

# Federal Circuit Hits Pause on CIT's Section 122 Tariff Ruling

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On May 12, 2026, the U.S. Court of Appeals for the Federal Circuit issued a nonprecedential [order](#) on appeal from the U.S. Court of International Trade's (CIT) decision striking down the government's 10% tariff under Section 122 of the Trade Act of 1974 (Section 122). As discussed in our recently published [client alert](#) on the CIT's May 7 decision, the CIT held that the government exceeded its authority under Section 122 and granted limited relief to the plaintiffs in that case. The Federal Circuit's new order consolidates the government's appeals in several cases.

In the same order, the Federal Circuit granted an immediate stay of the CIT's order and permanent injunction while it considers the government's motion for a longer-lasting stay pending appeal. As a result, the CIT's decision is not currently operative as to the named importer plaintiffs and the state of Washington in its capacity as an importer. The Federal Circuit's order does not address the underlying legal questions about the scope of Section 122; it is limited to consolidation and interim procedural relief.

## What This Means for All Importers

For importers that were not parties to the CIT case, the Federal Circuit's order does not change the existing framework: CBP continues to assess and collect the 10% tariff on covered imports, and any change will depend on the outcome of the appeals and any further judicial or administrative action.

## Legal Significance of the Federal Circuit's Order

The Federal Circuit's order is procedural and does not resolve the core legal dispute over the interpretation of Section 122.

If the Federal Circuit ultimately agrees with the CIT's interpretation, it may reinforce a historically anchored view of "balance-of-payments deficits" and the conditions under which Section 122 can be used. If the court adopts a different reading, it may permit broader reliance on contemporary economic indicators under Section 122. At this stage, the Federal Circuit has not indicated which interpretation it favors.

## Practical Considerations and Next Steps for Importers

Importers should continue to treat the Section 122 tariffs as applicable to covered imports, with an eye toward future developments. This includes incorporating the surcharge into pricing, sourcing, and budgeting decisions;

maintaining detailed entry and payment records; and monitoring liquidation, protest, and post-summary correction deadlines to preserve potential refund opportunities if the legal landscape later shifts. Importers should also evaluate whether participation in litigation or other legal strategies is appropriate to protect their interests.

At the same time, companies should track developments under other tariff authorities, including ongoing and anticipated actions under Section 301 and Section 232, as these may affect the overall duty burden independently of the Section 122 litigation.

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