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HOW HAS JAPAN COPEd WITH THE TRUMP ADMINISTRATION'S TRADE POLICY?

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LIST OF ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CNBC	Consumer News and Business Channel
DSB	Dispute Settlement Body
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EC	European Communities
EPA	economic partnership agreement
EU	European Union
FFR	free, fair, and reciprocal
FMS	foreign military sales
FTA	free trade agreement
FY	fiscal year
G20	Group of Twenty
G7	Group of Seven
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
ICS	investment court system
IO	international organization
IP	intellectual property
ISDS	investor–state dispute settlement
JBIC	Japan Bank for International Cooperation

JPY	Japanese yen
JUSEP	Japan–United States Strategic Energy Partnership
LDP	Liberal Democratic Party
LNG	liquefied natural gas
MAFF	Ministry of Agriculture, Forestry and Fisheries
MC	ministerial conference
METI	Ministry of Economy, Trade and Industry
MFN	most favored nation
MOSS	market-oriented sector-specific
NAFTA	North American Free Trade Agreement
NCBA	National Cattlemen’s Beef Association
NEXI	Nippon Export and Investment Insurance
NHK	Nippon Hōsō Kyōkai
NPPC	National Pork Producers Council
OECD	Organization for Economic Co-operation and Development
OPIC	Overseas Private Investment Corporation
PARC	Policy Affairs Research Council
RCEP	Regional Comprehensive Economic Partnership
SII	Structural Impediments Initiative
SNTV	single non-transferable vote
SOE	state-owned enterprise
TAG	trade agreement on goods
TPP	Trans-Pacific Partnership

UK	United Kingdom
US	United States
USMEF	United States Meat Export Federation
USTR	United States Trade Representative
WTO	World Trade Organization

Introduction

Donald J. Trump, sworn into office after the 2016 presidential election in the United States (US), gave a rude awakening to the world trading system with his policies of populism, economic nationalism, protectionism, and aggressive unilateralism. All other countries, including Japan, have had to cope with this policy shock in a timely and reasonable manner. Thus far, Japan has coped with this problem relatively well, but, in the end, some compromises have been inevitable. For example, Japan had to concede and agree to enter into bilateral trade negotiations called *trade agreement on goods* (TAG) negotiations. Whether this was the right decision remains to be seen. The central focus of this paper is to explain why Japan had to concede.

There is no doubt that this research question is of practical significance. Even though the relative weight of their economies may have declined over the years, the United States and Japan remain the largest and the third-largest economies, respectively, in the world. The United States is the largest trading partner for Japan, while Japan is the fourth-largest trading partner (as of 2017) for the United States. Thus, US–Japan trade relations are still very important in the world economy, and how well they manage their trade relations should be of great interest to the rest of the world.

The research question of this paper is also of great interest academically. Japan used to be known as a “reactive state”—an entity that transformed itself largely in response to external pressures such as those from the United States. However, some have argued that Japan has become less reactive and more recalcitrant in the face of various changes in the world since the

end of the Cold War. Thus, it is important to know whether Japan remains a “reactive state” in the traditional sense and, if so, why.

Uniqueness of the Trump administration

The trade policy of the Trump administration has been unusual in many ways. Its populist rhetoric is one: While Trump blames foreigners for “taking advantage” of the United States in trade, he also blames past US administrations for their “incompetence” in making “bad” trade deals with its trading partners. The American people, in Trump’s view, have been ill served by the traditional political “elites” in the United States; that kind of rhetoric was unheard of in the past.

The invocation of “national security” in legitimating its protectionist policies is another unusual feature. Under the Trump administration, Section 232 of the Trade Expansion Act of 1962, which was created to allow a US president to resort to trade sanctions to defend US national security in a traditional sense, has been used to legitimate more bread-and-butter trade protectionism. According to the Trump administration, national security is now imperiled by imports from allies such as Japan, Canada, and the European Union (EU).

Finally, American trade policy has now been mobilized to maintain the political, economic, and technological primacy of the United States, as is clear in Trump’s animus toward China, especially in his aim to undermine the “Made in China 2025” initiative.

Although Japan has had ample experience in dealing with various kinds of protectionism and unilateralism by previous US administrations, it has had to be more creative and proactive in managing these unique aspects of the Trump administration’s policy.

Challenges for Japan

The Trump administration posed many policy challenges for Japan from the very beginning. First, the Trump administration withdrew from the Trans-Pacific Partnership (TPP) agreement, as Donald Trump as a candidate had threatened to do repeatedly during his electoral campaign. The TPP is a multilateral agreement and, therefore, deciding what to do with the agreement after the US withdrawal was the first major policy challenge for Japan.

From the outset, it was clear that the Trump administration wanted to replace the TPP with a bilateral free trade agreement (FTA) with Japan. Japan, in contrast, was hesitant to commit itself to such an agreement. Thus, fending off the pressure for a bilateral trade deal was a second policy challenge for Japan.

A third challenge was dealing with the American argument that bilateral US trade deficits with Japan must be reduced. For Japan, trade imbalances should be addressed multilaterally. The Trump administration preferred to deal with deficits bilaterally and through anti-market means such as tariffs and quantitative restrictions.

The fourth challenge was how to cope with traditional trade protectionism, especially regarding steel. The Trump administration made clear that it intended to protect the US steel industry, and it invoked Section 232. While American protectionism on steel is a familiar issue, Japan had to respond in an appropriate manner in this instance as well.

The fifth challenge was how to cope with the Trump administration's animus toward China. The Trump administration was openly hostile to China, accusing it of protectionism, excessive trade surpluses, failure to protect intellectual property, forced technology transfers

from foreign companies, cyber-attacks on American companies for industrial espionage, lack of transparency in disbursing subsidies to high-tech industries, and excess capacity in steel and aluminum that led to a glut in global markets. Not only did the United States want China to change its policies but it also asked Japan and the European Union for assistance in dealing with its China-related problems.

Japan's responses

Japan has coped with these challenges in the following multifaceted ways. Regarding the first challenge—the withdrawal of the United States from the TPP, Japan took a leadership role in preserving the TPP by shepherding the process of renegotiating the agreement in a way that would be acceptable to other members as well as future US administrations. The negotiation to remake the TPP into TPP-11 will be analyzed later in this paper.

As for the second challenge, the US demand for a bilateral trade agreement, Japan initially adopted a delaying tactic, in the form of the Asō–Pence talks for the first year of the Trump administration and the “free, fair, and reciprocal” (FFR) talks for the second year. However, as the pressure for bilateral talks mounted, combined with ever-stronger tariff threats, Japan eventually had to concede and agree to enter into TAG negotiations, as reported in a joint statement on September 26, 2018.

The third challenge, the Trump administration’s pressure on Japan to reduce bilateral trade deficits, is still ongoing. So far, Japan has coped through various offers of cooperation such as larger purchases of American liquefied natural gas (LNG) and defense equipment.

For the fourth challenge, steel protectionism, Japan took a measured step of asking for product-specific exclusions.

Finally, with respect to the fifth challenge, the American demand for Japan's assistance in dealing with its China problems, Japan promised to cooperate in various ways, and these commitments have been codified in trilateral and bilateral joint statements.

Explanation

Since these Japanese responses are complex and can only be explained by a combination of multiple factors, Japan's position cannot be reduced to a simple formula. Nevertheless, several responses can be captured by the well-known concept of the "reactive state." Although Japan no longer fits that description as envisaged by Kent Calder in the heyday of the US–Japan trade conflicts of the 1980s, it still retains a modicum of the phrase's features, especially in its flexibility toward external pressure. Even when Japan is proactive, as in the TPP-11 negotiations, its leadership in shepherding negotiations was a reaction to the wishes of the ten remaining members of the TPP for Japan to take such a role. Delaying tactics, such as the Asō–Pence talks, are a remnant of the passivity that once characterized the old Japan. The offer to expand purchases of US goods was a natural reaction to US demands for reducing trade imbalances. The request for production exclusions under the Section 232 tariffs was again a natural reaction given the denial of the United States of a country exclusion for Japan. Finally, Tokyo was willing to cooperate with Washington and Brussels to assist the United States with its "China problems" not only because Japan also suffers from more or less the same problems but also because it was under pressure from the United States and the European Union (EU) to cooperate.

It should be noted, however, that these features of “reactiveness” are not only a function of Japan’s external weaknesses and vulnerabilities but also a reflection of its domestic constraints such as the power of farmers and other vested interests as well as overriding interests of now-globalized Japanese businesses.

Reactive state

Perhaps it is no exaggeration to say that the single-most important theory that has greatly affected the study of contemporary Japanese foreign economic policy is that of the “reactive state,” initially proposed by Kent Calder in 1988.¹ Since the publication of his seminal article, the debate over the concept of the “reactive state” has preoccupied many scholars in the field. According to Calder, Japan’s economic policymaking is characterized by two features: passivity and flexibility.² Calder argued that for a country of Japan’s size, in comparison to European nations of similar stature, Japan was overly passive, taking few proactive policy initiatives toward the outside world.³ However, he also said that Japan was not rigid.⁴ In fact, according to him, Japan wielded a great degree of policy flexibility. Thus, he said that Japan was a quintessential “reactive state”—immobile without external pressure but extremely capable of change if placed under external pressure.

¹ Kent E. Calder, “Japanese Foreign Economic Policy Formation: Explaining the Reactive State,” *World Politics*, vol. 40, no. 4, 1988, pp. 517–41.

² Passivity means that “the state fails to undertake major independent foreign economic policy initiatives when it has the power and national incentives to do so; flexibility means that “it responds to outside pressure for change, albeit erratically, unsystematically, and often incompletely.” *Ibid.*, p. 519.

³ Calder argued that the (postwar) Japanese state has been “consistently more cautious in taking international initiatives than most major European governments.” *Ibid.*, p. 520.

⁴ Calder said that Japan has “typically been more deferential to pressure from the United States—and at times even from the European Community—than these middle-range powers (West Germany, Britain, and France].” *Ibid.*, p. 520. He finds a similar contrast with Latin American NICs (newly industrializing countries) and India, which were “somewhat more pro-active but less pragmatically flexible than their East Asian counterparts.” *Ibid.*, p. 519.

In his theory, Calder also traced the origins of these two features of “reactiveness”—passivity and flexibility—to the international system and domestic structural factors. While conceding that the dominance of the United States was important,⁵ he also attributed Japanese passivity to electoral politics and interest group politics,⁶ exacerbated by a special single non-transferable vote (SNTV) system⁷ and a bureaucracy with an inordinate degree of policy fragmentation.⁸

As for flexibility, aside from a heavy dependence on the United States,⁹ Calder traced it to the existence of the impact of media¹⁰ and transnational networks.¹¹ Of course, some of these features have changed since the publication of his article; for example, the electoral reforms of the 1990s made Japanese elections more competitive, and elections have become more policy-oriented. While bureaucratic fragmentation has not changed, there is more policy authority given to the prime minister, such that the integration of disparate policy areas has become easier. Thus,

⁵ Calder explained that “the pre-eminence of the United States...obviated the need for independent Japanese initiatives.” *Ibid.*, p. 526.

⁶ Calder argues that “[t]he most powerful interest groups...are agricultural federations and small-business dominated regional chambers of commerce [that] have virtually no international interests other than to resist foreign encroachments into Japanese domestic markets.” *Ibid.*, p. 530.

⁷ “Japan’s system of medium-size electoral districts forces as many as five members of the largest political parties (especially the ruling LDP) to run against one another in the same electoral district; thus, extremely small shifts in the total vote become crucial to a candidate’s election prospects. As a result, LDP legislators tend to be highly sensitive to constituency pressures, especially from relatively well-organized grassroots pressure groups such as agriculture and small business.” *Ibid.*, pp. 530–31.

⁸ Calder argues that “the fragmented character of state authority in Japan makes decisive action more difficult than in countries with strong chief executives, such as the United States or Fifth Republic France.” *Ibid.*, p. 528. This problem is especially acute “on broad, complex questions of global economic management, or on issues created by emerging technology or economic transformation where bureaucratic responsibilities have yet to be defined, ministerial jurisdiction is often unclear, and internal conflict over how to proceed is often strong.” *Ibid.*, p. 529.

⁹ “[H]eavy dependence on the United States for capital, markets, and diplomatic support...made Japan unusually deferential to strongly expressed US demands.” *Ibid.*, pp. 526–27.

¹⁰ “The size and coordination capabilities of the Japanese media...give them an extraordinary ability to sway grassroots opinion and to create a plausible pretext for action by the political authorities....” *Ibid.*, p. 535.

¹¹ Calder characterizes the nature of transnational policy networks as “cross-cutting communities of interest between Japanese and foreign interest groups.” *Ibid.*, p. 534. The paradigmatic case was that of orange negotiations where “US exporters and the Japanese import cartel benefited from a marginal increase in Japanese import quotas...as long as that increase was quite limited.” *Ibid.*, p. 534.

Japan has overcome some of the domestic constraints that had previously made Tokyo extremely passive in its foreign and economic policymaking.

Since the publication of Calder's article, several scholars have conducted follow-up research to validate or disconfirm his theory. Mikanagi, investigating Japanese policymaking during the 1985–1986 Market-Oriented Sector-Specific (MOSS) talks, argued that “as far as the MOSS talks were concerned, the Japanese government took the...option of ‘reaction.’”¹² Miyashita, through his analysis of Japanese foreign aid policy, found that in some notable instances where US and Japanese interests diverged, Japan complied with wishes of the United States, which made Japan “reactive.”¹³ He also made an important methodological point: To determine if Japan is genuinely “reactive,” it is important to “look at cases where US pressure required changes in Japan’s policy that [were] costly for Japan to make.”¹⁴ Schoppa, in contrast, found that America’s pressure on Japan was not almighty; analyzing the outcome of the 1989–1990 Structural Impediments Initiative (SII) talks, he found that Japan made concessions to the

¹² Yumiko Mikanagi, *Japan's Trade Policy: Action or Reaction?* London: Routledge, 1996, p. 6. While she demonstrated that *gaiatsu* generated “policy changes [in Japan] desired by the United States,” she also found that “there is no linear relationship between the presence of *gaiatsu* and Japanese responses.” *Ibid.*, p. 38.

¹³ Miyashita said, “My case studies provide strong evidence to support Kent Calder’s reactive state thesis.” Akitoshi Miyashita, “*Gaiatsu* and Japan’s Foreign Aid: Rethinking the Reactive-Proactive Debate,” *International Studies Quarterly*, vol. 43, no. 4, 1999, p. 728. His book reached the same conclusion: “The case studies demonstrate that *gaiatsu* was a significant factor in shaping Japanese [aid] policy.” Akitoshi Miyashita, *Limits to Power: Asymmetric Dependence and Japanese Foreign Aid Policy*, Oxford: Lexington Books, 2003, p. 179. He attributed Japan’s reactivity to asymmetric interdependence between the United States and Japan and the latter’s “desire to avoid major disruption in US–Japan relations.” Miyashita, “*Gaiatsu*,” pp. 697, 728.

¹⁴ Miyashita, “*Gaiatsu*,” p. 709. Similarly, in policy areas where Japan faces no strong US opposition, Japan can be “proactive.” *Ibid.*, p. 726.

United States in considerably varying degrees, depending on the subject under consideration.¹⁵

He also found that Japan was becoming more recalcitrant toward the United States in the Framework talks of the early 1990s.¹⁶

Schoppa later theorized about the origins of these newly formed recalcitrant traits in Japanese negotiating behavior.¹⁷ He pointed out that the demise of a clear hierarchy after the end of the Cold War,¹⁸ the loss of legitimacy of unilateralism after the establishment of the World Trade Organization (WTO),¹⁹ and the loss of trust between trade warriors of the two countries after a series of “managed trade” fiascos²⁰ had eventually led to a change in the “social context”

¹⁵ According to Schoppa, the Japanese “offered significant concessions in two areas (macroeconomics and the distribution system), compromised somewhat in one (land policy), offered only minimal concessions in another (exclusionary business practices), and offered virtually no concessions in the last (*keiretsu* business groups).” Leonard J. Schoppa, “Two-Level Games and Bargaining Outcomes: Why *Gaiatsu* Succeeds in Japan in Some Cases but Not Others,” *International Organization*, vol. 47, no. 3, 1993, p. 358; Leonard J. Schoppa, *Bargaining with Japan: What American Pressure Can and Cannot Do*, New York: Columbia University Press, 1997, p. 88. Furthermore, he attributed the variance in the success of US pressure to the effectiveness of what Robert D. Putnam called “synergistic strategies.” In particular, in successful and somewhat successful areas, Schoppa argued that two synergistic strategies (outside pressure leading to changes in domestic politics)—“participation expansion” and “alternative specification”—made a difference. Participation expansion involves a process where “[i]f these silent allies (of a Level I negotiator) constitute a minority within the domestic arena of the target nation at the beginning of negotiations, international pressure may in time succeed in bolstering this movement to the point that it becomes a majority.” This point is taken from Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization*, vol. 42, no. 3, 1988, p. 455. *Alternative specification* refers to the fact that “foreign demands for specific policy action can serve to spotlight policy alternatives that may not have been considered in the absence of foreign intervention.” Schoppa, “Two-Level Games,” p. 373.

¹⁶ According to Schoppa, the United States “found it impossible to convince the Japanese to put meaningful ‘results’ in the Framework agreements.” Schoppa, *Bargaining with Japan*, p. 263. He attributed the lack of success to three factors: the end of the Cold War, the establishment of the WTO, and the end of the long-term LDP rule.

¹⁷ Leonard J. Schoppa, “The Social Context in Coercive International Bargaining,” *International Organization*, vol. 53, no. 2, 1999, pp. 302–42.

¹⁸ According to Schoppa, “[T]he hierarchical relationship between the United States and Japan had been predicated on the Cold War conflict with the Soviet Union, so the sudden disappearance of this threat naturally led the Japanese to question whether established ways of relating to the United States were still appropriate.” *Ibid.*, p. 321.

¹⁹ “[T]he adoption of a more effective dispute settlement mechanism (under the WTO) shifted *procedural norms* as the United States’ trading partners became much more adamant that all trade disputes should be routed through the WTO (emphasis in the original).” *Ibid.*, p. 322.

²⁰ After the 1986 Semiconductor Agreement and the 1992 auto deal, Japanese negotiators began to feel that “[a]ny commitment they might make would be twisted after the fact into something more than what the Japanese had actually promised.” *Ibid.*, p. 324.

of US–Japan trade negotiations and to Japan’s increasing skepticism and resistance to US demands on Tokyo.

Among the three factors Schoppa mentioned, the establishment of the WTO also led to another new aspect of Japan’s trade diplomacy: “aggressive legalism.” Pekkanen pointed out that the new Japan was more proactive in its use of the WTO rules as a “sword,” which was a “marked departure from its usual low-profile, behind-the-scenes diplomacy in trade.”²¹ She said, “Japan is now becoming visibly active in terms of the legal evaluations and indictments of its major trade partners.”²² Araki, however, found Japan’s newly found aggressive legalism much more tempered: “Rather, it is a country that resorts to surgical strikes on selected targets (usually the United States) under a powerful cover of the EC (European Communities).”²³

Searight generalized this hypothesis to argue that international organizations (IOs) in general have “served as an outlet for Japan’s growing international activism.”²⁴ Immediately after Japan joined various IOs, “it remained very passive within them”²⁵; however, she noted Japan’s recent proactivity and traced it to two factors: “a desire to increase its international status and influence” and “to bind the United States to IOs...through engagement and entrapment.”²⁶ Even though the TPP is not an international organization, Japan’s desire to have the United States return to the TPP, a multilateral institution, is presumably driven by similar logic.

²¹ Saadia M. Pekkanen, “Aggressive Legalism: The Rules of the WTO and Japan’s Emerging Trade Strategy,” *The World Economy*, vol. 24, no. 5, 2001, p. 713.

²² *Ibid.*, p. 712.

²³ Ichiro Araki, “The Evolution of Japan’s Aggressive Legalism,” *The World Economy*, vol. 29, no. 6, 2006, p. 794. Araki said that “in six out of the eight cases that reached the panel/appellate stage, Japan was either a co-complainant of the EC or a part of the joint complaints led by the EC.” *Ibid.*, p. 793.

²⁴ Amy E. Searight, “International Organizations,” in *US–Japan Relations in a Changing World*, ed. Steven K. Vogel, Washington, D.C.: Brookings Institution Press, 2002, pp. 160–61.

²⁵ *Ibid.*, p. 163.

²⁶ *Ibid.*, p. 173.

Coercive bargaining

If Schoppa's theory is correct, we should expect that Tokyo would by now be largely impervious to coercion (a form of pressure based on threats, explicit or implied) by the United States under most circumstances. On the contrary, the Japanese government acceded to the Trump administration's demand for bilateral negotiations for an FTA or at least a deal similar to an FTA, as will be demonstrated later in this paper. The question is, why?

My hypothesis is that the effects of the preconditions for Schoppa's theory were weaker in that instance. First, Japan was more dependent on the United States in terms of security. Schoppa's argument was that coercion has no place in a relationship between equals, but Japan and the United States were not exactly equals. Since 2012, China has become increasingly assertive in the sovereignty issue over the Senkaku (Diaoyu) Islands, and Japan has been heavily dependent on the deterrent power of the US presence in the East China Sea. Indeed, the single most important issue for the Abe government at the beginning of the Trump administration was whether the new administration in Washington was still adhering to the Obama administration's pledge that the collective defense obligation, codified in the US–Japan Security Treaty, still covered the Senkaku Islands. If the United States honored that obligation, the Japanese government was ready to concede in other issue areas.

Another precondition for Schoppa's argument was that the WTO set the background for trade disputes. With its highly legalized dispute settlement system, many of bilateral trade disputes began to be adjudicated at the WTO. In theory, this dulled the impact of unilateral threats by the United States to impose sanctions on Japan in a trade dispute because a complaint regarding such unilateral threats can be brought to the attention of the multilateral body.

However, this is highly contingent on the “normative pull” of international trade law for the United States. The WTO has an independent effect on national trade policymaking to the extent that the country in question is ready to adhere to multilateral rules. The Trump administration acted differently from the Obama administration in the sense that the former, from its inception, made it clear that national trade laws held precedence over international trade rules. Thus, Japan, as well as others, became vulnerable to the naked power of unilateral threats by the United States to impose costs—often in the form of additional tariffs—on them.

Thus, with the preconditions of Schoppa’s “recalcitrant state” theory removed, Japan had to go back to square one: it became much more vulnerable to US pressure. This explains why Japan finally agreed to the start of bilateral trade negotiations under the name of “trade agreement on goods (TAG).”

Proactive FTA strategy

Another aspect of Japanese trade policy that does not conform to the “reactive state” thesis is Japan’s increasingly aggressive pursuit of free trade agreements. To be sure, early cases of its departure from WTO-centered policy, such as FTAs with Singapore and Mexico, were still “reactive” in the sense that the initiatives for these agreements came from Singapore and Mexico. However, Japan has become more proactive in formulating and executing its FTA strategy over the subsequent years. Why?

There is by now voluminous literature on Japan's FTA strategy, and it is beyond the scope of this paper to review the entirety of this literature.²⁷ Solís and Urata pointed to the domestic recession and competition with China as primary reasons: "Stimulation of structural reform in Japan to revitalize its economy and regain competitiveness is an important motive to pursue FTAs."²⁸ As an indication of competition with China, they pointed out that "Japan proposed to the Association of Southeast Asian Nations (ASEAN) an economic partnership agreement (EPA) in November 2002 only one day after China and ASEAN signed an agreement on closer economic partnership."²⁹ However, this is hardly an exhaustive list of factors that led to a proactive Japanese FTA strategy. As the following section will show, Japan was proactive in its FTA strategy in response to the Trump administration's withdrawal from the TPP. Whether competition with China was a major motive, as Solís and Urata suggested, remains to be seen.

Domestic constraints

This paper demonstrates that American coercion is necessary, if not sufficient, to explain why Japan conceded and the timing of its concession. This explanation was recently offered by the US ambassador to Japan. In an interview with *Asahi Shimbun*, William Hagerty said that the threat of tariffs on Japanese autos drove Tokyo to agree to trade with the United States:

There was a great deal of frustration, trying to get together with our counterparts in Japan. In April 2017, Vice President (Mike) Pence and Wilbur Ross, our commerce secretary, visited Japan and raised the need to enter into trade negotiation. "We need a trade deal." No response. I was with Vice President Pence in October, in a bilateral dialogue

²⁷ For a concise literature review, see Jemma Kim, *Japan and East Asian Integration: Trade and Domestic Politics*, London and New York: Routledge, 2018, pp. 19–25.

²⁸ Mireya Solís and Shujiro Urata, "Japan's New Foreign Economic Policy: A Shift Toward a Strategic and Activist Model?" *Asian Economic Policy Review*, vol. 2, no. 2, 2007, p. 231.

²⁹ *Ibid.*, p. 230.

discussion, when the issue was raised again, directly by the vice president. We said that we need to enter into trade negotiations. Again, no progress. In November 2017, President Trump met with Prime Minister Shinzō Abe in Japan. Trade was discussed at length, but no progress. We met in April 2017, at Mar-a-Lago. That's the time when Prime Minister Abe appointed Minister Motegi to work with Ambassador Lighthizer. I was very optimistic then. "Now we are ready to go." But things didn't move very fast. After the threat of Section 232 tariffs was brought out, though, things changed.³⁰

Nevertheless, domestic politics provides some supplementary explanations for additional details. For example, why did Abe make a concession in September 2018, instead of later in the year? To answer this question, we need to turn our attention to domestic politics. First, Abe was up for reelection as president of the Liberal Democratic Party (LDP) in September; until after the election, it would have been embarrassing for him to admit that he had experienced a major defeat in economic diplomacy. Trump was also facing a midterm election in early November, and for Trump to score points in those elections, the Japanese concession had to be made before then.

