



# Court of International Trade Holds Section 122 Tariffs Unlawful

Brooke M. Ringel

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On May 7, 2026, in a 2-1 decision by a three-judge panel of U.S. Court of International Trade, the court held unlawful President Trump’s imposition of 10% tariffs under Section 122 of the Trade Act of 1974. The case at issue is a consolidated action involving a lawsuit filed by 24 states and a separate lawsuit filed by two private importers. The court’s opinion is available [here](#). On May 8, 2026, a day after the court’s decision, the U.S. Government appealed the order to the U.S. Court of Appeals for the Federal Circuit.

**The Section 122 statute.** Section 122 allows the President to impose tariffs up to 15%, not exceeding 150 days, when fundamental international balance of payments issue exist. On February 20, 2026 (the day the Supreme Court struck down the IEEPA tariffs), President Trump announced a 10% tariff on imports, with some exceptions. The tariff went into effect February 24, 2026, and is currently set to expire July 24, 2026. In imposing the tariffs under the law, which requires a “large and serious United States balance-of-payments deficits,” the President identified “deficits in trade, primary income, secondary income, and the current account, and a negative net international-investment position” as support.

**The decision.** The court reviewed the text of the statute, its legislative history, and historical context to conclude that the President’s February 20 proclamation did not properly rest on the existence of a balance-of-payments deficit. According to the court, “what is relevant is what Congress meant by ‘balance-of-payments deficits’ in 1974, and what Congress meant can be determined based on what it reported at the time of enactment, namely the balance-of-payments deficits as measured by liquidity, official settlements and the basic balance. . . . Accepting as true every factual statement in Proclamation No. 11012 {of February 20, 2026}, the surcharge imposed by the Proclamation rests on the existence of a large trade deficit, a current account deficit, a negative net international investment position, and a deficit on the balance on primary and secondary income (which are part of the current account). . . . Nowhere does Proclamation No. 11012 identify balance-of-payments deficits within the meaning of Section 122 as it was enacted in 1974.” Thus, the court concluded that the February 20th Proclamation is unlawful.

**The remedy.** As a threshold matter, the court concluded that only the private importers and the State of Washington had standing to seek permanent injunctive relief on the basis that they face imminent injury due to Section 122 duty payments made or impending. The other 23 state plaintiffs, however, did not have standing because they did not demonstrate duty-related injury (neither they nor their public instrumentalities were shown to be importers of record liable for such duties).

For the private plaintiffs and the State of Washington, the court issued permanent injunctive relief. The court did not issue a universal (i.e., nationwide) injunction. In other words, the court's order applies only to the three prevailing plaintiff parties. The court declined to issue a universal injunction because (1) the private importers did not argue for a universal injunction, and (2) the state plaintiffs that urged a universal injunction did not have standing, except for the State of Washington, and the circumstances of Washington's injury did not warrant universal relief.

**How does this case differ from the IEEPA decision?** This decision differs in several notable ways from the legal and remedial issues presented in the IEEPA tariff litigation. First, in the IEEPA litigation, the Supreme Court found that the IEEPA statute never allows the imposition of tariffs. In contrast, here, the court found that while Section 122 does allow for tariffs, the stated basis for the specific presidential action at issue did not meet the standard for the imposition of tariffs under that law.

Second, unlike the initial IEEPA tariff decision, the court here did not issue a universal injunction. To the extent the state plaintiffs – who had argued in favor of that form of relief – decide to appeal the remedy, they will also have to appeal and first prevail on the question of standing.

Third, the scale of the tariff programs in terms of the duties at stake differ, and perhaps significantly. The IEEPA tariffs, while initially held at 10%, eventually increased on a country-specific basis to as high as 50%. Moreover, the IEEPA tariffs had no expiration date, whereas the Section 122 tariff – currently at 10% and which cannot exceed 15% – will terminate by operation of law on July 24, 2026. The exemptions provided from the Section 122 tariff, however, largely track those provided under the IEEPA tariff program.

**What next?** As was the case during the early stages of the IEEPA tariff litigation, there are still many unknowns ahead.

- Importers may attempt use this decision to file post-summary corrections (“PSCs”) (i.e., normal and permissible changes to documentation and claims on entry) for entries subject to Section 122 duties that have not yet liquidated by removing the Section 122 tariff line. An important caveat here is that while PSCs are normally pro forma and do not require CBP action to take effect, CBP may reject PSCs that are filed based on this court decision. That is because the court did not issue a universal injunction (meaning that the remedy does not apply to any importer except the two private plaintiffs and the State of Washington), and because the litigation is not final (meaning it can still be appealed).
- There is time to see how this plays out without relinquishing rights to future refunds.
  - First, other individual importers who may want to file their own lawsuits would do so under the court's “residual” jurisdiction, which carries a two-year statute of limitations period. Section 122 duties went into effect on February 24, 2026. The right to appeal remains available until February 2028.
  - Second, if CBP does not allow PSCs, entries may take up to 314 days to liquidate. That is not true for every entry, but it will be true for most. Thus, most entries will still be in pre-liquidation status and readily refundable in the coming months.
  - Third, once entries liquidate, importers have 180 days from the date of liquidation to file an administrative protest of that entry with CBP, and any protest does not need to be filed until the end of that period. That adds six months of time, even after specific entries

liquidate (which could take many more months from now for any given entry subject to Section 122), to understand how the litigation is unfolding and whether individual tariff recovery lawsuits will be necessary.

- The Administration may take action outside of the litigation in response to this decision. That may be anything from an early termination of the Section 122 tariffs to a modification of the proclamation to correct the legal errors identified by the court. In the latter case, perfection or reissuance of the Section 122 tariff action may moot the ability of other importer's to rely on the court decision as a basis for tariff recovery (either administratively with CBP or through individual lawsuits).
- Importers should monitor the universe and status of their entries on which they have paid or will pay Section 122 tariffs. There are two key timelines to monitor: (1) the right to file a lawsuit seeking refunds with the Court of International Trade under its residual jurisdiction (two years), and (2) the date of liquidation of relevant entries so that protests can be filed toward the end the protest period if there is still insufficient guidance coming from action in the courts and/or by the Administration.

As always, the attorneys in our International Trade practice are available to discuss how this may apply to your specific situation.