

United States Senate

WASHINGTON, DC 20510

January 15, 2025

Howard Lutnick
Commerce Secretary Nominee-
Designate
Chief Executive Officer
Cantor Fitzgerald
110 East 58th Street
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Jamieson Greer
United States Trade Representative Nominee-
Designate
Partner
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Dear Mr. Lutnick and Mr. Greer:

Congratulations on your nominations to be Secretary of Commerce and United States Trade Representative, respectively. President-elect Trump has charged you both with implementing his tariff and trade agenda, including his recent announcement that on inauguration day, he “will sign all necessary documents” to impose a 25% tariff on goods imported from Mexico and Canada, as well as a 10% tariff on Chinese imports.¹ We have long advocated for tariffs as a critical tool for promoting U.S. manufacturing. That said, it remains to be seen if the President-elect – who announced his plans for these inauguration-day tariffs via a TruthSocial post – has a strategic plan in place to secure wins for American workers and businesses, and to stop evasion by big multinational corporations.²

Big corporations do have a plan: secure tariff loopholes to protect their profits. Corporate lobbyists are already lining up to procure more of the tariff exclusions they got from the first Trump administration.³ Thanks to a combination of incompetence and corruption, the Trump

¹ Reuters, “Trump vows new Canada, Mexico, China tariffs that threaten global trade,” Costas Pitas, November 26, 2024, <https://www.reuters.com/world/us/trump-promises-25-tariff-products-mexico-canada-2024-11-25/>.

² CNN, “Trump tries to force other countries to negotiating table on immigration and trade with promise to hike tariffs,” Eric Bradner, Priscilla Alvarez, Kayla Tausche, November 26, 2024, <https://www.cnn.com/2024/11/26/politics/trump-tariffs-negotiating-tactic/index.html>; MSNBC, “How Trump’s billionaire pick for commerce secretary could backfire on Republicans,” Lori Wallach, November 24, 2024, <https://www.msnbc.com/opinion/msnbc-opinion/trump-cabinet-commerce-secretary-howard-lutnick-tariffs-rca181400>; New York Times, “Can Wall Street Billionaires Deliver on Trump’s Blue-Collar Promise?”, Alan Rappeport and Ana Swanson, November 25, 2024, <https://www.nytimes.com/2024/11/25/us/politics/trump-billionaires-economic-nominees.html>Add in all the cites from next deleted sentence.

³ New York Times, “Trump’s Trade Agenda Could Benefit Friends and Punish Rivals,” Ana Swanson, November 2023, 2024, <https://www.nytimes.com/2024/11/23/us/politics/trump-tariff-exemptions.html>.

administration gave tariff waivers to rich donors, big foreign-owned companies, and even a Russian oligarch and crony of Vladimir Putin.⁴

President-elect Trump has pledged to impose these tariffs on day one of his presidency, and the American people deserve answers now on how this time around will not be more of the same: a corrupt giveaway to the wealthy and well-connected.

The Administration of President Trump's 2018 Tariffs Was Corrupted by Special Interest Giveaways

Big corporations and their lawyers and lobbyists are already angling to obtain special favors and backdoor loopholes when President-elect Trump imposes his new tariffs in January—running the same playbook that resulted in the corrupt tariff exclusion process overseen by the first Trump administration.⁵ While President Trump talked tough on tariffs in his first term, his trade officials handed out exemptions in arbitrary, unfair, and opaque backroom deals.⁶ Lobbying on trade skyrocketed,⁷ and it clearly paid off for a favored few. For example, Apple CEO Tim Cook successfully lobbied President Trump for tariff exclusions on China-made products from computer chargers to the Apple Watch.⁸ The Commerce Department granted a tariff exclusion to a sanctioned company owned by a Russian oligarch – and only withdrew it after Senator Warren raised concerns.⁹

These were not isolated incidents. Senator Warren's office's review found that companies headquartered in Japan and China were over three times more likely to have their exemptions approved by the Commerce Department than American-owned companies.¹⁰ The Commerce

