

Feeling the Tariff Squeeze on Your Government Contracts? Relief is Available, But Only for Some

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We have all heard the news: as of April 5, 2025, most U.S. imports are subject to a baseline 10 percent tariff. China-origin products are tariffed at a baseline 145 percent rate.¹ Industry-specific levies include tariffs on both aluminum and steel at 25 percent,² and certain automobile tariffs. Although some relief has recently been granted, the Trump administration has threatened dozens of other products.³

That dramatic shift in U.S. trade policy has left many companies scrambling to ease impacts on their supply chains, and ultimately, their business. Federal government contractors are among those feeling the tariff squeeze most. Government contractors — especially those with fixed-price contracts — may have limited recourse in easing downside risks as their increased costs cannot easily be passed on to the U.S. government. Below, we discuss the impacts of the tariffs on contractors, potential avenues of relief and/or recovery of increased costs, how the government may respond, and guidance moving forward.

Tariff Impact on Government Contractors

The tariffs are likely to cause (1) increased costs in non-U.S. products, (2) increased costs in domestically manufactured products that rely on imported raw materials and parts, and (3) disruptions to the supply chain, including supplier pricing validity uncertainty, shortages, and delays, as non-U.S. manufacturers move away from the U.S. market, while any ramp-up in domestic manufacturing inevitably takes time. Simply put, government contractors face increased unpredictability in the pricing and availability of goods required under their contracts.

Indeed, some of the largest U.S. defense contractors are already quantifying the potential cost impacts. GE has estimated an additional \$500 million in costs and Northrop Grumman acknowledged that it anticipates narrower profit margins as a result of U.S. trade policy changes.⁴

More broadly, the tariffs may also threaten the survival of small business suppliers and the strength of the U.S. industrial base as a whole. On April 16, 2025, in a [letter](#) to the U.S. Secretary of Defense, Senator Jeanne Shaheen expressed such concerns — that tariffs will increase prices for Department of Defense (DoD) acquisitions, harming the department's purchasing power, weakening supply chains, and raising costs on small businesses. The letter aptly asks, "How is DoD factoring increased costs due to tariffs into fixed-price contracts?" It is a good question.

Strategies for Relief from the Effects of Tariffs

Cost-Type Contracts

As mentioned, contractors with fixed-price contracts are likely to shoulder the brunt of the tariffs. For cost-type contracts, generally speaking, contractors should be able to recover any increased costs resulting from the levies as allowable costs.⁵ Although the cost principles do not expressly address tariffs, the most analogous principle, FAR 31.205-41, Taxes, states that federal taxes are generally allowable (subject to certain exceptions found at FAR 31.205-41(b)).

Nonetheless, contractors with cost-type contracts should be on the lookout for provisions that shift the risk of increased tariff costs away from the government and to the contractor. Although rare, their inclusion in cost-type contracts may become more prevalent if the government seeks to protect itself from feeling the effects of tariffs. Further, contractors with cost-plus-award-fee or cost-plus-incentive-fee type contracts should consider the potential impact of tariffs when negotiating any fee schedule that is based on meeting certain cost targets.⁶

Fixed-Price Contracts

Turning back to fixed-price contracts, below is a summary of the various contract clauses and legal theories that may (or may not) provide a basis for relief.

