***Beyond “Unprecedented”: The Post-Pandemic Economy***

**Episode 6: “Pandemic Pressures on Global Trade”**

[00:00:02] **Anu** **Bradford:** We do not have a shared understanding in how we think about national security in today’s economy.

[00:00:08] **Petros** **Mavroidis:** The WTO is not a safe box for domestic policies.

[00:00:11] **Bradford:** Individual member states cannot alone fight a global pandemic.

[00:00:16] **Mavroidis:** The WTO failed to take the right lesson from the crisis.

[00:00:21] **[Media clips]:** The coronavirus pandemic has tanked the global economy with unprecedented speed. The steepness of the decline here is unprecedented. This is a crisis that is unprecedented. It is unprecedented. And we just don’t know.

[00:00:35] **Eric** **Talley:** This is *Beyond “Unprecedented”: The Post-Pandemic Economy*

from Columbia Law School and the Millstein Center for Global Markets and Corporate

Ownership. And I’m your host, Eric Talley, Sulzbacher Professor at Columbia Law School and a co-director of the Millstein Center.

[00:00:52] **Talley:** A quick note if you’re joining us after November 3. This episode was recorded prior to the U.S. general election. Of course, much of what we’re discussing will be affected by the next administration, and we’ll see how these scenarios play out in the coming months. Now, on to this episode of *Beyond “Unprecedented.”*

[00:01:15] **Talley:** Twenty-twenty was supposed to be a banner year for American farmers. In January, the United States signed a long-awaited trade deal with China, intended to cool tensions in our ongoing trade war and boost Chinese demand for American crops. But two months later, the COVID-19 pandemic slammed borders shut and brought global trade to a near halt. Farmers plowed crops under and dumped millions of gallons of unsold milk. International tourism plummeted, and complex international supply chains ruptured even as demand for masks and personal protective equipment skyrocketed. The pain was felt worldwide. In the second quarter of this year, global trade dropped by 12.5% compared to the first quarter, the largest drop on record. Even more alarming, governments around the world hoarded essential supplies, including medical equipment and pharmaceuticals, and positioned themselves to do more in anticipation of a vaccine. Flash forward to today, and trade is beginning to rebound. But the pandemic has shown that our system of far-flung specialized suppliers chosen for low cost rather than proximity, has major drawbacks amid national lockdowns. And international institutions such as the World Trade Organization and the European Union hit even more hurdles. So what can we do about this? Are there laws, regulations, or other solutions that would better promote healthy and prosperous global markets? And what will the future of international economic cooperation look like in a time of increasing retrenchment, border closings, and nationalism?

[00:02:49] **Talley:** Joining me to talk about these and other issues today are Anu Bradford and Petros Mavroidis. Anu Bradford is the Henry L. Moses Professor of Law and International Organization at Columbia Law School. She studies the EU’s regulatory power, international trade, and antitrust law. Anu is the author of a recent book, *The Brussels Effect: How the European Union Rules the World*. Welcome to the show, Anu.

[00:03:13] **Bradford:** Thank you so much, Eric. Delighted to be here.

[00:03:16] **Talley:** Petros Mavroidis is the Edwin B. Parker Professor of Foreign and Comparative Law at Columbia Law School and author of 10 books, including *The Regulation of International Trade*. He served as a member of the World Trade Organization Legal Affairs Division and has been a legal adviser to the WTO since 1996. Welcome, Petros.

[00:03:35] **Mavroidis:** Thanks for having me.

[00:03:37] **Talley:** So Petros, help us just kind of get up to speed. We know countries trade in goods and services with one another on a vast scale. But perhaps more, I don’t know, opaque to people is why that’s important. Can you give us just a general and brief sense of why international trade is so critical?

[00:03:57] **Mavroidis:** Well, from a pure, let’s say, earthly perspective, it’s a win-win game because trade is, of course, not a zero-sum game. You win by importing cheap like you win by exporting and gaining on export markets. But the original idea of the GATT was much more than that. This was the time of, let’s say, eminent statesmanship in the U.S. when people thought of trade as a means to communicate across nations and eventually contribute to the liberal world order and international peace. So we trade not just for economic reasons, but much, much more for establishing those links and interdependence that will make, let’s say, war or warlike situations an improbability in international relations.

