'A Deal Is A Deal': Tariffs No Excuse To Dodge Contract Terms

By **Carmela Romeo, Angela Vicari and Rebecca Maller-Stein** (June 6, 2025)

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Contractual relationships thrive on certainty. Yet the far-reaching scope of tariffs imposed and deferred over the last several months has raised concerns that businesses may not be able to perform their own contractual obligations or depend on others to perform theirs.

Drafting contracts and closing deals in progress have already been affected. And recent lawsuits by at least 13 states and several U.S. small businesses are challenging some, but not all, tariffs imposed between February and April as unauthorized.

Two federal courts — the U.S. Court of International Trade in V.O.S. Selections Inc. v. U.S. and the U.S. District Court for the District of Columbia in Learning Resources v. Trump — have invalidated those tariffs. Those decisions are on hold while appellate courts reconsider them, which further adds to the uncertainty that has been affecting businesses globally.[1]

In the current volatile environment, provisions regarding pricing and forecasting, amendment, termination, alternative dispute resolution, and force majeure are likely heavily negotiated and front and center in any contract dispute.

For a variety of reasons, discussed below, tariffs are unlikely to be a basis for allowing a contracting party to avoid contractual obligations.

But as the federal government's tariff policy continues to evolve, there are steps that businesses can take now to mitigate their impact and plan for future disputes related to pricing, operations and supply chain, as well as to assist them in current contracting efforts in a dynamic environment.

Key Contractual Concepts

Litigation involving nonperformance in an uncertain economic environment commonly involves one or more of four key contract or common-law doctrines:

1. Force majeure is a bargained-for contractual term that can excuse delay or nonperformance when unforeseen circumstances beyond the parties' control arise. Courts typically interpret such clauses narrowly and do not give them expansive meaning.

2. Impossibility is a common-law defense that may apply if an unexpected event occurs, the nonoccurrence of that event was a premise of the parties' agreement, and the unexpected event made performance under the contract either impossible or economically impracticable. However, economic hardship, in and of itself, is unlikely to render performance under a contract impossible.

3. Impracticability is also a common-law defense that may apply if an unforeseen event not caused by one of the parties makes performance excessively burdensome, inordinately

more difficult or extremely expensive.

4. Frustration of purpose is another common-law defense that may apply if the principal purpose of the contract is substantially frustrated without fault by the occurrence of an unforeseen event.

Changes in Economic Policy and Commercial Contract Litigation

Courts have not looked favorably upon defenses to breach of contract claims based on the impacts of government economic policy, including tariffs or sanctions. Instead, courts typically have followed longstanding contract interpretation principles, particularly among sophisticated parties, in rejecting contract defenses such as commercial impracticability, impossibility, frustration of purpose, and force majeure.

For example, in Chainworks Inc. v. Webco Industries, a 2006 decision from the U.S. District Court for the Western District of Michigan, a commercial broker of steel tubing sued its supplier for having unilaterally raised prices as a result of revoked steel tariffs and prevailed despite the significant financial impact of the change in tariff policy.[2] In short, the court accepted the broker's straightforward contract argument: "a deal is a deal."[3]

In Sage Realty Corp. v. Jugobanka D.D., the U.S. District Court for the Southern District of New York, in its 1998 decision, rejected both commercial frustration and force majeure defenses raised by a commercial tenant Yugoslavian bank subject to a presidential executive order implementing sanctions against Yugoslavian entities that prevented the tenant from using or accessing any of its assets located in the U.S.[4]

The tenant was not excused from performance under the frustration of purpose doctrine because the imposed sanctions were reasonably foreseeable to the tenant at the time of executing the lease.[5]

The lease's force majeure provision similarly was not an effective basis to excuse performance because it unambiguously required the tenant to continue to pay rent even in the event of a government action that prevented the landlord from performing its contractual duties.[6]

More recently, in 2020, in Shelter Forest International Acquisition Inc. v. COSCO Shipping (USA) Inc., the U.S. District Court for the District of Oregon rejected force majeure and supervening impossibility defenses raised by a shipping merchant based on the federal government's imposition of tariffs against China as applied to wood products.[7]

The tariffs were not unforeseen or unexpected because the merchant was aware of their impending impact at the time the merchant entered into the services contract at issue, and the language of the parties' force majeure provision demonstrated the merchant's knowledge that the new tariff policies could affect the profitability of its business.[8]

Lessons From COVID-19

Even an unforeseen worldwide pandemic did not affect courts' bedrock approach to rejecting breach of contract defenses premised on the impact of unforeseen economic events.