- **FAR 52.229-3, Federal, State, and Local Taxes:** Permits a price increase for any "new or increased Federal tax or duty" ⁷ that "the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date."⁸ Recovery under the clause is subject to three limitations. Contractors must be conscious that, unless these three requirements are met, any applicable tariff costs must be included up front in the contract price.⁹
 - First, the clause is only included in contracts performed "wholly or partly in the United States." ¹⁰ If you are performing work entirely overseas, you may be out of luck when it comes to seeking relief.
 - Second, the clause only governs either new or increased tariffs "taking effect after the contract date" or tariffs that were "exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period."¹¹ As a practical matter, most contracts executed before April 5, 2025, should satisfy this requirement as to the most recently announced tariffs.
 - Third, the increased costs must result from a tariff that " *the contractor* is required to pay or bear." This has proven to be a potentially significant hurdle for contractors to clear. In practice, this requirement makes it challenging for prime contractors to obtain a price increase under the clause for tariffs costs it did not **directly** pay. In other words, if a subcontractor, customs broker, or other third party picked up the cost of the tariff in the first instance, the contractor would need to prove that it nonetheless "bore" the cost — a fact-specific argument that has very limited support in the caselaw.¹² Moreover, contractors may not be able to recover general price increases that are indirectly attributable to tariffs. For example, in *Appeal of Pangea, Inc.*, ASBCA No. 62561 (Jan. 5, 2022), the Board rejected a contractor's claim for costs indirectly resulting from a tariff. Specifically, it held that costs associated with an increase in the price of domestic steel allegedly resulting from a tariff on non-U.S. steel was not the result of a "federal tax" as required under FAR 52.229-3.
 - Finally, the clause imposes certain procedural obligations that could impede recovery. For instance, the contractor must warrant in writing that it did not account for tariffs in the contract price.¹³ To avoid this potential pitfall (and potential allegation of a fraudulent claim), contractors should check their cost accounting and proposal records before seeking any relief under the clause. Contractors must also promptly notify the contracting officer (CO) if it reasonably expects a tariff to impact the contract price.¹⁴ This is a fact-specific standard, but once contractors learn of a potentially applicable tariff, they should proactively assess the impact in a documented internal analysis, then provide notice to the CO, and "take appropriate action as the CO directs."¹⁵
- **Various Economic Price Adjustment (EPA) Clauses:** ¹⁶ Certain fixed-price contracts may contain EPA clauses that provide for "upward or downward revision of the stated contract price upon the occurrence of specified contingencies."^{17 18} These clauses are included at the CO's discretion when "it is necessary to either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices."¹⁹ Any recovery under the clause is limited to a ten percent increase, to the supplies identified in the clause, and to quantities delivered after the effective date of the price increase.²⁰ Admittedly, the chances and extent of recovery under an EPA clause may be quite limited. Tariffs are unlikely to be a "specified contingency" in existing contracts, and the government may resist attempts to specify tariffs as an applicable contingency in future contracts. And even if contractors are successful in negotiating as such, the 10 percent cap on recovery will almost certainly not make the contractor whole, especially in light of the significant tariff rates the current administration has put in place.
- **FAR 52.225-8, Duty-Free Entry:** Provides contracting officers with the authority to accord duty-free status to certain non-U.S. supplies imported into the U.S. under the contract.²¹ If the eligible supplies are not listed in the contract, the contractor must notify the Contracting Officer (CO) in writing of "any purchase of non-U.S. supplies in excess of \$15,000 that are to be

imported into the customs territory of the United States" before the CO makes a determination whether to accord the supplies duty-free status.²² If this clause is included in the contract, meaning performance may include the importation of eligible supplies,²³ contractors may want to consider a two-pronged approach to increase the chances of recovery – request that the eligible supplies be accorded duty-free status, or in the alternative, request a price increase pursuant to another remedy-granting clause (i.e., FAR 52.229-3). The CO can certainly deny both requests, but this framing may increase the chances of obtaining duty-free status, as the government may see it as preferable to simply paying more money to the contractor.

