

Peterson Institute for International Economics

Is the World Trade Organization at a crossroads?

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[00:00:17.17] - Cecilia Malmström

Good morning, good afternoon, good evening. Welcome to this episode of Trade Winds. We will talk about WTO and the future of the trading system today. My name is Cecilia Malmström. I'm a non-resident senior fellow at the Peterson Institute for International Economics in Washington. With the current turbulence in the trading system, it has become very common to talk about the death of the World Trade Organization and the rule-based system as a whole. It was, as you know, established after the Second World War with the creation of GATT and then later became WTO in 1995. Millions of people across the globe have been lifted out of poverty because of WTO and the integration into the global trading scene. The rules have served us well. However, it is true that the WTO lately has not been delivering as it should. It is hard to make decisions, and the rulebook has not been updated to fit the modern trade challenges. We are facing a surge in tariffs, export restrictions, overcapacity, dumpings, etc. And current challenges such as green trade, digital trade, services, the rise of subsidies have not found their way into an updated WTO rulebook. We also have big economies violating the rules and the appellate body, the dispute settlement system, is dysfunctional.

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Still, however, more than 70% of global trade is done under WTO rules. So how can we move forward? We are approaching the 14th Ministerial Conference. This is an event happening every second year where ministers from the 166 member states are gathering. And this year it will take place in Yaoundé in Cameroon, Africa. No one expects big massive reforms, but there are some prospects for at least some way forward. What could be realistically agreed And what would it take to strengthen the global trading rules? Can we at all save WTO? This is what we are going to discuss today. I have a great panel with some of the best experts on WTO in the world. We have Petros Mavroidis, who is Edwin B. Parker Professor of Foreign and Comparative Law at Columbia University, but this year also visiting professor at Stanford. We have Mona Paulson, who is Assistant Professor of Law, London School of Economics and Political Science Law School. And we have Victor do Prado, who is a member of the

International Advisory Board of SEBRI, Brazilian Center of International Relations. And he's also former Director of the Council and Trade Negotiations Committee at the WTO.

[00:03:09.08]

And all of these three people are participating in the WTO debate, and you have all written extensively about trading system and WTO. So a very warm welcome. Thank you for joining us. So to kick off, how can we explain a little bit the current situation and how did we get there? How did trade become so weaponized as it is today? Who wants to start? Petros?

[00:03:37.15] - Petros C. Mavroidis

Okay, first of all, thanks so much for, for the invite. It's always great to be associated with you, Cecilia. I'll say very briefly, I'll make 4 short points. The first is I think everything starts, in my view, for whatever my view is worth, around 2008 with the unsuccessful conclusion of the Doha Round and immediately after the global financial crisis. From then onwards, the WTO has been facing one crisis after the other. For which it was ill-prepared to address. We managed to have a smooth ride mainly because the members showed, if you wish, a benign attitude, but not because the WTO had the instruments to address. And the data is relentless. Both the IMF and the Global Trade Alert and their joint efforts show that the overwhelming majority of interventions post-2008 They reflect the quest for economic security, and economic security, even the concept is missing in the WTO. Now, we don't know how to deal with it. Actually, the WTO is extremely outdated in this respect, from the subsidies agreement to the absence of export licensing, to, to, to— I can give you 20 examples. That's one. And two, I have to quote a friend of mine from Brazil, Emmanuel Ronell.

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He wrote, in my view, the best paper I have seen in this respect. There is an absence of hegemony in the WTO. We have three, let's say two to three, depends how you see the European Union, big players. None of them is a hegemon. They are unlike, they don't see the world in the same way, and they face competitive fringe from each other. None of them will go ahead and assume the cost to undo, to redo the WTO precisely because they know that they either can free ride on others' efforts or because their efforts will lead nowhere because there is no agreement. And quite frankly, to me, the worst thing we can do these days is to continue litigating this type of cases because judicial action can totally counterproductive. We need new legislation. And honestly, I'm a bit pessimistic because I cannot see where it's coming from.

[00:06:14.10] - Cecilia Malmström

Do you agree, Victor?

[00:06:18.07] - Victor do Prado

Yes, I do agree, Cecilia. I was nodding here as Petros was saying. And thank you also for the invitation. Very pleased to be here. By the way, I was thinking today is Ash Wednesday. And for those of us who are Christians, this is the beginning of Lent, and Lent is a time of reflection, right? So it's appropriate that we reflect as of today on—

[00:06:43.17] - Cecilia Malmström

It's planned for that, all day.

[00:06:47.01] - Victor do Prado

On Ash Wednesday. And by the way, if we're thinking about religious metaphors, reform in the Romance languages is the same word that we use for Reformation, right? So reformation of the Catholic Church was reshaping, so to increase the credibility of the church. And God knows that the WTO needs to rethink of itself and increase its credibility. But let me pick up on Petro's last point. I think leadership is an issue. And yes, who is the hegemon. We came from a world where there was a benign hegemon to a world where there are other hegemonies. I agree that 2008 is a moment when things starting to show that they were— that there were big problems, especially on the negotiating side. As of 2008, negotiating has become more and more difficult. But I would perhaps also point to the accession of China. As of the moment that China acceded, but not 2001, a little bit further, when China became such a powerhouse on trade, things started to get tricky. And I should mention, last but not least, and those of you who know me and know my views on this, The appellate body failed to see where the wind was going and failed to adapt to the new, to the new times.