For example, in BAE Industries Inc. v. Agrati-Medina LLC, in 2022, the U.S. District Court for the Eastern District of Michigan rejected an argument that a supplier was entitled to refuse to ship parts until the manufacturer paid increased prices under the parties' fixed-

price requirements contracts.[9] The court opined that an increase in steel prices as a result of the pandemic and war in Ukraine, among other things, was not enough to render contract performance impracticable.[10]

This lesson applies beyond the supply contract field, as well. In CAI Rail Inc. v. Badger Mining Corp.,[11] in 2021, the U.S. District Court for the Southern District of New York rejected a similar attempt to invoke frustration of purpose and impossibility defenses by a lessee of rail cars that could not make monthly payments due under the parties' lease documents after the onset of the COVID-19 pandemic when the pandemic and attendant regulations "caused more than a third of Badger's business to disappear virtually overnight."[12]

The court rejected defenses based on "the general economic consequences from the pandemic" absent any invocation of "[specific] government orders and regulations" that affected the lessee's performance.[13]

In Dover Mall, LLC v. Tang, an individual defendant was unable to pay rent on his nail salon in a mall when his business "lost viability in early 2020 during the State-mandated closure that accompanied the COVID-19 pandemic."[14]

In 2023, the Superior Court of Delaware rejected the tenant's impossibility, frustration of purpose, and force majeure affirmative defenses premised on his contention that the pandemic "frustrated the lease's purpose and made his performance impossible" and the mall's "declining occupancy rate and accompanying decrease in foot traffic prior to the pandemic further frustrated the lease's purpose."[15]

Because the force majeure provision in the defendant's lease, among other things, "contemplated a State-mandated closure" and "preserved [the defendant's] obligation to pay rent," it covered the risk of pandemic-related government closures and allocated any risk to the defendant.[16] This case also highlights the importance of drafting force majeure clauses to cover, or not cover, certain events, as that clause will often be outcome-determinative in these types of disputes.

But courts will occasionally allow for nonperformance in narrow circumstances, including crediting impossibility defenses where the impossibility of performance is based on illegality. Indeed, recently, in the February decision in Yodice v. Touro College and University System, the Southern District of New York excused breach of a tuition agreement based on a COVID-era law that outlawed in-person classes and other functions.[17]

The New York Civil Court, in its 2020 decision in Nelkin v. Wedding Barn at Lakota's Farm LLC credited a force majeure defense to breach of contract where the plaintiff canceled a wedding following the governor's executive order banning "large gatherings and events" during COVID-19 pandemic and the force majeure provision identified "circumstances beyond the control of either party — such as ... government regulations."[18]

Accordingly, while the COVID-19 pandemic did not meaningfully upend courts' approach to assessing issues of contract nonperformance based on unforeseen economic events, it presented the extreme circumstances that could occasionally lead to decisions excusing nonperformance under similar circumstances.

Despite a handful of choice decisions in the immediate aftermath of the pandemic that upheld the impossibility and force majeure defenses, there is no reason to think that, absent illegality, the legal framework for supply contract disputes will change due to the

imposition of tariffs.[19]

Tips to Mitigate and Plan for the Impact of Tariffs

Although the full scope, impact and timing of current U.S. tariff policy is yet to be determined, there are several measures businesses can take imminently in anticipation of contract disputes.

Proactivity

Be proactive now. Contract counterparties located abroad may attempt to renegotiate provisions as a result of tariffs on a number of raw materials and products. Become familiar with any other clauses that may afford you, or your counterparty, the opportunity to renegotiate or terminate the contract.

