

Landmark decision by the U.S. Supreme Court on additional tariffs

Since last Friday's Supreme Court decision, the customs situation in the USA has been shaped by three closely interconnected elements: (i) the Supreme Court's repeal of the so-called "sweeping tariffs" under the International Emergency Economic Powers Act (IEEPA), (ii) the termination of these IEEPA additional tariffs by executive order, and (iii) their replacement by a temporary import surcharge based on a different legal basis (Section 122 Trade Act of 1974) and the continuation of the de minimis treatment for small shipments to the US.

1. Previous situation

"Sweeping tariffs" here refers to the IEEPA additional tariffs that the US government had introduced in several executive orders as an emergency measure. Following the Supreme Court decision, these IEEPA tariffs are no longer permissible and must be terminated as quickly as administratively possible.

2. Key statement by the Supreme Court

On February 20, 2026, the Supreme Court ruled that the IEEPA does not authorize the president to impose tariffs: The authorization contained in the law to regulate imports is not a general power to impose tariffs, because constitutionally, the authority to impose tariffs and duties lies primarily with Congress. The ruling thus ends the legal basis for the IEEPA additional tariffs; questions regarding the reimbursement of amounts already paid are not automatically clarified and will have to be resolved in court.

3. Presidential Actions of February 20, 2026

Executive Order "Ending Certain Tariff Actions"

The executive order mandates that the additional tariffs imposed under IEEPA are no longer in effect and will be removed as soon as practicable. At the same time, it clarifies that other tariff instruments (in particular Section 232 and Section 301) are not affected by this. Thus, tariffs – for example, on certain imports of steel and aluminum products or on selected Chinese goods in the electronics sector or certain consumer goods – remain payable.

Proclamation: Temporary import surcharge of 10% (Section 122, Trade Act 1974)

As a replacement, the Proclamation introduces a temporary import surcharge of 10% ad valorem for

150 days, effective February 24, 2026. The measure is broadly applicable, but contains far-reaching exceptions (including certain critical minerals, energy products, certain agricultural goods, pharmaceuticals and active pharmaceutical ingredients, certain electronics, certain vehicles/parts, and certain aerospace products). In addition, as before, the temporary import surcharge will not be levied in addition to Section 232 tariffs (or only on the portion of an import that is not already subject to Section 232 tariffs).

Executive Order: Continuation of the de minimis treatment

The executive order continues the suspension of duty-free de minimis treatment (USD 800) for all countries. In principle, shipments will no longer be cleared under de minimis rules, but will instead undergo a formal entry process in ACE, the US customs clearance system. For international postal shipments, the order provides for a levy at the rate specified in the Proclamation (currently 10%) on the value of postal shipments subject to customs duties. This measure applies immediately and until either the 150 days expire or a new entry process for postal shipments is implemented.

4. Impact on Swiss companies (practical classification)

The most important point for Swiss exporters is that the IEEPA duties will be abolished, but will in fact be replaced by a flat-rate 10% import surcharge, unless an exception applies.

What does this mean in concrete terms? The 15% customs duties agreed last fall will be abolished. The MFN (Most Favored Nation) tariff rate will now apply again, increased by the temporary tariff rate of 10%. It should be noted here that the increase to 15% (+5%) mentioned by President Trump on social media has not yet been confirmed by the White House, and the published documents still provide for a 10% increase.

Example of how the applicable duty rate is calculated:

- Gearbox (HTSUS) 8483.40.5010: MFN/General duty 2.5% ad valorem duty + 10% temporary import surcharge à resulting in a duty rate of 12.5%.
- Pocket knife (HTSUS) 8211.93.0035: MFN/General duty 3 cents per item + 5.4% ad valorem duty + 10% temporary import surcharge à resulting in a customs duty of 15.4% plus 3 cents/item

It is unclear whether the flat customs duty rate of 15% agreed in the memorandum of under-standing with the US will remain in place, or whether the maximum customs duty rates agreed in the trade agreements that have not yet been legally concluded will be overruled by the Supreme Court's decision. It will be necessary to monitor further political and technical developments in this regard.

5. Possible next steps by the US government (scenarios)

In the short term, the US government will replace the country-specific IEEPA tariffs by returning to MFN/general duties, but will increase these via Section 122 with the temporarily applicable surcharges of 10% or 15% (tariff rate not yet confirmed). In the medium term, it is likely that greater use will be made of "traditional" trade instruments, in particular Section 301 (unfair trade practices) and Section 232 (national security), in order to introduce more selective or higher tariffs; these instruments were expressly not affected by the Executive Order. In the long term, it can be assumed that technical adjustments such as the abolition of the first-sale rule will be considered.

Conclusion

It is foreseeable that the situation on the US customs front will not calm down. Even though the Supreme Court decision is generally positive, the immediate reaction of the US government shows that it is not willing to waive the imposition of additional tariffs.

The unclear situation regarding the existing memorandum of understanding between Switzerland and the US, the uncertainty surrounding the

temporary tariff rate (10% or 15%) and the time limit on the announced measure indicate that the issue will likely return to the agenda by the summer at the latest.

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