IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: THE HONORABLE MARK A. BARNETT, CHIEF JUDGE
THE HONORABLE CLAIRE R. KELLY, JUDGE
THE HONORABLE TIMOTHY C. STANCEU, SENIOR JUDGE

THE STATE OF OREGON, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Court No. 26-01472

BURLAP AND BARREL, INC.; BASIC FUN, INC.,

Plaintiffs,

v.

DONALD J. TRUMP in his official capacity as President of the United States, *et al.*,

Defendants.

Court No. 26-01606

ORDER

Upon consideration of defendants' motion for a stay of the enforcement of judgments entered May 7, 2026, to permanently enjoin the United States from collecting tariffs pursuant to Proclamation No. 11012 and to refund already collected tariffs from plaintiffs the State of Washington, Burlap and Barrel, Inc., and Basic Fun, Inc., it is hereby

ORDERED that defendants' motion is granted, and it is further

ORDERED that the effectuation of Slip Op. 26-47 and judgments (*The State of Oregon, et al. v. United States*, Court No. 26-01472, ECF No. 50; *Burlap and Barrel, Inc. et al. v. United States*, Court No. 26-01606, ECF No. 39) is hereby stayed pending the entry of a final and conclusive judgment after all appeals.

Dated:______________________
New York, New York

____
JUDGE

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BEFORE: THE HONORABLE MARK A. BARNETT, CHIEF JUDGE
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THE HONORABLE TIMOTHY C. STANCEU, SENIOR JUDGE

THE STATE OF OREGON, *et al.*,

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BURLAP AND BARREL, INC.; BASIC FUN, INC.,

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DONALD J. TRUMP in his official capacity as President of the United States, *et al.*,

Defendants.

Court No. 26-01606

MOTION FOR A STAY
OF ENFORCEMENT OF JUDGMENT PENDING APPEAL

Pursuant to Rule 62 of the Rules of this Court, defendants respectfully request that the Court stay the enforcement of its judgments of May 7, 2026, pending defendants' appeal. *The State of Oregon, et al. v. United States*, Court No. 26-01472, ECF No. 50; *Burlap and Barrel, Inc. et al. v. United States*, Court No. 26-01606, ECF No. 39. We have already filed notices of appeal in both cases. Given the significance of these issues and the immediate effect of this

Court's order, defendants intend to expeditiously seek a stay from the Federal Circuit later today, May 11, 2026, and will of course relay the Court's decision on this motion to the Federal Circuit immediately.

Without a stay, defendants will be harmed in three critical ways. First, the injunction will severely undermine the President's trade agenda and will destabilize efforts to remedy our longstanding trade deficit. Second, the United States faces significant risk that it will be permanently deprived of the revenue these tariffs have generated and will generate. Third, U.S. Customs and Border Protection (CBP) will not be able to effectuate the Court's injunction without diverting its already-limited resources from the vast effort to refund duties paid under the International Emergency Economic Powers Act (IEEPA).

By contrast, a stay will not harm plaintiffs. Even if the judgments were affirmed on appeal, plaintiffs still would not be harmed because defendants will issue refunds if directed to do so by the Court, including any post-judgment interest that accrues during the pendency of the appeal. A stay of the enforcement of judgment would merely preserve the status quo during the pendency of our appeal.

If the Court denies this motion, defendants respectfully request an administrative stay of the judgment for seven days to allow time for the Federal Circuit and, if necessary, the Supreme Court to consider a stay.

BACKGROUND

Plaintiffs, two importers (called the private plaintiffs) and 24 states, filed separate suits in March 2026, challenging the President's imposition of tariffs under Section 122 of the Trade Act 1974. *Burlap and Barrel*, Compl., ECF No. 2; *Oregon*, Compl., ECF No. 2. Under the Court's scheduling order, ECF No. 24, plaintiffs filed motions for summary judgment and in the

alternative for preliminary injunction. *Burlap and Barrel*, ECF No. 11; *Oregon*, ECF No. 25. Defendants filed responses to both motions as well as answers to the complaints. *Burlap and Barrel*, ECF Nos. 15, 16; *Oregon*, ECF Nos. 34, 35. The Court held a hearing on April 10, 2026. *Burlap and Barrel*, ECF No. 35; *Oregon*, ECF No. 46.

On May 7, 2026, the Court declared Proclamation 11102 invalid, granted summary judgment for the private plaintiffs and the State of Washington, entered a permanent injunction against the enforcement of the challenged duties for those specific plaintiffs, and ordered that any duties paid by those plaintiffs be refunded. *See* Slip Op. 26-47 (May 7, 2026). Specifically, the Panel Majority held that Proclamation 11012 failed to identify "balance-of-payments deficits" as Congress understood that phrase when it enacted the Trade Act of 1974. *Id.* at 28-46. The Panel Majority reasoned that the term "balance-of-payments deficits" in Section 122 could only mean deficits in liquidity, official settlements, or the basic balance—measures of the United States' balance-of-payments position referenced in the legislative history. *Id.* at 45. Although the Panel Majority recognized that Congress extensively considered options for measuring the balance of payments but omitted a definitional provision from the final text of Section 122, the Panel Majority concluded that congressional reports tables listing "liquidity," "official settlements," and the "basic balance" as subcategories supplied the only valid methodology for identifying balance-of-payments deficits. *Id.* at 34-45. Judge Stanceu dissented, stating he would have denied plaintiffs' motion and provided the parties "notice and a reasonable time to respond" according to the procedure in USCIT Rule 56(f) because the majority granted summary judgment "on grounds not raised by a party." *Id.* at 54, 77-88; USCIT R. 56(f)(2). Judge Stanceu also explained why he disagreed with the Panel Majority's interpretation. Slip Op. 26-47 at 54-88.

ARGUMENT

I. Legal Standard

The power to stay a judgment pending appeal is "part of a court's 'traditional equipment for the administration of justice.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9-10 (1942)). The purpose of a stay pending appeal is to preserve the status quo so that the appellate court may take the necessary time to make a reasoned decision. *Id.* at 429-30. Rule 62(d) of the Rules of this Court applies to stays of judgments granting injunctions pending an appeal. Rule 62(d) provides that "the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Rule 62(e) eliminates the bond requirement "when granting a stay on an appeal by the United States."

