

## U.S. Court of Appeals for the Federal Circuit grants stay against injunction restraining Section 122 tariffs

12 June 2026

The United States Court of International Trade (U.S. CIT), vide its judgement dated 7 May 2026, had invalidated the temporary 10% ad valorem import surcharge imposed under Section 122 of the Trade Act of 1974 as being beyond the statutory authority delegated to the U.S. President. Consequently, the court granted injunctive relief in favour of certain states and private businesses. Pursuant to the U.S. CIT's decision, the Trump administration filed appeals before the United States Court of Appeals for the Federal Circuit and sought a stay of the injunction pending adjudication of the appeals. On 12 May 2026, the United States Court of Appeals for the Federal Circuit granted a temporary administrative stay against the CIT's ruling and associated injunction.

On 11 June 2026, the United States Court of Appeals for the Federal Circuit granted the government's request for a stay pending appeal, allowing the tariffs to remain in effect until the appeal is decided.

The court found that the CIT may have interpreted the term "balance-of-payments deficits" too narrowly under Section 122. Accordingly, it observed that the government had a reasonable chance of succeeding in the appeal. The court also agreed that the government could suffer significant harm if the stay was not granted, including trade policy disruptions and administrative challenges.

### Our comments

The Federal Circuit's order represents a significant interim victory for the U.S. administration, as it preserves the Section 122 tariff regime while the appeals are adjudicated. Although the order does not conclusively determine the legality of the tariffs, it indicates that the appellate court considers the government's challenge to the CIT's interpretation to be sufficiently arguable to warrant interim protection.

The decision is particularly notable because the appellate court expressed reservations regarding the CIT's narrow interpretation of "balance-of-payments deficits" and appeared receptive to the government's argument that Section 122 affords greater discretion in determining the existence of such deficits. These observations may influence the trajectory of the substantive appeals, although they are not binding findings on the merits.

From a practical perspective, importers and businesses affected by the Section 122 tariffs will be required to continue paying the surcharge pending the outcome of the appellate proceedings.

The final determination of the appeals is expected to have broader implications for the scope of presidential authority under Section 122 and the extent to which courts may scrutinize executive trade measures adopted on balance-of-payments grounds.

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