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Protecting Against the Impact of 2025 Tariffs on Construction Costs

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The 25 Percent Tariff on Canadian and Mexican Products

On March 3, 2025, the [Trump administration](#) announced that the United States would proceed with its anticipated plan to impose a 25 percent tariff on products imported from Canada and Mexico with a lowered ten percent tariff on Canadian energy products and a one-month pause on automotive imports and imports that meet USMCA origin requirements. Effective on March 4, 2025, this tariff comes on the heels of the expiration of the 30-day pause for negotiations with Canada and Mexico. The decision to implement these tariffs follows the reinstatement of 25 percent tariffs on steel, aluminum, and derivative steel and aluminum articles imported from all countries.

The tariffs on steel and other materials, along with the recently initiated Section 232 investigations on copper, lumber, and derivative products raise significant concerns in the construction industry regarding the increased cost of building materials leading to inflated project costs, potential delays, and reduced profitability. We anticipate the newly implemented tariffs on Canada and Mexico will similarly cause significant impact on the United States construction industry.

Force Majeure Provisions May Be Insufficient to Protect Parties From Rising Costs of Lumber

Current contractual provisions may not adequately protect the parties to a construction contract from increased costs of materials resulting from new or modified tariffs. Reminiscent of the global COVID-19 pandemic, suppliers and/or subcontractors may attempt to rely on *force majeure* clauses. However, *force majeure* clauses often protect against delays only and may not act as a compensable change provision. Further, as was the case with the COVID-19 pandemic, it may be difficult to argue in future contract negotiations that tariffs on materials qualify as unforeseeable, a condition found in most *force majeure* provisions. To the contrary, impacts on prices and manipulation of the softwood lumber market between the United States and Canada is the subject of the longest active trade dispute between the two countries dating back to the early 1980s. In other words, tariff impacts on a broad range of imported materials might be argued to be entirely foreseeable.

Review Current Contracts and Address Tariffs in Future Contract Negotiations

Given the uncertainties and the potential gaps in standard industry contracts, there are steps that can be taken to protect suppliers, subcontractors, general contractors, and owners now and in future contract negotiations.

To start, it is imperative that all parties review their existing project contracts and consult with counsel about how best to prepare for anticipated market shifts. For some categories of construction materials, it may also be instructive to take a closer look at the *force majeure* clause to determine if the language is broad enough to encompass tariffs and whether it provides for compensation due to the impacts experienced.

If the *force majeure* provision does not provide adequate protection to compensate for tariff-induced price increases, the parties should consider what protections may exist elsewhere in their contracts, along with associated notice requirements. Additionally, parties should consider open dialogue with their counter-parties related to tariff impacts, with an eye towards investing all participants in the problem and possible solutions.

For future contract negotiations, project participants should consider whether it is appropriate to incorporate independent provisions in their contracts relating to tariffs, or, as a more seamless alternative, negotiate tariff-based language into contractual change provisions. For example, contractors (or subcontractors and suppliers) should consider negotiating their contract's change provisions to define events constituting a compensable change to include the implementation or proposed implementation of new tariffs or modification of existing tariffs that increase the contractor's cost of materials and equipment. Downstream contractors should communicate these issues early in negotiations to allow their customers an opportunity to implement similar protections for any tariff-based pricing. Owners and developers willing to consider tariff-based adjustments should consider protections such as caps on increases due to tariffs, limitations to actual cost increases or a percentage thereof, and strict documentation requirements required to establish any increase. The Trusted Advisors in [Baker Donelson's industry-leading Construction practice](#) can assist you in formulating and negotiating protections to fit your unique circumstances.

Our Construction Group, along with our [International Trade and National Security Group](#) will continue to monitor developments and provide updates as warranted. If you have any questions or would like to discuss this in further detail, please reach out to the authors or a member of these groups.