

### COVID-19 TRACK AND CONTACTS

1. All employees must wear a face mask at all times.

2. All employees must maintain a 6-foot distance from others.

### COVID-19 TRACK AND CONTACTS

3. All employees must avoid handshakes and hugs.

4. All employees must avoid crowded areas.

### COVID-19 TRACK AND CONTACTS

5. All employees must avoid public places.

6. All employees must avoid travel.

### COVID-19 TRACK AND CONTACTS

7. All employees must avoid public places.

8. All employees must avoid travel.

### COVID-19 TRACK AND CONTACTS

9. All employees must avoid public places.

10. All employees must avoid travel.

### COVID-19 TRACK AND CONTACTS

11. All employees must avoid public places.

12. All employees must avoid travel.

### COVID-19 TRACK AND CONTACTS

13. All employees must avoid public places.

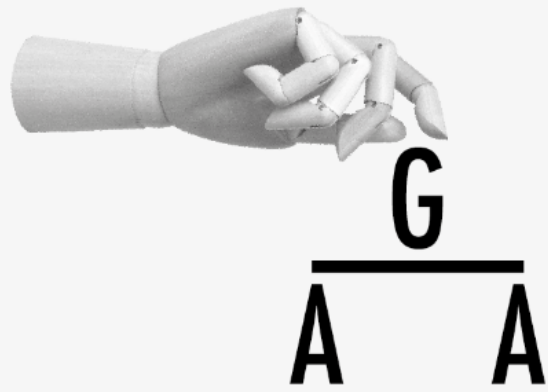
14. All employees must avoid travel.

### COVID-19 TRACK AND CONTACTS

15. All employees must avoid public places.

16. All employees must avoid travel.





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## **COVID-19, trade and contracts**

*Ivan Kasynyuk  
AGA Partners  
Kyiv, Ukraine*

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New challenges :

- 60 countries have already introduced export restrictions on agriculture products
- Shipping ports worldwide reported from 10% to 20% drop in comparison to 2019
- 50 countries introduced new port protocols: closure; 2 weeks quarantine; additional documentations, etc.

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And even more:

- Shipping containers stuck in China which led to significant shortage of transportation vehicles. Thus significant price increase.
- Shortage in labor in ports and increase of costs
- Affects variety of trade issues: surveys at ports, testing, certification, etc
- Delay leads to food loss and raising more problems with sanitary and phytosanitary issues.

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## ***Force majeure in different contracts***

1. GAFTA (prevention of shipment)
2. FOSFA (force-majeure and prohibition clauses)
3. SYNACOMEX (force-majeure clause)
4. Doctrine of frustration



***What are the criteria for the force majeure?***

1. Qualifying event
2. Unpredictable and unavoidable
3. Hinder or prevent performance of the contract (prevent - see *Tsakiroglou & Co. Limited v. Noble Thorl G.m.b.H.*)



## ***GAFTA and FOSFA clauses on force majeure***

FM events:

1. Government limit or prevents the export of goods;
2. External factors (acts of terrorism, riots, etc.);
3. Nature (Acts of God: weather, earthquake, COVID-19);
4. Any other event falling within the definition of "force majeure" ("catch-all clause").

N.B. Import restrictions are generally not a FM event





## ***GAFTA and prevention of shipment***

### **What to do:**

1. Notify your counter party within 7 days; or
2. Not later than 21 days before the beginning of the delivery period.

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## ***GAFTA and prevention of shipment***

### **Effect of FM:**

1. The contract is suspended for 21 days;
2. If the contract is not terminated, it is extended for another 14 days and automatically terminated afterwards.

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***FOSFA No4 force-majeure and  
prohibition clauses***

**What do you need:**

- Notification;
- Evidence.

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## ***FOSFA №4 force-majeure***

Effect:

- The contract is suspended for 60 days;
- Afterwards the contract is automatically terminated;
- Upon cancellation of force majeure - extra 21 days for delivery

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## ***Doctrine of frustration***

**When and how to apply:**

- the contract does not include a clause on force majeure;
- a higher standard of proof.

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## ***Case 1***

### **The contract:**

Goods: buckwheat;

GAFTA #48 - CIF;

Country of export - Ukraine;

Delivery period: 16-25 April 2020.

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## ***Case 1 (2)***

### **Contract performance:**

- 02 April 2020 - export ban (COVID-19);
- 04 April 2020 - notification on the buyers.



1. Force majeure?
2. Consequences?





## **Case 2**

### **The contract:**

Goods: rapeseed;

FOSFA - DAP contract;

Country of export: Ukraine;

Delivery period: 16-25 December

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## **Case 2 (2)**

### **Contract performance:**

- Russia introduce import ban;
- The Buyer rejects the goods and rely on force majeure;

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1. Is it force majeure?
2. Can the buyer be relieved from contract performance?

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## **Case 3**

### **The contract:**

Goods: buckwheat;

Delivery terms: GAFTA - FOB (Odessa);

Country of export - Ukraine;

Delivery period - 16-25 April 2020.

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### **Case 3**

Contract:

- 14 April 2020 the port of Odessa is closed for quarantine;
- The buyer has notified the seller on the force-majeure immediately.

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1. Force majeure?
2. FM for Buyers or Sellers?
2. Terms of delivery: FOB (Odessa only).

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A.G.A. Partners law firm

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