In addition, farm lobbies in the United States were growing increasingly vocal in the United States, especially after China and the European Union began to retaliate by targeting US farm products. Thus, immediate concessions, such as the opening of lamb markets and a promise of future concessions on farm products were necessary for an amicable resolution of the policy conflict between Tokyo and Washington; both countries were negotiating under tight domestic constraints, which were also shaped by international events. They were playing Putnam's two-level games, in which international and domestic games interact with each other.³¹

³⁰ "U.S. Ambassador to Japan: Threat of Car Tariffs Drove Tokyo to the Table," *Inside U.S. Trade*, February 5, 2019.

³¹ Putnam, "Diplomacy and Domestic Politics."

Japan's response

Before proceeding to the case studies, a few preliminary remarks are in order. First, with respect to the organization of each section, most narratives will follow chronological order because that is the easiest to understand. Going back and forth in time would unduly confuse readers. However, each section will address the following points:

- Any specific policy challenges that were posed by the Trump administration and that Japan had to address;
- Japan's responses and the rationale (in terms of interests, reasoning, strategy, normative context, etc.) behind each response;
- The ways in which the United States and other actors reacted to Japan's response, to the extent that those are relevant to the subsequent developments;
- International and domestic constraints under which Japan and the United States behaved in the context of the topic of each section;
- The ways in which these international and domestic constraints interacted;
- Whether these explanations are consistent with the notion of a "reactive state."

Second, it is important to note that the most fundamental conflict of interest between the United States and Japan was not really over substance but over form; the Japanese government wanted first and foremost to preserve the TPP and wanted the United States to return to the TPP, whereas the United States wanted to negotiate a bilateral free trade agreement with Japan. However, on several occasions, the Trump administration signaled to Japan that it was willing to join the TPP if and only if the TPP could be renegotiated in such a way that it would benefit the United States more than it would benefit Japan. This precondition was unacceptable to Japan.

Asō–Pence Talks

The first Japanese response was the arrangement of Asō–Pence talks as a primary forum of economic negotiation between the two countries during the first year of the Trump administration. Originally, it was not intended as a delaying tactic, but in the end, it served as such, partly because Deputy Prime Minister Asō was so effective as a bulwark against the US push for a bilateral free trade agreement.

Policy challenges

The most important policy challenge that Japan faced was the Trump administration’s hostility toward the TPP and its decision to withdraw from the TPP on “day one.” The Abe government had invested considerable political capital to forge the TPP; therefore, the Japanese government wanted to keep the TPP intact and tried to persuade the Trump administration to change its mind. For its part, the Trump administration wanted to negotiate a bilateral free trade agreement with Japan through bilateral negotiations, and this was incompatible with the basic tenet of the Abe government’s position to prioritize the TPP.

Trump’s hostility to TPP

Trump’s hostility toward the TPP was evident from the beginning, for he had made disparaging remarks about the TPP throughout his electoral campaign of 2015–2016. On June 16, 2015, Trump announced that he would run for president as a Republican Party candidate. From

the beginning, he was opposed to the TPP, saying the agreement would only benefit China; he mistakenly thought that the TPP included China.³²

The TPP became a target of criticism from both parties during the presidential electoral campaign. On October 7, 2015, two days after the agreement in principle on the TPP, Democratic candidate Hillary Clinton announced her opposition to the TPP.³³ Clinton said that the inadequacy of the TPP on currency manipulation was one reason for her opposition.³⁴ On the Republican side, Trump and Mike Huckabee, a former Arkansas governor, opposed the TPP. Senator Ted Cruz, who was a front-runner in the Iowa caucus in February 2016, also made it clear that he was opposed to the TPP.³⁵ On March 1, or what is known as Super Tuesday, Trump won primaries in seven states. By early May, Ted Cruz had withdrawn from the Republican primary race, and it had become all but certain that Trump would win the Republican nomination. Trump made a major speech on trade policy in Pennsylvania on June 28, and in that speech, he called the TPP “the greatest danger yet” to the US economy.³⁶ He made it clear that he would withdraw the United States from the TPP if elected.³⁷

On July 18, 2016, the Republican Party adopted its party platform for the presidential election at its National Convention. On trade, this read that the United States should rebuff trade

³² Takeshi Kawanami, “*Itan Torampu no Sugao (2): Nihon Tataki ha sujiganeiri,*” *Nihon Keizai Shimbun (Nikkei)*, March 19, 2016, p. 6.

³³ “*Daitōryō sen made 1-nen Kiro no Chōtaikoku (Chū): ‘Koyō obiyakasu’ han TPP kowadaka, Hogoshugi jiwari, Hijun eikyō mo,*” *Nikkei*, November 7, 2015, p. 6.

³⁴ *Ibid.*

³⁵ Tomoyuki Kawai, “TPP, *Imin...Kyōwa hakunetsu, Kurūzu Torampu shi ga hantai, Rubio shi ha eijūken shinsei yōnin,*” *Nikkei*, February 7, 2016, p. 5.

³⁶ Tomoyuki Kawai, “2016 *daitōryō sen: TPP ridatsu wo shuchō: Torampu shi beikeizai ni ‘Saidai no kyōi,’*” *Nikkei*, June 29, 2016, evening ed., p. 3. For the full text, see “Full Transcript: Donald Trump’s Jobs Plan Speech,” June 28, 2016, www.politico.com/story/2016/06/full-transcript-trump-job-plan-speech-224891. Accessed January 17, 2019.

³⁷ Tomoyuki Kawai, “TPP *jitsugen futōmeisa masu, Torampu shi ‘Ridatsu’ ni kidō shūsei, Kurinton shi wa saikōshō genkyū (2016 Bei Daitōryōsen),*” *Nikkei*, June 30, 2016, p. 6.

agreements that did not benefit the country, without explicitly mentioning the TPP.³⁸ The following day, Trump was nominated as the Republican candidate for president, and on July 21, he delivered his acceptance speech, launching his “America First” and “Make America Great Again” slogans. He said that the TPP would “not only destroy our manufacturing but it will make America subject to the rulings of foreign governments.”³⁹

In the first televised debate with Democratic candidate Hillary Clinton, Trump said that he would bring back jobs that had fled the country and criticized Clinton for switching her position on the TPP from support to opposition.⁴⁰ In the third televised debate on October 19, both candidates expressed their opposition to the TPP, with Trump adding that he would renegotiate the North American Free Trade Agreement (NAFTA).⁴¹ In October, candidate Trump published a video in which he pledged that he would withdraw the United States from the TPP on “day one.”⁴² Donald J. Trump was named the winner of the US presidential election on November 8, 2016.

³⁸ Takeshi Kawanami, “*Bōeki ‘Beikoku daiichishugi de,’ Kyōwatō taikai seisaku kōryō wo saitaku, TPP hijun yochi nokosu,*” *Nikkei*, July 20, 2016, p. 2.

³⁹ Naoya Yoshino, “*Torampu shi ‘Beikoku daiichi,’ Daitōryō kōho shimei judaku enzetsu, Kyōwatō taikai, TPP ‘Shomei shinai,’*” *Nikkei*, July 22, 2016, evening ed., p. 1. For the full text, see “Full Transcript of Donald Trump’s Acceptance Speech at the RNC,” July 22, 2016 (delivered July 21, 2016), www.vox.com/2016/7/21/12253426/donald-trump-acceptance-speech-transcript-republican-nomination-transcript. Accessed January 17, 2019.

⁴⁰ Naoya Yoshino, “*Daitōryōsen hatsu no TV tōron, Beikoku no shinro meguri ōshū, Kurinton shi ‘Daikigyō no nukeana fūsa,’ Torampu shi ‘Nusumareta koyō wo dakkai,’*” *Nikkei*, September 27, 2016, evening ed., p. 1.

⁴¹ Takeshi Kawanami, “*Ryōshi ‘TPP hantai’ saihyōmei, Saigo no tōronkai (2016 Bei daitōryōsen),*” *Nikkei*, October 21, 2016, p. 7.

⁴² “Full: Donald Trump Speech in Gettysburg, PA, October 22, 2016: Donald Trump Rally in Gettysburg,” www.youtube.com/watch?v=GVk2Ojd76yo. Accessed January 17, 2019.

Abe's attachment to TPP

In contrast to Trump's hostility to the TPP, Prime Minister Abe's attachment to the deal was equally evident. There were three main reasons for this. First, the TPP was a key component of his growth strategy or what is now known as "Abenomics," and Abe owed his political fortunes to the success of his economic policies. Second, he had invested significant political capital in forging the TPP from 2013 to 2015, when Japan participated in the TPP negotiation. Third, the TPP originally was part of the Obama administration's "pivot" to Asia, a policy that was in line with the basic tenet of Abe's foreign and defense policy.

Thus, even when the fate of the TPP seemed doomed in 2016, because all the major contenders in the US presidential election, primarily Clinton and Trump, opposed it, Abe doggedly stuck to his policy of ratifying the TPP as soon as possible. It was immediately before the US withdrawal from the TPP that Japan ratified the original TPP-12 agreement. On November 10, the lower house of the Diet approved the TPP bills,⁴³ and on December 9, the upper house of Japan's Diet approved the TPP, ensuring ratification.⁴⁴ The cabinet of Prime Minister Shinzō Abe approved the TPP on January 20, after which the government notified New Zealand, the country to which the pact was entrusted, that Japan had completed its domestic procedures.⁴⁵ Ironically, the completion of the domestic process in Japan came on the same day as President-elect Donald Trump's inauguration.

⁴³ "Torampu shi shōri yureru TPP, Hōan ha shūin tsūka, Machikōba 'Juchū ga shinpai,' Giin 'Shingi torōkamo,'" *Nikkei*, November 11, 2016, p. 39.

⁴⁴ "Japan's Diet Votes to Ratify TPP," *Inside U.S. Trade*, December 9, 2016.

⁴⁵ "Japan Completes TPP Ratification Process," *Inside U.S. Trade*, January 20, 2017.

Persuasion

Given his strong attachment to the TPP, it was natural for Abe to try to persuade President-elect Donald Trump to change his mind. Abe had a chance to meet with Trump in New York immediately after the 2016 election, and he talked about the TPP at that meeting, even though he did not officially disclose the content of their conversation. Abe was scheduled to meet with Trump on November 17, 2016. Heading into the meeting, Abe said that he would urge Trump to ratify the deal. “I will seize every opportunity to urge the United States and other countries to complete domestic procedures promptly,” Abe said.⁴⁶ Abe did not reveal what was discussed at the meeting, but he told reporters that he was reassured that Trump was a “trustworthy leader.”⁴⁷

However, it became clear that Abe was not succeeding in his attempts at persuasion. Four days after the Abe–Trump meeting, President-elect Trump showed a video in which he pledged to report the withdrawal of the United States from the TPP on day one.⁴⁸ In that video message, “I am going to issue our notification of intent to withdraw from the Trans-Pacific Partnership, a potential disaster for our country. Instead we will negotiate fair, bilateral trade deals that bring jobs and industry back onto American shores,” Trump said.⁴⁹ True to his word, on January 23,

⁴⁶ “Japan’s Prime Minister Still Pushing TPP, Could Raise the Issue with Trump This Week,” *Inside U.S. Trade*, November 15, 2016.

⁴⁷ Kōya Jibiki, “Shushō ‘Shinrai kizukeru to kakushin,’ Torampu shi to hatsu kaidan,” *Nikkei*, November 18, 2016, evening ed., p. 1.

⁴⁸ Mariko Hirano, “TPP ridatsu ‘Shonichi ni tsūkoku,’ Torampu shi ga meigen,” *Nikkei*, November 22, 2016, evening ed., p. 1. See “A Message from President-elect Donald J. Trump,” November 21, 2016, www.youtube.com/watch?v=7xX_KaStFT8. Accessed January 17, 2019.

⁴⁹ “Trump Pledges to Withdraw from TPP on Day One of New Administration,” *Inside U.S. Trade*, vol. 34, no. 46, November 25, 2016.

2017, Trump signed an executive order pledging the United States would withdraw from the TPP “indefinitely,” ruling out the possibility of renegotiation.⁵⁰

Japan’s response

Japan’s first response was to create a forum in which the differences between the two countries’ positions could be ironed out.⁵¹ The forum’s name was innocuous: the US–Japan Economic Dialogue, which would be headed by US Vice President Mike Pence and Japan’s Deputy Prime Minister Tarō Asō. Bureaucrats at the Japanese Ministry of Finance put forward the idea of having a dialogue at the vice president–deputy prime minister level.⁵² It is highly unusual for a deputy prime minister of Japan or a US vice president to head this kind of forum, but it made sense, at least from the Japanese point of view, because it could cover topics pertaining to the jurisdiction of many ministries.⁵³ By having a US vice president presiding over the forum, the hope was that the dialogue would be insulated from the influence of President Trump, who had repeatedly made protectionist comments before getting elected.⁵⁴

Abe–Trump meeting of February 2017

On February 10, 2017, Abe met with Trump in Washington for the first time since the latter’s inauguration. Before then, an unnamed administration official told Reuters that “a

⁵⁰ Takeshi Kawanami, “Bei TPP ‘Eikyū ni ridatsu,’ Daitōryōrei shomei hakkō ha zetsubōteki, ‘Kōhei na bōeki’ Nihon ni yōkyū,” *Nikkei*, January 24, 2017 evening ed., p. 1.

⁵¹ Interview, February 27, 2019.

⁵² “Shidō Nichibei keizai taiwa (1): Garasu zaiku no ‘Kawase bōei’ (Hakushin),” *Nikkei*, April 17, 2017, p. 2.

⁵³ Interview, February 27, 2019. The decision on the US side could not be made until the last minute, however.

⁵⁴ Kōya Shimizu, “Nichibei taiwa endaka atsuryoku nimo, Bōeki to makuro seisaku ryō bunya, Nihon no fūjikome saku kikuka,” *Nikkei*, April 13, 2017, p. 19.

“replacement” for the Trans-Pacific Partnership was likely to be on the agenda for the meeting. “Given the domestic political capital [Abe has] expended on TPP, there’s going to be an effort to work with him on a follow-on,” the official had said, according to Reuters.⁵⁵ By a “replacement” for the TPP, what the Trump administration meant was a bilateral agreement with Japan. Peter Navarro, director of the newly created National Trade Council, said in a TV program on January 29, 2017, that the United States was interested in a free trade agreement with Japan. In response to a comment that the withdrawal from the TPP only benefited China, he said that trade negotiations with Japan, Australia, New Zealand, Malaysia, and Thailand would be a substitute for the TPP.⁵⁶ Given the US preference for a bilateral FTA, Abe hedged his bets before his February 10 meeting with Trump. In a House of Representatives discussion on January 27, 2017, Abe argued that bilateral agreements were not incompatible with his pursuit of TPP. “While pursuing the TPP, we have negotiated (a bilateral free trade agreement) with Australia and we are negotiating one with Canada. They are not incompatible with each other at all.”⁵⁷

Abe continued to stress the importance of the TPP to Trump when he met with him in Washington on February 10, 2017. After the meeting, Norio Maruyama, deputy press secretary of the Japanese Foreign Affairs Ministry, told reporters, “We continue to convey the message that TPP is extremely important in terms of the strategical meaning and in order to create a new

⁵⁵ “Report: Trump Seeks Early Opportunity to Talk with Abe About a Bilateral Deal,” *Inside U.S. Trade*, January 27, 2017.

⁵⁶ Takeshi Kawanami, “*Nichibei* FTA ni iyoku, Bei tsūshōkaigi toppu ‘*Nikokukan kōshō ga jiku*,’” *Nikkei*, January 30, 2017, evening ed., p. 3.

⁵⁷ Takeshi Kawanami and Ryō Nakamura, “*Nikokukan kyōgi ukeire he, Seifu jidōsha nado rikai motomeru*,” *Nikkei*, January 28, 2017, p. 3.

economic zone in the Asia–Pacific.... We tried to convey that message to the Trump administration. We are not abandoning the idea of the TPP.”⁵⁸

Given the unbridgeable differences over the TPP, the United States and Japan decided to create a forum for further discussion. After the meeting, the two leaders appeared at a joint press conference. Trump said that the two countries would “seek a trading relationship that is free, fair, and reciprocal, benefiting both of our countries.” Abe said, “We see dramatic growth to expand free trade and investment,” but he added, “of course, it must be done in a fair manner.”⁵⁹ Abe said that the two leaders had agreed to establish a bilateral economic dialogue—led by Vice President Mike Pence and Japanese Deputy Prime Minister Tarō Asō—that he described as an opportunity to “further deepen these bilateral economic relations.”⁶⁰ Maruyama told reporters that the bilateral US–Japan Economic Dialogue would be based on three “pillars”: fiscal and financial policies; cooperation on infrastructure, energy, cyber issues, and space; and a framework for bilateral economic cooperation, including trade.⁶¹

US reactions

The United States readily accepted the creation of this forum.⁶² Thus, it served as a primary forum of negotiation for economic policy, at least during the first year of the Trump administration. The Dialogue was divided into three pillars, and the third pillar was on trade.

⁵⁸ Jenny Leonard, “Japanese Official Says Abe to Continue Making Case for TPP to Trump Team,” *Inside U.S. Trade*, vol. 35, no. 7, February 17, 2017.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² While Vice President Pence welcomed the idea, it was up to President Trump to create this forum. Interview, February 27, 2019.

Then, in the second year of the Trump administration, the United States wanted to place US Trade Representative Robert Lighthizer as the lead ministerial negotiator; henceforth, the forum became less effective for Japan with respect to fending off US pressure for a bilateral FTA.

First round

The first meeting of the US–Japan Economic Dialogue led by Vice President Mike Pence and Deputy Prime Minister Tarō Asō took place in Tokyo on April 18, 2017. The two countries could not agree on the trade framework. The failure to reach an agreement was clear in the press conference after the meeting.⁶³ Vice President Pence appeared optimistic about the prospects for negotiations that would eventually lead to a bilateral free trade agreement, calling the Trans-Pacific Partnership “a thing of the past for the United States,” adding that abandoning the regional deal “will be our policy going forward.”⁶⁴ Asked about the prospects for a bilateral deal, he said, “today, we’re beginning a process of economic dialogue, the end of which may result in bilateral trade negotiations in the future [when] there may be a decision made between our two nations to take what we have learned in this dialogue and commence formal negotiations for a free trade agreement.”⁶⁵

Japanese Deputy Prime Minister Asō, on the other hand, did not even mention the idea of a bilateral trade deal with the United States during the same press conference. “From the big

⁶³ In the joint press release issued after the meeting, one of the pillars of the Dialogue was a “common strategy on trade and investment rules/issues.” The US preference for a “bilateral framework” and the Japanese interest in the “regional...trading environment [read: TPP]” were both mentioned. “Joint Press Release from Vice President Mike Pence and Deputy Prime Minister Taro Asō on the US–Japan Economic Dialogue,” April 18, 2017, www.whitehouse.gov/briefings-statements/joint-press-release-vice-president-mike-pence-deputy-prime-minister-taro-aso-u-s-japan-economic-dialogue/. Accessed January 31, 2019.

⁶⁴ Jack Caporal, “Pence Says ‘Economic Dialogue’ May Lead to Japan FTA Negotiations,” *Inside U.S. Trade*, April 18, 2017.

⁶⁵ *Ibid.*

picture and strategic point of view, we would like to seek the best shape and form of bilateral framework,” Asō said. He added that the United States and Japan should lead the trade rulemaking process in the Asia–Pacific with the goal of enshrining high-standard norms.⁶⁶

Asō visited the United States the following week and continued to advance the Japanese position that the TPP was the best deal for the United States. He told reporters on April 21, 2017, in Washington, “I think TPP would serve the benefit more, both for Japan as well as for the United States, but if it goes on a bilateral route and it will be the case that a better condition can be gained by the United States than TPP, no guarantee of that.”⁶⁷ He tried to explain the logic: “Twelve countries have worked on the TPP; the United States has gained something from Japan, but it was in the multilateral framework,” he said. “If it is bilateral then there is no one else to go to balancing out the gains and losses. So, the conditions which were acquired in TPP can get worsened on the bilateral route. This is more than a possibility. So, all this needs to be discussed adequately and fully.”⁶⁸

Meanwhile, the Trump administration notified Congress on May 18, 2017, of the start of renegotiations of NAFTA.⁶⁹ This was good news for Japan because the focus of US trade negotiations would henceforth be on NAFTA—at least for the time being. Indeed, NAFTA renegotiations consumed the lion’s share of time for the US trade negotiators during the first year of the Trump administration.

⁶⁶ Ibid.

⁶⁷ Jenny Leonard, “Japan’s Asō: ‘No Guarantee’ Bilateral Deal Would be Better for U.S. than TPP,” *Inside U.S. Trade*, vol. 35, no. 17, April 28, 2017.

⁶⁸ Ibid.

⁶⁹ Takeshi Kawanami and Shūichi Maruyama, “*Bei kanzei hikiage miokuri, NAFTA saikōshō he gensanchi kisoku ga shōten*,” *Nikkei*, May 20, 2017, p. 9.

Second round

US Trade Representative Robert Lighthizer and Foreign Minister Tarō Kōno met in Washington in September, and they agreed to step up discussion on “specific bilateral trade issues,” as well as to explore other efforts to strengthen trade and investment ties. “At that meeting, they discussed work plans to promote the trade agenda under the US–Japan Economic Dialogue,” the Office of the US Trade Representative (USTR) said in a statement.⁷⁰

Mike Pence and Tarō Asō met again in Washington on October 16, 2017. After the meeting, a statement reported that the two countries had made “tangible progress” on several trade fronts, including agriculture and autos, with broader goals still in sight.⁷¹ “Both sides affirmed that they would intensify work to achieve further progress in the near term on bilateral trade issues,” the statement said.⁷² Japan offered to assist the United States in exporting American LNG to other Asian countries to help US efforts to reduce its trade deficits.⁷³

A few days later, it was revealed that the United States had proposed the idea of an FTA at the October 16 meeting of the Economic Dialogue. The *Nikkei Asian Review*, citing a Japanese government official, said the United States had officially broached the subject during the second round of the US–Japan Economic Dialogue. The report said that a “high-ranking official from the country’s Ministry of Foreign Affairs” had said that Japan would “not enter negotiations

⁷⁰ “Report: Japan, U.S. to Set Up Working Groups on Trade, Other Issues under Bilateral Dialogue,” *Inside U.S. Trade*, September 5, 2017.

⁷¹ “Pence, Asō Claim Progress on Ag, Auto Trade Issues,” *Inside U.S. Trade*, October 16, 2017. Despite their rhetoric, however, the issues on which they agreed were relatively minor, such as lifting restrictions on Japanese persimmons and Idaho potatoes, as well as “streamlining” auto noise and emission testing procedures for American autos. “Joint Press Release from Vice President Mike Pence and Deputy Prime Minister Tarō Asō on the Second Round of the US–Japan Economic Dialogue,” October 16, 2017, www.whitehouse.gov/briefings-statements/joint-press-release-vice-president-mike-pence-deputy-prime-minister-taro-aso-second-round-u-s-japan-economic-dialogue/. Accessed January 31, 2019.

⁷² “Pence, Asō Claim Progress on Ag, Auto Trade Issues,” *Inside U.S. Trade*, October 16, 2017.

⁷³ Takeshi Kawanami and Mari Ishibashi, “*Bei tainichi bōeki kirikomu, Keizai taiwa FTA kōshō iyoku, Nōgyō shōjun, Nihon ha keikai*,” *Nikkei*, October 18, 2017, p. 3.

immediately.”⁷⁴ Vice President Pence had also said that the United States was in no hurry to negotiate a bilateral trade agreement.⁷⁵

Trump’s visit

Abe and Trump could not resolve their seemingly irreconcilable differences over the TPP and a bilateral FTA. During his tour in Asia in the fall of 2017, Trump met with Abe in Tokyo on November 5, during which Trump emphasized the size of bilateral trade imbalances between the two countries. At the meeting, Trump demanded a reduction in US trade deficits with Japan and, at the press conference after the meeting, said, “Trade deficits with Japan must be reduced.”⁷⁶ Also, Trump demanded that Japan increase its purchase of US defense equipment.⁷⁷ On the other hand, Abe mentioned the Japanese position that specifics would be discussed in the US–Japan Economic Dialogue framework.⁷⁸ One of the major items of cooperation was a Japan–US Strategic Energy Partnership (JUSEP), in which Japan would assist the sales of US LNG to third-country markets, such as Southeast Asia.⁷⁹ Japan had already pledged to invest more than 1 trillion Japanese yen (JPY) through government-private funds in the LNG markets in Asia.⁸⁰ Another cooperative venture was to increase infrastructure investment, and, for that purpose, it was agreed that the Nippon Export and Investment Insurance (NEXI) and the Japan Bank for

⁷⁴ “Report: U.S. Makes First Official Overture to Japan for a Bilateral Deal,” *Inside U.S. Trade*, vol. 35, no. 42, October 20, 2017.

⁷⁵ Interview, February 27, 2019.

⁷⁶ “*Bei fukinkō zesei ha yuzurazu, Bōeki kuruma nado shōjun, FTA niha genkyū sezu,*” *Nikkei*, November 7, 2017, p. 2.

