

Is Capitol Hill's Coming Anti-China Legislation Now Veto-Proof?

*TIE asked one of
Washington's premier
U.S.-China political
analysts.*

BY CHRIS NELSON

The title was the “homework assignment” from my guru on international economics, David Smick, and I frankly delayed until the very last second, and for once, we were right. The day we put pen to paper, the chief sponsors of last year’s successful House-passed currency misalignment legislation announced that this year, it not only would be re-introduced with bipartisan support, but that the same bill would be introduced in the Senate.

Despite years of tough talk, that little miracle of ego-suppression, not to mention sincerity, had somehow eluded the currency warriors in the Senate, although toward the end of 2010, New York’s irrepressible Chuck Schumer (D) did occasionally threaten to drop the House bill onto some “must have” measure facing the pressure of adjournment deadlines.

Had Schumer done that, then Smick’s excellent question would have been put to an immediate test—indeed, something of an immediate crisis. President Obama would have been confronted with a choice between either losing some bill badly needed at the last minute, or risking continued rational management of a broad swath of strategically sensitive U.S.-China relations.

But no one in the Senate, including Schumer, ever did anything but talk about currency.

That was last year.

This year, despite the U.S. Treasury’s just completed, twice-yearly kabuki show of proving without doubt that China does manipulate its

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currency, but then saying it lacks the grounds to “cite” China under U.S. trade law, it seems clear the political physics have changed with the Republican takeover in the House and the ascendancy to chairman of the Ways and Means Committee of Michigan’s David Camp (R).

Camp surprised many, including your humble reporter, with his decision to speak and vote for then-Chair Sandy Levin (D-MI)’s revised China currency bill, which would define “currency misalignment” in ways making it easier for Commerce to accept (or harder for Commerce to reject) a trade case charging that Chinese monetary policy is an illegal subsidy under WTO rules. But the ink was hardly dry on the committee print when we were called by Camp’s staff.

“Chris, you did see his speech last night, right? He said China currency would not be a ‘major priority’ for next [this] year,” when Camp was expected to become the new chair.

Message received.

We don’t want to spend this whole article on China currency, even though it is now immediately upon us. But it’s important to understand that studies consistently show that most U.S. business already in China, when surveyed, list currency misalignment fairly far down their list of concerns. Far more likely are complaints about market access, intellectual property rights, government procurement, the rule of law, and so forth.

And the currency issue is misleading in the sense that while most U.S. (and international) companies primarily sourcing in and producing in China may not be much affected by misalignment, there very definitely is a major class of companies in the United States that are badly hurt by the estimated (guesstimated) 25 percent to 45 percent undervaluation, and they are concentrated in small- and medium-sized steel and parts companies, and specialty manufacturers who are undercut by Chinese competitors.

So even if the macroeconomic effect can be disputed (and it is, bitterly), the cumulative political effect of the constant drumbeat of stories citing recognized experts, such as the Petersen Institute’s Fred Bergsten and his numbers on misalignment and the jobs it costs in the United

States, means no one in Congress disputes that the renminbi is yet another example of China “not playing fair.”

So the renminbi, almost regardless of the objective facts, feeds the litany of “unfair trade practices,” including the state subsidies that make it so hard even for successful U.S. companies to do as well as they should. Every member of Congress feels this in his or her bones, even if they aren’t willing to go so far as to vote for a currency bill.

The key question becomes whether all of the above adds up to changing the renminbi situation sufficiently that Camp may feel forced to change his mind, and allow the legislation to come up under the rubric of “doing something.” Our verdict for the first quarter of this year: not likely. This summer? Maybe. By the fall? That depends! And that’s what we want to write about.

First, make no mistake, Republicans are just as exercised over the accumulating list of grievances, disputes, and heartburn issues raised by the players in U.S.-China trade as their Democratic colleagues—it’s just that as a species, Republicans are less likely to believe in the efficacy of legislating economic outcomes.

But remember, Chairman Camp did virtually cosponsor Levin’s currency bill last year. Both lads come from Michigan, and there are many points in Camp’s speeches where his *cri de coeur* on behalf of the auto workers, steel plant workers, and the myriad of small manufacturers most impacted by China currency policies could just as easily have come from Democratic National Committee headquarters, if not the AFL-CIO.

Second, if there’s an issue on which both parties firmly agree, it’s on “enforcement,” although often there is a real division on timing, which industry is to be “helped” (versus “protected”), and just how many trade cases can be brought before “enforcement” crosses that invisible, psychic line of “protectionism.”

Make no mistake, though, we’d argue that the Congressional perception of “enforcement,” perhaps more than any single trade issue, is the major deciding factor for most members on what kind of China bill is warranted, and when. All White House administrations long ago learned this lesson, of course, and you can chart their thinking by the timing and number of trade cases that are authorized, including how the White House of the time assesses the likely impact of a big case on the overall relationship.

An obvious example: Unless for some reason you want to enrage a visiting Chinese senior leader, you don’t announce a big case just before he arrives, or just after he’s left. You give him a decent interval, and if the case has potential for influencing the relationship, you make very sure to give him a heads-up, and to explain why the decision is being taken.



