



April 9, 2026

Section 122 of the Trade Act of 1974

On February 20, 2026, the Supreme Court [held](#) that the [International Emergency Economic Powers Act \(IEEPA\)](#) does not authorize the imposition of tariffs. Later that same day, President Trump [announced](#) that he was imposing a temporary 10% surcharge on imports using [Section 122 of the Trade Act of 1974 \(19 U.S.C. § 2132\)](#). This is the first time a President has used Section 122.

Section 122 authorizes the President to impose temporary import duties or surcharges “[w]hensoever fundamental international payments problems require special import measures to restrict imports (1) to deal with large and serious United States balance-of-payments deficits, (2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or (3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium.” President Trump’s actions have raised questions about the meaning of the term “balance-of-payments deficits” as it is used in Section 122.

Sec. 122 and the Bretton Woods System

In 1944, delegates from various countries [met in Bretton Woods, NH](#), to plan the post-World War II economic order. Under the monetary system that emerged, participating countries generally pegged (fixed) the [exchange rates](#) of their currencies to the U.S. dollar, which the U.S. government allowed [foreign governments](#) to convert into gold at [\\$35 per ounce](#). Due to the global need for U.S. dollars in the Bretton Woods system, by 1949 [U.S. dollar liabilities held abroad](#) were growing larger than the U.S. stock of [monetary reserve assets \(chiefly gold\)](#). By the [1960s](#), [concern](#) about the [outflow of gold](#) and U.S. capacity to maintain the convertibility of the dollar prompted [expert debate](#) (including over what [statistics](#) would best represent the problem) before Congress’s Joint Economic Committee. Congress held dozens of hearings, culminating in a report [recommending the devaluation of the dollar](#). That summer, several countries [signaled](#) their intention to convert dollars into gold. [In response](#), on August 15, 1971, President Nixon [proclaimed](#) a national emergency and imposed a 10% surcharge on imports (with some qualifications) to reduce the flow of dollars abroad and encourage trading partners to negotiate. He also suspended the convertibility of U.S. dollars into gold. The surcharge [lasted 127 days](#), until the conclusion of an agreement with 10 other major economies devaluing the dollar.

Following [legal challenges](#) by importers, President Nixon [asked Congress](#) for clearer statutory authority for such measures. In 1975, Congress enacted Section 122, [authorizing](#) tariffs on terms (15% for up to 150 days) similar to those imposed by President Nixon (10% for 127 days). By this time, the U.S. government was [allowing](#) the

value of the dollar to fluctuate (or *float*) against other currencies, marking the end of the Bretton Woods system.

Table I. Selected Events in the History of Section 122

Date	Event
Aug. 15, 1971	President Nixon proclaimed a surcharge up to 10% on certain imports and suspended the convertibility of the dollar.
Dec. 20, 1971	After agreeing with major economies to devalue the dollar, President Nixon terminated the surcharge.
Apr. 10, 1973	President Nixon proposed trade reform legislation, including “more flexible authority to raise or lower import restrictions on a temporary basis to help correct deficits or surpluses in our payments position.”
Jul. 8, 1974	U.S. Customs Court held that the Trading With the Enemy Act did not authorize the 1971 import surcharge.
Jan. 3, 1975	Congress enacted Section 122 into law.
Nov. 6, 1975	U.S. Court of Customs and Patent Appeals reversed the Customs Court’s July 8, 1974, decision on the surcharge, but noted that future surcharges must comply with Section 122.
May 1976	Following the formal end of Bretton Woods, the Interagency Committee on Balance of Payments Statistics recommended ending the publication of “overall” balance-of-payments statistics.

Overview of the Balance of Payments

The balance of payments is [a record](#) of a country’s economic transactions with the rest of the world, including trade in goods and services, investment income, and unilateral transfers of aid or remittances (classified as the *current account*), and capital flows and acquisition of financial assets (classified as the *capital and financial account*). The [International Monetary Fund \(IMF\)](#) has standardized [balance-of-payments accounting](#) across countries. This standard uses double-entry bookkeeping, in which each transaction is entered as a credit in one account and a debit in another account, such that a country’s total balance-of-payments position always equals zero. For example, the United States has a deficit in the current account that is largely due to its [trade deficit](#), but runs a surplus in the capital and financial account because it is a net recipient of capital flows from abroad.

