



Temporary Deferment of Import Duty Payments

April 30, 2020

On April 18, 2020, President Donald J. Trump issued [Executive Order 13916](#) to provide the Secretary of the Treasury temporary emergency authority under Section 318(a) of the Tariff Act of 1930 ([19 U.S.C. 1318\(a\)](#), as amended) to extend deadlines for certain estimated payments of taxes, duties, and fees “for importers suffering significant financial hardship because of COVID-19.” Section 318(a) allows the President to authorize the Secretary of the Treasury to extend payment deadlines during a period of national emergency proclaimed pursuant to the National Emergencies Act.

Following the executive order, the Department of the Treasury and U.S. Customs and Border Protection (CBP) [issued a temporary final rule](#) immediately postponing the deadlines for importers to deposit certain estimated duties, taxes, and fees for 90 days. To qualify for the temporary postponement, an importer’s operations must have (1) been fully or partially suspended during March or April 2020 due to orders from a competent governmental authority, and (2) generated gross receipts for March 13-31, 2020 or for April 2020 that were less than 60% of the gross receipts for the comparable period in 2019. The rule does not require importers to file documents proving their eligibility, but does require them to maintain records establishing that they meet the requirements for relief. The temporary postponement does not apply to [antidumping duties](#), countervailing duties, duties assessed under [Section 232 of the Trade Expansion Act of 1962](#), or duties assessed under Sections [201](#) or [301](#) of the Trade Act of 1974. The temporary final rule also requires that shippers with both eligible and ineligible products file separate entries for each group of products.

While the temporary final rule was immediately effective, Treasury and CBP have [invited public comment on its provisions](#).

Background

These executive actions were the latest in several actions taken by CBP on deferments. On March 20, CBP [announced](#) that it would grant additional days for payment of estimated duties, taxes, and fees on a case-by-case basis. Opponents of these measures, such as domestic steel producers, the [Committee to Support U.S. Trade Laws](#) (CSUSTL), and [others](#), expressed concern that CBP’s discretionary policy might grant payment extensions to importers subject to Section 232, antidumping, and countervailing duty orders. CSUSTL urged that CBP must not “exercise discretionary authority to facilitate the entry of

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unfairly traded imports into the U.S. market.” CBP [reversed](#) its discretionary practice on March 26, stating that it was “no longer accepting requests for additional days for payment.”

While there were supporters for CBPs discretionary deferral, [certain businesses, organizations](#) and Members of Congress pushed the administration to create a more formal and less discretionary policy. Senator Dianne Feinstein [penned a letter](#) urging the administration to defer all tariffs “for at least 90 days and, more broadly, until the companies paying them can emerge from the ongoing crisis.” Senator Charles E. Grassley, chair of the Senate Finance Committee, [advocated for a similar extension](#), comparing such an effort to the 90-day relief already offered on tax payments by the Internal Revenue Service. Such a deferral, he argued, “would be a commonsense way to improve the liquidity of our businesses during this time of economic disruption.”

By the end of March, reporting in major news outlets [\(1\)\(2\)\(3\)](#) indicated that an announcement on a 90-day deferral was imminent. The administration [pushed back against such reports](#) and it was a further 18 days before President Trump issued an executive order authorizing a postponement.

Reception and Issues for Congress

The U.S. Chamber of Commerce [lauded the temporary final rule](#), saying that “it will help American businesses make payroll and retain employees in the coming weeks.” Similarly, the Retail Industry Leaders Association (RILA) [praised the rule](#), stating that it “will improve liquidity and the cash flow for those retailers who have closed stores during this crisis.” However, supporters of the rule have expressed concern with its limitations. The rule, for example, does not allow a refund of duties already deposited. Because most duties, fees, and taxes for March have already been paid, the temporary final rule effectively covers only entries filed in April. RILA has expressed concerns about the limited temporal scope for the order and has [urged](#) that CBP extend the rule for another 90 days.

The rule has also had vocal opponents. The President of the Alliance for American Manufacturing, which represents certain manufacturers and the United Steelworkers, [called the move](#) “a bad idea” and expressed concern with potential loopholes. Specifically, he stated that the lack of a requirement to provide proof of hardship “practically begs for fraud and abuse.” As such, he argued, the “deferral action shouldn’t be extended, period.”

Other countries are deferring the payment of duties and other taxes because of the pandemic. Canada, for example, has established a program that [allows importers to defer payment](#) of customs duties and other taxes until June 30, 2020. The United Kingdom, France, and other countries, in contrast, have eschewed general programs in favor of granting deferments on a case-by-case basis. The approach of the UK and France is limited by the rules of the EU customs union, which allows EU members to grant deferrals on a case-by-case basis, but does not allow a general deferment of the kind implemented by Canada.

The rule also comes amidst other tariff-related measure taken by the administration in the midst of the COVID-19 outbreak. For example, the administration [excluded](#) Chinese facemasks and other medical gear from the tariffs the administration had previously placed on them under Section 301.

Article I, Section 8 of the U.S. Constitution grants the authority to regulate international trade to Congress. Since early March, several Members of Congress have been advocating for a deferment like that granted in CBP’s temporary final rule. However, the period for deferment expires on April 30 and the administration has not signaled that it intends to extend eligibility. Members are likely to continue to weigh in on their views and signal their policy preferences to the administration in the coming days and weeks.

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