

Roundtable with Prof. Tsuyoshi Kawase, Prof. Kazuhiro Maeshima, Prof. Shujiro Urata and Masakazu Toyoda

# Is a “Rules-Based Economic System” Close to Cliff Edge?

By Japan SPOTLIGHT

This Roundtable was joined by Prof. Shujiro Urata of Waseda University, Prof. Tsuyoshi Kawase of Sophia University, and Prof. Kazuhiro Maeshima of Sophia University, and moderated by Masakazu Toyoda, chairman of the Japan Economic Foundation (JEF). All are distinguished experts on international economy and politics in Japan, actively involved in policy recommendations for a rules-based international economic system.

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## Participants



*Prof. Tsuyoshi Kawase*



*Prof. Kazuhiro Maeshima*



*Prof. Shujiro Urata*



*Masakazu Toyoda*

## Why “Recommendations for the Development of a Rules-Based International Economic System” Are Necessary

**Toyoda:** Sanctions against Russia over its invasion of Ukraine appear to be dividing the world between democracies on one side and non-democracies on the other, developed countries on one side and emerging economies and developing countries on the other. Major industrialized democracies also face divisions from within. The United States is divided between Democrats and Republicans. France just went through an election that pitted moderates against the right. In the United Kingdom “Brexit” still reflects social and political divisions. The global community and nations alike are plagued by division.

The WTO dispute settlement is seizing up because the members of the Appellate Body cannot be appointed due to opposition from the US. Meanwhile, the expansion and enhancement of regional free trade agreements are increasingly constrained with the US abandoning the Trans-Pacific Partnership (TPP). The rules-based

international economic system is under siege.

JEF has issued “Recommendations for the Development of a Rules-Based International Economic System” with Prof. Shujiro Urata, professor at the Graduate School of Asia-Pacific Studies at Waseda University, chairing the research committee set up for this purpose. Also joining us from the committee are Prof. Kazuhiro Maeshima and Prof. Tsuyoshi Kawase, both professors at Sophia University.

Today, we are discussing the background and the salient points of the recommendations. I’d like to begin with why we need the recommendations. Prof. Urata, I’d like to have your views on this matter as the committee chair. What is causing divisions in the global community and within nations? Does distinguishing between democracies and non-democracies exacerbate divisions? “Rules-based” and “power-based” feel more appropriate. What do you think?

**Urata:** As Mr. Toyoda said, division is growing in the global community and within nations, the divisions caused by the Russian

invasion of Ukraine being the latest example of the former. But of all the divisiveness we are witnessing today, the most serious for the global community in my view is the division caused by the conflict between the US and China. The background to the US-China conflict is the rapid rise of China as a military power. Since 1979, China has leveraged globalization to achieve dramatic economic growth, which it has been using to expand its political and military influence. Striving to rise from great power to superpower status, it has come to challenge the existing US-led international order. This rise of China has spawned the conflict with the US and is dividing the global community.

Meanwhile, divisions have been on the rise within many nations, including the US. The most important cause of this is growing inequality. This is manifested in many ways, including income, wealth, and educational opportunity. Growing inequality is rooted in technological progress and globalization. There is a growing demand for individuals capable of utilizing information technology and other cutting-edge technologies, who experience growing incomes, while demand for members of the labor force incapable of utilizing such technology fail to grow, not to mention their income. Inequality is rising as a result.

Meanwhile, the main cause of technological progress is the stepped-up competition between businesses as a consequence of globalization. The failure to come up with an effective policy response to the resulting growth in inequality is aggravating the social divisions.

As for democracies versus non-democracies, I agree that this exacerbates conflict. It's wrong to categorize some countries as democracies and others as non-democracies when the definitions are unclear. For example, Singapore has a political system that is close to one-party rule, so I assume it falls under the non-democracy category. But Singapore is not in conflict with democracies such as Japan and the US. I also believe there are cases that are difficult to categorize as "rules-based" or "power-based." For example, the US in principle is rules-based, but it has power-based elements, as can be seen in the unilateral measures that it takes.

The significance of "Recommendations for the Development of a Rules-Based International Economic System" when division is growing in the global community and within nations is this: achieving a rules-based international economic system restrains division and enables steady global economic growth and social stability.

Great powers are often inclined to adopt power-based economic policies on the international stage, and such policies may produce temporary benefits to that country, but in the long run they shut out competition from smaller countries with the result that technological progress is impeded, which in turn acts as a drag on economic growth in the great powers themselves.

Meanwhile, a rules-based international economic system promotes competition between nations with the result that economic growth is achieved and society is stabilized. Moreover, a rules-based international economic system treats any nation that participates in it fairly regardless of its size, with the result that equitable international relationships are achieved.

**Toyoda:** Let me ask you, Prof. Maeshima, what is causing division in the US? More specifically, what gave rise to anti-globalization? Is it irreversible or just a temporary phenomenon? Has America forgotten the significance of a rules-based international economic system?

