



K&L GATES

ENERGY POLICY IN THE TRUMP ADMINISTRATION: TRADE & TARIFFS

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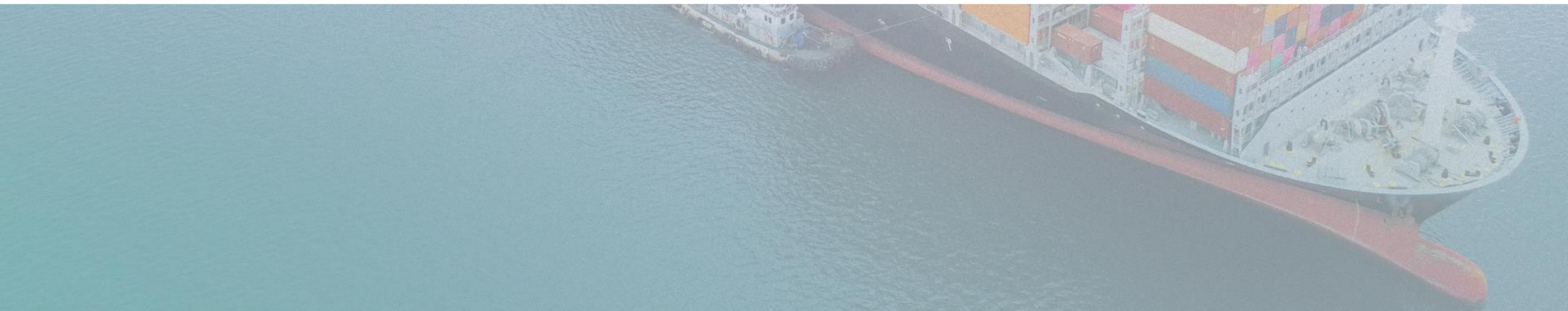
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Key Players



U.S. Trade Representative: Jamieson Greer



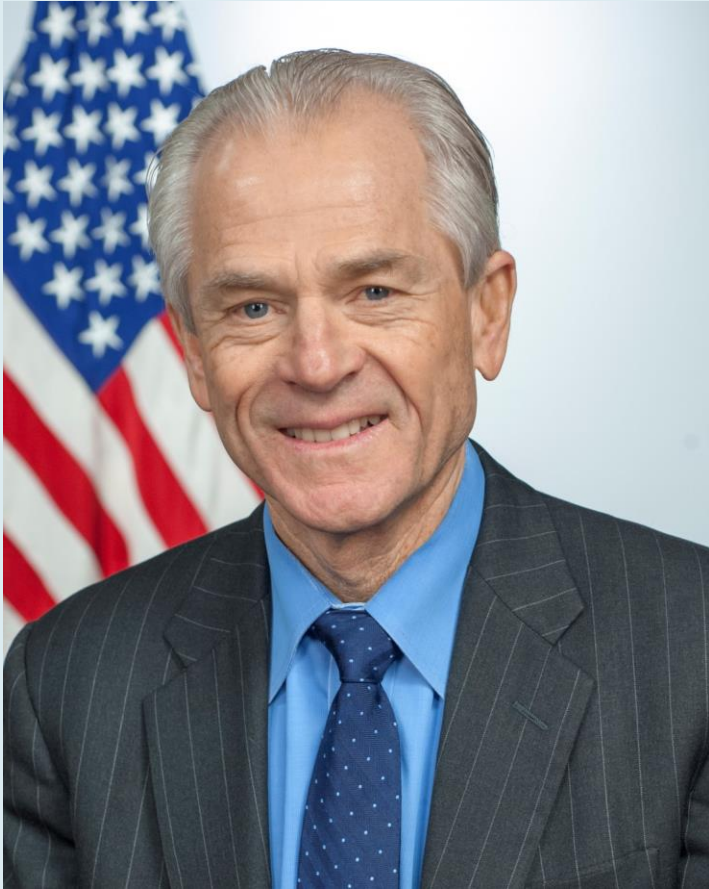
- Jamieson Greer serves as the 20th U.S. Trade Representative
- Greer served as the Chief of Staff to Robert Lighthizer, who served as U.S. Trade Representative in the first Trump Administration
- Greer played an active role in trade negotiations with China, Mexico, and Canada in the first Trump Administration

