

United States Senate

WASHINGTON, DC 20510

March 27, 2026

The Honorable Rodney S. Scott
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Commissioner Scott,

On February 20, the Supreme Court struck down tariffs that the Trump administration was collecting from American businesses under the International Emergency Economic Powers Act (IEEPA). Now that the Court of International Trade (CIT) has ordered tariff refunds to proceed, we are calling on the Trump administration and U.S. Customs and Border Protection (CBP) to automatically issue refunds using the records CBP already possesses, and not through CBP's proposed Consolidated Administration and Processing of Entries (CAPE) system. The unfinished CAPE system would require those seeking refunds to affirmatively "opt-in" in order to get their money back. This approach would impose unnecessary burdens on small businesses and individual importers, and it risks denying them the relief to which they are entitled. If we are to truly make whole those who wrongly paid for the Trump administration's unlawful tariffs, CBP must fully automate the refund process.

According to CBP, CAPE is a new module within CBP's Automated Commercial Environment (ACE) system designed to process IEEPA tariff refunds at scale.¹ Under the proposed system, importers and customs brokers must affirmatively submit a "CAPE Declaration," a web-based claim that requires businesses to upload files identifying the "entry summaries" that document each import shipment and the tariffs paid on it.² Furthermore, in order to receive any refund, importers must separately register for CBP's Automated Clearing House (ACH) electronic payment system.³ Only entities that comply with this burdensome process can receive refunds.

¹ Erik Larson and Zoe Tillman, *Trump Tariff Refunds Portal Is 70% Complete, US Tells Judge*, Bloomberg News via Transport Topics (Mar. 13, 2026), <https://www.ttnews.com/articles/tariff-refunds-portal-judge>; Harry Clark et al., *CBP Delivers Progress Report on IEEPA Tariff Refund System*, Orrick (Mar. 12, 2026), <https://www.orrick.com/en/Insights/2026/03/CBP-Delivers-Progress-Report-on-IEEPA-Tariff-Refund-System>.

² Clark et al. *supra* note 1; Antone Gonsalves, *As Trump tariff refund process takes shape, importers remain uncertain*, Supply Chain Dive (Mar. 9, 2026), <https://www.supplychaindive.com/news/trump-tariff-refunds-importers-uncertainty-cbp-814142/>.

³ Jonathan R. Todd, *Tariff Refunds Update – IEEPA Recovery Process “Knowns” And “Unknowns,”* Benesch Law (Mar. 12, 2026), <https://www.beneschlaw.com/insight/tariff-refunds-update-ieepa-recovery-process-knowns-and-unknowns/>.

CAPE is an opt-in system, one that places the burden of obtaining a refund squarely on those who were wronged, not on the government that unlawfully collected their money in the first place. CAPE's opt-in nature will disproportionately harm small businesses. Legal experts following the CAPE rollout have already raised concerns that requiring importers to opt in and provide documentation, rather than having the government use its own records to issue refunds automatically, risks leaving many businesses in the lurch.⁴ Many large companies have legal teams, customs brokers on retainer, and the administrative capacity to file and pursue claims such as these. Small businesses often have none of these resources. Many are unaware that CAPE exists, or that they must affirmatively act to receive a refund on tariffs that the Administration illegally collected. Others lack the technical infrastructure, records retention systems, or staff expertise to submit a complete and accurate CAPE declaration. Even if small businesses are able to complete the declarations, this takes time and money away from operating or expanding their businesses. The result will be that small businesses — which had no choice but to pay these illegal tariffs and were least able to absorb the cost — will be the least likely to recover what they are owed.

There is no principled reason for the Trump administration to conduct the refund process this way. CBP already has the payment records it needs to issue refunds. As of March 4, 2026, CBP reported that more than 330,000 importers had paid or deposited approximately \$166 billion in IEEPA tariffs across more than 53 million entries.⁵ All of those payments are recorded in CBP's own ACE system — the same system within which CAPE is being built. If the government has records of every entry on which illegal tariffs were collected, it necessarily has records of every entry on which a refund is owed. Requiring businesses to file declarations to identify those entries is an unnecessary process that seems designed to discourage and reduce the number of refunds the government must ultimately pay.

CAPE also creates new vulnerabilities for financial exploitation. The system includes a feature allowing importers to designate third parties to receive refunds on their behalf.⁶ This is precisely the mechanism that investment banks and other buyers of tariff claims — who are already offering small businesses as little as twenty cents on the dollar to purchase their refund rights — are positioning themselves to exploit.⁷ A cumbersome opt-in process that disadvantages small businesses while enriching Wall Street intermediaries is not justice. It is an extension of the original harm.

⁴ Larson and Tillman, *supra* note 1.

