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Five Considerations When Seeking to Temporarily Postpone Payment of Import Duties Due to the COVID-19 Emergency

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On April 19, 2020, U.S. Customs and Border Protection ("CBP"), the Department of Homeland Security, and the Department of the Treasury issued a temporary final rule (the "Rule") permitting importers to postpone payment of certain import duties for 90 days to help offset the impacts of COVID-19. As the Rule does not create a blanket authorization to postpone payment of all duties, taxes and fees, it is important to examine the criteria carefully.

Though the Rule comes on the heels of President Trump's April 18, 2020, Executive Order, CBP has considered granting some form of import relief for more than a month. On March 20, CBP announced authorization of case-by-case review of extension requests for payment of duties, taxes and fees due to the effects of COVID-19, but overturned the authorization only a few days later. The Rule reflects CBP's ongoing process as it attempts to strike a balance between providing some relief to companies suffering significant financial hardship from COVID-19 while retaining certain protective duties that are considered critical to the Administration's trade policy.

Below are five considerations for importers in assessing whether they may postpone import duty payments:

1. **The Rule applies only to merchandise entered in March and April 2020.** For qualified imported merchandise entered into the United States only from March 1 to April 30, 2020, importers can delay payment of duties, taxes and fees by 90 days.
2. **Importers cannot get refunds for payments already made.** If an importer has already paid duties for entries in March and April 2020, CBP is not permitted to return such payments.

3. **The Rule excludes merchandise subject to antidumping duties, countervailing duties, or to Section 201, 232, or 301 tariffs.** If the entry summary for a particular entry includes merchandise that is subject to antidumping duties, countervailing duties, or Section 201, 232, or 301 tariffs, the entire entry cannot benefit from the Rule, and the importer must pay all duties, taxes and fees on time.
4. **Importers can split shipments into more than one entry to take advantage of the Rule for qualified merchandise.** CBP indicated in the Rule that it anticipates importers will "file separate entries" for merchandise in a shipment that is eligible for postponement under the Rule and merchandise that is not eligible.
5. **The importer must be subject to "significant financial hardship."** An importer must have at least partially suspended its operations during March or April 2020 due to orders from a governmental authority limiting commerce because of COVID-19. In addition, the gross receipts for March 13-31 or the month of April must be less than 60% of the gross receipts for such period in 2019. The importer does not need to provide CBP with evidence in its import documentation, but must keep such information in its records.

These criteria can involve various nuances, including how to determine the entry date and overall eligibility based on applicable duties. Properly completing entry documentation will also be critical to maximizing the merchandise that qualifies for postponement. Importers should therefore consult specialist counsel or their customs broker regarding applicability of the Rule.

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