[00:04:42] **Talley:** Now, you briefly mentioned something called the GATT, which, as I recall, it stands for the General Agreement on Tariffs and Trade. What was that, and what happened to it, and what is the WTO?

[00:04:53] **Mavroidis:** So the GATT was supposed to be one chapter of the International Trade Organization—the third leg of the Bretton Woods system, post-World War II reconstruction. The ITO never saw the light of day. The GATT is an agreement which disciplines state barriers to trade, saw the light of day in 1948 stayed in place until 1995, and as of 1995, became an integral part of the World Trade Organization, which beyond trade in goods, regulates trade in services and intellectual property rights.

[00:05:28] **Talley:** So Anu, let me bring you in on this. If the WTO were an onion, then perhaps the next layer down of that onion might be what you’d call a mini WTO, comprising select member states that are part of either international agreements or an economic union of their own. And the European Union or the EU is the poster child of this second layer. How does the EU fit into this organizational structure, the WTO, and how and why did it come about?

[00:05:57] **Bradford:** So there was a strong economic case to create a common European market where the individual member states can trade with one another, enhance the competitiveness of their economies, and reap the gains from state economies and by specializing in the industries that they can do better compared to the other member states. But there was also a very compelling political imperative. The idea that the European Union was built to maintain peace after the Second World War to make sure that the cost of going to war with one another would be prohibited, and we would not see that happen again. How would the European Union fit into the broader architecture of the World Trade Organization, though, it should not be inconsistent with the goals of the WTO. And there is a longstanding debate as to whether these regional blocs undermine the global trading system or whether they actually pave the way for even greater cooperation in the multinational setting. And I think the economists disagree to some extent in the assessment of the benefits of the regional trading blocs. But I think few people would dispute that the existence of the European Union would be anything but beneficial for the global economy.

[00:07:22] **Talley:** Is there a sense in which the EU, sort of representing itself as sort of a bloc group of entities, steals some of the thunder from the WTO on some level, sort of saying, look, the real action is happening with the EU and the WTO becomes, almost by definition, more peripheral? Or do they work more in conjunction with one another?

[00:07:46] **Bradford:** So ideally, we would liberalize trade globally. But if you think about the action that has been taking place in the WTO since its founding, it is rather thin. There haven’t been any big trade agreements concluded in that framework. So the question you need to ask is whether the world is better off when we can still further trade liberalization by striking various trade deals among various regional blocs and whether that is still a better world than a world in which that difficult, complex large multilateral agreements in the WTO fail to materialize.

[00:08:28] **Talley:** Petros, let me careen over to you. China is in many ways the 600-pound elephant in the room. And I guess part of the issue, and I want to hear from both of you on this, is the system—the political system, the economic system, the sheer way that manufacturing and distribution are organized in China—it’s a bit different from what we’re used to in the North American, Western European sort of model. What kind of challenges has the WTO and international trade generally had in trying to incorporate this very, very large, really not a market-oriented internal economy into the system? And I’ll start with you, Petros.

[00:09:10] **Mavroidis:** There was a little bit of arrogance or exuberance on the part of incumbents. They thought that China would become first a market economy and then a political liberal order. If you look into the discussions back in the end of the ’90s, it’s crystal clear both sides of the Atlantic—it’s not, people like to say no, not only the U.S., Europe, same thing. This never happened. Now, why didn’t it happen? Well, because the WTO is not a safe box for domestic policies. The WTO is a trading agreement. Of course, it was built by liberal, Western liberal democracies, but on the road a number of guys, the new kids on the block, did not look like the incumbents. Why were they not the problem? Well, because they were small. If you open your doors to Hungary or Poland or Czechoslovakia, you don’t get very much in terms of international trade. But when you get a non-market economy of the size of China, then you open up the door to trouble.

[00:10:11] **Talley:** Anu, let me get your take on this. How specifically has China and its emergence as a true economic and world power affected the dynamics inside the EU itself? And do you sort of sign on with Petros and the difficulties in bringing on board a large non-market economy?

