

## U.S. Importers Can Postpone Duty Payments for 90 Days, But Relief Limited

Alert

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On April 19, U.S. Customs and Border Protection (CBP) announced the rollout of a 90-day duty deferral program for importers experiencing significant financial hardship. The temporary relief is limited in scope because it does not apply to Section 301 tariffs imposed by the Trump administration on goods from China. Also, postponement is limited to merchandise imported in March and April 2020. Eligible importers should contact their customs brokers to ensure payments are scheduled on a timely basis.

### What relief is available?

President Trump signed an executive order on April 18 authorizing the secretary of the treasury in consultation with CBP to temporarily postpone for a period of 90 calendar days payment of certain duties, taxes and fees by importers facing significant financial hardship due to COVID-19. The relief became effective April 20.

On April 22, CBP published a Temporary Final Rule (TFR) in the federal register amending its regulations by adding a new section, 19 CFR Part 24.1(a). The TFR noted that the action was taken in response to the extraordinary challenges facing the trade community during the COVID-19 national emergency and is consistent with treasury's decision to postpone due dates for federal income tax payments.

The 90 calendar day payment deferral applies to formal entries of merchandise (that is, import shipments with a value over \$2,500) entered into the United States or withdrawn from warehouse for consumption (including entries from foreign trade zones), in March or April 2020.

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No interest will accrue for the postponed payments during the 90-day period. Nor will CBP impose any penalties, liquidated damages or other sanctions.

Federal excise taxes collected by CBP, such as taxes on alcohol imports, can also be postponed.

Importers had been actively lobbying the Trump administration for some form of tariff relief for weeks. CBP previously announced on March 20 that it would approve additional days for duty payments on a case-by-case basis. A few days later, CBP notified importers that it was no longer accepting requests for extensions of time to make payment.

## Who is eligible for duty postponement?

Duty postponement is available to importers who have experienced a "significant financial hardship." In order to qualify, an importer must satisfy the following criteria:

1. An importer's operations have been fully or partially suspended during March or April due to orders from a competent government authority limiting commerce, travel or group meetings due to COVID-19.
2. As a result of such suspension, the gross receipts of such importer for the period March 13-31 or April 2020 are less than 60% of the gross receipts for the comparable period in 2019.

According to [Frequently Asked Questions \(FAQ\)](#) published on the CBP website, "gross receipts" is defined as provided in the IRS regulations at 26 CFR §1.9993-6.

No documentation must be submitted to CBP to postpone payments, but importers are required to maintain records evidencing their eligibility. CBP may request the documentation in the future to ensure compliance.

The importer of record (IOR) is the only party eligible for postponement. For example, a customs broker who acts as IOR on behalf of clients is not eligible for duty postponement unless the broker satisfies the criteria for significant financial hardship.

## Are all goods eligible for duty postponement?

The temporary postponement does not apply to all goods. In fact, as the TFR makes clear, products that qualify for duty postponement are limited.

Entries with goods subject to one or more of the following trade remedy duties are not eligible for postponement:

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- Antidumping or countervailing duties
- Section 232 duties (e.g., steel and aluminum imports)
- Section 201 duties (e.g., solar cells and washing machines)
- Section 301 duties (e.g., goods from China)

In order to take advantage of the 90-day postponement, importers must ensure their entries do not include merchandise in any of the above-referenced categories. That is, if a shipment contains both eligible and non-eligible merchandise, the entire shipment becomes ineligible for postponement. CBP is authorizing importers to submit separate entries to segregate eligible merchandise from non-eligible merchandise (for new entries only).

Because a significant amount of imports into the U.S. are China-origin goods subject to the Section 301 tariffs, this temporary postponement will have limited impact. Instead, the duty postponement will benefit imports from Vietnam and other countries where some U.S. manufacturers have transitioned production outside of China.

Notably, the FAQ released by CBP appears to confirm that goods from China designated on Section 301 Tranche 4B (List 4B) are eligible for the 90-day postponement. List 4B includes many consumer products such as toys, apparel and footwear. In December 2019, as a result of the Phase One trade deal between the U.S. and China, the administration indefinitely suspended the imposition of a 15% duty on List 4B merchandise.

Also, goods entered in March or April that were granted a product exclusion are eligible for duty postponement, so long as the exclusion was in effect on the date of entry.

## How do importers postpone duties?

Importers who want to take advantage of the additional 90 calendar days for payment should work with their customs brokers to schedule payments in the Automated Commercial Environment (ACE) portal. CBP will not adjust payment dates.

## Opportunity for Comment

In response to the duty deferral announcement, many members of industry voiced concern that 90 days is not enough to deal with the economic effects of the pandemic and should be increased to 180 days or longer.

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CBP invites interested persons to comment on all aspects of the TFR. CBP specifically invites comments that relate to the economic, environmental or federalism effects that might result from the regulatory change, with reference to the specific portion of the rule, the reason for recommended change, and include date, information or authority that supports the recommended change. Comments must be submitted no later than May 20, 2020.

### Additional Information

The TFR, payment instructions and FAQs related to duty postponement can be found on [CBP's COVID-19 Updates and Announcements webpage](#).

For more information on the announcement, please contact [Elsa Manzanares](#), [Guy Smith](#) or the Stinson LLP contact with whom you regularly work.

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