

GIBSON DUNN



International Trade Advisory & Enforcement Update

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Section 122 Global Tariffs Invalidated by the Court of International Trade: Ruling and Next Steps

The Court of International Trade issued an opinion holding that President Trump’s 10 percent global tariffs imposed under Section 122 were not authorized under that statutory provision, rejecting an attempt by the Trump Administration to replace in part the duties terminated after the [Supreme Court struck down IEEPA-based tariffs](#). In contrast to the IEEPA context, where refunds are currently being processed on a mass scale, this decision is not yet final and thus does not provide a basis for importers to seek refunds on entries subject to Section 122 tariffs. Further judicial proceedings will determine both whether the United States can continue to collect the current 10-percent-Section-122 tariffs during the remaining term of these duties pending appeal and whether importers may ultimately be entitled to refunds of these duties. Even if the Section 122 tariffs are unraveled, there are other measures—some novel, and some longstanding—the Administration can use to pursue its trade agenda.

On May 7, 2026, the U.S. Court of International Trade (**CIT** or **the Court**) rejected President Trump’s invocation of [Section 122](#) of the Trade Act of 1974 (**Section 122**) to impose a temporary global 10 percent tariff on imports from nearly every country for the 150-day period provided for in Section 122. See [Presidential Proclamation No. 11012](#) (Feb. 20, 2026) (the **Proclamation**). The CIT held, in a 2–1 split opinion, that the President’s action did not meet the statutory criteria required to invoke Section 122 and that three importer plaintiffs had sufficient “standing” to challenge the Section 122 duties. The CIT also granted summary judgment to these importer plaintiffs and entered a permanent injunction against the United States’ collection

of the Section 122 duties from these three importer plaintiffs. The CIT held that the remaining state plaintiffs were not importers, thus did not have “standing” to challenge the Section 122 duties, and dismissed their claims.

The Trump Administration has [appealed](#) the decision at the U.S. Court of Appeals for the Federal Circuit (**CAFC**), which will review and decide whether Section 122 provides authority for the President’s temporary duties, a decision that may, as in the case of the IEEPA tariffs, be further appealed to the U.S. Supreme Court for a final decision on the merits. On May 12, 2026, the CAFC entered an administrative stay, suspending the implementation of the CIT’s order while the appeal proceeds.

I. Background

Section 122 authorizes the President to impose duties of up to 15 percent *ad valorem* for up to 150 days “to deal with large and serious United States balance-of-payments deficits.” The statute was passed in 1975 in response to strains on the post-World War II global financial system based on fixed exchange rates. In 1971, President Richard Nixon had previously, pursuant to other statutory authority, imposed temporary import duties of 10 percent on goods brought into the United States. That action had expired by the time Section 122 came into force.

On February 20, 2026, the same day that the United States Supreme Court invalidated the President’s IEEPA tariffs in [Learning Resources, Inc. v. Trump](#), the Trump Administration issued Proclamation 11012, invoking Section 122 (for the first time since the provision entered into force) to impose a temporary 10 percent *ad valorem* surcharge on nearly all imports into the United States from nearly all countries. (The President subsequently [threatened](#) to raise the surcharge to the statutory maximum of 15 percent, but to date he has not done so.) The duties are set to expire on July 24, 2025, unless extended by an act of Congress.

While importers have been paying duties under Section 122, in the case of the IEEPA duties, the CIT has been coordinating a process whereby importers of entries whose “liquidations” are not yet final can obtain refunds (with interest) for duties paid under IEEPA.^[1]

II. The Cases Before the CIT: *State of Oregon v. Trump* and *Burlap and Barrel, Inc. v. Trump*

Shortly after President Trump imposed the Section 122 tariffs, lawsuits challenging his authority to do so were filed by both private merchant importers and a coalition of U.S. states. The CIT heard consolidated oral arguments in April.

Both plaintiff groups alleged that the President’s 10 percent surcharge was an unlawful invocation of Section 122, claiming that changes to the international economic system, such as the United States’ move away from the gold standard, made it impossible in 2026 to have the kind of “balance-of-payments deficits” that were referenced in the Section 122 legislation passed in 1975. While recognizing that the international monetary system has changed, the Trump Administration argued that the President has discretion to determine when large and serious balance-of-payments deficits exist based on reasonable economic methodologies currently in use.

