multibillion-dollar undertakings.

"The challenging part is the timing, particularly with large capital investments," said Evan Chuck, who leads Crowell & Moring LLP's Asia practice and works extensively on energy trade issues involving China. "You don't want to pull a switch on something if things might flip around again."

That only underscores the need for energy companies to immediately engage with the Trump administration, even if it's only to gather intelligence on what the president is thinking, said Aaron Cummings, who co-heads Crowell & Moring's government affairs practice and previously was chief of staff to Sen. Chuck Grassley, R-Iowa.

Cummings, who worked on trade issues during the first Trump administration when Grassley chaired the U.S. Senate Committee on Finance, noted that the proposed Canada tariffs carved out a lower rate for certain energy products, which indicates that Trump isn't completely rigid and at least acknowledged the tariffs' potential harms to the oil and gas industry.

"I think they're cognizant of that and that it signals of willingness for there to be exemptions ... and perhaps some kind of exclusion process as it relates to energy," Cummings said. "Now what we haven't seen yet is any sort of indication that they would sort of go easy on green energy, for example."

Cummings also said that in speaking with former colleagues on the Hill, there is an appetite among many members of Congress to push for exclusions from any imposed tariffs.

But whether Trump will be as willing to hear out energy companies' concerns and create exclusions and exemptions as he was during his previous term is a big question mark, attorneys say.

"This time around, there's a lot more trepidation about the tariffs because there's a lot less confidence in after-the-fact measures being an efficient way to relieve that pressure," Bracewell's Zive said.

Reisinger of Norton Rose noted that Trump largely relied on traditional tariff authorities in his first term, such as ordering investigations and having federal agencies make recommendations. This time around, Trump's proposed tariffs against Canada and Mexico came with little warning and cited the International Emergency Economic Powers Act, which allows the president to set tariffs in response to a national emergency, such as a threat to national security.

Trump threatened to use the IEEPA in his first term, but that would have put the White House in uncharted legal waters, and it ultimately backed off.

"I don't know that Trump 1.0 is a fair guide any longer," Reisinger said. "He's taken that dramatic leap into these unproven emergency powers that have never been used for this specific purpose."

In a persistently uncertain environment, attorneys say the most effective way for energy companies to plan around tariffs might be to base it on the one thing that is certain: Trump likes tariffs and will likely look to impose more of them.

"All the signals we have coming from the Trump administration is that they view tariffs as a powerful tool, they're not afraid to use it in a way that could inflict economic pain, at least in the short term, and they want to use this tool broadly," Cummings said.

--Additional reporting by Dylan Moroses, Caroline Simson and Alex Lawson. Editing by Brian Baresch and Michael Watanabe.
