



US-CHINA COMMERCIAL ISSUES

-- SPEAKING NOTES --

Before a Global Business Dialogue Colloquium

***China Mirrors:
Reflections on Trade with the Middle Kingdom from
Canada, Mexico and the United States***

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**John R. Magnus
TRADEWINS LLC
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Good morning. It is an honor to be on this panel with Gilles Gauthier, Kenneth Smith Ramos and Flavio Volpe. I'm grateful to Judge for asking me to cover the Yanqui portion of today's "Three Amigos" program.

Of course our focus is not North America itself, but rather each Amigo's economic relationship with China. Each relationship has its challenges, and as the presentations will illustrate, those challenges are not being handled identically.

Anecdotes

I'll start with two anecdotes, one involving investment and the other involving trade.

Ownership of GE Appliances: I do some work in the home appliances sector for a business in Louisville, KY called GE Appliances. This was one of the iconic GE businesses for a long time, but starting in the early 2010s word surfaced that GE was looking to sell it. Ultimately a buyer emerged, and everybody spent about a year getting ready for a transaction in which Electrolux, headquartered in Sweden, would become the new owner. We were all quite surprised when it didn't turn out that way, after the U.S. government put itself sideways to the transaction on antitrust grounds. It seemed like a really narrow thing that was of concern, involving one category of appliances (cooking products) and just one distribution channel. It seemed like the kind of thing you could clear up easily with some deal conditions. But after a short while in court, the participants threw their hands up and canceled the deal. And then came word that, instead, Quingdao Haier from China was going to purchase GE Appliances, which in fact happened roughly 9 months ago. Chinese rather than Swedish ownership. One wonders whether the officials who blocked the earlier suitor intended this result, or even thought about it. Anyway, that's now a data point in the bilateral investment relationship.

Solar case and G-20 meeting: In the solar equipment sector, we have dueling antidumping measures: ours on photovoltaic cells and modules, and China's on polysilicon used to make those cells and modules. This is a situation that nobody seems to like very much and that the governments have made some effort to resolve, by finding a way to settle the cases out. The most recent opportunity would have been on the sidelines of the latest G-20 gathering which occurred in China, in Hangzhou. Press reports indicate things did not go altogether swimmingly there, starting with a fracas at the airport involving top aides to President Obama and then tumbling further downhill. So, no solution.

In the hands of a better presenter, these stories could become parables illuminating something important about the state of the China-US relationship and

its trajectory. One deals with investment, one with the intersection of trade enforcement and statecraft. I can't tell you what to think about either one.

So instead, and given that some of you paid to be here, I will do a quick *tour de table* of some headline-level US-China issues:

- Market economy status in antidumping cases
- Currency
- Bilateral Investment Treaty (BIT) negotiation
- Metals overcapacity
- Export restraints
- Structure used to manage bilateral economic discussions
- Leadership competition – TPP and RCEP as Asian trade platforms

For clarity, and as an aid to anyone wondering when to check email, here are some things you will *not* hear about in the next 6 minutes:

- the bilateral merchandise trade deficit;
- the need for a US screen, on inbound investment from China, that goes beyond national security concerns; and
- the ways in which we would be better-off if only our approach to trade and regulatory issues were more like China's.

Onward.

Market Economy Status

Some language in China's accession agreement, roughly in the nature of a "Peace Clause," will expire in several weeks, on December 11. The Chinese government believes this triggers an automatic end to the use of surrogate country data in antidumping calculations for Chinese products. The US government isn't so sure and hasn't signaled any clear intentions. What you need to know is:

- China does *not* have a market economy, as that term is defined in the US antidumping law. It isn't arguable. For a U.S. agency to find otherwise would be a lawless act.
- Absent a decision to "graduate" China to market economy status, U.S. law *requires* the Commerce Department to use surrogate data in determining the normal value of Chinese products. This is not one of the (many) areas where the law gives Commerce broad discretionary leeway in fashioning a methodology.
- Commerce in any event could not promptly begin making determinations, in mid-December, that apply normal market economy methodology to Chinese products. This is because in pending China cases, Commerce has only collected data of the type used in NME determinations. So there will be

some post-December 11 determinations that China can challenge at the WTO, if it wishes.

