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NOW WHAT? THE FUTURE OF TRUMP TARIFFS AND TRADE POLICY AFTER
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PANEL

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Kari Heerman Good afternoon, everyone. I am the director of trade and economic statecraft and a senior fellow in the economic studies program here at the Brookings Institution. It's a pleasure to have you join us today for what I expect to be a very illuminating conversation. Today's panel examines one of the most consequential developments at least in 2026 in U.S. Trade policy, the Supreme Court's decision. This Friday, invalidating the Trump administration's use of the International Emergency Economic Powers Act, or IEEPA, as the legal basis for broad tariffs applied to the imports of dozens of countries. That ruling has reconfigured the statutory authorities for presidential tariff powers and raised several pressing questions, including what approaches remain for pursuing trade policy change at scale. How will this change in tariff authority affect economic decision-making or economic outcomes in the real economy and beyond? And how should our trading partners think about the durability of U.S. Trade policy, investment policy, and industrial policy and its implications for the broader global trading system? Our panel of experts today span law, foreign policy, and economics, and they'll help us think through what comes next. I'll begin with a question for Pat Childress. Pat, drawing on your experience in the Office of the General Counsel at USTR, you recently wrote what turned out to be a very prescient article on the Trump administration, the likely next steps following the IEEPA tariffs being overturned by the Supreme Court. Can you give us the crisp version of what you're telling your clients at Holland and Knight? What did the court do? What didn't it do? And what are the big legal implications of this ruling?

Patrick Childress Thanks, Kari, and thanks so much for the invitation. Very happy to be here. I think you did a good job of summing up the basics of the court's ruling. So I won't get into that too much more, but this was a ruling that was celebrated by those who opposed the president's trade policy agenda. And the hope was that this would usher in a new day for US international economic policy. And I know a lot of people were very excited. So that excitement lasted. For only a few hours, however, because shortly after the Supreme Court ruling, later that afternoon, the president held a press conference where the message was very clear. And that was that the White House had a backup plan and that tariffs were not going anywhere. So what do we know now about that backup plan? Well, we know quite a bit, and it's really going to unfold in two stages. And the first stage is going to be placeholder tariffs under section 122 of the trade act of 1974. Those are the new replacement tariffs that went into place earlier today. Now the rate of those tariffs is still a little bit uncertain. The original announcement indicated 10 percent over the weekend. The president announced that that was going to be raised to 15 percent, but then the latest guidance has them back down at 10 percent. So we're still waiting to see exactly where those land. But two important limitations of Section 122, one that relates to this tariff rate, Section 122 has a cap of 15%. So we won't see any tariffs any higher than the 15% rate under Section 121. The second important limitation is a statutory time limit of 150 days. So these Section 122 tariffs will expire at the end of that period. So how will the administration use that 150 day period? Here again, we now know a lot more about the administration's plan and that is to use that 15 day period to initiate a whole host of Section 301 investigations of various trading partners. And the goal will be to conclude as many of those investigations as possible by the end of that 150-day period. And then use the results of those investigatory processes to put in place new and additional tariffs, this time under Section 301. And unlike the Section 122 tariffs, those tariffs will not be time bound and they won't be capped at a certain percentage. Now, if this plan succeeds, then these new Section 302 tariffs will ultimately give the president more or less what he's looking for in a replacement tariff regime. And that's really three things. The first is the ability to adjust tariffs up or down. The second is country by country specificity. And then

finally and importantly, the third is that these new tariffs will be in place under a different statutory authority. This time one that has been challenged in court numerous times and thus far has held up to court challenges.

Kari Heerman Pat, that's really helpful. We're getting a number of questions on the Q&A from our audience about the legality and the contestability of Section 122. Are these tariffs subject to legal challenge as well? Do you expect to see more legal challenges on Section 121?

Patrick Childress Thanks, Kari. Yes, I do, is the short answer. I do expect that there will be legal challenges to the tariffs imposed under Section 122. But one thing that's important to remember here is that the goal of these tariffs is a stopgap. So we know that these tariffs are going to expire within or at the end of 150 days. So the administration is using these tariffs as a bridge to get from the now defunct IEEPA tariffs to the section 301 tariffs that are gonna take a little bit more time. And section 122 will be an effective vehicle to do that irrespective of any court challenges that might come.

Kari Heerman Great, thanks. And this is just a reminder to those of you who are watching, that if you would like to submit a question for our panel, you can send them at any time to events at brookings.edu. All right, moving on to some of the economics. Elena, you've been tracking these tariffs very closely as co-director of the Tax Policy Center here at Brookings, and you've written that tariffs can function as tax policy, executed through delegated authority. From that perspective. Does this ruling reassert Congress's constitutional role over taxation, or is that overstated?

