

ICC Global Trade Update

Special Edition - US Supreme Court Decision on Tariffs

1. WHAT HAPPENED

On 20 February 2026, the United States Supreme Court ruled 6-3 that President Trump lacked the legal authority to impose tariffs under the International Emergency Economic Powers Act (IEEPA). The Court affirmed the earlier May 2025 judgment of the United States Court of International Trade, which had found the tariffs unlawful.

The ruling strikes down the so-called 'reciprocal' tariffs, fentanyl-related tariffs on China, Canada, and Mexico, and other tariffs imposed under IEEPA, including those on Brazil (40%) and India (25%). Tariffs imposed under other legal mechanisms, namely Section 232 (e.g. autos, steel) and Section 301 (e.g. Chinese goods), are not affected.

ICC issued an [initial response](#) to the decision, highlighting the challenge with associated refunds and raising the importance of certainty and predictability in trade relations

2. WHITE HOUSE RESPONSE

Within hours of the ruling, President Trump issued three Executive Orders.

The first [Executive Order](#) invoked Section 122 of the 1974 Trade Act, imposing a blanket tariff on all imports to the US for 150 days (expiring 24 July 2026). The tariff was initially set at 10% before being raised to 15% on 21 February. US Customs and Border Protection has yet to implement the increase.

Section 122 allows the President to impose quotas or duties of up to 15% for up to 150 days on imports from all countries, or selectively against countries that maintain unjustifiable or unreasonable restrictions on U.S. commerce. Any extension beyond that period requires an act of Congress.

The second [Executive Order](#) formally ended certain IEEPA tariff actions, though claimed the underlying national emergencies remain in effect. In it he directs the head of each executive department and agency to take all appropriate steps to end the additional ad valorem duties imposed under IEEPA "as soon as practicable". US CBP's only communication at the time of writing has been:

CBP is working with other government agencies to fully examine the implications of the SCOTUS decision. CBP will provide additional information and technical guidance for ACE filers as soon as it becomes available.

The third [Executive Order](#) confirmed the continued suspension of de minimis treatment, including for shipments sent through the international postal network.

The Section 122 tariffs take effect on 24 February. There is an exemption for goods that are in transit which were loaded before 24 February and enter the US before 28 February.

3. WHAT IT MEANS IN PRACTICE

The Executive Order confirmed that the new Section 122 tariffs do not stack with existing Section 232 tariffs.

Certain product categories are exempt from the new Section 122 tariffs under Annex I and Annex II of the Executive Order, including:

- (a) Certain critical minerals
- (b) Metals used in currency and bullion
- (c) Energy and energy products
- (d) Certain natural resources and fertilisers
- (e) Certain agricultural products, including beef, tomatoes, and oranges
- (f) Pharmaceuticals and pharmaceutical ingredients
- (g) Certain electronics
- (h) Passenger vehicles, certain light trucks, certain medium- and heavy-duty vehicles, buses, and certain parts of passenger vehicles, light trucks, medium- and heavy duty vehicles, and buses
- (i) Certain aerospace products
- (j) Information materials, donations, and accompanied baggage
- (k) All articles and parts of articles currently or that later become subject to additional import restrictions imposed pursuant to Section 232
- (l) Qualifying USMCA products
- (m) Duty-free textile products under CAFTA-DR.

These exceptions largely replicate previous exemptions provided for under the IEEPA tariffs, but coverage is not identical. Businesses that relied on an IEEPA exemption should urgently verify that the same exemption is contained in the S122 Annexes.

4. REFUNDS

The Supreme Court decision on the IEEPA did not address refunds, leaving the question of what happens to the billions already collected to future proceedings before the Court of International Trade. However, it is settled law that illegally collected duties must be returned, and it is generally expected that importers will ultimately be entitled to refunds.

However, it is also expected that any refund process will likely be difficult to navigate and prolonged. The decision leaves open the possibility of each importer having to challenge CBP in order to obtain a refund.

The US Administration has given no indication it will act voluntarily. At a press conference on 20 February, President Trump said:

“Wouldn't you think they would have put one sentence in there saying that keep the money or don't keep the money, right? I guess it has to get litigated for the next two years. So they write this terrible, defective decision, totally defective.”