Under the Bretton Woods system, U.S. government reports and economists used the term *balance-of-payments deficit* to refer to a deficit in a selected set of transactions within the total balance of payments. This usage associated balance-of-payments deficits with the above-described challenges that confronted U.S. policymakers in the 1960s. Such deficits reflected an increase in foreign claims on U.S. dollars relative to U.S. reserves of gold. Balance-of-payments deficits denoted a surplus of dollars abroad that could require the United States to intervene in foreign exchange markets, buying surplus dollars to maintain the government's capacity to convert dollars into gold. These deficits strained U.S. gold reserves and created pressure to devalue the dollar. During the Bretton Woods era, balance-of-payments deficits were partially the result of high levels of U.S. spending abroad, including military expenditures and investment. Trade deficits could contribute to but were not considered the same as balance-of-payments deficits.

Related to these policy concerns, between 1965 and 1976, the Department of Commerce regularly reported three “overall balances, measuring balance of payments surpluses or deficits.” The main overall balance reflected “the extent of official [government] intervention” in foreign exchange markets. In 1976, the Department of Commerce ceased reporting these three statistics. As contemporary news and government publications observed, the U.S. government no longer needed such statistics in the post-Bretton Woods system of floating exchange rates, in which a balance-of-payments deficit or surplus is automatically resolved through the depreciation or appreciation of the dollar. The Department of Commerce has continued to report “partial” balances, including the current, financial, and capital accounts, as well as their constituent parts (e.g., goods and services trade in the current account).

Selected Legal Disputes

President Trump's invocation of Section 122 cited several justifications including “large and persistent trade deficits.” Several states and importers have filed lawsuits in the U.S. Court of International Trade (CIT) claiming trade deficits are not *balance-of-payments deficits* under Section 122.

Previously, as part of its basis for ruling that IEEPA did not authorize worldwide tariffs in response to a trade deficit, the CIT reasoned that “tariffs responding to a trade deficit fit under Section 122” instead. The court observed that “[t]rade deficits are one of the key balance-of-payment deficits.” When the U.S. government appealed the CIT's decision to the U.S. Court of Appeals for the Federal Circuit, it argued that Section 122 “does [not] have any obvious application here, where the concerns the President identified ... arise from trade deficits, which are conceptually distinct from balance-of-payments deficits.” The Federal Circuit upheld the CIT's decision without addressing the application of Section 122 to trade deficits, in a decision that was in turn affirmed by the Supreme Court. A dissenting opinion in the Federal Circuit averred that “a goods trade deficit alone is not enough for ... section 122” and that trade deficits are not a “fundamental international payments problem” under Section 122.

Proponents of using Section 122 tariffs to respond to trade deficits might argue that, as a matter of ordinary meaning, *balance-of-payments deficits* could include deficits in any of the constituent accounts within the U.S. balance of payments, including trade deficits. Opponents may point to sources like those summarized above to argue that, particularly when Section 122 was enacted, *balance-of-payments deficits* referred only to measures of the need for U.S. government intervention to maintain a system of fixed exchange rates and were not equivalent to trade deficits.

As potential contextual evidence that Congress did not mean to equate *balance-of-payments deficits* with trade deficits, a separate provision in the statute, Section 122(c), allows the President to reduce tariffs in response to “large and persistent ... balance-of-trade surpluses” (emphasis added). Legislative history may also suggest that *balance-of-payments deficits* does not refer to trade deficits. Some earlier versions of Section 122 used *balance of payments* throughout, and a Senate Finance Committee report explained that this term was deliberately amended to “balance-of-trade” in what became Section 122(c). At least one such non-enacted version defined a “serious balance-of-payments deficit” as a substantial deficit for four consecutive quarters in either of two of the “overall” balance-of-payments statistics used in 1965-1976. The House Ways and Means Committee later reported it had rejected definitions seeking “mathematical exactness.”

Policy Options for Congress

Extending the Tariffs. Section 122 authorizes a surcharge for up to 150 days “unless such period is extended by Act of Congress.” Congress could consider legislation to extend (or terminate) the surcharge proclaimed by President Trump, although Section 122 does not provide expedited procedures for considering such legislation.

Amending Section 122. If Congress approves or disapproves of Section 122 duties and does not wish to wait for or defer to courts' interpretations of the statute, it could either amend Section 122 or pursue nonbinding measures (such as a simple resolution) to express whether it thinks Section 122's conditions for tariffs are currently satisfied.

Overseeing the Strategy. The Trump Administration has indicated that it plans to use the 150 days provided by Section 122 to conduct the investigations necessary to impose tariffs using other authorities, particularly Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) and Section 301 of the Trade Act of 1974 (19 U.S.C. §§ 2411-2420). Congress could conduct hearings and other oversight activity related to these investigations.

International Oversight. The United States notified the World Trade Organization (WTO) of its implementation of a tariff for balance-of-payments purposes, as required for WTO members. The notification triggers a WTO review of U.S. actions that includes input from the IMF. Congress could consider shaping balance-of-payments discussions at the WTO or IMF, including through appropriations or legislation setting objectives for U.S. representatives.

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