



Capitol Hill Weekly

Washington National Tax
Federal Legislative & Regulatory Services

February 23, 2026

This update reflects facts as of Monday morning, February 23, 2026. The situation is fluid and may change.

Congress returns this week from a one-week recess, and it returns to the same problem it left, namely, funding for the Department of Homeland Security (DHS). It made no evident progress in resolving issues preventing action on about \$64 billion in appropriations during the break. Dominating the news last week, instead, was the long-awaited Supreme Court decision on the validity of the tariffs imposed by the President under the International Emergency Economic Powers Act (IEEPA). While on Tuesday of this week, the President will deliver the State of the Union Address, setting out his agenda for the year in the lead-up to the November elections. Although it is not clear what his priorities will be, the President has said he does not favor attempting to pass another budget reconciliation bill this year.

Funding. Congress has yet to pass an annual funding bill for DHS, after completing funding the rest of the government earlier in the month. Annual funding for DHS expired on February 13. Prospects for immediate resolution of the funding standoff are not good. Sixty votes are needed for Senate passage, and Congressional Democrats continue to insist on a list of restrictions on Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) operations before providing any additional funding. Congressional Republicans and the President remain opposed to most of those demands.

Sufficient funding was provided in the One Big Beautiful Bill Act to continue operations of ICE and CBP without the additional funding that would be provided in the annual DHS appropriations bill. Other agencies of DHS, like Federal Emergency Management Agency (FEMA), the Coast Guard, and the Transportation Security Administration (TSA), are unfunded, however. Operations for most of these agencies will continue, as they are deemed essential, but employees cannot be paid until Congress passes funding legislation. Suspension of pay has led to service disruptions in the past when these agencies have been left unfunded for an extended period. And, indeed, the Administration threatened to limit airport security operations of TSA, although it abandoned that position quickly.

Tariffs. The Supreme Court ruled late last week that IEEPA does not authorize the President to impose tariffs. That ruling invalidated the tariffs widely imposed by the President last April.

The issues of whether, how, and to whom refunds should be made of the \$150-200 billion in tariffs collected under IEEPA authority was not a question before the Court and was not addressed. This question has been left to the lower courts and U.S. Customs and Border Protection.

The President quickly moved to reimpose tariffs under other legal authority. Only hours after the Supreme Court's decision, the President issued a proclamation imposing global 10 percent tariffs (with a long list of excepted items) under section 122 of the Trade Act of 1974. The next day, the President said he will increase those tariffs to 15 percent.

Tariffs are authorized under section 122 to address fundamental international balance of payments problems. The presidential proclamation cited large U.S. trade deficits as the basis for the tariffs. Section 122 has never before been used as tariff authority, and that rationale—trade imbalance—may be contested in new litigation as insufficient to constitute a fundamental balance of payments problem within the meaning of the statute.

The President also indicated—and his advisors have since reiterated—an intention during the five months of the section 122 tariffs to investigate whether to impose additional tariffs under section 301 of the 1974 Trade Act. That law authorizes the imposition of tariffs to address unfair trade practices of other countries, and investigations are a prerequisite. Section 338 of the 1930 Trade Act was also cited as potential authority, although that provision, like section 122, has never been used, so the limits of its authority have not been tested.

Meanwhile, tariffs already imposed under section 301 or under section 232 of the Trade Expansion Act of 1962 remain in effect. The ultimate goal may be, as suggested by the Treasury Secretary over the weekend, to replicate the tariff regime just invalidated by the Supreme Court under other authorities. Those authorities, however, are subject to more restraints than those formerly claimed under IEEPA and would be based on, as of yet, unknown authorities.

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