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Transcript

CHINA IN THE WORLD PODCAST

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Guest: **Tim Stratford**

Episode 27: China's Regional Trade and Investment Agenda
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Haenle: You're listening to the Carnegie–Tsinghua "China in the World" podcast, a series of conversations with Chinese and international experts on China's foreign policy, international role and China's relations with the world brought to you from the Carnegie–Tsinghua Center in Beijing. I'm Paul Haenle, the director of the Carnegie–Tsinghua Center, and I'll be your host.

Today I'm joined by my friend Tim Stratford, managing partner in the Beijing office of the law firm Covington and Burling. Tim focuses on advising international clients doing business in China and assisting Chinese companies seeking to expand their business globally. Tim was previously the assistant U.S. Trade Representative in the Bush and Obama administrations, responsible for developing and implementing U.S. trade policy for mainland China, Taiwan, Hong Kong, Macao, and Mongolia. Prior to his work at USTR, Tim worked in China for more than 25 years including serving as general counsel for General Motors China Operations, as minister counselor for commercial affairs at the U.S. Embassy in Beijing, and as chairman for AmCham China. Tim, I'm thrilled to join you today here at your Covington and Burling office here in Beijing and look forward to discussing trade and economic issues with you.

Stratford: Thank you, Paul. It's great to be with you.

Haenle: Now, TPP would be a long-term aspiration for China and along the way there would be a number of things that they could do as stepping stones moving toward that direction. One, which was announced last year, is the Shanghai Free Trade Zone. You've had discussions with Chinese government officials on this project. Can you give us a sense of what aim of the Chinese government is here, what its progress is, and what we might expect to see going forward?

Stratford: Sure. Some of us who are on the board of the American Chamber of Commerce here had a meeting a year ago with one of the vice chairs of the NDRC, which is, of course, the central economic agency in the Chinese government, and what we were told at the time was that the Shanghai Free Trade Zone basically had at least 3 purposes. One was to try to drive more domestic reform. It can create a kind of competitive liberalization dynamic in China of the type that Bob Selleck used to talk about. You set up one zone that's liberalizing in one place in China and then other geographical areas in China say, 'Hey we want to do that in our province and our city as well.' You get a very pro-reform dynamic that's created by that. But, the vice-chair particularly told us that one purpose of the zone is to experiment with some of the liberalizations they would need to put in place in order to conclude a Bilateral Investment Treaty with the United States and also to prepare that China could someday join TPP. So, I certainly found that very interesting. We have seen in the zone a very explicit adoption of some of the principles that would be a part of a bilateral investment treaty with the United States. In particular, the zone has adopted a "negative list" approach; and what that means is that, unlike the rest of China where every foreign investment project has to be specifically approved by the Chinese government, in the Zone. Unless your type of investment is listed on that negative list, all you have to do is file for the record rather than get specific approval in order to make an investment. So that is a very, very significant step forward and it's the sort of thing that might be necessary under a U.S.-China Bilateral Investment Treaty as well.

In terms of how far they are going, the fact that they put the system in place is very encouraging. The initial negative list that this zone is using is very, very long. So, many have been critical that it was not, in fact, much of a liberalization because almost everything is on the negative list. But, there are statements by Chinese leaders that the list is going to be updated

regularly and that it's going to be pared down significantly over time. So, that's an example of an area that we are watching very carefully. I think the zone will be showing us how quickly and how comprehensively various sectors of the Chinese government will be able to liberalize and open to more foreign investment.

Haenle: Now, Tim, you mentioned the U.S.-China Bilateral Investment Treaty, and I know this is something that you're intimately familiar with and knowledgeable about. So I wanted to ask you about this. Last July, after a 4-year hiatus, China agreed to restart negotiations on the Bilateral Investment Treaty that would encompass all sectors expect, like the Shanghai Free Trade Zone, there is also a negative list. What are the promises in your view, the promises and perils, for the BIT? And, also, how do you see this impacting the U.S.-China relationship more broadly and American businesses that are operating in China?

