

Executive Order and CBP Rule Authorize 90-Day Duty Deferral for Certain Imports

April 21, 2020

Key Points

- On April 18, 2020, President Trump issued an Executive Order authorizing temporary deferral of certain duty payments, which CBP implemented via a Temporary Final Rule on April 20, 2020.
- Importers of record who have experienced “significant financial hardship” due to COVID-19 may defer payments of estimated MFN duties, taxes and fees for 90 days from the date those payments would otherwise have been due.
- The duty deferral does not apply to merchandise subject to trade remedies, including AD/CVD duties, duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962, or duties assessed pursuant to Sections 201 and 301 of the Trade Act of 1974.

Background

On April 18, 2020, President Trump signed an **Executive Order** granting the Secretary of the Treasury (the “Secretary”) emergency authority to extend the payment deadline for certain duties in response to COVID-19. The Order invokes the emergency authority under **19 U.S.C. § 1318**, which permits the Secretary to allow certain duty free imports during the existence of an emergency declared by the President.

On April 19, 2020, U.S. Customs and Border Protection (CBP) issued a **Temporary Final Rule** (the “Rule”) to implement the Order. CBP also issued two messages providing further instructions to importers relating to the implementation of the Rule (**CSMS #42423171** and **CSMS #42421561**). On April 20, 2020, CBP issued responses to **Frequently Asked Questions** (FAQs).

The Rule 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. The temporary postponement also applies to merchandise entered, or withdrawn from warehouses or foreign trade zones, for

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consumption in March or April 2020. In addition, no interest will accrue for the delayed deposits during the postponement period.

Imports and Importers Qualifying for Duty Deferral

The scope of imports and importers eligible for the Rule is limited.

The Rule applies to most-favored nation (MFN) duties for entries filed on or after March 1, 2020, and no later than April 30, 2020, as well as taxes and fees (including merchandise processing fees and cotton fees). The Rule does not permit return of any deposits of estimated duties, taxes and/or fees that have already been paid, even if the entries occurred during the postponement period. Entries that contain merchandise subject to antidumping or countervailing duties (AD/CVD), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962, or duties assessed pursuant to Sections 201 and 301 of the Trade Act of 1974 are ineligible for postponement.

Additionally, to take advantage of the Rule, importers of record must demonstrate “significant financial hardship” as a result of full or partial suspension of operations in March-April 2020 due to orders from a competent government authority that limit commerce, travel or group meetings. Additionally, as a result of the operational suspension, the importer of record’s “gross receipts” between March 13-31, 2020, or in April 2020 must be 60 percent less than the gross receipts for the comparable period in 2019. For this purpose, CBP has adopted the definition of “gross receipts” used under the income tax regulations at [26 CFR 1.993-6](#).

Implications for Importers

Because the Rule does not authorize the refund of any duties, fees or taxes already deposited—even for entries during the postponement period—and because most duties, fees and taxes in March have already come due, the Rule appears to practically cover only entries filed from early April through the end of April.

Importers of shipments subject to the specified trade remedies, including AD/CVD duties and Section 201, 232 or 301 duties, should take special precautions. The Rule and CBP’s implementing instructions indicate that CBP expects importers to file separate entries for shipments that contain both merchandise eligible for temporary postponement and merchandise ineligible due to the application of the specified trade remedies. As a result, it appears that entries containing only merchandise subject to the specified trade remedies are ineligible for the deferment of any duties, including MFN duties. However, CBP’s FAQs note that “[m]erchandise granted an exclusion from Trade Remedy duties qualifies for the 90-day postponed payment” so long as the exclusion is in effect at the time of entry. The FAQs continue that: “Merchandise that benefits from the retroactive application of exclusions after the time of entry are not eligible for the 90-day duty postponement. Entries with any merchandise subject to AD/CVD, Section 201, 232 or 301 Trade Remedy duties are not eligible for the 90-day postponement.”

Importers of record are not required to file documentation with CBP demonstrating eligibility for duty deferment as a result of “significant financial hardship,” but they must maintain such documentation as part of their books and records.

According to CBP’s instructions, periodic monthly statement (PMS) filers were required to make updates to April 2020 statements by 11:59 p.m. Eastern time on April 20,

2020. CBP's instructions indicate that the duties and fees paid via the April PMS, which covers imports through the end of March, can be postponed until July 22, 2020. Likewise, duties and fees paid via the May PMS, which covers imports through the end of April, can be deferred until August 21, 2020. CBP has updated its systems to make it easier for importers to update the PMS.

With respect to estimated taxes, CBP's instructions provide that taxes paid via the deferred tax schedule may be postponed up to three months from the payment due date.

While the Rule became effective immediately, CBP has invited public comment on its provisions by using the docket USCBP-2020-0017 on the Federal eRulemaking Portal.

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