



## A. Introduction

On 2 April 2025, U.S. President Donald J. Trump invoked his authority under the International Emergency Economic Powers Act of 1977 (“IEEPA”)<sup>1</sup>, implementing new tariffs on imports into the United States as follows<sup>2</sup>:

1. A 10% baseline tariff on all imports (excluding those from Canada and Mexico), effective 5 April 2025.
2. Reciprocal tariffs on specific countries, replacing the baseline rate for certain countries. For Malaysia, the reciprocal tariff will be 24%, taking effect on 9 April 2025 at 12:01 a.m. EDT (12:01 p.m. Malaysia time)<sup>3</sup>.

Certain goods would not be subjected to reciprocal tariffs under Section 232 of the Trade Expansion Act 1962<sup>4</sup> which includes:

1. Steel, aluminum, automobiles, and auto parts; and
2. Semiconductors and pharmaceuticals.

However, on 9 April 2025, new tariffs rates on imports were dropped to 10% for most U.S. trade partners for 90 days (“**90 days suspension**”) to allow trade negotiations with those countries except for China with an increase of 125% reciprocal tariffs<sup>5</sup>. On 10 April 2025, the Trump Administration clarified that tariffs on China goods stands at 145%<sup>6</sup>. On 11 April 2025, China retaliates by raising tariffs on US goods to 125%<sup>7</sup>.

<sup>1</sup>[https://uscode.house.gov/view.xhtml?req=\(title:50%20section:1701%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title50-section1701\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:50%20section:1701%20edition:prelim)%20OR%20(granuleid:USC-prelim-title50-section1701)&f=treesort&edition=prelim&num=0&jumpTo=true)

<sup>2</sup> <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/> dated 2 April 2025

<sup>3</sup> <https://theedgemalaysia.com/node/750103> dated 3 April 2025

<sup>4</sup> <https://www.govinfo.gov/content/pkg/STATUTE-76/pdf/STATUTE-76-Pg872.pdf>

<sup>5</sup> <https://www.cnbc.com/2025/04/09/trump-tariffs-live-updates.html> dated 10 April 2025

<sup>6</sup> <https://www.cnbc.com/2025/04/10/china-trump-tariffs-live-updates.html> dated 11 April 2025

<sup>7</sup> <https://www.cnbc.com/2025/04/11/china-strikes-back-with-125percent-tariffs-on-us-goods-starting-april-12.html> dated 11 April 2025

## **B. Concerns with the 90-days suspension**

The future of Malaysia's **24% reciprocal tariff** beyond the 90-day suspension remains uncertain. What is certain, however, is that businesses must adapt to policy shifts and reversals as the new norm and revisit their contractual agreements at least until President Trump achieves his underlying objectives.

This article identifies the key clauses in agreements and tariffs-related safeguards that businesses must reassess to mitigate tariff-related risks.

## **C. Contractual safeguards**

### **1. Force Majeure Clause**

Force Majeure Clauses generally permits a party to suspend or terminate the contract if there is an unforeseeable circumstance which is outside the control of a party. Under Malaysian law, it is trite that for a party to rely on an alleged Force Majeure Clause, it would need to fall under a Force Majeure event specifically provided in the Contract<sup>8</sup>. However, a Force Majeure event does not include an event in increase in tariffs. Further, tariffs usually do not constitute force majeure events, as they increase costs rather than render performance impossible. Unless the clause specifically covers government-imposed tariffs, importers are typically obligated to fulfil contractual terms despite the added expense."

A proactive approach would be updating force majeure events to cover "government-imposed tariffs, retaliatory duties, and other material trade barriers,"

### **2. Frustration**

Under Malaysian law, the Contracts Act 1950<sup>9</sup> incorporates the common law doctrine of frustration<sup>10</sup>. Generally, in order to raise frustration, a party needs to prove that the contract has become "*impossible, or by reason of some event which the promisor could not present, unlawful, becomes void when the act becomes impossible or unlawful.*"<sup>11</sup>

The effect of frustration is to bring the contract to an end immediately and automatically. The remedies available in cases of contract frustration are as follows:

- (a) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged, shall, in the case of sums so paid, be recovered from him or cease to be payable.
- (b) If the party to whom the sums were so paid or payable incurred expenses before the time of discharge, the court may, if it considers it just, allow him to retain or recover the whole or any part of the sums so paid or payable.
- (c) Any party to the contract who has obtained a valuable benefit before the time of discharge, there shall be recoverable from him by the other party such sum, as the court considers just.

