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Transcript

CHINA IN THE WORLD PODCAST

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Guest: **Claire Reade**

Episode 73: U.S.-China Trade Relations in the
Trump Era

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Haenle: Today, I'm delighted to welcome Claire Reade, a nonresident senior associate and Freeman Chair of China studies at CSIS and a law partner at Arnold and Porter. Welcome, Claire, to China this week as a distinguished visitor to the Carnegie–Tsinghua Center. Claire has more than three decades of experience in handling international trade strategy, negotiations, and litigation, she spent six years as the assistant U.S. trade representative for china affairs in the office of the U.S. trade representative, where she was responsible for developing and implementing U.S. trade policy toward China, Hong Kong, Macau, Taiwan, and Mongolia. And before that she served as the first chief counsel for china trade enforcement at USTR. Today we'll be speaking with Claire on issues related to U.S.-China trade relations, a topic of course that's been brought up extensively in the presidential campaign. Claire, thank you very much for joining the China in the World podcast today.

Reade: It's my pleasure.

Haenle: I mentioned that you started out in USTR as the chief counsel for China trade enforcement. That was actually at the end of the Bush administration and I wonder if we could just start out, if you could tell me a little bit about that position and why, what that position did and how you got started there.

Reade: The dates go as follows. I came in August 2006, and I was in that role until April 2010, when I shifted over to being the assistant U.S. trade rep for China.

Haenle: So you were two years in the Bush administration before the Obama administration took over?

Reade: Right. And what had happened was, there was recognition that, in 2006, China had been in the WTO for five years and there had been a transition period that had been established for China to actually meet its obligations, and that transition period was largely over. There was a very significant sense that China as a major participant in the world system needed now to be held fully accountable to meet the rules. I think the administration at the time was looking for ways to really focus on this issue and get resources really targeted at moving things forward with regard to bringing WTO cases against China in areas where China was not meeting the rules. So I was a partner in doing international trade law in a major Washington law firm and a friend of mine reached out to me and I actually had a background way back in the day from having a fellowship coming out of law school and the Fletcher school. I got a fellowship to study mediation, and at the time, back in ancient history, you were not able to go into China, so I went to Taiwan. And it actually was the year that we derecognized Taiwan, 1979-1980. I was in Taiwan studying mediation as an alternative form of dispute settlement. I had Chinese, which I had acquired at Harvard during the time I was doing this joint degree between Harvard and the Fletcher School. So I got this fellowship, and that started me off, I had an abiding interest in China that had come from that background. So I was, I had been almost 25 years in being a lawyer in a law firm and I had always been interested in public service, I had been at the State Department legal adviser's office when I was a baby law student, so it had always been in my mind. So this was a great opportunity, and I was focused laser-like on finding areas where there were WTO rules at issue where China wasn't meeting its obligations, so I was involved with quite a large number of cases against China. I probably had a role in about nine major WTO cases against China.

Haenle: And in your perspective, was this helpful in enforcing the standards that China signed up to during that period where you put forth nine WTO cases against China? What kind of impact did this have?

Reade: I thought it was helpful. First of all, one of the things that no one knew at the outset was whether China was serious about living inside the institution that it had signed up to. Which means, do you respect the rulings that come down if they come down against you, do you make changes in your policies if it's pointed out that your policies, your laws are not proper, are inconsistent with WTO rules? And China really responded by and large very constructively: laws were changed, practices were amended to come into compliance. It's complicated and some of the cases have probably lingered longer than others in terms of China implementing its obligations. China also settled a number of cases I think because they recognized it was an open-and-shut case, frankly, and they didn't want to have a bad record.

Haenle: The optics were bad for China.

Reade: Yeah, so the settlement was preferable for them. The good news about that was when they settled, they settled for 100 cents on the dollar. As USG, we would not have accepted a settlement less than that.

Haenle: I take it this must have been good experience going into the job on assistant U.S. trade representative on China.

