Nos. 24-1287 and 25-250

In the Supreme Court of the United States

LEARNING RESOURCES, INC., ET AL.,

Petitioners,

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Petitioners,

v.

V.O.S. SELECTIONS INC., ET AL.,

Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the District of Columbia Circuit and on Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF SCOTT LINCICOME, COLIN GRABOW, AND CLARK PACKARD *AMICI CURIAE* IN SUPPORT OF PETITIONERS IN 24-1287 AND RESPONDENTS IN 25-250.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATEMENT OF INTEREST

The *amici* are policy researchers with decades of expertise in U.S. trade policy, including tariff- and non-tariff barriers, international trade agreements and relations, and industrial policy. Their research advances the economic, political, and moral cases for free trade and highlights the costs of protectionism. Their work also documents how the abuse of executive authority over U.S. trade policy imposes high costs on the U.S. economy, particularly on smaller businesses and their workers, diminishes the United States' standing abroad, and undermines the rule of law and individual liberty. As this case is, at its core, about the scope of executive authority over U.S. trade policy, *amici*'s perspective is especially valuable for the Court's consideration.[1]

SUMMARY OF ARGUMENT

The government contends that calamity would befall the nation's economy and foreign policy if the president were unable to impose tariffs under the International Emergency Economic Powers Act. These claims are groundless and should be ignored.

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[1] No party's counsel authored any part of this brief and no person other than *amici* and their counsel funded its preparation and submission. *See* Sup. Ct. R. 37.6.

ARGUMENT

Globalization skeptics often think of U.S. trade policy the way Homer Simpson thinks of alcohol: as the cause of, and solution to, all of life's problems.[2] The government's view of tariffs is no exception.

To support its position in these proceedings and in public, the government has made fantastical claims regarding the president's use of the International Emergency Economic Powers Act (IEEPA) to impose tariffs on imports into the United States—*and* regarding the world that existed before IEEPA tariffs were deployed. In particular, the government has repeatedly alleged that curtailing the president's authority to implement tariffs under IEEPA—and invalidating those tariffs already imposed—would devastate the U.S. economy, the federal government's fiscal position, and the president's ability to effectuate trade and foreign policy, while imposing an unbearable burden upon the government to refund collected duties and foreign investments.

The U.S. trade policy *status quo*, in other words, caused all the nation's problems, and IEEPA tariffs are the only solution.

As this brief will demonstrate, the government's claims are inaccurate—and often hysterically so. Instead, the facts

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[2] Wikipedia, *Homer vs. the Eighteenth Amendment*, https://en.wikipedia.org/w/index.php?title=Homer_vs._the_Eighteenth_Amendment&oldid=1311559631#:~:text=Homer's%20line,%20Quips (version as of Sept. 15, 2025).

show that the tariff authority claimed by the president under IEEPA is not essential for (1) negotiating and finalizing U.S. trade agreements;[3] (2) imposing reciprocal tariffs—which the IEEPA tariffs are not;[4] (3) conducting U.S. foreign policy;[5] (4) reversing the nation's fiscal trajectory;[6] (5) preventing a U.S. economic collapse;[7] (6) blocking foreign government retaliation against U.S. trade and investment;[8] or (7) restoring American manufacturing and the

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[3] *Contra, e.g.,* Government Opening Br. 10–11.

[4] The government has repeatedly referred to the IEEPA trade deficit tariffs as "reciprocal" tariffs, claiming that they "level the playing field for American manufacturers and producers." Declaration of Howard W. Lutnick, attached to the August 29, 2025 Rule 28(j) Letter of D. John Sauer, *V.O.S. Selections, et al. v. Trump, et al.*, No. 25-1812, Doc. 158 (Fed. Cir. Aug. 29, 2025) ("Lutnick Decl."), ¶ 8; *see also* Exec. Order No. 14,257, 90 Fed. Reg. 15041 (Apr. 2, 2025); Exec. Order No. 14,326, 90 Fed. Reg. 37963 (July 31, 2025); Office of the U.S. Trade Representative, *Reciprocal Tariff Calculations*, https://ustr.gov/sites/default/files/files/Issue_Areas/Presidential%20Tariff%20Action/Reciprocal%20Tariff%20Calculations.pdf.

The August 29 Rule 28(j) Letter of D. John Sauer attaches the Declarations of Howard W. Lutnick, Mario Rubio, Scott K.H. Bessent, and Jamieson Lee Greer, which are cited and rebutted throughout this brief. It is available online at: https://storage.courtlistener.com/recap/gov.uscourts.cafc.23105/gov.uscourts.cafc.23105.158.0_1.pdf.

[5] *Contra, e.g.,* Lutnick Decl. 14–15.

[6] *Contra, e.g.,* Government Opening Br. 11.

[7] *Contra, e.g.,* August 11, 2025 Rule 28(j) Letter of D. John Sauer, *V.O.S. Selections, et al. v. Trump, et al.*, No. 25-1812, Doc. 154 (Fed. Cir. Aug. 11, 2025); Government Opening Br. 3.

[8] *Contra, e.g.,* Lutnick Decl. 13–14.

defense industrial base.[9] The record further shows that, again contrary to the government's claims, (8) IEEPA tariff refunds need not be administratively difficult;[10] (9) the government is under no obligation to repay foreign investment commitments;[11] and (10) the IEEPA tariffs are rewriting U.S. trade law without Congress.[12]

Amici firmly believe that the Court's resolution of the questions presented should be based on U.S. statutory and constitutional law rather than the possible effects of the Court's decision. Nevertheless, should the Court consider the government's extralegal doomsaying, it can rest assured knowing that the sky does not fall in a world without IEEPA tariffs.

IEEPA tariffs are not the solution to all the nation's problems, because—to the extent those problems even exist—U.S. trade policy was not their cause.

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[9] *Contra, e.g.,* Government Opening Br. 5–6.

[10] The government has previously contended, for example, that delaying a ruling on this case until summer 2026 could "result in a scenario in which $750 billion–$1 trillion in tariffs have already been collected, and unwinding them could cause significant disruption." Government Motion to Expedite Consideration of the Petition 6. See Motion to expedite consideration of the petition for a writ of certiorari at 6 (quoting declaration of Secretary Bessent).

[11] *Contra, e.g.,* Lutnick Decl. 13–14.

[12] *Contra, e.g.*, Government Opening Br. 12–13.

I. IEEPA tariffs are not essential to the President's ability to conduct foreign affairs

A. Authority to impose tariffs under IEEPA is not essential to the President's ability to negotiate trade agreements

The government contends that IEEPA tariffs are essential to securing favorable agreements with foreign trading partners.[13] Until this year, however, the United States had never invoked IEEPA to negotiate or finalize any of the trade agreements to which the country is now a party—agreements that were approved by Congress and are more durable, comprehensive, and economically significant than the trade deals inked in 2025.

Since IEEPA's 1977 enactment, the United States has completed 14 comprehensive regional and bilateral Free Trade Agreements (FTAs) with 20 countries[14] as well as the multilateral Tokyo Round and Uruguay Round Agreements (establishing the World Trade Organization (WTO)) with 165 other countries currently.[15] In virtually every agreement, U.S. trading partners lowered their average tariffs on American exports more than the U.S. did on foreign

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[13] *See* Lutnick Decl. ¶ 19; Declaration of Mario Rubio ¶ 13; Declaration of Scott K.H. Bessent ¶ 8; Declaration of Jamieson Lee Greer ¶¶ 15–17 (all attached to Rule 28(j) Letter of D. John Sauer, *see supra* n.4).

[14] Office of the U.S. Trade Representative, *Free Trade Agreements,* https://ustr.gov/trade-agreements/free-trade-agreements.

[15] World Trade Organization, *Members and Observers*, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

exports.[16] None of these successful agreements were negotiated using IEEPA tariffs or the threat thereof.

In fact, previous U.S. trade agreements are superior to the IEEPA-related trade deals for several reasons. First, they are more durable because they were entered into voluntarily by foreign governments, making these parties less likely to defect in the future. So too on the U.S. side; implementation of these agreements involved constitutional power-sharing—negotiated by the executive branch and codified by Congress—making them less vulnerable to reversal by a future executive than unilateral IEEPA deals. President Trump himself used the congressional-executive agreement process during his first term to negotiate and implement the U.S.–Mexico–Canada Agreement.[17]

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[16] *See, e.g.,* Bryan Riley, *Trump Is Still Wrong About "Disastrous" Trade Deals*, NATIONAL TAXPAYERS UNION FOUNDATION (Oct. 27, 2020), https://www.ntu.org/foundation/detail/trump-is-still-wrong-about-disastrous-trade-deals. *See also* Arvind Subramanian, *et al*., *Chapter III The Uruguay Round,* in INTERNATIONAL TRADE POLICIES: THE URUGUAY ROUND AND BEYOND (1995), *available at* https://www.elibrary.imf.org/display/book/9781557754691/ch03.xml. Only in the US–Singapore FTA did the United States lower its average tariffs more than its partner did—Singapore's tariffs were already around zero, leaving little room for reduction.