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There was a lack of political sensitivity in some of the decisions, especially on subsidies and especially on the issue of SOEs. So, In a way, that provoked a crisis of the appellate body, and we know the rest of the story. No need for me to say what happened with the appellate body. So I guess that's where we're coming from. Thanks.

[00:09:02.05] - Cecilia Malmström

So we have this crisis, and then at this— lately we have seen a lot of urgent crisis to the current system, of course, but still trade has proven to be remarkably resilient in a way. How is that possible, Mona?

[00:09:20.19] - Mona Paulsen

So I'm going to try not to be too contrarian, but reflecting back on some of these key moments by my colleagues here, from Petrus and Victor, I suppose one of the interesting questions is if we reflect back further prior to the creation of the WTO, and think about how these questions and how these laws, you know, to Petrus's point that they are largely outdated. One of the things that strikes me about the moment that we're in right now is that everything is highly reactionary. And there is a lot of similarities to actually what we saw coming out of the First World War and into the Second World War, where the first initiative of governments to negotiate these agreements largely were in the context of war. But there they were thinking about how to transition out of wartime economies, a lot— the large sort of thinking about the United States and its concerns geopolitically with Britain and its imperial preferences and how to restore Europe into the Second World War. And so one of the things they were really focused on was how do they begin to think about long-term commitments to create these kinds of global markets going forward, to move out, transition from wartime to peacetime.

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And one of the things that strikes me the most interesting about the rise of economic security that to sort of build on what Petrus's points were about this, about this quest for that, is that right now in the moment that we're seeing, unfortunately, right at this precipice of the ministerial conference, is governments actively trying, or perhaps they're not actively intentionally trying to do it, but their actions speak to this inability to focus on long-term commitments. Everything is highly short-term, highly reactionary, resting on informality, and it's quite counter to actually the context by which many of these provisions were created. And you see that in evidence by the way that the entire WTO architecture is supposed to be about security and predictability for producers to make things and people to buy things, where instead policies are running directly in contestation with that. And so rather than having an effort to create credible commitments to support coordination and cooperation, to think long-term about supply, we're seeing shifts that pull against that, that, And I'm not sure if the causal connection here is to the pandemic or to specific leaders being elected in various places or to the rise of populism.

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But I think we're seeing these carefully engineered legal principles now trying to press into a sort of frame that many governments don't want to operate in. And I think this is probably amplified by rapid digital technologies and industrialization in highly advanced computing technologies from biotech to, artificial intelligence. So I think this is some of the challenge as the first element. But also, it's the hegemon point. What I found really interesting about that point is the United States always actively consolidated its views with other allies. And in fact, you saw a lot of, uh, compromise coming out in, in the way that then you saw India and other countries sort of presenting their positions to the United States and the United States making concessions to get their alliance into the club. Whereas, so we saw a lot of instrumentality of alliance building. And today, now, we don't see— well, I'll come back to that, I think, later in our discussion. We do see some of it, but we're not seeing the United States give up something to be able to have that. And that is a significant shift. Not to put just a focus on the United States here, but in terms of the way then we think about policies and security, To me, it's not just about the hegemonic control.

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It's about this desire to treat many of these actions as exceptional. And again, short-term, not predictable, focusing on centralization of decision-making, again, removing that internal domestic contestation. So these are some of the things that I think are to build to what Victor and Petro said are also part of explaining of why we're at where we are today.

[00:13:41.08] - Cecilia Malmström

Well, in order to try to address these, I mean, these are lack of leadership, lack of hegemon, lots of things that are unsolved in the past, but coming up with new challenges as well where the rulebook is not updated. These are not easy issues to deal with when there's also a political conflict and when there is no possibility of making these coalitions as you all refer to. So what we see now in Geneva where ambassadors are trying to prepare for the ministerial, every country has an ambassador and They are not trying to prepare, but then of course there will be political decisions, if any. But they are rather focusing on quite detailed issues of sort of trying to gently reform decision-making, the way shall we move away from unanimity requirement, how can we address the development, the fact that some of the countries can self-define themselves as developing countries and thereby get special and differential treatment, which is, you know, discriminatory in a way, especially if it goes on for decades, and the level playing field, uh, with balanced trade. So these are the issues, what I heard lately, that are being focused around in Geneva, but they will not really solve the big challenges.

[00:15:01.20]

But is this a way, a feasible way forward to break some of the deadlock, or should we start to other, uh, at another end? What do you think? Victor, you have been spending many years in Geneva. You know how it works.

[00:15:19.22] - Victor do Prado

Indeed. Tricky. I would say that the attempt to have any formal decision on getting rid of consensus is doomed to fail right now. Even the plurilaterals with so many countries, for example, on the investment facilitation for which JSI, which has been there, still is opposed by India. So having formal decisions is going to be tricky. I still think that it's important to reflect, important to reflect, including on the real challenges of today that Mona so well explained, the issue of immediatism. It seems like governments want things now and are using national security for that. And indeed, this has perhaps to do with the disruption in supply chains and other challenges that occurred in the pandemics. This is not going to be solved easily. What I think could be done is small actions, people putting into place, yes, the obligations that are there in some of the JSIs through unilateral actions. The action of China, for example, by saying, I will no longer claim developing country status.

[00:16:56.27] - Cecilia Malmström

Exactly. That's an important step.

