

MACROCOSM

## Tariffs: Supreme Court or Bust

Sunday, August 31, 2025

Donald Luskin

Trump isn't in it to delay. He's in it to win it. His order to his team: get me to SCOTUS ASAP.

When the [Court of Appeals for the Federal Circuit ruled Friday](#) that President Donald J. Trump's tariffs imposed under the International Emergency Economic Power Act were unlawful, our hot take was to fear that the Trump administration would seek to delay an ultimate ruling by the Supreme Court and keep the tariffs in place as long as possible (see ["Tariffs Lose On Appeal -- Sort Of"](#) August 30, 2025). New information from sources changes our view.

- The opportunity to delay arose in the Court of Appeals' remand to the Court for International Trade to reconsider [its permanent injunction against the tariffs](#) (see ["You Heard It Here First: Court Strikes Down Trump's Tariffs"](#) May 28, 2025) in light of the Supreme Court's new *Trump v. CASA* standards on "universal injunctions" (see ["Video: TrendMacro conversation with Judge Gregg Costa on nationwide judicial injunctions -- are tariffs next?"](#)

May 2, 2025).

- Now we are hearing that the Solicitor General of the United States intends to speed up the game, by petitioning for a hearing by the Supreme Court as soon as possible, likely this coming week. The Court of Appeals has stayed the lower court's injunction until October 14 pending such a petition, but the government's filing it earlier than that gets it before the justices ahead of their annual ["long](#)

### Update to strategic view

**US MACRO, US STOCKS, US BONDS, FX:** We hear from sources that the Solicitor General has been instructed by Trump to petition the Supreme Court on the IEEPA tariffs, as soon as this coming week. Trump is not happy to have lost twice, wants a clean win, and believes he can win at SCOTUS where there is a Republican-appointed majority, including three justices he appointed himself. If the partisan distribution seen in the lower courts repeats at SCOTUS, Trump has only a 31% chance of winning. We think that is about what markets have expected all along, even before Friday's Court of Appeals ruling after markets closed. We expect little reaction when markets open again tonight. We think SCOTUS will overturn the tariffs, and the only question is refunds – a decision that will probably be remanded to the lower court, which has already said it sees them as a likely remedy.

[\[Strategy dashboard\]](#)



Donald J. Trump    
 @realDonaldTrump

ALL TARIFFS ARE STILL IN EFFECT! Today a Highly Partisan Appeals Court incorrectly said that our Tariffs should be removed, but they know the United States of America will win in the end. If these Tariffs ever went away, it would be a total disaster for the Country. It would make us financially weak, and we have to be strong. The U.S.A. will no longer tolerate enormous Trade Deficits and unfair Tariffs and Non Tariff Trade Barriers imposed by other Countries, friend or foe, that undermine our Manufacturers, Farmers, and everyone else. If allowed to stand, this Decision would literally destroy the United States of America. At the start of this Labor Day weekend, we should all remember that TARIFFS are the best tool to help our Workers, and support Companies that produce great MADE IN AMERICA products. For many years, Tariffs were allowed to be used against us by our uncaring and unwise Politicians. Now, with the help of the United States Supreme Court, we will use them to the benefit of our Nation, and Make America Rich, Strong, and Powerful Again! Thank you for your attention to this matter.

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Aug 29, 2025, 5:10 PM

[conference](#)” on September 29, at which they will plan and prioritize the coming year’s work.

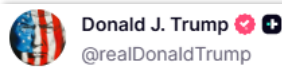
- We are hearing that this decision to speed up the tempo of the game comes directly from President Donald J. Trump. He is obviously not happy to have lost in court twice. Winning is his thing. Not delaying. He believes he can win at SCOTUS (please see [the Truth Social post](#) on the previous page).
- Trump would seem to enjoy a six-to-three partisan advantage, indeed, with three justices having been appointed by him in his first term.
- Two of the judges in the three-judge panel at the Court for International trade, where the tariffs were ruled unlawful the first time, were appointed by Republican presidents, one by Trump himself. If that pattern repeats at SCOTUS, converting it to a

probability, Trump has a 0.00% chance of winning.

- Of the three Republican-appointed judges on the eleven-judge Court of Appeals bench, two dissented in Trump’s favor on Friday, as did two Democratic-

appointed ones (Trump is wrong in [an unhinged Truth Social post today](#), above, when he says one Obama-appointed judge coted to support the tariffs – two did). If *that* pattern repeats at SCOTUS, Trump has a 53% chance of winning.

- Putting the two cases together, that is, considering the fourteen-judge universe that has already ruled on this case, Trump has only a 31% chance of winning at SCOTUS.
- Obviously, the party of the president who appointed judges and justices is far from the only determining factor. But we think that 31% chance of Trump winning at SCOTUS is probably about right in terms of what is being discounted by markets, and is probably not a lot different from what markets were expecting when they closed Friday without knowing the Court of Appeals’ decision. We are not expecting much action as a result of the decision when futures trading opens this evening.
- By the way, we try not to think probabilistically. We think the Supreme Court will uphold the lower courts. Period. The only question for us is how SCOTUS will handle the matter of remedies – that is, tax refunds. Likely it will remand the matter to the Court for International Trade (yes, the court where the tariffs were struck down unanimously, and the court that said it would let the tariffs continue to be collected while the case proceeded specifically because refunds could be issued later). Then let’s watch the Trump administration argue in open court that unlawful tariffs should not



Donald J. Trump  
@realDonaldTrump

Without Tariffs, and all of the TRILLIONS OF DOLLARS we have already taken in, our Country would be completely destroyed, and our military power would be instantly obliterated. In a 7 to 4 Opinion, a Radical Left group of judges didn’t care, but one Democrat, Obama appointed, actually voted to save our Country. I would like to thank him for his Courage! He loves and respects the U.S.A.

1.76k ReTruths 7.13k Likes

Aug 31, 2025, 1:01 PM

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be refunded to General Motors and John Deere, exactly the kind of companies the tariffs were intended to protect. Maybe Trump will urge the court to award refunds to China -- after all, that's who he says will pay his tariffs.

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### Bottom line

We hear from sources that the Solicitor General has been instructed by Trump to petition the Supreme Court on the IEEPA tariffs, as soon as this coming week. Trump is not happy to have lost twice, wants a clean win, and believes he can win at SCOTUS where there is a Republican-appointed majority, including three justices he appointed himself. If the partisan distribution seen in the lower courts repeats at SCOTUS, Trump has only a 31% chance of winning. We think that is about what markets have expected all along, even before Friday's Court of Appeals ruling after markets closed. We expect little reaction when markets open again tonight. We think SCOTUS will overturn the tariffs, and the only question is refunds – a decision that will probably be remanded to the lower court, which has already said it sees them as a likely remedy. ▶