

# LEGISLATIVE UPDATE

February 23, 2026

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## Government Affairs Update

Both chambers of Congress return to session tomorrow, a day later than scheduled to accommodate weather-related travel delays.

**Tariffs:** Last Friday, The U.S. Supreme Court issued a 6-3 decision, holding that the power to regulate importations granted to the President in the International Emergency Economic Powers Act (IEEPA) does not include the power to impose tariffs. The decision struck down tariffs that President Trump imposed last year based on declared national emergencies, including tariffs on goods imported from Canada, China, and Mexico based on the determination that those countries failed to curb the flow of fentanyl into the U.S., and reciprocal tariffs on goods imported from almost all countries based on trade deficits.

Later that day, President Trump issued an Executive Order to remove IEEPA duties from the U.S. tariff schedule. But he has promised to use “other alternatives” to reinstate some tariffs.

On Friday evening, he issued a presidential proclamation to impose a 10% ad valorem global tariff under section 122 of the Trade Act of 1974. That statute allows a president to impose temporary global import duties of up to 15% for a period of up to 150 days (five months) to address significant balance-of-payment deficits. The administration argues that large trade deficits and the risk of a sharp depreciation of the U.S. dollar both qualify as fundamental international payments problems. The proclamation exempts specified products from the new tariffs, including certain agricultural products, critical minerals, electronics, and vehicles; articles that enter duty-free under the USMCA trade agreement; textiles and apparel that enter duty-free under the CAFTA-DR trade agreement; and more. And it specifies that the new tariffs will not stack on top of section 232 tariffs. The tariffs apply to goods imported between February 24 and July 23, 2026, at which date they will automatically expire unless Congress votes to extend them.

On Saturday, the President said in a social media post that he will increase the amount of the section 122 tariffs to the statutory maximum of 15%, effective immediately, but as of 10:00 am today the White House has not yet released

any presidential action to implement such increase. No prior administration has relied on section 122 to impose tariffs, so the statute's limits have not been tested in the courts. Thus, it is unclear, for example, whether current trade deficits are sufficient to trigger the statute's delegation of tariff authority, or whether the President could revive the section 122 tariffs after they expire by declaring a new balance-of-payments emergency.

President Trump also announced that his administration will simultaneously launch investigations that could lead to longer-term tariffs on a range of countries and goods. Specifically, he referenced section 301 of the Trade Act of 1974, which authorizes the president to impose tariffs on goods imported from countries that the U.S. Trade Representative (USTR) finds have engaged in trade practices that are unfair, unreasonable, or violate previously signed trade agreements. The administration will have to complete separate investigations for each targeted country. Typically, such investigations take a year or more to complete, but the President said they will be concluded within five months.

The USTR issued a statement on Friday confirming that it will conduct the investigations on an accelerated timeframe and concurrent with previously initiated section 301 investigations involving Brazil and China. Over the weekend, Treasury Secretary Bessent said that the administration also will conduct investigations under section 232 of the Trade Expansion Act of 1962. That statute allows a president to impose sector-specific tariffs on imports that the Commerce Department deems to be a threat to national security. President Trump previously relied on this statute to levy tariffs on automobiles and automotive parts, certain metals, and lumber and timber.

The President said he will continue to pursue trade negotiations, using the looming tariffs as leverage. And he floated the idea of imposing trade embargoes on some nations. He expects existing trade agreements to remain in place.

The Supreme Court did not order the government to refund payments of unlawful tariffs. President Trump stated that he expects that issue will resolve via litigation. Over the weekend, Secretary Bessent also said that "lower courts" will decide the issue and that the administration will do as they direct.

We expect a flurry of legislative activity in response to the Supreme Court decision.

Senate Majority Leader John Thune (R-SD) and House Speaker Mike Johnson (R-LA) previously tried to block votes to end the President's IEEPA tariffs, with Speaker Johnson going so far as to restrict the House's authority to even consider such measures.

Last September, the House passed a rule that included a provision to block consideration of any measure relating to President Trump's tariffs through January of this year. The rule passed by just one vote and only after leadership was able to flip enough Republicans who initially voted against it. Three

Republicans held firm in their opposition. Last week, the Speaker tried to include similar language in another rule – this time to extend that legislative block until at least July. GOP leaders and the White House whipped their members to support the rule, arguing that they only wanted to halt legislative action pending the Supreme Court’s decision in the tariff case, but it failed by a vote of 214-217. Three Republicans voted against it. House Democrats subsequently forced a vote on a resolution (H.J. Res. 72) to overturn the emergency declaration that supported the IEEPA tariffs on Canada. President Trump threatened election consequences for any Republican who voted for the measure. In spite of that, it passed 219-211, thanks to the support of six Republicans. Seven GOP members bucked their leadership on one or more of these votes: Reps. Don Bacon (R-NE), Brian Fitzpatrick (R-PA), Jeff Hurd (R-CO), Kevin Kiley (R-CA), Tom Massie (R-KY), Dan Newhouse (R-WA), and Victoria Spartz (R-IN). (Over the weekend, the President withdrew his prior endorsement of the reelection of Rep. Hurd.)

