

Old Tariffs, New Tariffs, Future Tariffs – Understanding the Landscape

February 23, 2026

Within a 24-hour period on February 20, 2026, the U.S. Supreme Court struck down the “IEEPA tariffs” as unlawful, the president issued a proclamation imposing new global tariffs of 10% (which he later said would be increased to 15%), and the administration stated it was initiating several new Section 301 investigations, signaling additional tariffs in the near future:

IEEPA Tariffs –What Was Decided

The U.S. Supreme Court’s recent ruling that the International Emergency Economic Powers Act (IEEPA) does not authorize the president to levy tariffs, immediately invalidated President Trump’s IEEPA tariffs (including the so-called “fentanyl tariffs” and “reciprocal tariffs”).[1] The Court reached this conclusion through two concurring opinions:

- One concurrence (Justices Elena Kagan, Sonia Sotomayor and Ketanji Brown Jackson) reasoned that IEEPA’s statutory authority to “regulate” imports does not include the power to impose tariffs.
- The second concurrence (Chief Justice John Roberts, joined by Justices Neil Gorsuch and Amy Coney Barrett) relied on the “major questions” doctrine, concluding that Congress must clearly delegate authority involving matters of “vast economic and political significance,” especially when dealing with a “core congressional power,” such as taxation.

Shortly after the decision was released, the president issued an executive order[2] confirming the end of the IEEPA tariffs and directing agencies to terminate the tariffs “as soon as practicable.” U.S. Customs and Border Protection (“CBP”) issued an official Cargo Systems Messaging Service notice announcing that effective February 24, 2026, it will no longer collect IEEPA tariffs.

What About Refunds?

As expected, importers who paid IEEPA tariffs are anxious to receive refunds. The Supreme Court’s IEEPA tariff decision, however, did not address the question of refunds and the president himself said it could take years to resolve this issue given its complexity.

Nevertheless, importers and businesses who paid IEEPA tariffs should take immediate action. Unless Congress enacts new legislation addressing the refunds, only importers of record are presently entitled to file refund claims. In any case, businesses that paid additional amounts to cover IEEPA tariffs should contact the importer promptly to arrange how any refunds will be requested and passed along.

Absent any further direction or legislation addressing the refund process, the action importers should take depends on whether or when the customs entry has liquidated:

- Unliquidated Entries. For a customs entry that is not yet liquidated, the importer should immediately revise the entry to exclude IEEPA tariffs by filing a “post summary correction” (PSC). The PSC process is available to importers seeking adjustments for tariffs that may become refundable, such as the IEEPA tariffs. Once a PSC is filed, CBP should then liquidate the entry without applying the IEEPA tariff and refund the overpayment. Note, that there is an

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option to request an extension of the liquidation period if, for some reason, an importer is not able to file a PSC on an unliquidated customs entry in the very near future.

- **Liquidated Entries within Past 180 Days.** For a customs entry that has been liquidated within the past 180 days, the importer should file a protest requesting reliquidation without the IEEPA tariff and demanding a refund. The 180-day post-liquidation period is the statutory period for filing such protests. If CBP denies the protest, the importer may then contest the denial before the U.S. Court of International Trade (“CIT”).
- **Entries Liquidated More than 180 Days Ago.** For a customs entry that was liquidated more than 180 days ago, the importer would need to file a claim before the CIT. In ongoing litigation before the CIT, the government indicated it would not oppose reliquidation of entries outside the protest period if the Supreme Court found the tariffs unlawful.

New Section 122 Tariff – What is Covered

By presidential proclamation^[3], President Trump imposed a new global 10% tariff under Section 122 of the Trade Act of 1974 (“Section 122”) on all imports from all countries, with a few exceptions. Shortly thereafter, the president announced he would increase the tariff rate to 15%, but CBP recently issued an official Cargo Systems Messaging Service notice announcing that, effective as of 12:01 a.m. eastern standard time on February 24, 2026, CBP would levy the Section 122 tariff at a rate of 10%.

Section 122 authorizes the president to impose a “temporary import surcharge” to address “large and serious” U.S. balance-of-payments deficits, provided that the tariff rate is capped at 15% and the duration is limited to 150 days (until July 24, 2026), unless Congress extends the period.