Elena Patel Good question. I think it's something that economists feel pretty certain about the answer, just like we felt certain going into the case, but economists are not lawyers for a good reason. And there's a lot of places where we can talk to each other and learn from these things. And so from my perspective, it's unambiguous that the power to levy taxes lives with Congress and not the executive branch. There is limited delegated authority with regards to trade policy and in particular trade negotiations. That has been delegated by Congress to the executive branch through the sections that Pat has already referred to, 301 is a popular one, 232 is a popular one. And importantly, what underpins those authorities is sort of the role of the executive branch in the state and their ability to negotiate sort of state policy. I think that what the Supreme Court did here is see through the IEEPA tariffs for what they were, which was as estimated by the Congressional Budget Office. A \$3 trillion tax increase. And often the administration has justified these on the grounds that they will raise substantial revenue, which I'll be the first to say we need revenue. I'm just not sure that this is the route by which we need to go about raising that revenue. And so AIPA clearly stretched the delegation. I think that's in particular what the Supreme Court weighed in on. They did not weigh in on whether there is an economic emergency going on in the country right now. They stuck really to the AIPA tariffs and whether the executive branch has the authority to levy tariffs are under AIPA. And so I think that the power to raise taxes has always been with Congress. It remains there. And I would remind everybody that Congress has delegated all of these authorities to the executive branch, which means Congress has the power to adjust the delegated authorities now and in the future to realign, should they choose, tax policy and trade policy.

Kari Heerman Thanks, Elena. That's a great point. I'm moving on to Mira. We're fortunate to have you here as a visiting fellow at Brookings in the Center for Asia Policy Studies because you have been on the front lines of foreign policy, including serving as senior director for East Asia and Oceania in the White House National Security Council and the

Biden administration and advising private sector clients at the Asia Group. Stepping back. How does this, does this ruling meaningfully alter how trade policy can be used as a tool of statecraft particularly as Elena just has taught us about what that delegation authority has been used for in the past?

Mira Rapp-Hooper Kari, thank you so much for having me. It's great to be here with so many great colleagues. My short answer is no. From the perspective of many of our partners, the United States became a much more unpredictable and protectionist trading partner some time ago. And while the last year have taken that unpredictability to a new level, post-liberation day, This latest turn of the crank is another moment of clarification in what many of our allies and partners still understand to be a United States that is no longer where they are on trade. If you look at Asia in particular, which of course is where I spend a lot of my time, the feeling that the United States had moved to a fundamentally different place on trade goes back to 2016 when we failed to. Move ahead and ratify the Trans-Pacific Partnership, which of course had been our idea. The rest of Asia has since moved on ahead with TPP, thinks it's a wonderful agreement and still can't quite wrap their heads around why we could not get on the train that we ourselves had built. While the last year's worth of trade protectionism has been of a totally- level. There has been kind of a parting of ways on the way that our allies see us on trade for some time. They have sensed increasing trade protectionism in both the right wing of the Republican Party and the left wing of the Democratic Party, the feeling that the United States between administrations would become more unpredictable on trade. And of course, headed into the second Trump administration did expect tariffs to come to the four at extremely high levels. In ways that they had not foreseen previously. Now, last year's Liberation Day was a surprise in sort of the magnitude and sweeping nature of the tariffs that were applied. But over the course of the last year, many of our allies have actually become accustomed to managing incredible uncertainty in their trading relationship with the United States and to making the best of it. For all that, last week's decision was quite resounding in SCOTUS' rebuke of one of the presidents. Central foreign policy items. Many of our allies followed this decision closely. They were expecting there was a good chance that IEEPA would be struck down, at least in part, as a legal basis for tariffs going forward. And they were also tracking this so closely that they knew it was highly likely that section 122 would become the authority of next recourse while the administration looked to reconstitute the tariffs under additional authorities over the course of the for the next 150 days. So for many of our allies, the game now is to try to keep things on track. If they've already got a tariff arrangement with the United States that they're basically happy with, they want to try and keep things stable. If the Section 122 tariffs maybe give them a bit of a reprieve, if they were at higher tariff levels before, let's say 19 percent if you're in Southeast Asia, a 10 percent if under section 122 is actually a relatively good deal. And some uncertainty has been opened up for allies like India, who may still be negotiating their own agreements and therefore may have an opportunity to kick the can down the road a little bit and see if they can get a better rate now under section 122. But for much of the rest of the world, the game has really kind of moved on. Most of our partners are still free trading nations that are looking at new trading agreements with one another, that are looking to pull closer to one another in a world in which the United States is less unpredictable. And while this latest turn of the crank did inject more uncertainty into what the next few months might look like, it will ultimately get us back to a set of authorities such as the 301s and the 232s that many allies and partners are actually much more accustomed to dealing with.

Kari Heerman Thank you, Mira, for that really great. Of how our allies and partners are seeing this. We did get a number of questions about those negotiated trade agreements that you mentioned through the Q&A email. So I wonder, do you and maybe Pat, you

wanna weigh in on this too? Do you think countries will try to renegotiate the agreements once they've already made them or how do you think the countries going forward will treat them especially given what Pat mentioned that Section 301 will allow additional power to move things up and down on a bilateral basis? Yes.

