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Impact of tariffs and suspension on development projects under the FIDIC form

By Nicholas Gould

In early December, I had the pleasure of serving as a session moderator at the Annual FIDIC International Contract Users' Conference in London. The session, "*Impact of tariffs and suspension on development projects*", featured a panel of construction and international arbitration experts.[1] In our discussion, we explored the multifaceted effects of tariff regimes and project suspensions, particularly those arising from the cuts to the United States Agency for International Development ("USAID") and the Millennium Challenge Corporation ("MCC").

These developments have substantial implications for international contractors and employers involved in US-funded infrastructure programmes, including projects which were under the FIDIC form of contract.

Background

Soon after being sworn into office in January 2025 President Trump signed Executive Order 14169, pausing US foreign aid funding for 90 days. This move signalled a significant shift in the American approach to global aid and infrastructure.

In the months that followed, the Trump administration took further steps to reduce and effectively close USAID and MCC[2] through funding freezes and proposed rescissions of previously appropriated funds.[3] These measures meant that independent foreign-assistance entities, including USAID and MCC, faced severe reductions in budget authority and operational capacity.

In April 2025, the Department of Government Efficiency formally ordered the MCC to suspend all ongoing programmes.[4] USAID experienced a comparable operational shutdown, having lost the majority of its foreign-assistance programmes, with staff either laid off or reassigned and core functions transferred to the State Department.

The funding freezes and rescissions, which functionally sought to "switch off" the ongoing aid and infrastructure programmes, were further compounded in April when President Trump announced the "*Liberation Day tariffs*"[5] via Executive Order. While the legal status of these tariffs is currently being debated in the US courts (and therefore makes it unclear what the tariffs' long-term impact will be), they have profoundly affected domestic and global supply chains in the short term.

But the impact of the tariffs extends beyond trade issues – tariffs have significantly impacted the feasibility of US-funded infrastructure and the delivery of projects, with real consequences for employers and contractors up and down the supply chain involved in these infrastructure projects. Increased material costs, delays in equipment deliveries, and uncertainty over contractual obligations have affected the feasibility of US-funded infrastructure projects, creating real consequences for employers and contractors.

This, alongside the effective suspension of US grant programmes, has left numerous international infrastructure projects facing terminated contracts and uncertainty regarding their continuation and completion.

The impact on development projects and framing the problem in FIDIC terms

For international contractors and employers operating under the FIDIC form of contract, these disruptions create a series of practical and legal challenges. Projects that were well underway suddenly had their remaining funding cancelled, with no clear path to completion.

Funding freezes and tariffs immediately had serious contractual implications – turning what appeared to be a policy issue into a crisis under FIDIC Clauses 8, 13, 14 and 16.

Suspension without formal instruction

A fundamental assumption behind the contracts which govern these projects is that there is a functioning and paying employer – and should the employer cease to function or be able to pay, that there will be sufficient time to follow proper procedure. Where funds were summarily withdrawn and programmes shuttered, this core assumption failed. Many projects were never formally suspended via Clause 8.9. Instead, work stopped because the funding was rescinded, rather than because instructions to suspend were issued. This has led to disputes over suspension, standby costs and repudiatory breach.

Change in laws

Where a change in law arises after the base date which would impact the contractor's performance of the works, Clause 13.6 can give rise to an extension of time and potentially to cost. Tariffs qualify as a change in law, giving entitlement to time and cost in principle – but this fell apart because costs rose at the same time that funding became frozen and was rescinded.

Non-payment and termination

While FIDIC sets out a structured escalation pathway for non-payment under Clauses 14 and 16, the scale of the funding rescissions meant that many employers were effectively unable to remedy the default. Rather than allowing the contractual mechanisms to operate as intended, a number of agencies characterised the resulting project closures as "*terminations for convenience*". This sits uneasily with FIDIC's default-based allocation of risk and remedy. By recasting a non-payment event as an administrative termination, contractors' entitlements to breach-based recovery were significantly restricted and pushed many parties towards treaty, political-risk or extra-contractual claims to address losses that the convenience termination model does not capture.

Strict procedural enforcement

Clause 20 is a cornerstone of the FIDIC contractual framework, setting out precise notice and claims procedures that are strictly enforced. In the context of the USAID and MCC funding collapse, Clause 20 posed a challenge: contractors were often unable to issue notices in real time. Where entitlement to relief under Clauses 8, 13, 14 or 16 might exist, procedural non-compliance under Clause 20 has limited or thwarted many claims.

What next?

Contractors are increasingly seeking protections such as automatic tariff adjustments, political-suspension compensation and expedited remedies for non-payment. There is pressure to revisit and potentially re-draft key FIDIC clauses, such as those mentioned above, to address the new landscape of geopolitical and financial disruption caused by the US tariff regime and withdrawal from foreign aid programmes.

Practitioners are now confronted with a critical question: is the FIDIC form of contract robust enough to deal with these unprecedented risks, or has the traditional approach to risk allocation become outdated?

While FIDIC provides a structured framework for addressing suspension, change in law and non-payment, recent events demonstrate that the current forms were not designed for simultaneous political, financial and trade/supply chain disruption on this scale. Moving forward, one might expect to see future versions of FIDIC contracts deal explicitly with political funding rescissions and tariff volatility as standalone cause for compensation.

In the interim, practitioners can adopt practical strategies to navigate this fast-changing environment:

1. **Communication and triage:** Maintain clear, continuous dialogue with employers, financiers and other stakeholders to identify emerging risks and prioritise responses. Rather than hoping everything will work out, be proactive in auditing the contract to assess the project's ongoing economic viability and scope.
2. **Strict adherence to notice requirements:** FIDIC has very specific requirements as to what qualifies as a notice. Ensure that all claims, suspensions and variations are formally documented in compliance with Clause 20.
3. **Real-world risk assessment:** Carefully evaluate the political, economic and supply-chain environment before committing to new contracts. Consider contractual protections or mitigations where possible.

Conclusion

The combination of funding freezes and tariff volatility initiated earlier this year has underscored both the resilience and limitations of the FIDIC form of contract. While FIDIC provides structured mechanisms for addressing the issues above, these events reveal the challenges that emerge when simultaneous disruptions occur outside the control of either party to a FIDIC contract.

For contractors and employers, the practical implications are clear. Proactive communication with stakeholders, disciplined contract administration, and effective risk management are more critical now than ever. Ultimately, the lessons from the USAID and MCC cases highlight the evolving interface between global policy, project finance and contractual risk.

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Footnotes

1. Thanks to my excellent panel members: Denis Serkin, Partner, Peckar & Abramson; Shan Greer; Chief Executive Officer of the British Virgin Islands International Arbitration Centre (BVI IAC); and Marion Smith KC, Barrister, Arbitrator, Adjudicator, Mediator at 39 Essex Chambers and Honorary Professor in the Centre for Commercial Law Studies, Queen Mary University of London.
2. MCC was created by Congress in 2004 and provided "*time-limited grants*" to dozens of developing countries. It was viewed as the US response to China's Belt and Road initiative, which also funds infrastructure in developing countries.
3. The Trump administration requested to cancel US$1.2 billion in unspent funds from MCC: *https://www.congress.gov/crs-product/R48624*
4. *https://www.politico.com/news/2025/04/23/doge-millennium-challenge-foreign-aid-00306333*
5. *https://www.nytimes.com/live/2025/04/02/business/trump-tariffs-liberation-day*