

TRENDMACRO LIVE!

Our Hot Take on The SCOTUS Tariff Decision

Friday, February 20, 2026

Donald Luskin

It's a complicated tapestry of concurrences and dissents – but the tariffs are dead.

[Smells like victory](#). From the very day almost one year ago when President Donald J. Trump became the first president to impose tariffs under the International Economic Emergency Powers ACT, we said the courts would strike them down (see [“They Called His Bluff on Tariffs”](#) February 2, 2025). [Now the Supreme Court has done so, affirming two lower courts](#). It has been our great privilege to have had a small role in it, working with Judge Michael McConnell who tried the case before SCOTUS, [providing the economic evidence and arguments](#) to impeach the Trump administration's contention that a trade deficit that has persisted for half a century constitutes an “emergency” (see [“Video: TrendMacro conversation with Judge Michael McConnell, the Constitutional scholar fighting tariffs in the Supreme Court”](#) September 19, 2025).

[We predicted the decision would be 6 to 3, and it was](#) (see [“Tariffs: Supreme Court or Bust”](#) August 31, 2025). Justices Brett Kavanaugh and Samuel Alito seemed most sympathetic to the government's case in the oral arguments on November 5, and they were joined in a dissent written by Kavanaugh by Clarence Thomas, who also filed his own separate dissent (see [“On the SCOTUS Tariff Oral Arguments”](#) November 5, 2025).

[The judgement of the court was written by Chief Justice John Roberts. In essence, he writes that IEEPA simply does not allow tariffs. From there, it's complicated](#) – Roberts filed a separate opinion as to two subsidiary issues, joined by Neil Gorsuch and Amy Coney-Barrett (both of whom wrote separate concurrences). Elena Kagan wrote a concurrence-in-part and was joined by Sandra Sotomayor and Ketanji Brown Jackson, in which they argued that the major questions doctrine need not be invoked because the Act so clearly does not permit tariffs. [These complications don't matter. As Dr. McCoy would say, “It's dead, Jim.”](#)

[What happens now?](#)

HOW WILL MARKET REACT? As of this writing mid-morning, the reaction is positive, but muted – just as we predicted (see [“The SCOTUS Tariff Decision that Didn't Bark in the Night”](#) January 14, 2026). This confirms our belief that [this morning's decision was largely expected. Over time, we expect to see markets take on board the pro-growth effects of two things that are not expected – the issuance of refunds, and Trump's not](#)

Credit for today's victory for economic freedom goes to the [Liberty Justice Center](#), the public interest law firm that [filed the first lawsuit](#) opposing the IEEPA tariffs right after so-called “Liberation Day,” and has since coordinated the efforts of the five private and twelve public plaintiffs (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). This builds on their longstanding work fighting government interference in the economy and in our lives, including [a landmark case](#) opposing vaccine mandates during the Covid panic. We can't urge you strongly enough to [support them](#), as we have – and tell 'em TrendMacro sent you!

replacing the IEEPA tariffs by other means (which will only be visible with time).

WILL REFUNDS BE MADE? YES. This morning's decision was silent as to refunds. The administration promised both lower courts that have heard this case that refunds would be made – with interest – if the tariffs were ultimately found unlawful. With SCOTUS having done nothing to rule out backward-looking remedies in this case (there are plenty of cases in the past in which it has), refunds will be made – whether proactively by the Customs Bureau, or reactively in response to tariff-payers filing for them using Form 19 (in case you have paid a tariff, here's the link). We're probably looking at something like \$150 billion that will drop straight the balance sheets of the S&P 500 companies who have surely done most of the tariff-paying. This is a non-recurring event that won't affect forward estimates, but it will endow US firms with a great deal of liquidity and optionality, equivalent to something like 5% of annual earnings. It is in the same ballpark as a year's worth of corporate tax savings under the One Big Beautiful Bill (see "Video: What you're not hearing about the One Big Beautiful Bill" July 7, 2025).

WILL TRUMP IMPOSE NEW TARIFFS NOW? MOSTLY NO. The president's authority to unilaterally impose tariffs is limited – which is why Trump sought to use the unlimited authority he claimed under IEEPA.

- Trump could use Section 232 of the 1962 Trade Improvement Act (Orwell would love that name) to impose sectoral tariffs on categories of goods. But he already has. What's left to do?
- Trump could use Section 301 of the 1974 Trade Act to impose tariffs on countries found, upon investigation, to have engaged in especially unfair or unlawful trade practices. It's a slow process and the bar is high – and it has already been deployed against China in Trump's first term.
- Or Trump could take another shot with IEEPA. While SCOTUS has determined that the Act does not permit tariffs as such, it does permit other economic measures such as license fees. Trump could simply rebrand the tariffs as "license fees." When asked about tariff alternatives in a January New York Times interview, Trump said,

"Well, you have a lot of alternatives. You could take a look at the word 'license.' You know what I mean by that. Do you know what I mean? You could take a look at the word 'license.' License is a very pretty word. It's sort of strange. I'm allowed to license, because when you license, you get, you know, you get money for licensing things. So I have the right to license."

