Navigating U.S. Tariffs: What CFIB Members Need to Know About Contracts and Exit Strategies Under Canadian Law

For Canadian small and medium-sized businesses (SMEs) that engage in cross-border trade with the U.S., sudden tariff increases can significantly alter the economics of a deal. If newly imposed tariffs make fulfilling contractual obligations unsustainable, businesses may need to renegotiate or exit agreements. Understanding your legal options under Canadian law is crucial to mitigating financial losses and maintaining operational stability.

Renegotiating Contracts in Light of Tariffs

Many CFIB members operate on tight margins, and tariffs can significantly impact costs. If your contract lacks an explicit tariff adjustment clause, you may still have room to negotiate under various contractual doctrines such as **Frustration**, as recognized in Canadian contract law—an argument that a significant change in circumstances has made performance unreasonably difficult. Approaching the other party with a proposal to adjust pricing, revise delivery terms, or share tariff-related costs could lead to a mutually beneficial resolution. Many contracts contain **hardship clauses**, which allow renegotiation if external factors substantially impact the agreement's financial viability. Checking your contract for these provisions is a critical first step.

Exiting Contracts: Legal Avenues Under Canadian Law

If renegotiation is not feasible, businesses may explore legal grounds for terminating the contract. Several potential avenues exist:

- **Force Majeure:** This clause excuses a party from performance when unforeseeable events beyond their control occur. While force majeure traditionally covers natural disasters and political upheavals, some contracts explicitly include government actions such as tariff changes. If your contract contains such a clause, it may provide a legal basis to exit without liability.
- **Frustration of Contract:** Recognized under Canadian law, this doctrine applies when an unforeseen event—such as a prohibitive tariff—renders the contract radically different from what was originally agreed upon. A Canadian court may determine that the contract is discharged, but frustration has a high threshold; it must be shown that the tariffs have made performance nearly impossible, not merely more expensive.
- **Material Adverse Change (MAC) Clause:** Some contracts include a MAC clause, which allows termination if a significant economic or regulatory change negatively impacts the feasibility of the agreement. If applicable, this clause could provide a way out.
- **Breach by the Other Party:** If the counterparty has breached a material term of the contract, this may provide a right to terminate. Reviewing the contract for any failure to perform by the other party could present an opportunity for exit.
- **Mutual Termination Agreement:** If both parties recognize that tariffs make the contract impractical, they may agree to a negotiated termination, minimizing losses for both sides.

Statutory Provisions That May Apply

Canadian law provides statutory protections that may assist in exiting or renegotiating contracts impacted by tariffs:

- **Frustrated Contracts Act (See Ontario, BC, Alberta and Saskatchewan):** In some jurisdictions, this legislation governs contracts that have become impossible to perform due to unforeseen circumstances. It allows for a fair distribution of losses and may provide relief if frustration of contract is established.
- **Article 1470 C.C.Q**. (**Quebec Civil Code)** : Addresses force majeure (superior force), which releases a party from liability when performance becomes impossible due to an unforeseeable and irresistible event.
- **Sale of Goods Act (provincial legislation):** If a contract involves the sale of goods, and tariffs render performance fundamentally different, the Act's provisions on unforeseen circumstances or impossibility may apply.
- **Competition Act (Canada):** If a counterparty imposes unfair terms in response to tariffs, businesses may have recourse under the Act, particularly under provisions related to abuse of dominance or restrictive trade practices.
- **Canadian International Trade Tribunal (CITT):** If a tariff is unfairly imposed or affects contractual obligations, businesses may have legal recourse through trade remedy mechanisms overseen by the CITT.

Key Takeaways for CFIB Members

1. **Review your contracts** – Identify force majeure, hardship, material adverse change, and tariff-adjustment clauses under Canadian law.
2. **Communicate with your counterparties** – Propose renegotiations that distribute the burden of increased costs.
3. **Consult legal counsel** – If exiting a contract is necessary, seek legal advice from a Canadian lawyer to ensure compliance with contractual and statutory obligations.
4. **Explore alternative exit strategies** – Consider frustration of contract, breach by the other party, or mutual termination agreements.
5. **Leverage statutory provisions** – Review whether provincial or federal laws, such as the Frustrated Contracts Act or Sale of Goods Act, provide avenues for relief.
6. **Plan for future agreements** – Include tariff-related clauses in new contracts to protect against sudden economic shifts.
7. **Leverage CFIB resources** – CFIB members can access legal guidance and advocacy support to navigate trade challenges.

Tariff fluctuations are an inherent risk in international trade, but with a well-informed approach and reliance on Canadian legal principles, CFIB members can safeguard their interests through strategic contract management.

Legal Disclaimer: *The content of this article is provided for general informational purposes only and does not constitute legal or professional advice. It is not intended to be relied upon as a substitute for consultation with qualified legal counsel. The legal principles and statutory references discussed herein may apply differently depending on the specific facts and jurisdiction involved. Neither LawVo nor the Canadian Federation of Independent Business (CFIB) makes* *any representations or warranties as to the accuracy, completeness, or currency of the information provided, and neither party accepts any responsibility or liability for any loss, harm, or damages that may arise from reliance on this article. Readers are strongly advised to seek independent legal advice tailored to their particular circumstances.*