

ALERT

Duty Deferral Related to COVID-19? Not So Fast, Says CBP

March 27, 2020

After initially signaling its openness to allowing importers to defer the payment of import duties in relation to the coronavirus (COVID-19) pandemic, U.S. Customs and Border Protection (CBP) retreated from this position in a new Cargo Systems Message issued on March 26, 2020.

Normally, importers are required to pay the duties that they believe are owed on imported products shortly after the date that the goods enter the United States. After the goods enter, CBP then has a period of time in which to confirm and finalize the amount of duties owed.

In a Cargo Systems message issued last week, CBP indicated that given the difficulties that COVID-19 poses with respect to locating company personnel, cash flow, and other issues that impact duty payment, the agency was prepared to approve additional days for importers to tender duties. CBP's new message, however, indicates that it is no longer pursuing such options.

CBP's new message does not explain the reasons for the agency's change of heart. That said, while many importers and importer advocacy groups have pressed CBP to allow additional days for payment, there are legal and practical hurdles to implementing deferred payments. For example, it was not clear to what extent CBP would have allowed deferral not just of "standard" import duties, but antidumping/countervailing duties, Section 232 duties, or Section 301 duties, all of which are aimed at protecting the U.S. manufacturing base, national security, and/or pressuring the United States' trade partners to abandon unfair and discriminatory trade practices.

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While CBP has determined not to pursue duty payment deferrals, the Office of the U.S. Trade Representative (USTR) is collecting comments, on a rolling basis, regarding the degree to which modifications of existing Section 301 tariffs may be necessary to assist in the national fight against COVID-19. For importers that hoped to take advantage of duty payment deferrals, this new comment process may provide a means to secure relief as to at least a portion of a company's overall tariff burden.

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