Tariffs and the Construction Industry

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On February 10, 2025, President Donald Trump announced his intention to impose 25% tariffs on imports of all steel and aluminum, two materials found in nearly every construction project. These tariffs are set to take effect on March 12, 2025. Tariffs would be paid by American companies importing goods that are subject to the tariff. While in his first term, Mr. Trump previously imposed 25% tariffs on steel and 10% on aluminum, he would go on to grant duty-free exemptions to several countries, including Canada, Mexico and Brazil. While the US does produce steel domestically, imports are still necessary to meet commercial needs, with steel imports accounting for 21% of the US market in 2023. Canada and Mexico collectively accounted for almost 40% of US steel imports in 2024. Approximately 50% of all aluminum used in the US is imported, with Canada accounting for 79% of aluminum imports in January-November 2024.

In addition to the steel and aluminum tariffs, on February 13, 2025, Mr. Trump announced his intention to impose "reciprocal tariffs" whereby the US would impose the same tariffs on goods coming into the US as foreign countries assess on American goods that they import. If fully enacted, these tariffs may result in higher costs for end users of many commonly used construction materials, including concrete, lumber, steel, aluminum, drywall, appliances and electrical components. For example, the National Association of Home Builders has stated that 70% of the imports of two essential building materials, softwood lumber and gypsum (used in drywall), come from Canada and Mexico. Canadian softwood lumber accounts for approximately 30% of American consumption, with common applications in framing, roofing, and siding in home construction.

Project Procurement Phase

Unsurprisingly, the impact of tariffs may affect projects that contemplate procurement through a Guaranteed Maximum Price (GMP) contract. GMP contracts generally provide a measure of certainty as to how much a project will cost the owner, which is of particular importance for public projects that rely on bond financing. An unsettled tariff regime may discourage contractors from entering into GMP contracts, jeopardizing the viability of public works projects.

Uncertainty regarding tariff implementation and potential price increases may also impact the supply chain for construction projects. In such circumstances, project owners have a number of available options to account for this uncertainty. Project owners can consider including cost relief mechanisms in their agreements to allow all of the project parties to defer the potential impact of tariffs until the uncertainty regarding their implementation, or potential deferral or even abandonment, is resolved. Project owners and the other parties may also choose to directly account for tariff pricing/escalations in the project agreement.

Construction Phase

Tariffs imposed during construction may raise novel questions for project participants regarding contract interpretation. For example, many *force majeure* and “supervening event” clauses provide relief for a "change in law." Whether tariffs, once implemented, amount to a change of law will likely require a jurisdiction-by-jurisdiction evaluation if the term is not itself defined in the contract documents. Owners may consider a number of different options to avoid the need to litigate whether a tariff constitutes a *force majeure* or supervening event, owners may consider relaxing certain material requirements/specifications if a contractor is able to procure the required material in a more timely and/or cost-effective manner. Owners may also wish to consider negotiating a reduction of the contractually allowed overhead and profit markups to offset the increased costs caused by tariffs.

Conclusion

Tariffs will no doubt impact the construction industry during the current administration. However, it is difficult to predict the full impact, and consequences, of tariffs on construction materials and overall project costs as ongoing diplomatic efforts may play a role in both how and when the tariffs may, or may not, be implemented. In the meantime, industry participants should continue to closely follow announcements regarding tariff implementations and negotiations.

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