⁷⁷ “*Torampu shi Bei no bōei sōbihin kōnyū semaru, Nihon ha shōkyokuteki,*” *Nikkei*, November 7, 2017, p. 4.

⁷⁸ “*Bei fukinkō zesei ha yuzurazu, Bōeki kuruma nado shōjun, FTA niha genkyū sezu,*” *Nikkei*, November 7, 2017, p. 2.

⁷⁹ “*Nichibei enerugi de kyōchō, LNG infura Ajia ni tsūshō atsuryoku kanwa mo nerau,*” *Nikkei*, November 7, 2017, p. 5.

⁸⁰ *Ibid.*

International Cooperation (JBIC) would sign a memorandum of understanding with the United States' Overseas Private Investment Corporation (OPIC).⁸¹ Finally, Trump and Abe also agreed on the promotion of Abe's concept of a "free and open Indo-Pacific" strategy in cooperation with Australia and India.⁸²

There were some questions as to whether an FTA was on the agenda in the Abe-Trump meeting on November 5. Reuters noted that Deputy Chief Cabinet Secretary Yasutoshi Nishimura had said on November 6 that Trump had not brought up the subject when he met with Abe. However, William Hagerty, US Ambassador to Japan, said that President Trump and Abe had talked about a free trade agreement during the meeting. Hagerty said that the United States was unhappy with its trade deficit with Japan and that "an FTA is one of the tools we may need to address that."⁸³

International and domestic constraints

No significant constraints existed on either side in setting up this framework of talks. The only major constraint on the US side was the NAFTA renegotiation, which was the highest priority for the administration in its first and second years. The Office of the US Trade Representative, which handled trade negotiations in bilateral talks, was too preoccupied with NAFTA during that time. Nevertheless, Lighthizer was very enthusiastic about bilateral FTAs;

⁸¹ Ibid.

⁸² "Nichibei shunō kaidan, 'Kitachōsen ni saidaigen no atsuruyoku,' *Tainichi akaji sakugen he kyōgi*," *Nikkei*, November 7, 2017, p. 1. Abe had advocated the Free and Open Indo-Pacific idea in 2016. At the Trump-Abe meeting, they agreed on three principles to underpin this strategy: promotion of basic shared values, the pursuit of economic prosperity, and the assurance of peace and stability. "Indo Taiheiyō senryaku suishin, *Nichibei Gō In to renkei he, Taichūgoku kensei kyōryoku tsukaiwake*," *Nikkei*, November 7, 2017, p. 4.

⁸³ "US Ambassador Says Trump, Abe Discussed an FTA; Japanese Officials Say Otherwise," *Inside U.S. Trade*, vol. 35, no. 47, November 24, 2017.

therefore, it was natural after the agreement with Mexico and Canada at the end of August and September 2018, respectively, that he would devote more energy to Japan.

As far as the substance of talks was concerned, another constraint on the US side was the farm lobbies, which were increasingly growing nervous about the lack of an FTA with Japan. A need for a bilateral free trade agreement was acutely felt by the US beef industry when Japan triggered a safeguard on frozen beef in the summer of 2017. Alarmed by the Japanese plan to use the beef safeguard, Agriculture Secretary Sonny Perdue expressed concerns. “I am concerned an increase in Japan’s tariff on frozen beef imports (from 38.5 percent to 50 percent) will impede US beef sales and is likely to increase the United States’ overall trade deficit with Japan. This would harm our important bilateral trade relationship with Japan on agricultural products,” Perdue said in a July 28 statement after Japan announced the safeguard, which began on August 1 and was scheduled to end on March 31, 2018. The safeguard only affected countries that did not have free trade agreements with Japan.⁸⁴ The reason for this was somewhat involved: Japan’s safeguards for frozen beef, as well as a separate safeguard for chilled beef, were agreed to as part of the 1994 Uruguay Round. The safeguards were administered on a quarterly basis, but Japan, in its free trade agreements, had shifted to annual safeguards, which were less likely to be triggered, according to the US Meat Export Federation (USMEF).⁸⁵

The National Cattlemen’s Beef Association (NCBA) and the US Meat Export Federation (USMEF) criticized Japan for the triggering of the safeguard. NCBA president Craig Uden said that triggering the safeguard showed the need for a free trade agreement between the United States and Japan. “We hope the Trump administration and Congress realize that this unfortunate

⁸⁴ Jack Caporal, “Perdue Says Japan’s Frozen Beef Safeguard Tariff Will Harm Trade Relations,” *Inside U.S. Trade*, vol. 35, no. 31, August 4, 2017.

⁸⁵ “Japan’s [sic] Ends Beef Safeguard, Lowering Tariffs on U.S. Imports,” *Inside U.S. Trade*, April 5, 2018.

development underscores the urgent need for a bilateral trade agreement with Japan absent the Trans-Pacific Partnership,” Uden said.⁸⁶ NCBA and USMEF pointed out that Japan was the top export destination for US beef, with exports valued at US\$1.5 billion in 2016. According to the USMEF, imports of frozen beef from the United States and other countries went over the safeguard threshold of 113 tons during the first quarter of Japan’s fiscal year 2017.⁸⁷ Japan ended its beef safeguards on April 1, 2018, and lowered tariffs on US beef exports from 50 to 38.5 percent.

The US pork industry was also agitated by the lack of an FTA with Japan, especially after the European Union and Japan came to an agreement in principle in 2017. This will be explained in the section on the EU EPA.

“Reactive state”?

The US–Japan Economic Dialogue, or the Asō–Pence talks, served as Japan’s bulwark against the US pressure for a bilateral FTA. In that sense, if the focus is placed solely on this aspect of the US–Japan trade relations, Japan may seem more “recalcitrant” than reactive. Certainly, it showed no flexibility on the question of bilateral FTA. However, this does not mean that Japan was rigid; in fact, it offered many concessions, such as the energy partnership and cooperation in infrastructure. Furthermore, pressure for a bilateral FTA was half-hearted during the first year of the Trump administration. With further pressure in the second year of administration, Japan caved in.

⁸⁶ Jack Caporal, “Perdue Says Japan’s Frozen Beef Safeguard Tariff Will Harm Trade Relations,” *Inside U.S. Trade*, op. cit.

⁸⁷ Ibid.

Negotiating TPP-11

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), or TPP-11, an agreement among eleven countries on the Pacific Rim, was a product of renegotiation after the United States withdrew from the original TPP.

After the Trump administration withdrew the United States from the TPP, Japan had two responses: one, to renegotiate the TPP into TPP-11, and two, to expedite the negotiation toward an economic partnership agreement (EPA) with the EU. The first response—renegotiating the TPP—is the subject of this section. We shall discuss the EU EPA in the next section.

Policy challenges

As already explained, the Trump administration withdrew from the TPP in January 2017. This presented a major policy challenge for Japan, for the TPP was an important element of Japan's growth strategy, and without economic growth, Japan could not solve many of its economic problems such as a rapidly aging society, an unsustainable amount of public debt, and the need to counter economic competition from China. In response to this problem, the Abe government decided to renegotiate the TPP into TPP-11 in April 2017; this was a major decision for Japan. Japan, in consultation with its partner countries, decided to take an active leadership role in this process. This section explains these two decisions.

Japan's response

Several alternatives concerning the TPP existed at the time of the US withdrawal. First, Japan could simply have abandoned the TPP. Second, it could have continued to persuade the United States to return to the TPP. And third, it could have renegotiated the TPP into an agreement without the United States. There were benefits and costs associated with each of these options. In the first option (abandoning TPP), Japan would not have been able to reap economic benefits from the agreement, but Japanese farmers, a key constituency for the LDP, would have been pleased. The second option (continuing to pressure the United States) was the least costly, but the prospects of the United States returning were not good, and it was not wise to antagonize the United States when the US president had stated repeatedly that he did not wish to return to the regional deal. Therefore, the third option seemed relatively costless and potentially promising.

However, the third option actually consisted of many variations, ranging from a minimalist option of changing as few provisions as possible from the original agreement to a maximalist option of changing a number of provisions and adding new members. Japan, in cooperation with Australia and New Zealand, opted for the minimalist position. The minimalist option would be the least costly, entailing the shortest delay, and it would be sufficiently beneficial with most of the economic benefits from the original agreement accruing.

These considerations may seem relatively easy to figure out in hindsight, but at that time, they were not so simple. After all, TPP-11 consisted of eleven members with eleven different sets of interests and concerns. Thus, it was not clear if the members could come to a consensus on the minimalist option in a renegotiated version. In the end, the final product was not minimalist in a strict sense of the word.

Another notable feature in this series of events was Japan's leadership role. Japan designated itself a leader in the negotiations for TPP-11 and acted accordingly, performing five different functions: (1) expediting the process; (2) guiding the discussions in the minimalist direction; (3) making sure that United States' return would be easy; (4) facilitating negotiations by hosting many chief negotiators' meetings in Japan; and (5) prodding the slow-moving members such as Vietnam and Malaysia. The second function, keeping the changes to a minimum, turned out to be the most challenging, as the following section will show.

Tokyo opts for TPP-11

In April 2017, the Abe government decided to renegotiate TPP into TPP-11. How did this happen? The Abe government had to make sure at least three conditions were satisfied: (1) that there was zero chance that Trump would change his mind in the short run; (2) that the United States would not object to TPP-11; and (3) that other members would go along with this decision. The first condition became clear after Abe's two failed attempts to persuade Trump. Abe twice explained the significance of the TPP to Trump: first at Trump Tower New York in November 2016 and again while playing golf in February 2017.⁸⁸ However, Trump would not budge, and it became increasingly clear that persuasion would require a long time, if it has any chance of succeeding.

The second condition was met when Japan sent emissaries, including Masatsugu Asakawa, Vice Minister of Finance for International Affairs, to the United States in March 2017. In March, Abe sent high-ranking officials to the United States to meet with Kenneth Juster,

⁸⁸ "TPP saikōshō 'konnai,' Shushō Bei fukki kentō de kyōchō," *Nikkei*, January 30, 2018, p. 4.

Deputy Assistant to the President for International Economic Affairs. The message Japan got from Juster was that the United States still wanted a bilateral FTA, but that it would not prevent TPP-11 from happening.⁸⁹ Also, the fact that the United States would acquiesce to TPP-11 had been already implied in the Joint Statement from February 10, 2017.⁹⁰

The third condition was satisfied when it became increasingly clear that the other members also wanted TPP-11. Some members had started considering TPP-11 when President Barack Obama was still in office. In November 2016, Mexico and Peru had suggested the possibility of TPP-11. Peru's President Pedro Pablo Kuczynski Godard said that something else could substitute for the TPP. He also suggested adding other countries such as China and Russia.⁹¹ At that point, however, Abe was still clinging to the idea of putting the original TPP agreement into effect.

In January 2017, the South American countries became more active in their efforts to move the TPP in this direction. On January 24, Chile's Minister of Foreign Affairs, Heraldo Muñoz Valenzuela, said that Chile would convene a meeting of TPP signatories with Korea and China in Chile in March.⁹² President Kuczynski of Peru said that he would seek a new agreement with China and TPP signatories. He said Peru needed to have a free trade agreement with Asian countries such as China, Australia, New Zealand, and India.⁹³ Japan participated in the March

⁸⁹ Manabu Shimada, Yasuo Takeuchi, and Shunsuke Shigeta, “*Kōki neratta ‘TPP11,’ Shushō ‘Izure Beikoku mukaeire,’ Nichibeitaiwa go ni shōjun,*” *Nikkei*, April 23, 2017, p. 5.

⁹⁰ Interview, February 26, 2019. Also, see “Joint Statement,” February 10, 2017. www.mofa.go.jp/files/000227768.pdf. Accessed April 18, 2019.

⁹¹ “*‘Bei nuki TPP’ kenen, 11-kakoku hakkō an nado fujō, Nihon senryaku rerinaoshi,*” *Nikkei*, November 16, 2016, p. 3.

⁹² “*‘Eikyū ridatsu’ TPP kekkai, Torampu shi ga daitōryō rei, Seifu taibei FTA shinchō,*” *Nikkei*, January 25, 2017, p. 2.

⁹³ “*‘Posuto TPP’ meguri omowaku, Perū, Gōshū, Chūgoku kuwaeta wakugumi mosaku, Kanada, ‘Beikoku nuki ariena,’*” *Nikkei*, January 25, 2017, evening ed., p. 3.

2017 meeting of the eleven remaining TPP trade ministers in Chile, where they sought to chart a path forward for a deal without the United States. At that point, Japan was sitting on the fence as to whether to pursue TPP-11 or keep working toward putting the original TPP into effect (by persuading the United States to come back to the TPP). “Without narrowing down the options, we would like to keep all options open,” Takao Ochi, Deputy Minister of the Cabinet Office said.⁹⁴ At the Santiago meeting in March, several ministers told the Japanese delegation that the negotiation for TPP-11 would not work without Japanese leadership; they also said that the other countries were perfectly happy to follow the Japanese lead.⁹⁵ Since the meeting in Chile, countries in the region were looking to Japan to exert leadership, as it was the largest TPP economy.⁹⁶ Another reason Japan could offer leadership was that it was one of the few countries that could provide adequate logistical support for repeated negotiating rounds.⁹⁷

After the March meeting in Chile, Japan deliberated over whether to opt for TPP-11, and in mid-April it was decided that not only would Japan promote the formation of TPP-11 but also that it should take a leadership role in this endeavor. There were two factors behind this decision. First, as was already stated, the Japanese government had sounded out possible US reactions to TPP-11 and found that the United States would not object to such an endeavor.⁹⁸ Second, it had found that other TPP countries were expecting Japan, the largest economy among the eleven, to take the lead.⁹⁹ At the March meeting in Chile, ministers from several countries expressed their

⁹⁴ Hidetaka Miyamoto, “TPP ‘*Beinuki*’ ni ondosa, *Nihon shinchō*, *Gō ha hakkō shuchō*,” *Nikkei*, March 17, 2017, p. 9.

⁹⁵ Interview, February 25, 2019.

⁹⁶ Jenny Leonard and Jack Caporal, “Ross to Accompany Pence to Japan for High-Level Talks; Countries May Have Different Goals,” *Inside U.S. Trade*, April 14, 2017.

⁹⁷ Interview, February 25, 2019.

⁹⁸ Akio Fujii, Ryōhei Yasojima, and Shunsuke Shigata, “*Bei nuki TPP suishin ni kaji, Raigetsu 11-kakoku de kakuryō kyōgi*,” *Nikkei*, April 15, 2017, p. 1.

⁹⁹ *Ibid.*

intention to follow Japan's lead if Japan was willing to take the leadership role. After hearing this, Abe made up his mind.¹⁰⁰ After the decision, Deputy Prime Minister Asō told the *Nikkei Asian Review* that Japan would work to convince the remaining TPP countries to bring the deal into force without the United States. Asō said that a deal “could be reached quickly.”¹⁰¹

Australia was informed of this decision first. Australia was fully in support of the idea of TPP-11. Australian Trade Minister Steve Ciobo said, after meeting Nobuteru Ishihara, Japan's State Minister for Economic and Fiscal Policy (with the TPP portfolio), that it would bring mutual benefits for the eleven countries to promote what had been agreed to in the TPP.¹⁰²

Minimalist option

Early on, the Japanese government had made it clear that it preferred a minimalist option from two considerations: to make sure that TPP-11 would be something palatable for the United States to return to and to make sure that renegotiation would not take a long time. It was reported in April 21, 2017, that Japan's policy was to leave the major framework of the TPP intact while negotiating with other countries to put TPP-11 into effect. It would work with Australia and New Zealand to keep the changes to the absolute minimum.¹⁰³ Other countries were not necessarily of the same mind. The first meeting to discuss TPP-11 in earnest was a ministerial meeting in Vietnam on the sidelines of Asia-Pacific Economic Cooperation (APEC) trade ministers meeting. On the evening of May 20, the chief negotiators could not finish the Joint Statement because of

¹⁰⁰ This was reported a year later. Jun Yamazaki and Ryōhei Yasojima, “TPP *hakkō nennai maedaoshi mo, Nihon shudō de fukkatsu, Sankakoku ‘Bei nuki’ demo iyoku,*” *Nikkei*, March 10, 2018, p. 5.

¹⁰¹ “Japan Says It Will Push for TPP without the U.S.; Australia, Canada Suggest UK Could Join,” *Inside U.S. Trade*, vol. 35, no. 17, April 28, 2017.

¹⁰² “*Shidō Nichibei keizai taiwa 3: Nihon Bei nuki TPP sebumi (Hakushin)*,” *Nikkei*, April 19, 2017, p. 2.

¹⁰³ “TPP *Beinuki demo kaezu, Kanzei ya tsūshō rūru, Nihon 10-kakoku to chōsei he,*” *Nikkei*, April 21, 2017, p. 1.

this disagreement. While Australia and New Zealand sided with Japan in insisting on no major changes to the agreement, Malaysia objected. Vietnam remained cautious as well.¹⁰⁴

In July, when the chief negotiators of the eleven countries met in Hakone, Japan and Australia tried to steer the discussion to form consensus on adding minimal changes to the original TPP agreement.¹⁰⁵ In the end, consensus formed on two points: one, the parties would not touch the market-access provisions in the original agreement; and two, the only changes made would be to suspend provisions in the trade rules area for the time being.

Japan's leadership

Japan made its intention to take the lead clear from the beginning. Nobuteru Ishihara, whose portfolio included TPP-11, said he consulted with the Minister of International Trade François-Philippe Champagne from Canada on the phone on April 28 before the Toronto meeting.¹⁰⁶ Ishihara told Champagne that the Japanese government would lead the discussion in the chief negotiators' meeting in Toronto, and Canada had agreed to cooperate.¹⁰⁷ On May 1, 2017, Keiichi Katagami, the Japanese chief negotiator for TPP, said that Japan would be in a leading position and would lead the discussion to promote cooperation of the eleven countries.¹⁰⁸ Katagami met with chief negotiators from Australia, Canada, and New Zealand on May 1, and told them that Japan would lead the discussion.¹⁰⁹

¹⁰⁴ Jun Yamazaki, "TPP11 *nennai gōi saguru, Kyō kakuryō kaigō, Sankakoku ni ondosa*," *Nikkei*, May 21, 2017, p. 5.

¹⁰⁵ "TPP11 *sōki hakkō he chōsei, Shuseki kōshōkan gogo ni kaigō*," *Nikkei*, July 12, 2017, evening ed., p. 3.

¹⁰⁶ "TPP *kaigō meguri denwa kyōgi, Keizaishō to Kanada bōekishō*," *Nikkei*, April 29, 2017, p. 5.

¹⁰⁷ *Ibid.*

¹⁰⁸ "TPP *chōsei he, '11-kakoku de kessoku*," *Nikkei*, May 1, 2017, evening ed., p. 3.

¹⁰⁹ "TPP11 *kyōgi shidō, Kōshōkan kaigō Nihon nennai kecchaku teian he*," *Nikkei*, May 3, 2017, p. 5.

Japan took leadership in the following areas: (1) expediting the process by reminding other members that time was limited; (2) making sure that United States' return was easy; (3) hosting and chairing many chief negotiators' meetings in Japan and elsewhere; (4) prodding the slow-moving countries; and (5) guiding the discussions toward the minimalist option. Since the last area is the most complex, we shall look at the other areas first.

First, Japan kept reminding the others that time was of the essence in this endeavor. One of the reasons was the United States. In preparing for the Asō–Pence meeting, which was scheduled for April 2017, Juster had pressed for a three-month deadline for concrete results coming out of the US–Japan Economic Dialogue. This US pressure gave Japan an added incentive to hurry to conclude TPP-11, because the latter might serve as a buffer.¹¹⁰

The chief negotiators from TPP-11 countries met in Takanawa, Tokyo, from September 21 to September 22, 2017. At the start of this round of negotiations, Kazuyoshi Umemoto, who succeeded Katagami, emphasized that it was important to put TPP-11 into effect as soon as possible.¹¹¹ When the chief negotiators met in Urayasu on October 30, Japan's Atsuyuki Oike, deputy chief negotiator for TPP, said the remaining time was very short, and he pleaded with every country for flexibility.¹¹² This was because they were trying to come to an agreement in principle by the time of the APEC summit meeting in Vietnam in November 2017.

Second, Japan wanted to keep the doors open for the United States, to keep the US return as simple as possible. A part of the draft Ministerial Statement, which was scheduled to be issued at the Vietnam TPP-11 ministerial meeting, became known on May 21, 2017. The negotiators

¹¹⁰ “*Nihon ga ugokasu TPP11 (Jō): Bōeki jiyūka rūru iji, Nichibei kōshō no bōhatei ni,*” *Nikkei*, April 27, 2017, p. 5.

¹¹¹ “*TPP11 Tōkyō de kaigō kaimaku,*” *Nikkei*, September 21, 2017, evening ed., p. 3.

¹¹² “*TPP11 Nyūjūrandō zanryū he, Shin Seiken nōsanhin yushutsu kakudai ni kaji,*” *Nikkei*, October 31, 2017, p. 2.

were planning to make the US return to the TPP easy. In the original TPP, the working group under the TPP Commission, the TPP's highest decision-making body, was to examine the eligibility of a new member. The eleven made the United States exempt from the working group procedure if it wanted to rejoin.¹¹³ Despite their efforts, however, the actual text in the Ministerial Statement remained vague on this point.¹¹⁴

Third, Japan hosted four chief negotiators' meetings in Japan: (1) Hakone, July 11–13, 2017; (2) Tokyo, September 21–22, 2017; (3) Urayasu, October 30–November 1, 2017; and (4) Shinjuku, Tokyo, January 22–23, 2018. Also, Japan co-chaired the Vietnam ministerial meeting with Vietnam in November 2017.

Fourth, Japan prodded the laggard countries. For example, the countries were expected to submit a list of provisions to be suspended by the time of the chief negotiator's meeting in Sydney in August. Vietnam and Malaysia only explained their wishes orally without any documentation, giving the excuse of a delay in domestic coordination.¹¹⁵ Umemoto asked every country to submit its wish lists by the next round of negotiations.¹¹⁶ The Japanese government aimed at signing TPP-11 by early March in 2018. To do that, the government decided to send Motegi to Vietnam in December 2017. Abe telephoned Prime Minister Nguyễn Xuân Phúc of Vietnam on December 22 and said that Motegi was heading for Vietnam.¹¹⁷ Motegi met with Tran Tuan Anh, Minister of Industry and Trade of Vietnam, on December 25, and they discussed

¹¹³ “TPP11 *Bei fukki ni michi, Kakuryō kaigō seimeian, kanryaku na tetsuduki meiki*,” *Nikkei*, May 16, 2017, p. 1.

¹¹⁴ See “Trans-Pacific Partnership (TPP) Agreement Ministerial Statement,” 22 May 2017, www.beehive.govt.nz/release/trans-pacific-partnership-tpp-agreement-ministerial-statement. Accessed February 1, 2019.

¹¹⁵ Jun Yamazaki, “TPP11 *tōketsu kōmoku de mizo, Chosakuken ya seifu chōtatsu nado, Raigetsu kaigō de tsume*,” *Nikkei*, August 31, 2017, p. 2.

¹¹⁶ *Ibid.*

¹¹⁷ “TPP *sōki hakkō, Nichietsu shunō ga icchi*,” *Nikkei*, December 23, 2017, p. 4.

the issue of delaying the implementation of the workers' rights dispute settlement, a high-priority issue for Vietnam.¹¹⁸ As a result of these consultations, they decided to write that commitment into a side agreement in January 2018.¹¹⁹

Keeping changes to a bare minimum

Fifth, Japan wanted to keep the number of changes in the agreement to a bare minimum. In procedural terms, one change was absolutely necessary. The original TPP agreement contained a provision that made the participation of the United States necessary for the deal to enter into force; the combined gross domestic product (GDP) of the ratifying countries had to exceed 85 percent of the total. This clause needed to be changed in TPP-11 so it could take effect without the United States. Consensus on this question was quickly reached. The discussion in Hakone on July 12, 2017, was devoted to changing the criteria for the TPP's entry into force. The original agreement set the threshold of the minimum of ratifications for the entry into force: 85 percent of the total GDP and six or more countries ratifying. Then a representative from one country advocated maintaining the current text while adding a protocol by the eleven countries. Another country's negotiator suggested writing a fresh agreement. Thus, the negotiating session hit an impasse.¹²⁰ Japan managed to form a consensus by removing the GDP requirement. Umemoto announced that a mutual understanding was formed on the path toward the entry into

¹¹⁸ "TPP11 *kakkoku shomei, 3-gatsu jōjun made ni mezasu, Keizaishō ga Betonamu hōmon,*" *Nikkei*, December 26, 2017, p. 4.

¹¹⁹ "*Kanada Betonamu ni hairyo, TPP11 jitsugen wo yūsen,*" *Nikkei*, January 24, 2018, p. 3.

