ELECTRIC VEHICLES AND THE TRANSFORMATION OF NORTH AMERICAN AUTO TRADE

-- SPEAKING NOTES --

Presentation at Case Western Reserve University School of Law
Seventh Trade Law Fall Update

Cleveland, OH

John R. Magnus
TRADEWINS LLC
November 18, 2022

TRADE**WINS** LLC
1330 Connecticut Ave. NW
Washington, DC 20036
www.tradewinsllc.net

November 18, 2022

ELECTRIC VEHICLES AND THE TRANSFORMATION OF NORTH AMERICAN AUTO TRADE

-- SPEAKING NOTES --

Good morning and thanks to the organizers for including me. My assigned task is to pull into our discussion the auto-related provisions of this year's Inflation Reduction Act (IRA). There are many, but particularly relevant today are:

- A $7500 per vehicle consumption subsidy (tax credit), available only if:
  - the vehicle is assembled in North America; and
  - the battery and its key components meet local content/"friend-shoring" requirements.
- There are also direct (plain vanilla) production subsidies for domestic manufacturing of batteries and components.
  - Some help with Capex – DOE loan guarantees and 48C credits.
  - Others help with Opex – especially the new 45X (per-unit-of-output) credit for domestic production of "eligible components," including critical minerals.

A policy argument has erupted around the requirements for the consumption subsidy. Many auto companies report they cannot produce according to the IRA's prescriptive recipe. Some stakeholders argue that a shortage of qualifying vehicles will slow the gas-to-electric transition that a generous consumption subsidy would otherwise deliver.

At a trade conference held in a law school, it makes sense to also consider some <u>legal</u> issues. For simplicity, we can focus first on the assembly requirement, which takes effect right away, as opposed to the battery rules which kick in after some delay. Tax rules which discriminate in favor of vehicles assembled in North America violate the WTO's two core non-discrimination obligations, national treatment and MFN. In this case, we also have a subsidy in one of the WTO's two prohibited forms (contingent on buying domestic rather than imported goods).

Trade partners have noticed this, have run some numbers, and are objecting. Bilateral dialogues with the EU, Japan, Korea are under stress. The United States' latest great policy innovation in the auto sector has some resulting stink on it, and will have more if actual WTO litigation ensues. This is happening, meanwhile, in a timeframe overlapping the expected release of a USMCA panel decision that could

TRADE**WINS** LLC
1330 Connecticut Ave. NW
Washington, DC 20036
www.tradewinsllc.net

be adverse with respect to the second-latest U.S. auto policy innovation … the aggressive roll-up rules announced after the conclusion of the USMCA negotiation.

The combined political upshot could be bad, maybe very bad. One conclusion is that trade obligations are dogging us at every turn, interfering with what we want to do. Another perspective would be that we are navigating without any heed for our trade obligations and courting trouble intentionally or at least recklessly.

I typically advise clients that policies which violate international obligations tend to be wobbly, less durable than other kinds of policies, and not a great basis for big investment decisions. Auto makers have to decide whether it is or isn't worthwhile to produce according to the IRA's complex recipe. It will be interesting to see how they assess the current rules' prospects for longevity.

The Treasury Department may have some scope to dull the sharpest edge of the IRA problem by applying the law more flexibly in the case of vehicle fleets than for vehicles owned by individuals. My fellow panelists may have a view on whether that could shrink the problem a lot or just a little. It certainly won't make the WTO vulnerability go away.

* * *

Hopefully that stirs the pot adequately. I look forward to the Q&A.