The four factors relevant to issuance of a stay of judgment pending appeal are well established: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted); *see also Standard Havens Prods., Inc. v. Gencor Indus., Inc.,* 897 F.2d 511, 512 (Fed. Cir. 1990). As discussed below, all four factors support granting defendants' motion.

II. Defendants Will Suffer Irreparable Harm Without a Stay

The United States faces irreparable harm absent a stay of the Court's judgments enjoining the challenged tariffs. The Constitution grants the President the power to conduct foreign affairs and manage national security. U.S. Const. art. II, § 2; *see also Ziglar v. Abbasi*,

582 U.S. 120, 123 (2017) ("National-security policy . . . is the prerogative of the Congress and the President."); *Humane Soc. of U.S. v. Clinton*, 236 F.3d 1320, 1329 (Fed. Cir. 2001) ("in cases in which international relations are concerned, the President plays a dominant role"). Respectfully, the Court erred by interfering with the President's exercise of his congressionally-directed duty to address balance-of-payments deficits and their resulting harms. It should at minimum enter a stay to limit the irreparable harm to ongoing trade negotiations, as well as to U.S. economic and national security, while defendants appeal.

The President has determined that the balance-of-payments deficit he identified significantly harms U.S. national interests, including economic and national security interests, and has determined that an import surcharge in the form of duties is required to deal with those problems. *See, e.g.*, Proc. No. 11012, 91 Fed. Reg. 9339, 9341 (Feb. 20, 2026) ("I find that fundamental international payments problems within the meaning of section 122 exist; that those problems significantly harm United States national interests, including economic and national security interests; and that special measures to restrict imports are required to address those problems, as authorized by section 122."); *id.* at 9342 ("Restricting imports through the surcharge imposed in this proclamation is required to address the fundamental international payments problems within the meaning of section 122 that I have found to exist. The surcharge imposed in this proclamation will deal with the large and serious United States balance-of-payments deficit.").

The Court's injunction thus constitutes an enormous intrusion on the President's conduct of foreign affairs and efforts to address the rapidly deteriorating balance-of-payments position of the United States. This is particularly so given the size and persistence of the U.S. current account deficit and the fact that further declines in the United States' net negative international

investment position could lead to a disorderly external rebalancing of the U.S. economy. As Ambassador Greer explains, the current crisis "endangers our ability to finance our spending, erodes investor confidence in our economy, and distresses financial markets." Greer Dec. ¶ 7.

Secretary Lutnick confirms Ambassador Greer's concerns in his attached declaration, stating that removing the tariffs "would remove the only global baseline currently restraining an unprecedented spike in import flows. . . ." Lutnick Dec. ¶ 16. As the Secretary explains, the tariffs help "prevent[] the resurgence of conditions such as extremely high imports and trade deficits that contributed to the balance of payments problems found in" the President's proclamation. Lutnick Dec. ¶ 7. "Importers respond to tariff expectations," and "[t]rading partners respond to tariff expectations." Lutnick Dec. ¶ 14. As a result, Secretary Lutnick attests that "premature removal of the surcharge would usher in a flood of imports that characterized the pre-global tariff landscape." Lutnick Dec. ¶ 7. The Secretary expects that, without the requested stay, "goods imports in May 2026 and subsequent months would increase above the levels that would otherwise prevail with the surcharge in place." Lutnick Dec. ¶ 18. Plaintiffs' importation of merchandise without paying the applicable duties would undermine the President's goals, and the requested injunction would weaken the President's efforts to reverse these trends.

Likewise, the Court's injunction, if not stayed, will disrupt ongoing negotiations that seek to address the balance-of-payments issues the United States is facing. Ambassador Greer highlights this point, emphasizing that the Section 122 tariffs have "incentivized trading partners to remain at the negotiating table by underscoring President Trump's determination to address fundamental imbalances in the global trading system." Greer Dec. ¶ 5. The President's tariff agenda has resulted in nine new trade agreements and many more framework agreements, all of which have created "more market access for American workers, producers, and service

providers, than decades of traditional free trade agreements . . . ." Greer Dec. ¶ 4. Similarly, Secretary Lutnick warns that the injunction will "reduce incentives for foreign governments to address policies that undermine United States commerce and national security," Lutnick Dec. ¶ 21, and "undermin[e] our position with trading partners during ongoing negotiations," *id.* ¶ 29. The United States cannot "reconstruct the negotiating leverage, market expectations, or trade flows that would be lost during th[e] period" of the Court's injunction." Lutnick Dec. ¶ 8.

And there is a strong public interest in allowing the Executive Branch to implement administration policies. *See, e.g.*, *Trump v. Orr*, 146 S. Ct. 44, 46 (2025) (injunctions against an "Executive Branch policy," especially one "with foreign affairs implications" by their nature impose "irreparable injury") (quoting *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025)).

That is especially true here where any injunction causes more legal questions than it solves. As the Court is aware, Section 122 import surcharges may not exceed a period of 150 days, "unless such period is extended by Act of Congress." *See* 19 U.S.C. § 2132(a). As of today, those duties will only be in effect for ten more weeks, until July 24, 2026. *See* 91 Fed. Reg. at 9343. The temporary nature of the tariffs matters. If the injunction stands, Secretary Lutnick says, "the harm cannot be repaired later." Lutnick Dec. ¶ 8. The United States faces real risk that it may not be able to recover all the lost import-restricting effect of a temporary measure after the statutory period has run. "Nor can the United States recover the negotiating leverage, market expectations, or trade flows that would be lost during that period." *Id.* "Once goods enter the United States in higher volumes, the import-restricting effect of the temporary surcharge for that period is lost." Lutnick Dec. ¶ 24.

The Court's opinion does not address whether Section 122's 150-day clock is suspended while the surcharge is enjoined (and plaintiffs will surely argue that it is not). The Court's

injunction would require the United States to stop collecting those duties—first, from the private plaintiffs and the State of Washington, and then from the countless additional plaintiffs sure to bring their own actions seeking the same injunctive relief. Therefore, even if defendants are successful on appeal, the United States may never be able to collect some of the duties that could otherwise have been collected during the remaining ten weeks of Section 122's time limit. Lord Dec. ¶ 6 ("If liquidation is not extended, CBP will not be able to reliquidate the entries beyond the 90-day reliquidation period absent a court order."). And, the injunction creates a serious risk that importers will take advantage of any gap in the Government's ability to collect Section 122 duties by increasing imports now in order to avoid future duties, including future Section 122 duties if defendants prevail on appeal in this matter. Lutnick Dec. ¶ 18 (importers and foreign producers "will have a strong incentive to accelerate shipments into the United States before other tariff measures are finalized or implemented").