- **Various Excusable Delay Clauses:** As discussed, the potential effects of tariffs are not limited to price increases but also supply shortages and disruptions to the supply chain which may ultimately delay the contract schedule. FAR 52.249-8(c) governs excusable delays under fixed-price contracts and provides, "the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include...acts of the Government in either its sovereign or contractual capacity." Likewise, FAR 52.249-10(b), excusable delays under fixed-price construction contracts, states the Contractor shall not be liable for damages for any delay in completing the work "that arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor" including for "[a]cts of the Government in either its sovereign or contractual capacity." See also FAR 52.249-14. Tribunals have consistently found that contractors facing unforeseen supply shortages are entitled to schedule relief under these clauses.²⁴
- **Constructive Acceleration:** If a contractor is entitled to an excusable delay due to tariff-caused supply disruptions, but is nonetheless required by the government to maintain the original contract schedule, the contractor may be entitled to any increased costs incurred to meet the "constructive acceleration" (i.e., costs to source the supplies from an alternative source to meet contract deadlines).²⁵
- **Subcontracts:** In negotiating with subcontractors and suppliers, contractors should consider the inclusion of commercial terms that address the potential effects of the tariffs and allocate risks between the parties. Examples include: a materials price escalation or reopen clause (identifying a base price, how and when a final price will be determined, and how the parties will share any difference between the final and base price); an alternative materials clause (permitting the parties to substitute goods or materials due to cost increases or supply chain disruptions); a change of law clause (allowing for adjustments to the contract price or delivery schedule resulting from a change in the laws of a country, such as tariffs); or a force majeure clause (specifically identifying tariffs, government action, and/or a change of law as a basis to relieve the parties of their contractual obligations).
- **Legal Theories to Excuse Performance:** If the tariffs were to have a profound impact on performance, contractors should keep in mind certain legal doctrines that may relieve them of their contractual obligations: mutual mistake (allowing contract modification or termination when the parties are mistaken regarding a material fact on which the contract was based); impracticability (excusing performance due to unforeseen circumstances that render performance impracticable); impossibility (excusing performance due to unforeseen circumstances that render performance impossible); or frustration of purpose (excusing performance when the party's principal purpose under the contract is substantially frustrated by unforeseen circumstances not caused by the party). Successfully arguing these doctrines is a fact-intensive and difficult endeavor that should only be considered in exceptional situations to avoid a contract breach.
- **Changes Clause (or Constructive Changes):** The Changes Clause,²⁶ ordinarily one of the first places a contractor would look to recover increased contract costs, may not be of much use for seeking relief for increased costs caused by tariffs. Use of this clause may be in vain because the government has made no formal change to the contract,²⁷ but rather, there has been a change in law that may impact contractor performance. For the same reason, a constructive change claim, used when the government takes an action that has the same effect as a written change order, is unlikely to succeed. However, if the government makes a change to the contract (i.e., mandating compliance with a specification or requiring a specific source for materials) that makes tariffs unavoidable, the changes clause may be a basis for recovery.
- **Extraordinary Relief:** Another potential avenue of relief is Public Law 85-804 which empowers the president to authorize agencies to enter into, amend, and modify contracts, without regard to other provisions of the law if doing so would facilitate the

national defense.²⁸ Specifically, the CO may amend a contract when (1) contractor performance is essential to the national defense, (2) there is a loss under the contract, and (3) the loss impairs the contractor's "productive ability."²⁹ Extraordinary relief may be appropriate when government action unfairly interferes with contractor performance such that "fairness may make some adjustment appropriate." The imposition of tariffs arguably meets that standard. Nonetheless, the aforementioned elements must be established and even then, extraordinary relief is seldom granted.

Government Defenses

It goes without saying that, under fixed-price contracts, the government may assert defenses to bar recovery based on the various technicalities and limitations of the clauses covered above — e.g., the contractor did not directly bear the costs of the tariffs such that recovery under FAR 52.229-3 is barred, tariffs are not a "specified contingency" such that an EPA clause is inapplicable, etc.

If the government is unsuccessful in defending against recovery grounded in a remedy-granting clause, or the contractor is left only with a common law theory of recovery (e.g., quantum meruit), the Sovereign Acts Doctrine looms large. That defense provides that, "the United States when sued as a contractor cannot be held liable for an obstruction to the performance of the particular contract resulting from its public and general acts as a sovereign."³⁰

In recent years, the government successfully defended against numerous contractor claims for increased costs caused by COVID-19, including those incurred to comply with public health measures, by invoking the doctrine. Tribunals repeatedly held that the health orders were of a public and general nature — that the government was acting in its sovereign capacity, and not specifically targeting the contractor in issuing the orders, barring recovery.³¹ Unfortunately, if a contractor does not have relief under a remedy-granting clause of the contract, the Sovereign Acts defense could pose a formidable barrier to recovery that can only otherwise be overcome by emphasizing the unique facts of the contractor's case. This makes it even more important to ground any claim for relief in a remedy-granting clause in the contract which would likely survive a government assertion of a sovereign act.

Summary Guidance

Government contractors and in particular those with fixed-price contracts, face an uphill battle in passing along any tariff impacts on costs to the U.S. government, especially given ongoing uncertainty about how the U.S.'s new trade policies will ultimately play out. Nevertheless, contractors should consider the following actions to ensure they are well-prepared and positioned to maximize their ability to mitigate negative effects on their business.