**Maeshima:** The recent backlash against free trade in the US is actually a case of scapegoating. Let me explain. It is true that over the last 25 to 30 years, inequality has been rising in the US even while the US economy itself grew. This meant that the rich became richer while others, particularly the middle class, did not. In fact, I would go so far as to say that the American middle class went into decline, and that middle-class discontent was directed towards free trade.

The US promoted free trade through the implementation of the North American Free Trade Agreement (NAFTA) in 1994 and China's accession to the WTO in 2001. But there are many Americans who think that this "outsourcing" resulted in the loss of jobs to America's competitors. But it could be the case that the manufacturing job loss is largely attributable to technological innovation, not free trade. In that sense, it could be that free trade is being used as a scapegoat.

The lack of an effective domestic policy response against inequality also figured prominently. Suddenly, discontent towards growing inequality made free trade "Public Enemy No. 1." Once upon a time, the US was seen as the global champion of free trade promotion. But in 1930, with the US economy in freefall, the Smoot-Hawley Tariff Act was signed into law, instantly raising tariffs on over 20,000 import items, further shrinking the global economy and condemning it to the decade-long Great Depression.

Moreover, America's turn towards protectionism through the

Smoot-Hawley Tariff Act pushed Germany, already burdened by World War I reparations, towards Nazism. The idea that American protectionism spawned Nazism had a strong hold on the American imagination for a long while. While it had long been the American view that protectionism was bad because it had given rise to Nazism, the powerful aversion towards protectionism dissipated as World War II became a distant memory.

As a result, the Republican Party, for whom free trade had been one of its foundational tenets, metamorphosed into the party of the protectionist “America First,” while the Democratic Party is now the one more oriented towards free trade. Moreover, this may be a matter of America’s demographics, but division is growing in the US. The idea that “free trade is evil” blew up in the Republican Party around the 2016 presidential election, and the negative feelings towards free trade were too strong even for the Democratic Party to stand in its way.

**Toyoda:** Let me turn to Prof. Kawase. You have given us recommendations for the reconstruction of a rules-based international economic system. Is such a thing even possible? Have you seen efforts in that direction emerging?

**Kawase:** The desire for its reconstruction is certainly there. That is why there are Joint Statement Initiatives in the WTO, where efforts by like-minded countries to explore and create new rules continue. Of course, there is no assurance that the efforts will succeed. As has been long pointed out, WTO members, currently numbering 164, are a very diverse group with very different interests ranging from the US and China – the economic superpowers otherwise simply called the G2 – to least developed countries and even failed states. The idea of a rules-based international economic system differs among these countries. It has accordingly become very difficult to reach agreement on a consensus basis.

For example, it is said that while China has gained enormous benefits from its accession to the WTO, WTO rules as they currently stand have been ineffective in reforming and opening up China’s state capitalist economy and that this has been a great disappointment to the US. In that sense, the WTO in its current state should be very comfortable for China. The US by contrast has experienced the decline of its middle class through globalization in the 20 years since China’s accession. In fact, empirical studies show that the drop in the income of America’s middle class was

particularly conspicuous just after China’s accession.

It is against this background that former President Donald Trump claimed to “Make America Great Again” and President Joe Biden is calling for a “foreign policy for workers and the middle class,” distancing themselves from traditional, neoliberal trade policy. This is being manifested in the series of US actions that run counter to the supremacy of rules. Specifically, the US criticized the Appellate Body until it stopped functioning, abandoned the TPP, and has all but given up negotiating FTAs.

Meanwhile, the EU, Canada, Australia, and others still maintain a healthy rules-based approach, seeking reform on the basis of existing WTO rules. India and South Africa, on the other hand, argue for a WTO that is more mindful of the developing world.

There is agreement on a rules-based approach as the broadest of parameters, possibly with the exception of the US and China. But does that mean it’s possible to achieve a rules-based approach with any specificity? That’s a pretty difficult task as it currently stands.

## WTO Reform

**Toyoda:** Let’s go into the specifics. I’d like to begin with the WTO as the foundation of our rules-based international economic system. First, I’d like to ask Prof. Maeshima. The US has resolved many issues through the WTO, so why has it come to hold the Appellate Body in distrust? Does this have the same origins as the American wave of anti-globalism? How does the Appellate Body look from the American perspective?

**Maeshima:** Directly connected to anti-globalization in the US is this mistrust towards the WTO and, more specifically, towards the Appellate Body. This is less a matter of concern on the part of the current Biden administration and more the aftereffects of the mistrust towards the WTO during the Trump administration. The Trump administration was ill-equipped to handle international organizations and international collaboration, which must be managed multilaterally. It believed that diplomacy, where necessary, should be conducted one-on-one; matters should be handled bilaterally, not multilaterally.