[17] Christopher A. Casey & Cathleen D. Cimino-Isaacs, *Trade Promotion Authority (TPA)*, CONG. RESEARCH SERV. (Feb. 20, 2024), https://www.congress.gov/crs-product/IF10038; Shayerah I. Akhtar, *U.S.–UK Trade Relations: Background and Select Issues*, CONG. RESEARCH SERV. (July 25, 2025), https://www.congress.gov/crs-product/IF11123; Liana Wong & Lauren Ploch Blanchard, *U.S.–Kenya Trade Negotiations*, CONG. RESEARCH SERV. (May 22, 2024), https://www.congress.gov/crs_external_products/IF/PDF/IF11526/IF11526.6.pdf.

Second, previous U.S. trade agreements are more comprehensive than the 2025 IEEPA-related trade deals. Prior to 2025, the typical U.S. trade agreement contained more than a dozen chapters on not just trade in goods but also services, investment, and, in recent years, e-commerce. Past U.S. FTAs also contained detailed disciplines on tariffs, non-tariff measures, customs rules, and other measures that can affect trade flows as much or more than tariffs. The IEEPA deals, by contrast, are much simpler and narrower (and more ambiguous).[18]

Third, because of their firm and comprehensive foundation, past U.S. trade agreements generally enhanced

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[18] See, for instance, Exec. Order 14,345 on the framework negotiated with Japan, The White House, *Implementing the United States–Japan Agreement* (Sept. 4, 2025) (published at 90 Fed. Reg. 43535), https://www.whitehouse.gov/presidential-actions/2025/09/implementing-the-united-states-japan-agreement/ and the *Joint Statement on a United States–European Union Framework on an Agreement on Reciprocal, Fair, and Balanced Trade* (Aug. 21, 2025), https://www.whitehouse.gov/briefings-statements/2025/08/joint-statement-on-a-united-states-european-union-framework-on-an-agreement-on-reciprocal-fair-and-balanced-trade/. By contrast, the United States–Mexico–Canada Agreement and the U.S.–Korea Free Trade Agreement contain binding disciplines on issues such as customs administration, sanitary and phytosanitary measures, rules of origin, and electronic commerce, as well as impartial, state-to-state dispute settlement measures. Office of the United States Trade Representative, *Agreement between the United States of America, the United Mexican States, and Canada Text* (Jul. 1, 2020), https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between and *KORUS FTA Final Text* (Jan. 1, 2019), https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text.

trade.[19] The United States International Trade Commission has found, for example, that U.S. bilateral and regional trade agreements resulted in a significant increase in exports to and imports from FTA partner countries (and thus an increase in U.S. trade overall).[20] The Chamber of Commerce adds that U.S. exports to FTA partners grew nearly three times faster than U.S. exports worldwide over the same period.[21] It is unlikely the IEEPA trade deals will have similar effects, especially as they lock in U.S. tariffs at historically high levels.

America's true bargaining power comes from its massive and dynamic economy, technological leadership, and stable legal institutions, not IEEPA tariffs. Yet even if tariffs were necessary bargaining chips, other statutes passed by

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[19] As a result of expanded trade, previous U.S. FTAs and the GATT/WTO agreements yielded positive economic gains. A 2021 United States International Trade Commission report found that U.S. trade agreements implemented since 1984 increased US GDP by nearly $90 billion and increased domestic employment by about 485,000. U.S. Int'l Trade Comm'n, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Report* 89 (June 2021), https://www.usitc.gov/publications/332/pub5199.pdf.

[20] *See id.* at 98. (finding that U.S. exports to FTA partners increased 12.9 percent more than a counterfactual scenario where no FTAs are in place, and that US imports from FTA partners increased by 15.2 percent versus the same counterfactual). The analysis does not include the Uruguay Round Agreements.

[21] U.S. Chamber of Commerce, *The Open Door of Trade: The Impressive Benefits of America's Free Trade Agreements* (2015), https://web.archive.org/web/20210223080246/https:/www.uschamber.com/sites/default/files/open_door_trade_report.pdf.

Congress grant the executive branch the authority to impose tariffs to achieve various government objectives.[22] Indeed, U.S. government officials have recently acknowledged this actual tariff authority,[23] and the President himself claimed to have leveraged it during his first term to negotiate narrow deals with Japan and China.[24] There is no need to invoke IEEPA.

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[22] Section 301 of the Trade Act of 1974 authorizes the executive branch to investigate and remedy "unfair" foreign trading practices, including trade agreement violations, unreasonable policies burdening U.S. commerce, or market access restrictions. 19 U.S.C. § 2411. Section 338 of the Tariff Act of 1930 permits the president to impose ad valorem tariffs up to 50 percent on imports from countries that have "discriminated" against U.S. commerce. 19 U.S.C. § 1338. For "large and serious" balance of payments deficits, Section 122 of the Trade Act of 1974 grants unilateral authority to the executive branch to impose import surcharges up to 15 percent ad valorem and/or import quotas, limited to 150 days absent congressional extension. 19 U.S.C. § 2132. Section 232 of the Trade Expansion Act of 1962 grants the executive branch broad authority to investigate and impose tariffs or trade restrictions to address national security risks from imports. 19 U.S.C. § 1862.

[23] NBC News, *Transcript: Meet the Press — September 7, 2025*, https://www.nbcnews.com/meet-the-press/meet-press-september-7-2025-n1312693 (Secretary Bessent acknowledging "numerous other avenues" to impose tariffs).

[24] Trump White House (1st Term), *Remarks by President Trump on the United States–Mexico–Canada Agreement* (Oct. 1, 2018), https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-united-states-mexico-canada-agreement/; Trump White House (1st Term), *Remarks by President Trump at Signing of the U.S.–China Phase One Trade Agreement* (Jan. 15, 2020), https://trumpwhitehouse.archives.gov/briefings-statements/re-

B. The "reciprocal" IEEPA tariffs are not reciprocal

Throughout these proceedings and in countless other instances, the government has referred to the global tariffs imposed under IEEPA as "Reciprocal Tariffs,"[25] because the President intended them to mirror foreign governments' tariffs on U.S. exports.[26] These IEEPA tariffs are "reciprocal" in name only.

A Cato Institute analysis of the U.S. "Reciprocal Tariff" rates in place as of August 14, 2025, showed that they (i) were higher than foreign countries' average tariffs on U.S. exports in 114 of 144 cases (79 percent); and (ii) matched the foreign tariff rate in only one such case. In general, U.S. "Reciprocal Tariffs" have been set by the President at rates much higher than those foreign governments apply to

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marks-president-trump-signing-u-s-china-phase-one-trade-agreement-2/. President Trump also used tariffs imposed under other authorities as leverage to renegotiate at least some elements of the US–Korea Free Trade Agreement. *See* Victor Cha, *KORUS Revision: Not the Worst Outcome*, CTR. FOR STRATEGIC AND INT'L STUDIES (Mar. 26, 2018), https://www.csis.org/analysis/korus-revision-not-worst-outcome.

[25] *See* Government Opening Br., Appendix C (quoting Exec. Order Nos. 14,257, 14,259, 14,266, 14,298, 14,316, 14,326, 14,334, 14,346).

[26] *See, e.g.*, Gavin Bade & Tarini Parti, *Trump Orders Federal Agencies to Study Reciprocal Tariffs*, WALL ST. J. (Feb. 13, 2025), https://www.wsj.com/economy/trade/trump-orders-federal-agencies-to-study-reciprocal-tariffs-9ce1475c; Andrea Shalal, *et al*., *Trump threatens new tariffs in bid to reshape trade*, REUTERS (Feb. 14, 2025), https://www.reuters.com/world/us/trump-says-reciprocal-tariffs-coming-thursday-2025-02-13/.

American goods.[27] This includes all of the top 25 markets from which the United States imported goods in 2024 (excluding Canada and Mexico, as they do not have "reciprocal" rates). In these cases, affecting the vast majority of total annual imports, U.S. tariffs exceed foreign tariffs on American goods by almost *12.5 percentage points* on average.[28]

This fact is directly relevant to the matter at hand. The government has justified global IEEPA tariffs on the grounds that they were needed to realign U.S. tariffs to match foreign tariffs, which are supposedly high, on American goods. The evidence shows this justification to be empty—especially since the "reciprocal tariffs" often apply

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[27] This lack of reciprocity might be explained by the President's open admission that many IEEPA tariff rates were set by, *inter alia*, "gut instinct." *See* Aaron Rupar (@atrupar), X.COM (Aug. 15, 2025, 9:16 PM), https://x.com/atrupar/status/1956525481966092311.

[28] Scott Lincicome & Alfredo Carrillo Obregon, *Please Stop calling them "Reciprocal" Tariffs*, CATO INSTITUTE (Aug. 14, 2025), https://www.cato.org/blog/please-stop-calling-them-reciprocal-tariffs. There is also no evidence that the "reciprocal tariffs" match foreign governments' non-tariff barriers (NTBs) on U.S. exports. The government has never comprehensively quantified countries' NTBs, and it discarded the original reciprocal tariff formula that it claimed incorporated these non-tariff measures after said formula was widely discredited. *See, e.g.,* Colin Grabow, Scott Lincicome, Kyle Handley, *More About Trump's Sham "Reciprocal" Tariffs*, CATO INSTITUTE (Apr. 3, 2025), https://www.cato.org/blog/more-about-trumps-sham-reciprocal-tariffs; Liliana Rojas-Suarez & Ignacio Albe, *US Tariff Tracker: Measuring "Effective Tariff Rates" Around the World*, CENTER FOR GLOBAL DEVELOPMENT (last updated Aug. 7, 2025), https://www.cgdev.org/media/us-tariff-tracker-measuring-effective-tariff-rates.