Mira Rapp-Hooper I'm happy to chime in with what I'm hearing from Asia, and then I'll turn the mic to Pat. What I hear from many of our closest allies who already have framework agreements in place with the United States is that, for now, they're making no sudden movements. If you are South Korea or Japan and you've basically decided to live with a 15% tariff rate under your negotiated agreement with the administration, part of the reason for that is so that you can get back to business in other areas. Of economic and security cooperation. So I don't see those allies making any quick moves right now to reopen those agreements. From their perspective as well, if you're a large manufacturing economy, it's often the 232 tariffs that matter just as much as the existing tariffs under IEEPA. And those tariffs, of course, haven't gone anywhere. As I've already mentioned, for some partners, this actually looks like not a bad deal. Most of Southeast Asia had actually clustered around a 19% effective tariff rate. So for them, whether Section 122 brings you down to 10% or 15%, it's relatively better off than you thought you were going to do under your negotiated agreement with the Trump administration previously. The thing where I think there is most uncertainty created is for those partners where there has not yet been an understanding reached. So one example is India, where we had expected Indian trade negotiators in Washington just this week, and they've called off their trip, perhaps, to wait and see whether, indeed, the number they were negotiating towards is going to come in higher than the 122 rate, therefore incentivizing them to kick the can down the road and not conclude an agreement too soon. Or, of course, the case of China, where President Trump is planning a visit in just a few weeks and the United States tariffs are a primary form of leverage. So from where I sit, where you have an unsettled case, where the parameters have not yet been ironed out, that's where the partner has the most incentive to take a close look and see if they can do better by deferring trade action to a later date, hoping that either 122s or a subsequent authority will bring them in at a lower tariff rate. But why don't I pass to Patrick?

Patrick Childress Thanks, that was a great answer. I think part of my response will depend on where the section 122 rate ultimately lands. So if we stay at 10% across the board, trading partners won't have much room here to complain because they will either have the same deal in terms of tariff rate that they had under IEEPA or they'll have a better deal and in some cases a much better deal. So if it's if the 122 rate stays at 10% I don't expect that any trading partners will attempt to use this as a basis for walking away from what they've already negotiated. In terms of the countries that don't yet have a deal are still involved in negotiations. Again here, I don't think that there are going to be major changes because while it's true that the Ayipa tariffs were the forcing mechanism. That directly brought these negotiating partners to the table. At a more foundational level, it wasn't really the IEEPA tariffs themselves. It was that this threat that the United States would suddenly impose much higher tariff rates in the future. And given some of the other statutory authorities that we've already discussed, that threat remains. So I think the dynamic really won't change much, even for these countries that haven't reached a negotiated bilateral arrangement yet.

Kari Heerman At lots of nods when you said it's the threat that matters to our foreign partners. And I suspect that's the case to private sector as well. So moving into a little bit more of what are the impacts that we're seeing in the real world as a consequence of this decision. I want to bring in Emily Blanchard, Dartmouth economics professor and former

chief economist at the State Department. From the perspective of somebody who is an economic scholar. And somebody who has been on the front lines of U.S. Foreign policy, I'd like to get a sense of how you view this development, in particular from a macroeconomics and trade perspective. Is this ruling economically material? Do those nods mean not really? Does it change expectations in a meaningful way? Does it matter for business decisions, investment, sourcing, supply chains, or as you very famously say, global value chains? Tell us more.

Emily Blanchard Sure, great set of questions, and I'm just delighted to be here. Yeah, I think this does material the decision, both the striking down of the IEEPA decision and the new tariffs, even if the tariffs started at 10% for a given country and stayed at 10%, for a give country, I still think there are real economic consequences of these two decisions, and that you flagged it, Kari, precisely through the expectations mechanism. So firms are always making decisions in a mirror flag, a highly uncertain economic environment as they're trying to price in and respond to a lot of uncertainty. So the question is, are they now working with a new set of expectations over what they could expect in the future, both the worst possible threats, do those look different? Or, and I actually think this is one of the most important decisions, they've now seen. On Friday, first, the IEEPA tariffs are gone, so that tariff authority is no longer there. But maybe the most important news item for a firm operating today is, this administration is bound and determined to keep those tariffs in place at any opportunity. And there was a chance, certainly, I think there was chance, a fairly strong chance, or thought, that there was this fairly strong chance that if IEEPA was struck down, as it was last Friday. There was a door open for the Trump administration to put a pause on tariffs and maybe take the political win in the sense of saying, hey, the Supreme Court, you know, we can berate the Supreme court as the president did. The Supreme court is forcing us to stop with our tariff escalation. Darn, they're gnarly hides, but you know what can we do? And the what can do would make sense from a political perspective. The tariffs are a drag on real economic activity. The US economy is starting to show some signs of softness, maybe directly related to tariffs. Tariffs, of course, do obviously and mechanically increase the cost of living for American consumers. We're nine months out from an election. It would not be crazy for the administration to have said, OK, maybe we're bummed about these tariffs. We didn't have to say we backed down, but to not go back in and try again to re-up the tariffs. So the new news, the big news for firms is nope, this as of Friday, it is very clear that the administration is gonna continue to pursue these high tariffs through other tariff authorities and patlated out so clearly through 122 for the next 150 days and then following on that probably section 301, 232, what have you, the various trade act of 1974 and 62, those various provisions. So, I think firms... Are looking at the world differently, and that does mean that they are going to make maybe different changes. So I won't drone on and on, but just a couple of flags for the kinds of changes that I would expect firms to make as they update their priors about what they can expect in future months and potentially years. Number one, pricing. I think a lot of firms have not updated their price pass-through decisions because they've been waiting on the Supreme Court decision on IEEPA, waiting to see if maybe the administration would back. Down if IEEPA was struck down. So maybe we'll start to see a higher price pass through from firms, importing firms to consumers. We've already seen in a bunch of places and there's some very compelling economic studies that price pass rate can be very high in certain channels but there was a lot of buildup of inventories that soften the price flow. Now, if you're looking ahead to a future where as a firm, maybe you expect these tariffs to be in place with near certainty. Maybe now you start to pass on the pass or even more of those costs. You might also lean on your foreign suppliers more. So that's another place where we might expect price adjustment. Related to that, firms may be adjusting their sourcing decisions. We've got different tariffs across different countries. This is actually