⁵ Harry Clark et al., *CBP Outlines IEEPA Tariff Refund Process that May Be Operational as Soon as in 45 Days*, Orrick (Mar. 6, 2026), <https://www.orrick.com/en/Insights/2026/03/CBP-Outlines-IEEPA-Tariff-Refund-Process-that-May-Be-Operational-as-Soon-as-in-45-Days>; Stefan H. Reisinger et al., *CBP Proposes Potential Refund Process Following CIT Order*, Norton Rose Fulbright (Mar. 12, 2026), <https://www.nortonrosefulbright.com/en-us/knowledge/publications/d01f7c5d/cbp-proposes-potential-refund-process-following-cit-order>.

⁶ Clark et al., *supra* note 1.

⁷ Caitlin McCabe, *Wall Street Traders Are Pouncing on the Tariff Refund Chaos*, Wall St. J. (Feb. 25, 2026), <https://www.wsj.com/finance/wall-street-traders-are-pouncing-on-the-tariff-refund-chaos-d0144703>.

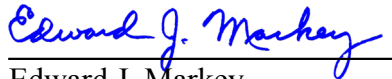
We therefore urge CBP to redesign the CAPE system so that it uses the records already in ACE to automatically identify and issue refunds to all importers, without requiring any affirmative claim or opt-in. Moreover, the Trump administration should prioritize refunds to small businesses, which are least able to absorb the economic impact of these tariffs. To the extent that CBP needs additional information, such as payment routing details, it should proactively reach out to collect that information from the businesses that paid the tariffs. The government wrongfully collected this money. It should bear the burden of returning it. Small businesses should not have to do additional work to receive refunds on what amounted to illegal tariff payments.

The CIT, the Federal Circuit Court of Appeals, *and* the Supreme Court have spoken. Every cent of illegal IEEPA tariffs must be returned. The only question is whether CBP will make that process as simple and equitable as possible, or whether it will implement a complicated and unfair system through which large corporations and Wall Street will benefit financially. To help Congress and the public better understand how CBP intends to implement the tariff refund process, please respond to the following questions in writing by April 10, 2026:

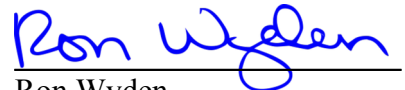
1. How does CAPE comply with the CIT order that the government issue tariff refunds?
2. How does CAPE comply with representations from Administration attorneys in court that it would promptly, and at no cost to businesses, issue refunds if the tariffs were struck down?
3. Why did CBP develop CAPE rather than repurpose the existing ACE system to automatically issue refunds? Please provide any documents analyzing the shortcomings of repurposing the ACE system to automatically issue refunds.
4. Why is CAPE “opt-in,” requiring affirmative action by tariff payers?
5. Why does CAPE require importers to identify entry summaries when CBP already has that information?
6. How will CBP ensure that each step of the refund process is transparent and accessible to small businesses?
7. Will there be a formal appeal system for businesses that dispute the amount of the refund issued by CBP?

We urge you in the strongest possible terms to avoid any additional burden on small businesses of the type CAPE would impose and instead promptly implement an automated tariff refund system.

Sincerely,



Edward J. Markey
Ranking Member, Committee
on Small Business and
Entrepreneurship



Ron Wyden
United States Senator
Ranking Member, Committee
on Finance



Jeanne Shaheen
United States Senator



Charles E. Schumer
United States Senator



Christopher A. Coons
United States Senator



John Hickenlooper
United States Senator



Adam B. Schiff
United States Senator



Angela D. Alsobrooks
United States Senator



Mark R. Warner
United States Senator



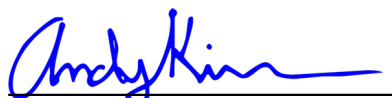
Jeffrey A. Merkley
United States Senator



Raphael Warnock
United States Senator



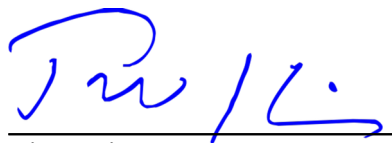
Jacky Rosen
United States Senator



Andy Kim
United States Senator



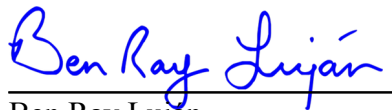
Jack Reed
United States Senator



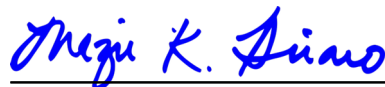
Tim Kaine
United States Senator



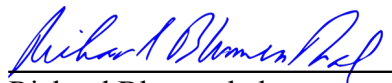
Michael F. Bennet
United States Senator



Ben Ray Lujan
United States Senator



Mazie K. Hirono
United States Senator



Richard Blumenthal
United States Senator