



The Fears and Risks of Tariffs and Their Impact on the Design and Construction Industry

Tariffs, which are taxes imposed by governments on imported goods, have become a significant concern for the design and construction industry. These tariffs can affect material costs, supply chains, project timelines, and overall economic health. This article explores the fears and risks associated with tariffs and their impact on the design and construction industry.

Increased Material Costs

One of the most immediate effects of tariffs on the construction industry is the increase in material costs. When tariffs are imposed on essential materials such as steel, aluminum, and lumber, the prices of these materials will rise, perhaps significantly. This increase affects not only the cost of raw materials but also the prices of finished products such as beams, pipes, window wall systems, and other construction elements. As a result, construction companies face higher expenses, which can lead to increased project budgets and higher costs for clients and consumers.

Recent data shows that construction input prices jumped 1.4% in January, marking the largest monthly increase in two years. This surge was attributed to a rush to purchase materials ahead of potential tariffs. Contractors working on fixed-price projects are particularly affected, as they are squeezed by higher material costs.

Supply Chain Disruptions

Tariffs can cause significant disruptions to supply chains. Construction companies often establish long-term relationships with suppliers to maintain a steady flow of materials. When tariffs are suddenly introduced or increased, these supply chains can be interrupted, leading to delays and shortages. This disruption can slow down construction projects, extend timelines, and increase labor costs as workers wait for materials to arrive.

Impact on Project Timelines and Budgets

The ripple effect of increased material costs and supply chain disruptions is felt acutely in project timelines and budgets. When the cost of materials goes up, construction companies must either absorb the additional expenses or pass them on to their clients. Absorbing the costs can squeeze profit margins and limit the ability to invest in new projects or hire additional workers. Passing the costs on to clients can make new construction projects less attractive, potentially reducing the demand for new buildings and infrastructure. Delays in material delivery due to disrupted supply chains can also extend project schedules, leading to additional labor and equipment rental costs.

Legal and Contractual Challenges

Tariffs can also lead to legal and contractual challenges. Construction contracts often include fixed prices for materials and labor. When tariffs cause material costs to rise unexpectedly, disputes can arise over who should bear the additional costs. This can lead to legal battles and strained relationships between contractors, suppliers, and clients, as well as risk to design professionals engaged in estimating the cost of construction in the design phases of a project. To mitigate these risks, construction companies may need to include escalation and force majeure clauses, change-in-law provisions, and risk-sharing mechanisms in their contracts.

Economic Uncertainty

The imposition of tariffs creates economic uncertainty, which can have a broader impact on the construction industry. Uncertainty about future material costs and supply chain stability can make it difficult for construction companies and project owners to plan and budget for projects. This uncertainty can also affect investor confidence, potentially leading to reduced investment in new construction projects. In an industry where long-term planning and stability are crucial, this economic uncertainty can be particularly damaging.

Professional Liability and Claims

The potential tariff situation on construction materials can pose triggers for professional liability risks and claims for construction professionals, architects, and engineers, including:

- **Cost Overruns and Budget Issues:** For construction professionals, tariff-related increased project costs can result in claims for cost overruns and budget mismanagement. Architects and engineers—particularly those providing pre-construction cost-estimating services—may also face claims for cost mismanagement.
- **Project Delays:** Increased costs and potential material shortages due to tariffs can cause project delays. Delays can lead to claims of breach of contract or failure to meet project deadlines, which can be particularly problematic for projects with fixed-price or guaranteed maximum price contracts.
- **Contractual Disputes:** The uncertainty and financial pressures caused by tariffs can lead to disputes over project scope, timelines, and deliverables. Miscommunication or disagreements in these areas can result in breach-of-contract claims.
- **Regulatory Compliance:** Changes in material sourcing and project planning to mitigate tariff impacts might lead to non-compliance with local building codes or environmental regulations. This can result in legal claims and penalties.
- **Financial Performance:** The financial strain from increased costs and potential project delays can lead to insolvency risks for architectural and engineering firms. This can result in claims from clients and subcontractors for unpaid work or damages.

Project Considerations

For construction firms engaged on a project for pre-construction in the role as a CM, GC or Design-Builder, or for architects or engineers with a project in the design phases, consider the following questions for these common project types:

- **Is your project publicly funded** through a referendum, such a school, community center, aquatic facility, police/fire station, or library?
 - When were the project budgets established and funds “fixed” to implement design and construction?
 - Are those funds still sufficient, even with a “normal” contingency established at the time of referendum/funding?
 - How will the owner and their constituents respond to a more expensive project, perhaps 20% or more, or a reduced scope project because the public entity cannot identify additional funds?
 - Does the overall team leadership (owner, design professionals, and construction contractors) understand the inflationary cost pressures on the project? Have they worked together to adjust scope/quality/intent to acknowledge the reality of additional construction cost?