really interesting. So the IEEPA tariffs allowed enormous discretion in setting higher tariffs against some countries than other countries. Well, or maybe the IEEPA tariff, maybe the rules didn't allow that, but that's what the administration did. The Section 122, at least in the meantime, has a uniform tariff level, so that could change sourcing decisions. I'm not sure how that's gonna change as we shift to Section 301 and 232 in the future, because those are mostly bilateral. For indirect investment, we could see those patterns change, that's very slow, it's very expensive, but there is evidence that FDI patterns have been changing since 2016, and especially since 2018, so maybe we see more of that. And Mira's already talked us through thinking about how other countries are viewing our reaction. So signing more FTAs with each other, maybe they'll start thinking differently about retaliation. So again, I think there's a lot of updating of priors, even if the statutory tariffs haven't moved very much.

Kari Heerman Thanks, Emily. Elena, staying on the economics theme, but moving to kind of a different dimension, you mentioned a possible upside that tariffs have had in terms of revenue. So can you walk us through how the court's decision affects fiscal outcomes, revenue stability, refund exposure, the broader administration's budget strategy?

Elena Patel Yeah, I think it's a really important part of the puzzle, and not to keep layering on volatility, but this is another place where there's incredible volatility now in the federal fiscal budget. So, we came out of actually remarkably last summer. For all of the flurry that went into passing the tax bill last summer, it settled tax law in a way that tax law has not been settled for the last 25 years of continually expiring and then negotiated extensions of provisions. That bill permanently reduced revenues by \$4 trillion over 10 years, but it did set rates for businesses and individuals in a permanent way on an ongoing basis. So we actually left the summer with a period of stability. However, we dug ourselves deeper into a fiscal hole and some of the promise of these tariffs was, the upside is that we are a net importer that actually is quite a big base to tax with a tariff. And so there's always been revenue potential there. You just have to be careful because of all of the things that we've talked about across all of the experts on this call, with how you use tariffs to raise revenue versus effect trade flows. So where we are now on the other side of IEEPA is the CBO recently forecasted that the sort of the suite of the Trump administration tariffs was gonna potentially bring in \$3 trillion over 10 years in extra revenue, which does offset, could have offset actually a substantial portion of the cost of the tax bill last summer. And now those dollars will evaporate. And so if you think about the volatility and tariff revenue, it's not that tariffs themselves have historically contributed a lot to the federal budget, but since 2018, there has been a trend when the first Trump administration put tariffs in place, the Biden administration sort of held the line, and now they've ramped up from being about \$7 billion a month in revenue to 30. With the IEEPA tariffs, there was a substantial chunk of change coming in the door that raised. Different fiscal questions about whether tariffs could be a long-run sustainable source of revenue in light of what we are otherwise facing, which is persistent federal deficits. I would say that the IEEPA tariff decision raised more questions and answers precisely because of what you've prompted me to talk about next, which is we've collected \$130 billion in revenue so far, possibly more as we continue to get the data. And we don't know what to do with those dollars now that IEEPA has been invalidated. And the Supreme Court was silent on what to do with the dollars except for Justice Kavanaugh who rightly noted that it's in some sense the worst kind of mess right now fiscally to deal with, which is who is eligible for refunds? Is it the importer of record? Consumers paid for the tariffs through higher prices, but there's really no mechanism, as far as I know, for consumers to see some of that refund. And so is it going to be a windfall game to importers? These are big outstanding questions. And I think we're all waiting to get more clarity. Clarity could come from Congress. My understanding is Congress could

decide how to handle refunds, but we're in kind of a gray area right now. And one thing I would say in the vein of refunds. So Patrick's point, the 122 tariffs, whether that will legally be resolved in 150 days is like with probability zero. Those are gonna be around until they expire. It doesn't undercut the legality of what's being done through 122. And I think the precedent of what will be done with refunds associated with IEEPA has further down the line implications for how one might handle a 122 challenge that's resolved later on. If we've collected all of this revenue under authority, that may not be legal. There's gonna be more refunds potentially to deal with in the future. So I would bet in the past, if companies weren't so much paying attention to the refund issue, from this moment forward, they should be, because I think there are serious legal questions. About whether the 122 tariffs are justified, which means that on an ongoing basis, there may be challenges that might invoke future refunds.

Kari Heerman Thanks so much, Elena. That's really helpful. We're getting questions up, down, and sideways about that very issue. So I'm glad you addressed it. I'm going to ask Pat a question that we got from our audience, from John Corrigan at the Silverado Policy Institute. Pat, if you could take this. And then I think, Emily, you might have something to weigh on too. USTR and Treasury have suggested that since the Supreme Court ruling that the tariff structure created under IEEPA can be recreated in highly similar if not identical form using Section 301, how could USTR create a remedy under one or more Section 302 investigations that is so similar to IEEPA tariff structures and would doing so generate legal risk? You talked a little bit about this at the beginning and you and I first met when we were both working on, I think, I'm simultaneous section 301 investigations on digital services taxes so I know you have some concept of how to answer this question.