In determining whether frustration applies to an increase in tariffs scenario, the courts would need to determine whether the increase in tariffs amounts to a supervening event which makes a contract to be impossible of performance.<sup>12</sup>

---

<sup>8</sup> Gogung Fusion Restaurant (KLCC) Sdn Bhd & Ors v Suria KLCC Sdn Bhd [2021] MLJU 2345<sup>2</sup>

<sup>9</sup> Section 57 of the Contracts Act 1950

<sup>10</sup> MLGH (Sabah) Sdn Bhd v Rainbow Bay Sdn Bhd and another appeal [2023] 5 MLJ 597 at [82]

<sup>11</sup> Section 57(2) of the Contracts Act 1950

<sup>12</sup> Yee Seng Plantations Sdn Bhd v Kerajaan Negeri Terengganu & ORS [2000] 3 MLJ 699

### 3. Material adverse change (MAC) Clause

Generally, material adverse change (MAC) clauses are found in share purchase agreements<sup>13</sup>, mergers and acquisitions and loan agreements<sup>14</sup>. A MAC clause enables a party to exit the contract if certain event materially affects the said party, (i.e. severe financial strain)<sup>15</sup>. Although not universally included general contracts, such clauses have grown more prevalent amidst the rising trade instability.

### 4. Cost allocation clauses

Incoterms or International Commercial Terms are a set of commercial a set of commercial/trade rules established by the International Chamber of Commerce ("ICC") that are used in international sale contracts<sup>16</sup>.

Most international trade contracts would incorporate and / or make reference to Incoterms 2020. Generally, the responsibility for tariffs, duties, and other import-related expenses falls on the importers.

Accordingly, importers would need to navigate and consider whether provisions can be made in the contract to allocate responsibility to the exporter as a whole or in part to address the commercial impact of the increase in tariffs.

### 5. Price Adjustment clauses

Generally, price adjustments clauses allow for adjustments to the agreed-upon price based on specific triggering events or market conditions (i.e. increase in tariffs). Contracts may include a price escalation clause structured with tariffs in the event a tariff increase raises costs beyond the agreed threshold. This would allow for renegotiation of pricing.

## D. **Other tariffs-related safeguards**

Organisations may incorporate shorter contract terms to avoid being tied into unfavourable price structures due to the increase in tariffs., Businesses may also consider renegotiating agreements into non-exclusive contracts, allowing supply diversification.

## E. **Conclusion**

In today's global trade landscape, tariffs war creates substantial challenges and unpredictability for businesses involved in international commerce and supply chains. With tariffs increasingly being leveraged as instruments of geopolitical strategy, businesses must mitigate these risks by implementing carefully designed contractual safeguards.

---

<sup>13</sup> Travelport Limited v Wex Inc [2020] EWHC 2670 (Comm); Winchart Sdn Bhd (No. Syarikat: 517031-W) & Anor v Zalaraz Sdn Bhd (No. Syarikat: 117907-W) [2008] MLJU 267;

<sup>14</sup> Grupo Hotelero Urvasco v Carey Value Added [2013] EWHC 1039 (Comm) at [334]

<sup>15</sup> ibid

<sup>16</sup> <https://iccwbo.org/business-solutions/incoterms-rules/>

### Further information

Should you have any questions or how it may affect you or your business, please get in touch with the following:

**Tan Soo Yew**

Partner

[kwsiew@tsl-legal.com](mailto:kwsiew@tsl-legal.com)

**Chuck Siew Ka Wai**

Partner

[kwsiew@tsl-legal.com](mailto:kwsiew@tsl-legal.com)

**Sebastian Lee Sheng Hong**

Partner

[shlee@tsl-legal.com](mailto:shlee@tsl-legal.com)

© TSL Legal

This article is intended to provide general information only and does not constitute legal advice. It should not be used as a substitute for professional legal consultation. We recommend seeking legal advice before making any decisions based on the information available in this article. TSL Legal fully disclaims responsibility for any loss or damage which may result from relying on this article.