[00:10:29] **Bradford:** Absolutely. So I think it has been one of the greatest challenges of the international trade system. So their non-market economy that is heavily subsidized by the Chinese state. And the WTO has rules on government subsidies. It foresaw this potentially to be a problem. But those rules have proved to be ill-equipped to constrain the efforts of the Chinese state to subsidize its companies. And I think the reform of the subsidy rules is also something that everybody knows is imperative, it’s urgent, but at the same time, there is no consensus on how those rules could be reformed. So interestingly, the European Union is very much aware of this and has not waited for the WTO to act. The EU has been busy drafting its own rules that would allow the European Union to then control the Chinese aid that is flooding the European market. So the European’s own state aid rules have been designed to control if a European government, a government of a member state, is subsidizing its own companies. At the same time, the WTO rules have been designed to constrain the situation whereby subsidized Chinese exports are entering, for instance, the European market. But when China is directly subsidizing Chinese companies that are operating within the European market or backing the acquisitions of European companies by Chinese companies, those are areas where there is a gap in the legal frameworks. And the European Union is now determined to try and close that gap in the name of fairness, in the name of leveling the playing field.

[00:12:26] **Talley:** Can you give me an example, just to boil this down, of specific situations where it seems pretty clear that the Chinese government has been sort of lending its heft inside the EU or inside North America?

[00:12:39] **Bradford:** Right now, Eric, their focus is on what happens when the economies are shattered due to COVID-19. And there are many companies that are struggling and that may be teetering on the verge of bankruptcy. And the fear is that Chinese government still has the money to go and pursue strategic acquisitions and basically go on a shopping spree and acquire very critical assets across the global marketplace, including then in the European Union. So there has been an emphasis that something needs to be done now in order to constrain this trend. And actually, this month, the European Union issued a new regulation whereby it is calling for harmonization of the foreign direct investment screenings across the member states so that there would be a common framework and an understanding of how the individual member states can better screen investments of strategic assets and make sure that those all don’t end up in the hands of Chinese or other foreign companies.

[00:13:47] **Talley:** The U.S. has been notably active in this area of regulation of foreign direct investment as well. There’s a well-known committee inside the U.S. called the CFIUS committee, which I think stands for the Committee on Foreign Investment in the United States, that will often step in and either prevent or maybe even undo various types of asset purchases and acquisitions if the president ultimately deems that those transactions are against national interest. Are there analogous sorts of interventions in the EU?

[00:14:22] **Bradford:** The EU has been very concerned of the need to protect their critical assets that could then go into the foreign hands. And here we get to this question of, what is the appropriate way to think about the national security review of investment, and how do we define what is critical national security? So I think it is understandable that most nations would not want to see the control of their ports, airports, critical telecommunications, or energy infrastructure. But we have entered the era where we see a lot of abusing of the concept of national security. A lot of President Trump’s trade wars are being fought under the guise of protecting the U.S. national security interests, and the Trump administration has invoked this national security exception in the WTO as the rationale. So my concern is that we do not have a shared understanding or adequate restraint in how we think about national security in today’s economy.

[00:15:30] **Mavroidis:** You’re absolutely right. And actually law is on your side, because the one GATT report which decided the national security case, it said clearly, I will be differential if the parties are in a warlike situation. The U.S. is in no warlike situation. And soon I would expect the U.S. to lose all those cases of the WTO system, it’s a self-enforcing contract. So at the end of the day, depends on the persuasive power of the complainant who will threaten you with retaliation. I think the WTO should have remedies which are maximum compensatory. I agree with you that this administration has probably put the question black and white once again. But this is an outlier administration, I mean, I don’t think we should see too much into this. Every American international relations scholar compares the trade policy to international policy of the Trump administration with any prior administration and conclude in the same way.

[00:16:30] **Talley:** I want to steer you guys to the pandemic. The topics that we’ve been thinking about recently, or been talking about recently, have been general. But pandemic specifically, when the breakdown in supply chains happened in February and March, and when there was a premium that was now being placed on things like personal protective equipment and a huge discount on things like travel services, what sort of special strains did that place on international trade?

[00:16:58] **Bradford:** So first of all, the reaction to the pandemic was that this is going to bring globalization to a halt. Every country is going to prioritize protecting their own citizens. They are going to erect barriers and make sure that they are reshoring their critical supplies. But at the same time, those predictions have not really turned out to be true. We have not seen reshoring at a large scale. The companies continue to rely on the global marketplace. They might be rethinking the resilience of their supply chains. They might be diversifying them. But there is no strategy under which they can afford to bring those back home. The global companies cannot start sourcing or producing or selling locally, so they do need the global marketplace. So that is not the casualty of the pandemic that I worry about, the company’s commitment to globalization. What I do worry about, Eric, though, is that the nationalistic response and the protectionist impulse of the governments has been obvious, and that might last even beyond the pandemic. So we have seen a lot of efforts by the national governments to pursue more protectionist measures, to question their commitment to globalization, and devise policies that clearly are designed to restrict global trade.