Patrick Childress Yes, absolutely. And thanks for the question, John. Great to hear from you. So it's a very good question. So if we're using Section 301, how closely can we get to fully recreating the IEEPA tariff structure? In other words, another way to put that is, can Section 302 be used as a tool to put in place tariffs that impact all goods from a particular trading partner? Because Section 303 is a country-specific enforcement tool. And to get back to where we were under IEEPA, we would need to be able to use Section 301 to put tariffs in place on all goods from a specific trading partner. I do think there's a possibility to use a Section 30 one to do that. And that's my view for this reason. So Section 30 is meant to investigate specific trading partners for trade related acts, policies or practices. That are discriminatory against the United States. So the first step in a Section 301 process is to establish that that sort of act policy or practice is occurring or is in place in that trading partner. And then once that's determined, so we have an actionability determination, i.e. That there's an act that we can impose tariffs based upon. Then the question is how best to use the trade remedies that are available to convince our trading partner to change that act policy or practice. And the president in collaboration with USTR could certainly determine that the best way to convince a trading partner to change the act policy or practice under investigation is to put tariffs on goods of that country. And in fact, to put tariff on all goods of that are exported to the United States.

Emily Blanchard Do you want me to jump in, Kari?

Kari Heerman I actually want you to hold because I have a better one for you to answer, but first I'm going to ask a question for Mira and you can incorporate your answer to this with a after I get to Mira. Um, so we're getting some questions. From the audience about the foreign affairs power and the Supreme Court's ruling on the foreign affairs powers and how it differs from taxing power. Given what they found, that this, that the, oh I'm going to say this wrong, so Pat, close your ears, that Congress wouldn't have likely delegated tariffs

as a foreign affairs power, but given the fact that the president was very clearly using tariffs as foreign policy tool. What do you think how governments might change their overall strategic calculus vis-a-vis the United States?

Mira Rapp-Hooper It's an interesting question. My sense is for the time being, and I think this is sort of consistent with what I said earlier, our partners are taking an extremely cautious approach. Exactly as Patrick said, the threat of tariffs under IEEPA were as much about the threat as they were about IEEPA or what Congress did or did not delegate to the president. And from their perspective, they believe we're not living in a world in which, as Emily rightly laid out, it is very clear that this administration intends to keep tariffs high, no matter what, and intends use whatever authority is necessary to try to get back to levels that are closer to those liberation day levels, despite the fact that IFA is now on the cutting room floor. It's not my impression, at least from the conversations I've had with senior government officials around the world. That they are more broadly interpreting the delegation of the foreign affairs power. Rather, they're looking at this as an instance during this Trump administration of the Supreme Court having drawn a clear line in the sand about what the president can and cannot do. And now they're watching the administration kind of move on and try to do that same thing again. Under different authorities. So at least thus far, I don't see a whole lot of lessons learned about foreign affairs power delegation, but we'll certainly have a bunch of time as folks continue to grapple with the decision to look at that question further.

Kari Heerman And so back to Emily, if you can kind of take what both Pat and Mira just said and maybe think about how tariffs are used both for strategic and economic purposes and having some flexibility to implement tariffs might have some advantages in strategic interactions that certainty has advantages in economic interactions. And can you kind of talk about whether there is a trade-off there. And what kind of solutions might there be.

Emily Blanchard Yeah, absolutely. This is a great set of questions. So yes, and you said it, Kari, I mean, it's not a surprise, we think very similarly about these things. But I think the uncertainty that can be useful, there can be strategic ambiguity and foreign policy, particularly in these bilateral negotiations, that same strategic ambiguity is kryptonite for firms, right? This is much harder to operate that strategic ambiguity? What are we gonna do? You know, will we won't raise tariffs, it makes it very difficult for firms to make planning decisions. And so that has real economic consequences. And to be clear for trading partners on both sides of a bilateral relationship, and for trading partner elsewhere too, because the global economy is all interconnected. So there is absolutely a trade off there. I will, I want to cite one other really interesting trade off as we think about the policy objectives, both economic and political and foreign policy objectives of the Trump administration. And I just want to acknowledge a really important conflict. If the tariffs are meant to induce reshoring in the United States, as the president will often say, I'm sure he's going to talk about, you know, revitalizing American manufacturing in the state of the union tonight. And he's gonna say tariffs are a key plank in the strategy to do that. If the tariffs are meant to induce reshoring, and therefore to reduce import volumes into the United States, they will not by definition be generating as much revenue. But if the goal of the tariffs is to generate revenue or to impose costs on foreign trading partners, well then we're not gonna get the reshorer. And so there is this natural tension, this unavoidable tension in the objectives as articulated by the Trump administration. And I think as time goes on, that will be clearer and clearer, not only on the US side, but for our trading partners overseas as they sort of look around to a changed landscape. So I think that's a really important thing to just keep in the back of our minds is that you can't have all of these objectives at the same time. The one other thing I just wanted to flag on IEEPA

versus the 301. Facsimile of IEEPA. Can we put in place a bunch of 301 or maybe section 232 with maybe some carve-outs set of tariffs that mimics the IEEPA tariffs that were in place before? This is more obviously Pat's venue than mine. I don't see why not in terms of the tariff structure, but again think about a lot of the impact of tariffs again for firm decision-making and for foreign policy. Is in the threat capacity and the ability to very quickly ramp up and ramp down those tariff threats. So a Section 301, for example, you have to have done a investigation and found a basis for each of these trading partners that could be hit by these, which means you cannot overnight turn on a tariff against a country against you. You have not done a Section 301 investigation into their acts, policies, and practices. So... I think the threat value is quite different. We might get a facsimile of the tariff structure, but we don't have a facsimile of IEEPA flexibility, which is really important for bargaining.