Pursuant to the presidential proclamation, the Section 122 tariff will not apply to the following:

- Articles listed in Annexes I and II of the proclamation, such as certain agricultural products, passenger vehicles, pharmaceuticals, critical minerals, and electronics (largely mirroring the IEEPA tariff exemption list);
- USMCA-compliant goods of Canadian or Mexican origin, including auto parts;
- Textile and apparel goods from Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras or Nicaragua, entered free of duty under the Dominican Republic-Central America-United States Free Trade Agreement; and
- Articles already subject to tariffs under Section 232, except that non-metal content in such goods will be subject to the Section 122 tariff.

In addition, goods are exempt from the Section 122 tariff if they were “loaded onto a vessel” (i.e., ship) and in transit to the U.S. before February 24, 2026, and enter into the U.S. before February 28, 2026. This means that the goods must clear customs before the deadline, so having all paperwork ready in a timely manner to prove the conditions are satisfied will be crucial.

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Importantly, except for goods already subject to Section 232 tariffs (e.g., steel and aluminum), the Section 122 tariff is to be stacked on top of any other tariffs otherwise imposed on the goods, such as Section 301 tariffs, antidumping or countervailing duties, and the ordinary most favored nation (“MFN”) duty rate.

Shipping imported goods into a foreign trade zone (“FTZ”) will not insulate the goods from the Section 122 tariff, because the presidential proclamation provides that goods admitted into an FTZ have “privileged foreign” status. This means that the Section 122 tariff is locked in on such goods at the time entry, regardless of when it the goods are released into U.S. commerce or if transformed while in the FTZ. (Note, the “privileged foreign” status rule does not apply to goods admitted into a customs bonded warehouses. See below.)

Future Tariffs – What to Expect

President Trump imposed the Section 122 tariff in order to buy some time to reinstitute more longer-term, flexible tariffs under other statutes. Namely, the following statutes are the most likely to be considered:

- Section 301 of the Trade Act of 1974. President Trump has already directed the Office of the U.S. Trade Representative to initiate new investigations under Section 301. Section 301 provides that if, after an investigation, the U.S. Trade Representative determines that foreign practices are “unjustifiable” or “discriminatory” and burden or restrict U.S. commerce, the president may impose tariffs on the discriminating country. Typically, this process takes several months, because it requires soliciting public comments and holding hearings.
- Section 338 of the Tariff Act of 1930. Section 338 allows the president to impose “new or additional duties” of up to 50% on countries that discriminate against U.S. commerce. No investigations or hearings are required, so Section 338 tariffs can be levied quickly. But no president has ever imposed tariffs under Section 338, and it would likely provoke legal and trade challenges under World Trade Organization agreements.
- Section 232 of the Trade Expansion Act of 1962. The president is authorized to impose additional Section 232 tariffs on specific goods based on a determination by the U.S. Department of Commerce Secretary that the import of those goods threatens national security. An investigation and report from the Commerce Department is required, but the president can act immediately after receiving the report.

What to Anticipate

Regardless of what happens at the mid-term elections, businesses and importers should plan on the likelihood that the Section 122 tariff will be replaced by more permanent and potentially higher tariffs under Sections 301, 232 or even 338. Congress could extend the Section 122 tariff beyond July 24, 2026 – for any duration it chooses - but even if does not, the Trump Administration has already begun the process to use other statutory tariff authority.

Accordingly, tariffs on U.S. imports will likely remain in effect for at least through the current presidential term, in one form or another, though transitional “gap periods” may occur. Importers may be able to exploit such periods by staging goods in customs-bonded warehouses in the U.S. or by storing inventory in bonded warehouses in Canada or Mexico, then releasing the goods into U.S. commerce during a “gap period” when the effective tariff rate may be lower.

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We will continue to provide further information and updates as significant developments occur. In the meantime, please contact your Miller Canfield attorney or one of the authors of this alert.

[1] *Learning Resources, Inc. v. Trump*, decided Feb. 20, 2026 (Supreme Court of the United States); consolidated with *V. O.S. Selections, Inc. v. Trump*.

[2] Executive Order, dated February 20, 2026, entitled "Ending Certain Tariff Actions", at <https://www.whitehouse.gov/presidential-actions/2026/02/ending-certain-tariff-actions/>

[3] Presidential Proclamation, dated February 20, 2026, entitled "Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems, at <https://www.whitehouse.gov/presidential-actions/2026/02/imposing-a-temporary-import-surcharge-to-address-fundamental-international-payments-problems/>