Effect of Tariffs on Provisions in Supply Chain Contracts

Government-caused disruptions, such as the COVID-19[1] pandemic and the Russian invasion of Ukraine, can significantly impact agreements, leaving one party in an unfavorable position. Government trade disruptions—like export controls, tariffs, sanctions, or regulatory changes—can dramatically impact supply chain contracts. Tariffs, specifically, can raise costs, delay deliveries, and reduce overall reliability, which may implicate force majeure. Due to the legal risks involved, parties will seek to revise existing contracts to reflect new requirements, delivery terms, or party responsibilities. Parties to these agreements should be using contract language that provides them with the flexibility that accounts for these events.

1. Force Majeure and Contractual Interpretation Under U.S. Law

Under U.S. law, force majeure is a contractual, not statutory, doctrine. *See Beardslee v. Inflection Energy, LLC*, 904 F. Supp. 2d 213, 218 (N.D.N.Y. 2012), *aff'd*, 798 F.3d 90 (2d Cir. 2015) ("A force majeure event is an event beyond the control of the parties which prevents performance under a contract and may excuse non-performance."). A force majeure clause "excuses performance of contractual obligations—either wholly or for the duration of the force majeure—upon the occurrence of a covered event which is beyond the control of either party to the contract." *See generally Palm Springs Mile Assocs. v. Kirkland's Stores, Inc.*, No. 20-21724, 2020 WL 5411353, at *2 (S.D. Fla. Sept. 9, 2020). Because force majeure clauses are not "opt-out provision[s] and [are] limited in scope," they "are narrowly construed, and 'will generally only excuse a party's nonperformance if the event that caused the party's nonperformance is specifically identified.'" *Id.* (quoting *ARHC NVWELFL01, LLC v. Chatsworth at Wellington Green, LLC*, No. 18-80712, 2019 WL 4694146, at *3 (S.D. Fla. Feb. 5, 2019)).

Tariffs can disrupt global manufacturing supply chains by increasing costs, delaying materials, or rendering performance commercially impracticable. Whether such disruptions trigger a force majeure clause depends on the contract clause's language, governing law, and how courts in that jurisdiction interpret such provisions. *See Beardslee*, 904 F. Supp. 2d at 218. Courts focus on whether the event falls within the list contemplated by the parties at the time of contracting and whether the event was unforeseeable. *See Kel Kim Corp. v. Cent. Markets, Inc.*, 131 A.D.2d 947, 949–50, 516 N.Y.S.2d 806, *aff'd*, 70 N.Y.2d 900, 519 N.E.2d 295 (1987) (when in a *force majeure* clause, specific events are enumerated, followed by or coupled with more general language of excuse, the precept of *ejusdem generis* as a construction guide is appropriate…words constituting general language of excuse are not to be given the most expansive meaning possible, but are held to apply "only to…the same general kind or class as those specifically mentioned"). Commonly listed events include "acts of government," "changes in law," or "import/export restrictions."

[1] Success of *force majeure* claims during COVID was mixed—it was obvious that a force majeure should apply when performance was completely prevented by government regulations, but more controversial when the suit involved secondary effects on a contract which boiled down to the terms of the contract and the specific events in question. *See* https://www.law.com/americanlawyer/2025/04/14/as-seen-during-covid-trump-tariff-war-could-spawn-force-majeure-claims/?slreturn=20250423170329.

If the clause expressly refers to new "tariffs" or "import duties" as force majeure events, the clause squarely applies to the recent trade measures. *See id*. The more clearly the language of the force majeure clause demonstrates that the parties intended to grant a party relief in a particular situation, the more likely a court will excuse a party's non-performance. *See Fitness Int'l, LLC v. 93 FLRPT, LLC*, 361 So. 3d 914, 921–22 (Fla. Dist. Ct. App. 2023

