

OPINION

FRANCOIS BAIRD | Trump tariffs – don't get your hopes up

US Supreme Court ruling offers only temporary reprieve for SA trade

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FILE PHOTO: U.S. President Donald Trump holds a chart next to U.S. Secretary of Commerce Howard Lutnick as Trump delivers remarks on tariffs in the Rose Garden at the White House in Washington, D.C., U.S., April 2, 2025. REUTERS/Carlos Barria/File Photo (Carlos Barria)

South Africans should not get too excited about the invalidation of most of President Donald Trump’s tariffs on South African exports to America.

Trump immediately imposed new (but lesser) tariffs, and there may be worse to come.

The decision by the US Supreme Court to strike down the 30% “reciprocal” tariffs Trump imposed last year was not unexpected. FairPlay predicted this last year in an article published by Business Day, noting that a string of lower courts had ruled that tariffs could not be imposed under the International Emergency Economic Powers Act (IEEPA) (“[US courts may save SA chicken producers](#)”, September 2 2025).

That has come true, and for the moment there is a breathing space of sorts. Invalidation of the 30% “reciprocal” tariffs affects everything South Africa exports to the US, barring exceptions such as precious metals, citrus and macadamia nuts. There are also 25% lower tariffs on automotive vehicles and parts.

South Africans should note, though, that Trump has said he will use other US legislation to achieve his tariff goals and that the 15% tariffs on all countries, imposed under different legislation, are only a start. The rate was originally announced on February 20 as 10%, but it was increased to 15% a day later.

And Trump may unveil further changes in his state of the union address on Tuesday evening. He has warned that he will continue to deal harshly with countries whose policies he disagrees with. This could bode ill for South Africa.

The tariff regime that was invalidated relates to the International Emergency Economic Powers Act (IEEPA). This 1977 sanctions law has been the basis of most of the Trump tariffs. As FairPlay predicted in September, the Supreme Court has now ruled that the legislation did not include a right for the president to impose tariffs unilaterally.

The decision was not unanimous, and the case made by the dissenting justices that IEEPA could be used by the president with Congress’s approval may have a bearing on how future challenges to tariffs are adjudicated.

In the words of Justice Brett Kavanaugh: “Rather, it (IEEPA) empowers the president to regulate imports during national emergencies with the tools presidents have traditionally and commonly used, including quotas, embargoes and tariffs.”

There are other laws and statutes the Trump administration might use to impose new tariffs.

In television interviews, treasury secretary Scott Bessent referred to section 301 of the Trade Act of 1974 and section 232 of the Trade Expansion Act of 1962, both of which were used during Trump's first term to hit China and impose steel and aluminium tariffs. He said tariffs under those laws will generate the same revenue as the IEEPA tariffs.

Section 122 of the Trade Act of 1974 is the section Trump has used to impose his new 15% global tariff regime. The provision empowers the president to address "large and serious" balance-of-payments deficits through import surcharges of up to 15%, import quotas or a combination of the two.

These tariffs expire after 150 days, unless Congress votes to extend them. In a social media post on February 21, Trump made it clear that he intends to use the 150 days to "determine and issue the new and legally permissible tariffs". So 15% under section 122 is a stopgap measure; final tariffs will be announced in the next few months.

Section 338 of the Tariff Act of 1930 may also be used. It authorises the president to impose tariffs of up to 50% on imports from any country that "discriminates" against US commerce compared to other nations.

South Africa still faces the predicament of having alienated the US government by aligning itself with China, Iran, Hamas and Russia. Therefore, the South African government should urgently seek clarity on which provisions apply, what the Trump administration's intentions are, and the future of the trade talks with the US, which have not yet reached finality.

Those talks were aimed at securing a lower tariff rate than the 30% "reciprocal" rate then applying. What is the situation now that lower tariffs are in force?

South Africa faces the risk of being found to "discriminate" against the US because of its anti-American alignment, anti-dumping duties and general tariffs imposed on US poultry imports. A White House fact sheet last April singled out pork and poultry for what the US saw as unfair import restrictions

"For decades, South Africa has imposed animal health restrictions that are not scientifically justified on US pork products, permitting a very limited list of US pork exports to enter South Africa," it said.

"South Africa also heavily restricts US poultry exports through high tariffs, antidumping duties and unjustified animal health restrictions. These barriers

have contributed to a 78% decline in US poultry exports to South Africa, from \$89m in 2019 to \$19m in 2024.”

South African negotiators offered a permanent import quota of 72,000 tonnes of US chicken annually, free of the anti-dumping duties that would otherwise apply. Sacrificing South African poultry, the second most competitive producers in the world, was clearly premature. What is the situation now that lower tariffs are in place?

South Africa’s membership in the African Growth & Opportunity Act (Agoa) trade agreement that gives select African countries duty-free access to the US market is still at risk. Countries have been added and deleted from the Agoa list by many administrations.

Some countries, like Eswatini and India, have played a shrewd trade game. Hopefully the South African government will use this temporary reprieve to find solutions for its self-created trade risks.

• *Baird is the founder of the FairPlay movement and a distinguished fellow at the Energy Policy Research Foundation in Washington DC.*

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