The WTO and its Appellate Body are multilateral venues. Although it may ultimately end up as a bilateral matter between the US and China, I believe that the focus of the Trump administration was on going back to the pre-WTO, GATT stage. The fundamental intent of

the Trump administration was to destroy the WTO framework itself, which aims at a higher level of free trade, with the aim of having each sovereign state making its own decisions.

How does this situation look under the Biden administration? My view is that the Biden administration needs time to correct the situation because so much happened under the Trump administration.

**Toyoda:** Prof. Kawase, the EU has come up with the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as an alternative to the Appellate Body. What exactly is the MPIA, and how should Japan deal with it?

**Kawase:** The Appellate Body is currently out of order. The MPIA is an EU initiative that serves as an alternative appellate procedure through arbitration. Currently participating are 26 countries and regions, if the EU is counted as a single member. Members other than the EU include Australia, Brazil, Canada, China, Mexico, New Zealand, and Singapore.

Article 25 of the WTO's Dispute Settlement Understanding provides arbitration without identifying any specific purpose for its use. This arbitration can be used for a procedure that approximates the function of the Appellate Body. In the WTO, a panel makes the initial determination, to which any party to the dispute may seek a review by the Appellate Body. Since the Appellate Body is currently unable to act, the panel's decision is submitted to arbitration under the MPIA instead, which acts as a substitute of the Appellate Body.

The MPIA procedures for the most part follow the existing procedures of the Appellate Body, but some of the American criticism of the Appellate Body has been accommodated. For example, the Appellate Body must in principle decide within 90 days after an appeal is made. But the issues are often complicated or the parties to the dispute make so many claims that the appeal stretches on with no end in sight and the Appellate Body fails to meet the deadline, inviting criticism from the US. In the MPIA, the arbitrator can recommend the parties to narrow down the issues before making the determination so that the deadline is met. Such procedural efforts can be seen in some areas.

Unfortunately, mindful of US objections, Japan has not joined the MPIA. But China has. If Japan does not participate in the MPIA, let's say that there is a dispute with China and China loses. China will file an appeal with the empty Appellate Body, leaving the dispute

unresolved indefinitely. Japan currently has a case before a panel regarding China's imposition of anti-dumping duties on stainless steel products (DS601). If Japan wins the case but continues to stay out of the MPIA, China will file an "appeal into the void" with the Appellate Body to forestall a resolution.

The Biden administration appears to be working bit by bit to turn back the trade policies that had undergone dramatic changes under the Trump administration, but there is very little movement as far as the Appellate Body is concerned. With prospects so unclear, it is especially important for Japan to join the MPIA, particularly to handle China.

The most important thing is to bring the international trade order under the rule of law. Even if it's only on a provisional basis, we should first bring the situation back as close as possible to what it was, and then engage in a deliberate and painstaking discussion of Appellate Body reform. Japan should assume this responsibility since it has historically been the greatest beneficiary of the WTO's dispute settlement system. When we consider our national interest in the context of trade policy, declining to join the MPIA in consideration of the American position is not in our national interest at all.

**Toyoda:** Prof. Urata, shouldn't Japan be more proactive in recovering the functionality of the Appellate Body? I feel that not enough is being done there. What is your view on this point?

**Urata:** I agree that the fact that Japan is staying out of the MPIA even after it was set up is a serious problem. Joining it must be the first thing Japan does. Once that is taken care of, Japan should seize the initiative in Appellate Body reform by presenting its views on what form the reform should take.

## Expectations Regarding RTAs

**Toyoda:** Let's move on to FTAs and RTAs. Prof. Urata, China is not even a signatory to the Agreement on Government Procurement (GPA) and I've heard complaints from many countries to the effect that China is not fully fulfilling its obligations under the WTO. Is it desirable for China to join the CPTPP? Taiwan has also expressed its desire to join the CPTPP. What should we make of Taiwan's application?

**Urata:** I believe that it is desirable for China and Taiwan to join the CPTPP. But there are conditions. It goes without saying that China and Taiwan must accept all the provisions applicable under the CPTPP if they are to accede. Moreover, the current CPTPP signatories must confirm that China and Taiwan will comply with CPTPP rules once they become members. I believe that clearing this hurdle will be more difficult for China than it will be for Taiwan. Specifically, it will be very difficult for China to satisfy the provisions on state-owned enterprises, labor, and digital trade.

The current signatories should not make exceptions for China. If China clears those hurdles to join the CPTPP, the unfair activities and unfair trade practices of Chinese businesses will be corrected, reducing and eliminating damage inflicted on Japanese and other foreign businesses. Over the long run, we could also hope that the one-party dictatorship under the Chinese Communist Party (CCP) and all the problems that come with it will decline.

As for Taiwan's accession, I assume that there are member states that will oppose it for fear of harming relations with China. But in the interests of the growth and development of the regional, Asia-Pacific, and global economies, I hope that Taiwan does become a member.