¹²⁰ "TPP *hakkō yōken de mizo, Shuseki kōshōkan kaigō, 11-gatsu made ni hōkōsei,*" *Nikkei*, July 13, 2017, p. 5.

force.¹²¹ The procedure for effecting the TPP was simplified to ratification by a half of the signatories or more.¹²²

After the trigger for entry into force was settled, the next order of business for TPP-11 was whether to revise the substance of the text. Japan wanted its partners to consider suspending concessions made to the United States when it was still a party to the deal. However, Japan also proposed that any suspended concessions be reinstated if the United States decided to rejoin the deal later.¹²³ After three days of meetings in Sydney in August 2017, the TPP-11 partners agreed to suspend certain provisions—including a data exclusivity period for biologics.¹²⁴ For the suspension of each item, consensus was necessary. In keeping with their minimalist stance, Japan, as well as Australia, New Zealand, and Singapore, did not submit a wish list for suspensions.¹²⁵

The country with which Japan had the greatest difficulty was Canada, which kept adding more wishes for suspension. During the Sydney round of negotiations on August 28–30, Canada and Mexico were the first to put forward their wish lists for suspension. Their combined list already included about fifty items. The Da Nang ministerial meeting of TPP-11 on November 8–9, 2017, which sealed an agreement in principle, was tumultuous. The leaders of APEC countries were scheduled to arrive on that evening of November 9, and negotiators had to hurry. Abe directed Japanese diplomats to expedite negotiation to reach an agreement in principle in Da

¹²¹ “TPP11 *shūsei ha saiteigen, Shuseki kōshōkan kaigō de hōshin kakunin, Kakkoku tairitsu no hidane nokosu*,” *Nikkei*, July 14, 2017, p. 5.

¹²² “TPP11 *Nihon jōho mo shōten, Tōketsu kōmoku kyō saishūan teiji*,” *Nikkei*, November 9, 2017, p. 5.

¹²³ “Report: Japan Proposing to Suspend Concessions Made to U.S. in TPP,” *Inside U.S. Trade*, vol. 35, no. 34, August 25, 2017.

¹²⁴ “Reports: TPP-11 Countries Agree to Suspend Some Provisions, Meet Again in September,” *Inside U.S. Trade*, vol. 35, no. 35, September 1, 2017.

¹²⁵ Interview, February 25, 2019.

Nang.¹²⁶ Canada caught Japanese negotiators by surprise by requesting an emergency bilateral meeting on the early morning of November 9 to discuss auto safety regulation issues. Japanese negotiators were infuriated by the last-minute negotiation request.¹²⁷

On November 9, the ministers agreed in principle, or so they thought. On November 10, Canadian Trade Minister Champagne tweeted that Canada had not agreed in principle. Therefore, the Abe–Trudeau meeting on the afternoon of November 10 was almost entirely devoted to the TPP.¹²⁸ Motegi reconvened a ministerial meeting on the late afternoon of November 10, and they finally had a “deal,” in the words of Motegi.¹²⁹ The agreement, in principle, consisted of suspending eleven items in the intellectual property rights area and nine items in the other areas. Motegi double-checked whether there was any misunderstanding among the parties. He made sure that Canada would not object any further.¹³⁰ On November 11, the TPP-11 members publicized the contents of the agreement and issued a ministerial statement. The new name for the agreement was to be a Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). However, four items remained on the agenda for further consultation. One of them was cultural exceptions in investment that Canada had been demanding.¹³¹ Even after agreement in principle, however, Canada did not make any concrete proposals on the cultural exception that was still on the negotiating table.¹³² Informally, Canadians demanded relaxing the

¹²⁶ Ryōhei Yasojima and Jun Yamazaki, “TPP *ōsuji gōi*, *Hyōryū no aseri kara daketsu*, *Motegi shi ‘Bei fukki no dodai dekita,’*” *Nikkei*, November 10, 2017, p. 3.

¹²⁷ *Ibid.*

¹²⁸ Ryōhei Yasojima and Atsushi Tomiyama, “TPP11 *shunō kaigō hirakarezu*, *Kanada dotanba de hanki*, ‘*Ōsuji gōi sezu’ to tsūto*, *Abe shushō shunō kaidan de settoku*,” *Nikkei*, November 11, 2017, p. 2.

¹²⁹ *Ibid.*

¹³⁰ Jun Yamazaki and Ryōhei Yasojima, “TPP 20-*kōmoku tōketsu*, *Chizai ya funsō shori*, 11-*kakoku de ōsuji gōi*,” *Nikkei*, November 11, 2017, evening ed., p. 1.

¹³¹ Ryōhei Yasojima and Jun Yamazaki, “TPP 19-*nen hakkō mezasu*, *Bei nuki ōsuji gōi de kakuryō seimei*,” *Nikkei*, November 12, 2017, p. 1.

¹³² “TPP11 *kakkoku shomei*, 3-*gatsu jōjun made ni mezasu*, *Keizaishō ga Betonamu hōmon*,” *Nikkei*, *op. cit.*

rules of origin.¹³³ Given these Canadian attitudes, Japan began to consider the possibility of TPP-10—a TPP-11 without Canada.¹³⁴ Japan aimed to resolve these issues in the chief negotiator sessions in Tokyo in January 2018.¹³⁵ The chief negotiators met in Tokyo on January 22, 2018, to hammer out the final details. On the agenda were the cultural exception for domestic “contents” demanded by Canada and the expansion of Vietnamese worker rights demanded by Mexico.¹³⁶ Canada strongly demanded the maintenance of cultural exception, but Japan remained hesitant on the issue.¹³⁷ The chief negotiators agreed on the disciplines for state-owned enterprises (SOEs) for Malaysia and the liberalization of service trade and investment for Brunei. As for the longer implementation period for Vietnam to implement worker rights, they decided to write that into a side agreement. In the end, twenty-two items out of more than a thousand provisions in the original TPP were suspended.¹³⁸ On the cultural exception issue, the parties agreed on attaching a side letter, which was merely political cover for Canada.¹³⁹

US reactions

Every time there was progress made on TPP-11, the United States reacted, and the messages were always mixed. However, one thing was consistent: The Trump administration

¹³³ “TPP 3-gatsu shomei, Kanada ga risuku, Raishū nimo saishū kōshō, gaikoku kontentsu kisei kuruma shōten,” *Nikkei*, January 18, 2018, p. 5.

¹³⁴ The Japanese delegation submitted two versions of text to the meeting: one with Canada and one without. Interview, February 25, 2019.

¹³⁵ “TPP 3-gatsu shomei, Kanada ga risuku, Raishū nimo saishū kōshō, gaikoku kontentsu kisei kuruma shōten,” *Nikkei*, op. cit.

¹³⁶ “TPP11 shuseki kaigō kaimaku, Kyōtei naiyō kakutei mezasu,” *Nikkei*, January 22, 2018, evening ed., p. 3.

¹³⁷ “TPP shuseki kaigō, Kanada nao kyōkō, Kyō saishūbi,” *Nikkei*, January 23, 2018, evening ed., p. 3.

¹³⁸ “Kanada Betonamu ni hairyo, TPP11 jitsugen wo yūsen,” *Nikkei*, January 24, 2018, p. 3. For the text of the CPTPP, see “Comprehensive and Progressive Agreement for Trans-Pacific Partnership,” www.mfat.govt.nz/assets/CPTPP/CPTPP-Text-English.pdf. Accessed February 1, 2019.

¹³⁹ Interview, February 25, 2019.

would return to the TPP only if the other members were willing to renegotiate the terms. That condition conflicted with the Japanese objective of keeping the agreement intact and, therefore, there was no way that the United States could elbow its way into the TPP once the negotiation on TPP-11 was under way.

In January 2018, Trump said that the United States was ready to return to the TPP if it were to become better. He was willing to renegotiate the TPP.¹⁴⁰ Abe, after hearing Trump's remarks, said that he welcomed his remarks, while denying the possibility of renegotiating the original TPP agreement.¹⁴¹ Trump again referred to the possibility of returning to the TPP on February 23, 2018, after meeting with Australian Prime Minister Malcolm Turnbull.¹⁴² The representatives from eleven countries signed TPP-11 in Santiago, Chile, on the afternoon of March 8. After the signing of TPP-11, Trump directed the USTR to study the conditions under which the United States could return to the TPP. Lindsay Walters, then White House Deputy Press Secretary, explained that the president had directed Larry Kudlow, Director of the National Economic Council, and US Trade Representative Robert Lighthizer to study whether it could be turned into a better agreement.¹⁴³

¹⁴⁰ Takeshi Kawanami, "*Bei TPP fukki kentō, Torampu shi hyōmei, Saikōshō jōken ka,*" *Nikkei*, January 26, 2018, evening ed., p. 1.

¹⁴¹ "TPP *saikōshō 'konnai, 'Shushō Bei fukki kentō de kyōchō,*" *Nikkei*, January 30, 2018, p. 4.

¹⁴² Tsuyoshi Nagasawa, "TPP *saikōshō hitsuyō, Torampu shi Bei fukki meguri,*" *Nikkei*, February 24, 2018, evening ed., p. 3.

¹⁴³ Taisei Toriyama, "*Bei TPP fukki jōken kentō, Torampu shi tsūshō daihyō ni shiji,*" *Nikkei*, April 13, 2018, evening ed., p. 1.

Domestic constraints

The most important domestic constraint on Japan to put TPP-11 into effect was the farm lobby's objection. Even though TPP-11 was without the United States, the most formidable farm-product exporting country, TPP-11 included many agricultural exporters such as Australia, Canada, and New Zealand. The way the Abe government coped with this domestic constraint was the same as it was for the original TPP: with domestic compensation. Thus, the Japanese government started budgeting programs to compensate farmers and to increase the competitiveness of Japanese farm products.

After the agreement in principle in Vietnam in November 2017, the Japanese government started preparing domestic countermeasures for the TPP. On November 20, the government presented its draft plans to the Countermeasures Headquarters of the Liberal Democratic Party (LDP) and got its approval.¹⁴⁴ The government's Comprehensive Countermeasures Headquarters for TPP and the Japan–EU EPA met on November 24 and decided on the outlines of the new countermeasures.¹⁴⁵ Countermeasures consisted of both “offensive” and defensive measures. Offense was geared toward increasing exports of farm and food products from 750 billion yen in 2016 to 1 trillion yen by 2020.¹⁴⁶ While the Finance Ministry called for a reduction in countermeasures, the agriculture and forestry tribe (*norin zoku*) of the LDP demanded an increase because of the addition of the Japan–EU EPA.¹⁴⁷

¹⁴⁴ “*Chizu satōkibi, Seifu ga seisansha shiensaku, TPP Nichiō EPA niramū,*” *Nikkei*, November 21, 2017, p. 4.

¹⁴⁵ “*Nōgyō shien he shin taikō, Seifu TPP Nichiō EPA uke, Shushō ‘Banzen no taisaku,’*” *Nikkei*, November 24, 2017, evening ed., p. 3.

¹⁴⁶ “*Nōgyō shien kōshu ryō niramī, TPP11 Nichiō EPA taisaku de taikō, Yushutsu 1-chōen nerau, Chizu setsubi dōnyū,*” *Nikkei*, November 25, 2017, p. 4.

¹⁴⁷ *Ibid.*

“Proactive state”?

The degree of leadership exerted by Japan in the course of TPP-11 negotiation was so remarkable that Japan received international praise for its leadership. After the agreement in principle, Prime Minister Nguyễn Xuân Phúc of Vietnam proudly said that the success of TPP-11 negotiations was thanks to the challenging role played by Japan and Vietnam together as co-chairs.¹⁴⁸ Does this mean that Japan is turning from a reactive to a proactive state? Perhaps that judgment is premature. First, it was only after consultation with all the major members and their approval, and at their request, that Japan decided to take the lead. Thus, it was not so much that Japan chose to play a leadership role as that it offered the opportunity to play such a role. When Japan repeatedly expressed that it would lead the negotiation, the other members accepted; so, there was still a tinge of “reactiveness” to the Japanese behavior.

Also, the circumstances were exceptional in this setting. The reason Japan was expected to be the leader was that it was the largest economy among the eleven.¹⁴⁹ That is not the case in many other trade negotiations such as the Regional Comprehensive Economic Partnership (RCEP) negotiations, which are still under way. Thus, it is important not to overgeneralize from this exceptional case. On a positive note, Japan was given a precious learning experience in the TPP-11 negotiations, and henceforth more Japanese diplomats will emulate this achievement as a model as they seek to make Japan a more respectable player in world trade.

¹⁴⁸ Atsushi Tomiyama, “*Bei ni TPP fukki hataraki kake, Betonamu shushō ‘Nihon to renkei,’*” *Nikkei*, November 16, 2017, p. 1.

¹⁴⁹ Akio Fujii, Ryōhei Yasojima, and Shunsuke Shikata, “*Bei nuki TPP suishin ni kaji, Raigetsu 11-kakoku de kakuryō kyōgi,*” *Nikkei*, April 15, 2017, p. 1.

Negotiating the Japan–EU EPA

After the Trump administration withdrew the United States from the TPP, Japan had two responses: first, it renegotiated deal as the TPP-11, and second, it accelerated negotiations on an economic partnership agreement (EPA) with the European Union. Now that the first response has already been covered, this section will discuss the EPA with the EU.

Policy challenges

After the Trump administration withdrew from the TPP in January 2017, the Abe government decided to accelerate the EPA negotiation with the EU. The EPA negotiation with the EU had started in 2013, and the parties had planned to complete negotiations by the end of 2015, but that deadline had been missed. Negotiation had hit an impasse in the following year. However, after the United States withdrew from the TPP, Japan accelerated the negotiation process.

Japan's response

Why did Japan accelerate the negotiation with the EU? There were several, equally important reasons. First, the EU EPA, like the TPP, was also an important element in the Abe government's growth strategy. Back in 2013, the Abe government had set a goal to raise the FTA ratio (the proportion of Japan's trade that is covered by FTA partners) to 70 percent by 2018.¹⁵⁰

¹⁵⁰ Prime Minister of Japan, *Japan Revitalization Strategy: Japan is Back*, June 14, 2013, www.kantei.go.jp/jp/singi/keizaisaisei/pdf/en_saikou_jpn_hon.pdf. Accessed February 8, 2019.

As of mid-2013, Japan was negotiating three “mega-FTAs”—the TPP, the EU EPA, and the RCEP—all of which included Japan’s major trading partners. If all three could be completed, the FTA ratio would be comparable to those of such countries as South Korea and Australia, which had very high FTA ratios. However, with the EU EPA, it was expected that the rate would go up to 34.4 percent as of 2017.¹⁵¹ The government also estimated that the EPA would boost Japanese GDP by 5 trillion yen.¹⁵²

The second rationale for accelerating the Japan–EU EPA was symbolic. At a time when the world trading system was being buffeted by populist backlashes against globalization, it seemed important to send a message that Japan and the European Union were still committed to maintaining an open trading system. When Abe visited Europe in March 2017, he met with German Chancellor Angela Merkel, and both leaders agreed to cooperate to sustain the free-trading system. Abe said, “We have to hoist the flag of free trade high by cooperating with Europe and the United States.... Sealing the Japan–EU EPA will send a symbolic message to the world.”¹⁵³

The third rationale was more practical: to influence other countries’ negotiating behavior. The first motive was that the EU EPA might entice the Trump administration to return to the TPP. Second, and more importantly, the EU EPA was expected to exert pressure on the other members in the TPP-11 negotiation. After signing an interim agreement with the European

¹⁵¹ With the RCEP, the FTA rate would be up an additional 27.6 percent. “FTA/EPA *teiketsukoku tonō bōeki, Nihon yōyaku 3-wari*,” *Nikkei*, August 13, 2017, p. 5.

¹⁵² In December 2017, the Japanese government published the results of an estimate of the economic effects of TPP-11 and the Japan–EU EPA, which were estimated to boost to Japanese GDP by 7.8 trillion yen and 5.2 trillion yen, respectively, and to create 460,000 jobs and 290,000 jobs, respectively. “TPP11 to *Nichiō* EPA, GDP 13-*chōen oshiage, Seifu shisan*,” *Nikkei*, December 21, 2017, p. 5.

¹⁵³ Rieko Miki, “*Han hogoshugi michi kewashi, Nichiō EPA ga shikinseki, Nichidoku shunō kaidan*,” *Nikkei*, March 21, 2017, p. 3.

Union in July 2017, Abe said at a press conference on July 6, 2017, “I expect that EPA (with the EU) to induce discussion toward early entry into force of TPP (-11).”¹⁵⁴ Third, the Japan–EU EPA might influence the course of the RCEP negotiations.¹⁵⁵

Impasse

The EPA negotiations with the European Union hit an impasse in 2016.¹⁵⁶ In March 2013, Japan and the European Union had agreed to start negotiations over an EPA. Initially the self-imposed deadline for the completion of the negotiation was the end of 2015. When Shinzō Abe met with Herman van Rompuy, president of the European Council, and José Manuel Barroso, president of the European Commission, in Brussels on May 7, 2014, they agreed to conclude the EPA negotiation as early as possible. They said they would finish the negotiations by the end of 2015.¹⁵⁷ Visiting Australia to attend the Group of Twenty (G20) trade ministers meeting in July 2014, Toshimitsu Motegi, Minister of Economy, Trade and Industry, met with Karel de Gucht, European Commissioner for Trade, and they set a target finish date for the EPA negotiations for the end of 2015.¹⁵⁸ In March 2015, Prime Minister Abe met with German Chancellor Angela Merkel, who was visiting Japan for the first time in seven years, and they also agreed to target

¹⁵⁴ Yasuo Takeuchi, “TPP11 *kōshō ni hazumi, Nichiō EPA, Nihon GDP 0.29% age mo,*” *Nikkei*, July 7, 2017, p. 5.

¹⁵⁵ Interview, February 27, 2019.

¹⁵⁶ Interview, February 27, 2019.

¹⁵⁷ Kōya Jibiki, “*Nichiō EPA sōki ni daketsu, Shunō ga kakunin, Shushō ‘Rainen mezasu,’*” *Nikkei*, May 8, 2014, p. 1.

¹⁵⁸ Kaori Takahashi, “*‘Rainen chū ni ōsuji gōi,’ Nichiō EPA kakuryō kaidan de icchi,*” *Nikkei*, July 20, 2014, p. 3.

the end of 2015 for the completion of the EPA negotiations.¹⁵⁹ Foreign Minister Kishida and French Foreign Minister Laurent Fabius also agreed on the same target date.¹⁶⁰

The fourteenth round of negotiations took place in Tokyo in December 2015. There was no progress over tariffs, and the negotiators abandoned the goal of reaching agreement by year-end.¹⁶¹ On tariffs, the focus was on autos and dairy products. In the TPP negotiation, Japan had agreed to phase out tariffs on hard cheese such as cheddar, but the EU demanded broadening the scope of tariff eliminations on cheese.¹⁶² Mauro Petriccione, the chief negotiator for the EU, had a press conference on December 17, 2015, and said that reaching an agreement by the end of 2016 had become a priority for the EU.¹⁶³

The end of 2016 became the next deadline. Japan hosted a Group of Seven (G7) summit meeting in Ise-Shima in May 2016, and on the sidelines of the formal sessions, Prime Minister Abe met with Donald Franciszek Tusk (president of the European Council), Jean-Claude Juncker (president of the European Commission), and David Cameron (prime minister of the United Kingdom or UK). They agreed that they would try to reach an agreement on the EPA at an early date in 2016.¹⁶⁴ However, less than a month later, they were taken by surprise when UK voters voted to leave the European Union in a national referendum called by the Cameron administration. Mikio Hayashi, Minister of Economy, admitted that an agreement in principle by

¹⁵⁹ “*Nichidoku renkei tatenaoshi, Merukeru shushō 7-nen buri rainichi, Tai Roshia omowaku icchi,*” *Nikkei*, March 10, 2015, p. 3.

¹⁶⁰ “*Nichiō EPA kōshō wo kasoku, Nichifutsu gaishō ga icchi,*” *Nikkei*, March 15, 2015, p. 2.

¹⁶¹ “*Nichiō EPA kōshō etsunen, Kanzei kyōgi nankō,*” *Nikkei*, December 5, 2015, p. 5.

¹⁶² *Ibid.*

¹⁶³ Manabu Morimoto, “*Nichiō EPA rainen chū gōi ‘Yūsen,’*” *Nikkei*, December 18, 2015, p. 7.

¹⁶⁴ “*Bōeki hogo shugi ni taikō, Ise-shima samitto, EU no tsūshō kyōtei riten kyōchō, Ei no zanryū unagasu nerai,*” *Nikkei*, May 27, 2016, p. 5. Abe met with Tusk and Juncker in Mongolia in July, and they confirmed the same point. Kōya Jibiki, “*Nichiō EPA kōshō shōnenba, Shushō sōki gōi he ketsui, EU daitōryō ra to kaidan,*” *Nikkei*, July 16, 2016, p. 5.

the end of the year might have become difficult given “Brexit,” for the United Kingdom had so far been one of the main protagonists pushing for the Japan–EU EPA.¹⁶⁵ Nevertheless, at a European Council (“summit”) meeting on October 21, 2016, the leaders agreed that they would actively engage in negotiation with a view to reaching a “political” agreement (note the retreat) by the end of the year.¹⁶⁶

Japan and the European Union held chief-negotiator-level negotiation sessions in Tokyo in December, but negotiations hit an impasse. The European Union demanded that Japan reduce or abolish tariffs on wine, pork, and cheese, while Japan asked the European Union to eliminate tariffs on autos and electronic goods. However, there was little progress on these fronts.¹⁶⁷ The negotiators abandoned the idea of completing the negotiations by the end of 2016. Speaking at a press conference, EU chief negotiator Petriccione emphasized that there was considerable progress on pork while suggesting the existence of difficulties with cheese.¹⁶⁸ Foreign Minister Fumio Kishida and Cecilia Malmström, the European Commissioner for Trade, talked on the phone on December 20, 2016, and confirmed having to abandon the year-end deadline.¹⁶⁹

Imai mission

In the meantime, Donald Trump was named the winner of the November 2016 US presidential elections and, following his inauguration in January 2017, withdrew the United

¹⁶⁵ “*Ei EU ridatsu, Nichiō EPA kōshō nennai gōi ni an’un,*” *Nikkei*, June 25, 2016, p. 7.

¹⁶⁶ Manabu Morimoto, “*Fukōsei bōeki taisaku de icchi, Nichiō EPA nennai gōi shiya,*” *Nikkei*, October 22, 2016, p. 7.

¹⁶⁷ “*Nennai no ōwaku gōi muzukashiku, Nichiō EPA kanzei teppai no mizo umarazu,*” *Nikkei*, December 17, 2016, p. 7.

¹⁶⁸ “*Nennai gōi miokuri hyōmei, Nichiō EPA ‘Raigetsu kōshō saikai,’ EU kōshōkan,*” *Nikkei*, December 17, 2016, evening ed., 3.

¹⁶⁹ *Ibid.*

States from the TPP. This affected the Japanese calculus about the EPA with the European Union; it became all the more important to sign an EPA with the European Union as soon as possible, so Abe sent a personal emissary to the European Union. The Japan–EU summit was scheduled for July 2017, and Abe was preparing to reach an agreement at the time of the Japan–EU summit. He dispatched his aide Takaya Imai to Brussels to meet with Jean-Claude Juncker, president of the European Commission on February 24.¹⁷⁰ Imai and the European Commission agreed to aim for an agreement in principle (albeit on “fundamental elements of the EPA”) at the time of Abe’s visit to Europe for a G20 meeting in Germany.¹⁷¹

The EU shared the same goal of accelerating the EPA negotiations with Japan. The leaders of EU member states met in Brussels on March 9, and they agreed to expedite the negotiations on the EPA because of the busy political calendar in Europe in 2017.¹⁷²

Changing the wording

The Abe government also made a minor change in its policy with regard to the Japan–EU EPA: substituting words for the interim agreement. Traditionally, countries reach an “agreement in principle” before they finally reach an agreement to be signed. An agreement in principle, however, usually means an agreement that is almost complete before it is subjected to legal vetting. However, in late 2016, after Trump was elected, the negotiation had not advanced

¹⁷⁰ Yasuo Takeuchi, Jun Yamazaki, and Manabu Morimoto, “*Nichiō EPA ōwaku gōi no butaiura, Kigen kugitte seiji kecchaku, Shushō ‘Nantoka 7-gatsu ni,’ EU kikoku chokuzen made sesshō,*” *Nikkei*, July 9, 2017, P. 4. Imai actually met the *chef de cabinet*, Martin Selmayr, for Jean-Claude Juncker. Interview, February 27, 2019.

¹⁷¹ Yasuo Takeuchi, Jun Yamazaki, and Manabu Morimoto, “*Nichiō EPA ōwaku gōi no butaiura, Kigen kugitte seiji kecchaku, Shushō ‘Nantoka 7-gatsu ni,’ EU kikoku chokuzen made sesshō,*” *Nikkei*, op. cit. The European Commission also wanted Japan to appoint Ambassador Yōichi Suzuki as Japanese chief negotiator because he was already fully informed about the scope of the EPA. Interview, February 27, 2019.

¹⁷² Manabu Morimoto, “*EU hogoshugi taikō de icchi, Shunō kaigi, Nichiō EPA kōshō kasoku he,*” *Nikkei*, March 10, 2017, evening ed., p. 3.

enough to realistically reach such an agreement by July 2017. Therefore, the Abe government slightly lowered the bar by substituting a different word (*ōwaku gōi*) for an “agreement in principle” (*ōsuji gōi*).¹⁷³ *Ōwaku gōi* was a political agreement on the fundamental elements of the agreement but not quite as complete as an agreement in principle.¹⁷⁴ On March 21, 2017, Abe met with Tusk and Juncker in Brussels and confirmed that they would reach an *ōwaku gōi* of the EPA by the end of 2017.¹⁷⁵

At this point, the major remaining issues were tariffs on cheese, beef, and wine. The European Union wanted tariff cuts on soft cheeses such as mozzarella and Camembert, but Japan was taking a hard line because Japanese tariffs for these categories of cheese had been retained in the TPP. As for beef, the EU share was still small in the Japanese markets, but some export countries, such as Ireland, were enthusiastic about exporting to Japan.¹⁷⁶ On wine, the European Union wanted an early phase-out of tariffs. On rules, Japan wanted investor-state dispute settlement (ISDS), while the European Union proposed to set up a permanent investment court

¹⁷³ “Q&A: ‘*Ōwaku*’ *gōi* ‘*ōsuji*’ *gōi* to *dō chigau?* *Komakai kadai nokosu jōtai*,” *Nikkei*, July 7, 2017, p. 3. The word “*ōwaku gōi*” was invented by a high-ranking official in the Foreign Ministry.