(or "stack") on top of tariffs the executive branch has imposed under other statutes.[29] Instead, and as related trade deals also demonstrate, the IEEPA tariffs are simply a vehicle for implementing broad-based trade protectionism without congressional input and with "reciprocity" and other buzzwords simply cover for achieving that objective. And the government has quietly admitted as much.[30]

C. Authority to impose tariffs under IEEPA is not essential to the President's ability to conduct US foreign policy

The government contends that IEEPA tariffs are critical to the conduct of American foreign policy.[31] History shows otherwise.

Since World War II, the United States constructed an unprecedented global alliance network founded on security cooperation and economic integration. For nearly 80 years, the United States stewarded that rules-based trading system, understanding that durable alliances require expanded trade and investment under transparent and

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[29] As discussed below in Section III, the "recicprocal" tariffs imposed under IEEPA in fact effectively rewrite the U.S. tariff code that Congress codified on expressly reciprocal grounds (e.g., under the Reciprocal Trade Agreements Act of 1934).

[30] Lutnick Decl. ¶¶ 17–30 (repeatedly referring to the reciprocal tariffs as producing a global, "asymmetric" regime whereby U.S. tariffs are much higher than foreign tariffs).

[31] Lutnick Decl. ¶¶ 14, 31, 33; Rubio Decl. ¶¶ 3, 16, 18; Bessent Decl. ¶¶ 3, 11, 13; Greer Decl. ¶¶ 3, 5, 18–19.

predictable conditions and terms to which nations voluntarily agree. These alliances act as a force multiplier for American military, diplomatic and economic power while increasing the costs of foreign aggression against the United States and its interests.

IEEPA tariffs have not been central to these foreign policy accomplishments.

Since 1977, for example, the United States officially ratified 537 treaties and entered into thousands of other international agreements on topics ranging from defense assistance and nuclear non-proliferation to development assistance and scientific cooperation; IEEPA tariffs were involved in none of them.[32]

Nor were IEEPA tariffs involved in any other diplomatic and foreign policy successes. President Trump considers the the Abraham Accords—which normalized relations between Israel and several Arab nations—a crowning foreign policy achievement of his[33] and a framework for broader

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[32] Calculation based on treaties listed in search through Congress.gov (https://www.congress.gov/search?pageSort=numberAsc&q=%7B%22source%22%3A%22treaties%22%2C%22treaty-status%22%3A%22Approved%22%7D), excluding treaties submitted by the President before 1977. "Other international agreements" refers to non-Article II treaties, which are listed in sources like the Department of States's annual "Treaties in Force" report. For the latest version of this report, see https://www.state.gov/wp-content/uploads/2025/08/Treaties-in-Force-2025-FINAL.pdf.

[33] Donald J. Trump, *Remarks at the Saudi–United States Investment Forum in Riyadh, Saudi Arabia*, THE AMERICAN PRESIDENCY PROJECT AT UC

Middle East peace.[34] Like other historic U.S.-brokered peace agreements including the Camp David Accords, the Dayton Accords, and the Good Friday Agreement, the Abraham Accords were achieved through traditional diplomacy focused on shared interests and mutual benefits, not through the invocation of IEEPA tariffs.[35]

Far from achieving crucial U.S. foreign policy objectives, IEEPA tariffs may instead be undermining them. Today, for example, there is widespread consensus that China engages in abusive trade and investment practices in pursuit of its broader strategic goals.[36] Both the Trump and Biden

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SANTA BARBARA (May 13, 2025), https://www.presidency.ucsb.edu/documents/remarks-the-saudi-united-states-investment-forum-riyadh-saudi-arabia.

[34] Reuters, *Trump: Important that Middle Eastern countries join Abraham Accords* (Aug. 7, 2025), https://www.reuters.com/world/middle-east/trump-important-that-middle-eastern-countries-join-abraham-accords-2025-08-07/.

[35] Christopher Connell, *U.S.-brokered peace deals across the years*, BUREAU OF GLOBAL PUBLIC AFFAIRS, STATE DEPARTMENT (June 14, 2018), https://archive-share.america.gov/u-s-brokered-peace-deals-across-the-years/index.html.

[36] *See, e.g.,* Office of the U.S. Trade Representative, *Investigation: Technology Transfer, Intellectual Property, and Innovation*, https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/investigation; *see also* Clark Packard & Scott Lincicome, *Course Correction: Charting a More Effective Approach to U.S.-China Trade*, CATO INSTITUTE (May 9, 2023), https://www.cato.org/policy-analysis/course-correction; Michael B. G. Froman, *China Has Already Remade the International System*, FOREIGN AFFAIRS (Mar. 25, 2025), https://www.foreignaffairs.com/china/economics-china-international-system-tariffs-michael-froman.

administrations sought to identify and confront these challenges through coordinated economic actions like multilateral export controls. Yet IEEPA tariffs are straining key relationships with like-minded allies in Asia. Major Asian allies like India, South Korea and Japan—all skeptical of Beijing's ambitions—have all recently sought closer economic ties with China to mitigate the harm done by the U.S. tariffs.[37] By treating allies like adversaries, IEEPA tariffs appear to be driving the very regional realignment that the United States seeks to prevent.

II. Unwinding the IEEPA tariffs would not risk economic calamity

A. IEEPA tariffs are not a fiscal gamechanger

Contrary to the government's assertions, invalidating the IEEPA tariffs would have only a modest fiscal impact because the tariffs generate relatively modest federal revenues. From May through September 2025, when both "trafficking" and "reciprocal" IEEPA tariffs were fully in effect, *total* customs duties collected by the government were just 6.4 percent of total receipts and 4.8 percent of outlays (spending).[38] The IEEPA tariffs are just a subset of

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[37] Hugh Cameron, *Trump Tariffs Pushing US Asia Allies into China's Orbit,* NEWSWEEK (Mar. 31, 2025), https://www.newsweek.com/trump-tariffs-pushing-asian-allies-toward-china-2052937; Hugh Cameron, *Xi Tells Modi China and India Must 'Come Together' as US Tariffs Hit*, NEWSWEEK (Aug. 31, 2025), https://www.newsweek.com/china-xi-india-modi-come-together-us-trump-tariffs-2122286.

[38] *See* Department of the Treasury, "Summary of Receipts by Source, and Outlays by Function of the U.S. Government," in *Monthly*

these totals[39] and are subject to an increasing number of exemptions.[40] Thus, even on a static basis and assuming no other changes to U.S. tariff policy if the IEEPA tariffs are invalidated, a ruling against the IEEPA tariffs would affect only a small fraction of total federal receipts and an *even smaller fraction* of total federal spending—hardly grounds for an immediate fiscal crisis.

The IEEPA tariffs' fiscal effects are also negligible over the longer term. First, the static calculation above signifi-

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Treasury Statement for September 2025, https://fiscaldata.treasury.gov/datasets/monthly-treasury-statement/summary-of-receipts-by-source-and-outlays-by-function-of-the-u-s-government.

[39] Between February 2025 and September 2025, IEEPA tariffs comprised 53.4 percent of total customs duties received. *See* U.S. Customs and Border Protection, *Trade Statistics* (last modified Sept. 30, 2025), https://www.cbp.gov/newsroom/stats/trade (showing $88.995 billion in IEEPA tariff collections through September 23, 2025) *and* Department of the Treasury, "Summary of Receipts by Source, and Outlays by Function of the U.S. Government," in *Monthly Treasury Statement for September 2025*, *supra* n.38 (showing $166.7 billion in total customs duties). *See also* The Budget Lab at Yale, *State of U.S. Tariffs: September 4, 2025*, https://budgetlab.yale.edu/research/state-us-tariffs-september-4-2025 (projecting that IEEPA tariffs may eventually total 71 percent of U.S. customs duties).

[40] *See, e.g.*, Gavin Bade, *The U.S. Is Tiptoeing Away From Many of Trump's Signature Tariffs*, WALL ST. J. (Oct. 17, 2025), https://www.wsj.com/politics/policy/trump-tariffs-reciprocal-exemptions-e36f1216?mod=author_content_page_1_pos_1; Shawn Donnan, *et al.*, *How Trump Let $1 Trillion Worth of Imports Escape His Tariff Hammer*, BLOOMBERG (July 31, 2025), https://www.bloomberg.com/news/features/2025-07-31/trump-tariff-exclusions-how-1-trillion-of-imports-got-off-the-hook.

cantly *overstates* the tariffs' boost to federal receipts. Because importing businesses can deduct tariffs payments from their taxable income, revenue from the individual and corporate income taxes are mechanically reduced. The static calculation also fails to account for the slower economic growth and smaller tax base caused by those same tariffs.[41] Dynamic revenue calculations therefore show these tariffs raising hundreds of billions of dollars less than static calculations over the same ten-year period.[42]

Second, other U.S. policies—in particular, social insurance entitlements[43]—predetermine the federal government's long-term fiscal trajectory and will dwarf the IEEPA tariffs' revenue effects. Dynamic calculations from the Tax Foundation, for example, show that between 2025 and 2054 U.S. public debt will rise from 99.9 percent of GDP to 164.1 percent with the IEEPA tariffs and to 171.5

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[41] *See* Jeremy Horpedahl, *Three Things You Should Know About the Record Tariff Revenue*, CATO INSTITUTE (Sept. 12, 2025), https://www.cato.org/blog/three-things-you-should-know-about-record-tariff-revenue.

