Podcast Transcript

The Now and Next in International Trade: From Decoupling to De-Risking to Diversification – How to Navigate a Turbulent U.S.-China Trade Relations

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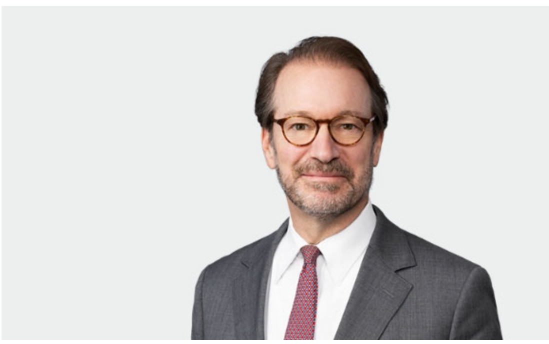

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Rubenking: The economic and trade relationships between the U.S. and China have been a topic of much debate. It is in the best interests of all parties involved to stay up to date with the latest trends and developments in the business climate in order to identify both emerging risks and opportunities, especially for businesses in sectors that are currently in the spotlight, such as semiconductors, solar panels, and electric vehicles. I'm Randall Rubenking, and you are listening to BakerHosts.

On today's episode, we joined Peter Roskam, the leader of BakerHostetler's Federal Policy team, and Sha Zhu, an International Trade Analyst on BakerHostetler's International Trade team. They will be discussing how companies in both the U.S. and China can successfully navigate the fast-paced political impacts of trade, including U.S. sanctions and the sentiment of Chinese language media. Welcome to the show, Peter and Sha.

Roskam: Thanks, Randall.

Zhu: Thank you, Randall. Hi, Peter.

Roskam: Hi, Sha.

Rubenking: Would each of you like to say a few words to introduce yourselves to our audience, Peter?

Roskam: Yeah, I'm happy to. I'm Peter Roskam. I'm a partner in BakerHostetler, and I lead the Federal Policy practice. I spent 25 years in public life before joining the firm. 12 of those years were representing a constituency outside of Chicago in the U.S. House of Representatives where I served on the Ways and Means Committee, which has jurisdiction over tax, trade, and healthcare policy, and chaired three of the subcommittees there, and was also in my party's leadership. So, it is nice to be with you, Randall. Thanks for the invitation today.

Rubenking: Sure. Sha, how about you?

Zhu: Sure. Peter is a very hard person to follow, but I'll try my very best. Hello everyone, my name is Sha. I'm based in Baker's D.C. office as an International Trade Analyst. I support both the Trade Remedy Group and the National Security team. More specifically, I helped with the anti-dumping, countervailing duty and customs issues on the remedy side as well as sanction export control issues on this national security side. It is a great honor to be here, especially speaking with Peter, so thanks for the opportunity.

Rubenking: Peter, first let me say congratulations on the successful conclusion of the 34th BakerHostetler Annual Legislative Seminar in this past June. Could you share some views from your bipartisan panel regarding the recent Congressional actions toward China, especially those by the House Select Committee on China?

Roskam: It was a really interesting panel. We had both sides of the aisle represented and the widest range of political perspectives as well from both the left and the right, and they came together and we had several hundred clients and partners and other friends of the firm who were in attendance. We were able to get into China policy in particular with the Select Committee, because we had Raja Krishnamoorthi, who is the ranking Democrat on the committee, and also Congressman Ted Lieu, who is in the congressional leadership on the Democratic side, and both of them brought a perspective on China which I thought was interesting.

Raja's perspective as a member of the China Committee was a little bit more aggressive, and he sounded like there wasn't too much daylight between him and his Republican counterpart, Congressman Mike Gallagher from Wisconsin. And the two of them are leading a bipartisan effort within Congress, which is pretty remarkable in this sense. If you're an observer of the U.S. Congress, you know that there is a lot of discord, a lot of anxiety, and a lot of animosity among the parties, and yet both sides of the aisle have come together in this notion that China is now a strategic opponent of the United States. And as such, policies have to be enacted to protect U.S. intellectual property and dealing with a whole host of other issues. So, it wasn't so much the specifics, Randall, of what they were saying, but it was the tone of what they were communicating, which was interesting, and it was a bipartisan disposition that looked at China as a strategic opponent.

