



CLIENT ALERT

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International Trade Update (27th Edition)

国际贸易观察(第27期)

Coronavirus is Anticipated to Impact Auto Industry

新型冠状病毒疫情预计将影响汽车行业

The Chinese New Year came early this year, with the aspirations of an entire country looking forward to a year of economic recovery, a year with hope in what a new trading relationship with the United States might hold. As communities around China prepared for the annual Spring Festival, the Chinese trade delegation was in Washington, D.C. signing, what many called, a historic trade deal with future commitments made by both nations. Unfortunately, as we know now, all of these future promises have been put on hold as Hubei Province, and China indeed, battle the terrible Novel Coronavirus epidemic. As of today, more than 60,000 people are confirmed to have been infected by this terrible virus and no less than 1700 people have passed away. As China continues to valiantly battle the spread of the Coronavirus, its economic impact is increasingly being felt in both China and the United States. As the days and even weeks pass, we believe this economic impact will be felt with even more ferocity. Already, the auto industry is preparing for significant disruptions and companies have begun evaluating their strategies around the inevitable delay in returning to normalcy.

中国农历新年在整个国家憧憬着经济复苏的盼望中到来，是与美国建立新的贸易关系充满希望的一年。当中国各地的社区为庆祝一年一度的春节做准备时，中国贸易代表团在华盛顿特区签署了一项有历史意义的贸易协议，其中美中两国都做出了对未来的承诺。不幸的是，由于目前湖北省以及整个中国正在与可怕的新型冠状病毒疫情作斗争，所有这些对未来的展望都被暂时搁置了。截至今日计算，已经有超过6万人确认感染了这种可怕的病毒，将近1700人为此失去了生命。在中国继续勇敢地与冠状病毒的传播作斗争的同时，疫情对中美两国经济的影响日益加增。我们认为再过几周，坊间会更多的感受到疫情对经济的冲击。目前汽车行业已经在为疫情将带来的严重的干扰做准备，企业也已围绕不可避免的延迟复工开始评估其策略。

As the full effects of the virus were being felt in China, the Chinese central government took extraordinary steps to prevent the spread of the virus. When the traditional holiday shutdown drew to an end, the central government extended the holiday layoff and ordered factories to remain on idle. Then, many of the provincial-level governments announced a further extension and restriction for general enterprises, which saw further shutdowns until February 9th or even later. Although some cities

have resumed operations and some regions have allowed companies to resume production, the ramp up has been slow to recover as factories are experiencing shortages in their workforce and permission to resume full manufacturing has been delayed in some of the hardest hit regions of the country, such as Hubei Province, which includes Wuhan. Exacerbating this slow crawl to recovery for China's leading domestic manufacturers, the tier 2 and 3 suppliers within China, the freight haulers and the shipping yards have all been hit with labor shortages, uncertainty, and even fear. While most US OEMs are maintaining a stiff upper lip to potential supply disruptions, Chinese OEMs are aggressively realizing the impacts. Volkswagen Group, for example, announced that it was postponing the start of production at its joint venture with SAIC Motor Corp. by another week to February 24.

随着中国各地普遍感受到冠状病毒疫情所带来的影响，中国中央政府采取了非同寻常的举措来防止该病毒的传播。在农历春节假期结束之时，中央政府延长了休假时间，并下令工厂停工。随后，许多省级政府宣布进一步延长停工并限制企业运作直至2月9日，甚至更晚。尽管一些城市已恢复运营，某些地区也已允许公司恢复生产，但由于工厂正经历劳动力短缺，且在受灾最严重的一些地区，例如湖北省，包括武汉市恢复全面生产的获准被推迟，因此产能恢复缓慢。国内的多家主要主机厂，二级、三级供应商，以及货运船运企业都已遭受到了因劳动力短缺，不确定因素甚至恐慌的重击。尽管大多数美国主机厂厂商在潜在的供应中断方面保持沉着地态度，但中国主机厂厂商已经敏锐地意识到这种影响。例如，大众汽车集团宣布将其与上汽集团合资的工厂的生产启动推迟两个星期，直到2月24日。

As the central government and provincial governments evaluate and introduce measures to protect the workforce and prevent the spread of the virus, Chinese companies must also plan for the realities of what looks like a prolonged slowdown or an uneven start-up. Of course, in China, keeping workers at home has significant financial considerations, beyond simply a delay in production. Here to the government has played a role; requiring state-owned landlords to reduce or exempt rents for small and medium-sized enterprises, encouraging non-stated owned landlords to do the same, offering reprieves from government deadlines, like the enterprise tax filing and refunding unemployment insurance premiums, delaying social security contribution adjustments and reducing the employer's contribution rate on employee's medical insurance premiums.