The Penn Wharton Budget Model estimates that up to \$175 billion in refunds could be due.

5. MORE TARIFFS ON THE HORIZON?

In a separate [statement](#), USTR Greer provided more detail about the future trade actions beyond S122 tariffs. Given that S122 expires on 24 July 2026, these investigations will need to move on an accelerated timeline if they are to provide replacement legal cover.

According to this statement, USTR intends to initiate new investigations covering most major trading partners:

- **Initiate investigations under Section 301 of the Trade Act of 1974.** The purpose of S301 is to deal with “unjustifiable, unreasonable, discriminatory, and burdensome acts, policies, and practices”. USTR expects these investigations to cover most major trading partners and to address areas of concern, including industrial excess capacity, forced labour, pharmaceutical pricing practices, discrimination against U.S. technology companies and digital goods and services, digital services taxes, ocean pollution, and practices related to the trade in seafood, rice, and other products.
- **Continue ongoing S301 investigations**, including on Brazil and China.
- **Maintain tariffs currently imposed under S232 and conclude ongoing investigations.**

Current ongoing S232 investigations include:

Product	Date of initiation	Comments	Report due
Pharmaceuticals	1 April 2025	7 May 2025	27 Dec 2025 (overdue)
Aircraft and jet engines and parts for commercial aircraft and jet engines	1 May 2025	3 June 2025	26 Jan 2026 (overdue)
Unmanned aircraft systems and their parts and components	1 July 2025	6 Aug 2025	28 Mar 2026
Polysilicon and its derivatives	1 July 2025	6 Aug 2025	28 Mar 2026
Wind turbines and their parts and components	13 Aug 2025	9 Sept 2025	10 May 2026
Robotics and industrial machinery	2 Sept 2025	17 Oct 2025	2 June 2026
Personal protective equipment, medical consumables and medical equipment including devices	2 Sept 2025	17 Oct 2025	30 May 2026

6. US TRADE DEALS & INTERNATIONAL RESPONSES

USTR Greer stated that “we are confident that all trade agreements negotiated by President Trump will remain in effect.” The response from US trading partners to the new S122 tariffs has been more muted.

Some trading partners – including Brazil, China, and India – may actually benefit from the new S122 tariffs, as the new 15% rate is lower than the “reciprocal” tariffs that they faced under IEEPA. By contrast, partners – like the UK, EU and Korea – that had secured low reciprocal tariffs through trade deals with the US, could see their tariffs rise under S122, calling into question the benefits of those agreements.

The European Commission issued a firm statement in response to the ruling. Invoking the EU US Joint Statement of August 2025, the Commission insisted that “a deal is a deal” and that EU products must continue to benefit from the most competitive treatment, with no tariff increases beyond the ceiling previously agreed. The Commission called on the US to honour its commitments and provide full clarity on its next steps, warning that the current situation is “not conducive” to the fair and mutually beneficial trade relationship both sides agreed to pursue.

On 21 February, Trade Commissioner Šefčovič spoke with USTR Greer and Commerce Secretary Lutnick. No joint outcomes were announced. The calls have done little to reassure the European Parliament: trade committee chair Bernd Lange called an emergency meeting for Monday 23 February to propose freezing ratification of the so-called Turnberry Agreement – the EU-US trade deal which had been scheduled for a committee vote on 24 February – pending a full legal assessment and clear commitments from the US on its next steps.

7. GO DEEPER

The Global Trade Alert has issued an analysis of what the Section 122 tariffs could mean in practice for U.S. trading partners including the potential percentage point changes prior to the SCOTUS ruling and the implementation of a 15% Section 122 tariff.

Please refer to the graph on the next page for further details and a link to the analysis is available [here](#).

