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U.S. Court of International Trade Invalidates Trump Section 122 Global Tariffs, the Administration Appeals, and Tariffs Likely Will Remain in Effect for Most Importers

Key Takeaways

- The U.S. Court of International Trade (CIT) invalidated President Trump's Section 122 10% tariffs, holding that the Administration exceeded the authority delegated by Congress under Section 122 of the Trade Act of 1974. The Administration has appealed the decision to the U.S. Court of Appeals for the Federal Circuit.
- The CIT's injunction is limited. The court granted relief only to the plaintiffs – the State of Washington, Burlap & Barrel and Basic Fun! – and declined to issue nationwide relief. The tariffs remain in place for most importers pending appeal, and continue to apply broadly unless additional importers seek and obtain relief.
- The decision increases pressure on the Administration to pivot to alternative statutory authorities, including Section 301 and Section 232, for future tariff actions.
- Importers should continue to monitor appellate developments, incorporate tariff exposure into customs and supply-chain planning and maintain robust import compliance practices.

On May 7, 2026, a divided three-judge panel of the U.S. Court of International Trade held that President Trump unlawfully invoked Section 122 of the Trade Act of 1974 to impose a temporary 10% global import surcharge, concluding that the President's use of trade and current account deficits to stand in the place of balance-of-payment deficits within the meaning of the statute renders the Proclamation imposing the tariffs *ultra vires*. *State of Oregon et al. v. United States* and *Burlap & Barrel, Inc. et al. v. United States*, Slip Op. 26-47 (Ct. Int'l Trade May 7, 2026). On May 8, the Administration appealed.

The decision significantly narrows the Executive Branch's ability to rely on Section 122 as an alternative source of broad tariff authority and reflects continued judicial scrutiny of expansive presidential trade actions.

How the Administration Used Section 122 to Impose Temporary Global Tariffs

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Following the Supreme Court's February 2026 decision invalidating tariffs imposed under the International Emergency Economic Powers Act (IEEPA), President Trump issued Proclamation No. 11012 under Section 122. The Proclamation imposed a temporary 10% *ad valorem* tariff on most imports for up to 150 days. The tariffs are scheduled to expire on July 24, 2026, unless Congress affirmatively extends them.

As discussed in our prior alert, Section 122 authorizes the President to impose temporary import restrictions when the United States faces "fundamental international payments problems," including "large and serious United States balance-of-payments deficits," imminent depreciation of the dollar, or international balance-of-payments disequilibrium.

The Administration justified imposing tariffs under Section 122 by citing several economic indicators, including persistent U.S. trade deficits, current account deficits, a negative net international investment position and deficits in primary and secondary income. The plaintiffs challenging the tariffs included 24 states (divided between states that directly imported and paid the tariffs and states that indirectly paid the tariffs through purchases from third parties), spice importer Burlap & Barrel, and toy importer Basic Fun!.

Why the Majority Concluded the Tariffs Exceeded Section 122

In a 2-1 decision, Chief Judge Mark Barnett and Judge Claire Kelly held that the Administration exceeded the authority delegated under Section 122 of the Trade Act of 1974. The court framed the dispute as a question of statutory interpretation – specifically, what Congress meant by "balance-of-payments deficits" in Section 122.

The majority first examined the plain language of the statutory text. Section 122 authorizes temporary import restrictions when "fundamental international payments problems" require action "to deal with large and serious United States balance-of-payments deficits." The court determined that "balance-of-payments deficits" is a defined term of art, not an open-ended economic concept committed entirely to presidential discretion. The majority also emphasized that Congress separately referenced "balance-of-payments deficits" in subsection (a) and "balance-of-trade surpluses" in subsection (c), demonstrating that Congress did not intend trade deficits and balance-of-payments deficits to be interchangeable.

The majority further stressed that because any tariff authority implicates Congress's Article I powers, delegations of tariff authority must be construed narrowly. The court reasoned that the government's interpretation of Section 122 would effectively permit the President to identify virtually any macroeconomic imbalance as a justification for tariffs, raising nondelegation concerns.