[00:16:58.14] - Victor do Prado

These, these are things that can be done unilaterally or in groups of countries in a declaratory manner, using the Secretariat and the premises of the WTO to meet in an informal way. This can be done. Any member of the WTO can ask, okay, I want this meeting room and I want Secretariat support. The minutes are not going to be prepared by the Secretariat, but the Secretariat can give them support. They can meet, they can discuss amongst themselves, they can issue documents even though these are not agreed documents. These can be issued. So small steps. And even on dispute settlement, you have the MPIA. Why not use the MPIA, for example, uh, in the, uh, joint statements? The joint statements members, those who are members of the MPIA, could say we agreed that if there is any dispute on the text of this MPIA, of this plurilateral, we're going to use the MPIA as dispute settlement. Practical things that can— that— because insisting on formal decisions just now is going to be very, very difficult because not only of the United States, because of the counter-reform, right? Remember, the Jesuits launched a counter-reformation after the Reformation, denying any reform.

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We have those who are counter any reform. I mean, take India. I saw a G90 declaration these days with their red lines. They don't want any change. That is going to put brakes on any formal decision.

[00:18:48.15] - Cecilia Malmström

And the MPIA, for those who are not following all the acronyms, is a sort of parallel appellate body that was created by the EU and now has 53 countries members, including China, for instance. And they have judged in clear cases. So it is a sort of temporary appellate body, but it works like the original one to keep on the momentum in a way. So we are approaching some kind of stage where everybody's talking about plurilateral or joint initiatives or initiatives by coalition of the willing is a very popular term these days, even if we talk mainly about security, but can also be used in trade. And everybody knows that. So is this the way for WTO to move forward? Shall we stop talking about decision-making and just move on? Because we can, as you said, Victor, we can do a lot without actually changing the rules, but using the rules and making sure that it's transparent, it's open for everybody, nothing is hidden. But if you don't want to join, we will go. So will that be a more sort of aggressive plurilateralism that we will be seeing? What do you think, Petros? You have also written a lot about this.

[00:19:58.21] - Petros C. Mavroidis

What do I think? What do I think?

[00:20:00.28] - Cecilia Malmström

Yeah, what do you think?

[00:20:02.02] - Petros C. Mavroidis

Today I started fasting and now listen to Victor, he puts me always back in the mood. Or religious fervor. I think that Victor—

[00:20:12.10] - Cecilia Malmström

How did we get here?

[00:20:14.05] - Petros C. Mavroidis

I think that Victor is absolutely right that, I mean, this is the moment to probably for the WTO, I don't want, it's an extreme word, hibernate, but this is not the moment for grand initiatives. This

is the moment for small steps. And there is no but in what I will say now. I agree with Victor 100%. We have to do, see what we can do because what Victor says in the way I understand him is how can we revive the faith in the WTO, that the WTO can deliver, even if what they deliver is not great. Eventually, there are two questions I think which we have to think about, which we cannot avoid. One is MFN and the other is adjudication. These are unavoidable. If we want to have a multilateral system, what keeps the WTO together? Well, the MFN.

[00:21:01.06] - Cecilia Malmström

Can you explain that? Most Favored Nation.

[00:21:03.15] - Petros C. Mavroidis

Most Favored Nation Clause, non-discriminatory trade. And I belong to the, always having taught for 12 years with Jagdish, to the MFN. MFN club. I am a multilateralist. And I'm a little—the reason for my pessimism is because I see an alignment of the European Union with the US when it comes to MFN. The way we understood MFN always was reciprocity ex ante. Viktor and I make a concession, whatever the concession is, and then may the best man, best woman win the market based on our concession.. And now I see a trend towards reciprocity exposed. That's how I read both the US and the EU reform papers. Essentially, they say MFN will be conditional on, um, uh, balanced trade between the partners. This is not new. In 1987, Jack Deason and Doug Irwin wrote the paper, The Return of Reciprocitarians, which was reflecting on the Reagan policy. There were a few initiatives in the US along those lines. And that was the rationale, if you wish, the raison d'être of the Section 301 aggressive unilateralism then. Let's balance trade. So that's one area where honestly I don't know. I mean, does the world still believe in MFN?

[00:22:20.06]

And the second is compulsory third-party adjudication. I think there the problem is a little bit less than what it is with respect to MFN, which to me is the key issue. Why do I say a bit less? Because quite frankly, I see the International Court of Justice continuing to function. Even though not everybody is a member of the ICJ compulsory optional clause. The US left after Nicaragua. Well, one way to revive the judiciary in the WTO would be to say, okay, US or whoever like the US, you don't want to participate, fine, you stay out. The rest of us, we believe in whatever we believe, appellate body or one instance adjudication, which is my preference. One instance, compulsory third-party adjudication. But US, you take a risk. If you're going to take Brazil tomorrow to the court, Brazil has to say yes. And if Brazil says no, there is no court for you. It is as simple as that. That's how reciprocity works. I think there, honestly, this is the

way forward. Now, to plurilaterals. I'm a big fan, as you know, Cecilia. I mean, we've been writing with Bernardo for the last 12 years on plurilaterals.

[00:23:28.26]

The problem we have with plurilaterals is this: to add the plurilateral, we need consensus. Where do you find this elusive consensus in the WTO nowadays? Unless if we change the rules and we allow for parties to go forward or do exactly what Victor said. Instead of going through formal Annex IV agreements, through scheduling the way we did it with the ITA, include this, the JSIs, for example, in the WTO and go ahead. Unless if we do that, I cannot see how plurilaterals can be the way, because as we know plurilaterals, unfortunately, we need the last WTO member to raise their hand and say, I consent to that, or to say nothing, go ahead and do it. And consensus, as you know, recently is quite elusive.

