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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

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August 21, 2025

The Honorable Kelly Loeffler
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

The Honorable Jamieson Greer
Ambassador
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20006

The Honorable Howard Lutnick
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Mr. Stephen Miran
Chair
Council of Economic Advisers
1650 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Administrator Loeffler, Secretary Lutnick, Ambassador Greer, and Chair Miran,

The Trump administration's tariffs have sown chaos across our economy. Now, after six months of trying to keep up with the president's ever-changing trade policies, American businesses are bracing for the possibility of a massive about-face as courts consider whether to reject the dubious legal underpinnings of the president's trade war. Two lower courts have already ruled decisively against the administration's claim of unlimited "emergency powers," which the president has used to justify the arbitrary imposition of tariffs against every country on the planet. A source close to the White House quoted by Politico placed the odds of the administration's opponents prevailing before the Supreme Court "as way higher than 50-50,"¹ so the possibility of a complete reversal of this disastrous policy is not something the president can ignore. I call on your agencies to immediately establish and publicize procedures for refunding tariffs paid by American businesses in the event the high court rejects the president's unlawful trade war.

On April 2, 2025, President Trump announced the most sweeping tariffs the United States has seen since the enactment of the Smoot-Hawley Tariff Act of 1930, targeting every U.S. trading partner and causing prices for domestic retailers, manufacturers, and consumers to rise.²

¹ Ari Hawkins, *How Trump's \$150 billion tariff brag could backfire*, Politico (August 6, 2025), <https://www.politico.com/news/2025/08/06/how-trumps-150-billion-brag-could-backfire-00494882>.

² Josh Schafer, *Fed's Preferred Inflation Gauge Shows Price Increases Accelerated in June Amid Tariff Uncertainty*, Yahoo Finance (July 31, 2025), <https://finance.yahoo.com/news/feds-preferred-inflation-gauge-shows-price-increases-accelerated-in-june-amid-tariff-uncertainty-124028246.html>.

These tariffs included a universal ten percent tariff on all imports along with country-specific “reciprocal” tariffs, which the president claims are permitted under the International Emergency Economic Powers Act of 1977 (IEEPA). Wall Street’s negative reaction this spring forced the administration to delay implementation for 90 days until July 9th; the president’s inability to secure deals pushed that deadline to August 1st.³ Even now that the deadline has passed, we continue to hear the president shifting his position from day to day.

Both the D.C. District Court⁴ and the U.S. Court of International Trade⁵ rejected the administration’s blatant attempt to ignore the Constitution, which gives Congress, not the president, the power to impose tariffs and regulate foreign commerce.⁶ During a subsequent hearing before the U.S. Court of Appeals for the Federal Circuit at the end of July, judges expressed significant doubts about the administration’s position, which claimed unlimited power to levy tariffs in response to anything the president deems a national emergency. Petitioners made it clear that IEEPA sets the bar for emergency powers quite high: it must rise to the level of “an unusual or extraordinary threat.”

The president’s justifications for levying tariffs have more to do with his own personal vendettas and score-settling than with any actual crisis threatening the country. Skepticism about the legality of his actions extends across the political spectrum, from blue state attorneys general to the conservative Cato Institute.⁷

The president’s own lawyers admitted in their brief before the U.S. Court of Appeals that if the administration were to lose, businesses that have paid tariffs imposed unlawfully under IEEPA would be entitled to refunds.⁸ This would pose an incredible logistical challenge, as many tariffs are paid by third parties before being passed along to importers and their customers. Businesses would also likely be entitled to interest on their payments, which would make these misguided tariffs even more costly for the American taxpayer.

If the administration fails to prepare for a situation in which hundreds of billions of dollars in tariff revenue unlawfully collected from American businesses must be repaid, it would

³ Ana Swanson & Tony Romm, *Trump Reverses Course on Global Tariffs, Announcing 90-Day Pause*, N.Y. Times (Apr. 9, 2025), <https://www.nytimes.com/2025/04/09/us/politics/trump-tariffs-stocks-china.html>.

⁴ Doug Palmer & Kyle Cheney, *Second federal court rules against Trump's tariffs*, Politico (May 29, 2025), <https://www.politico.com/news/2025/05/29/second-federal-court-rules-against-trumps-tariffs-00374377>.

⁵ Doug Palmer, Kyle Cheney & Josh Gerstein, *Federal court strikes down Trump's tariffs on countries around the world*, Politico (May 28, 2025), <https://www.politico.com/news/2025/05/28/federal-court-strikes-down-trumps-april-2-tariffs-00373843>.

⁶ U.S. Const. art. I, § 8.

⁷ *Cato Experts Available to Discuss IEEPA Tariffs Case*, Cato Institute (July 30, 2025), <https://www.cato.org/news-releases/cato-experts-available-discuss-ieepa-tariffs-case#>.

⁸ Ari Hawkins, *How Trump's \$150 billion tariff brag could backfire*, Politico (August 6, 2025), <https://www.politico.com/news/2025/08/06/how-trumps-150-billion-brag-could-backfire-00494882>.

go down as a historic act of executive malpractice, making what would already be a major, economy-wide disruption exponentially worse. Your agencies must act now so that businesses, especially our small businesses, are not left hanging should the courts overturn President Trump's destructive tariff regime.

Sincerely,



Edward J. Markey

Ranking Member, Committee on Small
Business and Entrepreneurship