Turning to the legislative history, the court concluded that Congress understood "balance-of-payments deficits" in 1974 to refer specifically to liquidity deficits, official settlements deficits and basic balance deficits associated with the Bretton Woods-era monetary system. The majority found that the Administration instead relied on modern macroeconomic indicators such as trade deficits, current account deficits, negative net international investment position and deficits in primary and secondary income. Because Congress did not incorporate such modern macroeconomic indicators into its consideration of balance-of-payments deficits when drafting Section 122, the court held that Proclamation No. 11012 was *ultra vires* and that the tariffs imposed under it were unauthorized by law.

The court also held that only direct importers subject to the tariffs – private plaintiffs Burlap & Barrel and Basic Fun! and the State of Washington – had standing. The claims of the other 23 state plaintiffs were dismissed because those states purchased goods subject to

the tariffs from third parties but did not import and pay the tariffs directly. Consequently, the court concluded that their alleged harms were indirect and speculative. The court declined to issue nationwide relief and instead entered a permanent injunction limited to the successful importer plaintiffs.

Dissent Would Have Preserved Broader Presidential Discretion

Judge Timothy Stanceu dissented, finding that Section 122 itself contains no express definition of “balance-of-payments deficits” and nowhere limits the term to particular accounting methodologies such as liquidity, official settlements, or basic balance measures. In addition, Judge Stanceu emphasized that while Congress distinguished between “trade balance” and “balance of payments” within the statute, Section 122 never references current account balances specifically and therefore does not foreclose reliance on modern balance-of-payments concepts.

Judge Stanceu’s dissent also noted that Congress removed from the statutory text earlier draft language that would have expressly defined acceptable balance-of-payments measurement methodologies. Judge Stanceu viewed this revision as evidence that Congress intentionally preserved presidential flexibility rather than rigidly limiting permissible economic measurements. Finally, Judge Stanceu criticized the majority for granting summary judgment on the basis of legal theories not expressly advanced by the parties without additional Rule 56 notice and briefing.

What Comes Next for Section 122 Tariffs and Trade Enforcement

The Administration has appealed the CIT’s ruling to the U.S. Court of Appeals for the Federal Circuit. Absent a stay or reversal, the injunction remains limited to the successful plaintiffs while the Section 122 tariffs currently continue to apply to most importers unless additional relief is obtained through separate litigation or through an expanded ruling on appeal.

In the meantime, the Administration continues to rely on alternative statutory authorities in imposing duties, including Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. It also continues enhanced customs enforcement initiatives involving country-of-origin verification, forced labor compliance, AD/CVD enforcement and broader supply chain scrutiny.

As recently as March 2026, USTR initiated multiple new Section 301 investigations concerning alleged structural excess capacity and production in manufacturing sectors involving numerous major U.S. trading partners, including China, the European Union, Mexico, Japan, India, Korea, Taiwan, Vietnam and others. USTR also separately initiated 60 additional Section 301 investigations concerning alleged failures by foreign governments to prohibit the importation of goods produced with forced labor. These investigations may ultimately support additional tariff actions or other trade restrictions later this year.

Key Considerations for Importers Following the Decision

While the decision’s immediate impact is limited, it nevertheless represents another significant judicial limitation on expansive presidential tariff authority; underscores the continuing volatility surrounding U.S. trade policy and tariff enforcement; and may shape future litigation involving executive trade powers.

Importers and companies should consider the following steps:

- **Incorporate tariff exposure into broader customs and supply chain planning,**

including sourcing decisions, customs valuation strategies, pricing, transfer pricing, inventory management and contractual allocation of tariff risk.

- **Continue exercising due diligence and reasonable care in all import-related transactions**, as the decision is unlikely to materially reduce overall U.S. trade enforcement activity.

Polsinelli's International Trade and Customs team continues to monitor developments closely and is available to assist companies in evaluating their tariff exposure; refund opportunities including secondary market liquidity options; litigation strategy; supply chain restructuring; customs compliance considerations; and broader trade enforcement risks arising from ongoing tariff developments.

If your business needs strategic legal guidance or anticipates potential impacts resulting from these announcements, contact Deanna Okun, David Karp, Lydia Pardini, Dominic Bianchi, Polsinelli's Executive Action Working Group or your Polsinelli contact.