

Certain Tariff Deferrals Possible for U.S. Importers Whose Revenue Has Sharply Declined

by Dave Townsend

Some U.S. importers may be able to defer payment of certain U.S. import tariffs by 90 days under a temporary final rule ("Tariff Deferral Rule") published on April 22 by U.S. Customs and Border Protection ("CBP") and the U.S. Department of the Treasury. The Tariff Deferral Rule is intended to help U.S. businesses facing a sharp fall in revenue, such as retailers who have been hard hit by the U.S. response to the novel coronavirus epidemic. However, as explained below, the Tariff Deferral Rule is strictly limited in scope and duration because only select businesses that pay certain tariffs through the end of April may benefit from it.

To qualify under the Tariff Deferral Rule, the U.S. importer must satisfy two legal conditions: (1) it must be partially or fully shut down, and (2) its gross revenue must have declined by 60% or more in the latter half of March (March 13-31) or the month of April compared to its 2019 revenue in the same period. A qualified U.S. importer will not require any pre-approval from CBP to defer paying such tariffs, but each U.S. importer who claims the right to rely on the Tariff Deferral Rule will need to be prepared to demonstrate its eligibility to CBP at a later time, if requested.

In addition, the Tariff Deferral Rule applies only to the U.S. importer of record of the goods subject to the tariffs. Accordingly, a business would not receive any relief from the Tariff Deferral Rule if it does not itself import the goods but merely buys them from a supplier that is the actual importer of record. In such a case, the non-importer business would need that supplier itself to qualify under the Tariff Deferral Rule and to defer its tariff payment in a timely manner and then to pass on that deferral in a temporary price reduction to the business.

The Tariff Deferral Rule only covers imports entered into the United States in March and April 2020 and offers no refund of previously paid tariffs. Thus, the Tariff Deferral Rule will only benefit U.S. importers who have delayed depositing tariffs or whose imports will enter in mid-to-late April 2020 because tariff deposits are often due within days of the merchandise arriving in the United States and upon the importer's formal filing of its entry

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summary (Form 7501) with CBP. Each U.S. importer will thus need to assess promptly whether it can benefit from deferring the applicable tariffs, or else the window to claim the deferral will quickly close.

Finally, the only tariffs eligible for the 90-day delay in payment under the Tariff Deferral Rule are U.S. “most favored nation” tariffs, that is, the regular import tariffs established for World Trade Organization members under the Harmonized Tariff Schedule of the United States. Significantly, the Tariff Deferral Rule excludes all antidumping and countervailing duties and also any of the Section 201 (safeguards), Section 232 (aluminum and steel), or Section 301 punitive tariffs that the Administration has imposed over the past two years on various goods made in China or the European Union.

Dorsey & Whitney attorneys can assist companies in assessing whether they can benefit from the Tariff Deferral Rule, including examining relevant CBP regulations applicable to the entry of merchandise and the deposit of tariffs.