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- **Is your project a spec office building or retail center** where leasing has begun but construction costs are not yet finalized?
 - Will the developer’s proforma be able to withstand significantly higher construction costs?
 - Has the overall team (developer, design professionals, and construction leaders) been able to work cooperatively to modify project scope and intent recognizing current and projected future construction costs.
- **Is your project a single family home** that you started design on a year ago but has not yet been bid?
 - Does the homeowner have the ability to increase their construction budget to accommodate additional costs or do you need to reduce the scope of the project?
 - Does the construction contract have a “cost-plus” basis to address increasing subcontractor and material prices?

Strategies for Mitigating Risks

To mitigate risks associated with tariffs, construction companies, architects, and engineers can adopt several strategies:

- **Communication:** Be proactive in discussing these factors of uncertainty impacting cost estimating and the validity of previously prepared estimates and cost-certain proposals. Project cost estimates conducted several months ago or more will likely experience cost increases unforeseen at the time of the initial cost estimates. Discuss these issues with your clients (project owners) so that they are aware of the impact and likely need to modify the construction and project budget including consideration of increasing project contingency. Document those discussions and decisions reached with your clients and other project team members in your project file, the goal being to align the clients’ expectations with the realities of an uncertain marketplace.
- **Include Contractual Protections:** Incorporating escalation and force majeure clauses change-in-law provisions, and risk-sharing mechanisms in contracts can help manage the financial impact of tariffs. Design and construction professionals are encouraged to mitigate exposure to duties and obligations that are within their control, with contractual clauses to mitigate design-to-budget risk. (See the shaded box below for sample language.)
- **Diversify Suppliers:** By sourcing materials from multiple suppliers, companies can reduce their reliance on any single source and potentially mitigate the impact of tariffs.
- **Increase Inventory:** Stockpiling essential materials before tariffs are imposed can help buffer against price increases and supply chain disruptions.
- **Leverage Technology and Industry Data:** Using data and technology to monitor market trends and predict potential tariff impacts can help companies make more informed decisions and adjust their strategies accordingly.

Contractual Protections

Consider the following contract clauses if you accept the responsibility for providing statements of probable construction cost or cost estimating.

Budget Evaluation and Cost Estimates

Evaluations of Client’s budget for the Project, the preliminary estimate of the cost of construction, and updated cost estimates prepared by Contractor represent Contractor’s judgment as a construction professional. It is recognized, however, that neither Contractor nor Client has control over the cost of labor, materials, or equipment; methods of determining bid prices; competitive bidding, market, or negotiating conditions; or application of tariffs or taxes by governmental directive. Accordingly, Contractor cannot and does not warrant or represent that bids or negotiated prices will not vary from Client’s budget for the Project or from any cost estimate or evaluation prepared or agreed to by Contractor.

Contractual Protections (continued)

Contingencies, Adjustments, and Alternate Bids

In preparing estimates of the Project cost, Contractor shall be permitted to and Client agrees to include contingencies for design, bidding, and price escalation. Contractor shall also be permitted to provide input to Client and design professional(s) on the materials, equipment, component systems, and types of construction to be included in the Contract Documents; to provide input to Client and design professional(s) regarding the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated cost of the Project to meet Client's budget.

Project Schedule

In the event Contractor is hindered, delayed, or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including but not limited to delays due to power or data system outages, acts of nature, public health emergencies including but not limited to infectious disease outbreaks and pandemics, governmental orders or directives, failure of any governmental or other regulatory authority to act in a timely manner, failure of Client to furnish timely information or approve or review Contractor's services or design documents, delays caused by faulty performance by Client's other contractors or consultants, or other unforeseen conditions, the time for completion of Contractor's services shall be extended by the period of resulting delay and compensation equitably adjusted. Client agrees that Contractor shall not be responsible for damages, nor shall Contractor be deemed in default of this Agreement due to such delays.

Conclusion

Tariffs pose significant risks to the design and construction industry, affecting material costs, supply chains, project timelines, and economic stability. By understanding these risks and adopting proactive strategies, construction companies can better navigate the challenges posed by tariffs and continue to thrive in a volatile economic environment.



References

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Construction Dive: [Tarriff fears tied to biggest construction cost jump in 2 years](#)

Construction Dive: [Construction spending slips as costs rise ahead of tariffs](#)

CLA: [The Impact of Tariffs on the Construction Industry](#)

Miller Thomson: [Diplomacy in disruption: Legal strategies for building resilience and navigating trade uncertainty in the construction industry](#)

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