- A pretextual move like this would end up right back in the Supreme Court, but that doesn't rule out Trump's trying it.
- All that said, we think the ruling factor is that amidst an "affordability crisis" we think Trump is more interested in reducing and removing tariffs than he is in implementing them (see "Did We Just See Peak

Update to
strategic view

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STOCKS: The Supreme Court has struck down Trump's tariffs under the International Economic Emergency Powers Act by a majority of six to three, just as we predicted long ago. There were complicated concurrences and two separate dissents, but these tariffs are dead. Market reaction has been muted because this has all come to be generally expected. The Court was silent as to refunds, which means they can proceed – the government promised refunds with interest to the two lower courts. Trump has limited scope to impose tariffs under other authorities. Sections 232 and 301 are cumbersome and already exhausted. He could argue that IEEPA tariffs are in fact "licenses," but this would be a legal stretch that would end up back with SCOTUS. But at this point, with an "affordability crisis," Trump is removing and reducing tariffs, not adding them. Trade deals real and imagined may fall apart, or the US tariff components of them can simply vanish, which would make them better. Trade deficits have only worsened since Trump took office, and China's exports to the world are at a record high, so the tariffs failed in their mission anyway.

[\[Strategy dashboard\]](#)

[Tariffs?](#) November 17, 2025). He has already rolled back tariffs on coffee, beef, pasta, many other foods, and furniture – the stuff that hits consumers right in the wallet.

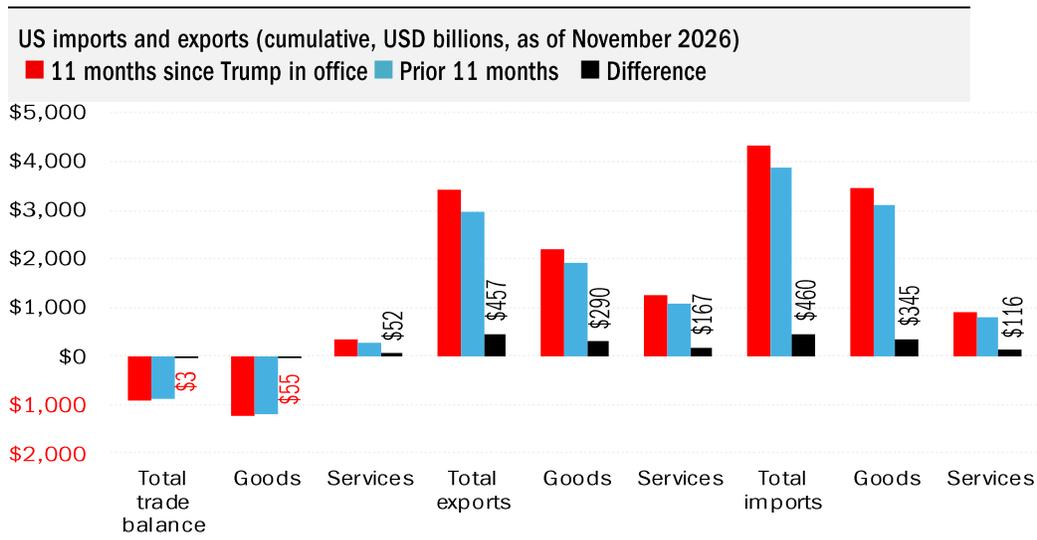
- Oh, to be sure, Trump will fulminate about this, though as of this writing there is no scathing post on Truth Social (the day is young). We have seen peak tariffs.

WHAT ABOUT THOSE GREAT TRADE DEALS? Uh... what trade deals? You mean the ones that have never actually been documented? The ones where we were supposedly threatening tariffs only as negotiating leverage to get other countries to treat the US more fairly, but then when they did so, we still imposed the highest tariffs in our lifetimes? Those trade deals? *Don't worry about that.*

In fact, with IEEPA tariffs ruled unlawful, *these trade deals – to the extent they exist – automatically get better.* Now those high US tariffs embedded in the deals mostly go away, which is what was supposed to happen anyway when other countries agreed to lower or eliminate their tariffs.

WHAT ABOUT THE TRADE DEFICIT? The trade deficit in goods was the stated “emergency” driving most of the tariffs.

- The tariffs have been a flop. As of the most recent data for year-end 2025, the goods trade deficit has worsened by \$55 billion for the 11 months since Trump took office (please see the chart below). The total trade deficit worsened by \$3 billion, reduced by an improvement in the trade surplus in services by \$52 billion. *The part that was not tariffed – services – got better, while the part that was tariffed – goods – got worse.*



Source: TrendMacro calculations

- And if the idea of the tariffs was four-dimensional chess designed to maneuver US allies into standing with us to reduce trade with China (see [“What is the Tariff Endgame?”](#) July 21, 2025), well, that

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backfired too. China just [announced](#) a record trade surplus with the world.

Bottom line

The Supreme Court has struck down Trump's tariffs under the International Economic Emergency Powers Act by a majority of six to three, just as we predicted long ago. There were complicated concurrences and two separate dissents, but these tariffs are dead. Market reaction has been muted because this has all come to be generally expected. The Court was silent as to refunds, which means they can proceed – the government promised refunds with interest to the two lower courts. Trump has limited scope to impose tariffs under other authorities. Sections 232 and 301 are cumbersome and already exhausted. He could argue that IEEPA tariffs are in fact "licenses," but this would be a legal stretch that would end up back with SCOTUS. But at this point, with an "affordability crisis," Trump is removing and reducing tariffs, not adding them. Trade deals real and imagined may fall apart, or the US tariff components of them can simply vanish, which would make them better. Trade deficits have only worsened since Trump took office, and China's exports to the world are at a record high, so the tariffs failed in their mission anyway. ▶