**Toyoda:** Prof. Maeshima, the administration of former President Barack Obama pushed the TPP but the Trump administration abandoned it. What was the reason for this dramatic shift? Any country has its own protectionist movement, but in the US, the Trade Adjustment Act was supposed to be there to overcome this. Why did it fail to work?

**Maeshima:** Free trade was made the scapegoat, as I already mentioned. And the TPP was the biggest villain of them all. President Trump called the TPP “the worst trade deal maybe ever signed anywhere, but certainly ever signed in this country” – a charge he repeated over and over again. Part of this was just campaign rhetoric for the presidential election. And nowhere in any of the rhetoric was there any debate on the kind of structural reform that would enable the Trade Adjustment Act to function, which the US should have undertaken in the first place. It seems as if the entire US decided in the 2016 presidential election to put “America First” instead of undertaking structural reform.

The Democrats were no different from President Trump and the Republican Party in this respect. The Democratic Party, relying on labor support, reacted to Trump's claim that “our jobs are fleeing the

country” by turning away from the TPP. And, as yet another false charge against the TPP, among supporters of the Democratic Party environmental protection groups who were staunch advocates for measures against climate change in particular claimed that the TPP was bad for the environment. The TPP did address climate change or, more generally, the environment to a considerable extent. But the idea that the TPP would destroy the environment took hold. Some environmental protection groups expressed the view that the TPP would destroy the environment. Trade between countries like the US and Japan is not a problem, but if other countries join the TPP and export products with large carbon footprints to the US, the TPP would have a negative impact on climate change including global warming. The TPP had become saddled with the reputation of being an incorrigible villain.

The Trump administration is behind us now, but the US remains very negative towards free trade. In the US, in order to put multiple trade negotiations into a single bundle, that power, which belongs to Congress, must be delegated to the president. Trade promotion authority (TPA), formerly called “fast track,” is necessary. However, the Biden administration has not even requested it. All this leads me to believe that a US return to what is now the CPTPP will be a long time coming.

**Toyoda:** I have a couple of questions for Prof. Kawase. Expanding the CPTPP is good, but the challenges that the WTO faces should not be forgotten in the wake. If the CPTPP and the EU are connected or collaborate through the Japan-EU Economic Partnership Agreement (EPA) and other means and the US decides to participate as well, could the resulting alliance function as a new forum for the development of new WTO rules? The Recommendations suggest that connection and/or collaboration between the EU and CPTPP and the addition of the US to such an initiative could lead to a broader reform of the WTO. What is your view on this?

**Kawase:** There should be several ways to do this. The EU could accede to the CPTPP, or an FTA between the two customs territories could be concluded between the EU and the CPTPP. In any case, this is something that must be explored as a mid- or long-term possibility.

Given the post-Ukraine situation and the ramifications of Russia's invasion of Ukraine, it deserves consideration from a security perspective as well as for its economic benefits. It was agreed as

Prime Minister Fumio Kishida stated at the Japan-EU Summit in May, that the security of Europe and the Indo-Pacific is inseparable in the post-Ukraine era.

As the countries united against Russia's invasion of Ukraine work to enhance supply-chain resiliency, I believe that a grand alliance between the EU and the CPTPP is worthy of consideration. Assuming that a grand alliance between the EU and CPTPP is achieved, could the outcome be incorporated into the WTO? Ideally, it should. But such an alliance will set very high standards. Given the large number of developing countries that are members of the WTO, the question is to what extent such developing countries will be able to sign on.

Therefore, this may not be a model that will replace the WTO as it is. But it will set forth the direction of reform and new rules and serve as de facto standards.

## Assessment of the IPEF

**Toyoda:** On a matter relevant to FTAs and RTAs, the US has proposed the Indo-Pacific Economic Framework (IPEF), which was launched last week in Japan. Participation is exceeding expectations, with 14 countries now participating. Prof. Kawase, what is your assessment of this US initiative?

**Kawase:** As a practical matter, it is very doubtful that supply-chain resilience can be achieved without more liberalized market access in goods and service trade and liberal direct investment rules. In a global supply chain, parts and components and semi-finished products frequently cross borders, which will be subjected to tariffs every single time they do so if there are no FTAs. Time-consuming customs procedures will stretch lead time needlessly. How this strengthens supply chains escapes me.

Moreover, if the US wants to improve environment and labor standards in the Indo-Pacific region, the developing countries there will have to alter their domestic systems drastically. But there will be no incentive for them to do so unless there are tangible benefits. The reason countries like Vietnam, Malaysia, and Brunei accepted the high labor and environmental standards in the TPP was the improvements in access to the American market, needless to say, and it also figured large that their agricultural and textile export would be liberalized. There's none of this in the IPEF. It's doubtful that those countries have an incentive to respond to demands that they improve their rules and regulations on labor and the

environment.

As for the ASEAN countries and India in particular, their perspective on China and Russia is different from that of the US and its allies like us. It will be very difficult to build an economic framework based on values and security with these countries. It's been quite a while since the US last launched a major economic initiative in the Indo-Pacific region, so this may be raising great hopes, but my view is that the initiative faces a daunting future.