[00:18:25] **Talley:** Petros is that your take as well, that politics has essentially overwhelmed the economic business case for global trade, at least in this context?

[00:18:35] **Mavroidis:** It’s unclear what is the equilibrium response to the pandemic. Is it, I stop exports, or is it I recourse to subsidization so I make up for the missing supply of medical goods? We’ve seen a little bit of both. When it comes to stopping exports, under the existing GATT you can do it. There is a provision which allows you to do it for essential products. When it comes to subsidies, unfortunately, Anu knows much better than me because there’s also an EU scholar, the WTO does not make a distinction between good and bad subsidies like the European Union: All subsidies are bad. So now you end up, in principle—it’s totally crazy, but that’s how it is—you will be punished for taking care of your sick people. And this, thank God, as Anu very correctly said, we didn’t see cases of countervailing duties or whatever—we didn’t—but the WTO once again failed to take the right lesson from the crisis and revamp, modernize its regulation of subsidies even within the confines of addressing, let’s say, a medical crisis like COVID.

[00:19:39] **Talley:** I want to get your thoughts on climate change. This is in many ways thought to be the province of public international law and treaties that are entered into amongst nations that are trying to sign on to various types of climate accords. There’s obviously been an awful lot of turbulence there with the U.S. pulling out of the Paris Accords. But it intersects pretty closely with international trade as well. And I’d be interested in your thoughts on how, whether, and when international trade itself is likely to pick up some of the elements of climate change policy on the ground baked into agreements themselves, or has it already begun to do that?

[00:20:20] **Bradford:** So, Eric, I am not a fan of tariffs and certainly the tariffs that we see being imposed right now as part of this trade war. But there is a really interesting discussion around carbon tariffs, and it centers on this idea that carbon is an externality and climate change is a common problem that we do need to resolve. And as you correctly said, we now have seen the Paris Accord not being a strong enough instrument to convince countries, even like the United States, to make the kind of commitments that we can have a truly consensus-based multilateral solution to one of the greatest problems that we have. So this is the reason or the backdrop against which jurisdictions like the European Union have laid out that we are going to leverage the trade system to try to fight climate change. And the logic would be the following: The idea is that if, for instance, the European Union starts putting a price on carbon—so you can have, for instance, a carbon tax or another kind of system that would then make the polluters pay for their greenhouse gas emissions—there would be a hit to the European industries’ competitiveness if the rest of the world did not follow suit. So the idea would be that then you start adjusting the price of the products on the border when foreign companies are importing goods into the European market. And we would basically adjust that tariff on the border whereby if they have not priced the carbon domestically, they would need to do so when they cross the border to the European Union.

[00:22:05] **Talley:** Petros, any thoughts on designing the pricing of carbon if to do so at all?

[00:22:09] **Mavroidis:** The question that you have here to ask is only one, and I think Anu nailed it. I mean, the only thing I said I put down in a different way, that you have to make sure you calculate it correctly. So, for example, you pay for the amount of CO2 emissions per unit of production, you come up with a number, and you say, I will impose this on both domestic and foreign goods and then you have no problem under the WTO. I wanted to add one thing on this, Eric. When Barack was in power, the APEC had an initiative for preferences for environment-friendly goods. So what they did—45 countries—they negotiated an agreement whereby, let’s assume you produce bamboo flooring, which is environment friendly, bamboo flooring would get a much better tariff rate than any other flooring of houses. So there was an attempt in the WTO, the so-called Environmental Goods Agreement. The EU participated very, very actively. So did, believe it or not, China. China was part of this, for other, for reputational, I think, or as a signaling mechanism. And they went up to a point. Now they are nowhere because of what the WTO is in general and the total malaise surrounding the WTO.

[00:23:20] **Talley:** I guess one issue that we haven’t really talked about yet is how free the EU is itself from internal pressures that might threaten to break it apart. We know that the U.K. is in the middle of what appears to be gearing up to be a hard Brexit. There are inflationary fears, some of the weaker economies are still trying to borrow heavily based on the EU’s reputational capital. Are there stability issues inside the EU since it isn’t within the confines of one national governmental structure? It is an economic union, after all, that make it somewhat limited in what it’s able to do before it starts coming apart at the seams.

