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# HOW MIGHT A US-MEXICO TRADE CONFLICT AFFECT TRADE IN NATURAL GAS?

## 美墨貿易衝突如何影響天然氣貿易？

Columbia | SIPA Center on Global Energy Policy

U.S. Secretary of State Rex Tillerson and Homeland Security Secretary John Kelly will have their hands full Thursday when they visit Mexico. From threats of deportation and a border wall to ending Mexico's privileged trade relationship with the United States, the U.S.-Mexico diplomatic relationship under the Trump administration has become more strained than it has been in years.

While concerns about energy security may not be as immediate, they are nonetheless acute for

### 本期摘要(KEY INFORMATION)

◎美國哥倫比亞大學全球能源政策中心於 2017 年 2 月發表了「美墨貿易衝突如何影響天然氣貿易？」一文，文中指出墨西哥愈趨依賴低價的美國天然氣進口，根據美國能源資訊署（EIA）的統計，兩國間的管路容量在過去五年翻了一倍，到 2018 年底前可能還會再翻倍。2005 年到 2015 年墨西哥發電配比中，天然氣亦從 34%躍升到 54%。除了低價因素，大量投資於美墨天然氣貿易亦植基於能源貿易管制環境的支持。北美自由貿易協定（NAFTA）消除了貿易壁壘，聯邦能源管理委員會（FERC）對管路核發許可，而申請人透過能源部執行的網絡系統，可取得概括授權並在數週內向墨西哥出口天然氣，然而川普當政後美墨貿易衝突浮現，墨西哥的能源官員及美國天然氣出口商擔憂若墨西哥不再是自由貿易協定國家，那麼出口天然氣須歷經公眾利益及環境審查，審查致生的延遲和不確定性將會干擾當前的商業貿易。鑑於 NAFTA 對現有天然氣貿易的重要性以及美墨關係日益惡化，在重啟美墨經濟關係上，維持天然氣自由貿易將是美國官員的一大挑戰。

◎日本能源經濟研究所(IEEJ)於 2017 年 2 月針對中國天然氣市場的供需動向發表了特別報告，指出中國天然氣的需求自 2014 年起急速減緩，不過到了 2016 年，天然氣需求增長率再度回升，預測 2017 年仍將維持上升趨勢，今後中國天然氣的需求及 LNG 的進口走向，不僅影響中國本身的能源配比，預估對全球天然氣市場、尤其是亞洲的 LNG 市場供需環境亦造成重大影響。現有的大型中國石油商，及其他新進業者將如何影響中國國內的 LNG 供應市場亦是值得關注的焦點。

many Mexican energy officials – as well as for many U.S. natural gas producers supplying our southern neighbor – given the size of the cross-border trade. Mexico has become increasingly reliant on cheap U.S. natural gas imports. Pipeline capacity between the two countries doubled in the past five years, and may nearly double again by the end of 2018, according to the U.S. Energy Information Administration (EIA). The share of gas in Mexico's electricity generation mix jumped from 34 to 54 percent between 2005 and 2015, and Mexican industry has staked its growth on the availability of low cost imports. The United States exported three times as much natural gas to Mexico in 2015 as it did in 2009 at the onset of the shale boom, EIA statistics indicate. In the first eleven months of 2016, the United States exported a total of 1.25 trillion cubic feet to Mexico, a remarkable 31% increase over the same period in 2015.

Indeed, substantial capital investments in U.S.-Mexico natural gas trade were made based not only on projections of a long-term supply of relatively inexpensive U.S. natural gas, but also the supportive regulatory environment for energy trade between the two countries. The North American Free Trade Agreement (NAFTA) eliminated trade barriers, the Federal Energy Regulatory Commission (FERC) issued the required authorizations for the pipelines, and the Department of Energy implemented a web-based system through which applicants can expect to receive "blanket authorizations" for exports of natural gas to Mexico within weeks.

The prospect of a conflict with Mexico over trade could unsettle this regulatory environment. On the U.S. side, natural gas producers and exporters likely expect that the new Administration would not intentionally interfere with their industry. Nonetheless, some involved in the U.S.-Mexico gas trade are asking what inadvertent, collateral damage could be done as a result of a trade conflict driven by the politics of U.S. manufacturing and President Trump's base in the industrial Midwest. On the Mexican side of the border, as discussed during a recent Center on Global Energy Policy roundtable on Mexico's energy sector in a Trump Administration, officials are increasingly worried about the damage that could be wrought should President Trump choose to use dependence on U.S. natural gas supply as leverage, as Russia has done in the past.