Similarly, last October the Senate passed three resolutions to disapprove of national emergencies declared to justify tariffs on products imported from Brazil (S.J. Res. 81), Canada (S.J. Res. 77), and other nations (S.J. Res. 88). Five Republicans voted for one or more of those resolutions: Sens. Susan Collins (R-ME), Mitch McConnell (R-KY), Lisa Murkowski (R-AK), Rand Paul (R-KY), and Thom Tillis (R-NC).

In the coming months, Congress could consider bills intended to simplify the tariff refund process; measures that focus on providing some sort of relief for smaller businesses could win bipartisan support. Alternatively, Republicans could try to utilize a special parliamentary procedure – the budget reconciliation process – to codify President Trump’s IEEPA tariffs on a party-line vote.

**Appropriations:** The Department of Homeland Security (DHS) shut down on February 14, following a failed effort to force Senate votes on the House-passed DHS appropriations bill and a resolution to continue funding Homeland Security activities and programs at FY 2025 levels for two weeks.

The White House and congressional leaders have continued negotiations, but they are no closer to resolution. The administration has scaled back its immigration enforcement surge, and Republicans believe that they are regaining their traditional political advantage on the issue. More conservative members of the GOP congressional conference insist that they will not support any of the Democrats’ demands, and they want leadership to push their own immigration priorities, specifically those that would limit sanctuary city policies.

Over the weekend, DHS announced that it would suspend TSA pre-check and global entry services effective yesterday evening – the resulting impact on airline travelers would have increased the pressure to reach a deal. But it rescinded that order within 24-hours. It could take weeks for the public to

notice the shutdown. The vast majority of DHS employees are considered essential, so they will continue working during the funding lapse. Thanks to money provided in last year's One Big Beautiful Bill Act, FEMA, U.S. Customs and Border Protection, ICE, and the Secret Service can continue their operations, and DHS can continue to pay active-duty Coast Guard members for at least a couple of months. TSA screeners will not miss their first full paycheck until mid-March.

**Biofuels:** Pursuant to a deal negotiated in January, the House Rural Domestic Energy Council has until February 25 to produce and bring up for a floor vote a bill that would expand sales of E15, an ethanol-based biofuel. (See Hill Update dated 1/26/26.) The Council's Co-Chairs have circulated a discussion draft and plan to release a formal proposal as soon as this Wednesday. Mid-size oil refiners are pushing for inclusion of language that would increase the number of refiners that can qualify for exemptions to renewable fuels standards, which would boost the oil industry by narrowing the market for higher ethanol blends. If that provision is included, it could tank prospects for passage.

**State of the Union:** President Trump will appear before a joint session of Congress tomorrow to give his State of the Union speech.

**House:** The House floor schedule contemplates votes on two bills under a rule, requiring simple majority support for passage. Both would repeal energy efficiency programs: the Homeowner Energy Freedom Act (H.R. 4758) would rescind funds provided in the Inflation Reduction Act to help states establish energy efficiency assistance programs, and the Home Appliance Protection and Affordability Act (H.R. 4626) would impose stricter requirements on any energy efficiency standards for home appliances issued by the Department of Energy.

The schedule also includes six measures to be considered under suspension of the rules, requiring two-thirds majority support for passage. That list includes three bills out of the House Science, Space, and Technology Committee, including a bill (H.R. 390) that would require NASA to conduct research relating to aerial firefighting; a bill (H.R. 2600) that would codify NASA's pilot program to acquire and disseminate Earth satellite data from commercial vendors; and a bill (H.R. 3679) that would require NIST to develop and disseminate AI resources and best practices for small businesses. Two bills out of the Oversight Committee would prohibit minimum educational requirements for government contractors (H.R. 5235) and require the Office of Management and Budget to issue guidelines to improve the federal rulemaking process. The last bill on the list is the ROTOR Act (S. 2503), an aviation safety bill introduced and passed in the Senate in response to the crash of a passenger plane and a military helicopter near the D.C. airport.

Rep. Ro Khanna (D-CA) will try to force a vote on a War Powers resolution (H. Con. Res 38) that would terminate the use of U.S. forces against the Iranian

government or military “unless explicitly authorized by a declaration of war” or authorization of the use of military force.

**Senate:** A procedural vote on DHS funding scheduled for today has been delayed to tomorrow due to the weather. The chamber could also vote to confirm administration nominees.

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TIA's Legislative Update is written by:

**Roy Littlefield IV, Vice President of Government Affairs, TIA**

Contact: 301.430.7280 ext. 137

[rlittlefield2@tireindustry.org](mailto:rlittlefield2@tireindustry.org)



Tire Industry Association | 1532 Pointer Ridge Place Suite G | Bowie, MD 20716 US

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