

The Certainty (or Uncertainty) of Tariffs

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The first quarter of 2025 has been packed with talk of tariffs. The application, repeal, modification and moving industry-specific exclusions have been a near-daily talking point. The interconnectedness of our national and regional economies, incumbent with cross-border supply, purchase and delivery of goods, leaves lingering and perhaps unanswered questions of how these artificial costs will be absorbed, passed on or felt throughout the supply chain.



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Although the full effect of the tariffs — and their reciprocal counterparts — may not yet be known, businesses and manufacturers would be wise to prepare and examine their contractual arrangements to pivot with expediency if circumstances dictate.

Caution should be taken to review each supply and purchase agreement within your company. Are the contractual arrangements with suppliers and customers on a long-term basis or an intermittent purchase order basis? Is the structure of the deal such that prices are only committed to, rather than quantity? How does the agreement treat taxes? Are taxes included or an “add-on” to the base price being charged? In sum, what are your exact obligations under each agreement, and under what circumstances can you demand performance?

Another important item in reviewing agreements (or revising in the case of existing agreements) is to consider including a force majeure-like provision to address the risks of new or heightened tariffs and other potential government-imposed costs. As standard force majeure clauses are not usually effective against foreseeable risks — which at this point certainly include tariffs — it might be wise to include a specific provision giving the parties some protection from tariff volatility. This can be accomplished by expressly providing, in such circumstances, for an escalation; or no breach for nonperformance in specified conditions; or arbitration, all with the purpose of allowing the parties to allocate (or mitigate) the risks and consequences between them.

The delivery terms of the agreement are also an important area to analyze when determining who is responsible for any applicable tariff. What did the supplier, or you as the manufacturer, commit to when arranging for shipment and delivery of goods? Was it to the destination? Or are you arranging for shipping and transport to be the responsibility of the customer or buyer? The responsibilities of each party to these agreements must also be examined to determine who initially

bears the cost of the tariffs in the context of the current contractual arrangement between your suppliers and customers.

Furthermore, both Canada and Mexico are partners to the U.N. Convention on Contracts for the International Sale of Goods (CISG), which provides broader equitable and contractual remedies than the common law of the U.S. To be as fully informed as to the state of each

contract supplying or generating revenue for your business, examining whether CISG has been expressly disclaimed or otherwise was included (perhaps as a matter of course in terms and conditions) to govern the terms of the international sales agreements is another important area of analysis that should be undertaken.

By examining where each of your companies

are positioned contractually and economically as these conditions and factors are presented will provide you with a leg up in uncertain economic times.

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