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Government Investigations & White-Collar Alert

May 12, 2025

Court of International Trade finds President Trump's Section 122 tariffs unlawful

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Businesses face uncertainty about potential tariff refunds. Learn what steps companies should take now to protect their interests and explore recovery options.



What's the impact?

- The US Court of International Trade found tariffs under Section 122 to be unlawful because the president did not properly invoke a "balance-of-payments deficit," as required.
- The court's order included refunds for some of the litigating parties, unlike the court's IEEPA decision, which ordered refunds for all importers.
- The government filed a notice to appeal the decision, but the decision opens a path to Section 122 tariff refunds in the future pending further appellate action.

On February 20, 2026—the same day that the United States Supreme Court declared a major aspect of President Trump's tariff agenda unlawful under the International Emergency Economic Powers Act (IEEPA)—the president announced a new tariff under Section 122 of the Trade Act of

1974. The US Court of International Trade (CIT) recently reviewed the Section 122 tariff and, on May 7th, decided that it, too, is unlawful. The CIT's decision in *Oregon et al. v. US et al.* is available [here](#).

The ruling of the CIT

Section 122 allows the president to impose a temporary tariff lasting no more than 150 days if he concludes that such a tariff is necessary to “deal with large and serious United States balance-of-payments deficits.” A central issue in the challenge to the recent imposition of these tariffs involves deciding what Congress meant by “balance-of-payments deficits.” The CIT decided that President Trump’s invocation of the US trade deficit and other monetary factors was not equivalent to the statutory “balance-of-payments deficits.” In other words, the president did not impose the tariffs under the conditions authorized by the statute; he imposed them under other reasons for which Congress never gave him authority to impose tariffs. Therefore, the CIT ruled that the president’s proclamation imposing the Section 122 tariffs “is invalid, and the tariffs imposed on the Plaintiffs are unauthorized by law.”

The Trump administration has filed its notice of appeal to challenge this ruling in the US Court of Appeals for the Federal Circuit. It will likely take months for that appellate court to decide whether to affirm the CIT’s ruling. If the parties appeal to the Supreme Court—which is likely regardless of the outcome in the appellate court—that will add more time before there is a final decision. In the IEEPA litigation, the Supreme Court implemented an expedited briefing and argument schedule, but it is too soon to know if the Supreme Court would do the same for Section 122 tariff litigation.

If the Section 122 tariffs can only be imposed until July 24, 2026, and the appellate decision on the CIT ruling will likely come after that date, why is this case important?

Although the Section 122 tariffs will stop on July 24, importers will have paid many millions of dollars in tariffs during the 150-day period during which they were in place. If the CIT ruling is affirmed, importers will be able to seek refunds of the substantial tariffs they paid.

This ruling could also have an important—although indirect—impact on the circumstances involving tariff refunds under IEEPA. The government is currently operating a refund system to repay some of the IEEPA tariffs deemed unlawful. But the government is doing so under an order issued by the CIT. Soon, the government will need to decide whether to appeal that order, as its deadline to do so is in early June. An appeal would not reconsider whether the IEEPA tariffs are unlawful—the Supreme Court settled that issue. But an appeal ruling may alter how, and whether, refunds are received by the many importers who have not sued the government

themselves. Having another tariff policy (the Section 122 tariffs) struck down by the CIT may embolden the president to continue litigating over the IEEPA tariff refunds.

Does this CIT ruling apply to all importers who have paid Section 122 tariffs?

No. At this point, the CIT ruling does not stop the government from collecting Section 122 tariffs, and it does not require the government to refund the Section 122 tariffs it has already collected (except as against certain parties in the litigation). That is because the CIT limited the scope of its ruling, so it does not apply to importers who were not parties to the litigation. But that does not mean that other importers will never see refunds of the tariffs that the CIT found unlawful. Many importers will find it advantageous to file lawsuits to challenge these tariffs, and they may do so in advance of upcoming shipments in order to avoid paying Section 122 tariffs on those entries. Other importers may wait to see a ruling from the US Court of Appeals for the Federal Circuit before deciding how to proceed. But if that appellate court (and the Supreme Court, if it ultimately takes up the case) affirms the CIT ruling, refunds of the Section 122 tariffs should eventually become available to any importer that has paid these tariffs. Whether importers will need to file a lawsuit or file a protest is yet to be determined.

Do importers need to take any immediate steps because of the CIT ruling?

This will depend on each importer's circumstances. Although importers will not immediately risk losing their right to a refund of Section 122 tariffs if they do nothing at this point, there may be benefits to filing a lawsuit to obtain refunds more quickly and to prevent future tariff payments under Section 122. Without filing their own lawsuit, importers will continue to pay Section 122 tariffs until July 24, 2026. Even if importers decide not to file their own lawsuit, they should consider filing protests when their entries with these tariffs are liquidated. For the large majority of entries, that liquidation will not occur for several months. The Section 122 tariffs were imposed in late February 2026, and the government usually takes approximately 10 months after entry to liquidate entries. Protests may only be filed after the entries are liquidated. The point of liquidation then triggers a 180-day deadline for importers to file protests on their entries. Although the deadline for filing protests on entries with these tariffs is many months away, importers should be aware that timelines may be shorter if US Customs and Border Protection liquidates their entries earlier than usual. Importers should monitor the liquidation of their entries and ensure they have all their entry summaries (CBP Form 7501) for entries with Section 122 duties in anticipation of litigation or protests.

One of the few certainties regarding tariffs is that they will continue to fluctuate in the near future. The government has taken aggressive preliminary steps necessary to impose new tariffs under a different law (Section 301 of the Trade Act of 1974) when the Section 122 tariffs

expire. And litigation will continue for both the IEEPA tariffs and the Section 122 tariffs. Businesses should be proactive in considering how to address the changes in tariff policy that carry significant monetary impacts and discuss their specific circumstances with counsel to determine the best path forward.

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