The answer to both questions turns on the fate of NAFTA. NAFTA is central not only because it is the agreement through which both countries have committed to trade freely in natural gas, but also because Congress has relied on the "free trade agreement" concept in setting the level of regulatory review that exports of natural gas must undergo prior to authorization. Under current law, the Department of Energy must grant companies natural gas export authorizations "without modification or delay" to countries with which the United States has in effect a "free trade agreement requiring national treatment for trade in natural gas." Exports to non-Free Trade Agreement countries require a public interest review, an opportunity for public comment, and an environmental review under the National Environmental Policy Act (NEPA). Exports to Free Trade Agreement countries do not.

Indeed, exports and imports of natural gas with NAFTA countries undergo regulatory processes about as complex as renewing a passport. The Department of Energy grants two-year blanket authorizations for export to Mexico within weeks. (Longer term export authorizations to Mexico and Canada require the applicant to submit a sales contract with a term greater than two years, and such requests are generally processed in months rather than weeks). Even when the issue of LNG exports became heated and politically controversial during President Obama's first term, leading to a roughly two-year delay while the Administration studied the economic and environmental impacts, export authorizations to Mexico continued to move forward without delay.

Should Mexico no longer qualify as a free trade agreement country, a new regulatory burden would fall on U.S. exporters. Existing authorizations would likely remain in force, but within two years most U.S. exporters would need to come back to the Department of Energy for a full public interest review of the kind that LNG exporters to non-free trade agreement countries have undergone in recent years. Also of critical importance in terms of timing would be the scope of the environmental reviews that are required to accompany the public interest review. While exports over existing pipelines would be eligible for a categorical exclusion from NEPA, a recent challenge by Sierra Club working its way through the U.S. Court of Appeals for the D.C. Circuit could expand the environmental review required for exports to include the environmental impacts of natural gas production and the effect of exports on net global greenhouse gas emissions. The broader the required environmental review, the longer the approval process would take and the more litigation risk would accompany it. Ultimately, even assuming an Administration that views the U.S.-Mexico gas trade favorably, the delay and uncertainty associated with such reviews would pose an unwelcome interference with current commercial practice.

If natural gas prices were to spike for any reason, politicians would howl about the harm to manufacturing businesses and consumers. In such a scenario, trade could be threatened were the more cumbersome non-FTA approval process to get bogged down again in heated political rhetoric. Again, we saw this first-hand serving in the Obama Administration.

It would not take NAFTA being abandoned entirely for Mexico to no longer qualify as a free trade agreement country under the Natural Gas Act. If NAFTA is re-negotiated, new restraints on natural gas trade (such as the imposition of tariffs on U.S.-bound Mexican-origin gas) could mean that the agreement no longer qualifies as providing for "national treatment for trade in natural gas." And, even if the natural gas provisions of NAFTA remain intact, a re-negotiated agreement that includes new tariffs or trade restrictions could invite litigation on whether NAFTA – its name nothwithstanding – is still a "free trade agreement" at all. The question would be a novel one. The term "free trade agreement" is not defined in the Natural Gas Act, nor is there an authoritative definition originating in trade law. In an early LNG export case, the Department of Energy rejected an argument that the World Trade Organization agreement is a free trade agreement under the Natural Gas Act, suggesting that a free trade agreement must be something that provides for more liberalized trade rules that the WTO – a standard that a re-negotiated NAFTA might fail to meet.

And what if, as some in Mexico fear, the Administration sought to use natural gas as a weapon against Mexico or to extract leverage in a broader negotiation? Of course, the U.S. case is fundamentally different from the Russian case because U.S. natural gas exporters and pipeline operators, unlike Gazprom, are entirely private companies that would likely resist any governmental effort to interfere with the free flow of gas. And so the legal question would be whether, absent new legislation, the Executive has authority to stop the flow of gas to Mexico over the objection of the U.S. exporters and pipeline operators. If Mexico no longer qualifies as a free trade agreement country, the Department of Energy could deny export authorizations to Mexico on the grounds that they are not in the public interest. The Department's decision would be subject to public notice and comment and a right of judicial review. But, if the Department provided a reasoned basis for its decisions rooted in U.S. foreign policy objectives, courts would likely defer.