¹⁷⁴ In December 2016, the Japanese government started using the word *ōwaku gōi*, but at that point it was still translated as “agreement in principle.” See Ministry of Foreign Affairs of Japan (MOFA), “*Kishida gaimu daijin to Marumusutorōmu ōshū iin (bōeki tantō) tonō denwa kaidan*,” 20 December 2016, www.mofa.go.jp/mofaj/press/release/press4_004087.html. Accessed February 8, 2019. “Telephone Talk between Foreign Minister Kishida and Ms. Cecilia Malmström, European Commissioner for Trade,” 20 December 2016, www.mofa.go.jp/press/release/press3e_000080.html. Accessed February 8, 2019. It was not until February 2017 that the translation became “agreement on fundamental elements.” MOFA, “*Kishida gaimu daijin to Marumusutorōmu ōshū iin (bōeki tantō) tonō chūshokukai*,” 17 February 2017, www.mofa.go.jp/mofaj/ecm/ie/page4_002804.html. Accessed February 8, 2019. “Foreign Minister Fumio Kishida Held Working Lunch with Dr. Cecilia Malmström, European Commissioner for Trade,” 17 February 2017, www.mofa.go.jp/ecm/ie/page1e_000133.html. Accessed February 8, 2019. However, the translation became “agreement in principle” again in July 2017. MOFA, “*Kishida gaimu daijin to Marumusutorōmu ōshū iin (bōeki tantō) tonō kaidan (Chūshokukai)*,” 5 July 2017, www.mofa.go.jp/mofaj/ecm/ie/page4_003105.html. Accessed February 9, 2019. “Foreign Minister Fumio Kishida Holds a Working Lunch with Dr. Cecilia Malmström, European Commissioner for Trade,” 5 July 2017, www.mofa.go.jp/ecm/ie/page4e_000631.html. Accessed February 9, 2019.

¹⁷⁵ Rieko Miki, “*Nennai ni ōwaku gōi kakunin, Nichiō EPA kanzei kōshō taibei niramū*,” *Nikkei*, March 22, 2017, p. 4.

¹⁷⁶ “*Nichiō EPA nao tairitsu ten, Kanzei bun’ya chīzu, gyūniku, wain*,” *Nikkei*, June 13, 2017, p. 5.

called an *investment court system* (ICS) to insulate government regulations from interference by multinationals.¹⁷⁷ The Japanese government decided to make concessions on European pork. For pork, which is 450 yen or more per kilogram, they were willing to cut tariffs. With respect to the TPP, the Japanese government had promised to cut tariffs on this class of pork to 50 yen by the tenth year. However, Japan wanted to retain tariffs on pork worth more than 500 yen per kilogram.¹⁷⁸

By this time, Japan and the European Union aimed at reaching an “agreement on fundamental elements” by early July 2017. Therefore, the last-minute negotiations started in Tokyo on June 13. The European Union had abolished production quotas on milk, and they wanted to increase exports of dairy products. Japan wanted EU tariffs on autos abolished.¹⁷⁹

The European Union enumerated its concessions: the European Union offered to eliminate tariffs on over 90 percent of auto parts products from Japan; the current EU tariffs ranged from 3–4 percent. On autos, with the current EU tariff at 10 percent, Japan and the EU continued to bicker over the length of the phase-out period. Although the European Union continued to insist on a period of over ten years, it was also signaling that this could be shortened to seven years.¹⁸⁰ Korean exports of autos and Korean production of autos in the EU area had been increasing steadily since the FTA between Korea and the European Union entered into

¹⁷⁷ Ibid.

¹⁷⁸ “*Butaniku no kanzei sage he, Nichiō EPA kōshō TPP nami ni*,” *Nikkei*, June 13, 2017, p. 1.

¹⁷⁹ “*Nōsanhin kanzei de saishū kōbō, Nichiō EPA shuseki kōshōkan kaigō hajimaru, 27-bunya chū 13-bunya ha kecchaku*,” *Nikkei*, June 14, 2017, p. 3.

¹⁸⁰ “*Kuruma buhin 9-wari de sokuji teppai, EU tainichi kanzei de jōho, EPA kōshō ōzume chīzu nado*,” *Nikkei*, June 16, 2017, p. 5.

force. Meanwhile, exports of Japanese autos to the European Union had stagnated: Japan had sold over 700,000 cars there in 2009, but the sale was below the 600,000 figure in 2016.¹⁸¹

The European Union and Japan decided to have ministerial-level talks at the end of June. Foreign Minister Kishida confirmed this on the phone with Malmström on June 21.¹⁸² In advance of the ministerial-level talks, the Japanese government started considering ways in which tariffs on soft cheese could be reduced. One way was to subdivide the product classes more finely, so as to minimize the damages to domestic producers.¹⁸³ Malmström directed chief negotiator Petriccione to stay in Tokyo as long as necessary to reach an agreement.¹⁸⁴

Before the ministerial-level meetings, both sides had agreed on the following: Japan had agreed to abolish or significantly reduce tariffs on wine, pork, and pasta; the European Union had agreed to eliminate tariffs on auto parts and electronic products. Regarding rules, it had agreed on the simplification of customs procedures, harmonization of standards, and assistance to small and medium industries to ease entry into each other's markets.¹⁸⁵ On the phase-out period for Japanese tariffs on wine, the Japanese government decided to eliminate them at the time of the EPA's entry into force instead of prolonging the phase-out; the wine price would be reduced by 93 yen per bottle as a result.¹⁸⁶

Malmström and Phil Hogan, the European Commissioner for Agriculture and Rural Development, arrived in Tokyo on June 29 to meet with Kishida and Yamamoto from June 30

¹⁸¹ “*Nichiō EPA tai EU yushutsu de kōbō, Kuruma kanzei kankoku wo ishiki, Teppai jiki nao mizo fukaku, Kagi nigiru nōsanhin ha kōchaku,*” *Nikkei*, June 25, 2017, p. 5.

¹⁸² “*Nichiō EPA kakuryō kyū de tsume, Nyūseihin kuruma kanzei kecchaku saguru, Nōshō ōwaku gōi he raishū hō’ō,*” *Nikkei*, June 22, 2017, p. 5.

¹⁸³ “*Chīzu ichibu de kanzei teppai, Nichiō EPA seifu ga jōho an,*” *Nikkei*, June 23, 2017, p. 4.

¹⁸⁴ Manabu Morimoto, “*Ōsuji gōi ‘Mōsugu,’ Nichiō EPA meguri ōshū iin,*” *Nikkei*, June 27, 2017, p. 5.

¹⁸⁵ “*Ōwaku gōi he chīzu sainankan, Nichiō EPA kyō kara kakuryō kyū kaigō, Dakyōten meguri tsunahiki,*” *Nikkei*, June 30, 2017, p. 5.

¹⁸⁶ “*Wain kanzei sokuji teppai he, Nichiō EPA kyō kara kakuryō kaigō,*” *Nikkei*, June 30, 2017, p. 1.

onward. Kishida and Malmström met and negotiated in Tokyo on June 30. Hogan and Yūji Yamamoto, Japan's Minister of Agriculture, also met on the same day.¹⁸⁷ The European Union pressed Japan to set a tariff rate quota for European beef.¹⁸⁸ On June 30, the European Union was still demanding a high target on cheese, expanding the quota volume by 8 percent per year.¹⁸⁹ The negotiations continued on July 1.¹⁹⁰ Japan continued to insist on a seven-year phase-out for auto tariffs. In return, the European Union clung to its demand on eliminating cheese tariffs.¹⁹¹ The European Union finally softened its stance on cheese in return for a Japanese concession on beef at 8:20 p.m.¹⁹²—just a few minutes before Hogan's scheduled departure time.¹⁹³ The European Union also conceded on the phase-out period for the auto tariffs.¹⁹⁴ Kishida flew to Belgium to continue negotiation on July 5.¹⁹⁵

Kishida and Malmström met on July 5 and reached an agreement.¹⁹⁶ Given the agreement in Tokyo on July 1, their meeting was just a confirmation of the agreement in Tokyo, and the meeting lasted only an hour.¹⁹⁷ At a press conference, Kishida said that they had made various efforts at many levels and could narrowly make a political judgment.¹⁹⁸ On July 6, the Japan–EU

¹⁸⁷ “*Tonai de Nichiō EPA kōshō, Kakuryō kyū de tsume no kyōgi, Kishida gaishō, ‘Isshin ittai tsuzuku,’*” *Nikkei*, July 1, 2017, p. 5.

¹⁸⁸ *Ibid.*

¹⁸⁹ Yasuo Takeuchi, Jun Yamazaki, and Manabu Morimoto, “*Nichiō EPA ōwaku gōi no butaiura, Kigen kugitte seiji kecchaku, Shushō ‘Nantoka 7-gatsu ni,’ EU kikoku chokuzen made sesshō,*” *Nikkei*, July 9, 2017, p. 4.

¹⁹⁰ “*Nichiō EPA kyōgi keizoku, Ōwaku gōi he shūnai tsume,*” *Nikkei*, July 2, 2017, p. 3.

¹⁹¹ “*Ōshū de asu kakuryō kyōgi, Shunō kaidan de gōi mezasu, Nichiō EPA,*” *Nikkei*, July 4, 2017, p. 5.

¹⁹² Takeuchi, Yamazaki, and Morimoto, “*Nichiō EPA ōwaku gōi no butaiura,*” *Nikkei*, *op. cit.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ “*Ōshū de asu kakuryō kyōgi, Shunō kaidan de gōi mezasu, Nichiō EPA,*” *Nikkei*, *op. cit.*

¹⁹⁶ Aruji Hatano, “*Nichiō EPA ōwaku gōi, Kakuryō kyū kyōgi shunō kyō sengen,*” *Nikkei*, July 6, 2017, p. 1.

¹⁹⁷ Takeuchi, Yamazaki, and Morimoto, “*Nichiō EPA ōwaku gōi no butaiura,*” *Nikkei*, *op. cit.*

¹⁹⁸ “*Nichiō jiyū bōeki jūshi shimesu, Chīzu yunyū waku 15-nen de muzei, Kokunai nōka shien he shin soshiki,*” *Nikkei*, July 6, 2017, p. 3.

summit meeting was held in Brussels, and the leaders announced that they had reached an “agreement in principle on the main elements” of an EPA.¹⁹⁹

In the end, the change of wording from *ōsuji gōi* to *ōwaku gōi* did not matter much because all political-level decisions had to be made by July 2017. Otherwise, putting it into effect before Brexit (initially scheduled for March 29, 2019) would have become impossible.²⁰⁰

ISDS

After the July 2017 agreement, a major sticking point was the investment dispute settlement: Japan wanted a traditional investor-state dispute settlement (ISDS) system, while the European Union wanted a permanent court on investment or an investment court system (ICS).

The EU started arguing for establishment of an ICS in 2015. In May 2017, the European Court of Justice ruled that on the EU–Singapore FTA, ratification by all member states would be necessary to include ISDS, and the European Union decided to separate the investment dispute portion from the Singapore FTA. A European parliament source said that for the European Union, the incorporation of ISDS into the EPA would be unacceptable.²⁰¹ Thus, the only

¹⁹⁹ Kōya Jibiki and Yasuo Takeuchi, “*Nichiō EPA 19-nen hakkō he, Shunō ōwaku gōi wo sengen, Jiyū bōeki ken’in,*” *Nikkei*, July 7, 2017, p. 1. European Commission, “EU–Japan Economic Partnership Agreement,” July 6, 2017, www.ec.europa.eu/commission/news/eu-japan-economic-partnership-agreement-2017-jul-06_en. Accessed January 22, 2018. The summit joint statement simply refers to “agreement in principle.” See European Commission, “24th EU–Japan Summit Joint Statement,” 6 July 2017, www.europa.eu/rapid/press-release_STATEMENT-17-1920_en.htm. Accessed February 8, 2019.

²⁰⁰ Interview, February 27, 2019. The United Kingdom was supposed to comply with all the EU treaties with third-party countries as long as they had entered into force before March 29, 2019.

²⁰¹ Shigeru Seno, “*Ōshu gikai no tantō giin Shiruba Pereira shi: Nichiō EPA ‘Tōshi’ bunri mo, Kyōgi nankō no funsō kaiketsu rūru, Saishū gōi wo yūsen,*” *Nikkei*, September 26, 2017, p. 5.

possibility to reach a final agreement would be to carve out the investment dispute portion of the agreement.²⁰²

On November 15, 2017, Malmström talked with Japan’s Foreign Minister Tarō Kōno and Economy Minister Hiroshige Sekō on the phone, and the three decided to separate the investment dispute issue from the EPA to reach a final agreement by the end of the year.²⁰³ On December 8, 2017, the European Union and Japan reached a final agreement on the EPA. Abe and Juncker talked on the phone on the evening of December 8, and they decided that the investment dispute issue would be separated from the agreement.²⁰⁴ However, Yōichi Suzuki, chief negotiator for Japan, said that clear guidelines had not been decided on the investment dispute issue.²⁰⁵ While the possibility of including it in the final version of the EPA had not been ruled out, priority would be given to giving effect to the agreement by the spring of 2019, even if that meant separating out the investment agreement from the EPA, he said.²⁰⁶ Finally, on February 28, 2018, the European Union and Japan decided to separate out the investment dispute arbitration portion from the EPA; they would give priority to the tariffs and rules portions of the EPA and hurry to finish up the EPA so that it would be ready for signature in the summer of 2018.²⁰⁷ The EPA was finally signed in Tokyo on July 17, 2018.

²⁰² Natsuko Segawa, “*Nichiō EPA oriaenu funsō kaiketsu seido, Taiō tōshi nukenu toge, ‘Uttaerareru gawa’ EU migamae (Shinsō Shinsō)*,” *Nikkei*, January 17, 2018, p. 2.

²⁰³ “*Nichiō EPA ‘Nennai’ kakunin, Kakuryō ga denwa kyōgi 19-nen hakkō mezasu*,” *Nikkei*, November 16, 2017, p. 4.

²⁰⁴ “*Nichiō EPA kōshō daketsu, Kanzei teppai 19-nen hakkō mezasu*,” *Nikkei*, December 9, 2017, p. 1.

²⁰⁵ Manabu Morimoto, “*Nichiō EPA daketsu ‘Igi okii,’ Tōshi bunya ha raishun handan, Shuseki kōshōkan*,” *Nikkei*, December 9, 2017, evening ed., p. 1.

²⁰⁶ *Ibid.*

²⁰⁷ Manabu Morimoto, “*Nichiō EPA, Tōshi bunya nuki de chōsei, Kanzei rūru hakkō yūsen*,” *Nikkei*, March 1, 2018, evening ed., p. 3

US reactions

The Trump administration did not take direct action on the Japan–EU EPA; it neither endorsed nor frowned upon the agreement. Thus, it did not affect the course of Japan–EU negotiations. However, the Japan–EU EPA may have indirectly affected subsequent US actions. For example, the US pork industry was worried about its competitiveness in the Japanese market, as a bilateral trade deal with Japan topped the list of trade priorities for the pork industry, according to the National Pork Producers Council (NPPC). Executives from the council had told reporters more than a year earlier, on April 6, 2017, that a US–Japan deal was vital for pork exports. “The European Union is being extremely aggressive in our own backyard,” NPPC President Ken Maschhoff said. “The president can’t allow them to get in there (Japan) ahead of us.”²⁰⁸ Thus, the signing of the EU EPA gave the Trump administration a greater incentive to negotiate a bilateral FTA with Japan as soon as possible.

Domestic constraints

As with TPP-11, the most important domestic constraint on Japan to negotiate an EPA with the European Union was again the opposition from the farm lobby. The Abe government’s response to this problem was the same as with the TPP-11: domestic compensation. In the summer of 2017, in advance of the agreement in principle, the LDP started preparing countermeasures for the Japan–EU EPA. The LDP set up headquarters on countermeasures on June 9, 2017, placing five working groups under the auspices of the headquarters.²⁰⁹ The LDP headquarters had discussions on June 16, and some participants demanded that agriculture not be

²⁰⁸ “Pork Industry Keen on a Bilateral Trade Deal with Japan,” *Inside U.S. Trade*, April 6, 2017.

²⁰⁹ “*Jimin tsukinai ni nōka shiensaku, Nichiō EPA he jinarashi, Chīzu butaniku no hoshō shōten*,” *Nikkei*, June 15, 2017, p. 4.

sacrificed for the sake of agreement.²¹⁰ The working group on agricultural products also met on June 20.²¹¹ At a July 4 headquarters meeting, Policy Affairs Research Council (PARC) Chairman Toshimitsu Motegi promised to provide ample assistance to farmers should the EPA be agreed to.²¹² The LDP convened another EPA countermeasures headquarters meeting on July 21.²¹³

The government started coordinating with the ruling coalition about including agricultural assistance in the supplementary budget of fiscal year (FY) 2017. The size of the compensation would be 300 billion yen.²¹⁴ On November 24, 2017, the government issued outlines of the countermeasures for TPP-11 and the Japan–EU EPA. On the export side, the government decided to aim at increasing the volume of agricultural and food products to be exported from 750 billion yen in 2016 to 1 trillion by 2019. On the defensive side, the government would contemplate introducing new equipment and skills training. Loss compensation for pork and beef producers would be raised from 80 percent of losses to 90 percent.²¹⁵ The government included a 317-billion-yen agricultural assistance package as countermeasures for the TPP and the EPA in the supplementary budget of FY 2017.²¹⁶

“Proactive state”?

Japan’s FTA strategy is a complex topic, and it is beyond the scope of this paper to fully explain its nature. In the context of discussions of its being a “reactive state,” one could argue

²¹⁰ “*Nōgyō kanzei sage kensei, Nichiō EPA kōshō de jimin,*” *Nikkei*, June 16, 2017, evening ed., p. 3.

²¹¹ “*Nichiō EPA kōshō nōsanhin de yōbō he, Jimin kanzei sage kensei,*” *Nikkei*, June 21, 2017, p. 5.

²¹² “*Nichiō EPA meguri nōka shien wo kentō, Jimin taisaku honbu,*” *Nikkei*, July 5, 2017, p. 4.

²¹³ “*Nichiō EPA taisaku honbu kentō, Seifu yotō,*” *Nikkei*, July 21, 2017, p. 5.

²¹⁴ *Ibid.*

²¹⁵ “*Nōgyō shien kōshu ryō niramī, TPP11 Nichiō EPA taisaku de taikō, Yushutsu 1-chōen nerau, Chīzu setsubi dōnyū,*” *Nikkei*, *op. cit.*

²¹⁶ “*Hosei ni nōgyō taisaku 3170-okuen, Nichiō EPA nado gōi uke,*” *Nikkei*, December 15, 2017, p. 4.

that Japan was “reactive” in the early stages of its evolving FTA strategy, because the first agreements that Japan negotiated, such as the FTAs with Singapore, South Korea, and Mexico, were all suggested by those partner states. Eventually, Japan became more proactive, however.

As far as the Japan–EU EPA was concerned, Japan was more “proactive” overall in comparison with the European Union, in the sense that Japan was more enthusiastic about negotiating it. It was only in the aftermath of the East Japan Earthquake that the European Union became more forthcoming about the EPA with Japan.²¹⁷

As for the acceleration of the EPA negotiation from January 2017 onward, both Japan and the EU were proactive²¹⁸; the acceleration of EPA talks was only possible because the EU and Japanese interests converged in the new era of protectionism and populism when the world trading system was under increasing strain.

Coping with Section 232

A new development shook the world trading system in the second year of the Trump administration: the imposition of Section 232 tariffs on steel and aluminum, as well as the start

²¹⁷ On March 11, 2011, the Great East Japan Earthquake hit the Tohoku region of Japan and caused enormous economic damage in wide areas of eastern Japan. The Japanese government henceforth began to use the post-earthquake reconstruction as a rationale for moving ahead with the Japan–EU EPA. Foreign Minister Takeaki Matsumoto, meeting in Berlin with German Foreign Minister Guido Westerwelle on April 30, 2011, said, “We need progress in starting EPA negotiations in light of the reconstruction after the earthquake damages.” Westerwelle supported the Japanese position on the Japan–EU EPA. Mikio Sugano, “*Nichiō EPA zenshin ni kitai, Nichidoku gaishō kaidan*,” *Nikkei*, May 1, 2011, p. 4.

²¹⁸ The European Union’s motives were multifarious, and it is beyond the scope of this paper to clarify them all. First, they worried deeply about Brexit, and to reinforce the *raison d’être* of the European Union, obtaining tangible results in trade was important. Second, the European Union was also in a hurry because elections for the European Parliament were scheduled for May 2019. The term of Jean-Claude Juncker would end in October 2019. The Japan–EU EPA would be one of the most important legacies of the Juncker Commission. Interview, February 28, 2019.

of Section 232 investigations into auto imports. Japan had to cope with these challenges in a timely manner. While Tokyo “reacted” to metal tariffs in a cautious and restrained manner, it was more aggressive on autos. In the end, however, as a result of the threat of auto tariffs, the Abe government acceded to US pressure by agreeing to start TAG negotiations. This section will concentrate on Section 232 tariffs on metals; the TAG negotiation will be the subject of the next section.

Policy challenges

One of the unique features of the Trump administration’s trade policy has been its repeated resorts to a rarely used provision called Section 232 of the Trade Expansion Act of 1962. This provision gives a US president the authority to restrict certain imports if they would impair the national security of the United States. The Trump administration chose to interpret the phrase “national security” so broadly that imports from security allies could pose a national security threat.

The Trump administration started Section 232 investigations into steel and aluminum imports as early as March 2017 and intended to take action within three months. However, the internal division—especially objections from the Defense Department—delayed the process considerably; hence, the United States did not finally impose tariffs until March 23, 2018.

On March 1, 2018, Trump said that the imports of steel and aluminum impaired US national security and therefore the United States would restrict those imports by levying

25 percent tariffs on steel and 10 percent tariffs on aluminum.²¹⁹ For Japan, a US ally, this was particularly a big shock, because Tokyo had always operated under the assumption that it would be exempt from Section 232 tariffs, which had been imposed ostensibly for national security reasons.

The Japanese struggled with the Section 232 tariffs, not only because the tariffs themselves burdened Japanese exports of these metals, but also because of the coercive intent behind the tariffs. Tokyo knew full well that the tariffs on steel were a US strategy to coerce other countries. For instance, Trump said in March 2018, “If we could make a deal with Canada and Mexico on NAFTA, there is no reason to impose (steel) tariffs on them.” For Japan, the coercive intent was to make Japan come to the negotiating table for a bilateral FTA.

Japan’s response

The Japanese government took a multifaceted strategy to cope with the Section 232 tariffs on steel and aluminum: (1) it first asked the Trump administration to exclude Japan from Section 232 tariffs altogether; (2) after this request was denied, Japan concentrated on gaining product-by-product exclusions; (3) it continued to try to fend off US pressure for a bilateral FTA; (4) in coordination with others, it rebuked the tariffs; and (5) it made a public notification of its

²¹⁹ Submitted to the White House were these reports: US Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effects of Imports of Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, January 11, 2018, www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf. Accessed February 13, 2019; US Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effects of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, January 17, 2018, www.commerce.gov/sites/default/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf. Accessed February 13, 2019.

intent to retaliate but did not retaliate immediately. It did not file a complaint at the WTO, although many other countries did.

Pleading for exemption

The United States was planning to exempt some countries from its Section 232 tariffs, and so it seemed natural for Japan to ask the Trump administration to exclude its exports entirely. In Brussels, Japan's Minister of Economy, Trade and Industry Sekō had talks with US Trade Representative Lighthizer on March 10, 2018, at which Sekō argued that steel and aluminum exports from allies such as Japan would not have any adverse influence on US security, arguing for exemptions from the planned Section 232 tariffs.²²⁰ On March 22, while signing the Section 301 measures on China, Trump said, "Japan's Prime Minister Abe is smiling, saying that 'It's unbelievable that we could dupe the United States for such a long time.' Those days are over."²²¹ On March 23, Section 232 tariffs on steel and aluminum were imposed. While the European Union, Canada, and several other countries were exempted, Japan and China were not.²²²

Prime Minister Abe visited the United States in April, and Abe and Trump met on April 17–18, 2018, at Trump's personal property, the Mar-a-Lago resort in Florida. At that meeting, Abe asked Trump to exempt Japan from the Section 232 tariffs on steel and aluminum, arguing that "there is no way in which Japanese steel and aluminum would impair the national security of

²²⁰ Manabu Morimoto, "*Bei ni yun'yū seigen no tekiyō jogai yōkyū, Keisanshō kakuryō kaidan de,*" *Nikkei*, March 11, 2018, p. 3.

²²¹ "*Tainichi atsuryoku yunyū seigen hatsudō, Torampu shi 'Mō damasarenai,' FTA kōshō niramū,*" *Nikkei*, March 24, 2018, p. 3.

