

CLIENT ALERT

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1

THE UNITED STATES ISSUES 90 DAY CUSTOMS DUTIES DEFERRAL FOR COMPANIES EXPERIENCING SIGNIFICANT FINANCIAL HARDSHIP DUE TO COVID-19

by Dan Ujcz and Bruce Thelen

The United States has imposed a 90 day deferral for the deposit of customs duties due March 1 – April 30, 2020 for companies experiencing significant financial hardship as a result of COVID-19. The deferral is temporary and limited to general customs duties. The deferral does not apply to special tariff measures such as the “steel and aluminum tariffs” (Section 232) and the “China tariffs” (Section 301).

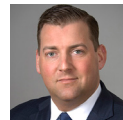
The April 18, 2020 “Executive Order on National Emergency Authority to Temporarily Extend Deadlines for Certain Estimated Payments” (available at <https://www.whitehouse.gov/presidential-actions/executive-order-national-emergency-authority-temporarily-extend-deadlines-certain-estimated-payments/>) and the April 19, 2020 “Temporary Final Rule issued by U.S. Customs and Border Protection (US-CBP) and the Secretary of Treasury” (available at <https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr-Temporary-Postponement-of-Payment-Period-for-DTF-20-4-2020-1.pdf>), establishes the following eligibility requirements, procedures, and restrictions:

- 1. Significant Financial Hardship:** A company seeking the deferral must demonstrate that its “operation must be fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19, and as a result of such suspension, the gross receipts of such importer for March 13–31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019.” The company need not file additional documentation with US-CBP to be eligible for this relief “but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.”
- 2. Deferral of Payments and Interest for March and April 2020:** The relief is a deferral as opposed to a suspension, meaning that the customs duties will need to be paid at least 90 days from the required date of deposit. The process “temporarily postpones the deadline for importers of record to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action.” In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period.
- 3. No Refunds if Previously Deposited:** The temporary postponement does not permit the return of any deposits of estimated duties, taxes, and/or fees that have been paid. As most companies pay the deposits within 10 days of entry, the most likely benefit will be for those deposits due in April 2020.

- 4. Does Not Apply to Special or Extraordinary Tariff Measures:** This temporary postponement also does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following:
 - a. AD/CVD—antidumping duties (assessed pursuant to 19 U.S.C. 1673 et seq.) and countervailing duties (assessed pursuant to 19 U.S.C. 1671 et seq.)
 - b. National Security Tariffs (e.g., steel and aluminum tariffs)—duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862)
 - c. Safeguards—duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 et seq.)
 - d. “China Tariffs”—duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 et seq.)
- 5. Does Not Apply to Any Other Debts and Payments Due to US-CBP:** The temporary postponement does not apply to deadlines for the payment of other debts to US-CBP, including but not limited to deadlines for the payment of bills for duties, taxes, fees, and interest determined to be due upon liquidation or reliquidation, deadlines for the payment of fees authorized pursuant to 19 U.S.C. 58c (except for merchandise processing fees and dutiable mail fees), or deadlines for the payment of any penalty or liquidated damages.

The intent of the duty deferral is to provide companies with liquidity during the initial phases of COVID-19 while maintaining the strong enforcement policies regarding China and other countries. Given the eligibility requirements, durational elements, and exclusions, companies seeking to utilize the deferral should exercise caution and consult counsel as needed. Additionally, companies may desire to develop a whole-of-supply chain strategy as other countries (e.g., Canada) have implemented similar customs duty deferral policies. Dickinson Wright is available to assist on all customs matters in order to ensure business recovery, resumption, and resiliency.

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