On the other hand, if Mexico remains a free trade agreement country, a hypothetical Administration seeking to use gas exports as a weapon would have fewer options. One possibility would be to withdraw the Presidential Permits FERC has granted for cross-border pipelines. The authority to issue Presidential Permits does not come from an act of Congress but from the President's authority to conduct foreign affairs under Article II of the Constitution. The extent of the President's authority under Article II to control cross-border infrastructure has never been litigated and would be fraught with legal uncertainty, calling to mind what Supreme Court Justice Robert Jackson once called the "zone of twilight" in which the President and Congress "may have concurrent authority, or in which its distribution is uncertain."

At this point, it remains unlikely that the new Administration would want to interfere with the free flow of natural gas across our border. Mexico has simply become too important of a market for U.S. producers. Nevertheless, given the importance of NAFTA to existing gas trade and the deteriorating U.S.-Mexico relationship, preserving free trade in natural gas while re-opening other aspects of the U.S.-Mexico economic relationship will be a challenge for U.S. officials that may prove more difficult than it first appears.

原始連結：
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# 注目される最近の中国の天然ガス市場と LNG 輸入:成長軌道に回復か

## 受矚目的當前中國天然氣市場與液化天然氣進口：是否回歸成長？

日本能源經濟研究所(IEEJ)於 2017 年 2 月 28 日舉辦了中國天然氣市場相關研討會，並針對中國天然氣市場的供需動向、市場改革等議題於網站發表了特別報告，其報告首先提到中國的天然氣需求到 2013 年時仍呈現大幅成長，但自 2014 年起急速減緩，2015 年的增長率更下滑至 3%左右，背後重要的原因即是中國經濟邁入「新常態」，經濟成長率走緩至 7%，中國天然氣需求成長的大幅減緩，對於全球的天然氣供需、尤其是亞洲的液化天然氣(LNG)供需帶來很大的影響。

中國的天然氣供應源，大致分為國產天然氣、管線輸送的天然氣進口以及 LNG 進口三種類型，LNG 作為供需緩衝的角色，因應需求成長，在 2014 年之前 LNG 的進口仍呈現大幅擴張，許多 LNG 的供應事業，原先亦看好市場需求穩固的動向、原油高價帶動亞洲市場 LNG 上漲的因素而決定投資，但原本預期 LNG 擴大進口的中國市場，實際上卻產生縮減的狀況，這對亞洲的 LNG 市場影響甚大，也是造成亞洲 LNG 市場明顯供需趨緩的重要原因。

不過到了 2016 年，中國的天然氣需求增長率又回歸到近 2 位數，預測 2017 年將回歸到 10%的水平，推動其需求回升的即是發電部門與工業部門的需求擴大，再者為強化空污改善，天然氣被視為潔淨燃料而提升用量。

此外，LNG 價格大幅下跌亦改善天然氣的經濟性，喚醒市場對天然氣的需求，以致於中國在 2016 年 LNG 的進口急速增加，較前一年度增加近 25%，超出 2,500 萬噸，預估穩定增加的趨勢在 2017 年亦可能延續下去，今後中國天然氣的需求及 LNG 的進口走向，不僅是中國本身的能源配比，預估對全球天然氣市場、尤其是亞洲的 LNG 市場供需環境亦造成重大影響。

IEEJ 的報告更進一步指出，在中國第 13 個 5 年規劃(十三五)當中，就實現降低碳依存的政策目標而言，擴大天然氣的市場占有，與擴大非化石能源利用同等重要，預估中國天然氣的需求到 2020 年將超越 3,500 億立方公尺，從 2015 年到 2020 年將呈現幾近倍增的狀態。從這樣的供需動向來看，中國天然氣及 LNG 市場的業者動向亦是觀察重點——中國海洋石油(CNOOC)、中國石油天然氣集團(CNPC)、中國石油化工集團(SINOPEC)等大型中國石油商簽署了附無條件支付(take or pay)條款的進口合約，他們將如何供應中國市場？又如何確保各自的市場佔有率？另一方面，在市場改革逐步進行的情況下，浙江省能源集團、北京市燃氣集團等省級供氣網業者，以及天然氣火力發電廠、都市天然氣企業等新進業者將如何活化 LNG 的供應市場？未來的中國能源市場，乃至於天然氣市場的走向確實值得關注。(郭宛儀 摘譯)

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