Kari Heerman That's really helpful- I want to invite anybody else to come in and- add anything to to the sort of immediate real world effects- if not we'll move on to try to look through twenty six twenty twenty six and beyond to the future. Of U. S. Trade policy in the near end sort of medium term if you will- so starting with Elena. You've written about how the scale. Of the of this tariff exercise has been really important. And when tariffs reach the scale of major tax legislation, are we still talking about a case of delegated authority or are we talking about fiscal policy making that requires congressional ownership? You talked a little bit about that in your opening remarks, but can you elaborate on what that means looking forward?

Elena Patel Yeah, I think that the Supreme Court basically teed this up for Congress in the way that the majority opinion came down. My read of it is that it was the scale of what was going on that, in some sense, tipped the balance, along with many other data points, I think, against the administration's argument for the use of IEEPA. And so it really does beg Congress to weigh in, so to speak. And I have seen, I Think we've all seen whispers of this through legislative efforts that haven't gotten very far. 122, if the bridge is not long enough, so to speak, and they want the 122s to continue, Congress will be forced to take a stand on that. I'm sure that's not a conversation anybody in Congress wants to weigh in on just before the midterm election. So I suspect that the administration will do everything they can to push the 301 investigations through very quickly to not reach that point. But I do think when you're talking about \$3 trillion in revenue over 10 years, again, the scale of that is as big as major elements of the tax bill last summer for which there was. You know, fulsome debate, there was a long lead up to that conversation. A lot of people in Congress took very particular stands and that is what I think really clearly takes the IEEPA tariffs and now the 122 and the suite of things out of the trade negotiation lane that I think those delegated authorities are meant for and pushes it very clearly into a revenue lane, which really, like I said, says to Congress, what are you going to do? Because these authorities are delegated by Congress. They can be renegotiated. They can re-legislated. And I, for one, am sort of waiting and hoping, maybe I'll be waiting forever, but hoping that Congress will say something about whether this is the appropriate use of the delegated authority. Because these acts and sections are multiples of decades old at this point. And so it sort of raises questions about in 2026, are these are the appropriate delegated authorities for trade policy.

Kari Heerman Thanks, Elena. That's a great point, one that came up in an earlier event at the beginning of January that we had as well. Pat, if I can just have your reaction to what Elena just said. I mean, she emphasized that her feeling was that it's the issue of scale that contributed in part to the way that justices decided this case. Does the Constitution or

existing doctrine draw a meaningful line based on scale? Do you have the same kind of impression that Elena does? How are you thinking about that?

Patrick Childress My impression, and just to be upfront, we're getting a little bit out of my area of expertise here. I'm definitely not a constitutional lawyer, and I won't pretend to be for the purposes of this webinar, but my impression of the Supreme Court's ruling is that it was based much more on the text of IEEPA itself and the limited clear delegation of authority within the text that law. To the executive branch to levy tariffs based on the IBA authority.

Kari Heerman Thanks, Pat. You're as close as thing we have to a constitutional scholar on this on this call. So I appreciate you waiting in there. Better you than me. Mira, I'd like to turn to you kind of building on what we talked about previously, but looking forward from a strategic standpoint, broadly speaking for the U.S., what are tariffs uniquely capable of achieving in foreign policy, if anything, and national security for that matter? And does this ruling? Change how effectively they can see can serve that purpose or are we back in the comment that Elena made maybe these decades old authorities need to be updated for 2026 or not? How are you thinking about that?

Mira Rapp-Hooper Yeah, it's a great question. And I loved Elena's point about needing to update our authorities. As an Asia expert, I will take that piece in my purview, per se. But I will say, and just to take us back to a prior conversation, that I think from the perspective of many of our trading partners, the question is kind of what US tariffs? Policy is likely to look like going forward, not whether we're going back to the way things were. I think for many of our partners, scales have fallen from their eyes. They no longer think we're gonna return to inhabiting a world in which something like TPP would have been possible. And they believe that there will kind of be changes in degree, but not of kind. When future administrations come in and maybe update or change tariffs, but they are well familiar with how a 301 investigation works, well familiar with How 232s work, and as they move past the 150-day period of Section 122, are actually looking towards a period of at least somewhat more predictability in terms of. How the tariff is actually determined and then put into force. I think they do see the United States as a country that is likely to keep some level of high tariffs in place going forward, even though they hold out hope that that could change going forward and that our rationale for doing so might be a bit incoherent. Emily gave us a great. Point about the trade-offs faced between actually collecting revenue and reshoring manufacturing, right? And from their perspective, they've also seen the rationale for the United States keeping tariffs in place change from administration to administration, even while the tariffs themselves stay. So we pointed to the fact earlier that while the Trump administrations. First round of tariffs seemed to be a huge step. The Biden administration kept many of them in place, which was a huge surprise. And from the perspective of many of our partners, perceived as a bit of a setback. So they now see us on a course where there's going to be sort of operationalization of the same set of authorities that they know towards different ends. And that their security, economic, technological relationships by and large matter enough to, or rather, their relationships with us matter enough to them that they're going to find a way to keep dealing with us in this world, even as they figure out how to build more resilience, predictability, and dependability in other economic relations.