U.S. Commerce Secretary: Howard Lutnick

- Howard Lutnick serves as the 41st Secretary of Commerce
- Lutnick was a member of the Trump-Vance campaign and served as the co-chair of the transition team
- Lutnick is an advocate for trade policy that encourages growth in U.S. manufacturing

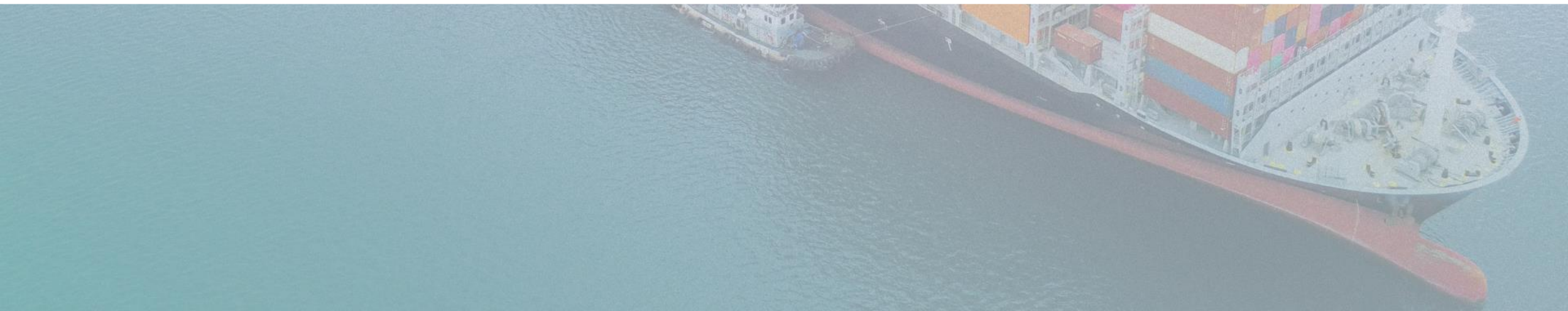


Senior Counselor for Trade: Peter Navarro



- Peter Navarro serves as one of President Trump's chief advisors on trade
- Navarro is a long-time advocate for reducing trade deficits and imposing tariffs on China, the European Union, and other trading partners
- Navarro's policy paper titled "The Case for Fair Trade" was the basis for the Project 2025 policy guide trade section

Trade and Tariffs



Presidential Tariff Authority

Congress is empowered under the Constitution to “regulate Commerce with foreign nations” and “lay and collect Taxes, Duties, Imposts, and Excises.”

- Congress has the authority to impose tariffs on U.S. imports, but those tariffs must be “uniform throughout the United States.”
- Congress has delegated authority to the President to impose tariffs under laws including the Trade Expansion Act of 1962, the Trade Act of 1974, the Tariff Act of 1930, and the Economic Powers Act of 1977.

Tariff Policy in the First Trump Term

President Trump is a long-time advocate for the use of tariffs to reduce trade deficits between the U.S. and other countries

- In his first term, President Trump imposed a 25% tariff on steel imports and a 10% import on aluminum imports, with certain exclusions available upon request
- President Trump relied then on Section 232 of the Trade Expansion Act of 1962, which grants the President broad power to impose tariffs on goods that are deemed to impair national security

