CLIENT ALERTS & INSIGHTS

Section 122 - Supply Chain Reactions to CIT Decision

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Featured Industries: Transportation & Logistics, International Trade & Supply Chain Management

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Key Takeaways

- The U.S. Court of International Trade has struck down the Trump Administration's Section 122 tariffs, ruling that the 10% duties on most imports were not supported by statutory authority. The decision follows a similar Supreme Court ruling on IEEPA tariffs earlier this year.
- This decision raises questions about potential duty refunds, ongoing compliance obligations, and increased litigation risk in both business-to-business and business-to-consumer relationships.
- Proactive compliance, clear contractual terms, collaborative trading partnerships, and dynamic operations are essential as the legal landscape continues to evolve. Companies can closely monitor refund processes, review and revise supply chain agreements, and prepare for potential tariff recovery disputes.

Global 10% tariffs imposed under Section 122 were intended by the Trump Administration as the immediate replacement for IEEPA-based reciprocal tariffs. Recently on May 7, 2026, the U.S. Court of International Trade (CIT) struck down those tariffs on the basis that they were not supported by statutory authority. This is just the latest landmark development in our international trade landscape following the February 20, 2026, U.S. Supreme Court (SCOTUS) decision finding that IEEPA tariffs were unlawful. We are working with clients across all industries, as well as their service providers, as each look to strengthen trading relationships and harden legal positions across domestic and global supply chains.

This bulletin delivers a quick summary on Section 122, the CIT decision and best practices for approaching forthcoming changes as court decisions and tariff refund issues continue to emerge.

Section 122 Tariff Strategy: The Administration invoked Section 122 of the Trade Act of 1974 to impose a temporary 10% duty on most imports just four days after SCOTUS rejected IEEPA-based tariffs. Section 122 tariffs became effective February 24, 2026. Our team previously outlined alternative tariff programs the White House could implement if SCOTUS deemed IEEPA tariffs unlawful. We also published immediate reactions when SCOTUS struck down IEEPA tariffs. Section 122 authorizes temporary import surcharges only in specified "situations of fundamental international payments problems," including large and serious balance-of-payments deficits. This authority to impose an import surcharge of up to 15% for a 150-day period dates back to fiscal risks

identified during the Nixon Administration that were rooted in global monetary policy and the gold standard. Lawsuits swiftly challenged the lawfulness of using Section 122 as the immediate alternative to IEEPA tariffs.

CIT Decision Takeaways: Plaintiffs argued that Section 122 permits tariffs only when the U.S. faces a qualifying international payments problem (i.e., a large and serious imbalance-of-payments deficit) and not in instances of trade deficit. The CIT agreed with Plaintiffs' arguments. Judges Mark A. Barnett and Claire R. Kelly ruled that the Administration improperly used its authority to impose Section 122 tariffs. Judge Timothy C. Stanceu dissented. The CIT majority reasoned that the Administration failed to identify an actual balance-of-payments deficit when imposing the tariff. Instead, the White House inappropriately relied on the trade deficit to justify imposing the 10% tariff under Section 122. There is no immediate duty impact for most importers following this decision. It remains to be seen whether refunds will be available and whether lawsuits before the CIT will ultimately be required. The Administration filed to appeal a day after the CIT decision.

Emerging Best Practices: Today the CIT decision highlights that we remain in a time of great change for supply chain compliance obligations, supplier and customer relationship management, and litigation risk. Maintaining awareness of changes and navigating variance in the cost of goods are the key challenges for supply chain professionals. Many clients have been identifying new internal resources, building hardened compliance programs and updating terms in response to the first launch of IEEPA tariffs in February 2025. As the situation develops, the top questions we receive right now focus on the availably of refunds and the effect of refund recovery on trading relationships. Each point is explained below.

Administrative Refund Process: On April 20, 2026, CBP launched the Consolidated Administration and Processing of Entries (CAPE) system as its administrative process in response to the CIT's demand on March 4 that it facilitate refunds of IEEPA duties paid by importers of record. Client experiences with the CAPE process have been relatively positive. If refunds are required to distribute duties collected under Section 122 then it is reasonable to expect that declarations will again be required through CAPE. One technical aspect to watch is the possible need to file protests close to the end of the 180-day window for entries that contain duty payments deemed unlawful. It remains possible that the Administration will seek to avoid refunds on older entries that are deemed "finally liquidated" due to the absence of protest.

Despite the existence of the CAPE process, some clients are choosing to sell their claims to financial firms or to more conservatively file lawsuit before the CIT. Those options will likely remain for Section 122 tariffs as well. Some agreements to sell claims require filing lawsuit in order to participate.

Litigation Risk for B2B Relationships: We are also counseling many clients on private party litigation risk. Business-to-business relationships raise concerns across clients although the vast majority of those are being resolved on commercial terms. It is not uncommon for a supplier that reduced cost, or a customer that paid pass-through duties, to approach the importer of record for negotiation of how duty refunds will be distributed (if at all). Deal terms are then being memorialized in simple letter agreements, more fulsome agreements and in purchase agreement updates. Those approaches are best served by recognizing that the IEEPA invalidation and this CIT decision may not be one-time events. This cycle of complying with law by paying duties, managing those through commercial relationships and then seeking refunds once the tariff programs are overturned may well

continue. Nimble process-oriented drafting helps with expectation setting and in avoiding revisiting these issues.

Litigation Risk for B2C Relationships: Business-to-consumer litigation likely carries greater practical risk for clients. Class action lawsuits have already been filed seeking recovery of pass-through tariffs for consumers who were not importers of record. Those often rely on unjust enrichment causes of action although other theories may be tested including breach of contract and fraud. The viability of claims may be questionable but the potential for reputation harm is not. In the retail context, the more challenging risk may be that deployment of tariff price changes violated state consumer protection laws. For example, some states restrict the ability to impose point-of-sale fees, such as a tariff surcharge, late in the online checkout process if the consumer was not made aware of that additional cost earlier in the transaction. Exercise of good business hygiene for retailers remains mission-critical for past and future tariffs, just as for all other pricing programs.

Benesch is available to counsel clients on managing current tariff recovery options, supplier and customer demands, and litigation risks, as well as ongoing tariff compliance and government enforcement. You may receive our client alerts on tariffs and related supply chain issues by signing up HERE.

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