Patrick Childress Yeah, thanks, Kari. Can I just jump in quickly on this one? Yes, please. So I think maybe another way to put your question is, or how is trade and terror policy going to change if the next presidential administration is a democratic administration? I think that might be what people are most curious about. And I'm not sure it's going to

change quite as much as a lot of people expect. Um, and, uh, for a couple of reasons. So as Mira mentioned, we have some historical precedent for this. When the Biden administration came in after the first Trump administration, tariff policy changed less in that instance than I think a lot of people expected. And then going forward, I think it's helpful to look at some of the underlying policy goals of the Trump administration's trade policy. And I think there are really three to focus on. The administration is looking to do three core things. The first is to increase US employment. The second is to bolster the US manufacturing sector. And the third is to lower bilateral trade deficits. There's some other goals as well, for instance, revenue raising, but I really think that those other goals are subsidiary goals to the three core ones that I mentioned. So more jobs, more manufacturing, lower trade deficits, And if you think about these goals, if they sound familiar to you, it's because they are very similar, if not exactly the same as the highest priorities of the Biden administration's trade policy as well. The Biden administration worker centered trade policy was centered around a lot of these very same priorities. So I think since we're looking at the direction of travel is going to be very similar between Republican and Democrat administrations, it's likely that some of the big changes that many people are anticipating at the end of the Trump administration might not come to pass in as dramatic a way as a lot of people expect.

Emily Blanchard I have a two-finger on this one, if I'm allowed. Okay, so I absolutely agree on the shared goals between the Biden administration and the Trump administration on bolstering American manufacturing production and especially manufacturing employment in the U.S. Completely agree, both administrations sound remarkably similar. I was listening to a podcast yesterday with Bridge Colby talking about how this was America first policy. And the interviewer said, that sounds a lot like foreign policy for the middle class. And it's really, really quite true in that shared objective. That said, I do think the emphasis on bilateral trade deficits is very much a Trump thing. I don't think it's fair to put that on the Biden administration. I don't think most officials in the Biden administration would have identified bilateral trade deficit, especially in goods only as a problem that needs fixing. I think they also would have had very different ideas about how. To address bilateral, global imbalances generally outside of certain lanes, maybe US, China, but even they're very different approaches. But I think that's really key. Also the difference in revenue and the focus on revenue generation. So that's one where I just wanna flag that's quite distinct. The other thing where I think there's a huge potential difference going forward, and this is not even necessarily Democrat versus Republican, but the next administration... Go back to Kari's earlier question, you know, what are tariffs uniquely suited to do? Is our tariffs the best way to boost manufacturing, employment, manufacturing production in the United States? And I think there the answer is quite clearly no. Tariffs are a pretty crummy way to do that, especially in the modern global economy, where the manufacturing sector imports enormous shares of our imported parts, components, raw materials from overseas. Tariff actually make American manufacturing firms. Less competitive, not more. So what instead might we see going forward? I would hope that Congress comes out of these next few years, at least the last year, but hopefully not too much longer, and says, you know what? We really do need to step up. If we believe as Congress, as representatives of the American people, that it is really important to boost certain sectors in the U.S. Economy. They're important questions about where we should focus attention if we do. But Congress can appropriate funds for targeted investment subsidies and incentives that do this better. And the focus on tariffs to me is in part a result of the fact that Congress has not been leaning forward with their appropriations policy, with thinking really clearly about a domestic industrial strategy that takes seriously some of the challenges that the U.S. Faces. I think we did see some of that in the Biden administration. That's to the credit of Congress in 2022, especially with the

Inflation Reduction Act, the bipartisan infrastructure legislation. I mean, the Chips and Sciences Act, these were exactly the kinds of things. So if we see more of that, then maybe the emphasis on trade policy goes away. Again, I don't think that Democrats cornered the market on getting Congress unstuck. I think that anybody could do it and I hope anybody does.

Kari Heerman Thanks, Emily. We've heard throughout that Congress is on the hook here, both in the Supreme Court's decision explicitly and then in Elena's discussion of tax policy and all of our discussion of trade policy and industrial policy. Emily just brought it into the mix. This is a huge question. I think that a lot of people are working on thinking about how to answer, but if you could each share an element or two of what you think. Um, legislatively that needs to be updated, dealt with, um, uh, to move us beyond this.