Dispute-Related Clauses

It may be necessary to invoke dispute-related clauses — or defend against a contract counterparty invoking the same. Be familiar with those clauses in your agreements, including the dispute escalation and venue provisions. Consider whether and under what circumstances an expedited court proceeding or alternative dispute resolution may be appropriate.

Beyond Common Defenses

Should a contractual dispute arise as a result of tariffs, be mindful that common contract defenses such as impossibility, impracticability, frustration and force majeure are unlikely to be viable defenses to a breach of contract claim.

Flexibility

Going forward, consider how you can negotiate more flexibility into the pricing and forecasting provisions of your new supply contracts to leave room for unexpected economic events, such as tariffs. On the other hand, consider how best to tighten up those same provisions in contracts in which you are the purchaser to avoid unexpected pricing increases.

Tariffs in Force Majeure Provisions

Consider explicitly including tariffs in any force majeure provision in your new supply contracts to allocate the risk to your counterparty and ensure you can rely on that provision in future disputes over commercially unfeasible prices resulting from tariffs, or consider exclusion depending on the circumstances of the contract at issue.

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[1] V.O.S. Selections, Inc. v. United States, No. 25-00066, 2025 WL 1514124 (Ct. Int'l Trade May 28, 2025) (per curiam); U.S. District Court for the District of Columbia, Learning Res., Inc. v. Trump, No. CV 25-1248 (RC), 2025 WL 1525376 (D.D.C. May 29, 2025).

[2] No. 1:05-CV-135, 2006 WL 461251, at *1, *4 (W.D. Mich. Feb. 24, 2006).

[3] Id. at *4.

[4] No. 95 CIV. 0323 RJW, 1998 WL 702272, at *1 (S.D.N.Y. Oct. 8, 1998).

[5] Id. at *3 (tenant followed press coverage on growing civil unrest in Yugoslavia and poor relations with the United States).

[6] Id. at *4-5.

[7] 475 F. Supp.3d 1171, 1186-88 (D. Or. 2020).

[8] See also Seaboard Lumber Co. v. U.S., 308 F.3d 1283, 1293 (Fed. Cir. 2002) (rejecting force majeure defense and opining that governmental policies that make performance merely unprofitable, including fiscal or monetary policies of the federal government, are not "acts of government" for purposes of force majeure clauses) (collecting cases).

[9] No. 22-12134, 2022 WL 4372923, at *2, *4 (E.D. Mich. Sept. 21, 2022) (applying Michigan law).

[10] Id. at *4.

[11] No. 20 CIV. 4644 (JPC), 2021 WL 705880, at *8 (S.D.N.Y. Feb. 22, 2021).

[12] Id. at *7 (internal quotation marks omitted).

[13] Id. at *8, *10 (noting that "the analysis might be different" if the defendant "had pointed to some government regulation that made completion of the transaction impossible").

[14] C.A. No. K22C-07-013 JJC, 2023 WL 6536975, at *1 (Del. Super. Ct. Oct. 5, 2023).

[15] Id.

[16] Id.

[17] See, e.g., Yodice v. Touro Coll. & Univ. Sys., No. 21CV2026 (DLC), 2025 WL 579957, at *4 (S.D.N.Y. Feb. 21, 2025) (compelling performance under the agreement "would have been illegal").

[18] See, e.g., Nelkin v. Wedding Barn at Lakota's Farm, LLC, 152 N.Y.S.3d 216, 220, 222 (N.Y. Civ. Ct. 2020) (force majeure clause identified "government regulations" and "disasters").

[19] Indeed, the Superior Court of Delaware recently rejected a commercial frustration of purpose defense in the context of a pharmaceutical supply chain dispute. See Andor Pharms., LLC v. Lannett Co., Inc., No. N22C-06-078-EMD CCLD, 2024 WL 1855112, at *16

(Del. Super. Ct. Apr. 29, 2024) (rejecting commercial frustration of purpose defense raised by pharmaceutical distributor based on "increased costs" from drop in expected demand resulting from FDA's change in scheduled approval of generic drug).