**Toyoda:** Let me ask Prof. Maeshima how the IPEF is going down in the US.

**Maeshima:** There is very little recognition of the IPEF among the general public in the US. Of course, trade people and the Indo-Pacific policy crowd there are aware that the IPEF is an important cornerstone for US trade policy in the absence of US influence over the CPTPP, the foremost economic network in the Asia and Indo-Pacific region. But the average American has no interest in it whatsoever. And the American media are largely ignoring it.

The IPEF is essentially a placeholder until the US can go back to the FTA formerly known as the TPP. It advocates low-key collaboration in four areas: fair and resilient trade; supply chain resiliency; infrastructure, clean energy, and decarbonization; and tax and anti-corruption. Anti-corruption and decarbonization are not matters that are appropriate for FTAs. The IPEF is a stopgap measure, unlike comprehensive treaties that cover tariffs like the TPP and drive the global economy.

It is my view that the Biden team responsible for Indo-Pacific policy intends to use the IPEF as a foothold through which the US can eventually make its way back to what is now the CPTPP. It is quite difficult for the US to join the CPTPP under the current circumstances. But there is a renewed appreciation there of the CPTPP's significance from the national security perspective, given the new focus on economic security. As the RCEP draws in nations throughout the Indo-Pacific region, the US must stake out its own claim. If the IPEF is the first step in this direction, there is hope that it will lead to bigger steps, even if it is now a modest gambit offered out of necessity and may not have much by way of benefits for the participants.

**Toyoda:** Prof. Urata, the CPTPP, APEC, ERIA, and IPEF are all Indo-Pacific institutions. Japan is a member of each of them. There's

some variation in membership as far as the other key countries are concerned. How do these four institutions, the IPEF included, fit together? It does look complicated, but can they be deployed effectively?

**Urata:** Add the RCEP and you have five regional institutions on the economic front in the Asia-Pacific and Indo-Pacific neighborhood. Japan is a member of all of them. Singapore, Brunei, Malaysia, Vietnam, Australia, and New Zealand are as well. The US is a member of APEC and the IPEF. China is member of the RCEP, APEC, and ERIA, and has applied for membership in the CPTPP.

As I just mentioned, membership varies, and there are significant differences in the objectives and nature of the institutions. The CPTPP and RCEP are FTAs, so they are hard law. They have multiple objectives, but their economic aim is to increase trade among their members and achieve economic growth.

As for APEC and ERIA, ERIA is regarded as the East Asia version of the OCED. The two are soft-law institutions. Their aim is not limited to economic growth through the expansion of trade and investment. Reducing the development disparity between members is also a major objective. Economic cooperation to reduce the disparity is an important area of activity for them. As Prof. Kawase explained in detail, the substance of the IPEF is to be determined going forward, but encircling China is one major objective.

Japan should take the features and objectives of these five regional institutions into consideration and use them selectively and effectively while maintaining an organic relationship between them to achieve economic development and political stability in the Asia-Pacific and Indo-Pacific regions. It is important to develop specific policies with this in mind.

## Climate Change & the International Economic System

**Toyoda:** It's encouraging to be told that Japan could use these five frameworks to enhance political and economic stability in Asia.

Next, I would like to take up climate change. In their call for new rules, the Recommendations include climate change, the digital space, and human rights. Today, I would like to take up climate change and the international economic system.

The EU is working to introduce its Carbon Border Adjustment Mechanism (CBAM) to combat climate change. Some people say

that it is protectionism using the protection of the environment as a pretext. Concerns are also being expressed about its compatibility with WTO rules. Moreover, some argue that the constraints of the carbon budget are not being shared equitably between developed countries and developing countries. The complaint here is that developed countries have already used up the bulk of the carbon budget, leaving very little. This could become a North-South point of contention.

Some people question the appropriateness of hard law for climate change. I'd like to begin by asking Prof. Urata for his view on this. In APEC, several nonbinding agreements on the environment have successfully achieved their goals. Developed countries may use up most of the carbon budget, taking away the development potential from developing countries. What is your view?

**Urata:** The carbon budget poses a very serious conundrum in dealing with climate change. The developed countries have already used up the bulk of the carbon budget, so distributing the remainder is difficult. I do not think it is fair unless developed countries take on a greater burden in the distribution of what remains in the carbon budget. However, it will be very difficult to reach agreement on what is a fair distribution, which makes it difficult to deal with the issue by setting rules.

I think that using a soft-law framework like APEC would be effective. APEC sets common goals for the response to an issue. Each member establishes and executes its own voluntary plan to achieve those goals. Voluntary implementation is the method of choice. Implementation of the plans is monitored through peer review. An important part of APEC activities is economic and technical cooperation. Developed members cooperate with developing members. I believe that the APEC approach is effective for climate change. Progress is monitored through peer review to determine whether steady progress is being made towards the goals. I participated in the trade policy review of the US. I visited the USTR, the Department of Commerce, and other institutions to conduct interviews and compiled a report from those interviews, which I submitted to the APEC secretariat. The US would follow up by working to resolve the issues raised in the report. I believe that this would be effective for environmental issues.

