

CIT Narrows Executive Tariff Authority, Invalidates Section 122 ‘Bridge’ Tariffs for Named Importers Only

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On May 7, 2026, the U.S. Court of International Trade (CIT) delivered a setback to the Trump administration’s post-International Emergency Economic Powers Act (IEEPA) tariff strategy, [holding](#) that the administration exceeded its authority under Section 122 of the Trade Act of 1974 (Section 122) by imposing a 10% across-the-board import surcharge under [Proclamation 11012](#).

The ruling follows the U.S. Supreme Court’s earlier [invalidation](#) of the administration’s tariff program under the IEEPA and signals resistance by the nation’s trade court to expansive uses of emergency and secondary trade authorities. Although the CIT limited relief to the named importer plaintiffs and the state of Washington acting as an importer, the decision has potentially far-reaching implications for future presidential tariff actions.

At the same time, the decision leaves the broader importing community in a complicated position: the Section 122 tariffs remain in effect for nonparty importers while the government pursues appeals and simultaneously continues to pivot toward alternative tariff authorities, particularly Section 301 of the Trade Act of 1974 (Section 301) and Section 232 of the Trade Expansion Act of 1962 (Section 232).

Section 122: The Administration’s ‘Bridge’ Tariff Strategy

Section 122 authorizes the president to impose temporary import surcharges of up to 15% for no more than 150 days when “fundamental international payments problems require special import restrictions” to address “large and serious” U.S. balance-of-payments deficits.

On February 20, 2026, the same day the U.S. Supreme Court invalidated the administration’s broader IEEPA tariff framework, President Donald Trump issued Proclamation 11012, imposing a 10% tariff surcharge on nearly all imports effective February 24, 2026, through July 24, 2026, unless extended by Congress.

The proclamation was viewed as an emergency “bridge” mechanism intended to preserve tariff leverage and negotiating pressure while the administration shifted toward more durable tariff authorities. In March 2026, the Office of the United States Trade Representative (USTR) initiated [new Section 301 investigations](#) focused on forced labor and global manufacturing overcapacity, signaling the administration’s intention to replace the temporary Section 122 tariffs with broader long-term trade measures.

The CIT’s Decision: Section 122 Has Limits

The consolidated litigation was brought by 24 states and two private importer plaintiffs challenging the legality of the Section 122 surcharge.

The government conceded standing for the importer plaintiffs and for the state of Washington insofar as Washington itself imported goods subject to the tariffs. However, the government challenged standing for the remaining states that were not direct importers.

The CIT agreed, holding that only parties directly responsible for paying duties suffered the concrete injury necessary to establish Article III standing. As a result, the claims asserted by the nonimporter states were dismissed.

The Meaning of ‘Balance-of-Payments Deficits’

On the merits, the majority focused on the statutory phrase “balance-of-payments deficits,” concluding that Congress used the term as a specialized economic concept tied to the international monetary system and to the economic methodologies that existed when Section 122 was enacted in 1974. The court emphasized that during the 1970s, policymakers evaluated balance-of-payments conditions using specific economic frameworks, including the basic balance, the liquidity balance, and the official settlements balance.

According to the majority, Section 122 must be interpreted within that historical context rather than through modern macroeconomic concepts untethered from Congress’s original understanding. The administration argued that current economic indicators — including the goods trade deficit, the broader current account deficit, and the United States’ negative net international investment position — demonstrated the type of international payments problems contemplated by Section 122.

The CIT rejected that interpretation, holding that those metrics are merely components of broader international economic accounts and are not equivalent to the “balance-of-payments deficits” Congress referenced in the statute. The majority warned that adopting the government’s position would effectively transform Section 122 into an open-ended authority permitting the executive branch to impose tariffs whenever any adverse international economic indicator existed. In the court’s view, that interpretation would improperly expand presidential authority beyond the limits Congress imposed.

Because Proclamation 11012 did not identify qualifying “large and serious” balance-of-payments deficits consistent with Section 122’s original meaning, the court held that the president acted *ultra vires* and invalidated the tariffs as applied to the plaintiffs.

Relief Was Significant — But Narrow

The practical impact of the decision, however, is currently limited.

The CIT issued a permanent injunction prohibiting collection of the Section 122 tariffs only as to the named importer plaintiffs and the state of Washington acting in its capacity as an importer. Those parties may pursue refunds of previously paid duties through established U.S. Customs and Border Protection (CBP) procedures. However, the court expressly declined to issue nationwide relief.

As a result:

- The 10% Section 122 surcharge remains fully operative for nonparty importers;
- CBP continues collecting the duties on most imports; and
- Broader relief will depend on future appeals or additional litigation.

The Dissent: Courts Should Not Freeze Economics in the 1970s

Judge Timothy Stanceu dissented, arguing that Section 122 should be interpreted flexibly to account for evolving economic frameworks and modern balance-of-payments reporting methodologies.

The dissent reasoned that Congress did not intend to permanently lock the statute into obsolete 1970s accounting conventions, particularly where some historical measurements are no longer used by the Bureau of Economic Analysis.

Judge Stanceu would have deferred more heavily to the executive branch's economic judgment and accepted reliance on contemporary indicators such as the current account deficit and the United States' net international investment position as sufficient evidence of "large and serious" international payments problems. Under the dissent's approach, courts should not second-guess complex macroeconomic determinations made by the political branches in the trade and foreign affairs context.

Another Judicial Constraint on Emergency Tariff Powers

The CIT's ruling marks the second judicial rebuke this year directed at expansive presidential tariff actions.

Together with the U.S. Supreme Court's earlier IEEPA decision, the ruling signals that courts are increasingly unwilling to permit the executive branch to stretch emergency or ancillary trade statutes beyond their original statutory and economic foundations.

If upheld on appeal, the decision may significantly constrain future administrations seeking to use Section 122 as a broad-based tariff authority tied to generalized trade deficits, capital flows, or modern macroeconomic concerns.

At the same time, the ruling leaves intact other major trade authorities, including Section 301, Section 232, and traditional antidumping and countervailing duty regimes.

The Administration's Pivot to Section 301

The administration has already begun shifting toward Section 301 as its preferred long-term tariff mechanism. Unlike Section 122, Section 301 is not limited to 150 days, does not impose a statutory tariff rate cap, and provides substantially broader discretion for maintaining and modifying tariffs over time. The administration's ongoing Section 301 investigations concerning forced labor and manufacturing overcapacity are expected to serve as the legal basis for future tariff actions covering imports from numerous countries and industrial sectors.

Accordingly, even if the Section 122 tariffs are ultimately invalidated in full, importers may soon face replacement tariff programs that are broader, more durable, and potentially more impactful.

Practical Implications for Importers

For the named plaintiffs, the decision halts future Section 122 duty collection and establishes a pathway for duty refunds. For all other importers, however, the 10% surcharge remains in place pending appellate review and any further judicial proceedings. Importers should therefore continue preparing for a rapidly evolving tariff landscape that may include continued Section 122 collections through July 24, 2026, Federal Circuit appeals and potential stay motions, additional importer-led challenges, replacement Section 301 tariffs, and further shifts in administration trade strategy. In this environment, companies should consider preserving entry and payment documentation, monitoring liquidation, protest, and post-summary correction deadlines, modeling tariff exposure under both current and potential future tariff regimes, reviewing supplier and customer contracts for tariff-allocation provisions, and closely tracking litigation developments, USTR actions, and CBP implementation guidance. The CIT's ruling may have narrowed one pathway for broad-based presidential tariffs, but the broader trade enforcement environment remains highly dynamic — and the administration's search for durable tariff authority is far from over.

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