[00:24:17.04] - Cecilia Malmström

Come back to plurilaterals, but I wanted to ask you more now because you have been writing lately about MFN, and you just told me you had a class today on MFN. Can you help explain to our audience as well, why is it so important and what would happen with the WTO if it disappeared?

[00:24:34.20] - Mona Paulsen

Yeah, I mean, sort of building on what Petrus and Victor have just said, I also am a multilateralist. We need t-shirts, Petrus. And I think that my WTO mug is somewhere up there. I think that, look, ultimately exactly as Petros described in terms of its role in partnership with reciprocity. And I think there are key elements to this that I explain to my students as well. And many people listening know that there are these fundamental elements that you treat all like products from all countries that are all WTO members in the same position. Now, there's some interesting questions here, I think, that we need to talk about in terms of conditional MFN and what that means in terms of what the EU wants as well. I think ultimately, though, why reciprocity and MFN are so vital to the continuing functioning of the multilateral trading system is that ultimately it focuses on harm to third country markets. And, you know, MFN eliminates the cost of trade diversion. And Petrus has written about this. Many people have written about this. And the benefit to that is that when you're negotiating with a specific partner, you then know that you're not going to have concession erosion by only bilaterally negotiating, because then all of what your concessions are made on an MFN basis, they apply to everyone on a most favored nation basis.

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Of course, with that comes free riding, which is sort of the counterproblem to this question. But the whole point of it is that you can enter into these trade negotiations without being fearful of what your negotiating partner will do in its next, in its next negotiation. That runs directly counter to some of what we've seen in terms of the criticisms of MFN by the United States and by the most recent European Union statements on WTO reform and reflections on MFN that, you know, the EU questions MFN's role in today's context, which is interesting because this comes back to Petrus's point about changed circumstances, right, that the rules don't apply. And I think ultimately, if they want to have more, in their language, agile adjustments in tariff levels, they want to be able to change realities quickly, then they're basically saying they don't want to treat all products in a nondiscriminatory way, that now people and products will be assessed based on their origin, which is a fundamental change in that we don't only focus on objective characteristics of how we set conditions for MFN or how we think about how we negotiate, that we are very concerned with where they come from.

[00:27:22.08]

And in addition to that, not only are we seeing this question about where products are made, but in fact, even further here, I'm thinking of Sam Lowe's recent piece in the Financial Times, or perhaps it was on his blog MFN, rightly so, that we're calling it. We're talking about MFN rules of control, right? So we're even going further and we're concerned with who controls the producer or the company. That is making a product or is delivering a service. So I think to that extent, we're thinking about a very serious departure. And this comes into question about consensus as well, because MFN is also tied to this notion where every government has a singular voice. They all have a single vote, so to speak, although of course we all know that voting doesn't happen within decision-making at the WTO. So what we have then with this absence of MFN, there was a point where someone said, I believe it was you, that the rest of the world still operates on MFN levels.

[00:28:20.21] - Cecilia Malmström

Hmm.

[00:28:21.26] - Mona Paulsen

My concern actually is that if we begin to lean into this highly variable system where we take out these norms that are fundamental to the WTO, such as non-discrimination, transparency, and this focus on reciprocity, right, that all go together. If we take some of these away and there are no norms that replace it and we're in this sort of lawless sense of trade, then we're in the state

where governments are not going to be able to develop policies in the absence of this bloc. Because what we're going to begin to see are these blocs that we don't know how they will operate together. And so it'll become much more difficult. So to not only thinking about plurilaterals being in schedules, But are governments going to be actually doing things that they're not supposed to be doing, such as imposing conditions or requirements within their schedules? Though they're not supposed to violate— to violate— obligations in their schedules, will they go there because they want to have that variability and they can't actually change the rules to do this? That would be a significant shift. And I think we need to almost have these fundamental conversations now, not even thinking about deliverables, but is that the system that they want to have?

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And this comes back to my central point about forward-looking, because when these governments say they want to abandon MFN, what are they imagining 10 to 15 years to look like, right? What does that mean for companies and for governments that are going to have to focus on policies forward-looking in a system where we have not just these highly varied blocs, but in terms of how people will navigate that and what will happen to the sort of harmonized system. So we're almost going from a very harmonized, sort of unified system that tries to stress predictability with its bindings and MFN to a complete opposite shift of that. And I worry that we're not actually trying to find the Goldilocks center between the two. I don't have a good religious metaphor for that, Victor, but if you have one, I'm sure he will come up with one.

[00:30:27.17] - Cecilia Malmström

When I read the EU paper and had seen some statements by the US administration as well, they don't talk about abolishing MFN. They talk about making it more flexible or reforming it. But is it reformable? I mean, it's either or, no? I mean, if you reform it, it's more of accepting the amount of exceptions that are already there. For instance, when there are bilateral free trade agreements and so on, because then they don't fall under MFN. But is there an ideal way to reform it?

