Cobalt Freeze and Force Majeure: DRC Export suspension and the IXM Case

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Following the DRC's export suspension of Cobalt as a regulatory measure, this brief explores the legal definition and application of force majeure in commodity contracts.

1. Introduction

The Democratic Republic of Congo (DRC) accounts for over 70 percent of global cobalt supply, a critical input for lithium-ion batteries and electric vehicles. In February 2025, the government, through ARECOMS (Authority for the Regulation and Control of Strategic Mineral Substances' Markets), suspended cobalt exports for five months - to address global oversupply and stabilize prices, and later extending the ban by another three months. This sudden intervention has prompted cobalt purchasers - most notably IXM under CMOC Group - to invoke force majeure. This brief examines whether such regulatory action qualifies as a force majeure event under typical contractual clauses. It integrates the recent declaration of force majeure by IXM amid the extended export ban, compares responses from major producers, and offers recommendations for drafting resilient force majeure provisions in mining and metals contracts.

2. Force majeure: Definition and contractual triggers

Force majeure clauses commonly excuse non-performance when extraordinary events - natural disasters, wars, government acts - render obligations impossible or commercially impracticable. Key requirements include:

- *Unforeseeability* : The event must not have been reasonably anticipated at contract formation.

- *Causation*: A direct link between the event and the inability to perform.

- *Impossibility, not inconvenience*: Performance must be rendered impossible, not merely more costly or difficult.

Many standard clauses explicitly list “acts of government” or “regulatory changes” as force majeure triggers, capturing situations where sovereign action disrupts supply chains beyond a party’s control.

3. The DRC Export suspension explained

On February 22, 2025, ARECOMS halted all cobalt exports in response to a global supply glut and falling prices. The suspension:

- Applied nationwide, affecting major mines such as Tenke Fungurume and Kisanfu.
- Removed an estimated 100,000 tonnes of cobalt from the market over seven months.
- Was extended on July 3, 2025, for three additional months, intensifying supply concerns for downstream industries.

By design, this measure aimed at price stabilization, but its broad scope and abrupt timing left buyers scrambling for legal remedies and alternative sources.

4. Case Study: IXM declares force Majeure

On July 3, 2025, IXM, the metals trading arm of China’s CMOC Group, formally declared force majeure on its cobalt supply contracts. Key facts:

- *Trigger event* : Extended export ban announced by ARECOMS.
- *Affected contracts*: Long-term offtake agreements tied to Tenke Fungurume and Kisanfu mine output.
- *Rationale*: The ban made physical delivery impossible, with no feasible alternative sourcing in the short term.
- *Industry ripple effects* : Shortly after, Glencore also declared force majeure. Cobalt Holdings cancelled its planned £230 million IPO aimed at arbitraging discounted Glencore volumes.

IXM’s invocation underscores how sovereign export controls can meet the classic force majeure criteria unforeseen government act, direct causal link, and true impossibility of performance. However, 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.

5. Legal and contract drafting implications

To bolster contractual resilience against regulatory export bans, parties should consider:

- *Explicit regulatory carve-outs*: List “export bans,” “trade restrictions,” or “licensing delays” alongside standard force majeure events.
- *Tiered notice and mitigation obligations*: Require prompt notice of government actions and documented efforts to source alternatives.
- *Define “impossibility” thresholds*: Clarify what constitutes an insurmountable supply gap versus mere commercial hardship.
- *Flexibility clauses*: Allow for adjustments in delivery schedules or partial shipments where feasible.

By embedding these provisions, buyers and sellers can more clearly allocate risk when sovereign interventions arise.

6. Conclusion

The DRC’s cobalt export suspension - and IXM’s subsequent force majeure declaration- demonstrate how regulatory decisions can trigger contractual relief mechanisms in volatile commodity markets. Success in invoking force majeure hinges on the unforeseen nature of government action, a clear causal link to non-performance, and precise contractual language. Future agreements in the mining sector should proactively address political and regulatory risks to minimize disputes and enhance supply-chain stability.

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