[42] *See, e.g.,* Erica York & Alex Durante, *Trump Tariffs: Tracking the Economic Impact of the Trump Trade War,* TAX FOUNDATION, Tbl. 2 (Oct. 3, 2025), https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/ (IEEPA tariffs raise $1.7 trillion on a "conventional" (static) basis but $1.1 trillion on a dynamic basis.); *State of U.S. Tariffs, supra* n.39, Tbl. 1 (all current tariffs raise $2.5 trillion conventionally and $472 billion less dynamically).

[43] Approximately 95 percent of non-interest unfunded federal obligations stem from U.S. entitlement programs. Romina Boccia, *Fast Facts about the U.S. Federal Debt*, CATO INSTITUTE (Mar 23, 2023), https://www.cato.org/blog/fast-facts-about-us-federal-debt.

percent without them (again, assuming no other changes to U.S. tariff or fiscal policy).[44] Cato Institute budget analyst Dominik Lett projects that, with or without IEEPA tariffs, the U.S. debt-to-GDP ratio will exceed the World War II high-water mark of 106 percent by 2030.[45] That is because, as Lett explains, "our long-term deficits are almost exclusively driven by just two programs: Medicare and Social Security, along with the resulting interest costs. A few trillion dollars in extra tariff revenue cannot fix those underlying commitments."[46]

These figures belie the government's claim that "[w]ith tariffs, we are a rich nation; without tariffs, we are a poor nation."[47] Instead, the United States by 2055 would be a nation $142 trillion in debt with the IEEPA tariffs or $150 trillion in debt without them.[48] As discussed in the following sections, moreover, decades of relatively open trade

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[44] Alex Durante & Garrett Watson, *Financial Ruin? Why Losing IEEPA Tariff Revenue Won't Change the Long-Term US Fiscal Trajectory,* TAX FOUNDATION (Sept. 24, 2025), Fig. 2, https://taxfoundation.org/blog/ieepa-tariff-revenue-trump-debt-economy/.

[45] Dominik Lett, *Revoking IEEPA Tariffs Will Not "Lead to Financial Ruin,"* CATO INSTITUTE (Oct. 3, 2025), https://www.cato.org/blog/revoking-ieepa-tariffs-will-not-lead-financial-ruin.

[46] *Id. See also* Kimberly A. Clausing & Maurice Obstfeld, *Tariffs as Fiscal Policy*, NAT'L BUREAU OF ECONOMIC RESEARCH (Oct. 2025), https://www.nber.org/papers/w34192.

[47] Government Opening Br. 2.

[48] These numbers come from the Tax Foundation's model that supports debt projections, alluded to at Durante & Watson, *Financial Ruin* and shared privately with Scott Lincicome. *See supra* n.44. While the numbers aren't directly reported, they can be deduced from those that

and investment have undergirded U.S. growth and prosperity – a longstanding position of global economic strength that historically high U.S. tariffs now threaten.

The government's claims of fiscal ruin are further exaggerated because they assume no other changes to U.S. policy. The President has already promised, on the contrary, to divert billions of dollars in IEEPA tariff revenue from the General Treasury (and paying down the debt) to American farmers hurt by those same tariffs.[49] The President is also considering "distribution[s]" of tariff revenues up to $2,000 to each American, further shrinking the tariffs' revenue effects.[50] Although there are many economic, diplomatic, and political reasons to expect that the IEEPA tariffs

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are. *See also* Committee for a Responsible Federal Budget, *Replacing Tariff Revenue if the Supreme Court Rules Tariffs Illegal* (Sept. 22, 2025), https://www.crfb.org/blogs/replacing-tariff-revenue-if-supreme-court-rules-tariffs-illegal (By 2035, debt-to-GDP would grow to 126 percent without IEEPA tariff revenues "as opposed to 120 percent under the [Committee for a Responsible Federal Budget] Adjusted August 2025 Baseline. Either scenario would result in debt being substantially above current levels and the prior record that resulted from World War II[.]").

[49] Grace Yarrow & Meredith Lee Hill, *Trump says he'll use tariff revenue to bail out farmers*, POLITICO (Sept. 25, 2025), https://www.politico.com/news/2025/09/25/trump-tariff-revenue-bail-out-farmers-00580708.

[50] Victor Nava, *Trump considering $2,000 tariff 'dividend'* for Americans, NEW YORK POST (Oct. 2, 2025), https://nypost.com/2025/10/02/us-news/trump-considering-2000-tariff-dividend-for-americans/.

will be reduced, the government's fiscal projections also assume that future presidents will keep them all in place.

Finally, the government ignores that revenues lost from invalidated IEEPA tariffs can be replaced by tariffs either enacted by law or imposed via executive action under one of the many U.S. laws explicitly providing the President with such authority (assuming, of course, the President follows the laws' "well-defined procedural and substantive limitations").[51] The government is well aware of the latter option, having initiated or threatened several other executive tariff actions this year—including as a possible "Plan B" response to the IEEPA tariffs being invalidated.[52]

The prudence of alternative tariffs is beyond the scope of these proceedings; what matters today is only that the alternatives exist—and rebut the government's dire predictions of fiscal destruction if the IEEPA tariff option is unavailable. "The question here is not whether something should be done; it is who has the authority to do it." *Biden v. Nebraska*, 600 U.S. 477, 501 (2023).

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[51] Pet. App. 19a.

[52] *See, e.g., Transcript: Meet the Press — September 7, 2025*, *supra* n.23; Andrea Shalal & Jeff Mason, *Bessent expects Supreme Court to uphold legality of Trump's tariffs but eyes Plan B*, REUTERS (Sept. 1, 2025), https://www.reuters.com/legal/government/bessent-expects-supreme-court-uphold-legality-trumps-tariffs-eyes-plan-b-2025-09-01/.

B. Invalidating the IEEPA tariffs would not impose significant harm to the U.S. economy but would instead produce net benefits

The government claims that eliminating tariffs imposed under IEEPA would threaten economic catastrophe. The record, if anything, points in the opposite direction.

As explained above, IEEPA tariffs have a modest effect on the government's finances and overall fiscal trajectory. Invalidating them would therefore have at most a negligible effect on the market for government debt and related securities.

Treasury markets price bond securities on the path of fiscal sustainability commensurate with their maturities, not on small, temporary, tariff inflows. Thus, recent analyses confirm that Treasury yield movements during the Spring 2025 tariff episodes were driven largely by macro-liquidity and positioning factors rather than tariff-revenue expectations. For example, the Bank for International Settlements found that after the April 2025 "Liberation Day" tariff shock, Treasury yield changes were "primarily attributable to other shocks, including a deterioration in Treasury market liquidity," rather than to the expected revenue effects of tariffs themselves.[53] Similarly, the Federal Reserve Bank of New York observed that the modest rise in long-term yields following tariff announcements did

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[53] Gábor Pinter, Frank Smets, Semih Üslü, *Market Whiplash After the 2025 Tariff Shock: An Event-Targeted VAR Approach*, BIS WORKING PAPER 1282 (Aug. 7, 2025), https://www.bis.org/publ/work1282.htm.

not reflect any repricing of sovereign credit risk or fiscal sustainability linked to tariff inflows.[54]

Invalidating the IEEPA tariffs also would not seriously harm the U.S. economy. In fact, foreclosing the President's use of IEEPA to impose broad-based tariffs would provide a modest but real economic *boost.* Virtually all professional economic analyses conclude that unilateral tariffs imposed in 2017–19 harmed the U.S. economy. The costs of tariffs were largely passed through to buyers of manufacturing inputs and final consumer goods. These costs in turn reduced employment, output, and exports in downstream U.S. industries.[55]

Economic analyses project even larger harms arising from the IEEPA tariffs, which dwarf the 2017–19 tariffs.[56] The economic pain is expected to be particularly acute for smaller U.S. businesses with less diversified supply chains

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[54] Roberto Perli, *Recent Developments in Treasury Market Liquidity and Funding Conditions: Remarks at the 8th Short-Term Funding Markets Conference*, FEDERAL RESERVE BANK OF NEW YORK (May 9, 2025), https://www.newyorkfed.org/newsevents/speeches/2025/per250509.

[55] Erica York, *Separating Tariff Facts from Tariff Fictions*, CATO INSTITUTE (Apr. 16, 2024), https://www.cato.org/publications/separating-tariff-facts-tariff-fictions#who-actually-pays-tariffs; Clark Packard, Scott Lincicome & Alfredo Carrillo Obregon, *Americans Paid for the Trump Tariffs—and Would Do So Again*, CATO INSTITUTE (Aug. 14, 2025), https://www.cato.org/blog/americans-paid-trump-tariffs-would-do-so-again.

