

U.S. Court of International Trade Holds Section 122 Tariffs Unlawful – Enjoins Tariff Collection and Orders Refunds for Plaintiff-Importers

by Dave Townsend, T. Augustine Lo, Justin T. Huff, Lawrence Ward, and Paula Ortiz Cardona

The U.S. Court of International Trade (“CIT”) held on Thursday, May 7, 2026, that the Trump Administration’s imposition of a global 10% “import surcharge” on nearly all U.S. imports is unsupported by Section 122 of the Trade Act of 1974 (“Section 122”).¹ Although the CIT struck down the Section 122 tariffs, it declined to impose a nationwide injunction, instead holding that only three plaintiff-importers are entitled to relief (two private companies and Washington State). The CIT ruling, which was a 2-1 decision from a three-judge panel, likely will be appealed to the U.S. Court of Appeals for the Federal Circuit (“CAFC”) and possibly the U.S. Supreme Court. In the meantime, U.S. importers should consider their options to potentially seek an injunction against the collection of Section 122 tariffs on their imports and refunds for the amounts they have paid to date.

Summary of Ruling.

On February 20, 2026 (the same day that the U.S. Supreme Court struck down President Trump’s global tariffs under the International Emergency Economic Powers Act (“IEEPA”)), President Trump issued Proclamation 11012, which imposed a 10% import surcharge under Section 122 to “deal with large and serious . . . balance-of-payment deficits.” The Trump Administration claimed that Section 122 authorized the tariffs due to persistent trade deficits, as well as deficits in income, the U.S. current account, and a net negative investment position. Section 122 allows the imposition of a global tariff surcharge, in relevant part, “[w]henver fundamental international payment problems require special import measures to restrict imports. . . to deal with large and serious United States balance of payments deficits.” The statute permits this surcharge to remain in effect for a period not to exceed 150 days, unless extended by Congress.

In this latest case, *Oregon v. United States*, the CIT found that Section 122 does not authorize an import surcharge for the deficits identified by the President in Proclamation 11012. The CIT concluded that Proclamation 11012 is unlawful: “Nowhere does Proclamation No. 11012 identify balance-of-payment deficits within the meaning of the Section 122 as it was enacted in 1974.” The CIT distinguished between a balance-of-

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payment deficit, which is an explicit triggering event for tariffs under Section 122, and the trade and investment deficits identified in Proclamation 11012. The CIT reasoned that Section 122 was not intended to permit global U.S. import tariffs merely upon a deficit in some of the sub-accounts that are used to measure the country's balance-of-payments.

However, the CIT found that only three plaintiff-importers had standing to claim before the CIT that the Section 122 tariffs are unlawful and obtain relief. While 24 states had joined the case as co-plaintiffs, the CIT held the states who did not allege they imported goods lacked standing. The CIT found that the non-importer states alleged only indirect, downstream effects from the Section 122 tariff that were insufficiently tied to the payment of the Section 122 duties.

The CIT decision was a split 2-1 decision of a three-judge panel. In dissent, Judge Stanceu of the CIT would have deferred deciding the case, believing that further proceedings were necessary to ascertain facts, and he disagreed with how the majority interpreted Section 122.

Remedy.

The CIT granted a remedy that applies only to the three plaintiff-importers with standing in the case. The plaintiff-importers who are private companies requested that the CIT enjoin the collection of Section 122 duties with respect to their own imports and require the repayment of the Section 122 duties paid. The CIT agreed and directed the United States to cease collecting Section 122 duties on the imports of the plaintiff-importers and to refund the duties paid with interest.

The CIT declined, however, to issue a nation-wide injunction as requested by the state plaintiffs after finding that most of the state plaintiffs lacked standing. The CIT found that the harms alleged by the lone state plaintiff-importer, Washington State, were insufficient to support a universal injunction with respect to all importers.

Implications for U.S. Importers and U.S. Trade Policy.

U.S. importers may wish to consider whether to file their own claims before the CIT to seek the same remedy afforded to the plaintiff-importers in the *Oregon* decision. Although the U.S. Government likely will appeal the *Oregon* opinion to the CAFC, the CIT decision potentially opens the door for U.S. importers to obtain injunctions to pause Section 122 tariff collection on their own imports pending an ultimate ruling in that case. It remains to be seen whether the CAFC or CIT will order a stay on the CIT injunction pending an appeal.

The Trump Administration issued Proclamation 11012 on the same day the IEEPA tariffs were held unlawful by the U.S. Supreme Court in *Learning Resources v. United States* (see our earlier [summary of this decision](#)). Since the Section 122 tariffs are time limited to 150 days, and must end by July 24, 2026 unless extended by Congress, they are a temporary measure.

Looking forward, key Trump Administration officials have said they intend to maintain tariffs on imports into the United States. They have pointed to Sections 301 of the Trade Act of 1974 (“Section 301”) and Section 232 of the Trade Expansion Act of 1962 (“Section 232”) as providing the basis for tariffs on some U.S. imports. In particular, the Trump Administration launched a host of Section 301 investigations in March. In addition, the Trump Administration continues to impose and expand Section 232 tariffs on broad swaths of imports such as aluminum, automobiles and automotive parts, copper, pharmaceuticals, semiconductors, steel, trucks and truck parts, and others. The Section 122 “import surcharge” appears to act as a temporary bridge to further tariff actions to replace the invalidated IEEPA tariff actions. We expect that the Trump Administration will maintain tariffs on most U.S. imports via Section 232 and Section 301. The U.S. Trade Representative may expedite the Section 301 investigations to impose new tariffs as the Section 122 measure expires on July 24, 2026.

The *Oregon* decision also raises the possibility that U.S. importers will be entitled to refunds of Section 122 duties already paid. Notably, thousands of importers have already made claims for refunds of duties paid under the IEEPA tariff actions that the U.S. Supreme Court invalidated in *Learning Resources*. It is possible that this latest CIT decision in the *Oregon* case could lead to a similar influx of new CIT cases that may lead to Section 122 tariff refunds for U.S. importers. However, whether refunds are issued depends on whether the U.S. Government appeals the CIT’s *Oregon* decision, and whether the plaintiff-importers ultimately prevail in such appeal.

¹ *Oregon v. United States*, No. 26-01472 (Ct. Int’l Trade May 7, 2026) (slip op.), *available at* <https://www.cit.uscourts.gov/sites/cit/files/26-47.pdf>.