



covid-19 and the trade community

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There are a bunch of other things going on when it comes to international trade, but the most concerning topic right now is the coronavirus or COVID-19. From a purely business continuity perspective, we are receiving lots of inquiries around the following question: "Can we get out of our contracts by invoking the force majeure clauses?" Such a clause allows parties to cancel contracts when events occur which are both beyond their control but also totally unexpected. A typical illustration would be an "Act of God." First, make sure your contract includes a force majeure clause, because if not, that could present a significant uphill and costly battle. Given the widespread losses which are likely to result, it is reasonable to anticipate companies of any size will, so to speak, "stick to their guns" in trying to "spread the pain."

Assuming such a clause is present in your contract, what does it say? An example of one recently presented includes among its examples: "... strikes, riots, floods, storms, earthquakes, fires, power failures, natural disasters, pandemics, insurrection, acts of God, or for any cause beyond the control of" the named party. Is that language sufficient to permit cancellation under the current circumstances of the COVID-19 outbreak? Probably so, since it mentions pandemics and the World Health Organization has labeled the outbreak as such, but would this language have been broad enough to cover the situation a month ago? Maybe not...

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