[56] *State of U.S. Tariffs*, *supra* n.39.

and less ability to withstand or avoid new tariff costs.[57] As discussed below, the IEEPA tariffs are also harming many U.S. manufacturers now forced to pay more for critical inputs. And many American farmers and companies have seen overseas sales decline because of retaliation against the IEEPA tariffs by both foreign governments and private firms or individuals.[58]

Economic uncertainty caused by the IEEPA tariffs has also been costly. Because of the law's meager procedural requirements, the IEEPA tariffs created pervasive doubts about whether new duties might be imposed, expanded, or rescinded without public notice, comment, or review. Similar doubts persist about exceptions to the IEEPA tariffs or new rules connected to the tariffs' implementation and enforcement.[59] For these reasons, various academic

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[57] Veronika Penciakova, Valerie Nguyen, Camelia Minoiu, Lauren Taylor, *Are US Importers Ready for the New Tariff Landscape?,* FED. RESERVE BANK OF ATLANTA (Aug. 26, 2025), https://www.atlantafed.org/blogs/macroblog/2025/08/26/are-us-importers-ready-for-new-tariff-landscape.

[58] *See*, *e.g.*, Scott Lincicome, *Trade Is Among People—and Retaliation Can Be, Too*, CATO INSTITUTE (Sept. 24, 2025), https://www.cato.org/commentary/trade-among-people-retaliation-can-be-too and Scott Lincicome, *America's Latest Farmer Crisis Is Government-Grown*, CATO INSTITUTE (Sept. 10, 2025), https://www.cato.org/commentary/americas-latest-farmer-crisis-government-grown

[59] *See, e.g.,* Peter Armstrong, *It's not the tariffs, it's the chaos,* CBC NEWS (Sept. 10, 2025), https://www.cbc.ca/news/business/armstrong-tariffs-cusma-compliance-1.7629323 (documenting the "chaos" and "vast new compliance requirements" that Canadian companies have encountered when trying to qualify for the exception from

measures of U.S. trade policy uncertainty have been historically elevated in 2025, peaking in April and remaining well above previous years' record levels.[60]

A large body of empirical work shows that trade policy uncertainty reduces investment, hiring, and growth.[61] Revised projections from the Congressional Budget Office in September 2025 show reductions in real GDP and higher prices in 2025 relative to projections in January 2025 due to higher costs and uncertainty over tariffs.[62] Eliminating IEEPA tariffs would reduce uncertainty and therefore would most likely *reduce* risks facing U.S. firms, the government, and the economy as a whole. Putting tens of billions

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IEEPA trafficking tariffs for goods that comply with the U.S.–Mexico–Canada Agreement) and Alexandra Stevenson & Keith Bradsher, *With New 40% Tariff, Trump Takes Aim at U.S. Dependence on China's Factories*, N.Y. TIMES (Aug. 1, 2025), https://www.nytimes.com/2025/08/01/business/trump-tariffs-china-transshipment.html (noting significant uncertainty surrounding trade deals and "transshipment" penalties connected to the IEEPA "reciprocal" tariffs).

[60] *See* Trade Policy Uncertainty (TPU) Index, *Overview and Paper*, https://www.matteoiacoviello.com/tpu.htm and Economic Policy Uncertainty Index, *Trade Policy Uncertainty*, https://www.policyuncertainty.com/trade_uncertainty.html.

[61] *See, e.g.,* Kyle Handley & Nuno Limão, *Trade Policy Uncertainty*, 14 ANNUAL REVIEW OF ECONOMICS (2022), https://www.annualreviews.org/content/journals/10.1146/annurev-economics-021622-020416.

[62] Congressional Budget Office, *CBO's Current View of the Economy from 2025 to 2028* (Sept 12, 2025), https://www.cbo.gov/publication/61236.

of dollars back into to the pockets of the American companies from whom the IEEPA tariffs were unlawfully collected would undoubtedly help, too.[63]

Prices in forward looking equity markets have consistently responded positively when courts or policymakers signal that emergency tariff authority may be curtailed. These include gains of 1 percentage points or more in the days following the pause of IEEPA tariffs on Canada and Mexico on March 5, 2025, when reciprocal tariffs were paused for 90 days on April 9, 2025.[64] Stocks also jumped immediately following the Court of International Trade ruling on May 29.[65] Markets treat IEEPA tariffs not as a pillar of fiscal stability but as a source of risk and uncertainty.[66]

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[63] As of September 23, 2025, CBP had collected approximately $89 billion in IEEPA-related duties. *See* U.S. Customs and Border Protection, *Trade Statistics*, *supra* n.39.

[64] *E.g.,* Stan Choe & Damian J. Troise, *Stock market today: Wall Street rebounds after Trump pulls back on some of his tariffs,* AP (Mar 5, 2025), https://apnews.com/article/stock-markets-rates-tariffs-trump-59d3601d30cce06043644c471a60e31d; Reuters, *Investors react as stocks jump on Trump's tariff pause* (Apr. 9, 2025), https://www.reuters.com/markets/us/stocks-rally-trump-tariff-pause-after-market-rout-2025-04-09/.

[65] AP, *Stocks climb after a court blocks many of Trump's tariffs* (May 29, 2025), https://www.wfsb.com/2025/05/29/stocks-climb-after-court-blocks-many-trumps-tariffs/.

[66] The government's economic confusion extends beyond just the IEEPA tariffs' economic effects. In one section of its filings, the administration portrays the United States' negative net international investment position as a looming "catastrophe," noting that by the end

In sum, no evidence supports the notion that unwinding IEEPA tariffs would trigger economic collapse. To the contrary, their removal would modestly improve economic performance, restore business confidence, and strengthen America's reputation as a reliable partner in global commerce.

C. There is minimal risk of foreign retaliation in the absence of IEEPA tariffs

The administration's claim that invalidating the use of IEEPA tariffs would render the United States vulnerable to foreign retaliation is vastly overstated.[67]

First, and again, U.S. trade law already furnishes the executive with a suite of authorities to respond swiftly and effectively to discriminatory or unfair trade practices by foreign governments. This includes at least two different laws that offer the president broad discretion for addressing foreign retaliatory tariffs with new U.S. tariffs or other restrictions on foreign commerce.[68]

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of 2024 foreigners owned approximately $26 trillion more in U.S. assets than Americans owned abroad. Secretary Lutnick characterizes this as a "catastrophic reversal" that finances "foreign control of American manufacturing, supply chains, and economic life, weakening the independence of our Nation." Lutnick Decl. ¶ 5. Yet elsewhere he touts the supposed benefits of tariff leverage for trade deals in which trillions of dollars of "foreign capital is directed to vital sectors." Lutnick Decl. ¶ 29. But these investments would increase the claims on U.S. assets by foreigners, thus worsening a situation the government claims is already a catastrophe.

[67] *See* Government Opening Br. 5.

[68] *See supra* n.22.

Beyond unilateral statutory tools, the United States also routinely relies on negotiations to defuse tariff disputes. When the European Union imposed retaliatory tariffs in 2018 following U.S. restrictions on steel and aluminum, the measures were suspended in 2021 after a negotiated relaxation of U.S. import restrictions.[69] Likewise, the United States and China reached a bilateral agreement in May 2025 to reduce retaliatory tariffs previously imposed by both countries.[70] These examples demonstrate that diplomacy, rather than unilateral emergency tariffs, remains an effective mechanism for resolving retaliation.

Finally, and most importantly, the record shows that foreign retaliation against U.S. commercial interests has arisen in recent years only in response to initial U.S. tariff actions, including those implemented via IEEPA, that contravene the United States' trade agreement obligations. Retaliatory measures announced by Canada, China, and the European Union in 2025 (and implemented by Canada and China), for example, were in response to US tariffs imposed under IEEPA and Section 232 of the Trade Expansion Act of 1962.[71] In addition, the United States faced retaliatory

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[69] Office of the U.S. Trade Representative, *Joint US–EU Statement on Trade in Steel and Aluminum* (Oct. 31, 2021), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/joint-us-eu-statement-trade-steel-and-aluminum.

[70] Exec. Order 14,298, 90 Fed. Reg. 21831 (May 12, 2025).

[71] William F. Burkhart & Keigh E. Hammond, *Presidential 2025 Tariff Actions: Timeline and Status*, CONG. RESEARCH SERV. (Sept. 16, 2025), https://www.congress.gov/crs-product/R48549.

tariffs from China in 2018 following the imposition of tariffs under Section 301 of the Trade Act of 1974 and tariffs from the European Union following the U.S. imposition of tariffs under Section 232.[72] By contrast, when the United States has imposed import duties that are clearly consistent with its trade agreement obligations (e.g., antidumping duties), no such retaliation has materialized.

In short, the risk of foreign retaliation is *created*, not diminished, by the President's invocation of broad emergency tariff powers under IEEPA. If the executive had no IEEPA tariff authority, the likelihood of foreign retaliation would substantially decline.

D. The IEEPA tariffs will not boost U.S. manufacturing and the U.S. defense industrial base and instead might harm them

Contrary to the government's assertions,[73] the IEEPA tariffs are neither necessary to nor effective in revitalizing U.S. manufacturing. American manufacturing, though robust before these tariffs, is deeply dependent on global

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[72] Karen M. Sutter, *U.S.–China Tariff Actions Since 2018: An Overview*, CONG. RESEARCH SERV. (updated Aug. 26, 2025), https://www.everycrsreport.com/files/2025-08-26_IF12990_088c2ef0c576934f35f417c59e8cb2899344459d.pdf; Shannon Van Sant & Bill Chappell, *EU Tariffs Take Effect, Retaliating For Trump's Tariffs On Steel And Aluminum,* NPR (June 22, 2018), https://www.npr.org/2018/06/22/622488352/eu-tariffs-take-effect-retaliating-for-trumps-taxes-on-imported-steel-and-alumin.