Rubenking: Very good. Well, that is encouraging to hear that both sides are working together on this particular issue. Now Sha, you issue a weekly China newsletter to your Baker colleagues and clients, and that includes updates on the latest U.S. sanctions on Chinese entities and individuals. Can you tell us what is covered in the most recent issue? Perhaps with a focus on the hottest sectors such as semiconductor, solar panels, and electric vehicles.

Zhu: Thank you, Randall, for picking up my very small publication. It was originated as an internal digest for very busy attorneys to grasp what is the latest and most important news that is relevant to their line of work. It started when I joined about November 2020, and now it increased to be a readership include both our attorneys who have China in their portfolio and their clients who volunteered their time to be a reader. So, I'm very honored to be an author of this small but growing publication.

Yes, I just wanted to lay out a little bit of a background of how this wave of U.S. sanctions on China has been coming so front and center, almost every trade practitioner and in other business attention. As we know, when China became Communist in 1949, it has already become a target of the western's export control measures and during Cold War, not too many people know that more products were restricted to export to China than to the Soviet Union. The Washington's control list for China before it got very popularized in the mainstream news was in 2007, and that list include a short list of items that are the airplanes and engines, optical fibers, advanced navigation system, a laser, and depleted uranium.

But to this list we have seen all the actions around Washington in recent years has been adding a lot of emphasis on emerging and basic technologies such as 4G semiconductor material, advanced electronic computer-aided design software, and network safety. And tension between the two countries really escalated when the Trump administration took a very hard economic stance and started the so-called trade war in 2018. And during Biden administration, although it was in everyone's hope that things will deescalate, we have not seen much effort to settle these tensions. And Biden administration also had a few measures to really slow the growth of the Chinese tech sector.

So China has been the subject to mounting U.S. sanctions, which was reflected in the newsletter. The top section is talking about all of the China-focused hearings and legislations. It is the law in the making. I think the highlight of this most recent months is the National Defense Authorization Act, where the Senate has passed overwhelmingly that can in place in reporting system to notify the government of certain transactions with countries of concerns, predominantly China and Russia. And this relates to the national critical capabilities such as semiconductor, battery with dual use, quantum technologies, microelectronics, artificial intelligence, et cetera, et cetera. And the newsletter will continue to talk about the newest import barriers and export controls, which are the few sectors that you highlighted, the semiconductors, the EV-related technologies, and everything that really concerns the future of our way of work and play, which is all included.

And then I will go on to talk about broader trade and investment issues, especially with technologies that go across borders. I will save it for a later comment of the China's reaction to it, but just looking at the U.S. side, we can see that things are fast progressing by the day, not even by the week. So, there is certainly a lot to monitor and for this newsletter to be comprehensive, I'm really trying to stay until the very last minute of publication to capture the latest news.

Rubenking: I see. Well, that is quite an undertaking. Let's focus a little bit from the other side, Sha, maybe on trade in general. Given the latest high level visits by U.S. officials to China and some of the remarks made by both sides, what is your view on where U.S.-China trade is headed, and especially, what are the sentiments you get from China as you read the Chinese language media?

Zhu: Well, thank you for the question, Randall. Yes, of course, being an observer, a keen observer of U.S.-China relations, especially trade and economics, I have definitely followed the keyword that is being highlighted by both administrations. We started at a very risky point, which is called decoupling. And we can hear voices from both the administration and the industry that it is definitely a no-go zone. So, people try to pull it back from a very, an unimaginable scenario of these two major economies detach each other's link, and it is really a mutual destructive act in both countries.

And then we move to the de-risk, a keyword, which means that we need to contain the scale and the severity of the sanctions that we put on to each other and all of the formal ways of impaired trade, such as all the trade remedy measures that is already very familiar to an area of Chinese products in the U.S. But in recent visit by Secretary Yellen, which is to your question, the both sides are observing the changes in the terminology and in the emphasis of each other, and she was smart to highlight that diversification is the new direction to go because a lot of global issues definitely require the two countries to combine their resources and put their policies and practices together in order to move forward the entire human race.

Therefore, the diversification, I think, is definitely a message received by the Chinese part, as well as her gesture to be opening up a series of more talks and to resume formality with China after this long and disruptive period of time. Just quickly on that, Secretary Kerry, who is a Special Envoy on Climate Change, he also visited China after Secretary Yellen, and although there were no major breakthroughs, but he was able to reconnect with his counterpart and further along those issues for a shared climate agenda. So, I think those are all good signals that we see at the highest level of willingness to collaborate and to resume a natural path that the two countries used to be on. Of course, we're not trying to be over optimistic here that things will quickly improve to the pre-pandemic or the pre-trade war era. But we, as observer and as a practitioner in the group, and we are very heartened to see that a lot of the high-level signals are going that direction, and just allow me to say a few words of China's reaction to all these, because it is important to observe things on both sides.

