



Tax Insights
from Customs and International Trade

CIT adopts narrow interpretation of Section 122

May 11, 2026

In brief

What happened?

In a divided 2-1 decision issued May 7, the US Court of International Trade (CIT) invalidated tariffs imposed under Section 122 of the Trade Act of 1974, finding that the President exceeded statutory authority in issuing Proclamation 11012. The Administration justified the tariffs, which imposed a 10% duty on most imports, based on trade deficits, current account deficits, and related economic indicators. The majority held that the Administration's economic justification does not meet the "large and serious balance-of-payments deficits" requirement under Section 122 and concluded that the proclamation exceeded the authority delegated by Congress. As a result, the court granted summary judgment and permanent injunctive relief to the private plaintiffs and the state of Washington, while dismissing other state claims for lack of standing. The Trump Administration has appealed the ruling to the US Court of Appeals for the Federal Circuit.

Why is it relevant?

This decision provides the first and a significant interpretation of Section 122 and reinforces judicial limits on Presidential tariff authority where Congress has imposed specific statutory limitations. The ruling also may constrain future efforts to invoke Section 122 or similar authorities to justify broad tariffs, and highlights continued judicial scrutiny of executive trade actions following recent challenges under other statutes, including the International Emergency Economic Powers Act (IEEPA). However, the court limited injunctive relief to the importer plaintiffs and declined to issue a universal injunction, which means the Section 122 tariffs may continue to apply to importers that were not a party to this litigation.

Actions to consider

Companies should assess whether they have paid duties under the Section 122 tariffs and determine options for relief, particularly if they are similarly situated to the successful importer plaintiffs. Because the court declined to issue a universal injunction, companies that were not a party to the litigation also may consider filing or joining litigation to preserve or obtain relief from the Section 122 tariffs. Businesses may want to monitor the Trump Administration's appeal, as well as further litigation or administrative developments that could expand or narrow the scope of relief. Given the court's refusal to issue a universal injunction, companies not a party to this case should continue to assess compliance obligations carefully. Companies should continue to remain vigilant regarding other pending or potential trade actions, including developments involving Section 301 tariffs and possible future tariff measures under other authorities, such as Section 338. Finally, this decision underscores the importance of proactive tariff mitigation strategies and ongoing monitoring of trade policy developments.

In Detail

Background

Section 122 of the Trade Act of 1974 authorizes the President to impose temporary import surcharges or quotas under specified circumstances, including where "fundamental international payments problems" require import restrictions to address "large and serious United States balance-of-payments deficits." On February 20, 2026, President Trump issued Proclamation 11012 imposing a 10% ad valorem duty on most imported articles under that authority. The proclamation relied on persistent US trade deficits, current account deficits, and related economic indicators as evidence that the statutory conditions had been satisfied.

CIT's interpretation of Section 122 under Proclamation 11012

The CIT's decision focuses on the statutory limits of Section 122 of the Trade Act of 1974 and whether the conditions for invoking that authority were met. Section 122 permits the President to impose temporary import surcharges only where there are "large and serious United States balance-of-payments deficits," among other specified conditions. The court determined that this phrase is a defined term of art that must be interpreted based on the economic concepts understood at the time of enactment in 1974.

In analyzing the statutory language and legislative history, the court concluded that Congress intended "balance-of-payments deficits" to refer to specific historical measures, including liquidity, official settlements, and basic balance metrics. The court found that the Trump Administration instead relied on modern economic indicators, such as trade deficits, current account deficits, and net international investment position, which are not equivalent to the statutory standard. Although the court acknowledged that these indicators may be economically related to balance-of-payments concepts generally, it concluded they were legally distinct from the statutory conditions required under Section 122. As a result, the court held that the statutory prerequisites for invoking Section 122 had not been satisfied.

Because the statutory prerequisites were not satisfied, the court concluded that Proclamation 11012 exceeded the authority delegated by Congress and was therefore invalid. The court granted summary judgment and permanent injunctive relief to the importer plaintiffs and the state of Washington, while declining to extend relief more broadly to other plaintiffs because they lacked standing.

The court also indicated that refunds, with interest as provided by law, may be available to the successful importer plaintiffs for Section 122 duties paid before the injunction took effect.

Observation: This decision underscores that courts may apply a strict, historically grounded interpretation of statutory tariff authorities, particularly where Congress has imposed specific economic conditions. For companies, this suggests that tariffs based on evolving economic frameworks may face increased legal challenges, especially where the underlying statutory language has not been updated to reflect modern economic metrics. In addition, because the court limited injunctive relief to the importer plaintiffs that were parties to the case, the decision's practical implications for importers that were not parties to the litigation remain uncertain and may ultimately depend on the outcome of the Trump Administration's appeal, and any future legal challenges.

Let's talk

For a deeper discussion of how these recent developments might affect your business, please contact:

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