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## US Trade Court Strikes Down Section 122 Tariffs, but Ruling's Fate Is Uncertain and Practical Impact Is Limited

### Executive Summary

- **What's new:** A divided three-judge panel at the U.S. Court of International Trade struck down the Trump administration's Section 122 tariffs as exceeding the president's authority, but limited its relief to three importer plaintiffs before it, leaving all other importers still subject to the 10% surcharge.
- **Why it matters:** The administration had turned to Section 122 immediately after the U.S. Supreme Court on February 20, 2026, invalidated tariffs imposed under the International Emergency Economic Powers Act. If the recent Section 122 ruling is upheld, refunds for other importers who have paid the levy may become available.
- **What to do next:** The government has already appealed the decision to the U.S. Court of Appeals for the Federal Circuit. Importers should review Section 122 duties that they have paid and are currently paying, to preserve their rights to assert claims and seek refunds in the future.

On May 7, 2026, a divided three-judge panel at the U.S. Court of International Trade (CIT), in *Oregon v. United States and Burlap and Barrel, Inc. v. United States*, invalidated the Trump administration's 10% tariff imposed under Section 122 of the Trade Act of 1974.<sup>1</sup> The ruling deals another blow to the administration's trade agenda after the previous statutory basis for its broad "reciprocal" tariffs under the International Emergency Economic Powers Act (IEEPA) was struck down by the Supreme Court's February 2026 ruling in *Learning Resources, Inc. v. Trump*. See our April 8, 2026, client alert, "[Tariff Refund Mechanism Takes Shape After Supreme Court's IEEPA Ruling](#)" and our February 24, 2026, client alert "[The Supreme Court Ends IEEPA Tariffs, Bringing Fresh Uncertainty for Companies.](#)"

Critically, the CIT's remedy is party-specific, not universal. The permanent injunction issued against the government's collection of the Section 122 tariffs extends *only* to the three importer plaintiffs who were found to have standing (a direct connection to the action): the State of Washington, Burlap and Barrel, Inc. and Basic Fun, Inc. All other importers remain subject to the Section 122 duties unless they bring their own action, the administration withdraws the tariffs, the tariffs expire or a court orders broader relief.

<sup>1</sup> *Oregon v. United States*, Slip Op. 26-47 (Ct. Int'l Trade May 7, 2026).

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## Background

### From IEEPA to Section 122

On the same day that the Supreme Court struck down the IEEPA tariffs, February 20, 2026, the president signed Proclamation 11012. This measure invoked Section 122 to impose 10% tariffs on the vast majority of imported goods from all countries, effective February 24, 2026. Section 122 empowers the president to impose temporary import surcharges of up to 15% *ad valorem* for no more than 150 days when “fundamental international payments problems require special import measures,” including to address “large and serious United States balance-of-payments deficits.” Because of the time limits imposed by Section 122, the 10% tariffs imposed under Proclamation 11012 are set to expire on July 24, 2026.

## The CIT’s Ruling

### The Majority’s Holding

A two-judge majority (Chief Judge Barnett and Judge Kelly) granted summary judgment for the importer plaintiffs, holding that the duties imposed through Proclamation 11012 exceeded the president’s statutory authority under Section 122. The court reasoned that Section 122 requires the president to identify “balance-of-payments deficits” measured according to specific recognized metrics that Congress contemplated when it enacted Section 122 in 1974. These metrics are deficits in liquidity, official settlements and basic balance.

Each of these is a 1970s-era methodology for measuring a country’s overall international payments position, summing different combinations of current-account flows, capital flows, and official reserve transactions. The government no longer publishes these particular summary measures, a fact central to the dissenting judge’s critique of the majority’s holding.

The Proclamation, by contrast, cited trade deficits, current account deficits and the U.S. net international investment position — metrics the majority determined were legally distinct from “balance-of-payments deficits” as that term is used in the statute. Because the Proclamation was not grounded in the specific conditions required by Section 122, the majority found the imposition of tariffs under Section 122 to be unlawful.

The majority’s analysis was informed by the Supreme Court’s reasoning in *Learning Resources*, echoing the notion that the U.S. Constitution allocates the taxing power to Congress, and that courts must therefore “carefully parse” statutory constraints

used in delegations of tariff authority to the president. The court was careful to state that it was relying on “the normal tools of statutory interpretation,” did not invoke the nondelegation doctrine and expressly disclaimed reliance on the major questions doctrine.

Nonetheless, the majority’s interpretation was guided by separation of powers concerns. In particular, the majority cited *West Virginia v. EPA* for the proposition that courts should hesitate to read sweeping economic and political authority into ambiguous statutory delegations. The majority also invoked the canon of constitutional avoidance, observing that a broader reading of Section 122 would lack any “intelligible principle” sufficient to save it from constitutional scrutiny.

Notably, the majority’s reasoning is in tension with the May 28, 2025 decision of a CIT panel that found the IEEPA tariffs to be invalid. This decision, in the combined case of *V.O.S. Selections, Inc. v. Trump* and *State of Oregon v. Trump*, is one of two trial court-level opinions that were subject to appeal leading to the combined *Learning Resources* case before the Supreme Court. In discussing whether IEEPA conferred the power to impose tariffs in response to trade deficits, the *V.O.S.* panel — which was composed of a different slate of judges than the combined *Oregon* and *Burlap and Barrel, Inc.* case — stated that the IEEPA tariffs were “imposed in response to a balance-of-payments deficit” because “trade deficits are one of the key balance-of-payment deficits.”<sup>2</sup> The *V.O.S.* panel asserted that tariffs responding to a trade deficit “fit under Section 122” rather than IEEPA, suggesting that the tariffs under IEEPA were instead described by Section 122.<sup>3</sup>

However, the *V.O.S.* panel’s references to Section 122 are not a binding construction of Section 122. Subsequent CIT panels are not generally bound by the findings of a previous CIT panel unless the finding is made in the same case.<sup>4</sup>

Nonetheless, the earlier panel’s assertion that tariffs responding to a trade deficit “fit under Section 122” is arguably at odds with the new panel’s assertion that use of Section 122 must be grounded in other specific “balance of payments” concepts (*i.e.*, deficits in liquidity, official settlements, or basic balance).

