

# CLIENT ALERTS

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## New Executive Order Gives 90 Day Extension on Payment of Certain Duties (But Not Section 232 or 301 Tariffs)

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U.S. Importers who are able to demonstrate they suffered a significant hardship caused by COVID-19 can benefit from President Trump's Executive Order extending the payment deadline on certain duties. This Order is similar to an earlier announcement proposed by U.S Customs and Border Protection, which was later withdrawn due to opposition from some domestic companies.

"By postponing the deadline to deposit certain duties, taxes, and fees for 90 days, we are providing much-needed relief to affected businesses," Treasury Secretary Steven Mnuchin said in a statement about the Order. "This [extension] will protect American jobs and help these businesses get through this time." Although the Order itself is still unpublished as of the date of this client alert, U.S. Customs and Border Protection (who is responsible for implementing the Order) issued an interim final rule on Sunday, April 19, 2020, [Temporary Interim Final Rule](#). Notably, some members of Congress have also been pushing the administration for such a payment extension.

President Trump's Order applies only to normal Column 1 duties, which are generally referred to as "most-favored-nation" or "MFN" tariffs, in the Harmonized Tariff System (HTS). The 90-day extension only applies to these basic MFN tariffs and does not apply to special duties under anti-dumping and countervailing laws, nor does it apply to Section 232 duties under the national security clause placed on steel and aluminum. Likewise, the extension does not apply to the four tranches of Section 301 tariffs placed on Chinese imports since 2018. As we reported in a previous alert, on March 27, 2020 a special process for COVID-19 related products subject to the Section 301 duties from China was introduced. (See Client Alert.)

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To qualify for the 90-day tariff extension, importers “must demonstrate a significant financial hardship.” Reportedly, importers will only be eligible for the extension if their operations were at least partially suspended in March or April due to emergency orders stemming from COVID-19. The Order states that importers can demonstrate financial hardship if their gross receipts between March 13-31, 2020 or in April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. Temporary Interim Final Rule. Importers may be asked to provide supporting documentation such as their customs closures or records to demonstrate that their gross receipt reductions relate to the COVID-19 emergency. Importantly, no interest on duties-owed will apply to these importers during the tariff extension period.

Customs, in its interim final regulation, noted that it:

“is amending the CBP regulations by adding a new section 24.1a to title 19 of the Code of Federal Regulations (19 CFR 24.1a) to temporarily postpone 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 but for this emergency action. In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period.”

This emergency action is being taken in response to the extraordinary challenges facing U.S. individuals and businesses during the COVID-19 national emergency (which significantly affects the trade community), and is consistent with the Secretary of the Treasury’s decision to postpone due dates for Federal income tax payments under section 7508A(a) of the Internal Revenue Code (available at <https://www.irs.gov/coronavirus>).” Temporary Interim Final Rule.

The Customs interim final regulation is open to public comment for 30 days from the date of publication under Docket No. USCBP-2020-0017. Importers that would like to see this temporary postponement extended for a longer time period, or expanded to include duties under Section 301 and 232 as well as Antidumping and Countervailing duties, can submit comments to this effect.

Please contact your Butzel Long attorney or the authors of this Alert for assistance with this process.

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