

# Publications

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Post-SCOTUS Tariff Reset: Trump Replaces IEEPA Duties with Temporary Section 122 10% Import Surcharge, Likely to Increase to 15%

## Key Takeaways

- **International Emergency Economic Powers Act (IEEPA) duties:** President Trump terminated IEEPA-based “additional *ad valorem* duties” and Customs and Border Protection (CBP) will cease collection on or after 12:00 a.m. EST on Feb. 24, 2026.
- **Section 122 Surcharge:** President Trump imposed a temporary 10% *ad valorem* “import surcharge” to covered imports under Section 122 for 150 days, effective Feb. 24, 2026, subject to Annex-based exclusions and a Section 232 non-stacking rule. He indicated plans to increase the surcharge to the statutory cap of 15%.
- **De minimis:** Duty-free *de minimis* treatment remains suspended for covered shipments, with a transitional framework for international postal network shipments.
- **Operational instructions expected:** Importers should monitor CBP guidance, Harmonized Tariff Schedule of the United States (HTSUS)/Chapter 99 changes, and Federal Register notices.
- **Refund posture:** Protest and litigation strategies for previously collected IEEPA duties remain fact- and posture-dependent; importers should assess liquidation status and preserve rights.

For importers, the aftermath of the U.S. Supreme Court’s Feb. 20, 2026 decision in *Learning Resources, Inc. v. Trump* has created uncertainty, and President Trump has issued new trade measures.

Following the ruling, which found the use of IEEPA as a tariff authority unlawful, President Trump issued coordinated trade actions that: (1) terminate specified IEEPA-based duties, (2) impose a temporary Section 122 surcharge of 10% *ad valorem* for 150 days (expected to imminently rise to 15%), and (3) continue the global duty-free *de minimis* suspension for low-value shipments. Section 122 duties apply to entries on or after 12:01 a.m. EST on Feb. 24, 2026.

**Read on for a breakdown of key developments, including immediate actions importers should take now.**

## Related People

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## Related Capabilities

- Trade Law Remedies
- International Trade
- Customs
- International
- Export Controls, Economic Sanctions & Compliance
- Executive Orders

## **IEEPA Tariffs Terminated; Other Duties Remain**

The same day the Supreme Court issued its decision, President Trump issued an Executive Order directing that the additional *ad valorem* duties imposed pursuant to IEEPA “shall no longer be in effect,” with the termination of collection of the IEEPA tariffs as soon as practicable. CBP issued CSMS guidance on Feb. 22, 2026 stating that it will cease IEEPA duty collection on or after 12:00 a.m. EST on Feb. 24, 2026.

President Trump emphasized that the underlying national emergencies remain in effect; other non-IEEPA measures tied to those emergencies are not affected; and duties imposed under Section 232 and Section 301 are not affected. President Trump further directed the U.S. Department of Commerce, the U.S. Department of Homeland Security, and the United States Trade Representative (USTR) (as appropriate), in consultation with CBP and the U.S. International Trade Commission, to determine whether HTSUS modifications are required and permitted implementation of such modifications by Federal Register notice.

## **New Section 122 Temporary Import Surcharge Set to 10%, Likely to Reach 15%**

President Trump also issued a Proclamation on Feb. 20 imposing a temporary import surcharge of 10% *ad valorem* on articles imported into the United States under section 122 of the Trade Act of 1974 (19 U.S.C. § 2132), effective 12:01 a.m. EST, Feb. 24, 2026. The surcharge is scheduled to end 12:01 a.m. EDT, July 24, 2026, unless modified, terminated, or extended by Congress.

Section 122 permits the imposition of a temporary import surcharge of up to 15%. A day after issuing the above-discussed proclamation, President Trump indicated his intent to increase the tariff to the statutory cap. At time of this alert’s publication, that informal announcement has not yet been formalized through an updated proclamation, and the increase may be delayed beyond the Feb. 24 effective date.

The surcharge will not stack on top of Section 232 tariffs; where Section 232 applies to part of an import, the surcharge applies only to the non-232 portion.