Because Section 122 specifically authorizes the imposition of “a temporary surcharge [...] in the form of duties,” the CIT could not have determined that Section 122 does not authorize tariffs, as the Supreme Court ultimately held in the IEEPA context. Instead, the CIT, in a split opinion, decided that the term “balance-of-payments deficits” has a specific definition, established in the legislative history, and that the President’s Section 122 proclamation failed to identify a deficit that met that definition. The majority also concluded that the facts and the law were sufficiently clear that the Plaintiffs were entitled to both summary judgment and a permanent injunction against the collection of the duties. In a thorough dissent, Judge Timothy Stanceu argued that the legislative history of Section 122 requires a different conclusion—namely, that Congress deliberately did not impose a narrow definition of “balance-of-payments deficits,” particularly since Congress removed a more particular definition of this term from a prior version of the text. Judge Stanceu also concluded that the record was not sufficiently clear to either grant summary judgment or issue a permanent injunction.

In theory, since the CIT majority concluded that the Proclamation did not provide a sufficient basis to invoke Section 122’s import surcharge authority, the Trump Administration could attempt to re-invoke Section 122 by altering its justifications for the surcharge. However, this effort would not likely be persuasive to the CIT majority given language in their opinion emphasizing the differences in global economics today from those in place at the time of the statute’s enactment.

The CIT ordered the government to refund duties paid under Section 122 by the two private importer plaintiffs and one state plaintiff,[\[2\]](#) but as noted, it dismissed the claims of the remaining state plaintiffs, finding that they did not have standing due to a lack of direct, concrete harm suffered. Consistent with this result, the non-importer state plaintiffs’ request for a universal injunction was denied, and because the importer plaintiffs did not ask for one, no universal injunction was granted.[\[3\]](#) On May 12, 2026, the CAFC issued an administrative stay of the CIT’s order, pending the CAFC’s consideration of motions for a more durable stay pending appeal.

III. What’s Next?

This decision by the CIT majority is by no means the final judgment on the legality of the Trump Administration’s Section 122 tariffs. As noted above, the Trump Administration is appealing the CIT decision, and there will accordingly be further proceedings, particularly appellate proceedings in the CAFC and potentially a further appeal to the U.S. Supreme Court. Because the CIT did not issue a universal injunction, only the three named plaintiffs would be entitled to refunds for duties paid under Section 122 imposed by the Proclamation, in the event the CIT’s order is affirmed. Other importers seeking refunds for entries subject to that surcharge may need to file individual cases at the CIT establishing their right to recovery pursuant to a successful final result. This step, however, may not ultimately be necessary if the CIT, with cooperation by CBP, establishes a refund system comparable to that developed with respect to the IEEPA duties.

As we [noted](#) last fall, it is important to remember that Section 122 is not the only statutory authority that President Trump is using, or could use, to replace the invalidated duties imposed under IEEPA. Other duties that remain currently in effect include those imposed under [Section 232 of the Trade Expansion Act of 1962](#) and [Section 301 of the Trade Act of 1974](#). Half a dozen Section 232 investigations are [currently ongoing](#), with actions expected to be announced

throughout the next few months. In addition to the 2025 Brazil- and China-focused Section 301 investigations, the Trump Administration [initiated](#) two new substantial Section 301 investigations in March 2026 targeting 16 economies for structural excess manufacturing capacity and 60 countries for forced labor enforcement failures. Both Section 232 and Section 301 provide the President with broad discretion to assess duties on the relevant industries and countries, as neither statute contains a ceiling limiting the tariff rate that can be imposed following investigation. Some [speculate](#) that [Section 338 of the Tariff Act of 1930](#)—an authority [focused on](#) unreasonable discrimination by foreign governments enacted in 1930 to respond to what would become the Great Depression and that has [never been used](#) to impose tariffs or other trade restrictions—will be an additional statutory authority tool utilized by the Trump Administration.

In sum, although this split decision by the CIT in the Section 122 litigation is a potentially important victory for importers, as well as another loss for the Trump Administration, subsequent appeals will determine the extent to which this potential is realized such that importers will later be able to obtain refunds (with interest) of the Section 122 duties they have paid.

[1] The IEEPA refund process is a broad effort directed by the CIT, with the cooperation of U.S. Customs and Border Protection (**CBP**), currently taking place under the CIT case *Euro-Notions Florida, Inc. v. United States*, 25-595, before Judge Richard K. Eaton.

[2] The State of Washington was the sole state plaintiff that alleged direct payment of Section 122 duties through its state-funded public university.

[3] The issue of whether the CIT can lawfully issue universal injunctions is still an open question, and the CIT decision in *State of Oregon v. Trump* and *Burlap and Barrel v. Trump* did not reach the issue.

