

# Thoughts on the Contractual Impact of Tariffs under Swiss Law

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## Key takeaways

- **Contracts should be checked to determine whether they include clauses addressing the impact of (threatened) significant trade tariffs on the contractual relationship.**
- **Default Swiss law potentially provides for means to address changed circumstances if the contractual equilibrium is seriously disturbed.**

## Introduction

In recent weeks, there have been heated discussions on trade tariffs. The (threatened) implementation of trade tariffs between countries with close economic ties may have a drastic impact on existing cross-border contractual relationships. This impact becomes even more severe if not only trade tariffs but also complete trade or export bans are imposed.

In light of the recent (threatened) implementation of trade tariffs, the question arises as to whether there are possible options available under Swiss law to deal with such developments.

## Contractual clauses

Firstly, the affected contract should be examined. Sometimes, contracts contain clauses that govern the procedure in the event that significant changes in circumstances strongly impact the contractual equilibrium (often referred to as “hardship”). Similarly, contracts may contain clauses that regulate the fate of the contract when performance is impeded for reasons beyond the parties’ control (often referred to as “force majeure clauses”). Both hardship and force majeure clauses may specify the exact steps that must be taken to exercise the rights they provide.

## Options under default Swiss law

Secondly, if a contract does not include such clauses, Swiss law still provides options for responding to changed circumstances or even the impossibility of fulfilling the contract.

If circumstances have changed in an unforeseeable way since the conclusion of a contract – making it (economically) unreasonable for one party to fulfil its obligations – a Swiss court may, in certain cases, modify the contract upon request. This could include, for example, early termination of the contract. However, due to the strict legal criteria, court-ordered contract modifications remain quite rare in practice.

If fulfilling the contract becomes not just unreasonable but entirely impossible – something more likely with trade bans than with trade tariffs – and non-performance is due to circumstances beyond the responsible party's control, both parties possibly may be released from their obligations. In such cases, the non-performing party might also be typically exempted from liability for damages.

In any case, when it comes to the (potential) introduction of trade tariffs, a case-by-case assessment is essential. Factors such as the level of the new tariffs, the countries involved, existing contractual arrangements, the interests of the parties and the type of products affected all need to be considered when evaluating whether – and what kind of – adjustments to the contractual relationship might be conceivable.

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## No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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