[00:30:59.14] - Mona Paulsen

Would you let me come back to that? Just one point, and then you can go to others. The only interesting thing I would say about this is that within the GATT and the ITO, the original architecture, right, because that system, to quote Bob Hudak, really relied on much more effective diplomatic technique, there we had a discussion where, where equality wasn't possible, there were other norms that governments would supplement it.. And so then there

would be this question of equitable sharing, which is still in the, in the system. It's within Article 20-J, but it's found in other places as well. So when they were dealing with state trading, where they were dealing with questions where governments may be intervening in markets, right? And this comes out of that transition from world war to peaceful economies. They imagined that the diplomacy part, the consultation part would kick in and governments would actually have a discussion of if we can't strive for pure equality, what would be the equitable alternative? But of course, within in the club. That question about what would necessarily still be equitable and creating it in an objective way where anyone could receive the same treatment for that, that's the question of are governments having that conversation?

[00:32:11.29]

And to answer your question about what happens if MFN goes away, all of these, if we have everything being outside, all of these coalitions, whatever they want to be called, these statements, these all operate outside. The absence of that is the negotiation, all the requirements, all the rules that require governments to talk to one another, whether it's tariff-free negotiation or dispute settlement. All of that requirement to actually talk to your other partners falls away. And that to me is one of the most consequential parts if we abandon MFN. But I'll let others now come in.

[00:32:48.16] - Victor do Prado

If I may, I do want to come back. Well, first, two things. First, I am also a multilateralist. I spent my life on multilateralism. And I'm really worried about these statements, be it by the EU or by the US, questioning MFN, because it has been really working. It has been the pillar of the system and it has worked. And instead of saying MFN, I would say Why don't we simply call it non-discrimination? People understand, do not discriminate between your trading partners. The second point I want to make is who is asking for this? Because what I see is that business likes MFN in most of the world. It's easy. The companies engaged in exportation and importation think that, you know, even where there is a preference, they prefer to use the MFN tariff. So where does the demand come from? And if we can isolate where the demand for abandoning MFN comes from, perhaps we can address that problem through one of the many exceptions that already exist and that allow flexibility. I'm all in favor of flexibility. I mean, again, using a religious metaphor here, everyone have their little sins, right? And you can be forgiven for your sins as well, right?

[00:34:25.20]

But it depends on you repenting and accepting that something is right or wrong. By the way, Just yesterday I got this email from Alan Wolfe. You probably got it as well. He wrote a text on MFN called "Open Pandora's Box by Scrapping MFN." And it's a good reflection on MFN. And again, agreeing with what Mona and Petros have said, but adding to this, I don't really know who is asking for for this, apart from, you know, political imperatives and electoral politicking.

[00:35:12.05] - Cecilia Malmström

Yes, it was a little bit surprising that it popped up as a topic, but it will certainly make its way to Cameroon, I think. Petros, do you have anything to add on this?

[00:35:21.13] - Petros C. Mavroidis

No, not anything.

[00:35:22.22] - Cecilia Malmström

You're fine. Well, we'll see, because of course it's hard to talk about a more flexible MFN. But as you said, who's asking for this and what would be the benefits? And don't we risk to sort of tear down the whole idea, the whole fundamental skeleton of WTO by abolishing it? But going back a little bit to the plurilaterals, of course, obtaining consensus is difficult. I have spent many years within the institutions of the European Union. We are only 27, quite like-minded, So, and there it is difficult sometimes to reach consensus. There's always, you know, political considerations and elections somewhere and so on. So there is this talk there as well about maybe a little group of willing can move a little bit quicker. And we have, not all countries have the euro, not all are part of Schengen and so on. So of course, with 166 countries in the WHO and some, a couple will join as well, I think in Cameroon. So, and with all the diversity that exists, It's hardly imaginable that everybody will agree on everything. So moving forward in smaller groups must be a way to go. And you can do that either by joint declarations, as was done at the Ministry of Trade in Buenos Aires when 3 big plurilaterals or GITS were created on e-commerce, on investment facilitation.

[00:36:53.05]

And there was one on services, I think, as well, with 80, 90 countries signing up. So quite a considerable number with both developing and developed countries. So it was a mixture from different continents and so on. And now we see that more and more countries saying that this, this must be the way forward. And we have small countries moving on, smaller countries moving on, on this, an agreement on plastics, There are a few on, on e-commerce as well. And we see more and more of this coming up. Will this— I'm trying to understand whether this is actually

something that could be good and healthy to see that we can make reforms and it works and we are setting new updated rules. And if you can't join now, you can join later. Or does it risk eroding the whole, the whole system by creating little clusters of groups? That's the big question, no?

[00:37:51.02] - Victor do Prado

Yeah.

[00:37:53.18] - Cecilia Malmström

How do you see it? Anyone?

[00:37:58.08] - Mona Paulsen

Petros, you go.

[00:37:59.04] - Victor do Prado

Petros, you want to go first?

[00:38:01.07] - Petros C. Mavroidis

I can go first, but it's my, one of my favorite philosophers, Yogi Berra, used to say it's very difficult to make predictions, especially about the future. I mean, yeah. How on earth can we know how these things will play out? But that's why you're here. Exactly. So in my view, I mean, this is, you're absolutely right that this is the most, the more feasible way, if you wish, to go ahead. I'll make two points briefly again. The first is the plurilateral solution in WTO is the exact opposite of the solution we had in public international law. And I never understood, I spent a lot of time with Bernard trying to understand the logic of Annex IV.. And we delved into the negotiations. And the one thing, maybe our understanding is wrong, that we gathered, not as a term of, as a matter of theory, but as a matter of explanation by those who thought about Annex 4, was that the fervor to keep consensus somewhere, that do not allow people to go and do little small yards with high fences. That was the idea behind Annex 4 by a number of negotiators. Negotiators. Now, in international law, normally, if we, the four of us, are part of an agreement and Viktor and me want to go further faster, we can do it as long as we don't impair your rights and obligations.