Trump 2.0 Tariffs: Inauguration Day to Liberation Day

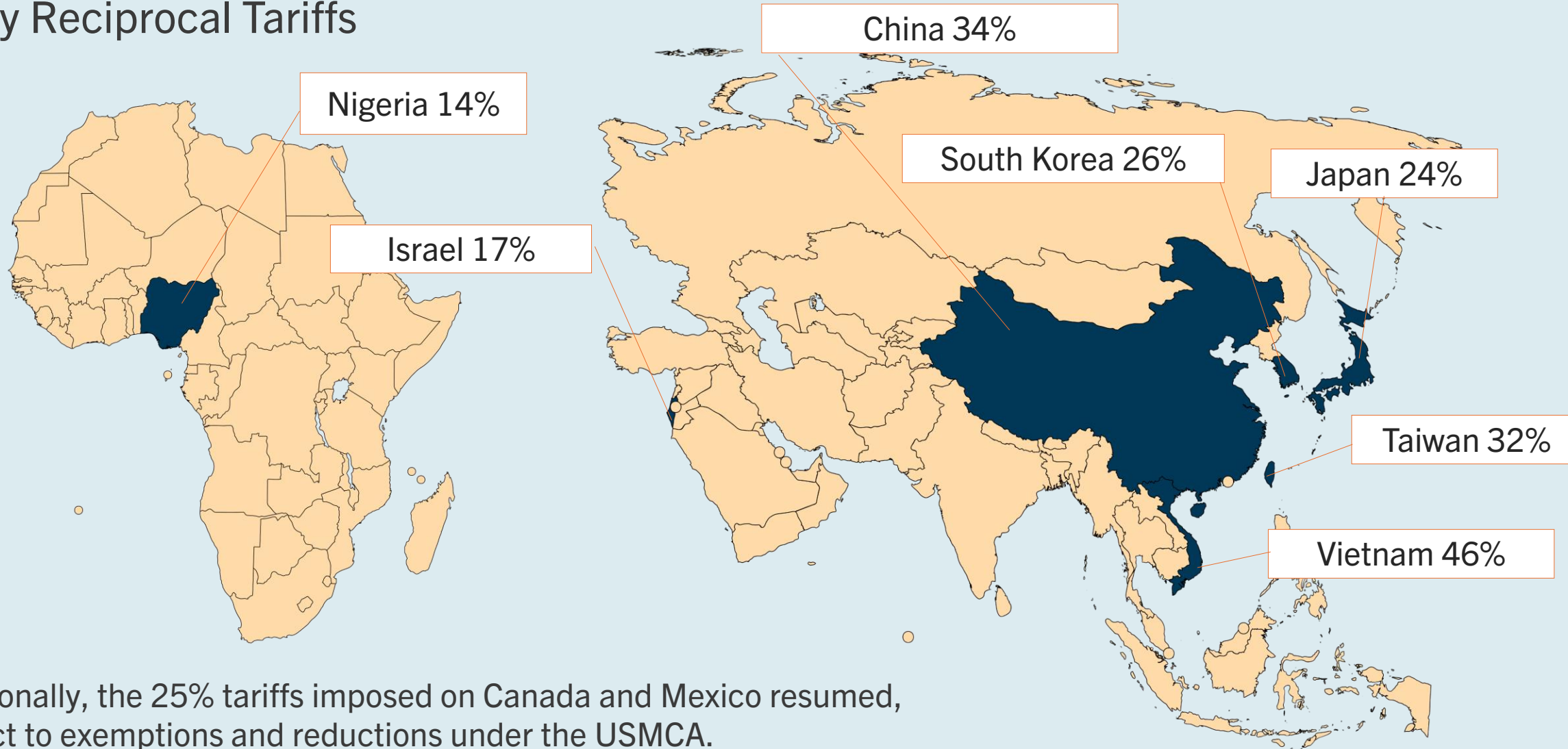
- In February 2025, President Trump introduced the first round of tariffs on Canada, Mexico, China, Steel, and Aluminum.
 - **China – 20%**
 - **Steel – 25%**
 - **Aluminum – 25%**
 - **Canada – 25% (Partial Rescission)**
 - **Mexico – 25% (Partial Rescission)**
- After major U.S. automakers opposed the tariffs on Canada and Mexico and requested a delay, President Trump paused those tariffs and announced that major reciprocal tariffs would be announced on April 2, 2025.

Trump 2.0 Tariffs: Reciprocal Tariffs

- On 2 April 2025, President Trump announced a series of “reciprocal” tariffs on US imports from all countries. The tariffs applied at different rates by country, starting at a **baseline of 10% and reaching as high as 50%**.
- A **baseline 10% reciprocal tariff** went into effect for all countries on April 5, with higher rates set to take effect on April 9.
- A 90-day pause was issued on April 9 for all country-specific tariffs, except for tariffs on Chinese goods. The 10% baseline tariff remains.

Trump 2.0 Tariffs: Reciprocal Tariffs

Key Reciprocal Tariffs



Additionally, the 25% tariffs imposed on Canada and Mexico resumed, subject to exemptions and reductions under the USMCA.

Trump 2.0 Tariffs: Reciprocal Tariffs

- Key imports were excluded from the April 2 reciprocal tariffs, including:
 - Goods that are already subject to Section 232 tariffs on steel, aluminum, and autos/auto parts
 - Certain metals and minerals, pharmaceuticals, semiconductors, lumber, electronics, energy, and other products
- Additionally, for goods that incorporate US content, the reciprocal tariffs would apply only to the non-US content – provided **at least 20% of the value of the good was US content.**

Trump 2.0 Tariffs: Reciprocal Tariffs

- Goods from China and Hong Kong remain subject to the initial 20% tariffs imposed in February, as well as additional existing 25% tariffs under Section 301 of the Trade Act of 1974 for certain goods.
 - **As of April 9, goods imported from China were subject to a 125% tariff.**
- Starting May 2, US tariffs will apply to products from China and Hong Kong that are imported under the “de minimis” exception for low value shipments to a single US recipient on a single day.