<sup>2</sup> *V.O.S. Selections, Inc. v. Trump*, Slip Op. 25-66, at 35 (Ct. Int’l Trade May 28, 2025).

<sup>3</sup> *Id.*

<sup>4</sup> *United States v. Millenium Lumber Distribution Co.*, 36 C.I.T. 1646, 1653 n.8 (2012) (The judges of the Court of International Trade are in no way bound by the decisions that their colleagues on the court have rendered in prior cases.).

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## Limited Scope of Relief

Despite invalidating the president's Section 122 tariffs, the court limited the impact of its finding to parties directly before it and directly affected by the tariffs. It found that only the three importer plaintiffs — the State of Washington, Burlap and Barrel, Inc., and Basic Fun, Inc. — demonstrated the concrete, imminent injury required for “standing” by virtue of directly paying Section 122 duties. All claims by non-importer state plaintiffs were dismissed for lack of standing. Their alleged harms were found too speculative for the court's relief to apply to them.

Because only importer plaintiffs had standing, the court determined that those plaintiffs could be made whole by a party-specific remedy. The court accordingly declined to enter a universal injunction. It stated that it need not decide whether the CIT is authorized, after *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), to issue such relief. Instead, the court entered a permanent injunction specific to the three importer plaintiffs, gave the government five days to implement it, and ordered refunds, with interest, for any Section 122 duties paid before the injunction takes effect.

## The Dissent

Judge Stanceu dissented both on the merits and on procedural grounds. On the merits, he argued that nothing in Section 122's text or legislative history conclusively limited “balance-of-payments deficits” to the specific metrics the majority believes the statute demands. On procedure, he argued that the majority erred by granting summary judgment on specific interpretive grounds that no party had raised, without providing the notice and reasonable time to respond that USCIT Rule 56(f) requires. The majority rejected that view, reasoning that the plaintiffs' challenge necessarily required the court to interpret the phrase “balance-of-payments deficits.”

## Next Steps

Although the CIT's ruling is significant, its practical impact is (for the moment) narrow. Because the injunction applies only to the three named importer plaintiffs, the vast majority of importers remain obligated to pay Section 122 duties. The government appealed the ruling to the Federal Circuit on May 8, 2026, with U.S. Trade Representative Greer expressing confidence that the government would prevail. The Federal Circuit will now review the CIT's decision, potentially *en banc*, with possible Supreme Court review thereafter.

Key issues to watch include whether the ruling will be stayed pending appeal at the Federal Circuit past the temporary stay the appeals court granted on May 12. Another potential avenue for the administration is simply to issue a new proclamation grounded in the specific balance-of-payments metrics the majority identified as permissible, although it is unclear if this would retroactively “cure” the deficiencies of the proclamation for past entries.

## Implications for Businesses

If an appellate court ultimately invalidates the Section 122 tariffs, it is reasonable to expect that U.S. Customs and Border Protection (CBP) will on its own initiative launch a refund process open to all importers under the CAPE mechanism currently used for the IEEPA tariffs. However, this is not assured, and CIT intervention to compel refunds — whether on remand in the *Oregon* and *Burlap and Barrel* cases or through separate CIT cases — may be required.

Regardless, importers should consider, in consultation with counsel, taking proactive steps now to preserve their rights to seek refunds. Such steps include:

- Filing or amending protests for liquidated entries.
- Filing an affirmative action at the CIT, where appropriate. But importers may instead find it prudent, depending on their circumstances, to wait and see how the appeal unfolds before initiating litigation.
- Maintaining detailed documentation of entries subject to Section 122 duties, an essential part of any hypothetical future refund process. The IEEPA tariff refund process illustrates that there can be significant delays between the time duties are held unlawful and when CBP processes refunds.
- Closely monitoring all developments concerning both the government's appeal of this decision and potential new litigation by parties seeking relief under this importer-favorable precedent.
- Memorializing refund-allocation mechanics in agreements and purchase orders with commercial counterparties and consumers, where appropriate. Disputes over the allocation of IEEPA refunds are already emerging among importers of record, downstream purchasers and end-users, including class actions seeking to recover pass-through tariffs. Similar disputes are conceivable with respect to Section 122 refunds.

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Finally, we note that, even if the CIT decision in *Oregon v. United States* and *Burlap and Barrel, Inc. v. United States* is upheld and the Section 122 tariffs are invalidated, importers will continue to face tariffs from many sources. The Section 122 tariffs will expire on July 24, 2026, in any event, and the administration has an array of other tariff authorities on which it can rely. See our January 13, 2026, article "[Turbulence Ahead: Tariff and Trade Policy Shifts Are Expected Amid Looming Supreme Court Decision.](#)"

In particular, the administration recently initiated wide-ranging Section 301 investigations under the Trade Act of 1974, which authorizes tariffs on goods from countries engaged in unjustifiable, unreasonable or discriminatory trade practices. The administration reportedly intends for these investigations to conclude this summer before the expiration of the Section 122 tariffs. It is therefore possible that the Section 122 tariffs will be effectively replaced by Section 301 tariffs that approximate the scale and scope of the previous IEEPA tariffs, with no limit on their duration. Importers should plan with these risks in mind.

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