²²² Taisei Toriyama, "*Tekkō arumi yunyū seigen hatsudō, Bei Nihon mo taishō,*" *Nikkei*, March 23, 2017, evening ed., p. 1.

the United States.”²²³ Trump, however, did not agree to exempt Japan from the Section 232 steel tariffs, and was still trying to use them as leverage. Trump said on April 18 that Japan could win an exclusion from new Section 232 tariffs on steel and aluminum if the United States and Japan could strike a trade deal. “If we can come to an arrangement on a new deal between the United States and Japan, that would certainly be something we would discuss,” he said, adding he would “look forward” to “tak[ing] them off.”²²⁴

Meeting Treasury Secretary Steven Mnuchin in Whistler, British Columbia, Canada, on May 31, 2018, Tarō Asō also expressed Japan’s concerns about US trade restrictions on steel and aluminum imports, asking once again to exempt Japan from the Section 232 tariffs.²²⁵

Product-by-product exclusions

After it became clear that the Trump administration would not exclude Japan from the metals tariffs, the Japanese exporters of steel and aluminum, with encouragement from the government, concentrated their efforts on winning product-by-product exclusions.²²⁶ The Commerce Department instituted a procedure by which concerned parties could request the exemption of certain products from the tariffs if they were not available from American sources. The Commerce Department announced the first determination on product exclusion requests on June 20, 2018. Wilbur Ross said in a statement that out of 98 requests, it had granted 42, denying

²²³ Yasuo Takeuchi, “*Tsūshō kyōtei hedatari senmei, Abe shushō ‘Saizen ha TPP,’ Torampu shi ‘Nikokukan ga yoi,’*” *Nikkei*, April 19, 2018, evening ed., p. 3.

²²⁴ Dan Dupont and Jack Caporal, “Trump, Abe Commit to ‘Intensify’ Talks on Trade ‘Deals,’” *Inside U.S. Trade*, vol. 36, no. 16, April 20, 2018.

²²⁵ Ryōhei Yasojima, “*Bōeki masatsu ni kenen hyōmei, Asō shi Bei zaimu chōkan to kaidan,*” *Nikkei*, June 1, 2018, evening ed., p. 3.

²²⁶ Interview, February 25, 2019.

56.²²⁷ As of February 2019, about 40 percent of Japanese requests for steel tariff exclusions and about 80 percent of requests for aluminum exclusions had been granted.²²⁸

Fending off US coercion

As has already been covered, there was a coercive intent lurking behind the Section 232 tariffs. Therefore, it was rational for Japan to take a tough stance, at least initially, to fend off US pressure. The best person to characterize this response was Deputy Prime Minister Tarō Asō, who made a comment on March 29, 2018, after Japan was left off a list of countries excluded from tariffs on steel and aluminum.²²⁹ “What’s most important is that we don’t allow the United States to use the tariffs to draw Japan into bilateral talks on a free trade agreement,” Asō told Japanese lawmakers, according to the Japanese broadcaster NHK.

Cooperation with third countries

Japan also joined international criticism of the US tariffs. When the United States announced the imminent imposition of Section 232 tariffs in March 2018, Kōsei Shindō, Chairman of the Japan Iron and Steel Federation, immediately sent a letter to US President Trump, saying that the tariff increase would be “a market-distorting measure which would have serious harmful effects not only on steel exports from Japan but also on steel trade

²²⁷ “Ross: Commerce Announcing First Steel Product Exclusions from 232 Tariffs,” *Inside U.S. Trade*, June 20, 2018. Products from seven Japanese companies were excluded in this first round of decisions. JETRO, “*Shōmushō tekkō kanzei de 42 ken no seihin betsu tekiyō jogai wo happyō*,” *JETRO Bijinesu Tanshin*, June 27, 2018, www.jetro.go.jp/biznews/2018/06/144bf6fdb3d987ef.html. Accessed February 11, 2019.

²²⁸ Sōyō Ōyanagi, “*Bei no yunyū seigen sochi kara 1 nen, tekkō 4 wari arumi 8 wari ga tekiyō jogai*,” *SankeiBiz*, March 22, 2019, www.sankeibiz.jp/macro/print/190322/mca1903221431007-c.htm. Accessed April 22, 2019.

²²⁹ “Hit with Section 232 Tariffs, Japan Pans Bilateral with the U.S.,” *Inside U.S. Trade*, vol. 36, no. 13, March 30, 2018.

worldwide.”²³⁰ Such unilateral calls for restraint fell on deaf ears. Then, Economy Minister Sekō attended a trilateral (United States–European Union–Japan) ministerial meeting in Paris on May 31, 2018. On that occasion, Japan and the European Union issued a joint statement denouncing the United States’ Section 232 tariffs, “which [Japan and the European Union considered] not justified under national security grounds.”²³¹ The G7 finance ministers’ meeting also issued a chair’s statement denouncing the US tariffs, saying that “many [G7 officials] highlighted the negative impact of unilateral trade actions by the United States.”²³²

WTO strategy

In the framework of the WTO, Japan took a restrained approach. First, it notified its intent to retaliate or “rebalance,” but it said it would retaliate only in 2021 or after the WTO ruled that the US measures were incompatible with the WTO; Japan did not resort to immediate retaliation. In contrast, some major trading partners of the United States, namely Canada, China, the European Union, and Mexico, all retaliated immediately. Second, Japan did not file a complaint against the United States over the Section 232 tariffs.²³³ In contrast, all the other major

²³⁰ Japan Iron and Steel Federation, “Submission of Comments: Release of the Section 232 Report on Steel by the Department of Commerce,” March 2, 2018, www.jisf.or.jp/news/topics/documents/20180302JISFLetter.pdf. Accessed February 11, 2019.

²³¹ European Commission, “EU–Japan Joint Statement,” 31 May 2018, www.trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156907.pdf. Accessed February 11, 2019. Tōgo Shiraishi, “*Nichiō bei yunyū seigen wo hihan, Kyōdō seimei ‘Ampo de seitōka dekizu,*” *Nikkei*, June 1, 2018, p. 5.

²³² G7 Information Centre, “Chair’s Summary: G7 Finance Ministers and Central Bank Governors’ Meeting,” Whistler, British Columbia, June 2, 2018, www.g7.utoronto.ca/finance/180602-summary.html. Accessed February 11, 2019. Takeshi Kawanami and Ryōhei Yasojima, “G7 *bōeki meguri kiretsu senmei, Gichō ‘Bei ni kenen ya shitsubō,*” *Nikkei*, June 4, 2018, p. 1.

²³³ Japan studied the possibility of filing a complaint with the WTO, but after considering various factors, such as the size of damages on Japanese export, the impact on overall US–Japan relations, and the context of cooperation with the United States at the WTO, decided not to file such a complaint. Interview, February 25, 2019.

trading partners of the United States (again, Canada, China, the European Union, and Mexico), filed complaints.

It is beyond the scope of the present paper to explain all these differences in response. It is important to note, however, that any combination of retaliation (immediate retaliation, retaliation in the distant future, or no retaliation) and litigation (litigation or no litigation) was conceivable and reasonable depending on the specific circumstances that countries found themselves in. Tokyo must have wanted to show a firm stance by criticizing the lack of justifiability of the Section 232 tariffs, but as a friendly ally of the United States, it did not want to antagonize the United States by taking excessively harsh countermeasures.

On May 18, 2018, Japan filed with the WTO a notification of its intent to withdraw concessions equal to the amount of trade affected by Section 232 tariffs on steel and aluminum. Japan's WTO notification said that the 25 percent tariff on steel and 10 percent tariff on aluminum equated to roughly \$440 million in additional duty collection on \$1.85 billion worth of affected trade. However, for the portion of trade that was based on an absolute increase in trade, the retaliation would not happen until 2021 or until the WTO found that the measures were illegal under WTO rules.²³⁴

In contrast, practically all the other major countries immediately retaliated against the United States: Canada, with \$12.6 billion worth of US goods, going into effect on July 1,

²³⁴ WTO, Council for Trade in Goods, Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards: Japan, G/L/1240, G/SG/N/12/JPN/4 (22 May 2018); Isabelle Hoagland, "Japan to Withdraw WTO Concessions in Response to Section 232 Tariffs," *Inside U.S. Trade*, vol. 36, no. 21, May 25, 2018.

2018²³⁵; China, with \$2.7 billion of US goods (2014 value) and 128 US products, going into effect on April 2, 2018²³⁶; the European Union, with \$3.3 billion of US goods in June²³⁷; Mexico, with retaliation levied on June 5; Russia, with 25–30 percent tariffs on US exports, in effect August 5²³⁸; Turkey, with \$1.8 billion of US goods, in effect June 18²³⁹; and with some other countries imposing tariffs on imports from the United States in retaliation. For its part, the United States requested the establishment of WTO panels on these retaliatory measures by Canada,

²³⁵ Anshu Siripurapu, “Canada Finalizes Retaliatory Tariffs on \$12.6 Billion Worth of U.S. Goods,” *Inside U.S. Trade*, June 28, 2018.

²³⁶ WTO, Council for Trade in Goods, Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Article 8.2 of the Agreement on Safeguards: China, G/L/1218, G/SG/N/12/CHN/1 (3 April 2018).

²³⁷ Isabelle Hoagland, “European Commission President Heading to the U.S. with a ‘Mandate’ to Talk Trade,” *Inside U.S. Trade*, June 29, 2018; WTO, Council for Trade in Goods, Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards: European Union, G/L/1237, G/SG/N/12/EU/1 (18 May 2018). Furthermore, on July 19, 2018, the European Union imposed provisional tariff-rate quotas on steel imports to counter diversion into the EU market caused by US Section 232 tariffs. Brett Fortnam, “Citing Diversions Stemming from U.S. Tariffs, EU Imposes TRQs for Steel,” *Inside U.S. Trade*, July 18, 2018. The European Union turned this provisional measure into a definite one on February 1, 2019. See WTO, Committee on Safeguards, Notification under Article 12.4 of the Agreement on Safeguards before Taking a Provisional Safeguard Measure Referred to in Article 6: Notification Pursuant to Article 9, Footnote 2 of the Agreement on Safeguards (Certain Steel Products): European Union, G/SG/N/7/EU/1, G/SG/N/11/EU/1 (18 July 2018); WTO, Committee on Safeguards, Notification under Article 12.1(B) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports: Notification Pursuant to Article 12.1(C) of the Agreement on Safeguards: Notification Pursuant to Article 9, Footnote 2 of the Agreement on Safeguards: European Union (Certain Steel Products): Supplement, G/SG/N/8/EU/1/Suppl.1, G/SG/N/10/EU/1/Suppl.1, G/SG/N/11/EU/1/Suppl.2 (7 February 2019).

²³⁸ WTO, Council for Trade in Goods, Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards: Russian Federation, G/L/1241, G/SG/N/12/RUS/2 (22 May 2018).

²³⁹ WTO, Council for Trade in Goods, Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards: Turkey, G/L/1242, G/SG/N/12/TUR/6 (22 May 2018); WTO, Council for Trade in Goods, Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards: Turkey: Supplement, G/L/1242/Suppl.1, G/SG/N/12/TUR/6/Suppl.1 (15 August 2018).

China, the European Union and Mexico in October 2018,²⁴⁰ followed by similar requests against Russia and Turkey in November and December, respectively.²⁴¹ Five separate panels (except one for the case on Turkey) were composed on January 25, 2019.²⁴²

Japan did not file a WTO complaint against the United States. This restraint is notable in comparison with the other major trading nations, which all filed complaints and were ready to litigate. On April 5, 2018, China requested consultations with the United States on its steel and aluminum tariffs at the WTO, calling into question the validity of US claims that the tariffs were imposed for national security reasons.²⁴³ On May 18, 2018, India formally requested WTO dispute settlement consultations with the United State over its steel and aluminum tariffs.²⁴⁴ At a June 1 press conference, the same day that Section 232 tariffs on steel and aluminum from the

²⁴⁰ WTO, Canada: Additional Duties on Certain Products from the United States: Request for the Establishment of a Panel by the United States, WT/DS557/2 (19 October 2018); WTO, China: Additional Duties on Certain Products from the United States: Request for the Establishment of a Panel by the United States, WT/DS558/2 (19 October 2018); WTO, European Union: Additional Duties on Certain Products from the United States: Request for the Establishment of a Panel by the United States, WT/DS559/2 (19 October 2018); WTO, Mexico: Additional Duties on Certain Products from the United States: Request for the Establishment of a Panel by the United States, WT/DS560/2 (19 October 2018); Hannah Monichen, “U.S. Requests WTO Dispute Panels over Retaliatory Tariffs,” *Inside U.S. Trade*, October 19, 2018.

²⁴¹ WTO, Russian Federation: Additional Duties on Certain Products from the United States: Request for the Establishment of a Panel by the United States, WT/DS566/2 (23 November 2018); WTO, Turkey: Additional Duties on Certain Products from the United States: Request for the Establishment of a Panel by the United States, WT/DS561/2 (21 December 2018).

²⁴² WTO, Canada: Additional Duties on Certain Products from the United States: Constitution of the Panel Established at the Request of the United States: Note by the Secretariat, WT/DS557/3 (28 January 2019); WTO, China: Additional Duties on Certain Products from the United States: Constitution of the Panel Established at the Request of the United States: Note by the Secretariat, WT/DS558/3 (28 January 2019); WTO, European Union: Additional Duties on Certain Products from the United States: Constitution of the Panel Established at the Request of the United States: Note by the Secretariat, WT/DS559/3 (28 January 2019); WTO, Mexico: Additional Duties on Certain Products from the United States: Constitution of the Panel Established at the Request of the United States: Note by the Secretariat, WT/DS560/3 (28 January 2019); WTO, Russian Federation: Additional Duties on Certain Products from the United States: Constitution of the Panel Established at the Request of the United States: Note by the Secretariat, WT/DS566/3 (28 January 2019).

²⁴³ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by China: Note by the Secretariat, WT/DS544/1, G/L/1222, G/SG/D50/1 (9 April 2018); Brett Fortnam, “Alleging Safeguard, MFN Violations, China Challenges U.S. 232 Tariffs,” *Inside U.S. Trade*, vol. 36, no. 15, April 13, 2018.

²⁴⁴ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by India, WT/DS547/1, G/L/1238, G/SG/D53/1(23 May 2018); Jack Caporal, “India Requests DSU Consultations with U.S. Over 232 Tariffs, Quota Deals,” *Inside U.S. Trade*, vol. 36, no. 21, May 25, 2018.

European Union went into effect, Cecilia Malmström announced that the European Union would bring a WTO dispute against the United States on its imposition of Section 232 tariffs.²⁴⁵ On the same day, Canada followed suit.²⁴⁶ On June 4, Mexico announced that it would challenge the US Section 232 tariffs on steel and aluminum via the WTO.²⁴⁷ On June 12, 2018, Norway requested consultations over the Section 232 tariffs.²⁴⁸ On June 29, Russia requested consultations with the United States over the steel and aluminum tariffs.²⁴⁹ On July 9, 2018, the Swiss government requested consultations with the United States over the steel and aluminum duties.²⁵⁰ Seven members (Canada, China, the European Union, Mexico, Norway, Russia, and Turkey²⁵¹) requested the establishment of dispute-settlement panels in October, followed by similar requests from India and Switzerland in November. The Dispute Settlement Body (DSB) agreed to

²⁴⁵ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by the European Union, WT/DS548/1, G/L/1243, G/SG/D54/1 (6 June 2018); Brett Fortnam, “Europe, China Warn of 232 Fallout; EU Files WTO Cases Against U.S., China,” *Inside U.S. Trade*, June 1, 2018. Malmström also said that the European Union was bringing a case against China for its technology-transfer policies, which the United States had already done in March 2018. “It demonstrates that we are not choosing any sides,” she said. WTO, China: Certain Measures on the Transfer of Technology: Request for Consultations by the European Union, WT/DS549/1, G/L/1244, IP/D/39 (6 June 2018).

²⁴⁶ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by Canada, WT/DS550/1, G/L/1245, G/SG/D55/1 (6 June 2018).

²⁴⁷ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by Mexico, WT/DS551/1, G/L/1246, G/SG/D56/1 (7 June 2018); Brett Fortnam, “Mexico Challenges Section 232 Tariffs at WTO; Others Join India’s Case,” *Inside U.S. Trade*, vol. 36, no. 23, June 8, 2018.

²⁴⁸ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by Norway, WT/DS552/1, G/L/1247, G/SG/D57/1 (19 June 2018).

²⁴⁹ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by the Russian Federation, WT/DS554/1, G/SG/D58/1 (2 July 2018); “Russia Requests WTO Dispute Settlement Consultations with U.S. over 232 Tariffs,” *Inside U.S. Trade*, vol. 36, no. 27, July 6, 2018.

²⁵⁰ WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by Switzerland, WT/DS556/1, G/L/1251, G/SG/D59/1 (12 July 2018); “Switzerland Initiates WTO Case Against U.S. over Section 232 Tariffs,” *Inside U.S. Trade*, vol. 36, no. 28, July 13, 2018.

²⁵¹ Because of minor complications, the complaint from Turkey was not filed until August. WTO, United States: Certain Measures on Steel and Aluminum Products: Request for Consultations by Turkey, WT/DS564/1, G/L/1259, G/SG/D61/1 (20 August 2018).

establish a panel on November 21, 2018.²⁵² The Director-General of the WTO composed the same panel for all these cases on January 25, 2019.²⁵³

US reactions

The Trump administration was determined to protect what was left of its steel and aluminum industries at all costs, and, therefore, it did not change its stance, even after its trading partners all condemned its steel and aluminum tariffs. Thus, Japan's muted response did not elicit any positive or negative reaction from the United States.

Domestic constraints

One of the domestic constraints that Japan faced in considering possible retaliatory strategies against the United States was that steel imports or, for that matter, any imports within the jurisdiction of the Ministry of Economy, Trade and Industry (METI) from the United States were limited. Hence, any meaningful retaliation had to include farm products. China and the European Union all retaliated against farm imports from the United States. However, in the case of Japan, agricultural trade falls outside the jurisdiction of METI, which ordinarily is the most aggressive trade warrior in Japan. Thus, unless the prime minister's office could coordinate

²⁵² Hannah Monicken, "Countries Escalate Sec. 232 Tariff Disputes at the WTO; U.S. Follows Suit," *Inside U.S. Trade*, vol. 36, no. 47, November 30, 2018.

²⁵³ The panel consisted of Elbio Rosselli (chair), Esteban Conejos, Jr., and Rodrigo Valenzuela. See WTO, United States: Certain Measures on Steel and Aluminum Products: Constitution of the Panel Established at the Request of China (India, the European Union, Canada, Mexico, Norway, the Russian Federation, Switzerland, and Turkey): Note by the Secretariat, WT/DS544/9 (China), (28 January 2019), WT/DS547/9 (India) (28 January 2019), WT/DS548/15 (EU) (28 January 2019), WT/DS550/12 (Canada) (28 January 2019), WT/DS551/12 (Mexico) (28 January 2019), WT/DS552/11 (Norway) (28 January 2019), WT/DS554/18 (Russia) (28 January 2019), WT/DS556/16 (Switzerland) (28 January 2019), WT/DS564/16 (Turkey) (28 January 2019).

between two different agencies—METI and the Ministry of Agriculture, Forestry and Fisheries (MAFF)—retaliation would have been difficult to execute. This was one of the problems that Japan had faced at the time of the imposition of steel safeguards under the George W. Bush administration.

“Reactive state”?

Security dependence on the United States (an international constraint), as well as bureaucratic fragmentation (a domestic constraint), which were both mentioned in Kent Calder’s original formulation of the reactive state moniker, mattered in this case, and these constraints deprived Japan of access to “aggressive” measures such as retaliation and litigation; hence, Japan was left with moderate measures such as asking for product exclusions or condemning the lack of a legitimate national security rationale behind using Section 232 to place tariffs on steel and aluminum.

Agreeing to Start TAG Negotiations

The Trump administration started using Section 232 as leverage for trade negotiations in its second year. While Japan could cope with Section 232 tariffs on steel and aluminum by applying for product-by-product exclusions, the Section 232 tariffs on autos and auto parts were more threatening.²⁵⁴ In the end, Tokyo conceded and agreed to start negotiations over what is

²⁵⁴ In 2017, Japan had exported 1.74 million autos to the United States, which amounted to 37 percent of total Japanese exports.

known as a trade agreement on goods (TAG) in September 2018. This section will explain how and why this happened.

Policy challenges

Policy challenges that the Trump administration posed in the summer of 2018 were two-fold. First, the Trump administration continued to press Japan to agree to negotiate a bilateral free trade agreement (FTA). This policy challenge had not changed from the previous year.

Second, the Trump administration started investigations into auto imports under Section 232 of the Trade Expansion Act of 1962. Now that the Trump administration had executed its Section 232 tariffs on steel and aluminum in March 2018, the threat of new tariffs on autos and auto parts seemed credible. The Trump administration made crystal clear its intent to use auto tariffs as a coercive instrument to force Japan to come to the negotiating table for a bilateral FTA.

Pressure for a bilateral FTA

A US proposal to negotiate a bilateral FTA had been made during the Asō–Pence talks in the fall of 2017, and the same US pressure continued in the second year of the Trump administration. In hearings on Capitol Hill in late March 2018, US Trade Representative Robert Lighthizer said that the United States had expressed interest in a bilateral FTA with Japan “at the appropriate time,” but added that Japan had been more focused on ratification and implementation of the Trans-Pacific Partnership agreement reached among its eleven parties.²⁵⁵

²⁵⁵ “Hit with Section 232 Tariffs, Japan Pans Bilateral with the U.S.,” *Inside U.S. Trade*, vol. 36, no. 13, March 30, 2018.

After the two countries prepared to have free, fair, and reciprocal (FFR) talks (see below) in the summer, Lighthizer again made it very clear that he was going to demand a bilateral FTA with Japan, and that the United States would demand starting bilateral FTA negotiations, as expressed in his testimony in a congressional hearing in July.²⁵⁶ In the FFR talks in August 2018, the US side demanded the start of bilateral FTA negotiations as expected, while the Japanese side continued to insist that the best alternative was for the United States to return to the TPP.²⁵⁷

Section 232 for autos

In the meantime, the Trump administration started seriously considering Section 232 investigations into auto trade in its second year. On May 23, 2018, Trump announced that the United States would start Section 232 investigations into auto and auto parts imports.²⁵⁸ Japan's Minister of Economy, Trade and Industry Hiroshige Sekō criticized the US move, saying that it “could destroy the multilateral trading system.”²⁵⁹

The United States was in a hurry to complete its investigations, and that was another sign that the investigations were being used as a coercive threat. This intent first became clear in relation to the European Union. Trump warned the European Union on June 22, 2018, tweeting that the United States would hit EU auto imports with a 20 percent tariff unless EU trade barriers

²⁵⁶ “*Bei FTA yōkyū no kamae, 9-ka ni bōeki kyōgi, Nihon kuruma kanzei mo nandai,*” *Nikkei*, August 1, 2018, p. 3.

²⁵⁷ Yūdai Koga, “*Bei nikokukan kōshō wo yōkyū, FTA nentō bōeki kyōgi futsukame he,*” *Nikkei*, August 10, 2018, evening ed., p. 1.

²⁵⁸ Taisei Toriyama, “*Bei kuruma kanzei 25% age kentō, Daitōryō shiji ampo riyū ni chōsa, Nihonzei ni dageki mo,*” *Nikkei*, May 24, 2018, evening ed., p. 1.

²⁵⁹ “*Bei nikokukan kōshō he atsuryoku, Kō kanzei kyōryoku na buki ni nihonsha senryaku minaoshi mo,*” *Nikkei*, May 25, 2018, p. 3.

were “soon broken down and removed.”²⁶⁰ This tweet came the same day new EU retaliatory tariffs on a range of US products went into effect. In a TV interview aired on July 1, 2018, Trump said that it was his policy to use Section 232 auto tariffs as leverage in negotiation. “I will not impose tariffs” if they make cars in the United States, he said, and the additional auto tariff he had in mind was 20 percent.²⁶¹

Later, the coercive logic was eloquently explained by Trump himself. In a speech in North Dakota, he made it clear that his Section 232 auto tariffs were intended as leverage. As proof, he used the example of the United States–European Union agreement in July 2018. The European Union was not letting the United States into its market, so he threatened increased auto tariffs, and the Europeans caved:

So, every time I have a problem with any of these many countries we’re talking about, especially the big car countries, I just say, “Okay, we can’t make those deals, that’s okay, I’m going to put a 20 percent tax on your cars.” [Their response is] “We’ll do it, we’ll do it. We’ll agree.”²⁶²

Trump also gave Japan a veiled threat in early September. While telling a *Wall Street Journal* reporter about his good relations with the Japanese leadership, Trump said, “Of course, that will end as soon as I tell them how much they have to pay.”²⁶³ On September 7, he told reporters on board Air Force One, “Japan knows that it will be a big problem if we don’t strike an agreement,” raising the heat on Japan.²⁶⁴ He added that “Japan did not deal with Obama

²⁶⁰ “Trump Pledges to Hit European Cars with 20 Percent Tariffs Unless Trade Barriers Are Removed,” *Inside U.S. Trade*, June 22, 2018.

²⁶¹ Taisei Toriyama, “*Kuruma kanzei wo kōshō zairyō ni, Torampu shi Bei seisan kakudai wo yōkyū,*” *Nikkei*, July 2, 2018, evening ed., p. 3.

²⁶² “Trump: Car Tariffs Would Be ‘Ruination’ of Countries Like Canada,” *Inside U.S. Trade*, September 7, 2018.

²⁶³ James Freeman, “Trump Eyes a Japan Trade Fight; In a Thursday Phone Call, the President Sounds Courteous and Stable, but Unfortunately Still Focused on Trade Deficits,” *Wall Street Journal* (online), September 6, 2018.