[00:24:02] **Bradford:** So you’re absolutely right, Eric, to point out to the many challenges that the European Union is dealing with right now. We can talk about still the financial crisis that we had with the euro crisis, which now, we see to be repeated with the economic devastation following the COVID. The public health crisis, obviously, that we all are dealing with, migration crisis, the list goes on. And then we obviously have Brexit. So without underestimating the challenges that the EU needs to deal with, let me just offer an alternative perspective. So if we think about Brexit and trade, for instance, there are no winners from Brexit and there are no winners, especially from hard Brexit. But in the end, the U.K. will lose relatively much more than the EU. The U.K. will need a deal with the EU more than the EU will need a deal with the U.K. So if you think about trade, about 50% of the U.K.’s trade is destined towards the European Union, and that will not change after Brexit. These companies need to have access to that neighboring, big market. But then to speak even more broadly about the effect of all these crises to the EU, if you think about, the EU has over the years always grown through crises. After the euro crisis, we saw a lot of rebuilding of the economic architecture, which is why the European banks, for instance, are now much more resilient than they were in the direct aftermath of that euro crisis. We saw increased powers gained by the European Union in response to the migration crisis, where we were reinforcing the Frontex, the border patrol of the EU. And now I would not at all be surprised if we saw the EU gain a new mandate in public health, when everybody understands that individual member states cannot alone fight a global pandemic like COVID-19 that does not respect the borders of the member states. So in many ways, I don’t necessarily see a weaker European Union being the inevitable response in the aftermath of this pandemic.

[00:26:19] **Talley:** Is there something about our economic order, either within or outside the WTO, that actually hasn’t been tried out or has been tried, but not with the type of attention to detail that you think would be necessary? Feel free to think outside of the box. I put you in charge for the day, what’s the one thing, or one or two things, that you would try to implement that would help us better be able to deal with some of these challenges?

[00:26:43] **Mavroidis:** So I would do three things. Is it O.K. if I do three and not one or two?

[00:26:48] **Talley:** I guess it’s O.K., sure.

[00:26:50] **Mavroidis** One, I would facilitate plurilateral agreements, variable geometry. So to the extent you have nine members, 15 members, it’s irrelevant the number, of the WTO who want to go further, faster, assuming they open the door to anyone to join in if they pay the same ticket to entry, I would say go ahead and do it. That’s point one. And this way it would bring a number of free trade areas in the WTO. Point two: I don’t think we need to go back to the appellate body. I would have one instance adjudication, but I would keep the depoliticized character. So third party education, compulsory, one instance, no two instances. And the third point is I would change the subsidies agreement. I would make a distinction between good and bad subsidies because some subsidies are the first, best instrument to address distortions. And I don’t want to see countervailing those subsidies.

[00:27:42] **Talley:** What about you, Anu?

[00:27:44] **Bradford:** The United States needs to stop its ill-conceived trade wars and start re-engaging its allies and re-engaging in the international institutions. And international trade always has had winners and losers. And we always promised that we would somehow compensate the losers. And a big reason why this country is going through such a difficult time right now is that we never really compensated those losers. We had a lot of people displaced, were displaced by trade, who became resentful and rightly so, for their unequal benefits of economic globalization. And I think we need to think hard and we need to think in more creative ways of how to then support those who are displaced by international trade. I think it is an opportunity to build a more sustainable and more fair international economic order. And it means that we also need to rethink of the domestic policies that they need to accompany any efforts to support international trade. All politics ultimately is local, and we need to find a way to rebuild that support for an international economic system that serves all of us.

[00:29:00] **Talley:** Anu and Petros, thanks so much for joining us today.

[00:29:04] **Bradford:** It was a pleasure. Thank you, Eric.

[00:29:05] **Mavroidis:** Thank you very, very much for inviting us.

[00:29:09] **Talley:** Well, that’s a wrap, at least for now, from *Beyond “Unprecedented.”* I thoroughly enjoyed these conversations and I’ve learned a lot from them. I hope you have too. Find all six episodes of the series wherever you get your podcast. And please leave us a review to let us know what you thought. From Columbia Law School, I’m Eric Talley. Thanks so much for listening.

[00:29:29] **Talley:** *Beyond “Unprecedented”* is brought to you by Columbia Law School

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