

Executive Briefing

Latest Updates on the Trump Administration

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Impact of Tariffs on Commercial Contracts

Parties confronted by the prospect of new tariffs will need to assess their impact on existing contractual obligations. U.S. law imposes the initial payment of the tariff on the importer of record who brings the good into U.S. territory. However, some contracts may expressly allocate the risk of additional or unexpected costs, taxes, tariffs and/or other governmental levies on one party, which in some cases could result in a shifting of the tariff burden away from the importer of record.

Concerned companies should undertake a review of all relevant contracts to determine how the tariffs will impact their rights and obligations, or that of their counterparties, and whether any actions need to be taken to address the new tariff regime.

President Donald Trump's tariffs — and the retaliatory measures taken by countries in response to them — may also trigger a host of provisions in commercial contracts. Contracts may contain provisions that allow parties to argue for relief in the form of cost-shifting or cost-sharing based on the unexpected monetary impact of the tariffs.

More broadly, the imposition of new tariffs, or retaliatory measures taken in response to them, could constitute a “change in law” or even a *force majeure* event, depending on the specific contract terms. To take just one example, the Chinese government has imposed a licensing requirement on the export of certain critical minerals, which may make performance of delivery obligations impossible or significantly more onerous, potentially triggering “illegality,” change in law or *force majeure* provisions.

In addition to express contractual terms, the relevant applicable law may speak to the legal consequences of the tariff or any retaliatory measures on the performance of the parties' obligation. Contractual performance may be required even in the face of unexpected financial hardship.

However, changed circumstances, frustration of purpose and impossibility may allow a party to argue that performance is no longer viable and should not be compelled in the face of an unexpected tariff burden or any retaliatory response. Parties should carefully consider what arguments and defenses are available under the governing law of the contract.

In the face of a rapidly evolving tariff regime, concerned companies will want to understand their rights and obligations and be prepared to proactively discuss the impact of any applicable tariffs with their contractual counterparties, before a dispute arises.