[00:39:29.03]

And if we do, well, we find a way. We have liability rules. We compensate you. In the WTO, the super simple solution for some reason got lost or was paid zero attention back in 1992-93 when they were discussing the plurilaterals. And they prefer to have consensus. And this is a vice that can, I think, should be, let's say, addressed in the future. Now, assuming this is not addressed, which I fear will be the case, I think honestly, the only possible way is what Victor said before, work within the system, plurilaterals, and try to get them through scheduling. Scheduling, of course, at the end of the day, certification requests again consensus. But even if there is no consensus, I go ahead, I leave it in my schedule, and you take me to the court and we'll find out if I'm right or if I'm wrong. To the extent that those agreements emulate the critical mass example, that is, 70%, let's say, of steel producers, we sign an agreement on overcapacity and we apply it on MFN basis, I foresee little trouble for this type of construct.

[00:40:42.12] - Cecilia Malmström

Viktor, you want to add something?

[00:40:43.26] - Victor do Prado

Yeah, if I may, I agree. First of all, I don't think that the flexibility of the plurilateral agreements would undermine the system at all. I think there was perhaps too much optimism back in 1992 and '93 when Annex IV, that is for those who don't know, the WTO agreement. These are the current plurilaterals whose rights and obligations are not extended to the other members. I think there was this idea that consensus would be used in a responsible way, that you would not block a consensus if you're not losing anything. And of course, in these plurilaterals, the current plurilateral agreement, Nobody's losing anything. So why would India want to block an agreement amongst a group of countries, a large number of countries, if they're not losing anything? Well, it's what we call holding hostages, right? I won't give you this until you give me that. And this is a type of attitude that is relatively new in system. People didn't take this— I mean, this, this was considered ungentlemanly, right? So you, you say, I will give you this if you give me that, in a positive way, whereas saying, I won't give you this unless you give me that, is not very nice.

[00:42:16.14]

And this is what, this is what is, is happening for, for a while now. But I, I do think that plurilaterals. And mind you, you referred, Cecilia, to the EU CPTPP type of coordination. I also see this in a positive light. I think that's the way forward. It's those countries that can do and want to do more and adapt the international agreements and rules to the conditions of today,

that they should be allowed to do so, and we should welcome these initiatives, actually. Thank you.

[00:42:56.10] - Cecilia Malmström

If you look at— they had a ministerial meeting just before Christmas and they wrote a statement, and quite a big part of the statement was dedicated to WTO, to reform WTO, to update WTO, to make sure that it has valid rules that are needed. And then they talked about facilitating trade between them. I didn't see anything about MFN in that. In that statement. And now they are continuing to meeting again. And one could consider that EU, CPTPP, and maybe Mercosur countries and a few others could join as friends of the system, as we call them sometimes, to try to push for some, let's call them plurilateral agreements in some areas where we desperately need them. And then we have small other groups coming up. We have a small group of countries who are pushing on digital rules, the DIPA. I think Singapore, New Zealand, Canada, South Korea, and a few others are there. And then we have a group within WTO of smaller countries who want to— FITS, it's a group who just launched, I think they're 12 or 14 smaller countries who want to stand up for the current rule and try to push them.

[00:44:11.23]

So we see different initiatives. And then we have this group who want to work for for trade and sustainability as well. So this is happening. So whatever one or two countries said, they will go on and there's no really way of blocking it. So maybe we need to have a thousand flowers popping up to see what works and waiting for, well, for the political moment to be more mature to make the more thorough reforms. Mona.

[00:44:40.26] - Mona Paulsen

Two points that you just raise that I wanted to reflect on. I think there's an interesting element here where we see something like DIPA, which is an open on an MFM basis kind of collective action. I think we have to also appreciate that for some governments, we are seeing active efforts to create closed agreements that would try to actually prevent that. And this comes back to this question about power asymmetry and how it's sort of stifling reform. My only point, if, you know, you invited us to sort of think about options further, is to not simply think about plurilaterals as the only means to go forward. I think there have to be, because obviously there's a question of what is happening in Geneva and what is happening in the capitals. And there has some, some elements just can't always happen. What can happen in Geneva is this sort of question. And now here I'm me, the Canadian, coming in and thinking about the Canadian Prime Minister's talk about collective action. One of the things that Dan Syriac and I, who is a

Canadian trade economist, and I recently wrote in the World Trade Review was how to use the existing mechanisms within the dispute settlement function to bring forward situation complaints, which is a way to address discrete problems without having to go through the actual process of creating new rules.

[00:46:04.27]

And there what we proposed is going through the history at the time. So I used my archival work and through the legal analysis and combining with Dan's economic synthesis, we looked at how situation complaints could be viable sources of collective action within the WTO. It isn't to replace the existing plurilateral initiatives, but it was one option for pursuing joint action, which is of course one of the other important elements of thinking about the architecture is how do the governments actually pursue joint action? And I think this is important to say, we are going to have a panel that is going to provide recommendations and rulings, not in respect of one particular government's actions, but to deal with the economic uncertainty created by whatever situation they want to address. It could be a combination of issues to bring forward discussions which have an international adjudicator, which try to bring this discussion into the WTO. And again, the reason for that, to lean into this question of collective action, is not to, to require those governments to then not negotiate with China or not negotiate with the United States. They're clearly still going to. And this is the division between Geneva and capitals.