Reade: It certainly was. I had a close relationship with the ouster, as we called him at the time. We worked very closely together, and I ended up doing a lot of negotiation, because we negotiated a lot of settlements. So, it was very interesting to see what it was like to be at a table when you had a broad array of the issues when you didn't have the rifle-shot approach for solving the problem, of here's a WTO rule, you are not meeting it, you need to meet it or else we're going to have a problem together. When I shifted over to becoming the assistant U.S. trade rep, now I had the entire array of issues in front of me where I could not use—

Haenle: Not a narrow approach, you had to take a more broad approach...

Reade: Not only that, but the solutions to those problems were maybe not as evident, because maybe there wasn't a WTO rule. Or maybe there was a WTO rule and if you thought about whether it would be constructive to take a case, it wouldn't necessarily work out that well.

Haenle: And you did that job for six years, is that right?

Reade: I was in the government from 2006 through the end of 2014. So my total time was more than eight years, but split between the two jobs.

Haenle: We're coming up on the end of the Obama administration, and you've had a good deal of time—some in the Bush administration, but a big chunk in the Obama administration—and I wonder if you look back over the eight years of the Obama administration, how would you

characterize the issues on trade with China? What are some of the legacy items that have come out of that, and looking into the next administration, where do we go from there?

Reade: I think the Obama administration focused on WTO cases with China that were of major significance systemically or structurally. That was an important dimension of what they were trying to do. One of the most important set of cases I think that were brought against China were the export restraints that China was putting on some natural resources where it had a dominant world market share. As a result it could affect world market prices and it could also use its resource-richness as a way to try to force companies to come in and locate in China in order to be able to get the resource, rather than freely exporting the resource to the rest of the world. And of course the WTO rules say that in the normal course of things you are supposed to freely trade, so you are not supposed to put restraints on your exports any more than you are supposed to put restraints on your imports. Freely trading is best for everybody. So that was very important and was an important principal and also important to a couple industries including steel and aluminum and some lesser-known industries as well. So in a series of cases, because there's only so much you can do at a time, we focused on a number of different raw materials and natural resources that China was hoarding, if you will. It ended up having impacts on high tech industries as well because these were industries that included rare earth, which people talked about a lot.

Haenle: Rare earth. Absolutely.

Reade: That was a big one people talked about. So, the effort to look at that, the effort to look at actions of SOEs and to see where there were China monopolies that were distorting markets, where China had committed to opening its market to other suppliers, those are also important cases. That was one useful thing that occurred. The other work that was done was to amplify the strategic economic dialogue, the so-called SED, that had been set up by Hank Paulson in the Treasury Department, and to add into it the separate strategic component, which was the strategic and economic dialogue, what the Obama administration did then was add high-level activity by the State Department and to some extent our military came into that to have conversations on strategic issues in addition to the economic issues. Now, my competence sits on the trade and investment side so I was still firmly on the economic side of the fence. But I will say that adding dialogue with China on the full range of issues that affect our two countries and having there be high-level conversations where it's not just a random conversation but sort of an expectation that you are going to sit down seriously review issues together at a specific time and at the end of that specific time from China's perspective you hopefully are not going to have a blowup where you leave mad, that creates a useful kind of pressure to sit down and try to understand each other and try to make progress on things. You don't always make progress but the conversation is important.

Haenle: I agree with that. The forcing function nature of having that. I was in the Bush administration when SED, Strategic Economic Dialogue, was created by Hank Paulson and I think it was very useful at the time and drove with vigor much of the economic agenda between the U.S. and China. I was in the Obama administration for 6 months and was part of the effort to modify that to make it both strategic and economic, and I think it was the right change at the right time, elevating not just the economic discussion but also the strategic discussion led by the Secretary of State. And you mentioned the military, and I think that's key, to try to get the military in this discussion. Now that we've got eight years of the Obama administration, there's a lot of

discussion about, how do we make it more effective going forward? You know, in recent meetings with the Chinese, a message I'm hearing from the Chinese is, we hope that we don't see the U.S. side get rid of the S&ED because it's not as effective as it could be, but rather let's keep it because of its reality as a forcing function and we need to know we have the predictability of meeting once a year and discussing issues. The Chinese side has been saying of late, let's focus our energy on making it more effective. Do you agree with that, and if so, what are the kind of things that a new administration might take on to make that body more effective in dealing with issues and making progress with issues?