²⁶⁴ Ryō Nakamura, “*Nichibei bōeki, ‘Taihen na mondai ni,’ Torampu shi gōi nakereba hōfuku shisa,*” *Nikkei*, September 8, 2018, evening ed., p. 1.

because they knew that they would not be retaliated against. That's not me.”²⁶⁵ *Nikkei* commented that it was characteristic of Trump to resort to indirect methods of communication for he had never used harsh words toward Abe in the numerous summit meetings that Abe and Trump had had so far.²⁶⁶

Japan's response

Japan, faced with the auto tariff threat, took a staged response. First, it engaged in another delaying tactic by setting up another forum, specifically dedicated to the discussion on trade matters. This came to be known as the FFR talks or the Motegi–Lighthizer talks. These were similar to the Asō–Pence talks in 2017, but their mandate was narrower.

Second, Japan continued to resist the threat of auto tariffs. The Japanese government as well as the Japanese auto industry protested against the Section 232 tariffs on autos and auto

²⁶⁵ “*Bei atsuryoku dōyō kakusu Nihon, Torampu shi tainichi akaji de kyōkō hatsugen, Sōsaisen hikae yōsumi,*” *Nikkei*, September 9, 2018, p. 3.

²⁶⁶ Ryō Nakamura, “*Bei tainichi akaji ni kyōkō shisei, Torampu shi chūkan senkyo hikae atsuryoku,*” *Nikkei*, September 8, 2018, p. 2.

parts, pointing out various facts that were detrimental to the United States if the Trump administration were to execute the threat of imposing tariffs on auto imports.²⁶⁷

Third, however, after the European Union gave in to a similar US threat, Japanese resolve to resist the US pressure weakened. Finally, the Abe government decided to agree to negotiate a deal that, on the surface, was not a bilateral FTA but that would nevertheless satisfy the US demands. That is the trade agreement on goods (TAG), a term invented by Japan.

FFR talks

Abe visited the United States in April 2018, and Abe and Trump met on April 17 and 18, 2018, as mentioned earlier. In advance of his visit, the *Nikkei Asian Review* reported that Abe was set to propose a “new framework for trade talks” in the hopes of drawing Trump back into TPP. The talks would be separate from the US–Japan Economic Dialogue led by Japanese Deputy Prime Minister Tarō Asō and Vice President Mike Pence. According to *Nikkei*, the new talks would be led by Japan’s “TPP point man” Motegi and US Trade Representative Robert

²⁶⁷ The Japanese government and industry associations warned the US Commerce Department that tariffs on autos and auto parts would undermine the US auto sector and economy. The Japanese government, in its June 29 submission, argued that trade relationships with allies like Japan contributed to the US economy and would not pose a threat to national security of the United States. “*Bei no kuruma tsuika kanzei naigai kara hantairon, Beishōgisho ‘Seisai kanzei maneku,’ Nihon seifu ‘Keizai ni aku eikyō,’*” *Nikkei*, June 30, 2018, p. 3. Japanese stakeholders pointed out in their submission to the Commerce Department that US auto and auto parts imports from Japan had declined; that US auto production had risen in recent years; that auto parts from Japan contribute to competitive auto production in the United States; and that Japanese auto companies had made significant investments in production, assembly, research, and development in the United States. Tariffs, they said, could threaten that rosy situation. Jack Caporal, “Japan and Its Auto Companies Warn Tariffs Would Harm U.S. Industry,” *Inside U.S. Trade*, vol. 36, no. 27, July 6, 2018. According to the Japanese Automobile Manufacturers Association (JAMA), Japanese-brand automakers operated 24 manufacturing plants and 44 research and development centers in 19 US states. Investments from Japanese-brand automakers were worth over \$48 billion. JAMA members purchased just over \$70 billion in auto parts made in the United States in 2017 and exported over 420,000 vehicles from US plants in the same year. Jack Caporal, “Japan and Its Auto Companies,” July 6, 2018. “In America, Toyota has 10 plants, 136,000 employees, and 1,500 dealers that contribute to their local economies,” Toyota said, in a May 25 tweet. “Tariffs on auto imports could hurt American jobs and raise consumer costs.” “Toyota Blasts U.S. Section 232 Auto Probe, Says Tariffs Would Boost Prices for Consumers” *Inside U.S. Trade*, vol. 36, no. 22, June 1, 2018.

Lighthizer.²⁶⁸ Japanese sources made it clear, however, that the new talk’s framework was “not preliminary consultations for an FTA.”²⁶⁹ The United States and Japan agreed to “intensify” talks on “free, fair, and reciprocal (FFR) trade deals,” President Trump and Prime Minister Abe said on April 18. However, they were talking at cross-purposes: Trump said, “We’re committed to pursuing a bilateral trading relationship that benefits both of our great counties”; for his part, Abe noted that Japan was aware of the US interest in a free trade deal but continued to prefer TPP, and “based on that position we shall be dealing with the talks.”²⁷⁰ In Japan, the Motegi–Lighthizer talks came to be known as talks over “free, fair, and reciprocal (FFR) trade,” a concept that the Trump administration always emphasized.

Japan and the United States started preparing for the first round of FFR talks. Initially, these were meant to be held in late July, but they were delayed until August. The Japanese government, if confronted with a demand for the start of FTA negotiations, was prepared to counter by arguing that Japan was not ready to make any concessions that would go beyond those that it had made in the TPP negotiations.²⁷¹

Motegi announced on July 31 that he and Lighthizer would meet on August 9. Lighthizer made it clear that the United States would demand the start of bilateral FTA negotiations, as

²⁶⁸ Brett Fortnam, “Abe Set to Visit Trump Amid Talk of New Trade Framework, TPP; NAFTA Technical Work Continues,” *Inside U.S. Trade*, April 16, 2018.

²⁶⁹ Manabu Shimada, “*Nichibei shunō kaidan: Bei nikokukan kyōtei ni iyoku bōeki kyōgi deha,*” *Nikkei*, April 19, 2018, evening ed., p. 1.

²⁷⁰ Dan Dupont and Jack Caporal, “Trump, Abe Commit to ‘Intensify’ Talks on Trade ‘Deals,’” *Inside U.S. Trade*, vol. 36, no. 16, April 20, 2018.

²⁷¹ “*Nichibei no aratana bōeki kyōgi, Kongetsu gejun nimo kakuryōkyū kaigō, Bei kyōkō ni FTA yōkyū ka,*” *Nikkei*, July 6, 2018, p. 4.

expressed in his testimony in a Congressional hearing in July.²⁷² Japan was unlikely to accede to the US demand for a bilateral FTA, sources said.

As expected, FFR talks yielded few results in August. Lighthizer and Motegi met in Washington August 9–10, 2018, and ended the two days of bilateral talks only with an agreement to continue talks sometime in September. *Nikkei* reported that the US side demanded the start of bilateral FTA negotiations, as expected, while the Japanese side continued to insist that the best alternative was for the United States to return to the TPP.²⁷³ On farm trade, the Japanese made it clear that Japan could not lower tariffs below the levels that were conceded in the TPP. As for the additional tariffs on auto imports under consideration, the United States did not offer any clear response.²⁷⁴

The statement from the Office of the US Trade Representative (USTR) offered few details on the discussions. The two sides agreed “to deepen US–Japan cooperation in various international economic issues,” the USTR said.²⁷⁵ However, auto industry sources said that the two sides were moving ahead because they wanted to set up a meeting between President Trump and Japanese Prime Minister Abe on the sidelines of a United Nations gathering in September.²⁷⁶

In preparing for the second round of FFR talks, one of the problems the Japanese government faced was a lack of measures to reduce trade imbalances. It was contemplating increasing purchases of LNG and defense equipment from the United States. LNG, if Japan were

²⁷² “*Bei FTA yōkyū no kamae, 9-ka ni bōeki kyōgi, Nihon kuruma kanzei mo nandai,*” *Nikkei*, August 1, 2018, p. 3.

²⁷³ Yūdai Koga, “*Bei nikokukan kōshō wo yōkyū, FTA nentō bōeki kyōgi futsukame he,*” *Nikkei*, August 10, 2018, evening ed., p. 1.

²⁷⁴ Rintarō Hida, “*Nichibei raigetsu ni mochikoshi, Bōeki kyōgi, kuruma nōgyō de oriawazu,*” *Nikkei*, August 12, 2018, p. 1.

²⁷⁵ “USTR: U.S., Japan to Hold Next Round of Ministerial Talks Next Month,” *Inside U.S. Trade*, vol. 36, no. 33, August 17, 2018.

²⁷⁶ Anshu Siripurapu, “Japan Hoping for EU-Like Deal as Lighthizer, Motegi Set to Meet in DC,” *Inside U.S. Trade*, July 31, 2018.

to buy all the contracted amounts that Japanese companies had signed, would amount to about JPY 500 billion in 2019. Also, foreign military sales (FMS) program contracts would amount to JPY690 billion, but if combined these would amount to only a little over JPY1 trillion, which was far short of the JPY7 trillion trade deficits that the United States was running with Japan.²⁷⁷

Before the second round of FFR talks, the Japanese government had decided that it would accept the start of bilateral tariff negotiations, provided that the United States would suspend the imposition of additional tariffs on autos currently under consideration.²⁷⁸ On September 25, Motegi and Lighthizer met in New York for an hour and discussed the start of bilateral trade negotiations. After the meeting, Motegi told reporters that the two sides had “reached consensus on the measures to promote trade between the two countries.”²⁷⁹ As a quid pro quo for the acceptance of bilateral trade negotiations, Japan demanded that the United States defer the imposition of additional tariffs on autos.²⁸⁰

EU deal

Initially, when the Trump administration was contemplating invoking Section 232 for its auto tariffs, the European Union was a primary target of the coercion. The Trump administration was pressing the European Union to agree to start talks over an agreement for three zeros: zero

²⁷⁷ “*Jidōsha taikoku semaru kiki, Bei Nihon ni bōeki kuroji no sakugen yōkyū, Gejun nimo FFR, Fuchō nara...Kōkanzei ni genjitumi,*” *Nikkei*, September 16, 2018, p. 3.

²⁷⁸ Rintarō Hida, “*Nichibei kanzei kyōgi he tsume, Kyō kakuryō kaigō, Kuruma hatsudō kaihi ga shōten,*” *Nikkei*, September 25, 2018, p. 2.

²⁷⁹ Rintarō Hida, “*Nichibei ‘Bōeki sokushinsaku de icchi,’ Kakuryōkyū kanzei fukume nikokukan kyōgi he,*” *Nikkei*, September 26, 2018, p. 3.

²⁸⁰ *Ibid.*

tariffs, zero nontariff barriers, and zero subsidies. Trump proposed that all Group of Seven (G7) nations aim for such an agreement at the G7 summit meeting in Quebec in June 2018.

The G7 summit meeting was held on June 8–9 in Charlevoix in Quebec. The first day was devoted to the discussion of trade issues. Although there was consensus to promote free and fair trade, the differences among the United States and the other six countries could not be bridged.²⁸¹ On the second day (June 9, 2018), Trump proposed completely free trade among the G7 nations. At the post-summit press conference, he said, “You want a tariff-free, you want no barriers, and you want no subsidies.”²⁸² He added that, “That’s the way you learned at the Wharton School of Finance,” referring to his alma mater.²⁸³ G7 finance ministers met again in Argentina in July and issued a joint statement that downside risks in the global economy were increasing due to trade tensions.²⁸⁴ Treasury Secretary Mnuchin repeated the US demand that all countries drop all tariffs, nontariff barriers, and subsidies, a proposal that Trump had made in the G7 summit in early June.²⁸⁵

It was hard for the European Union to agree to such talks. However, after the July 19 hearing on the Section 232 auto tariffs, Juncker, president of the European Commission, flew to Washington and agreed to start negotiations. The US–EU agreement, announced on July 25, 2018, said that the United States and the European Union would start negotiations with the aim that the two sides would “work together toward zero tariffs, zero no-tariff barriers, and zero

²⁸¹ Yūsuke Nakajima and Tōgo Shiraishi, “G7 *bōeki mondai de tairitsu, Bei ha tsuika kanzei yuzurazu*,” *Nikkei*, June 9, 2018, evening ed., p. 1.

²⁸² Anshu Siripurapu, “Trump Proposes Total Elimination of Trade Barriers among G7, Calls Trudeau ‘Dishonest’ and ‘Weak,’” *Inside U.S. Trade*, June 9, 2018.

²⁸³ *Ibid.*

²⁸⁴ Takeshi Kawanami, “G20 *Bei seiken no settoku fuhatsu, Kuruma kanzei hatsudō tsuyomaru keikaikan*,” *Nikkei*, July 24, 2018, p. 3.

²⁸⁵ *Ibid.*

subsidies (on nonauto industrial goods).”²⁸⁶ In return for agreeing to start the negotiations, the European Union won US assurance that tariffs on autos would not be imposed as long as negotiations continued.

This was the model that Japan tried to emulate in the coming talks with the United States. In preparing for the FFR talks in August, analysts agreed that the best-case scenario for Japan would be for the two sides to come to an agreement similar to the one struck on July 25, 2018, between the United States and the European Union, allowing Japan to avoid auto tariffs while making few concrete commitments aside from agreeing to continue talks.²⁸⁷ In particular, Japan would not make concessions beyond those it had agreed to in the TPP, as doing so would be politically toxic for Abe, who had already been embarrassed by Trump’s decision to withdraw from the pact and Japan’s failure to win an exemption from the Section 232 metal tariffs. “There’s been a lot of face lost by the Abe administration when it comes to trade policy,” said Shihoko Gotō, an analyst with the Wilson Center.²⁸⁸ Motegi studied the text of the US–EU agreement of July 25, 2018, very carefully in preparation for the September FFR talks.²⁸⁹

²⁸⁶ “Joint U.S.–EU Statement Following President Juncker’s Visit to the White House,” Statement/18/4687, European Commission, 25 July 2018, www.europa.eu/rapid/press-release_STATEMENT-18-4687_en.htm. Accessed February 7, 2019. Brett Fortnam, “U.S., EU Launch Talks to Eliminate Industrial Duties, Agree No New Tariffs,” *Inside U.S. Trade*, July 26, 2018.

²⁸⁷ Anshu Siripurapu, “Japan Hoping for EU-Like Deal as Lighthizer, Motegi Set to Meet in DC,” *Inside U.S. Trade*, July 31, 2018.

²⁸⁸ *Ibid.*

²⁸⁹ “*Ketsudan shunō futari kiride, Shushō ‘Korenara ikeru,’ Bōei rain mazu ha kenshu,*” *Nikkei*, September 28, 2018, p. 3. The US–Japan Joint Statement was not exactly a carbon copy of the US–EU agreement, but the former borrowed a number of expressions from the latter. For instance, on the Section 232 auto tariffs, the EU–US agreement said, “While we are working on this, we will not go *against the spirit of this agreement*, unless either party terminates the negotiations”; the corresponding part in the US–Japan agreement said, “Japan and the United States will...refrain from taking measures *against the spirit of this joint statement* during the process of these consultations” (emphasis added).

September 26 agreement

Abe and Trump met in New York on the sidelines of the UN General Assembly meetings on September 26, and the two countries issued a joint statement after the meeting. The statement said, “The United States and Japan will enter into negotiations, following the completion of necessary domestic procedures, for a United States–Japan Trade Agreement on goods, as well as on other key areas including services, that can produce early achievements.”²⁹⁰

In the joint statement, the two sides agreed to “respect the positions of the other government.” For the United States, that meant, “market access outcomes in the motor vehicle sector will be designed to increase production and jobs in the United States in the motor vehicle industries.” The United States, in turn, would respect Tokyo’s stance that “with regard to agricultural, forestry, and fishery products, outcomes related to market access as reflected in Japan’s previous economic partnership agreements constitute the maximum level.”²⁹¹ The most important aspect was mentioned at the end of the joint statement: The two sides would “refrain from taking measures against the spirit of this joint statement during the process of these consultations.”²⁹² Abe clarified the Japanese interpretation of this passage saying that the United State had agreed not to impose Section 232 tariffs on autos while negotiations were underway. “During the discussion, we agreed that there will be no additional tariff on autos,” he said, according to the *Nikkei Asian Review*.²⁹³

²⁹⁰ Office of the Press Secretary, the White House, “Joint Statement of the United States and Japan,” September 26, 2018, www.whitehouse.gov/briefings-statements/joint-statement-united-states-japan/. Accessed February 7, 2019. “U.S., Japan Agree to Enter into Talks for a Bilateral Trade Deal,” *Inside U.S. Trade*, September 26, 2018.

²⁹¹ “U.S., Japan Agree to Enter into Talks for a Bilateral Trade Deal,” *Inside U.S. Trade*, September 26, 2018.

²⁹² “Joint Statement of the United States and Japan,” *op. cit.*

²⁹³ “Abe: U.S. Deal Will Be ‘Completely Different’ from Japan’s Other FTAs,” *Inside U.S. Trade*, September 27, 2018. My sources also confirmed that President Trump explicitly promised that the United States would not impose Section 232 tariffs on Japanese autos. Interview, February 25, 2019.

Abe also emphasized that the trade deals between the United States and Japan would be very different from previous pacts that Japan had entered into. Abe told reporters in New York that a deal would be “completely different from the free trade agreements that Japan had made in the past.”²⁹⁴ In Japan it was advertised as a “trade agreement on goods (TAG),” something nominally different from a free trade agreement.²⁹⁵ This was because Prime Minister Abe had explained in the Diet that FFR talks were “neither FTA negotiations nor preliminary consultations (for an FTA).”²⁹⁶ Reportedly, Motegi had come up with the phrase “trade agreement on goods.”²⁹⁷ Another notable feature of the joint statement was that there was no target for reducing US trade deficits with Japan, which Lighthizer had insisted on inserting. Motegi had dissuaded him from inserting that clause and had instead inserted one saying that they aimed to increase production and employment in the auto industry.²⁹⁸

US reactions

Despite the fact that TAG was nominally different from an FTA, the Trump administration accepted the Japanese proposal. The reason was very simple: to the extent that Japan was going to abide by WTO rules, TAG would have to be treated as an FTA under the WTO rules. If TAG were not an FTA, any trade concession that Japan would make would have to be extended to other countries under the most favored nation (MFN) rule of the General Agreement on Tariffs and Trade (GATT). Clearly, that was not the Japanese intent. Therefore,

²⁹⁴ “Abe: U.S. Deal Will Be ‘Completely Different’ from Japan’s Other FTAs,” *Inside U.S. Trade*, op. cit.

²⁹⁵ The basis of the Japanese idea was to put the market access portion of the TPP into effect while leaving the rules portion out until the United States came back to the TPP. Interview, February 25, 2019. However, the precise boundaries remained ambiguous. Interview, March 1, 2019.

²⁹⁶ “‘TAG ha jijitsujō FTA’ no koe, Kokunai ni hairyo, iikaeka,” *Nikkei*, September 28, 2018, p. 3.

²⁹⁷ “Kieta tainichi akaji sakugen’an Motegi shi kuruma no koyōzō de settoku,” *Nikkei*, October 2, 2018, p. 4.

²⁹⁸ Ibid.

Japan would have to apply Article XXIV of the GATT to any trade deal (even with the name TAG) that it was going to negotiate with the United States.

Domestic constraints

Again, the greatest domestic obstacle to negotiating an FTA was the opposition from the farm lobbies. However, the Abe government overcame this problem by inserting a clause in the September 26, 2018, agreement saying that the maximal concessions that Japan was going to make to the United States would not exceed the level of concessions made under the TPP or the EU EPA. The logic was that if the farm lobby could live with the concessions under the previous agreements, then they could surely live with the new concessions because the concessions would be comparable to those made under the Obama administration.

Another constraint was Abe's reelection. The LDP had a party leader election for Abe in September 2018. Abe was up for reelection as president of the ruling Liberal Democratic Party, and his contender was Shigeru Ishiba. Abe won the reelection on September 20, and that removed a hurdle. An observer pointed out that the United States would push Abe harder after his reelection. Shihoko Gotō, an analyst with the Woodrow Wilson Center, said that Abe's recent reelection could embolden US negotiators, who no longer needed to worry about him being replaced with a potentially more hostile prime minister.²⁹⁹

²⁹⁹ Anshu Siripurapu, "Pressure Will be on Japan During Trade Talks with the U.S., Analysts Say," *Inside U.S. Trade*, September 21, 2018.

“Reactive state”?

Japan agreed to start TAG negotiations under the pressure of auto tariff threats from the Trump administration. Trump said at a press conference that it was because of the threat of additional tariffs on autos that partner countries such as Japan had agreed to enter into bilateral negotiations with the United States.³⁰⁰ Thus, Japan showed the typical behavioral pattern of a “reactive state.”

The question is why. Readers should recall that the end of the Cold War (and the breakdown of hierarchy in US–Japan relations), the establishment of the WTO (which led to the declining legitimacy of unilateralism), and the loss of trust between Japan and the United States led to the decreasing effectiveness of coercive bargaining between the two countries. In this case, however, the second condition became moot. The Trump administration imposed steel quotas on Argentina, Brazil, and Korea, invoking Section 232, but such quotas are ordinarily GATT-illegal. The Trump administration disregarded these WTO rules.³⁰¹ Trump even hinted at a possible withdrawal from the WTO.³⁰² Thus, the US disdain toward the WTO led to a weakening of the institutional constraint on US unilateralism.

Trilateral Cooperation

³⁰⁰ Tsuyoshi Nagasawa, “*Kuruma kanzei tsutae kōshō iri, Torampu shi tainichi senjutsu senmei*,” *Nikkei*, October 2, 2018, evening ed., p. 3.

³⁰¹ The Trump administration’s legal stance has thus far been that all these infractions can be justified under GATT Article XXI, which allows for national security exceptions.

³⁰² John Micklethwait, Margaret Talev, and Jennifer Jacobs, “Trump Threatens to Pull U.S. Out of WTO If It Doesn’t ‘Shape Up,’” *Bloomberg*, August 30, 2018, www.bloomberg.com/news/articles/2018-08-30/trump-says-he-will-pull-u-s-out-of-wto-if-they-don-t-shape-up. Accessed February 11, 2019.

One of the most notable features of the Trump administration (at least in comparison with previous administrations) was that from the very beginning, it placed China at the center of attention. It accused China of mercantilist trading and investment practices such as inordinate amounts of subsidies given to zombie firms, lack of intellectual property rights protection, high tariffs, investment restrictions at home, forced technology transfers, industrial espionage, stealing American technology through state-funded mergers and acquisitions of American companies, and so forth. The Trump administration was determined to stop all this. The policy challenge for Japan was whether to form a “coalition of the willing” to cope with the United States’ “China problem.” After about a year of consultations, a coalition of the willing was formed among the European Union, Japan, and the United States. That was reflected in the September 26 Joint Statement.

Policy challenges

One of Donald Trump’s messages on the campaign trail in the 2016 presidential election was that he wanted to get tough on China. In one of his major campaign speeches on trade, otherwise known as Trump’s seven-point economic plan announced on June 28, 2016, he said, “If China does not stop illegal activities, including its theft of American trade secrets, I will use every lawful...presidential power to remedy trade disputes....”³⁰³ Also, he repeatedly threatened to impose high tariffs (for example, 45 percent) on Chinese goods coming into the United States.

However, during the first year in office, the Trump administration was relatively restrained in its approach to China for a variety of reasons. One reason was North Korea, which

³⁰³ “Seven-Step Trump Economic Plan Includes Threat of NAFTA Renegotiation, Withdrawal,” *Inside U.S. Trade*, vol. 34, no. 28, July 1, 2016.

was extremely belligerent with its numerous nuclear tests and missile test-flights in 2017. To sanction North Korea, cooperation from China was essential; hence, Trump gave China the benefit of the doubt in return for the latter's cooperation over North Korea, a fact admitted by Trump himself repeatedly. For instance, speaking at his golf club in Florida in January 2018, Trump said, "China's hurting us very badly on trade, but I have been soft on China because the only thing that is more important to me than trade is war." If China was helping with North Korea, Trump added, he could "look at trade a little bit differently, at least for a period of time. And that's what I've been doing."³⁰⁴

If this reasoning was correct, it was a matter of time before improvement in North Korea–US relations, as evidenced by the June 12, 2018, meeting of Kim Jong Un and Trump meeting in Singapore, was bound to have repercussions on US–China trade relations. As expected, the Trump administration made its first move against China with its July 6 sanctions on US\$34 billion worth of Chinese imports.

Consensus in Congress

This "get tough on China" attitude was not a solely Trumpian phenomena. Even before Trump arrived in Washington, the get-tough-on-China stance had become a bipartisan consensus in Congress. For example, many members of Congress were even tougher on the issue of Chinese currency manipulation than Trump. Senate Minority Leader Charles Schumer (D-NY) in January 2017 called on President Trump to follow through on his campaign promise to label

³⁰⁴ "Trump: 'I Have Been Soft on China' Because of North Korea," *Inside U.S. Trade*, vol. 36, no.1, January 5, 2018.