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*Retiring U.S.
Ambassador to China*
Jon Huntsman

The recent announcement by U.S. Ambassador to China Jon Huntsman that he was quitting, quite suddenly, sparked speculation he planned to run for the Republican presidential nomination next year against his sponsor, President Obama.

This may well be, but the “insider” speculation was that Huntsman took a long, hard look at the list of contentious U.S.-China issues likely to arise, and concluded that with China undergoing a total leadership change next year, there was no incentive for any

prospective leader in Beijing to risk the wrath of his colleagues by appearing to be conciliatory toward the United States on anything, much less something as central to China’s export-led economy as renminbi valuation.

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Third, what if anything Congress can pass on China trade issues we think is potentially, perhaps even critically, affected by the overall relationship.

The general sense in Congress is that Beijing is being cooperative on North Korea (the most difficult foreign policy issue likely this year) and Iran (only slightly less difficult), and is improving its international aid posture in Africa instead of just trashing the entire International Monetary Fund/World Bank approach to responsible lending. It is continuing its positive contribution to combatting the Somali pirates, and has stopped being an overt bully of Japan and China’s Asian neighbors over maritime boundary and resource disputes, as we saw recently with the Senkakus, and incidents in the South China Sea.

All of these issues and more are sufficient unto themselves, but then you get to the really emotional things such as human rights, forced abortions, Tibet and the Dalai Lama, and for many in Congress, fair play for Taiwan.

All these things add up.

At some point, perhaps on a weekly basis, every member of Congress is likely to read a story, almost always a negative story, about some of these issues, and perhaps many of them. And at a certain point, every member will receive “Dear Colleague” letters urging co-sponsorship of some hortatory or non-binding “resolution” demanding better behavior by Beijing, or trying to build pressure on the Administration to “do something” about the issue at hand.

We’ve argued for years that how members of Congress perceive China is really an accumulated sense of the issues, and many members choose to see China primarily through the prism of only a few issues, often human rights issues.

But increasingly in recent years, every member has an accumulating list of trade disputes and perceived cheating, especially on intellectual property rights and market access, which involve companies in his or her own district.

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Former House Speaker Tip O’Neill wasn’t wrong when he said “all politics is local,” but he was even more right with advice that isn’t as often cited, “All politics is about who gets what.”

Increasingly, members of Congress think it’s China that “gets,” at the expense of many businesses and workers in their own districts.

So our little hedge, “that depends” on where Camp and the Republican House leadership may be on U.S.-China trade relations, is our way of saying that while we don’t see Congress completing action on a China currency bill in the first half of this year, we must warn that our prediction may be increasingly dependent more on the sum total of U.S.-China relations than on the specifics of Chinese monetary policy.

Several factors reinforce this conclusion. First, and perhaps most critically, the old “China Lobby” of a nearly

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unified U.S. business community willing to subsume its normal competitive issues for the long-term common good is history. Looking back on the fight to give China permanent normal trade relations under the World Trade Organization umbrella early in the George W. Bush Administration may come to be seen as a Golden Age never to be repeated.

U.S. business now is both fighting for its very life in China, and doing extremely well in China, depending on who you talk to, and what measurements you care to focus upon. Yet at the same time, virtually any U.S. business person will have his or her own list of mounting concerns, grievances, and sometimes a desired trade law enforcement case on their private agenda.

And sometimes these individual problems create a collective angst that can compel action.

See the quite astonishing example of a group letter to China's President Hu Jintao complaining in some detail about his government's managed trade policies, and particularly the intellectual property rights-threatening "indigenous innovation" policy, sent in December 2009.

This document was signed by quite literally every major U.S. and international business organization, including U.S. competitors in Japan and Europe which normally quite enjoy standing back during a U.S.-China trade fight, hoping to pick up the pieces. Every member of Congress was sent a copy of that letter, and you can be assured that Republicans and Democrats did not have differing "partisan" reactions.

The Ways and Means hearing we attended just prior to writing this article shows anecdotally the atmosphere in Congress, and the bipartisan atmosphere. Let's invent a new measurement for the U.S.-China relationship, just for *TIE*. We'll call it the "The *TIE* Angst Factor." If we were all New Yorkers, perhaps we could call it the "kvetch scale." Same thing, either way.

In a hearing ostensibly to grill U.S. Trade Representative Ron Kirk on why the White House has yet to complete the FTAs with Colombia and Panama which have been stalled for going on three years, "China" kept coming up. Chairman Camp led with it in his opening statement, charging that the PRC "purposefully blocks" market access for U.S. companies by its various policies, warning Kirk "this situation cannot be allowed to stand!"

Ranking Democrat and former chair Levin picked right up with his Michigan colleague, saying, "I agree with the Chairman, and urge the Administration to take a more serious stance to address China's currency manipulation..."

Washington State Democrat Jim McDermott, ranking Democrat on the Trade subcommittee chaired by Texan Kevin Brady (R), spent nearly all his question time whacking away on China, and demanding that Kirk tell him and

tell Congress what the Administration plans to do on "enforcement" of U.S. trade law, especially on China's commitments on government procurement.

