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Section 122 Tariffs Challenged in U.S. Court of International Trade

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Following President Trump's imposition of tariffs under Section 122 of the Trade Act of 1974 last month, the Section 122 tariffs have been challenged in a lawsuit filed by 24 states. The case is expected to be expedited on a similar basis as challenges to the International Emergency Economic Powers Act (IEEPA) tariffs in order to obtain a quick resolution for importers and consumers.

On February 20, 2026, President Trump signed a proclamation imposing tariffs on imports of merchandise into the United States under the authority of Section 122 of the Trade Act of 1974. The proclamation came hours after the Supreme Court issued an order invalidating tariffs previously imposed by the President under the authority of IEEPA.

Section 122 Tariffs Formally Challenged

On March 5, 2026, the Section 122 tariffs were formally challenged in a lawsuit filed by 24 states in the U.S. Court of International Trade. The lawsuit names President Trump, the Department of Homeland Security, the Secretary of the Department of Homeland Security, U.S. Customs and Border Protection, and the Commissioner for U.S. Customs and Border Protection as defendants.

In their lawsuit, the states challenge the legality of the Section 122 tariffs on the basis that (i) the statutory conditions required to implement tariffs under Section 122 have not been met, and (ii) the tariffs the President has imposed in the name of Section 122 go beyond the scope of tariffs that the statute provides for.

States Allege the Section 122 Conditions Are Not Satisfied

The states claim that Section 122 itself is an outdated statute written to overcome challenges that no longer exist – namely, challenges posed by fixed currency exchange rates which came to a head in the Nixon era.

The states allege that the President has invoked a purported "balance of payments" deficit to justify the Section 122 tariffs, but that the President misconstrues the term "balance of payments." Specifically, the complaint alleges that the President misinterprets a balance of payments deficit as the equivalent of a trade deficit. The states argue that the "balance of payments consists of three components: the current account, the capital account, and the financial account," but the President has only considered the "current account" in his assessment of the balance of payments. The states assert that, taken together, the current account, the capital account, and the financial account of the U.S. show that there is no balance of payments deficit sufficient to justify Section 122 tariffs.

States Allege the Section 122 Tariffs Are Over-Broad

The states further allege that the President's Section 122 tariffs have not been "applied consistently with the principle of nondiscriminatory treatment," nor are the tariffs "of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy," as required by the statute. Instead, the plaintiffs assert, the proclamation implementing the tariffs

"includes more than 80 pages of product exceptions, with no facts to establish that any of the limited circumstances warranting an exception is present."

Conclusion

We expect that this case will be heard on an expedited basis, similar to the challenges to the IEEPA tariffs. Until a ruling is issued by the Court of International Trade, the Section 122 tariffs are expected to remain in place until they expire on July 24, 2026. It is likely that the case will be appealed to the Supreme Court, regardless of the outcome at the Court of International Trade.

Our International Trade and National Security Team will continue to monitor developments and provide updates as warranted. If you have any questions or would like to discuss this in further detail, please contact [P. Lee Smith](#), [Matthew McGee](#), [Georgia Berthelot](#), or any member of Baker Donelson's [International Trade and National Security Team](#)