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Importers Facing "Economic Hardship" May Seek To Delay Payment of *Ordinary* Tariffs For 90 Days: Punitive Tariffs and Trade Remedies Excluded

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International Trade

In response to ongoing requests for tariff relief from importers facing economic hardship during the COVID-19 crisis as well as pressure from Congress, U.S. Customs and Border Protection ("CBP") and the U.S. Department of the Treasury released a joint temporary final rule on April 19, 2020, that provides importers with an option to delay the payment of certain import duties, taxes, and fees for 90 days. Payments eligible for deferral are deposits of estimated duties on formal entries of merchandise entered or withdrawn from a warehouse for consumption, including entries for consumption from a Foreign Trade Zone, in March or April 2020. The postponement option is available to importers who can demonstrate "significant financial hardship."

Importantly, the option to delay payment does not cover tariffs imposed under Section 232 of the Trade Expansion Act of 1962, Section 201 of the Trade Act of 1974, and Section 301 of the Trade Act of 1974 or antidumping and countervailing duties. The Trump Administration has used these trade laws to increase tariffs on imports from China, as well as on specific products such as steel, aluminum, solar cells and modules, and large residential washing machines. While there was earlier discussion of a payment deferral option for *all* tariffs, those suggestions faced considerable political pushback, which resulted in several apparent changes of course prior to the current announcement of a payment deferral option only for ordinary tariffs.

An importer will be considered to have a "significant financial hardship" if (1) the importer's operations were fully or partially suspended during March or April 2020 as the result of orders from a "competent governmental authority limiting commerce, travel, or group meetings because of COVID-19" and (2) the importer's gross receipts from March 13 to 31, 2020, or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019.

Importers are not required to file documentation of significant financial hardship when exercising the deferred payment option. The guidance makes clear, however, that it is the importer's responsibility to maintain records and documentation that demonstrate its eligibility for the relief. Importers should follow this guidance, as CBP may later audit importers that use the deferral option.

To facilitate this option to delay payment, CBP encourages importers and filers to take advantage of Automated Clearinghouse for electronic payment to the greatest extent possible. The authorization of the 90 additional calendar days for payment without penalty applies whether an entry summary is paid as a single-pay check, ACH Daily and Monthly Statement, or Periodic Monthly Statement.

More information is available via Cargo Systems Messaging Service ("CSMS") #42423171 (announcement of 90-day postponement) and CSMS #42421561 (payment instructions).

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