[00:47:15.26]

But to say, can we focus on something which does maintain this sort of space for contested dispute resolution? Can we focus on having the system within the WTO where all governments can participate? And can we have— continue to open up that conversation with a specific situation at hand? And to that extent, you can try to have this open space to bring back transparency, to think about these questions in a way that combines these things. So to the extent that I said to you, there's a sort of breakdown between these short-term urgencies and the long-term questions, long-term, the plurilaterals, how do we actually modernize the system? And this gets to Ambassador Olberg's, I think, third basket of, you know, the future forward-looking question. Those are vital. But also we need to, I think, think about how to encourage governments to use the existing systems to think about non-violation complaints, to think about situation complaints and why they may be relevant, consultation, the committee work all the way down. To have these discussions. This is, of course, could happen in a committee as well, right? You can have this kind of coalition building. But hopefully it's the due process, I think, that really matters in terms of thinking about how do we keep the system functioning.

[00:48:34.06]

And, and to that extent, it's not just a question of consensus, but it is still thinking about this principle of MFN. Not just substantively, which is how we sort of have been talking about it, but procedurally. Why is procedurally multilateralism important? And it's because it lets everyone at the table to talk. And, and to that extent, it's really important. The flip side to this is if that doesn't happen and it continues to happen outside of the WTO, if we have this Critical Minerals Coalition, we could, we could be seeing these alternative sites of governance sort of happening outside. And it's not, it's not yet clear to me whether we're seeing a thickening or a formalization of this sort of outside institutional building from the United States or not, right? It's too soon to tell. But we are seeing governments sign some sort of agreement, even though the enforcement— Simon Lester did a great breakdown of all the different enforcement provisions of all these various agreements. They're all different, which, you know, to me, why don't they have a model agreement, right? What's going on there? But to the extent that governments are signing on, it's an alternative world.

[00:49:50.27]

And so that, I think, where if we push it into the WTO, we encourage more discussion, which I think they need to be having on some of these issues.

[00:50:02.14] - Victor do Prado

Mm.

[00:50:02.15] - Cecilia Malmström

But can they have them in Geneva, or do we need to wait for the ministers to meet and try to push it in that direction so that those new initiatives can coexist and pushing the whole system forward?

[00:50:18.17] - Mona Paulsen

I mean, I hope that they have— I know this sounds really fundamental, but I almost feel like if they're going to have these questions and they're going to have them in Cameroon, Actually talking about what they think development means in a, in the fourth industrial revolution, what it means for various economies at various sizes is probably a worthy one to have. I don't know if it'll deliver some sort of sharp output, which I know is, you know, what you always would expect from these things, but, uh, it could be, it could be a sign. I keep thinking of now you said Pandora's box, Victor, and I'm thinking about Homer's Odyssey and Ulysses. Is tying himself to the mast. I am committing myself first and foremost. You know, where's— we're getting into all these—

[00:51:03.27] - Cecilia Malmström

I will not give in to the songs of the sirens, saying I will abandon MFN. No.

[00:51:09.10] - Mona Paulsen

And will we see the United States and the EU tie themselves to the mast? I don't know. And so the question is, what happens then?

[00:51:19.09] - Cecilia Malmström

Yeah. What do you think will happen, Victor? What could realistically happen in Cameroon and what should happen? Yeah, still realistically.

[00:51:29.29] - Victor do Prado

Yeah, I'm not in Geneva, so I don't have that sort of fine feeling of what— but from what I hear and what I read, I'm a bit worried. Well, first of all, when you said 166 countries plus others coming Yes, but let's put a grain of salt in there. The ones that really matter are like 20, 30, right? The others do not really participate that actively.

[00:52:00.28] - Cecilia Malmström

So no, they follow, they follow.

[00:52:03.20] - Victor do Prado

So consensus really does, it's not consensus of 150 or 60, it's consensus of 20-something or, or, or—

[00:52:11.12] - Cecilia Malmström

now that's hard enough.

[00:52:13.15] - Victor do Prado

It's hard enough. Right. But it's not those huge numbers. Second, there is a human factor to it, and you know it very well from your time as Trade Commissioner, Cecilia, which is the type of personal relationship that existed amongst the trade ministers. You guys— I mean, I was there in that room seeing you guys negotiate and trying to mediate and help together with Roberto

Azevedo at that time. And Pascal Lamy before, you had a personal relationship to many of these ministers, and this matters, and this is often lost when we think about these types of processes that I don't know that these ministers have the same type of relationship today that you guys had. I saw a picture of the trade ministers meeting at Davos that the Swiss organize every year, and there were quite a few missing there, and it didn't look like a family picture as it used to. So how can we reinstate that type of dynamics amongst the ministers? And if you don't have that type of dynamics, they will be reading statements, and if they're reading statements, they're not talking. So how can you get them to talk.

[00:53:33.04] - Cecilia Malmström

That's for sure.

[00:53:34.17] - Victor do Prado

Open way and think about the future. So I'm, I'm afraid I'm not very optimistic, but somehow this process of getting people together who have a certain trust amongst themselves and talk in an open way is what is needed to think about the future.

[00:53:56.02] - Cecilia Malmström

Hmm. Petros, how do you see it?