Of course, we've seen that China has taken on a lot of measures that it is being used on, and now China is being an active user of all of those export restrictions. Predominantly we see the gallium and germanium that was banned to be exported to China, although the new licensing regime is not about controlling, but it is not an outright ban. China still wanted to preserve the supplies of this niche material, though if you read the doctrine from the Trade Ministry, export application that meet requirements will still be approved. So, I think it is a very strong positioning tool for them to say we actually have this export control measures we can put in place, but also you have to be reading into those policies for companies to better understand how they can avoid all the disruptive risk to their supply chain.

Rubenking: Wow, it sounds to me like it is one of the more complex things going on in the world with the trade between China and U.S. We really appreciate you keeping an eye on it and keeping us up to date on that.

Zhu: Certainly.

Rubenking: Peter, we're also fans of your Right Lens newsletter on LinkedIn. Your comments on TikTok Hearing Through C-suite Eyes are particularly brilliant. What would your top three bits of advice be for Chinese enterprises in terms of risk mitigation and smart positioning as they continue to expand in the U.S. market?

Roskam: Yeah. Randall, it is an interesting question and I want to pick up on something that Sha emphasized when she was describing where U.S.-China policy is going from a commercial point of view. And to get to your question, she raised two concepts, one was decoupling, which is more aggressive, and one was de-risking, which is less aggressive. And we heard both of those themes articulated at the BakerHostetler Legislative Panel. There were some panelists who said, look, we absolutely, the U.S. economy needs to completely decouple from China, and they gave that argument. And there was another panelist that said that is completely unrealistic. There is no way this can happen. The two economies are inextricably linked in significant ways and you can't decouple, and then you get to Sha's concept that she articulated a minute ago about de-risking.

This is all to say that there is a kind of an American national sense of anxiety about China and what is going on and looking at the activity in the Xinjiang province and the Uyghurs and so forth. These are really troubling things that Americans see happening in China, and so if you're a Chinese enterprise, I guess my first bit of advice would be make sure you have a clear understanding of who you are as an enterprise and what your relationship is to the Chinese Communist Party. If there is elements of being a state-owned enterprise, or if you're really inextricably linked to the Chinese Communist Party, the CCP, the U.S. government is going to care about that and it is going to get a lot of attention. Part of the proof of that was the bipartisan U.S.-China Committee recently sent a letter to four venture capital firms in the United States, asking them detailed questions and documents for documents about what is the nature of the investments that they're making in China. And there is going to be an increased level of scrutiny. So, if you're a Chinese enterprise, recognize that is the type of pressure and inquiry that your foreign interlocutors are dealing with.

Just as an aside, the letter that went out to the four venture capital firms, I can easily see that, Randall, turning into something far broader, far deeper, far more expansive. And it could become a level of inquiry that comes not just to private venture capital firms, but it could be a level of inquiry that comes from Congress to even public companies. And so American public companies need to be mindful of that. So, number one, understand who you are as it relates to the Chinese state.

Number two, I would say have a really clear understanding about what your economic impact is in the United States. The United States political system is a political system that is driven by constituencies and constituent interests, and if there is a deep connection that a foreign firm has from an economic point of view in a particular state or region, that should be well understood and well documented. And I think sometimes there is a tendency on the part of foreign investors into the United States of not really taking that into account or not really having a deep understanding of that. And so, an understanding of that would be important, and being able to tell that story to American audiences is a significantly powerful thing.

And then finally, I would say a willingness to enter into conversations with American policymakers, to say, look, what can we do to reassure you that we're interested in doing business? We're not interested in taking advantage of this situation. So, I think those three things are, they're a little bit esoteric, they're a little bit not as concrete as I would have hoped, but that is the advice I would have for foreign investors in the United States right now.

Rubenking: Well, I feel like we've just barely scratched the surface on this whole thing. I hope you'll both join us again sometime for a follow up. Thanks very much, Peter and Sha.

Roskam: Thanks, Randall. Thanks, Sha.

Zhu: Thank you, Randall, Peter. It is our pleasure.

Rubenking: Thank you, Peter and Sha. If you have any questions for Peter or Sha, their contact information is in the show notes. As always, thanks for listening to BakerHosts.

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