Reade: You know, it's very interesting because the SED came into play the joint commission on commerce and trade was already in place, and that is a mechanism that's co-led by the Secretary of Commerce and UTSR and has as its interlocutor a vice-premier who's the same vice-premier who is the interlocutor for the S&ED's economic track. So the reason I mention that is, I think for U.S. business, they really appreciated what the JCCT could do in terms of solving concrete issues that needed to get taken care of, including systemic issues, and one of the sort of questions that arises is what is the purpose of the S&ED relative to the JCCT? I think there's been a tension between those to some extent although I think they're complementary, and I think they're complementary in the sense of both being these action-forcing events because you having a mechanism for actually meeting and you have predictability about what's going on. I do think that you can end up with meeting fatigue and sort of progress fatigue because when you're talking about major issues it's very difficult for you to make progress every three months on major issues. I think you have to be very careful that you don't proliferate dialogues because I think you can actually create a burnout effect where nothing happens anywhere.

Haenle: How do you perceive the...often the JCCT is just in advance of the S&ED...

Reade: They tend to bookend the year. In good years the S&ED occurs in the May, early June timeframe and the JCCT occurs November or December.

Haenle: I often hear people say, they're going to tee up issues at the JCCT for the S&ED, but I don't think they were designed in that way, were they, to deal with separate issues as I understand?

Reade: I think they were conceived by different people for different sets of problems, and it turns out there's an overlap. Because I think in the beginning Paulson's concept was that we needed to have overarching strategic—that's why it was called the strategic economic dialogue—strategic conversations about long term issues, where we actually sit down and we're not being transactional about something that's happening now. We're looking together at areas where we can work together or at areas where there are broader issues where we really need to be sitting down and talking about it. I think it took about 15 minutes after he announced it, I believe he was up at Congress very shortly thereafter at a hearing, and there were a number of very specific problems that were going on with China at the time, maybe it was currency, I can't remember what it was, and they basically said to him, we want to see progress through the SED, we need progress. How can you possibly take half of the cabinet for two days or three days or four days, and not "get something done"?

Haenle: So this pressure then to have deliverables and to show progress sort of pushed kind of the emphasis to have specific concrete outcomes and that then as a result it sounds like, had the JCCT and the SED and now the S&ED working on the same thing, probably in large part because of this pressure to have results, is that right?

Reade: Well I think in a practical way, right, one mechanism is better suited than another. When you are doing macroeconomics and you're talking about excessive savings rates in China, that is not something that JCCT deals with. That is something on the macro level that needs to be handled. Obviously, military does not come up. Climate does not come up in the JCCT unless you're talking about something specific like environmental goods or when you have refurbished goods and you're trying to get them imported and China has barriers, it could be something specific...it's like a Venn diagram, they're overlapping circles as opposed to being right on top of each other. I think it's a creative tension, though, and I think they're both very useful. What I do think is important is for there to be clear conduits up to the top leadership in China that's making the decision in both cases. So whatever the mechanisms are that Xi Jinping is using now, to be able to make decisions on strategic and economic issues, those interlocutors on the Chinese side need to be tied in directly to that for it to be effective and for us to be able to actually be willing to put the kind of resources that we put into it. And that's similar I think on the JCCT side. It's going to be very important that that occur too, because if the retail side of our relationship is basically in disarray or you've got a lot of dissatisfaction and you don't have progress through the JCCT on short and medium term issues that are occurring in our trade and investment relationship, that's a serious problem.

Haenle: Just to be a little more specific on the S&ED currently, the counterpart to the Secretary of Treasury is Vice Premier Wang Yang. Liu He of course plays a very important role on economic issues here in China as the head of the leading small group on economic affairs, but is not in the S&ED, correct?