- People who defend the *status quo* – the existing NME methodology – are defending an approach that has its flaws. Most notably, self-regulation is difficult when companies cannot easily estimate the normal value they are supposed to be selling above. Self-regulation, not collection of duties, is the main way the antidumping system achieves its objectives. So the current surrogate method, while it may be least-worst, is no paragon.
- People who confidently predict the normal market economy methodology can be kneaded and stretched to deliver a proper offset are more confident than is warranted. Canada is trying one such, but it is not guaranteed to work over time. And for us here in the United States, both domestic law and WTO law are fairly restrictive. So the dilemma is real.
- At the same time, it is good to recall that antidumping only affects a sliver of our bilateral trade with China. It's a lot in absolute terms, and the litigation fees pay college tuitions for the children of many of my kinfolk in the trade bar. But there are times when the political and totemic significance given to this methodological issue on normal value can be a bit excessive.

Currency

The buttoning up of a TPP side-deal, and the passage of some trade legislation lightly touching the currency issue, have not removed political pressure in this area. Likewise with the latest evolution of the RMB-to-dollar exchange rate (real and nominal) – that has calmed some economists but virtually no one else. The outgoing administration isn't likely to do anything dramatic on currency, except possibly if it would seal a favorable vote on TPP. But the next one might.

The two tracks for addressing currency remain, as always, government-to-government and U.S./unilateral. G2G efforts could be free-standing or could flow out of citing China under the 1988 Act as recently amended. Either way, that path runs through – or perhaps disappears into – a sizable bog. It might be a good project for a Trump administration. But like the soccer games that run on my family's tv set all weekend, it would most likely end in a scoreless tie.

The U.S. unilateral track would probably involve further changes to the trade remedy laws. Tweaking antidumping calculations to take account of currency misalignment is hellishly complex. Stacy Ettinger, working for Sen. Chuck Schumer, came up with something solid in that area, which may get some renewed and deserved attention in the context of a possible shift away from the NME/surrogate methodology. If you want the details, I would strongly recommend putting her behind one of these microphones.

Otherwise, the proposal to watch is still the subsidy/CVD proposal. At the moment, the case for addressing currency misalignment under subsidy rules

remains valid. Which is to say, the trading of dollars for RMB still occurs at a Chinese government window and at an administered price. So you have a financial contribution, and if the administered price is too generous in relation to a market-determined price, you've got yourself a subsidy. In my opinion, one that can be considered not just countervailable but prohibited (because it is export-contingent).

Clearing away the excuses that have prevented this from being even investigated, in CVD cases, would be ... momentous. But the possibility exists that big things could be done to placate trade hawks during the 2-year Congress that will start in January. My advice: don't rule it out.

BIT Negotiation

I cannot give you inside scoop on this item. I read what you all probably read – including reports that China submitted an improved, but still not electrifying, “negative list” some months ago.

Administration officials have expressed a wish to push this project forward in some meaningful way before leaving office – shoving the thing up onto a new, higher ledge where it can sit comfortably and be admired while a new U.S. government organizes itself. They have expressed the same wish in relation to T-TIP and a few other items. With just under four months remaining and the fate of other legacy-pertinent issues uncertain, this could be one where they will make a bit of news.

We are not at, or near, a point where a BIT with China could gain Senate ratification. No one will be voting soon. And the investment relationship as it evolves year by year – both U.S. outbound and U.S. inbound – is prompting some unease. One can imagine two competing narratives emerging at some point. In one narrative, the BIT assuages these concerns, while in the other, the BIT – by constraining our behavior – greatly magnifies them.

Metals Overcapacity

Everyone is concerned about capacity growth in China that, in some sectors, comes close to equaling world demand and has caused worldwide capacity to greatly exceed demand. If you wonder how this could have happened, you are not alone. Steel and aluminum are the poster children.

The vocabulary that officials around the world are using to discuss this situation is fascinating. They are talking, in an explicit way, about who will bear the brunt of the capacity reductions and plant closures that are so obviously needed. Considerations like this lurk behind many trade battles, but you usually have to peer through the fog.

Beyond the easy targets and glaringly uncompetitive facilities, can government officials actually agree on who is going to “take one for the team” and reduce capacity?

It’s also interesting to see them having such a discussion even as they, and other litigants, fight like tigers over individual trade remedy cases on specific categories of steel and aluminum products.

Across town at this moment, the aluminum part of this story is being addressed in an ITC hearing on competitive conditions affecting the U.S. aluminum industry. I gather that the witness list includes testimony from the China Nonferrous Metals Industry Association, among many others. If we act quickly, maybe we can get someone to race over there in an Uber and collect a set of witness statements from the press table. And then we can all do some reading that will cause profound depression. Sound like a plan?