**Toyoda:** I have a question for Prof. Kawase. Is the response to climate change appropriate for a rules-based international economic

system to handle? Also in connection with something that Prof. Urata referred to, I would appreciate it if you could talk about the pros and cons of hard law and soft law with regard to rules-based international economic systems, the WTO in particular.

**Kawase:** The Recommendations gives the EU's CBAM, which is essentially a border tax, as an example for a rules-based international economic system, but it must be recognized that using a measure like a border tax against climate change is a workaround and can only play a complementary role. "Trade and Environment" has been a major issue of contention since the pre-WTO GATT regime to this day, and this is a point that has always been made there.

In this connection, it's unclear in the latest EU proposal how the domestic industry's cost for buying emission rights is calculated and how the carbon tariff imposed on imports secures equal treatment across borders, thus ensuring national treatment for imported products. Accordingly, it's still unclear whether it's solely directed towards climate change or whether it's aimed at levelling the competitive conditions for steel and other industries.

If there is something to be said for it from a rules-based perspective, intrusive measures like carbon tariffs ideally should be undertaken on a consensus basis. In that case, Members would register their respective carbon tax systems with the WTO, providing transparency. Since everyone will introduce a similar system under this consensus, disputes would be prevented.

**Toyoda:** The Biden administration has a very strong interest in the environment. Historically, the US led the creation of the Kyoto Protocol but was unable to ratify it because Senate approval was not forthcoming. Depending on the outcome of the 2024 presidential election, it's possible that the US may also fail to take part in the undertaking for carbon neutrality by 2050. Prof. Maeshima, how serious do you think the US is on climate change?

**Maeshima:** It's entirely possible that the US may not take part in the undertaking to achieve carbon neutrality by 2050. Not only is there no consensus in the US on climate change, but the issue has become such a key point of contention in the political conflict that even if the US joins an initiative on climate change, it could soon drop out of it. And vice versa. I fear a repetition of this cycle.

The Democratic supporters' (liberals') concept of climate change is the same as ours in that we believe we must change our behavior

immediately. Some Democratic members of Congress strongly advocate for the introduction of a carbon tariff for this purpose. Meanwhile, many Republican supporters (conservatives) don't even think that global warming has begun. Even the overwhelming majority of Republican supporters who concede that Earth is getting warmer, that climate change is occurring, believe it is caused as part of our planet's cycle of warming and cooling and doubt that altering human behavior would have much of an effect.

Many conservatives are religious conservatives (evangelicals), who sometimes say things that are beyond my comprehension. One such person told me there was nothing to worry about even if the world came to face a serious crisis due to climate change because God would ultimately save us. For example, President Trump pulled the US out of the Paris Agreement, calling it a "Chinese trap" that causes great harm to American manufacturing, and many people still think that way.

But these are polarizing times. Democrats say this is wrong and support policies that are very different from those of the Republicans. If the Republicans take the White House, it goes without saying that the administration will switch from strongly committed to joining the global framework to one that is deeply antipathetic to it.

## **“Rules-Based” Resolution of Territorial Issues**

**Toyoda:** The Ukraine crisis can also be seen as a territorial issue of sorts. Some argue that the atrocities we witness every day should be handled by the International Court of Justice (ICJ). Japan also has issues with South Korea over Takeshima and with China over the Senkaku Islands among others. Territorial issues have historical implications, where emotions run high. They are very difficult problems, and harmful to bilateral relations.

Let me ask Prof. Maeshima whether the US has territorial issues. The US must be frustrated over the territorial issue between Japan and South Korea, as it divides two key allies. What is the American perspective on resolving territorial issues through the judicial process?

**Maeshima:** The territorial issue that is of most immediate concern to the US would be the 3,150 kilometer border that it shares with Mexico. But most of this border runs through desert. Many people

have land and houses along the border. The border itself is rather porous, and it is difficult to deploy people to guard it. In Japan, that border would be long enough to span the distance between Hokkaido and Okinawa. It is virtually impossible to put enough people in place to fully patrol this border. The wall on the US-Mexico border that President Trump talked about was little more than fantasy. It was impossible to build. It would have been a public works project of epic proportions, but little progress was made. Trump must have been aware that it had been a fantasy in the first place.

Given the porous nature of this border, immigration is also a highly politicized issue. In my view, decisions are made more from the political perspective rather than being left to the judiciary to decide. In the US, the situation remains unchanged that immigrants can easily enter the country illegally through a variety of ways. There are many American cities where illegal immigrants comprise 10% of the labor force in services. Given this situation, it is unthinkable for the US to close the border or to determine the border through international judicial procedures. Ciudad Juárez is well-known in Mexico as a place where people on the Mexican side cross the border in the morning to go to work and to go back home in the evening. The very idea of the border is quite flexible.