Similarly, the injunction requires CBP to issue refunds. Even if defendants are successful on appeal, it is possible that any refunded duties may never be collected. "Ordinarily, 'economic loss does not, in and of itself, constitute irreparable harm[,]'" "because in most circumstances financial harms can be remedied through subsequent legal action." *In re NTE Connecticut, LLC*, 26 F.4th 980, 990 (D.C. Cir. 2022). But financial injury can be irreparable "where no adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation." *Id.* (quotation marks omitted). That is true here. Therefore, the Court's injunction has the likely effect of nullifying the effects of the remaining Section 122 timeline, even if defendants succeed on appeal.

Indeed, for the reasons articulated by Judge Taranto in his dissent from an unpublished order denying a stay in *Transpacific Steel LLC v. United States*, 840 F. App'x 517 (Fed. Cir.

2020), there is a reasonable argument that an order requiring the Government to pay refunds should *automatically* be stayed under Rule 62(e) of the Rules of this Court, equivalent to Federal Rule of Civil Procedure 62(e), which provides that monetary judgments against the Federal Government are exempt from the usual requirement to post a bond in order to obtain an automatic stay pending appeal, *see* USCIT R. 62(e); Fed. R. Civ. P. 62(e). The Court can obviate the question of whether an automatic stay applies by granting one under the usual equitable standard.

Finally, the injunction would cripple CBP's ability to function at a particularly critical time. CBP explains that to effectuate the injunction, it must "reprogram the Automated Commercial Environment (ACE), CBP's official system of record for imported merchandise, to allow the affected importers to submit entry summaries without declaring" Section 122 duties and depositing the associated amounts. Lord Dec. ¶ 5. Such work first requires CBP to obtain confirmation of the plaintiffs' unique importer of record numbers—and although defendants' counsel requested this information from the plaintiffs on May 8, as of the time of this filing the Government is still awaiting this information from the State of Washington for all of its instrumentalities that have importer of record numbers. Lord Dec. ¶ 5. Only upon receiving this information from the plaintiffs can CBP complete the work to reprogram ACE. Lord Dec. ¶ 12. These circumstances present real risk that CBP, despite best efforts, may not be able to fully comply with the injunction in the timeframe the injunction requires.

Furthermore, the Court's decision will have the practical effect of sending hundreds, if not thousands, of plaintiffs to this Court to seek similar relief. *See, e.g.*, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (cautioning courts to "pay particular regard for the public consequences in employing the extraordinary remedy of injunction"); *Hanson v. District of*

Columbia, 120 F.4th 223, 247-48 (D.C. Cir. 2024) (per curiam) ("limiting injunctive relief to the four appellants in this case" is insufficient because "a follow-on class-action suit seeking the same relief would inevitably follow and almost inevitably have to be granted"); *Guerra v. Scruggs*, 942 F.2d 270, 275 (4th Cir. 1991) (considering the aggregate harm of additional injunctions in similar cases). Indeed, nearly four thousand cases seeking injunctions for individual plaintiffs relating to IEEPA duties were filed in the wake of the Court's decision in *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350 (Ct. Int'l Trade 2025). We have every reason to believe that importers will do the same in the wake of the Court's decision in this matter. The cascading effect of that expected flood amplifies the harm described by CBP by many orders of magnitude. As Mr. Lord explains, the many steps CBP must perform to effectuate more injunctions becomes "increasingly unworkable." Lord Dec. ¶ 7.

Specifically, to protect the revenue, CBP would try to extend the time period for the liquidation of the entries covered by this lawsuit (those whose claims have not been dismissed), rather than allow entries to liquidate and, absent a court order, risk not being able to assess the duties that may ultimately be owed. Lord Dec. ¶ 6. Should additional plaintiffs file actions and the Court's injunction be applied to their imports, "CBP will need to ascertain all affected IOR numbers," "constantly update the ACE programming to maintain [the] expanding list of importers," and "manually extend each importers' affected entries." *Id.* ¶¶ 6, 12. That process "will become increasingly unworkable," given that more than 13 million entry summaries have been filed with Section 122 duties to date. *Id.* ¶ 7. The additional expected injunctions will threaten to cripple the very system entrusted to effectuate the injunction. *See Winter*, 555 U.S. at 24; *Hanson*, 120 F.4th at 247-48; *Guerra*, 942 F.2d at 275.

Additionally, even if the Government prevails on appeal, "CBP may not be able to

retroactively collect the outstanding Section 122 duties." Lord Dec. ¶ 8. As Mr. Lord explains, "[f]or entries which CBP is enjoined from collecting Section 122 duties that it subsequently is able to liquidate or reliquidate with Section 122 duties, . . . CBP would face significant risk that bills issued upon such liquidations or reliquidations would go unpaid." *Id.* This is because CBP's general continuous bonding formula for importers' unpaid bills is "not likely [to] cover the full amount of Section 122 duties subsequently assessed." *Id.*

Without a stay, the Court's injunction also threatens CBP's ongoing efforts to effectuate the Supreme Court's decision in *Learning Resources*. Mr. Lord explains that to effectuate the injunction here, CBP will have to "divert resources" from the IEEPA refund process. Lord Dec. ¶ 12. As the Court notes, CBP has acted in good faith to implement significant changes to ACE to accommodate the tens of millions of IEEPA refunds it must process. *See* Slip Op. 26-47 at 50 n.40; *Atmus Filtration, Inc. v. United States*, No. 26-1259, ECF 33, 38, 47, 51; *Euro-Notions Florida, Inc. v. United States*, No. 25-595, ECF 15, 26. That effort is far from over—CBP is still in the early phases of refunding and has dedicated "substantially all of its available resources . . . to maintaining and improving" the process. Lord Dec. ¶ 12. CBP lacks the resources to staff both efforts simultaneously, nor should it be required to when plaintiffs will be refunded the Section 122 tariffs for their imports should they ultimately prevail in a final and unappealable decision, as discussed below.

