



Global Trade Advisory Alert

Update on US global trade regulatory developments in response to COVID-19

The coronavirus (COVID-19) pandemic is affecting all elements of society, including global trade. Over the past several weeks, a number of US Government agencies that regulate various aspects of global trade in the US continued to issue guidance and take various actions impacting the importation and exportation of goods, as described below.

FEMA restricts the export of certain goods for use related to COVID-19

On 10 April 2020, the US Federal Emergency Management Agency (FEMA) issued a temporary final rule to establish export restrictions on certain goods used in the response to the COVID-19 pandemic. The rule is retroactively effective from 7 April 2020 and will be in effect until 10 August 2020.

The temporary final rule provides as follows:

- Directs the Secretary of Homeland Security, through the FEMA Administrator, to use their joint authority to

allocate to domestic use scarce or threatened materials ("Covered Materials") used in response to the COVID-19 pandemic. These materials may not be exported from the US without explicit approval by FEMA.

- All export shipments of Covered Materials shall be temporarily detained by US Customs & Border Protection (CBP) in order to allow FEMA to:
 - determine whether the goods must be returned for domestic use;
 - issue a rated order (i.e., a contract or order placed in support of a national defense program, which takes precedence over all unrated orders, when necessary, to meet delivery dates specified in the rated order); or
 - allow exportation either in part or entirely.

In this regard, FEMA must make its determination within a "reasonable timeframe" after being notified by CBP of a detained shipment.

- Violations of this temporary rule by exporters, or by any party that attempts to facilitate such exports, is subject to penalties available under section 103 of the Defense Production Act (DPA) of 1950, as amended, (50 USC § 4513) or other available authority. Section 103 of the DPA allows for monetary penalties up to \$10,000 and imprisonment of no more than one year.

The Covered Materials subject to the temporary rule are the same materials designated as scarce or threatened by the Secretary of Health and Human Services under Section 102 of the DPA. They include:

- N-95 filtering facepiece respirators;
- Other filtering facepiece respirators of various designations;
- Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges;
- Personal Protective Equipment (PPE) surgical masks; and
- PPE gloves or surgical gloves.

The temporary rule also provides for certain exemptions that allow for the export of Covered Materials. Specifically, when reviewing potential exports of Covered Materials, FEMA will consider the following factors:

- The need to ensure that scarce or threatened items are appropriately allocated for domestic use;
- Minimization of disruption to the supply chain, both domestically and abroad;
- The circumstances surrounding the distribution of the materials and potential hoarding or price gouging concerns;
- The quantity and quality of the materials;
- Humanitarian considerations; and

- International relations and diplomatic considerations.

FEMA may also consult other agencies to determine whether it is necessary or appropriate to allocate the Covered Materials for domestic use.

Finally, the temporary rule includes an exemption that allows for the export of Covered Materials by or on behalf of US manufacturers with continuous export agreements with customers in other countries since at least 1 January 2020. Qualification for the exemption requires that at least 80 percent of a manufacturer's domestic production of covered materials, on a per item basis, was distributed in the US in the preceding 12 months.

CBP establishes COVID-19 cargo team and COVID-19 import relief webpage

On 1 April 2020, CBP designated a COVID-19 Cargo Resolution Team (CCRT) to support on-going cargo release activities for critical supplies in the fight against COVID-19. The CCRT resides within the Pharmaceuticals, Health, and Chemicals Center for Excellence and Expertise. As of 14 April 2020, the CCRT has moved its communications to CBP's COVID-19 Relief Imports Web Portal (<https://imports.cbp.gov/s>).

FDA eases restrictions on COVID-19-related devices

The US Food and Drug Administration (FDA) has issued several enforcement policy guidance documents related to the COVID-19 public health emergency. These policies provide for temporarily eased standards for the use of certain medical devices. These eased standards may include (on a product-by-product basis) the lifting of various advance notice or certification requirements. Moreover, for US import purposes, medical devices regulated by the FDA and subject to an FDA enforcement policy guidance document are subject to special reporting requirements, including reduced FDA documentation.

Each product-specific enforcement policy specifies certain rules or product qualities that must be met for the usually required FDA authorizations to be waived. Products with potential FDA authorization waivers include infusion pumps, Chinese-manufactured non-NIOSH approved respirators, gowns, other apparel, and gloves. A complete and up-to-date list of the FDA's current enforcement policy guidance documents related to the COVID-19 public health emergency may be found on the FDA's website (<https://www.fda.gov>).

Specified models and manufacturers of PPE have also been issued Emergency Use Authorizations ("EUA") by the FDA. EUAs serve as temporary FDA authorizations, allowing for expedited import clearance without the contingencies applicable to goods subject only to an FDA

enforcement policy guideline document. Any stakeholder may apply to have an EUA issued for a specified model of PPE. Products subject to an EUA are also subject to special filing procedures.

White House advises it has no plans for tariff payment deferrals

On 3 April 2020, Larry Kudlow, White House Economic Advisor, announced that deferrals for the payment of US import tariffs would not be moving forward because doing so would be “too complicated.” This conclusion was drawn after requests from Congress, CBP, and importers, led the White House to consider deferrals on general duties only, while leaving supplemental tariffs—such as the Section 301 China tariffs, the Section 232 steel and aluminum tariffs, and anti-dumping/countervailing duties—untouched.

USITC reviews imports related to COVID-19 response

On 17 April 2020, the US International Trade Commission (USITC) announced it has begun an investigation at the request of Congress’s US House Ways and Means Committee and Senate Finance Committee (“Congressional Committees”). The investigation calls for a report that identifies imported goods related to the response to COVID-19, their source countries, tariff classifications, import values, and applicable rates of duty during the years 2017 through 2019. The USITC will submit the report to the Congressional Committees by 30 April 2020. It will be made available to the public as well. USITC will continue to provide updated data runs on its website through 30 June 2020.

TTB postpones excise tax payments and filing due dates for industry members affected by COVID-19

On 31 March 2020, to provide relief from tax deadlines to Americans who have been affected by the COVID-19 emergency, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published Industry Circular 2020-2, which outlined requirements for the tax payment relief for:

- Any person with a due date for submitting a federal excise tax payment, return, operational report, or claim on wine, beer, distilled spirits, tobacco products, cigarette papers and tubes, firearms, and ammunition to TTB; and
- Any person with a due date for submitting export documentation to the TTB, in the period from 1 March 2020 through 1 July 2020.

All due dates for paying federal excise taxes to the TTB on wine, beer, distilled spirits, tobacco products, cigarette papers and tubes, firearms, and ammunition are

postponed 90 days from the original due date. The TTB Industry Circular does not postpone the payment of any other type of federal tax. For information about the payment of federal excise taxes on imported products, importers are directed to contact CBP.

How We Can Help

The information presented herein is intended as a high-level indicator of US global trade regulatory measures introduced in response to the COVID-19 pandemic. It reflects the position as of the date of this alert, but developments are quickly evolving, and measures taken by the US Government may change on short notice. Accordingly, the information presented herein should be considered directional, and any use you make of the information is at your own risk. For further details and current information or advice, please contact your Deloitte Global Trade Advisory specialist, or one of the contacts named below. Our professionals can help companies seeking to manage the current and potential impacts of the developments described above.

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