Of course administration officials holding the East Asia portfolio understand the need to resolve territorial issues through judicial procedures. But it must be very difficult for the average American to understand.

**Toyoda:** An issue between sovereign states cannot be resolved through international judicial procedures unless the parties are willing to do so. Prof. Kawase, what is your view on the resolution of territorial issues through international judicial procedures? Some people think that Japan should take the initiative in public communication. What do you think?

**Kawase:** Since I have no expertise on disputes beyond the economic sphere, I would expect you to take my answers with that caveat. It is difficult to resort to judicial procedures like the ICJ, international arbitration, where there is no compulsory jurisdiction as provided under the WTO involved. South Korea is unwilling to accept ICJ jurisdiction – it's the same with “comfort women” and conscripted workers – so the issue cannot be resolved once and for all. It's another story, of course, if there's a firm agreement between Japan and South Korea to resolve the issue through judicial means. Using

public communication to move the issue in that direction is a possibility.

But when proceeding with territorial issues and colonial history issues, it must be kept in mind that they are different from economic disputes, where judicial resolution has as rich history. It is fine when you're the winner. But given the social impact on the losing side and the resulting deterioration in public sentiment and bilateral relations, resolution on the legal end does not mean the end of the dispute. Even disputes submitted to the WTO have some of this. The US-EU beef hormone case and the Japan-South Korea case over fisheries products from the Fukushima area are examples where the panel and the Appellate Body decisions were not the end of the dispute.

In that sense, it may be difficult to bring emotional and political closure to such issues even when legal resolution is achieved. It is important to work for judicial resolution, but it's my non-expert view that you must proceed with damage control of the aftermath in mind.

**Toyoda:** I feel the Ukraine crisis is a sign that the postwar security regime does not work anymore. *Pax Americana* is truly broken and the world no longer has a policeman. I feel that the United Nations requires an overhaul. Prof. Urata, are judicial procedures appropriate for territorial issues? What are your thoughts on this in the light of this ongoing tragedy?

**Urata:** It is better for territorial issues to be resolved between the relevant sovereign states. The problem is that this is proving difficult to do. In such cases, I feel it appropriate to entrust the matter to the decision of the ICJ according to international law.

A decision by the ICJ may not be the end of a dispute, but there actually are cases where the issue has, at least on the surface, been resolved. For example, a territorial dispute between Singapore and Malaysia that spanned more than two decades was concluded by a 2008 ICJ decision. The problem is that it is difficult to take a case to the ICJ. A case cannot be filed without the consent of the parties to the dispute, and that is a big problem.

In addition, there is the question of the compelling force of the decisions, the judgments of judicial courts. A party to a dispute that does not comply with the judgment could be sanctioned if agreement is reached in the UN Security Council. However, if matters come to that, it is likely that a permanent member will exercise a veto, given the current state of the Security Council. In that case, sanctions cannot be enforced. In other words, the ICJ judgment will lack

compelling force, and that is a problem. UN reform has been under discussion. The compelling force of ICJ judgments – or lack thereof – is another issue that drives home the need for UN reform. All things considered, it appears difficult as a practical matter to entrust territorial issues to the ICJ.

## Developing a Rules-Based International Economic System & the Role of Japan

**Toyoda:** Finally, I would like to ask the members of the committee that produced the Recommendations, which advocate a rules-based resolution of issues in the international economic system, to give their views on the role Japan should play. A few words each from Prof. Urata, Prof. Maeshima, and Prof. Kawashima, in that order, please.

**Urata:** I hope that Japan will play a leading role in reconstructing global trade rules and the global trading system. Specifically, I believe it is important to expand the scope and enhance the quality of mega-FTAs such as the CPTPP and RCEP and to contribute to the expansion of plurilateral agreements under the WTO.

By expanding the scope of mega-FTAs, I mean increasing their membership. Enhancing their quality means raising their liberalization rates. And increasing the areas covered by mega-FTAs does both. One way of expanding plurilateral agreements is to increase the number of signatories to them such as the one on digital trade currently in the works, but opening up new areas for the consideration of plurilateral agreements is also included.

In my view, a new global trade system could be created by expanding both FTAs and plurilateral agreements. Let me explain. An FTA is an agreement with comprehensive sectoral coverage but with a limited number of participants – 15 in the case of the RCEP, 11 in the case of the CPTPP. A plurilateral agreement by contrast is an agreement on a specific issue with a large number of participants. By expanding these two types of agreements, we can ultimately come up with a new framework for trade with comprehensive sectoral coverage in which effectively all countries participate – a WTO 2.0, if you will. Japan should take the initiative in efforts towards this end.

The important thing here is to cooperate with like-minded countries, and to work with those countries to conduct the discussions efficiently and effectively. That is the role that that I want Japan to play; it is the role that Japan should play.

