



US takes action to abate tariffs and duties in wake of COVID-19

International Trade Alert

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In recent years, the United States has imposed a range of tariff measures that have increased duties on products imported into the US. Using authority provided under Sections 201 and 301 of the Trade Act of 1974, and Section 232 of the Trade Expansion Act of 1962, the US has imposed special tariffs, generally ranging between 7.5 percent and 30 percent, in order to address issues of national security, injury to domestic industry, China's trade practices, and other US concerns.

The United States has also granted exclusions for certain products subject to Section 301, Section 232, and Section 201 tariffs which have been announced in notices published in the Section 232 Exclusions Portal, a government website ([regulations.gov](https://www.regulations.gov)), or the Federal Register. These exclusions are the result of a processes that begin with an interested party filing an exclusion request within the required period specified by the administering government agency. For Section 301 tariff exclusions granted by the Office of the United States Trade Representative (USTR), the exemption applies not only to the products imported by the party seeking the exclusion, but also applies to any products that meet the description of the exclusion, regardless of whether the importer filed the exclusion request. The exclusion also applies retroactive to a predetermined date. For Section 232 tariff exclusions, the exclusion is generally effective for one year

from the date of the granting of the exclusion, with the possibility of retroactive relief between the date of the filing of the exclusion request and the date on which the exclusion is granted.

Prior to March of 2020, aside from the individual product exclusions, United States trade actions generally have resulted in escalations of tariffs on certain US imports. In contrast to this upward trend, however, recent events in the wake of the coronavirus disease 2019 (COVID-19) crisis have led to an abatement of US tariffs for importers. We discuss below the series of events and circumstances leading to this trend.

US National Emergency Declaration and its impact on imports

In response to the coronavirus pandemic, the Trump Administration took action that has enabled the abatement of tariffs on some US imports. In Proclamation 9994 of March 13, 2020, recognizing the risk that the coronavirus posed to US healthcare systems, the Administration declared a National Emergency, which set the stage for government agencies to take action in response to the escalating pandemic.

Coinciding with the declaration of the National Emergency, the USTR issued parallel announcements in Federal Register Notices dated March 10, March 16, and March 17, 2020, granting special Section 301 tariff exclusions for medical supplies from China. Many of these products, employed in the fight against COVID-19, are basic medical supplies such as certain soaps, medicine dispensing cups, surgical gloves, hot packs, cold packs, protective sanitary attire such as face masks, single-use sterile medical drapes, medial sponges, hospital apparel, and laboratory equipment.

On March 25, 2020, in direct relation to the COVID-19 pandemic and the resulting need for less restrictive trade in personal protective products and medical devices, the USTR announced the opportunity for public comment on the potential removal of Section 301 duties on certain medical products needed to fight the coronavirus, with comments to be accepted until June 25, 2020. Each comment must specify the product of concern by its 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading and include an explanation of “precisely how the product relates to the response to the COVID-19 outbreak.”

In addition, the USTR announced the following Section 301 tariff exclusions:

- On March 26, 2020, the USTR published tariff exclusions for articles on List 3 that include chemicals, steel and aluminum products, automobile and engine parts, electric motors, printed circuit boards, and hundreds of additional product specific items. These exclusions apply retroactively to September 24, 2018 and will remain in place until August 7, 2020.
- On March 31, 2020, the USTR published List 4A tariff exclusions that cover several product descriptions including ice bags composed of textile materials for treating injuries or soreness, textile identification bands, sterile urology drain bags of plastics, and plastic pouches of the type used with manually operated pill or tablet crushers to capture powdered medicaments. These tariff exclusions apply retroactively to September 1, 2019 and will remain in place until September 1, 2020.
- On April 7, 2020, the USTR published one year extensions for certain product exclusions granted in April 2019. The extensions cover eight exclusions that were set to expire on April 18, 2020, including instruments for measuring voltage or electrical connections, roller machines for paper, and aluminum pipe brackets. The remaining products from the April 18, 2019 notice, not included on this extension, are again subject to the Section 301 duties of 25 percent for articles on List 1 effective April 18, 2020.
- On April 22, 2020, the USTR announced new product exclusions pertaining to articles on List 3. The exclusions cover a variety of goods including various chemicals, electric motors, bicycles, and parts and accessories for meteorological equipment. The exclusions apply retroactively to entries dating back to September 24, 2018 and remain in effect until August 7, 2020.