China a currency manipulator, saying, “The president, when he ran, repeatedly said ‘on day one, I’m going to name China a currency manipulator.’ But he has not delivered.”³⁰⁵

Also, there was a call in Congress for the administration to form a coalition of the willing to cope with China. Lindsey Graham, one of the senators with the greatest influence on the Trump administration, said in August 2018:

So, the end game is for the Europeans, Japanese, United States to get in a room with China and say, “Your intellectual property theft, your heavy-handed government subsidies, state-owned enterprises, requiring foreign businesses to give their technology to do business in China, all that’s got to change. The best way for that change is for the WTO, which is [a] rules-based trading organization, [to] change its rules to deal with Chinese behavior. China’s too big an economy to [be allowed] to get away with all this.”³⁰⁶

However, the idea of a coalition of the willing came from the White House. Larry Kudlow, who was named director of the National Economic Council, said on March 15, 2018, that the United States should form a coalition with its trading partners to address China’s practices. “A thought that I have is [that] the United States could lead a coalition of large trading partners and allies against China, or to let China know that they’re breaking the rules left and right,” Larry Kudlow told CNBC. “That’s the way I’d like to see. You call it a sort of trade coalition of the willing.”³⁰⁷

³⁰⁵ “Schumer Presses Trump to Label China a Currency Manipulator,” *Inside U.S. Trade*, vol. 35, no. 4, January 27, 2017.

³⁰⁶ Anshu Siripurapu, “Lawmakers Renew Call for Talks with China after Proposed Tariff Hike,” *Inside U.S. Trade*, vol. 36, no. 31, August 3, 2018.

³⁰⁷ “Kudlow: U.S. Should Form ‘Coalition of the Willing’ to Confront China,” *Inside U.S. Trade*, vol. 36, no. 11, March 16, 2018.

“Draft framework”

Another notable feature of the Trump administration in coping with its China problem was that it was ready to take on all the major issues in one package. This was particularly evident in the proposals that the United States made to China in the spring of 2018. Before the visit of a US delegation to China, they sent Beijing a “draft framework” for “Balancing the Trade Relationship,” with a long list of demands. Among its many demands, the United States called on China to open up to foreign investment, improve its intellectual property (IP) environment, end certain support for Made in China 2025 sectors, trim the US trade deficit, and reduce tariffs to US levels.³⁰⁸ Given the long list of grievances that the Trump administration had on China, coordination with the European Union and Japan was destined to encompass very broad areas.

Japan’s response

Japan gradually got involved in this coalition of the willing with the European Union and the United States. In the beginning, it was Japan’s idea to consult with the United States and the European Union on its China problem.³⁰⁹ There was a ministerial conference of the WTO in Buenos Aires in December 2017, and this seemed a good opportunity to coordinate among the European Union, Japan, and the United States. Over time, this trilateral consultation became more intense and broader in scope.

³⁰⁸ Jack Caporal, “China Rejects New Slate of U.S. Trade Demands as Tariffs Loom,” *Inside U.S. Trade*, May 4, 2018.

³⁰⁹ Interview, February 26, 2019. Tokyo had two purposes in mind: The obvious objective was to discuss and coordinate positions on the China problems, but the hidden agenda was to bring the United States back to multilateral trade rules. Also, Japan wanted to be a mediator between the United States and the European Union, which were not on speaking terms at that time (December 2017).

First encounter

The ministerial conference of the WTO in Buenos Aires in December 2017 provided an opportunity for starting trilateral cooperation on trade among the United States, the European Union, and Japan. METI Minister Sekō asked Lighthizer and Malmström to meet with him to discuss possible trilateral cooperative measures to cope with unfair trading practices and to increase transparency in industrial policy such as that of China.³¹⁰ The United States, the European Union, and Japan issued a joint statement decrying “severe excess capacity in key sectors,” driven by “market-distorting subsidies” and other government interventions, including forced technology transfers. They said that they “shared the view that severe excess capacity in key sectors exacerbated by government-financed and -supported capacity expansion, unfair competitive conditions caused by large market-distorting subsidies and state-owned enterprises, forced technology transfer, and local content requirements and preferences were serious concerns for the proper functioning of international trade, the creation of innovative technologies, and the sustainable growth of the global economy.”³¹¹ “We, to address this critical concern, agreed to enhance trilateral cooperation in the WTO and other forums, as appropriate, to eliminate these and other unfair market-distorting and protectionist practices by third countries,” the statement added.³¹²

³¹⁰ “*Nichibeiyō taichū bōeki de kyōchō, Kyō WTO kakuryō kaigi, Sangyō seisaku no tōmeisei uttae,*” *Nikkei*, December 10, 2017, p. 5.

³¹¹ “Joint Statement by the United States, European Union, and Japan at MC11,” Office of US Trade Representative, December 12, 2017, www.ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/joint-statement-united-states. Accessed February 8, 2019.

³¹² *Ibid.* “U.S., EU, and Japan Issue Joint Statement Decrying Excess Capacity,” *Inside U.S. Trade*, December 14, 2017.

Second and third rounds

Sekō, Lighthizer, and Malmström met again in March 2018 at the Organization for Economic Co-operation and Development (OECD) headquarters. On March 10, the United States, Japan, and the European Union agreed on new steps to address practices that spur overcapacity in areas like steel production. “At the meeting, the three agreed on further steps...such as the development of stronger rules on industrial subsidies, strengthening of notification requirements in the WTO, and the intensifying information sharing on trade-distortive practices.”³¹³ They also agreed to many “initial joint actions,” according to a readout on the Brussels meeting, including defining the basis for developing stronger rules on industrial subsidies; enforcing existing rules by working jointly on current and new WTO disputes; strengthening notification requirements as the WTO; engaging with government authorities to further the work of the International Working Group on Export Credits; intensifying information sharing on trade distortive practices; coordinating in international forums, such as the G7, G20, the OECD’s Global Steel Forum; and reinforcing the WTO’s rule-making function.³¹⁴

The timing was not auspicious, however, because the United States had just announced the imposition of the Section 232 tariffs on steel and aluminum. Many sources close to the administration said that the initial idea was to roll out USTR’s Section 301 remedies before taking action on steel and aluminum in an effort to gain leverage in negotiations with allies

³¹³ Dan Dupont, “U.S., EU, Japan Agree to New Steps to Fight Global Overcapacity,” *Inside U.S. Trade*, vol. 36, no. 11, March 16, 2018.

³¹⁴ “Joint Readout from Meeting of the United States, European Union, and Japan in Brussels,” USTR, March 10, 2018, www.ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/joint-readout-meeting-united-states. Accessed February 8, 2019. Dan Dupont, “U.S., EU, Japan Agree to New Steps to Fight Global Overcapacity,” *Inside U.S. Trade*, vol. 36, no. 11, March 16, 2018.

thought likely to join the Trump administration in its efforts against Beijing.³¹⁵ “I think this meeting was meant to be, on some level, to brief key allies and to urge them to join us as much as possible, to refrain from statements against our 301 actions and take further steps through joint WTO cases,” said one source.³¹⁶

The United States, the European Union, and Japan pledged again on May 31, 2018, to tackle “nonmarket-oriented policies and practices” by developing stronger WTO rules for industrial subsidies and state-owned enterprises, cooperating on technology transfer, and laying out a list of conditions they said defined a market economy.³¹⁷ Lighthizer, Malmström, and Sekō met on the sidelines on the OECD ministerial meeting in Paris and issued a joint statement.³¹⁸ However, the timing was inopportune because it came on the same day the United States hit Europe with its Section 232 tariffs on steel and aluminum.³¹⁹ A scoping paper on rules for industrial subsidies, a joint statement on technology transfer, and a joint statement on “market-oriented conditions” were attached as annexes to the trilateral statement. “The three partners share the view that the existing WTO rulebook on industrial subsidies should be clarified and improved to ensure that certain emerging developing members do not escape its application,” the introduction to the scoping paper stated. On technology transfer, the three countries “confirmed their shared view that no country should require or pressure technology transfer from foreign companies to domestic companies, including, for example, through the use of joint venture

³¹⁵ Jenny Leonard, “Lighthizer to Discuss China Strategy, 301 with EU, Japanese Officials,” *Inside U.S. Trade*, vol. 36, no. 10, March 9, 2018.

³¹⁶ *Ibid.*

³¹⁷ Anshu Siripurapu, “U.S., EU, Japan Commit to Address WTO Subsidy Rules, Tech Transfer,” *Inside U.S. Trade*, vol. 36, no. 23, June 8, 2018.

³¹⁸ USTR, “Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union,” May 31, 2018, www.ustr.gov/about-us/policy-offices/press-office/press-releases/2018/may/joint-statement-trilateral-meeting. Accessed February 8, 2019.

³¹⁹ Siripurapu, “U.S., EU, Japan Commit to Address WTO Subsidy Rules, Tech Transfer,” *Inside U.S. Trade*, *op. cit.*

requirements, foreign equity limitations, administrative review and licensing processes, or other means”—practices that the United States had accused China of in the Section 301 investigation.

Summer of 2018

Working-level staff from the three countries met in Washington August 23–24, 2018. They continued a joint effort to address Chinese trade practices, by holding talks to build on previous ministerial meetings.³²⁰ Lighthizer, Malmström, and Sekō met in New York on September 25 and hammered out a common position. After their fourth trilateral ministerial meeting to discuss trade concerns mostly involving Chinese trade practices, they issued a joint statement, saying that they were committed to beginning formal talks on “more effective subsidy rules” by 2019.³²¹ Thus, it was not surprising that the September 26 joint statement signed by Abe and Trump included a clause about trilateral cooperation on China. Without naming China directly, they pledged to cooperate on the problems caused by Chinese trading practices. The joint statement said, “We will...work closely together, through Japan–United States as well as Japan–United States–European Union cooperation, to promote discussions...to address unfair trading practices, including intellectual property theft, forced technology transfer, trade-distorting industrial subsidies, distortions created by state-owned enterprises, and overcapacity.”³²²

³²⁰ Anshu Siripurapu, “U.S., Japan, EU Continue Talks on Chinese Trade Practices,” *Inside U.S. Trade*, vol. 36, no. 34, August 24, 2018.

³²¹ USTR, “Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union,” September 25, 2018, www.ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/joint-statement-trilateral. Accessed February 8, 2019. “U.S., Japan, EU Say They Hope to Initiate WTO Talks on Subsidies, e-Commerce,” *Inside U.S. Trade*, September 25, 2018.

³²² “Joint Statement of the United States and Japan,” September 26, 2018, www.mofa.go.jp/mofaj/files/000405449.pdf. Accessed January 24, 2018.

WTO litigation

The United States and the European Union also initiated WTO disputes on Chinese intellectual property rights issues in 2018. Japan, however, did not join this bandwagon. In parallel with its unilateral measures against China pursuant to Section 301, the United States requested consultations with China at the WTO over the latter's measures that allegedly prevented foreign intellectual property holders in China from protecting their intellectual property (IP) and negotiating market-based licensing and contract terms.³²³ The European Union and Japan asked to join US consultations with China in early April. National Economic Council Director Larry Kudlow said that he expected other countries to join the United States in the WTO case.³²⁴ On June 1, 2018, the European Union began its own WTO dispute settlement proceeding against China over the issue of technology transfer. Why Japan did not initiate a similar dispute is not entirely clear. One possible reason was that Japan already had a bilateral forum in which it could discuss intellectual property rights issues with China.³²⁵

WTO reform

One of the areas in which Japan, the United States, and the European Union cooperated was WTO reform. In July 2018, the European Union circulated a concept paper on WTO

³²³ Jack Caporal, "U.S. Claims China's IP Policies Violate TRIPS, Requests WTO Consultations," *Inside U.S. Trade*, vol. 36, no. 13, March 30, 2018.

³²⁴ "EU, Japan Ask to Join U.S. in WTO Consultations on IP Issues," *Inside U.S. Trade*, April 5, 2018.

³²⁵ Interview, February 28, 2019.

modernization.³²⁶ It offered various proposals for reform in the areas of rule-making, transparency, and dispute settlement. Donald Franciszek Tusk, president of the European Council, called on the other members to actively contribute to the efforts to reform the WTO.³²⁷

When Sekō, Lighthizer, and Malmström met in New York on September 25, 2018, they agreed to make joint proposals on WTO reform in November. One of the proposals was to institute punitive measures against member states who maintained measures to favor the domestic industry, with Chinese practices in mind.³²⁸ For example, China had been accused of not notifying the WTO of its illegal subsidies to its steel industry since 2006, but it had received no penalty for this omission.³²⁹ In early November, the outlines of the proposals that Japan, the United States, and the European Union were going to make became clear; they were going to introduce penalties on member states that continued to provide illegal subsidies. If a member state was found to be delinquent in notification obligations and if it did not change its policy for one year, three penalties would be imposed: (1) the member state would not be eligible to chair any WTO committee; (2) its questions at trade policy reviews would go unanswered; and (3) it would be obliged to pay additional contributions to the WTO budget. If noncompliance continued for another year, the violator would be considered an “inactive” member and its voice in the organization would be limited to the end of any major WTO meeting.³³⁰ The three member states, in cooperation with Costa Rica and Argentina, submitted their proposal to the Committee

³²⁶ European Commission, *WTO Modernization: Introduction to Future EU Proposals*, Concept Paper, n.d., www.trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf. Accessed February 6, 2019.

³²⁷ Rintaro Hosokawa, Manabu Morimoto, and Takeshi Kawanami, “WTO *takamaru kaikaku kiun, Bōeki sensō hadome to naruka, Chūgoku no fukōsei zesei motomeru, Beiō hojokin ya gijutsu iten de,*” *Nikkei*, September 18, 2018, p. 1.

³²⁸ Takashi Tsuji, “*Nichibeiō WTO kaikaku teian he, Kakuryō kaigō de gōi, Chūgoku kensei,*” *Nikkei*, September 26, 2018, evening ed., p. 3.

³²⁹ *Ibid.*

³³⁰ “WTO *ihan ni bassoku, Nichibeiō ga kaikaku an, Jikoku sangyō yūgū Chūgoku niramū,*” *Nikkei*, November 2, 2018, p. 1.

on Trade in Goods at the WTO on November 12, 2018.³³¹ The proposal came roughly one year after the US push and one week after a group of ministers met in Ottawa to discuss WTO reforms (see below). The contours of the joint proposal were discussed in the Ottawa meeting.³³² China's ambassador to the WTO criticized the new transparency proposal advanced by the United States, Japan, and the European Union, saying that China did not believe punitive measures were a good solution to countries falling behind in notifications.³³³

Meanwhile, thirteen ministers (from Brazil, Chile, the European Union, Japan, Kenya, Korea, Mexico, New Zealand, Norway, Singapore, and Switzerland) gathered in Ottawa on October 25, 2018, to discuss WTO reform. However, key members, China and the United States, were not invited.³³⁴ Reform of the Appellate Body was one of the three main topics discussed by the ministers, along with transparency rules and future work by the WTO.³³⁵ An EU concept paper that included Appellate Body reform proposals was used as the basis for discussion at the meeting.³³⁶ At the end of the two-day meeting, the ministers issued a communiqué. The Appellate Body issue loomed large, with the United States challenging how it functions and blocking new appointments. "We are deeply concerned that continued vacancies in the Appellate Body present a risk to the WTO system as a whole," read the ending communiqué. Another key

³³¹ General Council, Council for Trade in Goods, Procedures to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements; Communication from Argentina, Cost Rica, the European Union, Japan, and the United States, JOB/GC/204, JOB/CTG/14 (1 November 2018). See also Rintarō Hosokawa, "Nichibeitō WTO kaikaku teian, Chūgoku nentō, Muhōkoku de jikoku yūgū bassoku," *Nikkei*, November 13, 2018, evening ed., p. 3.

³³² Brett Fortnam, "U.S. EU, Others Propose Penalties for WTO Members Lax on Notifications," *Inside U.S. Trade*, November 2, 2018.

³³³ "China Criticizes WTO Transparency Proposal Advanced by U.S., Others," *Inside U.S. Trade*, November 16, 2018.

³³⁴ Brett Fortnam, "Australian Trade Minister: U.S. Should View Ottawa Ministerial Positively," *Inside U.S. Trade*, vol. 36, no. 43, October 26, 2018.

³³⁵ *Ibid.*

³³⁶ Brett Fortnam, "Official: Division on Doha Agenda Could Stymie WTO Reform Efforts," *Inside U.S. Trade*, October 26, 2018.

issue was how the Doha Development Agenda would fit in with a revamped WTO. Some developing countries were still committed to that agenda, leading one source to say “there is still a big gap, even between this meeting’s participants and other especially major developing countries....”³³⁷ The United States, along with some other WTO members, believed that the Doha Round was concluded in 2015, at the Tenth WTO ministerial conference in Nairobi, when trade ministers did not explicitly endorse the continuation of the round in a ministerial statement.³³⁸

On December 1, 2018, leaders of G20 countries issued a communiqué aimed at reshaping the WTO. The communiqué issued at the G20 leaders’ summit said that countries agreed to “review progress” made on WTO reform efforts during the next G20 summit, set for June 2019 in Japan.³³⁹ Noting unnamed “trade issues,” the G20 members pledged to use “all policy tools to achieve strong, sustainable, balanced, and inclusive growth, and safeguard against downward risks, by stepping up our dialogue and actions to enhance confidence.” *Politico* reported that an EU official said the unnamed “issues” cited in the communiqué were related to the disputes between Washington and Beijing.

Trade ministers, meeting in Davos in January 2019, said they wanted to make “significant progress” on WTO reform before a June G20 meeting in Japan. “We note with concern the sharp rise in trade restrictive measures over the past year and encourage all members to exercise restraint,” said a group of “like-minded” countries, led by Canada, in an official

³³⁷ “‘Like-Minded’ WTO Reformers Set Agenda, Wonder How to Get U.S. Attention,” *Inside U.S. Trade*, October 30, 2018.

³³⁸ Brett Fortnam, “Official: Division on Doha Agenda Could Stymie WTO Reform Efforts,” *Inside U.S. Trade*, op. cit.

³³⁹ Isabelle Hoagland, “G20 Communique Calls for WTO Overhaul, Cites ‘Current Trade Issues,’ Steel Concerns,” *Inside U.S. Trade*, December 1, 2018.

communiqué on January 25, 2019. The group of more than a dozen WTO members, which first met in Ottawa in October 2018, included Australia, Japan, the European Union, South Korea, and Mexico. The communiqué identified three main reform goals: resolve the Appellate Body impasse, “reinvigorate” the WTO negotiating function, and improve transparency. The countries also said they wanted to “explore” how the WTO system allowing countries to self-designate as developing “can be best pursued in rule-making efforts.”³⁴⁰ According to the communiqué, the group would meet again in May 2019.³⁴¹

Digital trade

Another area in which Japan, the United States, and European Union began to cooperate was the creation of new rules on digital trade. Meeting in Washington on January 9, 2019, Sekō, Lighthizer, and Malmström issued a joint statement on this issue. They agreed to convene a mini-ministerial meeting of the WTO on the sidelines of the Davos World Economic Forum meetings in January, and they would launch a fresh round of negotiations for making new rules on digital trade. On their minds was China, which was strengthening state controls on data, and the three countries purported to create an environment for more open flows of data.³⁴²

In the meantime, Japan, Singapore, and Australia were leading the effort to negotiate new rules on e-commerce, a push stemming from a statement issued by seventy-one WTO members

³⁴⁰ Hannah Monicken, “In Davos, WTO Members Seek ‘Significant’ Reform Progress by June G20 Meeting,” *Inside U.S. Trade*, January 25, 2019.

³⁴¹ *Ibid.*

³⁴² USTR, “Joint Statement of the Trilateral Meeting of the Trade Ministers of the European Union, Japan, and the United States,” January 9, 2019, www.ustr.gov/about-us/policy-offices/press-office/press-releases/2019/january/joint-statement-trilateral-meeting. Accessed February 8, 2019. Taisei Toriyama, “‘Dēta ryūtsū ken’ he renkei, Nichibeiyō bōeki shō ga kakunin, Takoku nimo kyōchō yobikake,” *Nikkei*, January 10, 2019, evening ed., p. 3.

at the 2017 ministerial in Buenos Aires. Members eyed January’s World Economic Forum at Davos for the potential formal launch of negotiations.³⁴³ The key to a formal launch was getting all the major players—the United States, the European Union, and Japan—on the same page. The United States had been adamant about including provisions on cross-border data flows and a ban on data localization in the scope of the talks. However, the European Union’s stance on data flows was a sticking point for the United States, as the European Union was in favor of exceptions to the principles of free cross-border data flows that have been criticized as overly broad. Further complicating the matter was the European Union’s belief that China must be included in an e-commerce deal and China’s opposition to the two main US priorities. China had not signed on to the e-commerce joint statement in Buenos Aires.³⁴⁴ Japan suggested a two-tier approach to e-commerce commitments: top-tier members would take on commitments on par with the US ambition, while second-tier members would have more flexibility in their commitments.³⁴⁵

On January 25, 2019, more than seventy countries, including the United States, China, the European Union, and Japan, confirmed their plan to begin WTO negotiations on e-commerce. “We confirm our intention to commence WTO negotiations on trade-related aspects of electronic commerce,” they said in a joint statement released on the sidelines of the World Economic Forum in Davos. Before the statement’s release it was an open question whether China, which was thought likely to oppose key US e-commerce goals for cross-border data flows and a ban on

³⁴³ Brett Fortnam, “U.S. Participation in e-Commerce Initiative Tied to Ambitious Outcome,” *Inside U.S. Trade*, December 28, 2018.

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

data localization, would join the group. A press release from the European Union noted that the negotiation process was “planned to start in March 2019.”³⁴⁶

US reactions

Any help that Japan could offer to the United States to cope with Chinese trading practices was welcome, and, in that sense, US reactions were never a constraint on Japanese actions in this area. However, there was a slight difference in the attitudes toward the WTO. Even though the major elements of the Japanese and EU strategies to cope with China included some elements of WTO reform, the US attitude toward WTO reform was lukewarm at best. Now that the United States was openly saying that it was a mistake to let China into the WTO in the first place, it was understandable that the United States wanted to keep some distance from WTO reform. However, no genuine WTO reform would be possible without cooperation from the United States and China. That represented a major constraint on the EU and Japan.

Domestic constraints

These efforts for trilateral coordination and cooperation proceeded very quietly, eliciting no news headlines. Therefore, there has been no major domestic constraint so far. Such constraints will become apparent only after the Japanese government starts taking some costly measures.

³⁴⁶ Hannah Monicken, “U.S. China, More than 70 Countries Announce ‘Intent to Commence’ e-Commerce Talks,” *Inside U.S. Trade*, January 25, 2019.

“Proactive state”?

In this most recent series of events, the only proactive aspect of Japan’s behavior is that Sekō took the initiative of gathering the three ministers together at the Buenos Aires WTO ministerial conference. As long as Japan did not have to take any concrete action, this was a wise move. Perhaps unexpectedly, the scope of trilateral coordination expanded, and it is not clear at this point whether Japan can continue to talk without taking any visible and potentially costly action. As long as no costly action is required, trilateral cooperation will continue at a technical level, and Japan can continue to be “proactive.”

Conclusion

This paper has undertaken six case studies of Japan’s response to Trump’s trade policy. Table 1 summarizes the findings of the case studies. We start with descriptive findings. First, only in Japan’s response to the security-based Section 232 tariffs on steel and aluminum and acceptance of TAG negotiations do we see typical behavioral patterns of a “reactive state.” In that sense, the applicability of the reactive state theory is diminishing, at least in comparison with the past. In the Asō–Pence talks, Japan was recalcitrant in the sense that it succeeded in fending off US pressure for a bilateral FTA while continuing to insist that the United States return to the TPP. In TPP-11 negotiations and EU EPA negotiations, Tokyo was extremely proactive. In trilateral cooperation, Tokyo was also proactive, but in a more limited sense.

Next, we examined the causes and constraints for reactivity and proactivity. First, the Asō–Pence talks were somewhat special; Japan was recalcitrant in the sense that it was passive

and rigid. Indeed, the Asō -Pence forum was used as part of Japan's delaying tactics. The reason was that the United States had no reason to resist the setting up of a forum per se.

TPP-11 and the EU EPA are special in that Japan was quite proactive. The reason Japan could be proactive was its lack of international constraints. The United States did not object to or resist the formation of TPP-11. Also, the European Union was interested in accelerating the EPA talks for the same reasons—concerns about the Trump administration and Brexit—that Japan was in a hurry. In both cases, opposition from farm lobbies could have seriously impaired Tokyo's ability to be proactive, but this did not materialize in a significant way because the government co-opted these lobbies with a promise of compensation.

Reactiveness in the Section 232 metals tariffs and acceptance of the TAG negotiations was quite revealing. In the case of the Section 232 tariffs, the steel lobbies, which could have pushed Tokyo to take such harsher measures as retaliation and litigation, did not do so, partly because they could be pacified with product-by-product exclusions offered by the United States. In the case of TAG negotiation, US pressure in the form of the auto tariff threats was too much to bear, and Tokyo had to accede. Strong opposition from the farm lobbies could have prevented Tokyo from easily compromising, but opposition was muted because the government promised that it would not go beyond what had been agreed to in the original TPP and the EU EPA, a condition that the United States accepted.

Finally, the trilateral cooperation remains a noncase in the sense that concrete measures have yet to be taken; hence, as long as Japan does not have to commit to taking any costly measures, Tokyo has room to maneuver.

Tables

Table 1: Summary of Findings

	Reactive or not	International constraints	Domestic constraints
Asō–Pence talks	Recalcitrant	United States readily agrees to the forum; US agriculture groups continue to lobby for FTA	No major constraint
TPP-11	Proactive	United States did not object to TPP-11	Potential opposition from farm groups
EU EPA	Proactive	European Union agreed to expedite negotiations	Potential opposition from farm groups
Section 232	Reactive	Security dependence on United States	Domestic steel lobbies satisfied with product-by-product exclusions
TAG	Reactive	Threat of auto tariffs unbearable	Potential opposition from farm lobbies
Trilateral cooperation	Proactive	United States and European Union cooperative	Measures not costly yet

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