**Maeshima:** I, too, believe that Japan should not only maintain its rules-based posture within the international economic system but also push a rules-based approach to the forefront more broadly. To keep consistency with the Recommendations, the rule of law, on which note the Recommendations conclude, is extremely important. Japan should comply with rules while steadfastly objecting to Russia's outrageous invasion of Ukraine in utter disregard of international law. We should emphasize the need to comply with international rules not only in the economic space but also in other areas including security even as we do so ourselves.

Japan should bridge the gap between the US and what is now the CPTPP. There is a very strong sense in the US Congress that China is the problem. Hardline policies against China have bipartisan support. The CPTPP has a powerful economic security element, so it could be a very powerful weapon to use against China, which will be a long-term rival for the US. Japan should reemphasize to the US the importance of joining the CPTPP. The IPEF should be the first step in this direction. By working with the US to promote the IPEF, Japan should pave the way for the US to return to what is now the CPTPP.

Businesses, academia, state assemblies, think-tanks, the mass media, and other stakeholders should be engaged to lay the groundwork for the US to come back to the CPTPP. State governments are the key here. In the US, states are not “local” in the sense that Japanese prefectures are “local.” Cities, towns, and other “local governments” exist under states. We should work to inform state and local governments. In the US, it is the state and local governments that do not have an aversion to free trade agreements. By working carefully on states, municipalities, and counties, it may be possible to move the federal government. That is how the path for America's return to the CPTPP may be cleared.

**Kawase:** It goes without saying that a rules-based approach should be the basis of Japanese efforts going forward. We must not forget that Japan has historically eschewed the power game as a means for its trade policy even when people were talking up “Japan as Number One.” As Japan regretfully falls further behind the US and China in terms of its economic capacity and increasingly takes on the appearance of a middle power, it is utterly unrealistic to engage in a power game with the US and China.

Japan is a member of the Ottawa Group, a sensible, rules-based caucus within the WTO. Its core members are the EU, Canada, and Australia, which largely coincides with the composition of the MPIA

members. It is very important for Japan to collaborate closely with these countries and to go forward on the basis of the framework of like-minded countries for discussing the future sensible direction of the WTO.

The important thing to keep in mind here is that Japan is not like the US. It is said that the US is in decline relative to China. But as you can see from the Trump administration's approach, still the US can play the power game if that is what it wants to do. Although it has not produced the desired results against China, the US can do it if it so desires and will do it if it decides to, but that is not the case for Japan.

As the Appellate Body and other issues demonstrate, Japan's national interest regarding the multilateral framework and system for rules differ in many ways from that of the US. I hope that the Japanese government will go forward under an overarching multilateral rules-based trade policy based on our own national interest instead of blindly following the US lead.

More specifically, WTO reform is important. The WTO is the foundation of the entire free trade system. Add-ons such as the (CP) TPP or the IPEF do not change the fact that there are still many areas where WTO agreements are the main source of the law. For example, most FTAs do not have substantial anti-dumping and countervailing duty provisions or any other trade relief rules. In such areas, the WTO continues to be the main source of the law. FTAs do have rules to constrain protectionist abuse of technical standards, sanitary and phytosanitary measures, and the like, but they are based on the Technical Barriers to Trade Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures of the WTO.

So, the most important thing is for the WTO rules that form the foundation to be securely implemented, in particular for their enforcement to be ensured by the dispute settlement procedure. In other words, the focus of Japanese efforts must be on the normalization of the dispute settlement function including the Appellate Body.

People say that the WTO is no good because rules cannot be set by consensus. But a trade agreement is like the water we drink and the air that we breathe. I consider it a success when it exists unnoticed. The agreement reached at a certain point in time on the reduction of tariffs and the elimination of trade barriers is complied with by everybody with no fuss whatsoever. And trade flows the world over without hitches. That is how a trade agreement should ideally work. When this is obstructed, the dispute settlement

procedure is mobilized to eliminate that obstacle. That is how a trade agreement should in principle function. New rules are fine if they can make them, but even if they can't, the most important thing is to guarantee that compliance with the substance of the WTO rules agreed by everyone in a normal manner is secured.

Should China be accepted as a member of the CPTPP? I think that it would be desirable. Why? Because the WTO rules as they currently exist are insufficient for reforming and opening up a state capitalist China, and the CPTPP is vastly more equipped in terms of the rules available for this purpose. We have learned our lesson from the 20-year failure of the WTO. Everything starts from having China clearly understand that it will not enjoy any privileges and special treatment and that it is "welcome as long as it corrects its wide range of state capitalist institutions and economic systems."

There are many things still that Japan must do in the interests of a rules-based international economic system. To repeat, Japan is no longer "Japan as Number One," much less capable of going toe-to-toe against the US or China. We have no choice but to make a stand on a rules-based international economic system. The important thing for Japan is to exercise leadership under an overarching view of our own national interest. This is essential for our survival. **JS**