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CBP Postpones Deadline to Pay Certain Estimated Duties, Taxes, and Fees

By Ted Posner and Nate Cunningham

On April 20, in response to the COVID-19 pandemic and related economic slowdown, U.S. Customs and Border Protection (“CBP”) and the Department of the Treasury issued a temporary final rule allowing importers of certain goods to postpone by 90 days the deposit of estimated duties, taxes, and fees to CBP. Subject to a “significant financial hardship” condition and exceptions for goods subject to tariffs imposed as remedies for certain foreign conduct found to be harming producers in the United States (e.g., dumping; subsidization; unjustifiable, unreasonable, or discriminatory acts, policies, or practices that burden or restrict U.S. commerce), the rule applies to goods formally entered into the United States or withdrawn from warehouse for consumption between March 1 and April 30, 2020.

Ordinarily, an importer must pay estimated duties, taxes, and fees to CBP as of the date it enters goods into the United States or withdraws goods from warehouse for consumption.¹ (See 19 C.F.R. §§ 141.101 – 105). “Entry” in this context refers to the submission of the physical or electronic documentation necessary for CBP to release goods from its custody, allowing them to enter U.S. commerce. Subsequent to entry, CBP determines the precise duties, taxes, and fees owed by the importer in a process known as “liquidation.” If the amount owed upon liquidation exceeds the amount deposited, then CBP issues an invoice to the importer; if the amount owed upon liquidation is less than the amount deposited, then CBP refunds the excess.

Under the temporary final rule (which will be codified at 19 C.F.R. § 24.1a), goods may be released from CBP custody upon filing of the required entry documentation, with the deposit of estimated duties, taxes, and fees to be made up to 90 days later. The charges encompassed by the rule include tariffs, assessments imposed by the Internal Revenue Service (such as excise taxes), and administrative fees (such as merchandise processing and harbor maintenance fees). No interest will accrue on a deposit postponed in accordance with this rule. Nor will CBP assess any penalty, liquidated damages, or other sanction for a payment properly postponed in accordance with the temporary final rule. However, as noted above, certain conditions and exceptions apply.

First, the rule applies only to entries or withdrawals from warehouse for consumption made between March 1 and April 30, 2020.²

Second, the postponement is available only to an importer that can demonstrate significant financial hardship. The importer is not required to submit to CBP documentation establishing such hardship, but it must maintain such documentation as part of its books and records. For this purpose, “significant financial hardship” exists for an importer if

“the operation of such importer is 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.”

Third, the postponement does not apply to the entry or withdrawal from warehouse for consumption of goods that are subject to duties under specified trade remedy statutes – in particular:

- the antidumping statutes (pertaining to duties imposed in response to injurious “dumping” – ordinarily consisting of sales of imported goods in the United States at prices below home market prices);
- the countervailing duty statutes (pertaining to duties imposed to offset the effects of subsidization of foreign production that is injurious to U.S. producers of like products);
- section 232 of the Trade Expansion Act of 1962 (pertaining to duties imposed for reasons related to national security);
- section 201 of the Trade Act of 1974 (pertaining to duties imposed to address certain injurious import surges); and
- section 301 of the Trade Act of 1974 (pertaining to duties imposed to address unjustifiable, unreasonable, or discriminatory foreign acts, policies, or practices that burden or restrict U.S. commerce).

Importantly, the postponement does not apply to any **entry** where the **entry summary** includes goods subject to duties under any of the foregoing statutes. “Entry summary” refers to the supplemental documentation that an importer provides to CBP – usually after entry, but sometimes concurrently with entry – “to enable CBP to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.” (19 C.F.R. § 141.0a(b).) An entry summary is submitted on CBP Form 7501, and subject to conditions specified by regulation (see 19 C.F.R. § 142.17), it may cover multiple different entries.

If an importer seeking to get the benefit of the deposit postponement is entering some goods subject to duties under the above-enumerated trade remedy statutes and other goods that are not subject to such duties, it will be important to provide separate entry summaries for those goods, even though the entries ordinarily could be consolidated on a single entry summary. If an importer does not provide separate entry summaries for trade remedy goods and non-trade remedy goods, it will not be able to avail itself of the postponed deposit deadline even for the non-trade remedy goods.

Moreover, it should be noted that when an entry is ineligible for the postponement due to applicability of duties under one or more of the trade remedy statutes, the ineligibility is not limited to the trade remedy duty portion of the importer’s liability. In other words, if a given entry is subject to trade remedy duties, not only is the importer disqualified from postponing deposit of those duties, it also is disqualified from postponing deposit of ordinary (*i.e.*, non-trade remedy) duties, taxes, and fees.

This exception is significant because of the increasing use of the trade remedy statutes in recent years. Most goods imported from China now are subject to duties under section 301 of the Trade Act of 1974. With certain exceptions and exemptions, steel and aluminum products from most sources around the world are subject to tariffs under section 232 of the Trade Expansion Act of 1962. Similarly, washing machines and solar cells from most sources are subject to tariffs under section 201 of the Trade Act of

1974. And a variety of other goods from countries around the world are subject to antidumping duties and countervailing duties as a result of trade remedy proceedings initiated by this Administration and prior Administrations.

In short, while the 90-day postponement provided by the temporary final rule may afford significant relief to some importers for some entries, it is important to verify that the entries in question in fact are eligible for that relief.

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- ¹ From time to time, importers may move goods to the United States and convey them to a bonded warehouse rather than enter them immediately into U.S. commerce. Even though such goods are physically present in the United States, they are considered not to have entered the customs territory of the United States until they are withdrawn from warehouse.
 - ² In certain cases, time of entry ordinarily is determined in part by reference to time of deposit of estimated duties, taxes, and fees. See 19 C.F.R. § 141.68. The temporary final rule waives that requirement. Thus, in such cases, time of entry is determined without regard to deposit of estimated duties, taxes, and fees.

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