Tariffs may fall within this scope if (1) they are newly imposed or significantly expanded after contract execution, (2) the clause specifically includes government-imposed trade barriers or changes in regulations, and (3) the tariffs directly impede performance, not just affect profitability. *See e.g.*, *Eastern Air Lines, Inc. v. McDonnell Douglas Corp.*, 532 F.2d 957 (5th Cir. 1976) (increased costs alone—even if substantial—do not necessarily excuse performance unless they are expressly included in the force majeure clause). U.S. courts generally do not excuse performance due to economic hardship alone. *See id*. If the imposition of tariffs was foreseeable or contemplated—especially in a volatile trade environment—parties are expected to allocate that risk. Courts are more inclined to enforce force majeure relief when the tariff was imposed unexpectedly and has a direct causal link to non-performance *or* the affected party can demonstrate that performance became impossible or illegal, not merely unprofitable. *See e.g.*, *Shelter Forest Int'l Acquisition, Inc. v. COSCO Shipping (USA) Inc.*, 475 F. Supp. 3d 1171, 1186 (D. Or. 2020) (contract's force majeure clause and state law's supervening impossibility doctrine did not excuse contractual performance when the record demonstrated that the breaching party was aware of the impending tariffs prior to entering into the contract, switched carriers in response to certain "unfair tactics," and the contract itself included language that "commercial contingencies" and "changing markets" would not impact their shared obligations under the contract); *see also Kyocera Corp. v. Hemlock Semiconductor, LLC*, 886 N.W.2d 445, 452–53 (Mich. Appl. 2015) (market events that render a contract no longer profitable will not excuse contractual performance when the parties were free to negotiate a force-majeure clause that by its terms could have included governmental market manipulation).

2. Related Doctrines: Impracticability (UCC § 2-615), Impossibility, and Frustration of Purpose

For contracts governed by the Uniform Commercial Code (UCC), particularly in the sale of goods, § 2-615 may provide relief if performance is made impracticable by an unforeseen event (such as a drastic tariff) that was a basic assumption of the contract. Still, courts apply this section narrowly and typically require more than just increased expense.

In cases involving the impracticability defense, the un-foreseeability of a supervening event may produce an impossibility sufficient to extinguish liability. Subsequent events which do not render performance objectively impossible, however, and only render it more difficult, burdensome, or expensive, will not relieve a party of its contractual obligations. *See Great Lakes Gas Transmission Ltd. P'ship v. Essar Steel Minnesota, LLC*, 871 F. Supp. 2d 843, 856 (D. Minn. 2012) (force majeure clause in contract for the transportation of natural gas to buyer's steel plant did not excuse buyer's duty to pay for transportation of gas, and doctrine of commercial impracticability/impossibility did not relieve buyer of its contractual duty to pay for transportation of gas).

Conclusion

While tariffs can in some cases qualify as force majeure events in U.S. manufacturing contracts, enforceability depends on the specific contract language, the timing and nature of the tariff, and whether the parties could have reasonably anticipated the change. To avoid ambiguity, parties should proactively address trade risks in the force majeure provision and broader risk allocation clauses.

Best Practices for Drafting in Manufacturing Contracts

To manage tariff risks effectively, U.S. manufacturers should:

- Include explicit references to tariffs or "changes in trade regulations" in force majeure clauses.
- Define the threshold at which cost increases or delays justify relief.
- Incorporate notice and mitigation requirements to preserve flexibility and fairness.

Sample Force Majeure Clause

Force Majeure. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement (other than payment obligations) to the extent such failure or delay is caused by or results from acts beyond the reasonable control of such Party, including but not limited to: acts of God, natural disasters, war, terrorism, labor disputes, epidemics, pandemics, embargoes, acts of government, changes in law or regulation, imposition of tariffs, duties, or trade restrictions, supply chain disruptions due to governmental action, or the unavailability of materials or transportation (each, a "Force Majeure Event").

The affected Party shall: (i) promptly notify the other Party in writing of the occurrence of the Force Majeure Event and its expected duration; (ii) use commercially reasonable efforts to mitigate the impact and resume performance as soon as practicable; and (iii) provide regular updates on the status of the Force Majeure Event.

If the Force Majeure Event continues for more than [60] days, either Party may terminate this Agreement upon [30] days' written notice to the other Party without liability, except for obligations accrued prior to termination.

Optional Add-On for Cost Impact

Notwithstanding the foregoing, if the imposition or material increase of tariffs or trade duties materially affects the economic basis of this Agreement, the Parties agree to negotiate in good faith an equitable adjustment to pricing, delivery terms, or other affected provisions. If no agreement is reached within [30] days of notice, either Party may terminate this Agreement upon written notice.