Tariffs on the Rise: Keeping International Contracts on Track in Uncertain Times

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The recent surge in U.S. tariffs on Brazilian imports is putting the legal framework for international sales contracts to the test. In an increasingly unstable environment, compounded by the weakening of multilateral institutions such as the World Trade Organization, whose Appellate Body remains paralyzed, contractual tools for risk management and dispute resolution have become more critical than ever.

For Brazilian companies that regularly export products to the U.S., understanding the legal implications of this scenario is essential. The impact is particularly acute for exports under long-term contracts with thin margins or fixed supply volumes, such as take-or-pay agreements common in tariff-affected sectors. For these companies, the priority is to review existing contracts and identify clauses that either increase exposure or offer protection.

The first step in any contract review is to determine who bears the cost of the new tariffs. While the burden typically falls on the importer, contractual provisions can shift that responsibility. Given the sharp rise in costs, importers may also push to renegotiate terms to distribute the financial impact. In either case, exporters must examine risk-allocation mechanisms carefully. Other clauses worth reviewing include delivery terms (Incoterms), which define when risk transfers at each stage of performance, along with exclusivity provisions and termination rights.

Under Brazilian law, parties often invoke force majeure clauses or the hardship doctrine to address contractual imbalances caused by unforeseeable, extraordinary events, either to terminate or revise the contract. The courts, however, generally require that such events go beyond the ordinary risks inherent in the agreement. In the current environment, parties will have to examine potential strategies in light of the specifics of their case.

That said, many international contracts are governed by foreign law, which means that provisions dealing with force majeure, changes in the law, or material adverse effects must be interpreted under the legal system chosen by the parties. It is not enough to rely on the wording of the provision — a proper understanding of the legal framework behind it is essential.

Another critical issue is how dispute resolution mechanisms are structured and applied. Arbitration, a usual choice, requires familiarity with the arbitration law of the seat specified in the contract, especially when it is outside the parties' home jurisdictions. Factors such as emergency powers of arbitrators, the availability of interim judicial relief, and any mandatory negotiation phase before arbitration can all influence strategy. Parties must be aware of these steps and timelines to ensure effective access to arbitration and avoid surprises.

The current tariff uncertainty underscores the need for well-structured contracts with clear provisions, carefully chosen governing law, and dispute resolution mechanisms that are compatible with the level of risk involved. For existing agreements, the priority is to review risk allocation and renegotiation triggers. Exporters should consider temporary adjustments or amendments that redistribute the impact of tariffs without jeopardizing the continuity of their commercial relationships.

If disputes arise, parties must weigh not only the substantive issues but also the procedural aspects to pursue a solution that, in cases of hardship, can restore contractual balance, reallocate risks, and preserve ongoing operations.

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