

MACROCOSM

Tariffs Lose on Appeal – Sort Of

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Trump now controls the tempo of the game, while tariffs become a new normal.

It took two weeks longer than we expected (see [“The ‘Mar-a-Lago Accord’ has Already Happened”](#) August 15, 2025), but as we’ve been saying since the beginning (see [“They Called His Bluff on Tariffs”](#) February 2, 2025), [the Court of Appeals for the Federal Circuit has ruled that President Donald J. Trump’s tariffs under the International Emergency Economic Powers Act of 1977 to be unlawful. But the decision was not unanimous, and the tariffs stay in place pending remand to the Court for International Trade and possible appeal to the Supreme Court.](#)

- *This brief note is a hot take. The ruling was complicated and the road ahead is not entirely clear. If possible, we will have further updates over the three-day weekend.*
- Of the eleven judges hearing the case *en banc*, eight were appointed by Democratic presidents and three by Republicans. *We had expected unanimity, but there were four dissenters* who found the tariffs lawful, among whom two were appointed by President George W. Bush and two by President Barack Obama.
- From our friends at the [Liberty Justice Center](#), the public interest law firm that represents the lead plaintiff (see [“Video: TrendMacro conversation with Jeffrey Schwab and Sara Albrecht of the Liberty Justice Center, the legal team overturning the Trump tariffs”](#) July 17, 2025), here is a high-level analysis of the majority and dissenting opinions.
- The essence, in one sentence, is that the *dissenters granted the president broad deference in foreign affairs matters – and don’t seem to understand that a tariff is a tax on American importers.*

Update to strategic view

US MACRO: This is a hot take, with updates likely over the three-day weekend. The Court of Appeals for the Federal Circuit has ruled the tariffs under the International Emergency Economic Powers Act of 1977 are unlawful. The decision had four dissents among the eleven-judge bench, two appointed by Bush and two appointed by Obama. The majority opinion ordered the tariffs to stay in place pending the government’s potential appeal to the Supreme Court, which must be petitioned by October 14. In the meantime, the case has been remanded back to the Court for International Trade for a ruling as to its authority to issue a “universal ...

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Issue	Majority Opinion (Per Curiam)	Dissent (Taranto, joined by Moore, Prost, Chen)
Text of IEEPA	IEEPA does not authorize tariffs . The statute allows regulation (like embargoes or restrictions), but tariffs are taxes , and Congress never mentioned tariffs in the statute.	IEEPA’s power to “ regulate imports ” is broad enough to include tariffs. Historically, tariffs are one of the most common forms of regulation of foreign trade.
Limits on Presidential Power	President’s interpretation would create unlimited, unreviewable authority to impose tariffs at will—contrary to the Constitution’s separation of powers.	IEEPA already contains meaningful limits: requires a finding of an “unusual and extraordinary threat” from a foreign source. That provides an intelligible

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		principle satisfying the nondelegation doctrine.
Historical Practice	No President before Trump ever used IEEPA to impose tariffs. Congress created other statutes (like Section 122) to deal with trade deficits, which shows IEEPA was not meant for tariffs.	Since 1977, Presidents have used IEEPA for sweeping restrictions on imports, exports, and financial transactions. The dissent argues this long practice supports a broad reading that includes tariffs.
Foreign Affairs Deference	Courts still have a duty to check the President—foreign affairs do not give a blank check. Tariffs are too economically significant to be left to unilateral executive discretion.	In foreign affairs, courts owe exceptional deference to presidential judgment. Tariffs here were tied to foreign threats (drugs, migration, hostile governments) and should be upheld.
Major Questions Doctrine	Even if IEEPA were ambiguous, under the Major Questions Doctrine , Congress must clearly authorize the President to impose tariffs. It did not.	The dissent downplays the major questions argument, stressing that Congress intended to give the President flexible tools in emergencies—including tariffs.
Policy Application	Tariffs were imposed without legal basis, destabilizing the economy, and harming businesses and consumers.	Tariffs were targeted bargaining tools to induce Canada, Mexico, and China to act against drugs, migration, and unfair practices. They fit IEEPA's purpose.
Bottom Line	Unlawful – President cannot impose tariffs under IEEPA. Protects separation of powers and prevents executive overreach.	Lawful – Tariffs are within IEEPA's grant of power. Courts should defer to the President's foreign-affairs judgment.

- The court has [given the government 45 days](#) (until October 14) to file a petition for an appeal to the Supreme Court. *We continue to believe that the Supreme Court will find the tariffs to be unlawful.*
- In the meantime, the court has remanded the case back to the Court for International Trade for a determination as to whether its injunction against the tariffs, now under an administrative stay (see [“On the Administrative Stay against Trump's Tariff Ruling”](#) May 29, 2025), should be reinstated and made permanent – and, *critically, whether the injunction should apply to all tariff payers or only the specific plaintiffs in the case.*
- In the recent *Trump v. CASA*, the Supreme Court ruled that federal courts could not issue “universal injunctions” whose rulings reached nationwide and to persons not directly involved in the original litigation. Our reading of *CASA* is that this would not apply to injunctions issued by the Court for International Trade, because it was set up by statute specifically to have national jurisdiction over just this kind of matter. If a tariff lacks legal authority to impose the tariff to begin with, it lacks legal authority for *all* payers of the tariff, not just the particular plaintiff. *That* is a matter of settled tax law.

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... injunction” in light of SCOTUS's recent *CASA* decision. We are confident the court will affirm the universality of its injunction against the tariffs, but remand is an opportunity for the government to slow down the process. We are confident that the Supreme Court will strike down the tariffs but are disappointed that it now seems destined to take longer than we had hoped.

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- Nevertheless, the next step is for the Court for International Trade to make a ruling as to the extent of its own powers in light of CASA. We've never known a government agency to decide it has too much power, and we've read [the scathing unanimous opinion on summary judgment](#) that struck down Trump's tariffs to begin with (see ["You Heard It Here First: Court Strikes Down Trump's Tariffs"](#) May 28, 2025), so we have little doubt how this will turn out. The injunction will be made permanent and universal. Until this happens, though, this step is an opportunity for the government to slow down the process and keep collecting the tariffs.
- Again, we remain confident that the Supreme Court will ultimately strike down the tariffs, but it will take longer than we had hoped. In the meantime, the tariffs will be collected and become ever more embedded as a new normal.
- As they become so, the government will make ever more embarrassing demands for deference to preserve the status quo, as they did yesterday morning in [a letter to the Court of Appeals before the judgment came down](#) – claiming, preposterously, that if the tariffs are ruled unlawful "...highly sensitive negotiations [the president] is conducting to end the conflict between the Russian Federation and Ukraine could be jeopardized, with severe consequences for ongoing peace negotiations and human rights abuses."
- In some sense it would have been better if the Court of Appeals had ruled the other way. Then the plaintiffs would control the tempo, and as of this writing the Supreme Court would have likely already have been petitioned.

Bottom line

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