⁴*Id*; New York Times, "How a Blacklisted Russian Firm Won (and Lost) a Break From Trump's Tariffs," Jim Tankersley, August 9, 2018, <https://www.nytimes.com/2018/08/09/us/politics/rusal-tariff-exemption.html>; Letter from Senator Elizabeth Warren to Commerce Secretary Wilbur Ross, October 30, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.10.30%20Letter%20to%20Commerce%20Secretary%20Ross%20re%20steel%20tariff%20exemptions%20....pdf>; U.S. Department of Commerce, Office of the Inspector General, "Memorandum: One Year Later—A Look at the Timeliness and Completion Status of Section 232 Product Exclusion Requests," July 1, 2019, <https://www.oig.doc.gov/OIGPublications/OIG-19-017-M.pdf>; Fotak, V., Lee, H., Megginson, W., and Salas, J., "The Political Economy of Tariff Exemption Grants," *Journal of Financial and Quantitative Analysis*, July 29, 2024, <https://jfq.org/wp-content/uploads/2024/08/23440-Tariff-Exemptions.pdf>.

⁵ New York Times, "Trump's Trade Agenda Could Benefit Friends and Punish Rivals," Ana Swanson, November 2023, 2024, <https://www.nytimes.com/2024/11/23/us/politics/trump-tariff-exemptions.html>.

⁶ CNN, "Escaping Trump's tariffs has required navigating a 'broken' system vulnerable to corruption, businesses and academics say," Matt Egan, November 26, 2024, <https://www.cnn.com/2024/11/26/business/tariff-exclusions-trump-businesses/index.html>.

⁷ ProPublica, "How Trump's Trade War Is Making Lobbyists Rich And Slamming Small Businesses," Lydia DePillis, January 6, 2020, <https://www.propublica.org/article/how-trump-trade-war-is-making-lobbyists-rich-and-slamming-small-businesses>.

⁸ New York Times, "Trump Administration Gives Apple More Tariff Relief," Jack Nicas, March 23, 2020, <https://www.nytimes.com/2020/03/23/technology/apple-watch-tariffs.html>; *id*.

⁹ New York Times, "How a Blacklisted Russian Firm Won (and Lost) a Break From Trump's Tariffs," Jim Tankersley, August 9, 2018, <https://www.nytimes.com/2018/08/09/us/politics/rusal-tariff-exemption.html>.

¹⁰ Letter from Senator Elizabeth Warren to Commerce Secretary Wilbur Ross, October 30, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.10.30%20Letter%20to%20Commerce%20Secretary%20Ross%20re%20steel%20tariff%20exemptions%20....pdf>.

Department's Inspector General found that trade officials made decisions following "off-record communications" and secretly changed review criteria based on the lobbying of a favored party, giving "the appearance of improper influence," concluding that the Trump Administration's process was "neither transparent nor objective."¹¹

The tariff exclusions process run by the Office of the U.S. Trade Representative (USTR) had similar problems. The Government Accountability Office found "inconsistencies" in USTR's application review,¹² and an independent analysis indicated that USTR favored politically connected companies, making USTR's tariff exclusions process "a very effective spoils system allowing the administration of the day to reward its political friends and punish its enemies."¹³ A former USTR official confirmed, "When you're running a process that has no appellate review, there's a lot of room for questionable behavior."¹⁴

The Biden-Harris administration put an end to most tariff exclusions,¹⁵ but with new Trump tariff threats, corporate insiders are already counting on the Trump-Vance administration to bring back the loopholes and giveaways.¹⁶ President-elect Trump has promised to impose new tariffs on "ALL products," but, Mr. Lutnick, you have stated that "you don't tariff stuff you don't make,"¹⁷ suggesting there could be a tariff exclusions process. If so, you have not clarified how you will make such determinations and what differences, if any, there will be from the previous problematic tariff exclusions processes. Concerns have also been raised about your use of your position as transition co-chair to benefit your investment firm,¹⁸ making it all the more important for you to clarify how the Trump administration plans to approach any tariff exclusions process, including recusing yourself from any decisions that raise conflicts of interest.