Elena Patel I might jump in with a couple of quick thoughts. One, I think that raising the question of like the correct way to do industrial policy is to my mind, kind of the big economic question that I hope, I know all of us are thinking about and I encourage the entire profession to be leaning into this. Industrial policy is a complicated topic for economists. It can be done really well. It can be done really poorly. There are pluses and minuses to doing industrial policy through the tax code versus through directed loan programs. We always want to watch out for picking winners and losers because Congress is not particularly good at that. I would argue that most people are not that good at that, the market is good at that. And so I would raise this as just a big open question of in a global economy where other state actors are engaging industrial policy, what's the right strategic response from the US and kind of the right channel for that to come through in a way that can be ramped up and wound down so that we're not stuck in industrial policy mode forever. And then to Congress and process, I just wanted to raise one other point that is something I've written about before. The process of IEEPA was obviously quite flawed in that it exists with a single decision maker and the stroke of a pen and an order that goes up on a webpage. The good thing about 202 and 301 tariffs is that there's a whole regulated process in place for those, which I hope is the process that continues, but it involves investigations and public notice and comment periods. And sort of a laying out of the breadcrumbs that lead to a conclusion that's clearly tied to the trade authority itself. And so we lost that. We as a public lost the ability to engage with that using IEEPA and we do not have it with 122 either as far as I know. And so why I'm glad that things will pull back to the 232 and 301 lane is at least it gives sort of businesses and people that are affected by these processes the opportunity to engage with a notice and comment period. And for those who have never done that before, watch these 301 tariffs and pay attention to that process because you can participate in that. The executive branch has these notice and comment periods to allow the public to engage in things that don't go through the normal rigor and debate of Congress for exactly that reason. And so be aware of that and be watching.

Kari Heerman Anyone else have anything to advise congress on?

Emily Blanchard If I can jump in on industrial policy and just, Elena, I couldn't agree more. To be clear, industrial policy and targeted subsidies and incentives are less distortionary than tariffs. If I have to choose one, I pick the industrial policy poison, but it can be incredibly difficult to get industrial policy right. It is incredibly difficult to get it right. But there's another benefit of putting those conversations around industrial support squarely in the legislative branch. There then needs to be a transparent conversation around costs and benefits and priorities. And I feel like when conversations around shaping the domestic economy, again, this focus on boosting manufacturing, particularly in

some sectors in the United States, when that falls into the trade policy realm, there's a temptation to pretend that the tariffs are free. Of course, we know empirically that the tariffs are not free. They're paid by American importers. But if there's a line item in Congress when you talk about industrial subsidies, I think the conversation around recognizing the very real costs and therefore focusing on the most acute priorities and very clearly like, where do you think markets really aren't going to get it right? And why? I mean, that would just be far more disciplined and productive. So I really hope that Congress takes up those sets of conversations. But carefully and with an awareness of how hard it is to get industrial policy.

Mira Rapp-Hooper Kari, I obviously, oh, please, Patrick, go ahead.

Patrick Childress No, no, please go ahead, Mira.

Mira Rapp-Hooper OK, I'll be brief. I obviously bring a foreign policy lens to this equation. So my vantage point here is a little bit different. But I do want to just pull on a couple of threads that we've heard over the course of the last few minutes. And that is to the point that several of us have made that there is actually likely to be more continuity than not when it comes to American tariff policy going forward. At least that's the experience of our allies thus far. And we've certainly found that once high tariffs are in place, it becomes politically very difficult to bring them down again. I would counsel both Congress and future potential leaders of either political party before they make that assumption that tariffs should stay in place or they feel boxed in by that assumption to step back and think about what could be accomplished with the leverage that has been generated by those tariffs. You accept, as many of our fellow panelists have laid out, the fact that tariffs have real costs on American importers, on American consumers, on African growth, etc. Etc. We can go down the line. It's worthwhile to acknowledge that we've nonetheless generated, including with some of our closest partners in the world, an incredible stock of leverage that could be used for a different purpose, including an economic purpose. If the United States was to focus on kind of a new era of industrial policy. And unveil a massive, let's say, supply chain initiative with close and trusted partners, one could imagine converting some of these trade framework agreements into something that would actually build a more coherent and cohesive system internationally for the United States on the global stage and still benefit us very much economically. Kind of watch this space for what I know several of us are working on this front that will allow us to say more about what exactly I mean here. But I just think it would be a real mistake for either Congress or any subsequent administration

Kari Heerman using the leverage generated to think very creatively about what could come next. Over from me. All right, Pat, I'll give you the last word and then I'll have the last word.

Patrick Childress Great. Well, maybe since we're running a lot of time, I just wanted to flag one issue for folks awareness. And that is that these reduced rates that we're seeing under section 122 currently, and it's most pronounced for countries like Brazil, which saw its rates drop from 50% to 15% overnight, China 35% to 15%. These can potentially represent real savings for importers. But this window is not going to last long. So we have 150 days at most before these Section 301 investigations conclude. And for these particular countries, we know there are already active Section 302 investigations going on related to China and Brazil. So the window might even be shorter. And we expect that once those 301 investigations conclude, those tariff rates are going to snap right back to pre-Supreme Court decision levels. So there is a window of opportunity here to take

advantage of these lower rates, but a heads up that that window of opportunity is likely to close fairly soon.

Kari Heerman Thank you, Pat. And thanks to all of you guys for, you know, unpacking what's happening, thinking about what the real implications are in the real economy and the real global relations, and then looking forward to what it means going forward through 2026 and beyond. And for bringing your very broad perspectives and experiences to this. I think it's clear. Um increasingly that um when we're talking about international trade policy and international economic policy more broadly in the current environment it really does take a broad lens uh to really look at this issue holistically um and think about it uh cohesively so I really appreciate you being here even though we're sort of all in our own lanes occupying our own expertise but really bringing them together is something we hope to keep doing here at Brookings um I'm grateful to have done so with all of you and I'm looking forward to more.