III. A Stay Will Not Substantially Injure Other Parties

In sharp contrast to the extraordinary harm to defendants, a stay will not substantially injure the plaintiffs. If a stay is entered and the Government does not prevail on appeal, any plaintiff who is an importer will receive payment on their refund, with interest, if and when ordered by the courts. "[T]here is virtually no risk" to any importer that they "would not be made

whole" should they prevail on appeal and the tariffs are held to be refundable. *See Sunpreme Inc. v. United States*, 2017 WL 65421, at *5 (Ct. Int'l Trade Jan. 5, 2017). The most "harm" that could incur would be a delay in collecting on deposits. This harm is, by definition, not irreparable. *See Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp.*, 17 F.3d 691, 694 (4th Cir. 1994). As a result, plaintiffs would not be substantially injured and a stay would appropriately preserve the status quo until the appeals process has been finalized.

IV. The Public Interest Is Served By a Stay

The balance of equities and the public interest—which merge where, as here, "the Government is the opposing party," *Nken*, 556 U.S. at 435—strongly favor a stay. The public interest requires that the President be able to swiftly address identified threats to the United States' economy, military preparedness, and national security. *See Winter*, 555 U.S. at 24; *PrimeSource Bldg. Prods., Inc. v. United States*, 535 F. Supp. 3d 1327, 1335 (Ct. Int'l Trade 2021) (concluding that "the public interest favors allowing the government to exercise its lawful authority" and granting stay pending appeal).

Protecting the public fisc is also an important consideration in deciding whether to stay the enforcement of a judgment pending the resolution of an appeal. *See, e.g., Heraeus-Amersil, Inc. v. United States*, 1 C.I.T. 270, 270 (1981); *Global Dynamics, LLC v. United States*, 138 Fed. Cl. 207, 211 (2018) ("protecting the public fisc is . . . a strong public interest" (cleaned up)). Any potentially irrecoverable funds (and, to the extent refunds and entries without the tariffs are recoverable, what would essentially be an extended loan) continue to perpetuate the circumstances that have atrophied the domestic manufacturing industry—the national emergency and national security harms that the tariffs were designed to protect against.

V. The United States Is Likely to Succeed on Appeal

Finally, the Court should stay its order because defendants are likely to succeed on appeal. The question here is whether the President "clear[ly] misconstru[ed]" his statutory authority to deal with large and serious balance-of-payments deficits under Section 122. *USP Holdings, Inc. v. United States*, 36 F.4th 1359, 1365-66 (Fed. Cir. 2022) (citing *Corus Grp. PLC v. ITC*, 352 F.3d 1351, 1356 (Fed. Cir. 2003)). In issuing Proclamation 11012, the President determined that "fundamental international payments problem within the meaning of section 122 exist," and that "the United States balance-of-payments position, under any reasonable understanding of the term in the context of section 122, is currently a large and serious deficit." *See* 91 Fed. Reg. at 9340. In making this determination, the President explained that "United States runs a trade deficit, does not currently make a net income from the capital and labor that it deploys abroad, and experiences more transfer payments, on net, flowing out of the country than into the country." *Id.*

Despite this finding grounded in the statutory text, the Panel Majority concluded that the President misconstrued his statutory authority, not based on statutory text, but based on "legislative history" indicating that "Congress understood balance-of-payments deficits to refer, at the time, to deficits in (1) liquidity, (2) official settlements, or (3) basic balance." Slip Op. 26-47 at 33. Respectfully, the Panel Majority erred, and there is a substantial likelihood that the Federal Circuit will disagree with this Court's judgment on appeal. As the Proclamation recognizes, and as economists have long understood, there are multiple ways of calculating a balance-of-payments deficit. Whatever other methods might be viable, the approach taken here—treating as a large and serious balance-of-payments deficit a deficit in the current account

stemming from a trade imbalance, coupled with a net negative international-investment position equal to 90 percent of U.S. gross domestic product—is not a clear misconstruction of the statute.

First, Congress not only did not define the term "balance-of-payments deficits," but it *declined* to enact definitional language included in a prior version of the bill. Because the term is a technical one, its interpretation must be driven by how it is understood in the relevant field of expertise. *See Van Buren v. United States*, 593 U.S. 374, 388 (2021). As our summary judgment response demonstrated, the approach taken by the President here is consistent with how economists understood the phrase "balance-of-payments deficit[]" both in 1974 and today. Plaintiffs' approach, by contrast, is not—as all members of the Panel correctly recognized.

In advancing a third, novel interpretation that no plaintiff proffered, the Panel Majority looked to a portion of legislative history. But "legislative history is not the law." *Azar v. Allina Health Servs.*, 587 U.S. 566, 579 (2019). Worse yet, the Panel Majority relied on weak legislative history—including language in a committee staff report—which does not even reflect the legislative history as a whole, as the dissent explains. *See* Slip Op. 26-47 at 56. In the same Senate staff report the Panel Majority relies on, the dissent identifies evidence "that the country's current account balance," on which the challenged Proclamation rests, "could have been considered to be a measure of the balance of payments in 1974." *See id.* at 63-64.

What is unquestioned is that the phrase "balance-of-payments deficit" is an economic term of art with a range of accepted meanings. The best reading of the statute, then, is that Section 122 allows the President to act in response to a set of circumstances that constitutes a "balance-of-payments deficit" within an economically reasonable understanding of that phrase. This reading recognizes that when Congress uses an economic term of art subject to determination by a range of reasonable economic methodologies, it leaves to the President and

his advisers the option of invoking any of those methodologies. *See Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. United States*, 102 F.4th 1252, 1261 (Fed. Cir. 2024) (if a term is "general but not ambiguous," it is "more properly viewed as one involving implied delegation of adjudicative authority" to the Executive Branch).

The Federal Circuit will review the question regarding the interpretation of Section 122 *de novo* and is likely to hold that the President acted within his properly delegated authority and did not clearly misconstrue the statute in imposing the challenged tariffs. This Court should grant a stay pending appeal.

CONCLUSION

For these reasons, we respectfully request that Court stay enforcement of its judgments pending resolution of all appeals.

Respectfully submitted,

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Dated: May 11, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to section 2(B)(1) of the Standard Chambers Procedures of this Court, that this brief contains 4,340 words, excluding the table of contents, table of authorities, any addendum containing statutes, rules or regulations, any certificates of counsel, and counsel's signature, as calculated by the word processing system used to prepare this brief (Microsoft Word).