On April 18, 2020, based upon the National Emergency Declaration, the Administration issued Executive Order 13916 which provided the legal authority for the US Department of the Treasury to take action to extend payment deadlines for payment of certain duties during the national emergency. Pursuant to this authority, US Customs and Border Protection

(CBP) has authorized a 90-day deferment period on certain payments for importers who have faced a significant financial hardship due to the coronavirus response. According to the joint Temporary Final Rule issued by CBP and the Department of Treasury, this payment flexibility will apply only for importers with significant hardship and will apply to merchandise entered in March or April of 2020. This temporary postponement does not permit the return of any deposits of estimated duties, taxes, or fees that have already been paid. In addition, imported goods that are subject to antidumping and countervailing duties, as well as Section 201, Section 232, and Section 301 tariffs, are not included in the duty deferral.

Finally, CBP has allowed imports of Personal Protection Equipment (PPE) to be accepted by tax-exempt charitable organizations as donations without payment of duties and without a customs entry. As discussed in Cargo Systems Messaging Service (CSMS) # 42320854, CBP may decline to collect duties on “goods being imported by US charities (or other private entities) to assist with disaster relief” pursuant to 19 U.S.C. 1322(b), so long as the tax exempt charitable organization provides “a letter from the charity, on the charity’s letterhead, with the charity’s Internal Revenue Service (IRS) number(s), stating it is willing to accept the imported goods and that the organization intends to donate the imported goods.”

How US importers can take advantage of various tariff exemptions and deferrals

US importers may consider navigating the various tariff exemptions and deferrals in several ways. Some importers may be able to take advantage of an exclusion from Section 301 tariffs not specifically requested by the importer. For example, an importer of plastic pouch bags of the type listed in the USTR’s March 31, 2020 announcement of List 4a product exclusions may take advantage of this exclusion even if the importer did not file for the exclusion. The tariff exclusion would apply retroactively to September 1, 2019, allowing for the return of relevant duties paid. For products subject to USTR exclusions from Section 301 tariffs, an importer may seek an extension of liquidations of customs entries and file timely protests of liquidations to receive the benefit of the exclusion.

Some importers may be able to mitigate the impact of the customs entry process and customs duties by, for example, importing PPE for donation as opposed to for sale, and by partnering with a tax-exempt charitable organization that will receive the PPE for the purpose of making donations. For example, a company may import certain PPE free of duty, so long as 1) the imported goods are destined for a recognized tax-exempt charitable organization and 2) the organization supplies a letter, on the charity’s letterhead and with the charity’s IRS number, stating that the charity will accept the organization’s donated goods. Once these criteria have been met, the importation can be executed through release by CBP authorized based on the manifest that is filed by the carrier without the necessity of filing a customs entry.

Additionally, some importers may be able to claim significant financial hardship due to the coronavirus crisis and qualify for deferral of payment of duties for up to 90 days. Importers of goods subject to duties, other than antidumping or countervailing duties, and other than Section 201, Section 232, and Section 301 tariffs, may be able to apply for postponement of payment for 90 days if they are able to identify hardships caused by restrictions imposed as a result of the COVID-19 pandemic. For example, as discussed in Cargo Systems Management Service (CSMS) # 42423171, CBP will deem that an importer is suffering a significant financial hardship if the operation of the importer is fully or partially suspended during March or April of 2020 due to government orders limiting commerce, travel, or group meetings due to COVID-19, and as a result of such suspension, “the gross receipts of such importer for March 13-31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019.” CBP does not require an importer to file documentation in order to be eligible for this relief, but the importer must maintain documentation and records establishing that it meets these requirements.

Given COVID-19’s potential for substantial economic impact, US importers may consult with DLA Piper regarding the impact of this pandemic on their business and possible steps that can be taken to mitigate that impact with respect to payment of customs duties. If you have any questions regarding these developments and their implications or would like to discuss your company’s situation, please contact the authors or your DLA Piper relationship attorney.

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

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