## **Key Exclusions from Section 122 Duties**

The surcharge applies in addition to other duties, taxes, and charges to all articles unless excluded by Annex I and Annex II. These exclusions include:

- Articles entered duty-free as goods of Canada or Mexico under HTSUS general note 11;[1]
- Textiles/apparel entered free of duty as a good of Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua under the Dominican Republic-Central America Free Trade Agreement;
- Passenger vehicles, buses, and certain other trucks vehicles, and certain parts of those vehicles;
- Certain aerospace products;
- Certain agricultural products (including beef, tomatoes, and oranges);
- Pharmaceuticals and pharmaceutical ingredients;
- Certain critical minerals;
- Certain natural resources/fertilizers;
- Pharmaceuticals and pharmaceutical ingredients;
- Metals used in currency and bullion;
- Energy and energy products; and
- Certain electronics.

## Special Treatment for Goods in Transit and FTZ Admissions

The Proclamation provides an exception for goods that (i) were loaded onto a vessel and in transit on the final mode of transit prior to 12:01 a.m. EST on Feb. 24 and (ii) are entered for consumption (or withdrawn from warehouse for consumption) before 12:01 a.m. EST on Feb. 28.

Additionally, covered articles admitted to a U.S. foreign-trade zone on or after the effective date generally must be admitted in privileged foreign status (except articles eligible for “domestic status”).

## Maintain Global Duty-Free *De Minimis* Suspension; Transitional Procedures for International Postal Network Shipments

Finally, President Trump issued an Executive Order continuing and operationally reinforcing the suspension of the duty-free *de minimis* exemption under 19 U.S.C. § 1321(a)(2)(C). For covered shipments (other than those delivered through the international postal network), the exemption does not apply regardless of value, origin, transportation mode, or entry method; shipments must be entered using an appropriate ACE entry type by a qualified party and are subject to all applicable duties, taxes, fees, and charges.

Until CBP’s new postal entry process becomes effective (to be established by CBP and published in the Federal Register), qualifying postal shipments may move under transitional procedures. During the transition, dutiable postal items are assessed a duty equal to the Section 122 temporary import surcharge rate on the value of each dutiable postal item. Country of origin and value must be declared for postal shipments subject to the transitional duty; certain AD/CVD- or quota-subject postal shipments may still require ACE entry per applicable regulations.

These changes apply to goods entered for consumption (or withdrawn from warehouse for consumption) on or after 12:01 a.m. EST on Feb. 24, 2026, and the HTSUS is modified as provided by Annex.

## Administration’s Next Steps

U.S. Trade Representative Ambassador Jamieson Greer signaled a pivot to alternative statutory tools and stated that negotiated trade agreements remain in effect.

Stated near-term actions include:

- Initiating several new section 301 investigations on an accelerated timeframe (while adhering to section 301 procedural requirements), potentially covering most major trading partners and issues such as industrial excess capacity, forced labor, pharmaceutical pricing practices, discrimination against U.S. technology/digital goods and services, digital services taxes, ocean pollution, and certain practices affecting trade in seafood, rice, and other products.
- Continuing ongoing section 301 investigations (including those involving Brazil and China).
- Maintaining existing section 232 tariffs and conclude ongoing section 232 investigations.

## Immediate Action Items for Importers

1. **Map duty exposure by legal authority:** Distinguish prior IEEPA-based “additional

*ad valorem* duties” from duties that remain (e.g., Section 232 and Section 301) and from the new Section 122 surcharge.

2. **Preserve IEEPA duty refund rights:** For previously collected IEEPA duties, identify impacted entries, track liquidation status, and coordinate protests/PSCs/litigation strategy as warranted. Coordinate with counsel to avoid waiver and timing issues.
3. **Operational readiness:** Monitor CBP guidance, CSMS messages, and Federal Register notices for HTSUS/Chapter 99 reporting and implementation timing.
4. **De minimis redesign:** Reassess low-value fulfillment and e-commerce models. Confirm broker/ACE capacity and carrier readiness, including postal shipments and transitional collection mechanisms.
5. **Exception management:** Build an exception-management workflow for the Section 122 surcharge using HTS-based product mapping against Annexes, and validate Section 232 overlap to prevent improper stacking.
6. **Engage early on Section 301:** Monitor USTR notices in potential accelerated Section 301 investigations and consider submitting comments, building evidentiary records, and assessing mitigation options (re-sourcing, valuation/planning, exclusions) as investigations progress.

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

[1] This includes any treatment set forth in subchapter XXIII of chapter 98 and subchapter XXII of chapter 99 of the HTSUS, as related to the Agreement between the United States of America, United Mexican States, and Canada