2026 Int'l Arbitration Trends: Tariffs Drive Transformation

By **Katie Gonzalez, Christopher Moore and Roberta Mayerle** (January 20, 2026)

Katie Gonzalez

Christopher Moore

Roberta Mayerle

Many topics captured the interest of the international arbitration community in 2025. The implementation of sweeping tariffs by the new U.S. administration created unprecedented disruption in cross-border commerce, and triggered a wave of trade-related disputes.

Meanwhile, other political reform efforts — including shifts in energy and environmental policy under the Trump administration affecting wind energy development, natural resource extraction, fuel emission standards and related supply chains — have similarly created uncertainty, and have the potential to foster new disputes.

And environmental, social and governance issues continued to gain prominence in international arbitration in 2025, with parties increasingly invoking sustainability commitments, climate-related obligations and human rights standards in investment treaty and commercial disputes spanning the energy, infrastructure and natural resources sectors.

We expect that 2026 similarly will herald a number of interesting developments in international arbitration. This five-part article summarizes what are likely to be key trends and topics in international arbitrations this year, including:

- The surge in commercial arbitrations driven by tariff-related disputes and other U.S. government policy changes, as parties grapple with questions of cost allocation, contract modification and force majeure in an era of unprecedented trade uncertainty;

- Evolving trends in mergers and acquisitions and securities arbitration, including the implications of the U.S. Securities and Exchange Commission's policy shift permitting mandatory arbitration clauses in public company registration statements;

- Strategic considerations in selecting arbitral seats amid political and legal changes, particularly following Mexico's judicial reform and the entry into force of England's Arbitration Act 2025;

- The complex landscape of enforcing arbitral awards against sovereign states, including ongoing debates over sovereign immunity, assignability of awards, and public policy defenses based on fraud and corruption; and

- The intersection of international arbitration with emerging technologies, including the deployment of artificial intelligence systems in adjudicative roles, and the enforceability challenges facing cryptocurrency-related disputes.

Tariff Changes Drive Transformation and Growth in Commercial Arbitrations

The rapidly changing global tariff landscape is poised to reshape international arbitration in 2026 and beyond. Since early 2025, the U.S. administration has imposed tariffs, some of which are now at 100-year highs, that have disrupted supply chains and injected acute uncertainty into cross-border commerce.[1]

As a result, many commercial relationships are now under strain. Some contracts can only be performed with delay or at sharply increased cost, while others may become commercially irrational or outright impossible.

Because large cross-border commercial agreements often include arbitration as the preferred dispute resolution mechanism, international arbitration is set to become a critical forum for resolving disputes arising from the shifting tariff regime.

Legality of Tariffs

In addition to product-specific tariffs imposed pursuant to Section 232 of the Trade Expansion Act, President Donald Trump has also imposed country-specific tariffs pursuant to the International Emergency Economic Powers Act, or IEEPA.[2]

On April 2, the Trump administration announced sweeping reciprocal tariffs affecting nearly all of the U.S.' trading partners, including large-scale economies like China and Brazil.[3] The IEEPA-based tariffs in particular have sparked intense legal debate.

The U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the Federal Circuit enjoined certain IEEPA tariffs as exceeding presidential authority, though appeals remain pending.[4]

The U.S. Supreme Court heard oral arguments in Learning Resources Inc. v. Trump on Nov. 5, and is expected to rule in its upcoming term on whether IEEPA authorizes the president to impose tariffs, and if so, whether it unconstitutionally delegates legislative power to the president.[5]

This constitutional uncertainty is now playing out not only in the courts, but also in commercial arbitrations. Parties benefiting from tariffs or seeking continued performance under their contractual arrangements argue that the measures are lawful exercises of executive authority and do not excuse counterparty obligations.

Conversely, parties suffering from the impact of certain tariffs or seeking to be excused for nonperformance contend that the measures are ultra vires, fundamentally alter the economic basis of the contract, or constitute unforeseeable governmental action triggering force majeure or hardship relief.

Some arbitral tribunals have elected to stay tariff-related proceedings pending the Supreme Court's decision.[6]

Contractual Tariff Disputes

On the international commercial arbitration side, three central questions are emerging for parties and tribunals as they grapple with disputes arising from changing tariffs:

1. If the contract remains in place as-is, who bears the cost of tariffs?

When parties continue to perform under existing contracts despite tariff increases, disputes frequently arise over who bears the additional cost. Under U.S. customs law, the importer of record is generally responsible for paying duties and tariffs upon entry of goods into the U.S.[7]

However, commercial contracts often allocate tariff risk through a range of provisions such as pricing clauses, change-in-law provisions or trade terms such as Incoterms.[8] These clauses are now receiving renewed scrutiny as parties — and arbitral tribunals, once matters escalate — seek to determine whether the seller or buyer ultimately bears the cost of import duties.

2. If the contract is to be modified, what mechanisms allow adjustment?

Many long-term contracts contain mechanisms to adjust terms in response to changed circumstances. Depending on the contractual language and the applicable law, the imposition of tariffs may constitute just such a change. Key adjustment mechanisms include:

- Hardship clauses: These provisions allow parties to demand renegotiation of key terms — e.g., volume or price — under certain circumstances, such as when an event fundamentally alters the economic balance of the contract and renders performance excessively onerous.