Trump 2.0 Reciprocal Tariffs Paused 4/9/25

- On April 9 President Trump announced a 90-day pause on all reciprocal tariffs while the administration conducts country-by-country negotiations to reduce trade deficits. The base rate of 10% tariffs on imports from all countries remains in place.
- 25% tariffs on goods from Mexico and Canada, imposed as part of a directive to reduce fentanyl smuggling, remain in place, subject to some exceptions.
- Tariffs on imports from China were not paused and were raised to 125%.

Tariff Exemptions

- Crude oil, natural gas, and petroleum refined products are excluded from the 10% baseline tariff on goods from all countries
- Last week, the White House announced that key consumer electronics including smartphones, computers, chips, and certain semiconductor technologies would be excluded from the reciprocal tariffs.

State-of-Play as of 4/17/2025

- **10%** baseline rate tariff on imports from all countries
- **125%** tariffs on imports from China
- **25%** tariffs on imports from Canada and Mexico
 - Subject to some exclusions and reductions, discussed later
- **25%** tariffs on steel imports
- **25%** imports on aluminum imports
- **25%** tariffs on auto part imports

State-of-Play as of 4/17/2025: China

Goods imported from China to the U.S. are subject to a 125% tariff

- China has responded to each of the tariff announcements, and increased tariffs on U.S. goods to 84% in response to the April 9 announcement.
- Coal and Natural Gas from the U.S. are subject to a 99% tariff, and U.S. oil is subject to a 94% tariff



Key Energy Impacts

- China imports around \$18 billion of oil and gas from the U.S. annually
- China has introduced export controls on several rare-earth elements crucial to manufacturing and clean energy technology

State-of-Play as of 4/17/2025: Canada



Goods imported from Canada to the U.S. are subject to a 25% tariff

- Goods covered under the USMCA, including agricultural products, certain manufactured goods, textiles, auto parts, and others are not subject to the 25% tariff
- Energy resources imported from Canada to the U.S. are subject to a lower 10% tariffs

Key Impacts

Canada has imposed a 25% tariff on automobiles and auto parts that are not compliant with the USMCA

- Ontario Premier Doug Ford imposed a 25% surcharge on electricity sold to the U.S. in March, which was later suspended.

State-of-Play as of 4/17/2025: Mexico



Goods imported from Mexico to the U.S. are subject to a 25% tariff

- Goods covered under the USMCA, including agricultural products, certain manufactured goods, textiles, auto parts, and others are not subject to the 25% tariff
- Energy resources imported from Mexico to the U.S. are subject to a lower 10% tariffs

Key Impacts

Mexico has not imposed reciprocal tariffs on the U.S. and Mexican President Claudia Sheinbaum remains engaged in trade negotiations with the Trump administration.

Key Energy Impacts

Critical Materials

- Aluminum: 60% imported from Canada
- Copper: \$4B imported from Canada in 2024
- Uranium: 27% imported from Canada
- Potash: 80% imported from Canada

Energy

- Oil, petrochemicals, and refined petroleum products
- Imported electricity
- Transformers and other electric grid equipment
- Computing materials and semiconductor technology

Congressional Reactions to Tariffs

On April 4, Senator Chuck Grassley (R-IA) and Senator Maria Cantrell (D-WA) introduced legislation to reclaim significant tariff authority from the President back to Congress.

- Six Republican Senators, in addition to Senator Grassley, have cosponsored the bill.

Representative Don Bacon (R-NE) introduced a companion bill in the House of Representatives, and nearly a dozen House Republicans have suggested that they might support the legislation.

- It is unlikely that Speaker Mike Johnson (R-LA) would bring the bill to the floor for a vote.