/s/ Claudia Burke
CLAUDIA BURKE

U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

THE STATE OF OREGON, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	CASE NO. 26-01472

DECLARATION OF AMBASSADOR JAMIESON LEE GREER, UNITED STATES TRADE REPRESENTATIVE

I, Ambassador Jamieson Lee Greer, hereby state as follows:

1. I am the United States Trade Representative and the head of the Office of the United States Trade Representative, a component in the Executive Office of the President. *See* 19 U.S.C. § 2171(a). I have been the United States Trade Representative since February 26, 2025.

2. The statements made herein are based on my personal knowledge, on information provided to me in my official capacity, reasonable inquiry, and information obtained from various records, systems, component employees, and information portals maintained and relied upon by the United States Government in the regular course of business, and on my evaluation of that information.

3. The purpose of this declaration is to explain, in my capacity as the principal advisor to the President on international trade policy and the chief representative for the United States in international trade negotiations, that the temporary import surcharge imposed in Proclamation 11012 of February 20, 2026 (Imposing a Temporary Import Surcharge To Address Fundamental International Payments Problems) ("Section 122 Proclamation") should be maintained during the

pendency of the United States Government appeal due to its continued importance in preserving our ongoing trade negotiations, bolstering our economic security, and reinforcing the Trump Administration's national security tariffs. If enforcement of the United States Court of International Trade's (CIT) judgments during the pendency of all appeals is not stayed, the United States Government will be required to pay refunds to the importer plaintiffs here—and any other importers who secure similar judgments in the coming days. This outcome will create uncertainty for both foreign trading partners and importers about the Trump Administration's ability to use trade policy to support domestic production and reduce reliance on imports generally, and in national-security-sensitive sectors in particular. It would also signal to financial markets that United States Government has fewer statutory tools than expected to confront long-standing problems in its balance-of-payments position at a time when its net international-investment position is sharply deteriorating.

4. First, maintaining the temporary import surcharge imposed in the Section 122 Proclamation is critical to ensuring trading partners' continued cooperation in ongoing trade negotiations. Since President Trump announced his global tariff program in April 2025, USTR has obtained significant commitments from trading partners to address structural problems underlying the substantial U.S. trade deficit, which as a subcomponent of the current account, contributes significantly to the large and serious balance of payments problems the United States is currently confronting. More specifically, due only to the leverage generated by President Trump's global tariff program, the United States has negotiated and finalized full Agreements on Reciprocal Trade ("ARTs") with Argentina, Bangladesh, Cambodia, Ecuador, El Salvador, Guatemala, Indonesia, Malaysia, and Taiwan and announced framework deals with the United Kingdom, the European Union, India, Japan, North Macedonia, South Korea, Switzerland, Thailand, and Vietnam. These

agreements have done more to eliminate certain persistent tariff and non-tariff barriers to U.S. exports, and thereby achieved more market access for American workers, producers, and service providers, than decades of traditional free trade agreements or multilateral negotiations at the World Trade Organization (WTO). Indeed, U.S. exports of goods and services exceeded $300 billion in each of the first three months of 2026, with each month breaking the record for the highest monthly export figure in American history.

5. After the Supreme Court issued its decision in *Learning Resources, Inc. et al. v. Trump*, 607 U.S. ___ (2026), which concluded only that the President lacked the authority under the International Emergency Economic Powers Act (IEEPA) to impose new additional tariffs on imports into the United States, and President Trump issued the Section 122 Proclamation, USTR has continued to work intensively with our ART partners to implement those agreements. The temporary import surcharge imposed in the Section 122 Proclamation has incentivized trading partners to continue implementation by underscoring President Trump's determination to address fundamental imbalances in the global trading system with increased tariffs.

6. Since President Trump issued the Section 122 Proclamation, USTR has also remained engaged in active negotiations with framework deal partners to finalize those agreements. In fact, USTR has scheduled additional negotiating rounds with numerous trading partners before the Section 122 surcharge is set to expire on July 24, 2026. A failure to stay enforcement of the CIT's judgments pending resolution of all appeals would inject uncertainty into those negotiations and significantly reduce trading partner incentives to eliminate barriers. Moreover, since the President announced the Section 122 surcharge, various other trading partners have approached the United States to engage in negotiations to eliminate their trade barriers as well. If

certain key trading partners walk away from the table now, these negotiations may never resume, even if higher courts conclude that the temporary import surcharge was lawful.

7. Second, the Section 122 surcharge enhances U.S. economic security. In line with Section 122 itself, the surcharge aims to address a large and serious U.S. balance-of-payments issue, as evidenced, in part, by the substantial U.S. trade deficit. Left unaddressed, this balance-of-payments issue endangers our ability to finance our spending, erodes investor confidence in our economy, and distresses financial markets.

8. President Trump's global tariffs program has spurred trading partners to commit hundreds of billions of dollars in greenfield U.S. investments across key sectors, including semiconductors, shipbuilding, energy, and critical minerals, while simultaneously securing increased market access for U.S. exports, as described above. Furthermore, the global tariffs program is designed to reinforce President Trump's domestic policies to increase domestic manufacturing capacity and production, which are already having an impact. In fact, since, the Section 122 tariff took effect on February 24, the manufacturing goods trade deficit decreased by 43.3 percent in March year-over-year, down from $151.4 billion in March 2025 to $85.4 billion in March 2026 (latest information available). In addition, from February 2026, the month the Section 122 surcharge took effect, through April 2026, overall manufacturing employment increased by one percent, as the Institute for Supply Management Manufacturing Purchasing Managers' Index and manufacturing productivity grew at some of the highest levels since January 2023. Thus, the President's tariff strategy, inclusive of the Section 122 surcharge, is having real, beneficial impacts on the U.S. economy.

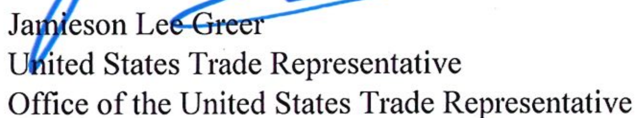
9. Third, the Section 122 surcharge supports U.S. national security. The Section 122 action reinforces President Trump's national security tariff program by creating a demand signal for

domestic producers, spurring an increase in domestic production of critical manufactured goods and agricultural products, thereby reducing our vulnerability to economic coercion by adversaries and enhancing supply chain resilience in defense-critical sectors.