- Price review clauses: Common in energy and commodity contracts, these clauses permit price adjustments according to an agreed formula, either periodically and without cause, or if specific criteria, such as a significant change in circumstances, are satisfied.

- Material adverse effect clauses: Frequently found in M&A agreements, these clauses allow parties to renegotiate or terminate transactions if circumstances materially worsen between signing and closing. However, U.S. courts construe such clauses narrowly, and often exclude general economic changes or industrywide disruptions.[9]

Arbitral tribunals, especially when applying laws from civil law jurisdictions, may also apply hardship doctrines or the principle of rebus sic stantibus, which allow relief short of termination in response to disruptive tariff shocks.[10] Even where contracts lack formal adjustment mechanisms, parties may nonetheless attempt renegotiation, sometimes under the shadow of pending arbitration.

3. If the contract is suspended or terminated, can nonperformance be excused?

When tariffs make contracts difficult or impossible to perform, parties may seek to excuse nonperformance. The most common avenue to do so is typically through force majeure clauses, which may excuse parties from liability for extraordinary events beyond their control.

Whether tariffs trigger such a clause depends on the specific language of the force majeure provision. Pandemic-era cases in the U.S. and the U.K. suggest that courts generally construe force majeure clauses narrowly, and require that the triggering event be specified

in the provision or fall within a catch-all category.[11]

In parallel with force majeure clauses, parties often invoke common-law doctrines — such as impossibility, impracticability (under U.S. law) or frustration (under English law) — as fallback arguments. However, these doctrines tend to be applied sparingly.[12]

In response to recent disruptions caused by increased tariffs or other political changes, parties are increasingly drafting force majeure and related clauses, sometimes colloquially referred to as Trump measure clauses, into their contracts.

These clauses explicitly reference tariffs, trade sanctions or governmental actions, and may include structured renegotiation or price review triggers tied to defined tariff thresholds.

As the tariff landscape continues to evolve, the coming years are expected to witness a significant rise in tariff-related commercial arbitrations, as disputes mature and parties exhaust available avenues for negotiation.

Katie L. Gonzalez and Christopher P. Moore are partners, and Roberta Mayerle is an associate, at Cleary Gottlieb Steen & Hamilton LLP.

Cleary Gottlieb associate Peter Carzis contributed to this article.

[1] See, e.g., Reuters, IMF says new US tariffs keep trade uncertainty running high (July 10, 2025), https://www.investing.com/news/economy-news/imf-says-new-us-tariffs-keep-trade-uncertainty-running-high-4130762.

[2] See, e.g., Reuters, What's in Trump's sweeping new reciprocal tariff regime (April 3, 2025), available at https://www.reuters.com/world/us/whats-trumps-sweeping-new-reciprocal-tariff-regime-2025-04-03/.

[3] Id.

[4] See generally Learning Resources Inc. v. Trump, No. 24-1287 (D.D.C. May 2025); V.O.S. Selections Inc. v. Trump, No. 25-1812 (Fed. Cir. Aug. 29, 2025).

[5] Oral Argument, Learning Resources Inc. v. Trump, No. 24-1287 (2025), https://www.supremecourt.gov/oral_arguments/audio/2025/24-1287.

[6] Even in arbitrations governed by non-U.S. law, such as English law, or seated elsewhere, parties are invoking representation and warranties clauses on compliance with local laws and regulations to contend that U.S. legal developments concerning tariffs have an impact on the parties' ability to carry out their obligations under the contract.

[7] See 19 U.S.C. § 1484(a)(1) (2022).

[8] The most common of these are Ex Works, whereby the risk transfers when the seller

makes the goods available at its premises, and Delivered Duty Paid, whereby the risk transfers at deliver to the buyer's location. See, e.g., Int'l Chamber of Commerce, Incoterms 2020: ICC Rules for the Use of Domestic and International Trade Terms (2019).

[9] See, e.g., In re: IBP Inc. S'holders Litig. v. Tyson Foods, 789 A.2d 14, 67-68 (Del. Ch. 2001).

[10] See, e.g., Int'l Inst. for the Unification of Private Law, UNIDROIT Principles of International Commercial Contracts (2016), Article 6.2 (empowering a court or tribunal to adapt a contract to restore its equilibrium after renegotiation fails). See also Ingeborg Schwenzer & Edgardo Muñoz, Duty to Renegotiate and Contract Adaptation in Case of Hardship, 24 Uniform Law Rev. 149 (2019).

[11] See, e.g., JN Contemp. Art LLC v. Phillips Auctioneers LLC, 507 F. Supp. 3d 490, 501-02 (S.D.N.Y. 2020), aff'd, 29 F.4th 118 (2d Cir. 2022) (holding that COVID-19 and related restrictions constituted a natural disaster under the force majeure clause only where the contract defined the triggering circumstances broadly enough to include such an event); Dwyer (UK Franchising) Ltd v. Fredbar Ltd [2021] EWHC 1218 (Ch).

[12] See, e.g., Kel Kim Corp. v. Cent. Markets Inc., 70 N.Y.2d 900 (N.Y. 1987) (holding that common-law doctrines of impossibility and impracticability are applied narrowly and only in extreme circumstances); Bank of New York Mellon (International) Ltd v Cine-UK Ltd [2021] EWHC 1013 (QB) (holding that frustration only applies when performance has become radically different from what was contemplated at the time of contracting).