- Monitor developments in U.S. trade policy and relevant agency guidance. With any luck, the government will provide direction on how it plans to address the impacts of tariffs as it relates to contracting, as it did with increased costs resulting from COVID-19 policies.³²
- Determine how tariffs currently in effect, as well as announced and threatened future tariffs, will or may impact performance under current and future contracts, including impacts on underlying supply chains.
 - For existing contracts, take stock of any remedy-granting clauses that may apply.
 - For ongoing acquisitions and future contracts, ask the government how it plans to handle increased costs that may result from tariffs. If appropriate, advocate for the inclusion of a remedy-granting clause, such as an EPA clause or FAR 52.229-3, Federal, State, and Local Taxes, in the solicitation and any resulting contract.
 - If appropriate, consider changes to relevant supply chains, including exploring alternative supply sources or negotiating lower-tier agreements to shift the risk of increased tariffs to third parties in your supply chain.
- When negotiating with subcontractors and suppliers, secure firm pricing and schedule commitments to the extent feasible. Alternatively, ensure appropriate mechanisms are included in the subcontract (i.e., a materials price escalation or reopeners clause,

scheduling the delivery of materials as soon as practicable, etc.) to adequately address the risks associated with tariffs.

- When asserting entitlement to relief, ensure the necessary elements are met. For example, FAR 52.229-3's requirement that the tariff be imposed "after contract award" or demonstrating the supply constraints that gave rise to an excusable delay were beyond your control.
- When calculating quantum meruit, make sure all increased costs are captured, such as those not directly tied to the increase in the supply price — such as additional transportation costs, material handling costs, storage costs, etc. At the same time, make sure only costs contemplated by the relevant remedy-granting clause are claimed.

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¹BBC, *See the Trump tariffs list by country*, (Apr. 10, 2025).

²Proclamation 10896, Adjusting Imports of Steel Into the United States; Proclamation 10895, Adjusting Imports of Aluminum Into the United States .

³See, e.g., E.O. 14233, *Addressing the Threat to National Security From Imports of Timber, Lumber, and Their Derivative Products* (contemplating the use of tariffs on timber and lumber); E.O. 14272, *Ensuring National Security and Economic Resilience Through Section 232 Actions on Processed Critical Minerals and Derivative Products* (contemplating the use of tariffs on critical minerals).

⁴Leslie Josephs, *RTX, GE Aerospace expect more than \$1 billion tariff impact*, CNBC, (Apr. 22, 2025); Mike Stone and Utkarsh Shetti, *US defense contractors mostly maintain forecasts despite Trump tariffs*, Reuters, (Apr. 22, 2025).

⁵See FAR 31.201-2 (stating a cost is allowable if it is (1) reasonable; (2) allocable; and (3) consistent with the cost accounting standards or generally accepted accounting principles and practices (if applicable), contract terms, and any other FAR cost principles).

⁶See *gen.* FAR 16.405-1, Cost-plus-incentive-fee contracts (providing for fee increases when "total allowable costs are less than targets costs"); FAR 16.405-2 Cost-plus-award-fee contracts (providing for an award fee that may be earned "for excellence in the area[] of cost").

⁷There is a good argument that tariffs meet the definition of a "Federal tax or duty" as the terms "tariffs" and "duties" are typically used interchangeably. See, e.g., 19 USC § 2481(i) (defining "duty" to include "the rate and form of any import duty, including but not limited to tariff-rate quotas"). non-U.S.

⁸See FAR 52.229-3 (defining "contract date" as "the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification").

⁹See *C.W. Over & Sons, Inc. v. United States*, 54 Fed. Cl. 514 (2002) (finding contract price, as awarded, included all state sales tax given contract's inclusion of FAR 52.229-3); see also FAR 52.229-3(b)(1) ("The contract price includes all applicable Federal, State, and local taxes and duties").

¹⁰ See FAR 29.401-3(a)(1).

¹¹ This language is especially apposite given the administration's current 90-day pause on reciprocal tariffs that is scheduled to expire in July. See [E.O. 14266, Modifying Reciprocal Tariff Rates To Reflect Trading Partner Retaliation and Alignment](#).