10. In sum, if the CIT's decision is not stayed pending appeal, trading partners with whom we have concluded ARTs might abandon implementation of their commitments and ongoing negotiations of future such agreements may cease, while President Trump's policies to promote U.S. economic and national security by expanding domestic production capacity and production may be weakened. Accordingly, it remains vital to the foreign policy, economy, and national security of the United States for the Court to permit the Section 122 temporary import surcharge to remain in effect.

11. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on this 11th day of May, 2026.

/s/ 

Jamieson Lee Greer
United States Trade Representative
Office of the United States Trade Representative

UNITED STATES COURT OF INTERNATIONAL TRADE

THE STATE OF OREGON, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	CASE NO. 26-01472

DECLARATION OF HOWARD W. LUTNICK,
UNITED STATES SECRETARY OF COMMERCE

I, Howard W. Lutnick, hereby state and declare as follows:

1. I am the Secretary of Commerce for the United States and the head of the Department of Commerce, an Executive Department of the United States. *See* 5 U.S.C. § 101. The purpose of this declaration is to assert, in my official capacity and opinion, how the failure to issue a stay in this case will cause irreparable harm to the United States by negating the critical role of the tariffs President Donald J. Trump has imposed under Section 122 of the Trade Act of 1974, 19 U.S.C. § 2132 ("Section 122") in redressing significant balance-of-payments issues that the United States faces. The statements made herein are based on my personal knowledge and on information provided to me in my official capacity as Secretary of Commerce.

2. Many of the fundamental problems the United States faces, ranging from the hollowing out of our defense-industrial and manufacturing base to balance-of-payment deficits and risk of significant currency depreciation, are caused by systemic trade imbalances with our foreign-trading partners.

3. The Department of Commerce has played a pivotal role in implementing the President's visionary trade policies. These policies have led to us securing historic trade deals and investment commitments from our trading partners, which are already yielding unprecedented returns that will contribute to redressing longstanding trade deficits and other economic issues.

4. Proclamation 11012 imposed a temporary 10 percent ad valorem surcharge on certain imports, subject to specified exceptions, effective February 24, 2026. The President imposed that surcharge after determining that fundamental international payments problems exist, that those problems significantly harm United States national interests, including economic and national-security interests, and that special measures to restrict imports are required to address those problems.

5. The Proclamation rests on the condition of the United States' international payments position and the President's judgment that those conditions impair United States national interests, including economic and national-security interests. The President found that the United States faces fundamental international payments problems; that special import measures such as surcharges and quotas are key tools to protect the economy and national security of the United States; and that large and serious balance-of-payments deficits can endanger the ability of the United States to finance its spending, erode investor confidence in the economy, and distress financial markets.

6. The President found in Proclamation 11012 that the United States runs a substantial trade deficit, that the annual balance on primary income turned negative in 2024 for

the first time since at least 1960, that the United States maintained a current-account deficit of 4.0 percent of GDP in 2024, that the United States' net international-investment position has deteriorated substantially, and that the balance on secondary income has been persistently in deficit since the 1960s.

7. The Section 122 surcharge is a temporary import restriction designed to help deal with those fundamental international payments problems. It is also part of a broader transition in United States trade policy following the Supreme Court's decision invalidating the prior IEEPA tariff program. The surcharge acts as a global baseline tariff that prevents the resurgence of conditions such as extremely high imports and trade deficits that contributed to the balance of payments problems found in Proclamation 11012. In my view, premature removal of the surcharge would usher in a flood of imports that characterized the pre-global tariff landscape, exacerbating the imbalances that Proclamation 11012 is designed to prevent.

8. The timing and full duration of the targeted Section 122 surcharge matters. Section 122 is, by design, temporary. The surcharge is scheduled to last only 150 days. If the surcharge is suspended or invalidated during the pendency of appeal, the harm cannot be repaired later. The United States cannot recover the lost import-restricting effect of a temporary measure after the statutory period has run. Nor can the United States reconstruct the negotiating leverage, market expectations, or trade flows that would be lost during that period.

9. Recent import data demonstrates why the temporary surcharge is necessary. In January, February, and March 2025—the three months immediately before President

Trump announced the global tariff program under the International Emergency Economic Powers Act—goods imports into the United States reached extraordinary levels. According to the Census Bureau's seasonally adjusted data for United States trade in goods with the world, imports totaled approximately $327 billion in January 2025, $325 billion in February 2025, and $344 billion in March 2025. Those were the three largest goods-import totals ever recorded.[1]

10. Those three months alone totaled just under $1 trillion in goods imports, for an average of $332 billion per month. That was an extraordinary import surge and reflected the scale and immediacy of the imbalance the Administration confronted.

11. After President Trump announced and implemented the global tariff program under IEEPA, imports immediately declined. Seasonally adjusted goods imports from the world fell from $344 billion in March 2025 to $275 billion in April 2025, a one-month decline of approximately 20% and totaling approximately $69 billion. Goods imports remained materially lower in the following months, including $275 billion in May 2025, $262 billion in June 2025, and $280 billion in July 2025.

12. When the President's broader global tariff regime was put in place for all countries in August 2025, the same pattern remained evident. Seasonally adjusted goods imports from the world fell from $280 billion in July 2025 to $262 billion in August 2025, a reduction of approximately $18 billion in one month. Compared with the January–March 2025 monthly average of $332 billion, August 2025 imports were approximately $70 billion lower.

[1] *See* U.S. Census Bureau, Trade in Goods with World, Seasonally Adjusted, available at https://www.census.gov/foreign-trade/balance/c0004.html.

13. These trends have contributed to an unprecedented, immediate, and sustained reduction in trade deficit levels, which directly address a key component of the balance of payment deficit identified in Proclamation 11012. In just one month following enactment of the IEEPA tariffs, the monthly trade deficit was almost cut in half from $161.5 million in March 2025 to $85.4 billion in April 2025. That deficit has consistently remained at reduced levels, including through the transition to the Section 122 proclamation. The most recent Census data available is for March 2026—the first full month following removal of the IEEPA tariff regime and transition to Section 122—reflects an increase in imports to almost $300 billion, but is still commensurate with the reduced and decreasing deficit levels that characterize the global tariff regime due in part to an increase to an all-time-high in exports.

