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Cobalt Freeze: Could DRC’s export suspension qualify as force majeure?

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Congo recently announced a temporary suspension of cobalt exports. One critical question arises: can this regulatory action be classified as force majeure for affected businesses?

1. Context.

The Democratic Republic of Congo [DRC], responsible for 70% of global cobalt production, recently announced a temporary suspension of cobalt exports. While this decision aims to stabilize the market, it has significant implications for companies reliant on Congolese cobalt. One critical question arises: ***can this regulatory action be classified as force majeure for affected businesses?***

2. The Case for Force Majeure: Definition and application

The concept of *“force majeure”* refers to unforeseeable and uncontrollable events that prevent contractual obligations from being fulfilled, such as natural disasters, wars, or other extraordinary circumstances. It is often invoked in legal contexts to excuse non-performance when events are beyond the control of the affected party. In the DRC’s decision to temporarily suspend cobalt exports, if the suspension disrupts existing contracts, affected parties might argue force majeure depending on the specific terms of their agreements. Ultimately, whether this qualifies as force majeure would depend on the contractual clauses and the legal interpretation in the relevant jurisdiction.

For companies in the Lualaba and Haut-Katanga Provinces impacted by the export ban, the following arguments could support a force majeure claim:

· *Unforeseeability of the suspension*. Although the DRC has implemented regulatory measures in the past, the sudden and temporary suspension of cobalt exports was not widely anticipated. Companies could argue that this action qualifies as an unforeseen event disrupting established operations and supply chains.

· *Government action as a force majeure event*. Many force majeure clauses explicitly include “acts of government” or “regulatory changes” as valid triggers. The DRC's decision to halt cobalt exports meets these criteria, as it was a deliberate regulatory intervention beyond the control of affected companies.

· *Impact on contractual performance*. To successfully invoke force majeure, companies must demonstrate that the export suspension makes contractual performance impossible, not merely inconvenient. For industries entirely dependent on DRC cobalt, the absence of alternative sourcing during that period strengthens this claim.

· *Force majeure and supply chain disruption*. With no access to alternative sourcing, companies can argue that the suspension disrupts the global supply chain, directly impacting their ability to meet delivery timelines, production targets, and contractual obligations.

3. Challenges

The argument of force majeure is not without challenges. Opponents may claim that the suspension is a deliberate regulatory action taken by the government to address market oversupply and stabilize prices. It is not the result of an unforeseen or uncontrollable event, but rather a planned intervention within the scope of the government's authority. Thus, it does not appear to qualify as a force majeure. The specific language of the force majeure clause in contracts will ultimately determine its applicability.

4. Conclusion

For companies grappling with the DRC’s export suspension, invoking force majeure could provide legal protection against claims of breach of contract. However, success will depend on the unforeseen nature of the event, the wording of contractual agreements, and the jurisdiction’s legal framework. This situation underscores the importance of comprehensive force majeure clauses that account for regulatory and geopolitical risks in volatile industries like mining. For future agreements, companies should include clear language in force majeure clauses to cover regulatory actions, export bans, or government-imposed restrictions as valid triggers. This strengthens their ability to invoke force majeure in similar situations. Companies must show that the suspension makes it impossible - not merely difficult - to fulfill their contractual obligations. For instance, if no alternative cobalt sources exist, companies can emphasize the complete disruption of their supply chains.

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