[73] Petition for a writ of certiorari, *Trump v. V.O.S. Selections, Inc.*, 12 (Sept. 3, 2025); Lutnick Decl. ¶ 8.

supply chains. The tariffs' breaking of those chains has already caused measurable harm to American manufacturers.

The government has justified the President's invocation of emergency powers on the premise that tariffs are needed to reverse an alleged decline in U.S. manufacturing. Yet American industry was performing at historically high levels before IEEPA tariffs were introduced. U.S. industrial capacity is at an all-time high, and industrial production stands near its peak.[74] Manufacturing output today is significantly higher than in decades past, and U.S. manufacturing value-added—an indicator of the sector's contribution to GDP—has reached record levels.[75] Similarly, U.S. exports of manufactured goods achieved a new record last year.[76] These indicators make clear that manufacturing was not in crisis..

Far from supporting domestic manufacturers, tariffs often harm them by increasing production costs. According

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[74] Fed. Reserve Bank of St. Louis, *Industrial Capacity: Total Index* (updated Sept. 16, 2025), https://fred.stlouisfed.org/series/CAPB50001S; Fed. Reserve Bank of St. Louis, *Industrial Production: Total Index* (updated Sept. 16, 2025), https://fred.stlouisfed.org/series/INDPRO.

[75] Fed. Reserve Bank of St. Louis, *Manufacturing Sector: Real Sectoral Output for All Workers* (updated Sept. 4, 2025), https://fred.stlouisfed.org/series/OUTMS; World Bank Group, *Manufacturing, value added (current US$)-United States*, https://data.worldbank.org/indicator/NV.IND.MANF.CD?locations=US (accessed September 30, 2025).

[76] Nat'l Ass'n of Manufacturers, *Facts About Manufacturing*, https://nam.org/mfgdata/facts-about-manufacturing-expanded/.

to the National Association of Manufacturers, 56 percent of all U.S. imports last year were inputs used by manufacturers.[77] Tariffs raise the price of these goods and their domestic equivalents. Multinational corporations and advanced manufacturers are especially vulnerable, as they typically have complex global supply chains that cannot be easily onshored and/or depend on access to high-quality, cost-effective components from around the world.[78] Restricting these transactions through blunt tariffs undermines the very innovation and productivity gains that have kept U.S. industry globally competitive. Thus, new research shows that, to the extent blanket tariffs can increase U.S. manufacturing output and employment, they do so primarily by *shrinking* advanced manufacturing—ironically the very industries that have the most direct nexus to national security.[79]

The tariffs' harm to U.S. manufacturers extends beyond their direct costs. As discussed in Section I.B, the Trump

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[77] Nat'l Ass'n of Manufacturers, *Trading to Win*, https://nam.org/issues/trade/.

[78] Jiaxin (Jason) He & Connor O'Brien, *Blunt tariffs undermine efforts to reshore high-tech manufacturing,* AGGLOMERATIONS (Sept. 10, 2025), https://agglomerations.substack.com/p/blunt-tariffs-undermine-efforts-to; Laura Alfaro, *et al.*, *Trade within Multinational Boundaries*, NAT'L BUREAU ECON. RESEARCH (June 2025), https://t.co/90IHN5vmp4 (finding that "more than half (three-quarters) of affiliates worldwide (in North America) export to or import from their U.S. parent").

[79] Scott Lincicome, *Trump's New Furniture Tariffs Are (Almost) Everything Wrong with U.S. Trade Policy Today*, CATO INSTITUTE (Oct. 8, 2025), https://www.cato.org/commentary/trumps-new-furniture-tariffs-are-almost-everything-wrong-us-trade-policy-today.

administration's ever-changing tariff actions—especially the IEEPA tariffs—have inflicted additional damage by increasing policy uncertainty and making planning more difficult.[80]

American manufacturers also face increased compliance costs stemming from a more complex tariff code. (The IEEPA tariffs, for example, vary by country and contain myriad product exceptions.)[81] A recent Federal Reserve research note found that U.S. manufacturers face potential

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[80] For examples of uncertainty, *see* Zach Edwards & James Melton, *Tariff Cost Pass-through Among Fifth District Firms,* FED. RESERVE BANK OF RICHMOND (Aug. 26, 2025), https://www.richmondfed.org/region_communities/regional_data_analysis/regional_matters/2025/tariff_cost_pass-through_fifth_district; Melissa Alvisi, *Tariffs Are Driving Uncertainty, And U.S. Businesses Need Clarity to Compete,* NAT'L FOREIGN TRADE COUNCIL (Aug. 4, 2025), https://www.nftc.org/tariffs-are-driving-uncertainty-and-u-s-businesses-need-clarity-to-compete/; Noi Mahoney, *Tariff turbulence deepens uncertainty across US supply chains*, YAHOO! FINANCE (Oct. 8, 2025), https://finance.yahoo.com/news/tariff-turbulence-deepens-uncertainty-across-195503188.html.

[81] *See, e.g,* Jordan Fabian, *et al.*, *'Death by a thousand papercuts' as importers struggle with new tariff compliance rules*, L.A. TIMES (Sept. 5, 2025), https://www.latimes.com/business/story/2025-09-05/new-tariffs-leave-u-s-businesses-tied-up-in-costly-red-tape; Jake Colvin, *The Tariff Costs Are Worse Than You Think*, COUNCIL ON FOREIGN RELATIONS (May 23, 2025), https://www.cfr.org/article/tariff-costs-are-worse-you-think; Fiama Angeles & Halit Harput, *US Tariff Stacking, Explained*, GLOBAL TRADE ALERT (Oct. 16, 2025), https://globaltradealert.org/blog/US-Tariff-Stacking-Explained.

annual compliance costs of $39 billion to $71 billion resulting from 2025 tariff actions[82]—business capital that would otherwise be spent on core business operations or domestic expansion.

The government points to various investment pledges as proof the IEEPA tariffs are necessary and effective in boosting U.S. manufacturing,[83] but that's not so. A survey by the Federal Reserve Bank of Dallas found that over 70 percent of manufacturers reported negative effects from higher tariffs this year.[84] The Institute for Supply Management reported in August that manufacturing activity had contracted for seven consecutive months.[85] Payroll data show that since April, the sector has shed 42,000 jobs and output, capital expenditure, and capacity utilization are all stagnant.[86] These are not the signs of a revitalization but

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[82] Spencer Bowdle & Fariha Kamal, *Trade Compliance at What Cost? Lessons from USMCA Automotive Trade,* FEDS NOTES (July 18, 2025), https://www.federalreserve.gov/econres/notes/feds-notes/trade-compliance-at-what-cost-lessons-from-usmca-automotive-trade-20250718.html.

[83] Lutnick Decl. ¶¶ 23, 24.

[84] Fed. Reserve Bank of Dallas, *Texas Manufacturing Outlook Survey* (Aug. 25, 2025), https://www.dallasfed.org/research/surveys/tmos/2025/2508#tab-questions.

[85] Nazmul Ahasan, *US Manufacturing Activity Contracts for Seventh Straight Month*, MSN (Oct. 1, 2025), https://www.msn.com/en-us/money/markets/us-manufacturing-activity-contracts-for-seventh-straight-month/ar-AA1NFVAV.

[86] Kennedy Andara & Sara Estep, *Trump's Trade War Squeezes Middle-Class Manufacturing Employment*, CENTER FOR AMERICAN PROGRESS (Sept. 5, 2025), https://www.americanprogress.org/article/trumps-

the symptoms of policies that raise costs, reduce demand, and stifle growth.

The IEEPA tariffs are neither justified by the condition of U.S. manufacturing nor effective at promoting its growth. The sector was solid before the tariffs, benefits from imported inputs, and is now showing signs of stress under higher trade barriers. Far from saving American manufacturers, IEEPA tariffs are doing much the opposite.

E. Refunds of IEEPA tariff revenue need not be administratively difficult

The government has acknowledged the feasibility of duty refunds in these cases,[87] and "[c]ourts have long recognized that when duties or tariffs are later invalidated, the government cannot lawfully retain those amounts."[88]

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trade-war-squeezes-middle-class-manufacturing-employment/; Fed. Reserve Bank of St. Louis, *Industrial Production: Manufacturing* (updated Sept. 16, 2025), https://fred.stlouisfed.org/series/IPMAN; Fed. Reserve Bank of St. Louis, *Manufacturing Sector: Real Sectoral Output for All Workers* (updated Sept. 4, 2025), https://fred.stlouisfed.org/series/OUTMS; Fed. Reserve Bank of St. Louis, *Capacity Utilization: Manufacturing* (updated Sept. 16, 2025), https://fred.stlouisfed.org/series/MCUMFN; Fed. Reserve Bank of St. Louis, *Manufacturers' New Orders: Total Manufacturing* (updated Sept. 3, 2025), https://fred.stlouisfed.org/series/AMTMNO.

