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U.S. Government Postpones Payment of Normal Import Duties for 90 Days to Mitigate COVID-19 Impact

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DAY

COMMENTARY
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U.S. Government Postpones Payment of Normal Import Duties for 90 Days to Mitigate COVID-19 Impact

IN SHORT

The Situation: The Trump administration has issued a temporary final rule postponing payment of certain duties, taxes, and fees for 90 days to provide temporary relief to importers suffering an economic impact from the COVID-19 outbreak.

The Result: The temporary postponement of the payment period will only apply for importers that can demonstrate "significant financial hardship," and the relief will not extend to duties assessed pursuant to certain trade remedies, including Section 232 or Section 301 duties.

Looking Ahead: Importers should assess whether they qualify for the temporary postponement of payment of certain duties, taxes, and fees and consider participating in the public comment process to help refine the rule's coverage and protections for affected U.S. importers.

On April 19, 2020, President Trump issued an executive order authorizing the Secretary of the Treasury temporarily to extend payment deadlines for certain estimated payments. The following day, U.S. Customs and Border Protection and the U.S. Department of the Treasury issued a [temporary final rule](#) that took immediate effect and postponed payment of certain normal import duties, taxes, and fees on merchandise imported during March and April for a 90-day period. The rule comes as part of the Trump administration's ongoing efforts to mitigate the economic impact of the COVID-19 outbreak.

Temporary Final Rule

The temporary final rule will allow importers that have suffered "significant financial hardship" to defer payment of normal import duties, taxes, and fees owed for 90 days. To demonstrate "significant financial hardship," the importer's:

- business operations must have either been 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
- gross receipts for March 13-31, 2020, or April 2020 must be less than 60% of the gross receipts for the comparable period in 2019.

Importers do not need to prepare an application or submit gross receipts prior to delaying the payment of duties. However, companies are required to maintain records to demonstrate compliance with the rule's eligibility requirements. The temporary postponement applies only to qualified imported merchandise made on or after March 1, 2020, and no later than April 30, 2020, by importers of record with a significant financial hardship.



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import duties, taxes, and fees owed for 90 days.

Excluded Duties

The executive order authorizes the extension of deadlines for payment of certain duties but prohibits relief from other duties imposed pursuant to certain trade remedies. These excluded duties include:

- Duties assessed pursuant to an antidumping or countervailing duty order;
- Steel and aluminum duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962;
- Duties assessed on Chinese-origin and other goods pursuant to Section 301 of the Trade Act of 1974; and
- Duties assessed to combat unfair trade practices and safeguard domestic industries pursuant to Section 201 of the Trade Act of 1974.

While duties imposed on Chinese-origin goods under Section 301 are currently excluded from the new rule's coverage, importers may benefit from a relatively new exclusion process for medical care and related products that are necessary in the response to the COVID-19 outbreak. That exclusion portal, which we discussed in [a prior Alert](#), permits companies to participate regardless of whether the United States Trade Representative is still considering or has denied a previously submitted product exclusion request for the relevant product. Interested parties may apply for exclusions until June 25, 2020.

Comment Period

Regarding the postponement of payment of normal duties, interested parties are invited to comment on the rule until May 20, including the rule's potential economic, environmental, and federalism effects. The rule suggests that commenters should refer to a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority to support the recommended change. As a result, companies should carefully review the temporary final rule and assess whether certain modifications may be necessary to alleviate the economic impact of COVID-19. For example, companies may consider requesting a longer period of temporary relief depending on their financial hardship.

THREE KEY TAKEAWAYS

1. Importers suffering "significant financial hardship" as a result of the COVID-19 outbreak may qualify for a 90-day postponement of payment of normal import duties.
2. The temporary final rule establishes criteria for which companies are eligible for relief as well as what duties are eligible for postponement of the payment period.
3. Companies should consider participating in the public comment process to assist in potentially refining the rule's coverage and protections for affected U.S. importers.



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