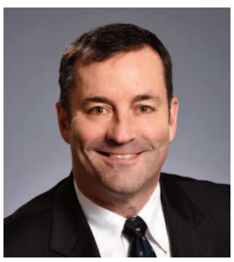
Well isn't this nice?

Understanding the impacts of tariffs on Ottawa's construction industry

For Simpsons fans: *Hi, I'm Troy McClure! You may remember me from such articles as COVID-19 Impacts: Scary But True, and Supply Chain Meltdown and Hyper-Inflation: Not Your Friend* in recent years.


Dan Leduc, Partner, Soloway Wright, LLP

Well now we are back to the same issues, dressed up in a different cause. With the Trump tirade of instituting a 25% tariff on all Canadian goods and the Canadian government's retaliatory steps in matching those tariffs dollar for dollar, where does that leave Ottawa's construction industry?

Material costs and supply chains

As you well know, the construction industry relies heavily on commodities like steel, copper, aluminum and lumber – all of which are vulnerable to tariffs. A 25% tariff on Canadian goods entering the U.S. could make Canadian products less competitive internationally, while Canadian producers may pass on these costs to domestic buyers. Retaliatory tariffs on U.S. imports could similarly increase prices for materials and equipment sourced from the United States, such as specialized machinery or HVAC components.

Ottawa contractors depend on cross-border supply chains. These tariffs could lead to delays, budget overruns, and strained relationships up and down the contractual chain.

Anticipate price volatility and plan accordingly.

Competitive pressures

The increased cost of materials due to tariffs could squeeze profit margins, particularly on fixed-price contracts where cost escalation isn't accounted for. Ottawa contractors may also face greater competition for local materials as suppliers prioritize markets less impacted by tariffs.

Legal and contractual risks

Contractors must prepare for disputes stemming from delays and cost overruns, especially when existing contracts lack adequate provisions to address unforeseen changes in material costs or regulatory environments.

Key steps to mitigate risk

1. **Review and revise contract terms**

- **Change-in-law clauses**: Ensure contracts include robust change-in-law clauses. These clauses allow for adjustments to project costs or timelines when new laws, such as tariffs, directly impact project delivery. Explicitly address how tariffs will be treated and whether they qualify as changes in law that warrant renegotiation. Some CCDC/CCA standard full contracts include such clauses, others don't. Make sure to read to see if you have access to a change in law clause in your contract. If you don't, look to

qualify your bid accordingly (see below). If you need appropriate wording, reach out to your lawyer.

- **Force majeure clauses**: While tariffs might not traditionally qualify as force majeure events, contractors could try to include contractual provisions to include significant and unforeseen economic changes, such as the imposition of tariffs, as grounds for relief.
- **Price escalation clauses**: Where possible, include clauses that allow for adjustments in material costs tied to market indices. This protects you from absorbing unexpected increases in prices for key inputs.

2. Qualify bids appropriately

- **Include tariff adjustments**: When submitting bids, explicitly note that the proposed pricing assumes no significant tariff-related cost increases. Add language reserving the right to adjust pricing based on changes in material costs due to new trade policies. Of course, the downside to doing so is that by qualifying your bid, you may render your bid noncompliant. But I understand that contractors qualify their bids often and still are awarded projects.
- **Limit exposure**: Where possible, avoid committing to fixed-price contracts without adequate protections. Consider offering clients a range of options, such as cost-plus contracts, to share the risk of price volatility. That may be more dreamlike than reality, however.

3. Diversify supply chains

- **Source locally**: Reducing dependency on cross-border materials by sourcing from local suppliers in Ottawa and the surrounding region can mitigate tariff-related risks. Strengthen relationships with Canadian manufacturers to secure favourable pricing and priority access. This means looking beyond your local distributor and looking into other potential suppliers and manufacturers.
- **Identify alternatives**: Explore alternative suppliers in countries not affected by tariffs. This may involve establishing new relationships or revisiting agreements with international suppliers outside the U.S. or Canada. This step requires some deep homework.

4. Engage in strategic procurement

- **Bulk purchases**: Lock in pricing by purchasing materials in bulk before tariffs are implemented. This strategy is especially useful for long-lead items such as steel beams or HVAC systems.
- **Forward contracts**: Work with suppliers to negotiate forward contracts, fixing prices for critical materials to hedge against future increases.

5. Strengthen risk management

- **Adjust project timelines**: Build additional time into project schedules to account for potential delays in material delivery caused by tariff-related disruptions. Again, this seems more dreamlike than real but it's something that could be addressed in terms of supply chain issues.
- **Expand contingency budgets**: Include contingency budgets in project estimates to absorb unexpected cost increases. Clearly communicate this approach to clients to manage expectations.

Long-term considerations

Invest in innovation

Tariff uncertainty could encourage contractors to explore alternative materials or adopt innovative construction techniques. For instance, modular construction or prefabricated components manufactured locally could reduce reliance on tariff-impacted materials.

Build stronger relationships

Establishing long-term partnerships with suppliers, subcontractors and clients can create mutual understanding and flexibility in navigating tariff-related challenges. Collaborative approaches to risk-sharing will be key to maintaining project viability. Communication is key. Your competitors are in the exact same situation, so none of this should be new to anyone. Ignoring it and not talking about it will only make its impacts worse.

Conclusion

Ottawa's construction industry faces significant challenges stemming from the proposed U.S. tariffs on Canadian goods and potential Canadian countermeasures. However, you have been through this before, even recently with the impacts of COVID-19 and then the subsequent hyperinflation and supply chain issues that arose.

With proactive measures, you can protect yourself and your clients from the brunt of these disruptions. By seeking contract language to address these risks, qualifying bids, diversifying supply chains, and engaging in strategic procurement, you can build resilience in the face of trade uncertainty.

Look at this moment as a time to innovate, collaborate, and adapt to ensure the stability and success of the industry.

As Troy McClure would say: "And don't forget to check me out in *'Lead Paint: Delicious But Deadly!'*"

The information provided in this article is for general informational purposes only and does not constitute legal advice. While efforts have been made to ensure the accuracy and relevance of the content, it may not reflect the most current legal developments. Readers are advised to consult a qualified legal professional for advice tailored to their specific circumstances. The author and publisher expressly disclaim any liability for actions taken or not taken based on the contents of this article.