[87] *See, e.g.*, Emergency Motion for a Stay Pending Appeal and an Immediate Administrative Stay, *V.O.S. Selections, et al. v. Trump, et al.*, No. 25-1812, Doc. 6 at 4, 25 (Fed. Cir. May 29, 2025); Brief for Appellants, *Learning Resources, Inc., et al. v. Trump, et al.*, No. 25-5202, Doc. 2122774 at 56, 59 (D.C. Cir. June 27, 2025).

[88] Joshua Claybourn, *Recovering Unlawfully Imposed Tariffs: Navigating Refunds of IEEPA Duties*, LAWFARE (Sept. 17, 2025),

As the former acting general counsel at U.S. Department of Homeland Security recently stated, "customs officials regularly process refunds," and U.S. lawyers regularly request them.[89]

The refund process can be administratively burdensome for U.S. importers[90], but it need not be. In fact, U.S. Customs and Border Protection (CBP) has issued broad, automatic refunds when required to do so. For example, the March 2018 renewal of the Generalized System of Preferences (GSP) program required both retroactive application to January 1, 2018 and the refund of any duties collected on GSP-eligible merchandise—including entries that had already been liquidated—during the months in which the program had lapsed.[91] In response, CBP issued Cargo Systems Messaging Service (CSMS) 18-000296 providing for the automatic processing of such refunds for all importers who had (1) used the agency's Automated Broker Interface and (2) included the GSP Special Program Indicator prefix with the tariff number on their electronic entries. For these

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https://www.lawfaremedia.org/article/recovering-unlawfully-imposed-tariffs--navigating-refunds-of-ieepa-duties.

[89] Alyssa Aquino, *'Uncharte Territory': What Would Importers Have to Do to Get Their Tariffs Refunded?*, LAW.COM (June 2, 2025) https://www.law.com/newyorklawjournal/2025/06/02/uncharted-territory-what-would-importers-have-to-do-to-get-their-tariffs-refunded/.

[90] Claybourn, *supra* n.88, *Recovering Unlawfully Imposed Tariffs*.

[91] Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 501(b)(2), 132 Stat. 348, 1050 (2018), https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

entries, CBP explained, refunds "will be processed automatically by [CBP] and no further action by the filer is required to initiate the refund process"—a process CBP expected to complete in approximately three months.[92] CBP issued an even larger volume of automatic, retroactive refunds for the 2013–2015 lapse of GSP, and a similar coding system remains in effect.[93]

If instructed by the Court to do so, CBP could use such a system to refund most of the IEEPA tariffs. For all entries on which IEEPA duties have been paid, CBP has instructed importers to report at least one Harmonized Tariff Schedule of the United States (HTSUS) "Chapter 99" secondary classification related to the IEEPA tariffs at issue.[94] CBP

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[92] *See* U.S. Customs and Border Protection, *CSMS# 18-000296-Generalized System of Preferences (GSP) Reinstated Through December 31, 2020* (Apr. 20, 2018), https://content.govdelivery.com/accounts/USDHSCBP/bulletins/1eb254f. Non-ABI filers and ABI filers that did not include the proper SPI, on the other hand, were invited to "submit a duty refund request to CBP no later than September 19, 2018." Refunds in these cases were completed over several months.

[93] *See* U.S. Customs and Border Protection, *Renewal of the Generalized System of Preferences and Retroactive Application for Certain Liquidations and Reliquidations Under the GSP*, 80 Fed. Reg. 44986 (July 28, 2015). For the current system, *see* Office of the U.S. Trade Representative, *GSP Expiration: Frequently Asked Questions* (Jan. 2021), https://ustr.gov/sites/default/files/gsp/GSPExpirationFAQ.pdf; *see also* U.S. Customs & Border Protection, *CSMS # 45244051* (Dec. 21, 2020); Liana Wong, *Generalized System of Preferences (GSP): Overview and Issues for Congress*, CONG. RESEARCH SERV. (Nov. 22, 2023), https://www.congress.gov/crs-product/RL33663.

[94] *See, e.g.*, U.S. Customs and Border Protection, *CSMS Nos. 64649265* (Apr. 4, 2025), *64680374* (Apr. 8, 2025)

could use these codes to find all relevant entries and refund IEEPA-related duties automatically via the agency's Automated Clearinghouse (ACH) Refund Program.[95]

An individual refund process—involving a separate Post Summary Correction for each unliquidated entry and administrative protest for each liquidated entry—would be burdensome for U.S. importers and highly inequitable.[96] During Fiscal Year 2024, CBP processed approximately 105,103 entries of merchandise each *day*[97]—totals that have surely climbed in 2025 as millions of daily "de minimis" packages are now also subject to both IEEPA tariffs and formal entry requirements.[98] If, instead of blanket

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[95] *See* U.S. Customs and Border Protection, *ACH Refund* (last modified Oct. 10, 2025), https://www.cbp.gov/trade/automated/ach/refund. As of September 30, 2025, all duty refunds were to be disbursed electronically, per a March 2025 White House directive. *See* Mallory Alexander International Logistics, *Federal Government Ending Paper Checks for Duty Refunds* (Sept. 17, 2025), https://www.mallorygroup.com/federal-government-ending-paper-checks-for-duty-refunds/; Exec. Order 14,247, 90 Fed. Reg. 14001 (Mar. 25, 2025); U.S. Customs and Border Protection, *New Functionality Pertaining to Electronic Refunds in the Automated Commercial Environment*, 90 Fed. Reg. 45956 (Sept. 24, 2025).

[96] Claybourn, *supra* n.88, *Recovering Unlawfully Imposed Tariffs*.

[97] U.S. Customs and Border Protection, *On a Typical Day in Fiscal Year 2024, CBP…* (last modified June 26, 2025), https://www.cbp.gov/newsroom/stats/typical-day-fy2024.

[98] U.S. Customs and Border Protection, "What does Executive Order 14324, 'Suspending Duty-Free De Minimis Treatment for All Countries' Do?" in *E-Commerce Frequently Asked Questions* (last modified Sept. 29, 2025), https://www.cbp.gov/trade/basic-import-export/e-commerce/faqs.

refunds, the government required every importer to affirmatively request a refund from CBP (and file administrative protests to keep claims alive in the meantime), it would not only advantage large, sophisticated importers over smaller ones—denying the latter finite resources illegally commandeered by the government—but also impose a significant burden on an already-stretched CBP. The Court should rule accordingly.

F. The United States would not incur repayment obligations from foreign commitments tied to the IEEPA tariffs

The administration's claim that invalidating tariff authority under IEEPA would obligate the United States to repay trillions of dollars in foreign commitments is without merit. No such debts exist.

First, the investment and purchase commitments announced by the administration are largely aspirational, remaining in the planning stages or not fully agreed upon. For example, South Korea was reported to have pledged $350 billion in investment and $100 billion in energy purchases.[99] Yet no formal written agreement has been concluded, and South Korea's president himself warned in September that commitments of such magnitude could risk financial instability.[100]

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[99] Tom Ramage, *Unpacking the U.S.-South Korea Trade Deal*, KOREA ECONOMIC INSTITUTE (July 31, 2025), https://keia.org/the-peninsula/unpacking-the-u-s-south-korea-trade-deal/.

[100] Josh Smith, *et al.*, *Exclusive: South Korea's President Lee says US investment demands would spark financial crisis*, REUTERS

Similarly, the administration has touted $600 billion in prospective European Union investments and $750 billion in energy purchase commitments.[101] EU officials, however, have emphasized that these figures represent private-sector intentions, not binding government obligations.[102]

Japan provides the clearest case: a September agreement referenced $550 billion in funding for projects selected by the U.S. government, and a Memorandum of Understanding has been completed.[103] However, no projects have been

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(Sept. 22, 2025), https://www.reuters.com/world/china/south-koreas-president-lee-says-us-investment-demands-would-spark-financial-2025-09-21/.

[101] The White House, *Fact Sheet: The United States and European Union Reach Massive Trade Deal* (July 28, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-united-states-and-european-union-reach-massive-trade-deal/.

[102] Gregorio Sorgi, *EU admits in can't guarantee $600B promise to Trump*, POLITICO (July 28, 2025), https://www.politico.eu/article/eus-600bn-us-investment-will-come-exclusively-from-private-sector/. Similarly, the EU's Commissioner for Economy and Productivity, Valdis Dombrovskis, stated earlier this month that the EU merely served to "facilitate" private sector investments in the United States as part of its commitments in the US–EU trade deal, with such facilitation consisting of the identification and removal of obstacles. *See* American Enterprise Institute, *The Transatlantic Partnership in a Changing World: A Conversation with Valdis Dombrovskis*, YOUTUBE (Oct. 14, 2025), https://www.youtube.com/live/hNj4tUwytkg?t=1262s (21:02 mark).

[103] Francis Tang, *Japan's $550 billion investment pledge outlined in MOU*, THE JAPAN TIMES (Sept 5, 2025), https://www.japantimes.co.jp/business/2025/09/05/economy/550-billion-mou/. *See also* Cabinet Secretariat of Japan, *Memorandum of Understanding Between the Government of Japan and the Government of the United States of America with Respect to Strategic Investments* (Sept. 4, 2025),

identified; no expenditures have occurred; and no binding debt has been created.

There is, quite simply, nothing to repay.