The following Gibson Dunn lawyers prepared this update: Donald Harrison, Adam M. Smith, Christopher Timura, Samantha Sewall, Hui Fang, and Layla Reynolds.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or the following leaders and members of the firm’s [International Trade Advisory & Enforcement](#) or [Sanctions & Export Enforcement](#) practice groups:

United States:

[Adam M. Smith](#) – Co-Chair, Washington, D.C. (+1 202.887.3547, asmith@gibsondunn.com)

[Ronald Kirk](#) – Co-Chair, Dallas (+1 214.698.3295, rkirk@gibsondunn.com)

Stephenie Gosnell Handler – Washington, D.C. (+1 202.955.8510, shandler@gibsondunn.com)
Donald Harrison – Washington, D.C. (+1 202.955.8560, dharrison@gibsondunn.com)
Christopher T. Timura – Washington, D.C. (+1 202.887.3690, ctimura@gibsondunn.com)
Matthew S. Axelrod – Washington, D.C. (+1 202.955.8517, maxelrod@gibsondunn.com)
David P. Burns – Washington, D.C. (+1 202.887.3786, dburns@gibsondunn.com)
Nicola T. Hanna – Los Angeles (+1 213.229.7269, nhanna@gibsondunn.com)
Courtney M. Brown – Washington, D.C. (+1 202.955.8685, cmbrown@gibsondunn.com)
Samantha Sewall – Washington, D.C. (+1 202.887.3509, ssewall@gibsondunn.com)
Roxana Akbari – Orange County (+1 949.475.4650, rakbari@gibsondunn.com)
Karsten Ball – Washington, D.C. (+1 202.777.9341, kball@gibsondunn.com)
Sarah Burns – Washington, D.C. (+1 202.777.9320, sburns@gibsondunn.com)
Hugh N. Danilack – Washington, D.C. (+1 202.777.9536, hdanilack@gibsondunn.com)
Justin duRivage – Palo Alto (+1 650.849.5323, jdurivage@gibsondunn.com)
Zach Kosbie – Washington, D.C. (+1 202.777.9425, zkosbie@gibsondunn.com)
Dorkas Laura Medina – Washington, D.C. (+1 202.777.9444, dmedina@gibsondunn.com)
Chris R. Mullen – Washington, D.C. (+1 202.955.8250, cmullen@gibsondunn.com)
Sarah L. Pongrace – New York (+1 212.351.3972, spong race@gibsondunn.com)
Anna Searcey – Washington, D.C. (+1 202.887.3655, asearcey@gibsondunn.com)
Erika Suh Holmberg – Washington, D.C. (+1 202.777.9539, eholmberg@gibsondunn.com)
Audi K. Syarief – Washington, D.C. (+1 202.955.8266, asyarief@gibsondunn.com)
Scott R. Toussaint – Washington, D.C. (+1 202.887.3588, stoussaint@gibsondunn.com)
Shuo (Josh) Zhang – Washington, D.C. (+1 202.955.8270, szhang@gibsondunn.com)

Asia:

Kelly Austin – Denver/Hong Kong (+1 303.298.5980, kaustin@gibsondunn.com)
David A. Wolber – Hong Kong (+852 2214 3764, dwolber@gibsondunn.com)
Fang Xue – Singapore (+65 6507 3692, fxue@gibsondunn.com)
Qi Yue – Beijing (+86 10 6502 8534, qyue@gibsondunn.com)
Dharak Bhavsar – Hong Kong (+852 2214 3755, dbhavsar@gibsondunn.com)
Soo-Min Chae – Singapore (+65 6507 3632, schae@gibsondunn.com)
Hui Fang – Hong Kong (+852 2214 3805, hfang@gibsondunn.com)
Arnold Pun – Hong Kong (+852 2214 3838, apun@gibsondunn.com)

Europe:

Attila Borsos – Brussels (+32 2 554 72 10, aborsos@gibsondunn.com)
Patrick Doris – London (+44 207 071 4276, pdoris@gibsondunn.com)
Michelle M. Kirschner – London (+44 20 7071 4212, mkirschner@gibsondunn.com)
Penny Madden KC – London (+44 20 7071 4226, pmadden@gibsondunn.com)
Irene Polieri – London (+44 20 7071 4199, ipolieri@gibsondunn.com)
Benno Schwarz – Munich (+49 89 189 33 110, bschwarz@gibsondunn.com)
Nikita Malevanny – Munich (+49 89 189 33 224, nmalevanny@gibsondunn.com)
Melina Kronester – Munich (+49 89 189 33 225, mkronester@gibsondunn.com)
Vanessa Ludwig – Frankfurt (+49 69 247 411 531, vludwig@gibsondunn.com)

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