Export Restraints

We are litigating on this subject again – on a third tranche of items that are used in global manufacturing, and that China has sought to keep at home. It’s an interesting set of cases in that China’s commitments, in the WTO accession agreement, go beyond the rather patchy rules that apply to WTO members generally.

With the legal issues having been sorted out in two prior disputes, it is possible this latest one can be resolved without the aid of a panel ruling. But maybe being told you must give foreigners an equal chance, to buy what comes out of the ground in your own sovereign territory, is just tough to swallow. Export restraints are not unknown in the United States – and in the case of fossil fuels, our debate has carried a strong scent of industrial policy considerations. So both sides of the coin are, or should be, visible here.

And I have read that Chinese companies buy a lot of things that come out of the ground in Australia. So maybe both sides of the coin are visible also in China. One hopes.

Structure for Regular Bilateral Engagement

The current structure (S&ED with its economic track, and JCCT) might not be delivering the best possible outcomes at the lowest possible bureaucratic and political price. There has to be bilateral engagement, but it could take different forms and timetables.

The larger context is worth recalling. Not that long ago, there was time set aside every year for floor debate in Congress about whether to continue trading on normal MFN terms with China. Some portion of the G2G engagement that occurred on large and small issues was linked, in its timing, with the calendar for our yearly Jackson-Vanik hullabaloo. That of course ended with China’s WTO

accession, and some new structures (commissions) were established as a forum for ongoing review, debate, and venting. Since then we have had two 8-year presidencies with, largely, the post-PNTR structure in place on the domestic side and the SED-JCCT structure in place on the G2G side.

Is this structure a sensible one? During its lifespan a lot of problems have emerged – more, it seems, than have been solved. The bureaucratic cost of SED-JCCT seems pretty high in relation to the substance of what shows up in the announcements and fact sheets. People who have participated directly can comment on how much, if any, actual waste (or harmful distraction) is involved. I suspect at least some.

Around the mid-point of the W Bush presidency, there was a declaration about how China's "entry period" in the WTO system had concluded and how we would now have a mature and "normal" trade relationship, complete with resort to dispute settlement and so forth. With the SED-JCCT structure, we have never really treated the relationship as a "normal" one. Maybe we shouldn't, because maybe it isn't. Still, here's a thought exercise: what if the structure for managing the China-US trade relationship were no different from the structure for managing the Brazil-US trade relationship?

Leadership competition, TPP and RCEP

Leadership competition of course occurs across various dimensions – not just trade architecture, but infrastructure finance and others.

But there is something of a cottage industry spewing out opinions on TPP vs RCEP, as if one or the other is bound to furnish the next century's map. I'm not sure it's "either/or." I'm not even sure it's "either."

One thing seems strange though. Some participants in the Great US Trade Debate seem to be angry at China – believe it has gotten ahead in part through cheating and mercantilism, believe it is shirking responsibilities that come with great economic success, believe it just sells us too damn much manufactured stuff and is decimating our industrial base. If that's your view, and you'd like to stick it to China, there should be some attraction in the idea of giving free-trade status to Vietnam which competes with China as a supplier to the U.S. market of one kind of goods, and to Japan which competes with China as a supplier to the U.S. market of another kind of goods. Did you all see the rowing competition at this past summer's Olympics? Pulling those two boats forward is akin to pushing China's boat backward. The logic is especially tidy if you consider that during the recent period of MFN trading, China's explosive growth as a supplier to the U.S. market has in large part replaced U.S. imports from the rest of Asia.

There should be some attraction, in other words, to the TPP.

This is an argument for TPP that does not depend on its "21st Century rules" – rules that I personally regard as a very mixed bag. It also situates the TPP

comfortably inside the “competitive liberalization” paradigm that, as far as I can tell, has never really been replaced as the organizing principle for US trade strategy even though its name is rarely spoken nowadays.

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If that doesn't swing the door open wide enough for a good Q&A, then we have all consumed too little coffee. You are of course free to ask (and say) what you want. My hope, though, is that Q&A will deepen our exploration of issues where the benefits of a potential “North American” approach are not being fully realized ... and also areas where the Three Amigos are knowingly taking different approaches with China, whose results can be usefully compared.

Meanwhile, many thanks for your time and attention.