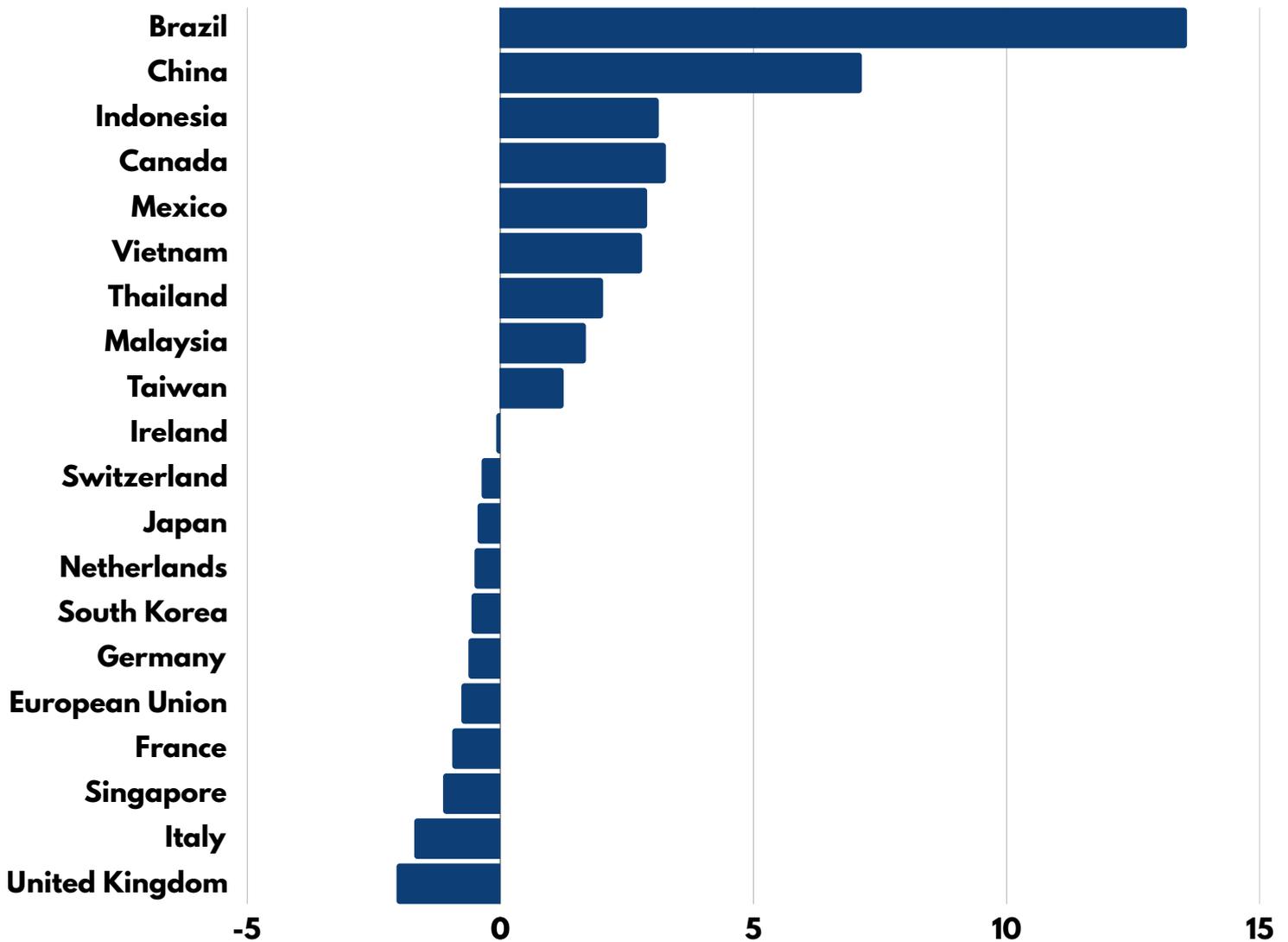
Winners and losers: tariff cuts by country

The shift from the pre-ruling tariff regime to Section 122 at 15% produces clear winners and losers among the top 20 US import sources. Countries that faced steep IEEPA surcharges see large tariff reductions: Brazil (-13.6 pp), China (-7.1 pp), and India (-5.6 pp) benefit most, since the flat S122 surcharge replaces country-specific IEEPA rates that were far higher.

At the other end, countries that already faced low tariffs before the ruling now pay more. The United Kingdom (+2.1 pp), Italy (+1.7 pp), and Singapore (+1.1 pp) see the largest increases, because the 15% S122 surcharge exceeds what they paid under the IEEPA regime (refer to the next page).

Tariff cuts for top 20 US import sources

● Change: Before to S122@15% (pp)



Source: Global Trade Alert