Reade: Correct. I mean, one of the challenges for the U.S. government is that it has sometimes been difficult for U.S. government officials to speak to the actual policymakers because when they're party officials, from the Chinese perspective they have said, you are government, you will speak to a government official, you will not speak to a party official. But with the shifting responsibilities inside the Xi administration, I think an understanding of the need for more flexibility is important. I also will say one other thing, and that is that I believe U.S. cabinet members have a lot more power than Chinese ministers do. So I think there's also an asymmetry, a mismatch, in terms of the meetings. There's absolutely nothing wrong with meeting with a Chinese minister, but the truth of the matter is even though Chinese vice premiers have multiple portfolios, our cabinet members have as much power in these days, in the Xi administration, they have more power than the vice premiers do. There's also an importance in the next administration to make sure that the levels are right, and then the final thing I would say about the S&ED in particular because there are multiple cabinet members involved, is there is a potentially large value to having there be candid conversations between counterparts on particular issues. But if what happens is that all the work is done and you only end up with a set of talking points read at a large meeting, that can be very frustrating...

Haenle: More of a dueling monologue, right, than an actual discussion?

Reade: I think the difficult is that we need to understand China. So if a Chinese official is sitting at a table with a number of his peers, there are constraints potentially on what that Chinese official can say and what can be said. There are not similar constraints on the U.S. side, a U.S. cabinet official who's in charge of name of that subject, energy, commerce, trade, will feel free to say what is on their minds and engage in the discussion. But the constraints on the other side are much more significant. So then, we have to find ways for there to be constructive interaction if for this to work we need to have this broad base of subject matter to set the table. And I would make the argument that we should not throw the baby out with the bathwater by reducing, say, just by having three people in a room, because if you only have three people in a room, then you're only going to talk about two things. And if the range of issues that China and the United States have is wide, which it is, we're better off trying to figure out how we get those good discussions set up rather than narrowing it to a smaller room where you know you might be able to have a candid discussion but only with a few people.

Haenle: So this is counterintuitive actually, because if you're thinking you're not having the candid discussions that you need to have because Chinese interlocutors have constraints because of the others around the table, then you would think we'd need to go smaller. But you're actually saying we need to broaden it out, and have more at the table because of their portfolios.

Reade: Well, no. Maybe what you do is have more break-outs. So, in other words, if we understand that in a large meeting you will not have candid conversation on their side, then you need to develop whatever the forum is for you to be able to have candid conversations. The other difficulty of course, and we can't do anything about this, is that our cabinet members are very busy, their officials are very busy, and you get your best candid conversations when you have a relationship. And it's difficult to build those relationships.

Haenle: These are all very good ideas. I think the next administration really needs to look at this. I agree with you not to throw the baby out with the bathwater, the S&ED and JCCT have been very useful forums, they can certainly be improved and find ways to become more effective. I would actually argue that the fact that they're on the calendar and they're there every year plays an important role in terms of predictability and knowing that you're going to have a time where you can focus on these issues.

Reade: I totally agree with you. Europe, during the time I was in the government, had some significant difficulties getting meetings set with the Chinese. If you can't meet, you can't solve a problem. It's important to understand the value of having those mechanisms in place.

Haenle: One of the things we're hearing from the Chinese side in advance of the next administration coming in, some of the messaging, is that we ought to perhaps do the same kind of regular meeting structure with our presidents. That while President Obama and President Xi have met often, it wasn't part of a regular meeting schedule. The Chinese for example have a regular meeting schedule with the Russian president, President Xi meets on a regular schedule with the president of France and the president of Germany, but there's not a regular meeting schedule for the U.S. and Chinese president, and I think one of the things we're hearing now is a suggestion on

the Chinese side to make them more regular like the JCCT, on the calendar, every year in the same time frame.

Reade: It is an interesting idea. What I think we have to do hopefully is to be able to connect them to these mechanisms so we aren't creating additional times where the really serious work is done. If you split them off, there's a risk that the only time they get really serious is when the two presidents are meeting and we wouldn't want that.

Haenle: You can't put everything on the two presidents. It's not possible. It's been delightful to talk to you and hear about your experiences in government and USTR, and your views on these really important issues. Claire, we welcome you back to the Carnegie–Tsinghua center. Thank you for doing the China in the World podcast.

Reade: It's my pleasure.