Navigating impacts of tariffs on the Canadian construction industry

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Recent tariffs instituted, and others proposed, by the United States and Canadian governments are expected to have a significant impact on the Canadian construction industry. Given the recent announcements of tariffs by the United States and Canada, and the Canadian construction industry will need to review the impact of these tariffs on current and future projects and prepare for the potential impacts of any additional future tariffs.

Summary of new tariffs/duties

Following the thirty (30) day pause of POTUS' initial Executive Order,[1] effective March 4, 2025 the United States imposed a twenty-five percent (25 per cent) tariff on all goods from Canada and Mexico entering the United States, except for Canadian energy, which has been set at ten percent (10 per cent).

In response, Canada announced a twenty-five percent (25 per cent) tariff against $155 billion of American "hard" goods (*i.e*. goods grown or manufactured in the United States),[2] commencing with a tariff on $30 billion of American goods with the remaining amount to go into effect twenty-one (21) days later.

POTUS previously announced a twenty-five per cent (25 per cent) tariff on all imported steel and elevating the tariff from ten per cent (10 per cent) to twenty-five per cent (25 per cent) on all imported aluminum, on all nations, including Canada. These tariffs are anticipated to come into effect on March 12, 2025.[3] It is not currently clear if these specific tariffs on aluminum and steel will be included in the tariffs that took effect March 4, or made in addition to those tariffs. A White House official previously indicated the steal and aluminum tariffs would be stacked, which could lead to fifty percent (50 per cent) tariffs on aluminum and steel; however, in the current political climate, this may change prior to March 12, and thus remains to be seen.

These tariffs will most likely lead to increased pricing, either directly, resulting from tariffs on the specific goods and materials directly used on a construction project, or indirectly, through a rise in prices of the materials incorporated into the manufacture of those goods and materials.

In addition, POTUS has also indicated that the United States may institute “reciprocal tariffs” on all goods imported into the United States, meaning the United States would match all import duties on any product originating from a country which levies tariffs on American exports into such country. At this time, it is unclear if these reciprocal tariffs would be in addition to, or replace, any tariffs already in place as of the date of application of the reciprocal tariffs.

Potential impacts on Canadian construction industry

Parties involved in the Canadian construction industry are aware of the many ways in which the Canadian and United States construction industries have been reliant upon, and integrated with, one another for numerous years. Canadian suppliers have exported materials and supplies (*e.g.* lumber) to the United States, and Canadian owners and constructors rely on materials (*e.g.* steel, machinery, equipment) imported from the United States. There are also products that cross borders several times during the manufacturing process before the end product is achieved.

Tariffs from both countries may have a significant impact on all involved in the Canadian construction industry, including increasing prices, potential delays to projects, and uncertainty in budgeting and pricing projects. Parties in the construction industry need to consider impacts on current projects and contracts, including if any changes need to be made for current contracts and/or if changes need to be made for future projects, including the procurement process and form of agreements. The following is a non-exhaustive list of considerations for parties involved in the industry.

1. Current projects

(a) Express contract terms

Parties that are already involved in a project should review their agreements to determine what, if any, provisions of the contracts may already respond to increased tariffs. For example, GC 10.1.2 of the standard form CCDC-2 2020 Stipulated Price Contract provides for an increase or decrease to the Contract Price if duties change after bid close. The standard form CCDC 5B Construction Management Contract - for Services and Construction provides that the Construction Manager shall include the payment of duties as a Cost of the Work; however, whether or not the increased tariffs will be included as a Cost of the Work may depend on the terms and conditions of any subcontracts and supply agreements. The parties may also need to consider these provisions, not just for increased tariffs, but for decreased tariffs, which may result in the Contract Price or Cost of the Work needing to be decreased.

(b) Other contract terms

Parties should also consider whether there are any other provisions that do not expressly provide for changes to tariffs but may otherwise apply. For example, force majeure clauses may apply; however, unless increases to tariffs or duties are expressly contemplated in the force majeure clause, then generally, the tariffs would have to make a contract commercially impossible, for an event of force majeure to arise. In addition, change of law provisions may assist the parties; however, the specific language of the change of law provision needs to be considered in order for a party to determine

whether the provision applies, and if so, what notice provisions may be required and what type of relief may be afforded to the parties. Otherwise, there may be unintended consequences.

2. Future projects

For those parties who have the benefit of not having yet entered into a contract, given the uncertainty of the impending tariffs, and the uncertain nature of how issues relating to trade between Canada and the United States will be addressed moving forward, consideration should be given to amending the typical agreements and procurement documents used to account for the potential risks of increased tariffs. For example:

a. Parties may want to consider expressly addressing the allocation of the risk of increased (or decreased) tariffs or pricing by including contractual provisions stating how any increase or decrease in tariffs applied after bid closing will impact the Contract Price, Cost of the Work, or other compensation. In drafting such provisions, parties should consider the impacts on the project of the allocation of risk, including whether the risk will be shared prior to or during the project. Where risk is not fully shared, owners should consider the impact on pricing if the entire risk is shifted to the contractors, which may lead to higher prices as contractors price the risk, and contractors should consider how pricing the risk may impact a contractors' competitive pricing. Similarly, if the entire risk is shifted to the owner, this may lead to requests for changes to the pricing during the project, and/or owners requiring contractors to avoid certain products and/or provide more clarity on the contractor's pricing.
b. Parties may want to consider contractual provisions that include a process for the parties to consider and pursue alternative options should tariffs cause an increase to the project costs. Such provisions should include notice provisions, a process for considering options, and timing for the application of any price increase or decrease.
c. Tender calling authorities may want to consider requiring that bidders provide, as part of their bids, information on any products being supplied from the United States, or internationally, including the value of the same, and include scoring of the bids based on this information. If this approach is taken, consideration will need to be given as to how much information a bidder should be required to supply and how that information will be scored. Any scoring requirements should be clearly and fairly articulated to the bidders, and a review of trade agreements should be considered.
d. Tender calling authorities may also want to consider requiring that bidders use only Canadian-sourced materials, with each bidder providing an attestation in its bid. Notably, public sector tender calling authorities will need to consider applicable international trade agreements and thresholds as local content requirements may not be possible for projects exceeding certain thresholds.

Parties to current and pending contracts and tender calling authorities should consult with their legal advisors before revising any procurement documents to include provisions designed to alleviate the risk of increased tariffs to ensure their enforceability.

Given the current uncertainty and potential impacts of Canadian and American tariffs on the Canadian Construction industry, parties should consider a proactive approach of reviewing current project agreements, template contracts, procurement processes and

other agreements. Conferring with legal advisors will assist parties in the Canadian construction industry with adequately planning for what may come next. The tariff situation is fluid but by turning your mind to the potential impacts of tariffs, it may be possible to take steps that will minimize the eventual impacts.

Footnotes

[1] White House Executive Order, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border" February 1, 2025.

[2] List of products from the United States subject to 25 per cent tariffs effective March 4, 2025: List of products from the United States subject to 25 per cent tariffs effective March 4, 2025 - Canada.ca

[3] White House Executive Order, "Adjusting Imports of Steel Into the United States", February 10, 2025

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