McDermott then reinforced this by praising the Administration's decision to file a controversial Trade Section 301 case against a "surge" in Chinese tire imports to the United States, and tried, unsuccessfully, to get Kirk to explain why he said the office of the USTR "lacked the resources" to bring all the cases which might be warranted.

A member asked about a Bilateral Investment Treaty with China, and Kirk was only too happy to say he was even then reviewing the BIT process and, "Hopefully we are at the end stage of consultations with the business community, and then we can go forward. I hope we can conclude a BIT with China and with India as well!"

Members then got down to the individual anecdotes that we argue form the "prism" through which so many see how the relationship is faring. Representative Dean Heller (R) of Nevada told about a small company in his district which he feels has been cheated by a Chinese company, and promised to send USTR the details.

Another member rehearsed the entire "indigenous innovation" fight, and said a company in his district had been badly cheated on intellectual property software infringements by its Chinese customer, so "What's the Administration's plan to get IPR resolved once and for all!?"

Representative Vern Buchanan (R) of Florida tried a different tack, criticizing the Administration for the delays in processing the South Korean, Colombian, and Panamanian free trade agreements, "So we never get a chance to move forward and really deal with China!"

Really "deal with" China? An interesting concept.

Let's wrap-up this discussion for now by passing along some of the sorts of legislation in addition to cur-

A Modest Proposal

Intellectual property rights is an issue "everyone" agrees on. So when will some clever member introduce a bill requiring any U.S. company buying or importing products made in China to provide a legally binding certification that those products fully comply with U.S. and international IPR standards?

Why not force U.S. companies doing business in China to certify that all their suppliers are IPR compliant? Would this be "protectionism"? Why isn't it simple, basic "trade enforcement," and likely to be very attractive if some member feels up to it?

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Key Recommendations of the U.S.-China Economic and Security Review Commission

■ The Commission recommends that Congress urge the administration to respond to China's currency undervaluation by

a. Working with U.S. trading partners to bring to bear on China the enforcement provisions of all relevant international institutions; and

b. Using the unilateral tools available to the U.S. government to encourage China to help correct global imbalances and to shift its economy to more consumption-driven growth.

■ The Commission recommends that Congress examine the efficacy of the tools available to the U.S. government to address market access-limiting practices by China not covered by its WTO obligations, and, as necessary, develop new tools.

■ The Commission recommends that Congress direct the Department of the Treasury to fully account for all sales of U.S. government debt to foreign governments and holdings of U.S. government debt by foreign governments.

■ The Commission recommends that Congress reauthorize the U.S.-Hong Kong Policy Act of 1992, which expired in 2007.

■ The Commission recommends that if the United States is to compete successfully in green technology manufacturing, Congress should examine domestic programs available to U.S. producers to ensure that these policies are an adequate response to China's strategic promotion of the green technology sector.

■ The Commission recommends that Congress request that the administration periodically issue a single report about the volume and seriousness of exploitations and attacks targeting the information systems of all federal agencies that handle sensitive information related to diplomatic, intelligence, military, and economic issues. To the extent feasible, these reports should indicate points of origin for this malicious activity and planned measures to mitigate and prevent future exploitations and attacks.

■ The Commission recommends that Congress direct the Securities and Exchange Commission to require that disclosure documents filed by companies seeking to list on the U.S. exchanges identify the Chinese Communist Party affiliation of board members and senior corporate officials.

—2010 Report to Congress of the U.S.-China Economic and Security Review Commission

rency which Congress might be tempted to play with, perhaps even pass, if the accumulated angst factor seems to sufficiently tilt the scales.

A more refined formulation should also ask what Congress can pass that would give the Administration more "leverage" on all the China issues without trashing the relationship.

Some members have already introduced legislation this year that would revoke China's most-favored nation status, and so withdraw the U.S.-China deal which brought Beijing into the World Trade Organization. This might be called the "nuclear option," and it's hard to see how things could reach that point, short of some awful thing like another Tiananmen Square—a non-trade, human rights event, please note.

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"trade enforcement," and likely to be very attractive if some member feels up to it?

How would the Administration respond? How could it say no immediately, as the process leading up to passage of any such bill could provide the White House with the traditional tool of, "If you don't make a deal with us, Congress will pass this and then we'll all be sorry!"

Here's another one, perhaps more risky in terms of feeding an emotional response, rather than a fact-based, objective measurement of theft. What would be the Administration's reaction to legislation authorizing a special safeguards case to ensure that all Chinese products meet relevant U.S. health and safety laws?

The likely Administration answer: "This is the kind of emotional, political grab-bag that keeps U.S. beef out of South Korea, Taiwan, and China, so how can we fight that when you want to do the same thing here?!"

The likely Congressional response: "Hey, it's all about fairness, a level playing field!"

So, let's sum up. Is Jon Huntsman right? Will things fall off the cliff this year in U.S.-China relations, perhaps to the point that Congress really will pass veto-proof legislation?

Most disasters don't happen. Let's hope this is one of them. ◆