Corporations are making crystal clear that they are ready to wheel and deal their way to tariff exclusions again. Lawyers and lobbyists are reporting "an influx of requests from companies that

¹¹ U.S. Department of Commerce, Office of the Inspector General, "Memorandum: Management Alert: Certain Communications by Department Officials Suggest Improper Influence in the Section 232 Exclusion Request Review Process," October 28, 2019, <https://www.oig.doc.gov/OIGPublications/OIG-20-003-M.pdf>.

¹² U.S. Government Accountability Office, "U.S.-China Trade: USTR Should Fully Document Internal Procedures for Making Tariff Exclusion and Extension Decisions," July 2021, <https://www.gao.gov/assets/gao-21-506.pdf>.

¹³ Fotak, V., Lee, H., Megginson, W., and Salas, J., "The Political Economy of Tariff Exemption Grants," *Journal of Financial and Quantitative Analysis*, July 29, 2024, <https://jfq.org/wp-content/uploads/2024/08/23440-Tariff-Exemptions.pdf>.

¹⁴ ProPublica, "How Trump's Trade War Is Making Lobbyists Rich And Slamming Small Businesses," Lydia DePillis, January 6, 2020, <https://www.propublica.org/article/how-trump-trade-war-is-making-lobbyists-rich-and-slamming-small-businesses>.

¹⁵ Bloomberg, "Biden to End Tariff Exclusions on Hundreds of Chinese Products," Eric Martin, May 24, 2024, <https://www.bloomberg.com/news/articles/2024-05-24/biden-extends-tariff-exemptions-on-some-imports-from-china>.

¹⁶ New York Times, "Trump's Trade Agenda Could Benefit Friends and Punish Rivals," Ana Swanson, November 2023, 2024, <https://www.nytimes.com/2024/11/23/us/politics/trump-tariff-exemptions.html>,

¹⁷ MSNBC, "How Trump's billionaire pick for commerce secretary could backfire on Republicans," Lori Wallach, November 24, 2024, <https://www.msnbc.com/opinion/msnbc-opinion/trump-cabinet-commerce-secretary-howard-lutnick-tariffs-rcna181400>.

¹⁸ Politico, "Trump transition chief under fire for conflicts," Rachel Bade and Jasper Goodman, October 23, 2024, <https://www.politico.com/news/2024/10/23/howard-lutnick-trump-transition-scrutiny-00184985>.

want to hire their services.”¹⁹ A partner working on international trade at one of the largest legal and lobbying groups recently said they are growing their teams and adding well-connected politicians to better serve clients.²⁰ He added, “The politicking part was so blatant under Trump, and it feels like it’s going to be even more so now.”²¹

Given that we are just 6 days away from President-elect Trump’s self-imposed deadline to impose some of his new tariffs, we request that you answer the following questions by January 21, 2025:


1. Will President-elect Trump’s tariffs include an exclusion process to exempt certain importers or imported products from tariffs?
2. If so, what are the criteria and processes for obtaining exclusions, and how will you prevent the rampant corruption that occurred in the exclusion process during the first Trump Administration?
3. Will you commit to putting in place a transparent and objective process that protects America’s small businesses and workers?

We will have additional questions about these tariffs and other policy matters as your nominations move to the Senate. Thank you for your consideration of this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Tina Smith
United States Senator

¹⁹ New York Times, “Trump’s Trade Agenda Could Benefit Friends and Punish Rivals,” Ana Swanson, November 2023, 2024, <https://www.nytimes.com/2024/11/23/us/politics/trump-tariff-exemptions.html>.

²⁰ <https://www.ft.com/content/de8fd441-20a7-4e3a-a650-70ca1868653a>.

²¹ *Id.*