[00:53:59.09] - Petros C. Mavroidis

I don't know, honestly, the feasibility angle. I don't know at all because I'm not an insider. I mean, Victor knows those things much better than me. I would say as a total outsider, I would hope that in Hyundai they are aware of their responsibilities, at least not to rock the boat, keep the WTO afloat. To me, if we keep the WTO afloat during those years, it's already big success and then wait for better times, I cannot see how we can do anything. And the one thing I don't like about what is happening in Geneva, I don't know where Victor stands because he's following those things much, much closer than me, is I see anytime there is a negotiation, even with good intentions, it ends up being a Christmas tree list. I mean, they end up with 5,000. I mean, why can't we just prioritize, say, let's do the small things first, first. That's again where I agree with Victor, the small things to revive some confidence and then eventually tackle the bigger issues. We just put everything on board. Now we go look into the discussions that the announcements about Hyundai. I mean, what is missing?

[00:55:13.18]

They want to discuss everything and anything from level playing field, name it. Do you seriously believe they can have a discussion on level playing field when even the term is indiscernible depending on whether I have negative or positive integration or 10,000 other things. Do small things, keep the system afloat, and let's wait for better times to go for the bigger push. That's my advice.

[00:55:37.06] - Cecilia Malmström

I think the ambassador responsible for trying to get this together is, as you mentioned, Ambassador Petr Želbek, and I think he is trying to focus on a few very limited ones. And even if I fully agree with you that personal relations and personal leadership is, of course, important. But we have, of course, also the role of the staff of the Secretariat. We have excellent people in Geneva. But if you compare to OECD, to IMF, to the World Bank, it is a very weak Secretariat power-wise. And we mentioned my colleague Alan Wolf, who has written extensively about WTO and has a lot of good advice. He points out that it has a very small budget and it is a very weak secretariat by statute, not because people there are weak. And this is, of course, something that a strong secretariat can also push together with some strong leaders as well. And this is unfortunately very difficult in the WHO. Is this a reform you think at all could be discussed, or is it just hopeless to change?

[00:56:43.27] - Victor do Prado

It's hard to know.

[00:56:48.25] - Mona Paulsen

And I think— oh, sorry, go ahead, Patrick.

[00:56:51.03] - Victor do Prado

Go ahead, Mona.

[00:56:52.07] - Mona Paulsen

Oh, Victor, um, uh, I was thinking about trust fall exercises when you were talking, Victor. Maybe they play a round of laser tag, you know, something. I think that it's a question of not just building trust in one another and the personal level, and I think that is very important, that these are people that are meeting, but also to build trust in the institutions itself and to think about what the role of the WTO is. And it strikes me that, that this is the question of sort of external assistance. And of course, the WTO is what the members make of it and, and how to build that

and how to stabilize bargaining power in a way that allows them to focus on transparency and to think about how to honor some of these commitments. I agree that you want to start small and prioritize. And it seems to me, though, that we're in this really difficult position because of just sort of the moment that we're in, that we have governments that want to just plow through, right? They want to get things done fast. And I know I've said this before, But ultimately, it makes it difficult to sort of have some of these very fundamental questions about what, what is it, what does development mean?

[00:58:15.22]

Do we need to rethink even how we calculate this? And this is Petrus's point too, you know, do we have fundamental discussions about what some of these terms mean? And it seems antiquated to have these kinds of conversations right now. You know, what do you want from transparency? What do you expect the Secretary do for you in terms of transparency? Do you want, do you want to provide better notification systems? How do you want to do it? Is that the conversation you want to be having where these governments are sort of really hammering home on policies for resilience and economic security or climate or digital, right? They're just plowing past that. And it's then difficult to sort of have these more fundamental discussions. And so I, I wonder if of how you marry the two. How do you do incremental when governments are sort of going so fast and so furious and also try to have some of these, these questions? And it probably comes down to trying to engage some of the safety valves as much as possible within the system as best you can and to keep it afloat, as Petrus already mentioned, and to think about where in these small aspects, which I think already happens, right?

[00:59:29.20]

I think in the WTO bodies and councils, committees, these kinds of small discussions have at play. But it's going to have to start somewhere. And some of this is just not a question for the institution itself, right? Some of these questions are domestic ones, in terms of domestic prioritization of topics. And that, that's what makes it challenging, right? As much as we want to talk about what the institution can do and building trust in the institution. If these questions are about domestic matters, it's difficult to sort of, it's difficult to have that question of how to think about this at the international level because you want to prioritize your own domestic interests and then go to the international. It's very difficult to do both at the same time.

[01:00:12.05] - Cecilia Malmström

Yeah, and that seems to be the majority these days.

[01:00:15.26] - Mona Paulsen

Yeah.

[01:00:17.09] - Cecilia Malmström

Any final comment, Petros or Victor? We are approaching the hour. I'm not I'm not sure we have solved all the problems, but at least we are confused on a higher level, thanks to you. And hopefully we have at least put some thoughts into those who are listening. And well, we'll see what will happen in the end. It's always useful to meet. It's always useful to sit around these tables and to meet personally. And sometimes that has has a good dynamic, sometimes it doesn't. So let's see, we might have a reason to come back post-yaoundé and see what happened and how do we move forward. Mona Paulson, Petros Mavridis, Victor Duprado, thank you so much for your time. It's been a pleasure really to have you. So thank you, and thanks to you, to the audience who were listening. Bye.

[01:01:09.07] - Petros C. Mavroidis

Thank you very much.