14. These figures are important because they show that broad tariff measures affect import behavior. Importers respond to tariff expectations. Foreign producers respond to tariff expectations. Trading partners respond to tariff expectations. When the United States maintains a credible tariff baseline, it affects the timing, volume, and pricing of imports into the United States.

15. The inverse is also true. When a broad tariff baseline is removed or expected to be removed, import volumes can rise quickly. After the Supreme Court invalidated the IEEPA tariff program in February 2026, imports increased in the latest month for which Census seasonally adjusted world-goods data are available. Goods imports from the world surged to $299.95 billion in March 2026, the fourth highest single month in history.

16. That increase occurred even with the 10 percent Section 122 surcharge in effect for March 2026. In my judgment, that is significant. It indicates that the Section 122 surcharge is not excessive or unnecessary. It indicates the opposite: even with the surcharge, import pressures remain substantial. Removing the surcharge would remove the only global baseline currently restraining an unprecedented spike in import flows while the Administration continues to address the United States' balance of payments issues.

17. The Section 122 surcharge is therefore serving a critical stabilizing function. It is helping prevent a return to the extraordinary import levels that prevailed ahead of the President's imposition of global tariffs. It is helping restrain imports while the United States addresses fundamental payments problems. And it is helping preserve the effectiveness of the President's trade strategy during a short but important transition period.

18. If this Court's decision takes effect and the Section 122 surcharge is removed, I expect importers and foreign producers to respond immediately. They will have a strong incentive to accelerate shipments into the United States before other tariff measures are finalized or implemented. Based on the import patterns described above, I expect that goods imports in May 2026 and subsequent months would increase above the levels that would otherwise prevail with the surcharge in place.

19. That increase would directly undermine the objectives of Proclamation 11012. The Proclamation was designed to restrict imports temporarily in order to deal with large and serious United States balance-of-payments deficits and related fundamental

international payments problems. Removing the surcharge would do the opposite. It would invite additional imports during the very period in which the United States is attempting to stabilize its trade position and transition to more targeted measures.

20. If the surcharge is removed now, foreign producers and trading partners will have every incentive to increase shipments, preserve dependence on foreign supply, and entrench their position in the United States market before other actions such as tariff measures and investment commitments and plans can be finalized. The result would be a surge of imports during the precise period in which the United States is attempting to strengthen its position in the international payments system, protect its industrial base, and move from temporary balance-of-payments action to a robust domestic manufacturing environment supported by other targeted trade remedies. The surcharge reinforces the seriousness of the United States' position and demonstrates that the United States will not allow large and persistent payments imbalances to continue unchecked while negotiations and statutory investigations proceed.

21. Conversely, suspending or invalidating the surcharge now would send the opposite signal. It would tell trading partners that the United States cannot maintain even a temporary, globally applicable import measure during a period of serious payments stress. It would encourage delay. It would reduce incentives for foreign governments to address policies that undermine United States commerce and national security.

22. Failing to issue a stay also creates substantial uncertainty for importers, foreign producers, and trading partners. That uncertainty itself changes behavior. Importers

may accelerate shipments in anticipation of refunds, broader relief, or further litigation. Foreign producers may increase shipments to take advantage of perceived weakness in the United States' tariff posture.

23. These market effects are difficult to quantify precisely in advance, but they are real. Trade flows respond to tariff expectations. The early 2025 import surge, the decline following the IEEPA tariff announcements, the decline following full implementation in August 2025, and the March 2026 increase following the Supreme Court's February 2026 decision all demonstrate that import behavior changes rapidly when the tariff environment changes.

24. The United States cannot remedy these harms after the fact. Once goods enter the United States in higher volumes, the import-restricting effect of the temporary surcharge for that period is lost.

25. The Proclamation's exceptions further confirm that the measure is calibrated to national-security needs. The surcharge does not apply on top of tariffs imposed under Section 232, which are themselves designed to address national-security risks in specific sectors. That structure avoids disrupting carefully designed national-security tariff programs for steel, aluminum, autos, critical minerals, and other strategic sectors. It preserves the President's ability to use Section 232 and other authorities in a targeted manner while Section 122 addresses the broader balance-of-payments problem.

26. In other words, the Section 122 surcharge does not displace the Administration's national-security trade architecture. It supports it. It provides a temporary baseline

while sector-specific tools, including Section 232, operate or are developed. Removing that baseline would weaken the entire structure by creating a gap during which imports could surge, trading partners could delay, and foreign producers could deepen their position in the United States market.

27. The surcharge is also carefully limited. It is temporary. It is set at 10 percent, below the maximum 15 percent surcharge authorized by Section 122. Maintaining the surcharge during appeal would preserve the status quo established by the President's Proclamation. Suspending it would not preserve the status quo. It would change the tariff environment, invite import acceleration and flooding the market, thereby exacerbating the very balance of payments issues that Proclamation 11012 sought to address.

28. A stay is especially important because the Section 122 surcharge is temporary by law. The remaining period is short. If the Government ultimately prevails on appeal after the surcharge has been suspended for much or all of the remaining 150-day period, the practical benefit of the surcharge will have been lost.

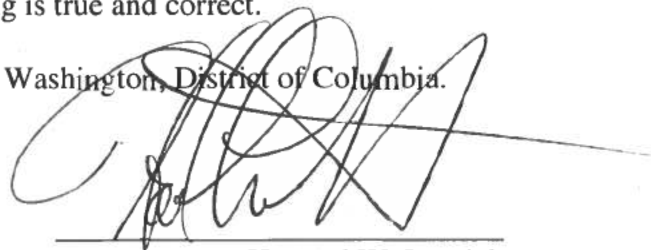
29. In my judgment, allowing the Court's decision to take effect during appeal would cause serious and irreparable harm to the United States. It would impair the President's ability to address the fundamental international payments problems identified in Proclamation 11012. It would increase the likelihood of higher imports in the coming months, unwinding the serious progress the Administration has made in reducing the trade deficit that feeds directly into current balance of payment problems. It would simultaneously weaken the United States' national security and

economic security posture while also undermining our position with trading partners during ongoing negotiations.

30. For these reasons, I respectfully submit that a stay pending appeal is necessary to prevent irreparable harm to the United States and to preserve the effectiveness of the President's temporary Section 122 action while appellate review proceeds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of May, 2026, in the City of Washington, District of Columbia.



