

US Supreme Court starts hearings on tariffs

Today marks the start of the US Supreme Court hearings regarding the legality of some of the US administration’s tariffs. A ruling is expected before the end of the year



No matter how the ruling of the US Supreme Court ends, we think tariffs are here to stay

Back in May, a US federal court, the Court of International Trade, delivered a landmark ruling that US President Donald Trump overstepped his authority by imposing tariffs under the International Emergency Economic Powers Act (IEEPA). The Supreme Court’s ruling will ultimately decide the case.

Historical precedent: The limits of emergency tariff powers

Trump has justified the bulk of his tariff announcements by pointing to the IEEPA, which gives the president power to “regulate” imports in response to certain emergencies. No president has ever invoked it before – although a precedent often mentioned in this context is a decision made by former president Richard Nixon in August 1971. Back then, Nixon imposed a temporary 10% tariff by pointing to a near-identical provision in IEEPA’s predecessor, the Trading with the Enemy Act. An appeals court ultimately upheld Nixon’s action in *United States v. Yoshida International Inc.*

We're no legal experts, but it is clear what is at stake here: an important part of the US administration's economic policy agenda. Some 40 legal briefs have been filed by a wide range of interest groups, from businesses to US officials. Businesses in particular are complaining about the uncertainty related to the tariffs, which is prompting delays in capital expenditure and consumer spending.

In recent years, the court has been reluctant to overrule presidential decisions of this magnitude, especially when Congress has delegated authority to the president under sweeping laws like the IEEPA. Currently, the court has a ratio of six conservatives to three liberals, with three justices appointed by President Trump himself. At the same time, upholding Trump's tariffs would shift the balance of power from Congress to the President, further enhancing his executive power. Predicting how the Supreme Court will rule therefore remains difficult. Betting markets have recently seen a shift in probabilities, assigning a 36% chance of the court ruling in favour of Trump's tariffs.

What if

If the Supreme Court ruled (partially) against the tariffs, the administration would no longer be able to collect IEEPA-based tariffs and would also face demands to refund those already paid. The unravelling of a large proportion of Trump's tariffs could exacerbate concerns about the state of America's public finances. Investors in the bond market have already been questioning the trajectory of the country's mounting debt. In order to avoid increasing public debt further, the President might have to reduce his "Big Beautiful Bill" tax deductions or find other ways to offset the budget deficit.

Since the introduction of the new tariffs, revenue from customs has improved significantly and is estimated to have brought an additional \$110bn in government revenues this year. However, a ruling would not affect all of these additional revenues.

At the same time, the loss of IEEPA-based tariffs might not be a permanent setback for Trump's push to reshape global trade, as sectoral tariffs would remain basically unaffected. It is therefore likely that if the Court were to rule against the tariffs, the US government would impose more and new sectoral tariffs, probably on pharmaceuticals, chemicals and automotives – a shift that could particularly affect the European economy. No matter how the Supreme Court's ruling eventually looks, tariffs are here to stay.

Author

Carsten Brzeski

Global Head of Macro

carsten.brzeski@ing.de

Julian Geib

Junior Economist, Global Trade

julian.geib@ing.de

Disclaimer

This publication has been prepared by the Economic and Financial Analysis Division of ING Bank N.V. ("ING") solely for information purposes without regard to any particular user's investment objectives, financial situation, or means. *ING forms part of ING Group (being for this purpose ING Group N.V. and its subsidiary and affiliated companies)*. The information in the publication is not an investment recommendation and it is not investment, legal or tax advice or an offer or solicitation to purchase or sell any financial instrument. Reasonable care has been taken to ensure that this publication is not untrue or misleading when published, but ING does not represent that it is accurate or complete. ING does not accept any liability for any direct, indirect or consequential loss arising from any use of this publication. Unless otherwise stated, any views, forecasts, or estimates are solely those of the author(s), as of the date of the publication and are subject to change without notice.

The distribution of this publication may be restricted by law or regulation in different jurisdictions and persons into whose possession this publication comes should inform themselves about, and observe, such restrictions.

Copyright and database rights protection exists in this report and it may not be reproduced, distributed or published by any person for any purpose without the prior express consent of ING. All rights are reserved. ING Bank N.V. is authorised by the Dutch Central Bank and supervised by the European Central Bank (ECB), the Dutch Central Bank (DNB) and the Dutch Authority for the Financial Markets (AFM). ING Bank N.V. is incorporated in the Netherlands (Trade Register no. 33031431 Amsterdam). In the United Kingdom this information is approved and/or communicated by ING Bank N.V., London Branch. ING Bank N.V., London Branch is authorised by the Prudential Regulation Authority and is subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. ING Bank N.V., London branch is registered in England (Registration number BR000341) at 8-10 Moorgate, London EC2 6DA. For US Investors: Any person wishing to discuss this report or effect transactions in any security discussed herein should contact ING Financial Markets LLC, which is a member of the NYSE, FINRA and SIPC and part of ING, and which has accepted responsibility for the distribution of this report in the United States under applicable requirements.

Additional information is available on request. For more information about ING Group, please visit www.ing.com.