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当中央政府和省政府评估并采取保护措施保护劳动力并防止病毒传播时，中国企业还须为长期经济发展减速或不稳定恢复的现实做好计划。当然，在中国，将劳动力留家里不仅仅导致了生产上的延迟，更会造成其他重大经济方面的影响和考虑。这里政府将发挥其作用，例如要求国有房产所有者减少或免除中小企业租金；鼓励非国有房主也推行同样的政策；对企业税收备案和返还失业保险金在政府限期前提供缓缴；延迟调整社会保障缴款；并降低用人单位对职工医疗保险费的缴纳率。

In another extraordinary step, the China Council for the Promotion of International Trade ("CCPIT") created an online certification platform on January 26, 2020, allowing companies affected by the epidemic to submit proof of certain facts that establish a *force majeure event and excuse performance of contracts*. A *force majeure* event in commercial law terms is also often referred to as an "Act of God," an "Inevitable Accident," or a "Perils of the Sea." As these phrases might suggest, it is an event unintended and unprovoked by the parties to a contract that prevents either or both of the parties from performing their obligations. Most standard terms and conditions within contracts offer some form of *force majeure* language tucked towards the back of the parties' agreement, but seldom do parties have the need or the reason to consider this historically significant "life line." Importantly, however, not all *force majeure* clauses are the same, and parties would be well advised to consider the exact provisions within their own agreements. One size doesn't fit all, and often times such provisions obligate the party looking to exercise this option to provide certain notices or mitigate the harm.

除此之外，另一个非同寻常的举措是，中国国际贸易促进委员会 ("CCPIT" 或 "贸促会") 于2020年1月26日创建了一个在线认证平台，使受疫情影响的公司可以提交某些事实证据，以证明不可抗力事件和免除合同履行责任。商法条款中的不可抗力事件通常也被称为 "天灾", "不可避免的事故", 或 "海上风险"。正如这些短语所描述的那样，这是合同双方无意间无端引发的事件，从而阻止了任何一方或双方履行其义务。大多数合同中的标准条款和条件都在当事双方协议的背后提供了某种形式的不可抗力语言，但当事方很少有必要或有理由会考虑这项在历史上曾经很重要的合同中的"命脉"条款。但是，重要的是，并非所有不可抗力条款都相同，因此，当事双方最好考虑拟写自身合同中所需要的明确条款。合同模板并不能满足所有的需求，而且通常，此类条款要求寻求行使此选项的当事方有义务及时通知合同相对方或减轻对方损失。

Because the exercise of such rights is not linear, parties unable to perform should take any steps necessary to protect their legal rights. CCPIT's actions in this regard have given an added tool to Chinese suppliers. On February 6, 2020, CCPIT issued China's first force majeure certificate of Novel Coronavirus to an auto parts manufacturer in Huzhou, Zhejiang Province, where the manufacturer was unable to deliver products to its overseas clients on time due to the outbreaks. The Deputy Director-General of CCPIT, Commercial Certification Center said that force majeure certificates have been recognized by more than 200 countries and is widely accepted overseas. It is unclear, however, what significance this certificate offers in the way of protection in the United States. Nonetheless, given the developing situation in China, those impacted should evaluate this government-sponsored certificate as it could further an argument by the supplier that the Chinese government has determined that the facts necessitate such extraordinary action.

由于此类权利的行使不是自动或成规的，因此无法履行义务的当事方应采取任何必要步骤来保护其合法权利。贸促会在这方面为中国供应商提供了解决的方法。2020年2月6日，中国贸促会向浙江省湖州市的一家汽车零部件制造商颁发了中国首份新型冠状病毒不可抗力证书，该制造商由于疫情未能及时向其海外客户交付产品。贸促会商业认证中心副总干事说，不可抗力证书已经得到200多个国家的认可，并在国外被广泛接受。然而目前尚不清楚该证书在美国将获得多少程度的保护力度。但是，鉴于疫情局势的发展，受影响的企业应评估是否申请政府所支持的不可抗力证书，因为该证书可以使供应商进一步解释中国政府已确定疫情事实且必须采取当前此种特殊举措。

A force majeure certificate can be applied online through <http://www.rzccpit.com/>. An enterprise will need register an account with CCPIT first, start an application for 'Factual Proof of Coronavirus Outbreak' (新冠疫情事实性证明), and upload the following documents to CCPIT's web portal in PDF version:

不可抗力证书可以通过登陆<http://www.rzccpit.com/>在线申请。企业首先需要在中国国际贸易促进委员会注册帐户，添加“新冠疫情事实性证明”申请，并将以下文件以PDF版本上传到中国国际贸易促进委员会的网站：



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1. Certificate/announcement issued by the government or agency where the company is located; 企业所在地政府、机构出具的证明/公告
2. Notice/certificate on delay or cancellation of sea, land or air transportation; 海陆空相关延运、延飞、取消等通知/证明;
3. Export sales contracts, cargo booking agreements, freight agency agreements, customs declarations, etc.; and 出口货物买卖合同、货物订舱协议、货运代理协议、报关单等; 以及
4. Other available materials. 其他所能提供的材料。

The regular processing time for a force majeure certificate application takes five (5) business days. An applicant can choose to expedite the application within one (1) to three (3) business days. Please see [here](#) for details in applying a force majeure certificate.

不可抗力证书申请的常规处理时间为五个工作日。申请人可以选择加快申请速度至一至三个工作日。请参阅[此处](#)以获取有关不可抗力证书的详细信息。

Thank you. 谢谢您。

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