Stratford: So, the BIT negotiations with China were originally launched in 2008, right around the same time as TPP negotiations began. What happened was that the negotiations were put on hold for a while when the United States conducted an internal review of the model. This happened at the beginning of the Obama administration. The review was completed, the negotiations resumed, and what happened last summer that was so significant was that at the Strategic and Economic Dialogue in July, the Chinese government announced that they would be willing to carry forward the BIT negotiations on the basis of three principles that are core parts of the U.S. model and that had been resisted, to a certain extent, by the Chinese up to that point. The first principle is national treatment and the Chinese have not necessarily objected to that. But, the problem was the traditional Chinese view of an investment treaty is that it should protect existing investment. So, if you have an investment, then the treaty gives you certain protections. But, it didn't deal with how you are able to get those investments in place in the first place. The United States has a more ambitious approach to the treaty where this idea of "national treatment," where you are treated the same way as local companies, applies not only after you have put the investment on the ground but it also applies during what they call the "pre-establishment phase." So that means that if you are hoping to invest, you should be treated the same way as a domestic investor is. In other words, all the parts of the market that the Chinese investors are allowed to invest in, you should be allowed to invest in also on the same terms and conditions. Now that would represent a huge change from the past and, in the same meeting that I talked about with the NDRC vice-chair where we talked about TPP, he also talked about this agreement by the Chinese government, and he himself said that this would require a fundamental change in China's investment regime. So, again, this idea of pre-establishment plus national treatment is accompanied by one other principle, the negative list principle.

We've already talked about the negative list for the Shanghai Zone. The significance of a negative list in a Bilateral Investment Treaty is that, again in the past, China had not used this approach. They had used what would be called a positive list approach. So, the agreement says you get this right, this benefit, and so on, but only with respect to the particular industry sectors listed in the agreement. But, the negative list approach turns that around and says you get it for every sector unless we have a specific exception that we have listed. That's a much more comprehensive approach. It gives a lot more clarity and transparency in terms of the what's converted, and it also means that, as new industries develop, those should be covered by the agreement. They aren't sort of excluded because they weren't part of some positive list that was put in some agreement years ago. So, the opportunity to have this type of Bilateral Investment

Treaty between the United States and China presents a lot of opportunities for companies from both countries. It governs not only how you are treated once you are in the country but also gives greater access to participate in the economy. In my view, it's the greatest opportunity for American companies to address concerns they have about doing business in China. It's the greatest opportunity we've seen since China joined the WTO in 2001. So, I think it's very important for companies to understand what the bilateral investment treaty could cover to understand what are some of the current challenges their own industries are facing, and make sure the U.S. trade negotiators are aware of those so that they can have those issues addressed in the treaty. I was working at General Motors during the period of the WTO negotiations. The auto industry, at the time, identified five areas where we thought out business was being blocked or strained in China, and we communicated that to trade negotiators. All five of those areas were addressed in the WTO commitments that China made, and it really made an enormous difference in the ability of the foreign auto industry to compete with China. I think we have a very good opportunity to achieve similar benefits in the course of the BIT negotiations.

Haenle: So you see this as potentially very positive for U.S. businesses. In your sense, is the U.S. business community sufficiently behind this effort in pushing it forward?

Stratford: I think there is a growing awareness of this. I hope that more people will listen to this podcast and become more aware of this as well because I think the negotiations are taking place now. There have been quite a number of very detailed negotiation sessions that have already taken place. The Chinese are busy now completing their first draft of the negative list that they're going to table in the negotiations with the United States toward the end of this year or early next year. So now is the time for companies to really become aware about these developments.

Haenle: And what kind of timetable would you expect? Is this within the next two years, the next 5 to 10 years?

Stratford: Well, I certainly would expect that they treaty negotiations would be concluded in less than five years. I think that, of course, it depends a lot on how ambitious the Chinese feel. I mean, the U.S. market is largely open so that the real work for preparing the negative list is mostly on the Chinese side. I think if the Chinese are willing to be as ambitious as a number of the reform statesmen by the new Chinese leadership indicate, you know, the negative list will be presented. The point is that now is a very active time in the negotiations. Now is the time to see the level of ambition, and so now's the time to really focus on it. If the ambition is there, I think the agreement could be concluded in the next two to three years. If we find after the next period of time that the ambition isn't there, then perhaps interest would fall off. But, I think there is a strong desire on the part of both countries not to let that happen.

Haenle: Well, great. Tim, thank you very much. It's been a pleasure to talk with you about these issues, and thank you for spending time with me today and for doing the Carnegie–Tsinghua Podcast. That's it for this edition of the Carnegie–Tsinghua "China in the World" podcast. I encourage you to explore our website at www.carnegietsinghua.org and see the work of all our scholars at the Carnegie–Tsinghua Center. Thanks for listening and be sure to tune in next time.