



U.S. customs tariffs remain under review: Court of International Trade questions sec. 122 customs tariffs

05 | 2026

The issue of customs tariffs in the U.S. remains ongoing. The U.S. Supreme Court recently upheld the ruling of the U.S. Court of International Trade (CIT), which found that customs tariffs imposed under the IEEPA are unlawful (KMLZ Customs Newsletter 03 | 2026). Now, the CIT is also calling into question the customs duties imposed under Section 122 of the Trade Act. President Trump invoked those tariffs immediately following the US Supreme Court's decision.

1 Background

The customs tariffs introduced by President Trump at the start of his second term were based on the *International Emergency Economic Powers Act (IEEPA)*, a type of emergency legislation. In February 2026, the U.S. Supreme Court ruled that the IEEPA is not a valid legal basis for the customs measures which were taken. The duties levied under the IEEPA are currently being refunded by U.S. Customs and Border Protection (CBP) (KMLZ Customs Newsletter 04 | 2026). Immediately following the U.S. Supreme Court's decision, President Trump introduced customs tariffs of 10% on the importation of all goods, initially for a period of 150 days. Customs tariffs have been in force since 24 February 2026. The legal basis for this was Section 122 of the Trade Act. This Section permits the temporary imposition of customs duties of up to 15%, under strict conditions. President Trump cited a deficit in the US trade balance. In his view, the introduction of new customs tariffs was necessary because the U.S. imports goods worth more than it exports. Through these customs tariffs, the Trump administration is attempting to reduce the importation of goods and stimulate domestic production.



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2 CIT decision

On 7 May 2026 (Slip Op. 26-47), the CIT ruled that a trade deficit did not constitute a sufficient basis for the imposition of customs tariffs under Section 122 of the Trade Act. Although Section 122 of the Trade Act provides for the imposition of customs tariffs where there are “large and serious United States balance-of-payments deficits”, the mere existence of a negative trade balance with other countries is not covered by this provision. The Trump administration had argued that the trade deficit led to a negative net international payment balance for the U.S. Even if this deficit was not explicitly envisaged at the time of the enactment of Section 122 of the Trade Act, the regulation must be interpreted dynamically, so that modern problems, such as a trade deficit, could also fall within its scope.

The CIT did not agree with this argument, voting two to one against it. “Balance-of-payments deficits”, as provided for in Section 122 of the Trade Act, refer instead to deficits in liquidity, the official settlement account and the basic balance. The liquidity balance refers to the financial solvency of the U.S. It is particularly at risk when large amounts of foreign exchange reserves must be used to settle external liabilities. The official settlement account covers the balance of accounts between the U.S. and monetary policy actors. It would be particularly at risk if sufficient foreign exchange reserves were not available to influence the value of the dollar with respect to exchange rates against other currencies. The overall balance sheet ultimately comprises an overview of the current financial situation, as well as a long-term forecast of capital movements in the state context. A risk exists here if there is a persistent deficit between liabilities and financing. The existence of a deficit in the trade balance does not fall within any of these three categories.

3 Consequences for the practice

Unlike the decision of the U.S. Supreme Court, this ruling initially applies only to the successful claimants. However, other taxable persons are also in a strong position to succeed with their own appeal proceedings and, if necessary, legal actions. The specific circumstances of the individual claimants’ cases were not a factor in the decision. The outcome therefore certainly allows for a generalized view of the legal situation. However, given that the decision applies only to the successful claimants, it is to be expected that CBP will continue to levy customs tariffs under Section 122 of the Trade Act. Taxable persons should therefore, in any case, lodge appeals against any assessments.

It is also worth noting that the decision was delivered by a mere two-to-one majority in favor of the claimants. One of the three judges on the bench expressed his considerable doubts in a dissenting opinion. In his view, the strict separation of current and trade accounts is outdated and that, in light of the current economic challenges, the customs tariffs introduced by President Trump are covered by Section 122 of the Trade Act. It is likely that the Trump administration will appeal against the CIT’s decision. The legal issues raised, particularly with regard to the dissenting opinion, are then likely to be examined in detail once again by the next courts. This will initially be the U.S. Court of Appeals for the Federal Circuit, after which time the case will ultimately proceed to the U.S. Supreme Court.

Given the already limited duration of the customs tariffs (150 days), the final decision will primarily have implications for the levying of customs tariffs in the past. However, the period of validity is extendable. The Trump administration currently appears optimistic that it will ultimately win this legal dispute.