

Insights

IN THE FACE OF COVID-19, ABILITY TO DEFER DUTY DEPOSITS FOR U.S. IMPORTS IS BACK FOR CERTAIN IMPORTERS

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As of Monday, April 20, 2020, U.S. Customs and Border Protection (CBP), in connection with the Department of the Treasury, temporarily postponed for 90 calendar days the deadline for deposits of certain estimated duties, taxes, and fees for certain importers. This action followed the April 18, 2020, issuance of [Executive Order 13916](#), by which President Trump provided authority to Treasury to take appropriate action, in connection with the Department of Homeland Security, to extend certain payment deadlines during the COVID-19 national emergency. This action is not a comprehensive duty deferral for all entered merchandise. Moreover, for those importers that qualify, it is not a deferral of liquidation dates for goods previously entered.

As discussed in a [prior client alert](#), CBP in March offered an opportunity for importers to request, on a case-by-case basis, extension of payment deadlines for estimated duties and other monies due at time of entry. Less than a week later, CBP halted acceptance of such requests but retained the right to allow additional days for payment under narrow circumstances, such as a physical inability to file entry.

Now in a more concrete and broadly applicable action, CBP has issued a [temporary final rule](#) postponing for qualifying importers the payment date of certain estimated duties, taxes, and fees applicable to merchandise entered or withdrawn from warehouse for consumption (including from a Foreign Trade Zone) between March 1, 2020, and April 30, 2020. Qualifying importers are those suffering a significant financial hardship as a result of the COVID-19 pandemic. An importer is considered to be experiencing a “significant financial hardship” if:

1. The importer’s operations were 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**
2. As a result of such suspension, its gross receipts for March 13, 2020 through April 30, 2020 are less than 60% of the gross receipts for March 13, 2019 through April 30, 2019.¹

Importantly, there is no requirement to provide documentation to CBP to benefit from the postponement, but importers taking advantage of the delayed deadline should retain adequate records demonstrating that they qualify. Although the rule is already in effect, public comments are being accepted through Wednesday, May 20, 2020, via an online portal and by mail.

The temporary rule includes a number of limitations. The postponement does not apply to any entries containing merchandise that is subject to additional duties assessed under antidumping or countervailing duty (AD/CVD) orders, or collected pursuant to Section 232, Section 201, and Section 301 tariff actions (the "Trade Remedy Duties").² Entries that contain merchandise subject to such additional duties are not eligible for the postponement, even if the entry also contains merchandise subject only to standard duties (as laid out in the U.S. Harmonized Tariff Schedule). CBP anticipates that importers will file separate entries for shipments containing both eligible and ineligible merchandise.

In addition, the postponement does not apply to any other monies owed to CBP, such as liquidated damages or duties, taxes, fees, and interest due upon liquidation. No interest will accrue for the delayed deposit during the 90-day postponement, but deposits already paid will not be refunded as a result of this action.

Since the issuance of the rule, CBP has released a set of [Frequently Asked Questions](#) related to the temporary duty postponement. Of particular note, CBP indicated that:

- The Importer of Record (IOR) itself must qualify for the significant financial hardship. If the IOR is a broker, the broker must be experiencing the significant financial hardship, not merely claim the deferral in reliance on hardship experienced by the underlying beneficiary of the shipment or party ultimately responsible for the duty payments;
- Entries containing merchandise subject to AD/CVD order(s) do not qualify for the postponement, even if the applicable additional duty rate is zero or when applicable duty rates have not yet been established;
- Although entries containing merchandise that is subject to Trade Remedy Duties generally do not qualify for the duty postponement, such merchandise is not disqualifying of the entry if that merchandise has been excluded from the Trade Remedy Duties at the time of entry; and
- Importers should avoid filing drawback claims against deferred estimated duties until payments are made on the entry.

CBP has also provided additional information on payment instructions in Cargo Systems Messaging Service (CSMS) [#42421561](#).

Although this action will undoubtedly provide temporary economic relief to some importers, significant limitations apply, even beyond the hardship requirement. Importers should closely

review the temporary rule, CBP's FAQs, and the duties applicable to their merchandise before deferring payment of deposits for estimated duties, taxes, and fees, and ensure adequate recordkeeping with respect to significant financial hardship status in the event CBP requests supporting documentation.

1. See 26 C.F.R. 1.993-6 for the definition of "gross receipts" applicable to the significant financial hardship standard.

2. In addition to ongoing antidumping and countervailing duty orders, recent trade remedy actions include Section 232 tariffs applicable to certain imports of steel and aluminum; Section 201 tariffs applicable to certain solar goods; and Section 301 tariffs applicable to certain imports of Chinese-origin goods.

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