Second, even if these investment commitments materialize, they do not constitute debts of the U.S. Treasury. Purchase commitments reflect foreign entities buying U.S. goods, while investment commitments involve the acquisition of U.S. assets. These transactions represent ordinary commercial exchanges between private or foreign actors and the American economy, not liabilities borne by the U.S. government.

Finally, the administration's own characterization of these commitments undermines the suggestion of debt. President Trump, for example, described the EU's supposed $600 billion investment commitment as a "gift."[104] With gifts, of course, "there's nothing to pay back." *Id.* Similarly, President Trump has likened Japan's $550 billion commitment to a "signing bonus," a term not typically understood to create debt.[105]

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https://www.cas.go.jp/jp/seisaku/tariff_measures/houmon/pdf/250905oboegaki.pdf.

[104] Daniel Dale, *Fact Check: Trump and the case of the nonexistent $600 billion EU 'gift,'* CNN (Aug. 22, 2025), https://www.cnn.com/2025/08/22/politics/fact-check-trump-eu-us-gift.

[105] CNBC, *Transcript: President of the United States Donald Trump Speaks with CNBC's "Squawk Box" Today* (Aug. 5, 2025), https://www.cnbc.com/2025/08/05/cnbc-transcript-president-of-

In short, the economic activities linked to the administration's IEEPA tariffs are incipient, contingent, and nonbinding, and they do not create repayment obligations for the United States. Claims to the contrary conflate foreign investment or purchases with sovereign debt and should be ignored.

III. The IEEPA tariffs are re-writing the U.S. tariff code without congressional authorization

Since the passage of the Reciprocal Trade Agreements Act (RTAA) of 1934, the base U.S. tariff schedule has been modified more than 200 times through some form of cooperation between the Executive and Congress.[106] This cooperation has broadly taken three forms. First, Congress

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[106] This calculation is based on a variety of sources, mainly the U.S. International Trade Commission's (previously, the U.S. Tariff Commission) "Operation of the Trade Agreements Program" reports (renamed "This Year in Trade" in 1992) published yearly since 1948, and covering developments from 1934 to the present date. Archives to reports published before 1992 can be accessed here: https://onlinebooks.library.upenn.edu/webbin/serial?id=optradeagprg, while reports published on or after 1992 can be accessed via the USITC's Publication Library: https://www.usitc.gov/commission_publications_library?search=otap&page=1. Information taken from these reports was then complemented with information from State Department historical documents online, Executive Orders archived in the "American Presidential Project" and presidential libraries, Federal Register archives, and Congress.gov. This calculation only accounts for modifications to most-favored nation (MFN) tariff rates and preferential treatment schemes, and thus, does not include trade remedies (e.g.,

delegates authority to the executive to negotiate tariff reductions within parameters set by Congress (the RTAA model). Second, Congress delegates authority to the executive to negotiate trade agreements according to pre-determined congressional objectives; the executive negotiates such an agreement; and then Congress votes on the entire agreement, including its changes to the U.S. tariff code (the "fast track" model followed for multilateral and bilateral negotiations since the Trade Act of 1974). Third, Congress authorizes trade preference programs and gives the executive discretion on targeted changes to the product scope and country coverage of those programs (e.g., the Generalized System of Preferences).

Congress has also delegated authority to the executive to determine and apply targeted remedial duties in addition to the tariffs established via the cooperative mechanisms above and therefore codified in the U.S. tariff code (i.e., the Harmonized Tariff Schedule of the United States). The primary vehicle for such duties has been U.S. "trade remedy" measures, which include anti-dumping duties, countervailing duties, and safeguard actions, but the executive has also applied duties under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411) and Section 232 of Trade Expansion Act of 1962 (19 U.S.C. § 1862). In all such cases, these executive

anti-dumping and countervailing duties, and safeguards), tariffs imposed under other remedial authorities (e.g., Section 232 of the Trade Expansion Act of 1968 and Section 301 of the Trade Act of 1974), and other actions taken by the Executive under Congressional authorization for temporary tariff relief. It also does not include actions instituting or modifying import quotas, or actions taken under article XXVII of the General Agreement on Tariffs and Trade (GATT).

actions have not substituted executive branch tariffs for those approved by the Congress but instead have added duties to those the Congress had previously approved. Thus, the Harmonized Tariff Schedule of the United States has remained clear, coherent, and predictable—an important factor in stabilizing and in enhancing U.S. international trade.

The IEEPA tariffs abandon this system. Most notably, the agreements reached between the Trump administration and U.S. trading partners following the imposition of, and under the ambit of, the IEEPA tariffs effectively rewrite the U.S. tariff code without congressional involvement. They do so by establishing baseline tariffs for thousands of products that collectively account for hundreds of billions of dollars in annual imports—tariffs that Congress had no say in determining and from which the executive will deviate at its discretion alone.

The intent to arbitrarily employ this singular discretion is clear from documents issued by the Trump administration in connection with the conclusion of the bilateral agreements inspired by the IEEPA tariffs. Most notably, Executive Order 14,345 on the US–Japan agreement states that, "Under the Agreement, the United States will apply a ***baseline 15 percent ad valorem tariff*** on nearly all Japanese imports entering the United States…."[107] Similarly, the Executive Order relating to the agreement between the

[107] Exec. Order 14,345, Implementing the United States–Japan Agreement, 90 Fed. Reg. 43535 (Sept. 9, 2025); Implementing Certain Tariff-Related Elements of the United States–Japan Agreement, 90 Fed. Reg. 44638 (Sept. 16, 2025).

Trump administration and the European Union provides that effectively the baseline tariff on US imports from the EU is 15 percent.[108]

Even for countries that have not negotiated similar trade agreements with the administration, the IEEPA "reciprocal" tariffs—which are described as additive[109]—represent an effective re-writing of the U.S. tariff code because they create a 10 percent tariff "floor" for the vast majority of imported products, regardless of origin.[110] Based on the most recent list of IEEPA exceptions published in the Federal Register, in fact, only about 9 percent of total tariff lines (1,040 of the more than 11,400 8-digit tariff lines in chapters 1–97 of the Harmonized Tariff Schedule of the United States (HTSUS)) have been excluded from the IEEPA "reciprocal" tariffs.[111] Included in this blanket coverage are imports from most countries that had previously entered into free trade agreements with the United States—agreements codified into law by Congress.[112]

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[108] Exec. Order 14,326, 90 Fed. Reg. 37963 (July 31, 2025).

[109] Exec. Order 14,326, 90 Fed. Reg. 37963 Annex II (July 31, 2025).

[110] The baseline IEEPA "reciprocal" tariff rate is set at 10 percent *Id.* at § 2(d). All countries subject are subject to this rate or a higher, country-specific rate. *Id.* at Annex II.

[111] For the current version of the HTSUS, *see* https://hts.usitc.gov/. For the latest list of products exempted from the IEEPA "reciprocal" tariffs, *see* Exec. Order 14,346, Modifying the Scope of Reciprocal Tariffs and Establishing Procedures for Implementing Trade and Security Agreements, 90 Fed. Reg. 43737 Annex II (Sept. 10, 2025).

[112] Of the countries that have entered into comprehensive free trade agreements with the United States, only Mexico and Canada are

Using IEEPA to impose such blanket tariffs is fundamentally different from levying targeted remedial duties through anti-dumping or countervailing duties on *select products* from *one country*; through Sections 232 or safeguards on *select products* from multiple countries; or through Section 301 on a broad range of imports from *one country*.[113] The IEEPA tariffs are also fundamentally different from what the executive branch has been authorized by Congress to do since the 1930s.

In short, the United States has a new tariff code, authored by one man and without the consent of Congress—the branch of government with constitutional authority over

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not currently subject to the IEEPA "reciprocal" tariffs. These countries are subject to the IEEPA fentanyl tariffs. Exec. Order 14,257, Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, 90 Fed. Reg. 15041 (Apr. 4, 2025); *see also* Exec. Order 14,326, Further Modifying the Reciprocal Tariff Rates, 90 Fed. Reg. 37963 (Aug. 6, 2025).

[113] On Sections 232 and 301, *see* Clark Packard & Scott Lincicome, *Presidential Tariff Powers and the Need for Reform*, CATO INSTITUTE (Oct. 9, 2024), https://www.cato.org/briefing-paper/presidential-tariff-powers-need-reform. Notably, Section 122 of the Trade Act of 1974 (19 U.S.C. § 2132) allows the president to impose tariffs of up to 15 percent on imports from all countries. Yet, unlike the actions taken by the administration under IEEPA, the duration of Section 122 tariffs is capped at 150 days, unless extended by an affirmative act of Congress. On antidumping and countervailing duties, *see* Int'l Trade Admin., *ADCVD Proceedings*, https://www.trade.gov/data-visualization/adcvd-proceedings. On safeguards, *see* Office of the U.S. Trade Representative, *Section 201 Investigations*, https://ustr.gov/issue-areas/enforcement/section-201-investigations.

tariffs and that has officially approved every other change to the tariff code since the founding.

CONCLUSION

There is little merit to the government's frequent public claims about the parade of horribles that would befall the nation if the IEEPA tariffs were invalidated. The United States has survived—and in fact has *thrived*—without IEEPA tariffs, and there is little doubt that it would do so again. Trade policy is neither the cause of, nor solution to, all the nation's problems. Claims to the contrary are unpersuasive, at best.

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