¹² Older decisions at the Court of Federal Claims (COFC) and Armed Services Board of Contract Appeals (ASBCA) have interpreted the clause's use of "bear" liberally to allow for the recovery of increased subcontractor costs that are ultimately "borne" by the prime contractor. See *Hegeman-Harris & Co. v. United States*, 440 F.2d 1009, 1017 (Ct. Cl. 1971) (permitting the prime contractor to recover "increased State taxes imposed on its subcontractors when [the contractor] had to bear their burden, either by specific provisions of the subcontracts or by inclusion in the price of those subcontracts let after the [applicable] tax increase"); *Appeal of Morrison-Knudsen Co., Inc.*, ASBCA No. 16483 (Oct. 13, 1972) (acknowledging recovery may occur in "situations where the contractor bears the tax indirectly, e.g., through a price increase charged by a subcontractor or supplier").

¹³ FAR 52.229-3(c).

¹⁴ FAR 52.229-3(g).

¹⁵ FAR 52.229-3(g).

¹⁶ See FAR 52.216-2 Economic Price Adjustment-Standard Supplies; FAR 52.216-3 Economic Price Adjustment-Semistandard Supplies; FAR 52.216-4 Economic Price Adjustment-Labor and Material.

¹⁷ FAR 16.203-1; see also FAR 52.216-2, Economic Price Adjustment-Standard Supplies; FAR 52.216-3, Economic Price Adjustment-Semistandard Supplies; FAR 52.216-4, Economic Price Adjustment-Labor and Material.

¹⁸ Similarly, the Defense Federal Acquisition Regulation Supplement (DFARS) contemplates economic price adjustments for basic steel, aluminum, brass, bronze, copper, and nonstandard steel items. See DFARS 252.216-7000-70001.

¹⁹ FAR 16.203-3.

²⁰ See, e.g., FAR 52.216-2(c).

²¹ See 48 CFR § 25.903 (describing supplies that can be exempt from duties, including those listed in Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule (HTS) and supplies (excluding equipment) for government-operated vessels or aircraft). Importantly, [E.O. 14193, Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border](#) has directed certain revisions be made to the HTS that could impact the exemptions described in 48 CFR § 25.903(a).

²² For DoD acquisitions, DFARS 252.225-7013 contemplates the accordance of duty-free status to a broader range of items, including end products and components from certain "qualifying countries" as defined in DFARS 225.003.

²³ See FAR 25.1101(e) (stating FAR 52.225-8 should be inserted in "solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained").

²⁴ See *Appeal of Eppco Metals Corp.*, ASBCA No. 38305 (Sept. 29, 1989) ("unforeseeable raw material shortages may give rise to excusable delay"); see also *Appeals of Phillips Construction Co.*, 88 Interior Dec. 689 (July 31, 1981) (finding contractor's delay was excusable due to diesel fuel shortage).

²⁵ See *Nova Grp./Tutor-Saliba v. United States*, 159 Fed. Cl. 1 (2022), *aff'd*, 87 F.4th 1375 (Fed. Cir. 2023) (stating the five elements of a constructive acceleration claim are (1) excusable delay; (2) knowledge by the government of the delay; (3) a statement or act of the government that can be construed as an acceleration order; (4) notice by the

contractor that the order is a constructive change; and (5) incurrence of additional costs as a result of the acceleration) (citations omitted).

²⁶ See FAR 52.243-1 (governing changes under fixed price contracts).

²⁷ See FAR 52.243-1(a) (entitling a contractor to an equitable adjustment when the "Contracting Officer...make[s] changes withing the general scope" of the contract).

²⁸ See FAR 50.000(a)(1).

²⁹ FAR 50.103-2.

³⁰ *Horowitz v. United States*, 267 U.S. 458, 461, 45 S.Ct. 344, 69 L.Ed. 736 (1925).

³¹ See, e.g., *Appeal of - Aptim Fed. Servs., LLC*, ASBCA No. 62982 (Apr. 28, 2022).

³² Office of the Under Secretary of Defense, [Guidance for Assessment of Other COVID-19 Related Impacts and Costs](#) (July 2, 2020).

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