

Devil in the details for COVID-19 duty deferral

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By Doreen Edelman and Andrew Bisbas

Importers wanting to take advantage of US Customs and Border Protection's (CBP) recently announced COVID-19-related duty deferral option should be cognizant of the makeup of their entry summaries.

Importantly, if an entry summary includes any products that are subject to the list of special duties — including those related to tariffs on imports from China and steel and aluminum — the entire entry is excluded from the deferral program and the importer cannot defer any of the duties owed on that entry. Since so many products are currently subject to Trump administration tariffs, this limitation prevents a huge portion of entries from China from benefiting from the duty deferral program.

CBP on Monday announced that importers of certain goods could defer for 90 days duties owed on products brought into the United States between March 13 and April 30. The deferral is meant to help importers cope with the economic effects of the COVID-19 pandemic.

Last month CBP had announced a broader case-by-case duty deferral option, only to cancel the program a week later in response to pressure from interest groups, including those in the steel industry. Since then, pressure on the Trump administration to refrain from deferring CBP payments, particularly special additional duties such as Section 301 duties (often referred to as "China" tariffs) and antidumping and countervailing duties, has not let up.

But a congressional cohort has also continued to push for the opposite in the interest of providing relief to US businesses and importers that have struggled to stay afloat as many parts of the economy grind to halt.

Apparently, the push from members of Congress to implement some kind of duty deferral program worked, but to a limited extent. The result of the competing lobbies is a 90-day duty deferral program that is specifically aimed at importers experiencing a significant financial hardship due to the coronavirus disease 2019 (COVID-19). The requirements that need to be met for a company to claim "significant financial hardship" under the program are outlined below.

Following an executive order from President Donald Trump authorizing the agency action, CBP published a temporary final rule describing the details of the program, as well as a list of frequently asked questions to help companies determine whether and to what extent the program applies to them.

Program details

In order to be considered to have a significant financial hardship, a company must have had its operations fully or partially suspended during March or April 2020 due to orders from a government limiting commerce, travel, or group meetings due to COVID-19. In addition, due to the suspension of its operations, the gross receipts of the company for March 13-31, 2020, or April 2020 must be less than 60 percent of its gross receipts for the comparable period in 2019.

If a company is experiencing significant financial hardship, the program applies to its shipments that were entered into the US in March or April. However, the program is limited in that it does not apply to any entry that includes merchandise subject to antidumping and countervailing duties, nor to duties assessed pursuant to: Section 232 of the Trade Expansion Act of 1962; Section 201 of the Trade Act of 1974; and, Section 301 of the Trade Act of 1974 — i.e., the “China tariffs.” In addition, the program does not apply to deadlines for the payment of any other debts to CBP, including interest due upon liquidation or any penalties due to CBP, and CBP will not refund any duties that have already been paid, regardless of whether the duties were owed on a March or April 2020 entry.

It is the responsibility of each importer to schedule its payments accordingly if it wants to use the program. If a company qualifies based on the CBP requirements and associated guidance, it does not need to file an application or any other special documentation with CBP to take advantage of the relief offered. However, the company must maintain documentation as part of its books and records to show that it meets the program requirements and make such records available to CBP upon request.

While many shippers hoped for a more comprehensive duty deferral option that also applied to special additional duties such as the China tariffs — which at 7.5 percent to 25 percent, are often much higher than regular duty rates — this fairly limited program will provide temporary relief for a subset of U.S. companies importing from elsewhere that have been forced to limit operations and have suffered financially as a result.

In light of the fact that the COVID-19 epidemic and resulting economic fallout is still unfolding, it is important to note that President Trump’s underlying executive order grants the government broad authority to defer duties during the duration of the national emergency far beyond the relief it has offered through this program. And by initially reversing itself in March, CBP and the administration have already shown they are willing to tweak their policies regarding duty collection to support the needs of private business during these trying times, so further duty relief in the coming weeks and months is not out of the question.

In the meantime, companies should work with their broker and trade counsel to determine if they can take advantage of opportunities to defer certain duties under the current program.

Doreen Edelman and Andrew Bisbas are attorneys with the law firm Lowenstein Sandler. They can be reached at DEdelman@lowenstein.com and ABisbas@lowenstein.com, respectively.