Howard W. Lutnick
41st United States Secretary of Commerce

IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: THE HONORABLE MARK A. BARNETT, CHIEF JUDGE
THE HONORABLE CLAIRE R. KELLY, JUDGE
THE HONORABLE TIMOTHY C. STANCEU, SENIOR JUDGE

THE STATE OF OREGON, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Court No. 26-01472-3JP

BURLAP AND BARREL, INC.; BASIC FUN, INC.,

Plaintiffs,

v.

DONALD J. TRUMP in his official capacity as President of the United States, *et al.*,

Defendants.

Court No. 26-01606-3JP

DECLARATION OF BRANDON LORD

I, Brandon Lord, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me in the course of my employment, hereby make the following declaration with respect to the above-captioned matter:

1. I am the Executive Director, Trade Programs Directorate, Office of Trade, U.S. Customs and Border Protection (CBP), a position I have held since July, 2022. In my role, I lead CBP's strategic efforts to enforce and protect the revenue, including the implementation of tariff measures under Section 232 of the Trade Expansion Act of 1962 and Section

122 of the Trade Act of 1974, 19 U.S.C. § 2312 ("Section 122"). I lead the administration of priority international trade issues, including Tariffs and Trade Remedies, Intellectual Property Rights, Free Trade Agreements, Import Safety, Textiles and Antidumping and Countervailing Duties. Previously, I served as the Acting Executive Director for Trade Policy and Programs, Office of Trade, from March 2021 until November 2021, and as the Deputy Executive Director for Trade Policy and Programs, Office of Trade, from November 2017 until July 2022.

2. On May 7, 2026, the Court declared Proclamation No. 11012, Imposing a Temporary Import Surcharge To Address Fundamental International Payments Problems, 91 Fed. Reg. 9,339 (Feb. 25, 2026) (the "Proclamation"), contrary to law, and permanently enjoined the collection of duties imposed by the Proclamation which invoked the President's authority under Section 122 (the "Section 122 duties"), with respect to three of the plaintiffs: The State of Washington (and its Instrumentalities), Burlap and Barrel, Inc., and Basic Fun, Inc. (the "affected importers"). The Court ordered Defendants to implement the permanent injunction within 5 days.

3. The Court's injunction poses immediate challenges to CBP, the agency tasked with collecting the Section 122 duties pursuant to the Proclamation and implementing the permanent injunction.

4. As of May 7, 2026, 170,885 importers have made over 13 million entries requiring deposits of Section 122 duties.

5. To implement the permanent injunction, CBP must first ascertain the importer of record (IOR) numbers for the affected importers, and will then need to reprogram the Automated Commercial Environment (ACE), CBP's official system of record for imported merchandise, to allow the affected importers to submit entry summaries

without declaring a provision of the Harmonized Tariff Schedule of the United States imposing Section 122 duties and depositing the associated Section 122 duties. CBP received confirmation of the IOR numbers for Burlap and Barrel, Inc. and Basic Fun, Inc., but it is currently waiting for confirmation of the IOR numbers for the State of Washington and its "instrumentalities."

6. Once ACE has been reprogrammed, CBP will need to manually extend liquidation for each of the affected importers' entries so that the Section 122 duties may be re-assessed if the permanent injunction is overturned on appeal. If liquidation is not extended, CBP will not be able to reliquidate the entries beyond the 90-day reliquidation period absent a court order. Extending liquidation is a manual and resource intensive process.

7. Should additional plaintiffs file actions and the Court's injunction be applied to their imports, CBP will need to ascertain all affected IOR numbers, continually modify the ACE programming as outlined above, and manually extend each importers' affected entries; a process that will become increasingly unworkable should additional IORs be covered, given that more than 13 million entry summaries have been filed with Section 122 duties to date.

8. If the permanent injunction is overturned on appeal, CBP may not be able to retroactively collect the outstanding Section 122 duties. For entries which CBP is enjoined from collecting Section 122 duties that it subsequently is able to liquidate or reliquidate with Section 122 duties, should a final decision in this matter uphold those tariffs, CBP would face significant risk that bills issued upon such liquidations or reliquidations would go unpaid. Although importers are required to maintain a continuous bond to cover unpaid bills, CBP's general continuous bonding formula is the greater of $50,000 or 10% of the duties, taxes, and fees paid by the importer in the

preceding 12 months, and thus would not likely cover the full amount of Section 122 duties subsequently assessed. Such bonding is intended for normal circumstances where estimated duties are usually deposited as required by 19 U.S.C. § 1505(a), and where the nonpayment of any estimated duties is a rare and/or unexpected occurrence.

9. Further, although CBP can extend liquidation of formal entries, the agency cannot do so for informal entries which liquidate immediately upon payment or release in accordance with 19 C.F.R. § 159.10(a). Thus, CBP may not be able to collect outstanding Section 122 duties on informal entries that are outside the 90-day reliquidation period if the permanent injunction is overturned.

10. This risk of unpaid bills and lost revenue would be exacerbated if the Court's injunction was applied to additional importers given the number of entries that have been filed with a deposit of Section 122 duties to date.

11. CBP's experience with processing refunds of tariffs imposed under the International Emergency Economic Powers Act (IEEPA) after the Supreme Court's decision holding that such tariffs were unlawfully imposed demonstrates that CBP can effectively and efficiently process refunds as needed if the affected plaintiffs prevail at the conclusion of litigation through all appeals. As further detailed in my declarations filed in *Euro-Notions Fla., Inc. v. United States*, Ct. No. 25-00595, CBP developed the necessary functionality and promptly began processing refunds after the Supreme Court issued its final decision.

12. Absent a stay of this Court's order pending appeal in this case, CBP will be required to divert resources from the IEEPA tariff refund processing effort to develop, test, monitor, and administer new functionality in ACE. Indeed, CBP is still engaged in the early stages of processing IEEPA tariff refunds through the new Consolidated Administration

and Processing of Entries (CAPE) functionality in ACE, and substantially all of its available resources are currently dedicated to maintaining and improving this functionality. After the initial deployment of the new ACE programming to implement the injunction with respect to the affected importers, the agency's continued compliance would require it to constantly update the ACE programming to maintain a potentially expanding list of importers for whom estimated duty deposits for the contested Section 122 duties would not be due, pending appeal.

Executed this 11th day of May, 2026.

Brandon Lord
Executive Director
Trade Programs
Office of Trade
U.S. Customs and Border Protection