Risk Issues are Party/Contract Specific

Parties to Renewable Energy Deals	Types of Contracts Implicated
Equity Investors Sponsors Asset Purchasers Lenders Project Company Interconnecting Utility Purchasing Utility/Off Taker EPC Contractor Equipment Suppliers REC Purchaser O&M Service Provider Admin Service Provider Technology Provider	Shareholder/LP/Operating Agreements Build Transfer Agreements Loan Agreements, Guarantees and Financing Docs Power Purchase Agreements (PPA) REC Purchase Agreements Energy Performance Contract Energy Off-Take Agreements Construction Contracts Equipment Supply Contracts Warranties O&M Agreements Interconnection Agreements Leases and Easements Admin Service Agreements Incentive Agreements

Sale Acquisition and Investment Risk

Risk Type	Contact Clauses Implicated
<p data-bbox="191 504 800 548">Asset Value and Performance</p> <ul data-bbox="191 621 1200 949" style="list-style-type: none">• Most risks are derivative of this issue. Will the project be able to generate the forecasted revenue, achieve the forecasted credits, inline with forecasted costs, supported by the anticipated financing, on the contracted timetable.	<p data-bbox="1291 504 1854 548">Purchase Price Adjustment</p> <p data-bbox="1291 564 1819 608">Plant Capacity Guarantee</p> <ul data-bbox="1291 624 1964 668" style="list-style-type: none">• Minimum Capacity/Buydowns <p data-bbox="1291 684 1656 728">Parent Guarantee</p> <p data-bbox="1291 743 1712 788">Tax Credit Insurance</p> <p data-bbox="1291 803 1895 848">Change in Law/Force Majeure</p> <ul data-bbox="1291 863 1760 1008" style="list-style-type: none">• Changes to ITC/PTC• Tariffs• AD/CV Duties <p data-bbox="1291 1023 1806 1068">Material Adverse Change</p> <p data-bbox="1291 1083 1989 1128">Substantial Completion/Delay LDs</p> <p data-bbox="1291 1143 1709 1188">Termination Clauses</p>

Purchase Price Reductions

- Many contracts contain clauses that will adjust the purchase price for the asset if certain known risks materialize for the project.
- Popular subjects for these clauses to cover include:
 - Failure of the project to obtain guaranteed capacity (electrical output).
 - Failure of the project to obtain certain investment tax credit, production tax credit or other incentives, such as use prevailing wage/apprenticeship programs.
 - Repeal or change to tax incentive laws, feed-in-tariffs, or other industry subsidies for which the project economics were based.
 - Equipment cost increases due to tariffs or AD/CV duties.

Spotlight on Force Majeure/CIL Clauses

- These clauses are contract specific and turn on specific negotiated language.
- In a typical force majeure case, where performance has just become more expensive, a party is not excused.
- Many projects have adapted these FM/CIL clauses to capture specific events.
 - Example: COVID-19
 - Example: AD/CV Trade Cases
 - Example: repeal of tax equity/tax credit legislation
 - Example: Industry Wide Interruptions
- These clauses may only provide temporary relief if the impediment to performance is not permanent.
 - Example: Schedules may be extended for each day of an FM event.
- Some CIL clauses are paired with price adjustment clauses.
- Do tariffs qualify as FM or CIL? Likely depends on specific language.

Spotlight on Material Adverse Change

- May be found in Reps and Warranties or Conditions to Closing or Completion.
- Typical elements:
 - Target company specific
 - Undisclosed
 - Durationally Significant
- MAE or MAC clauses may provide for price adjustment, termination, or other recourse.
- Not frequently invoked
- Could unanticipated cost increases constitute an MAC or MAE?
- Are industry wide tariffs specific enough to constitute an MAC or MAE?

Up Next: Fossil Fuels (Drill, Baby, Drill!)

Join us on **Wednesday, 23 April from 1:00-2:00** for our discussion focusing on changes in federal policy and regulation for the U.S. Fossil Fuels industry under the Trump administration. Our speakers will analyze the effects of several key executive orders and agency actions on U.S. oil and gas permitting, development, production, and export.

Partners from our Washington D.C. Public Policy and Law practice will offer their insights into the current political and regulatory environment, the lasting effects of the Trump administration's policies, and what the future holds for the Fossil Fuels industry.

Looking Ahead: Webinar Series

Session 3 - Fossil Fuels (4/23, 1:00-2:00)

Session 4 - Nuclear Energy (5/1, 12:00-1:00)

Session 5 - Electricity, Transmission, and Data Centers (5/8, 12:00-1:00)

Session 6 - Critical and Fuel Minerals (5/15, 12:00-1:00)

Session 7 - Renewable Energy (5/22, 12:00-1:00)