DEMYSTIFYING THE UNITED STATES: STARTING WITH THE ROLE OF LAW

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INTRODUCTION

The United States is in the last stretch of a highly anticipated and highly important election season. In November 2012, the American public will decide whether to re-elect the current President of the United States, Barack Obama, or whether to send his challenger Mitt Romney to the White House. In mid-October, a collection of national polls showed President Obama and Governor Romney to be virtually tied in the presidential campaign. The major political parties are also battling for control of the U.S. Senate, in which a similarly tight outcome is predicted, along with election of the House of Representatives, where the Republicans are predicted to retain their current majority.

Whoever wins in 2012 will face the same set of major challenges. The dual imperatives of job creation and deficit reduction will dominate the agenda. And pressure to act quickly and boldly will take center stage. On January 1, 2013, before the next presidential term even begins, a large package of tax cuts are due to expire and a large package of spending cuts are due to go into effect. This outcome, referred to as the "fiscal cliff", would impact the economy as a whole, with the Congressional Budget Office predicting that it "would have substantial economic costs in the short run."[2] The fiscal cliff would also put in jeopardy a variety of programs of interest to investors, such as funding and tax benefits for corporate research and development.[3] Then, in early 2013, the United States is expected to hit its debt ceiling, requiring further congressional authorization (of the kind that lead to a major political crisis in the summer of 2010). Given the likely division of power between the two parties, it is very possible that they will have to reach compromise in a way they have been thus far unable to do if the "fiscal cliff" experience is to be avoided.

Given the economic conditions in the United States, it is no surprise that the American public and media seem fixated on a handful of domestic issues. And yet, developments on the international stage may ultimately provide an equally lasting impact on the U.S. and global economy.

Chief among these trends is the recent tendency of Chinese companies to expand and invest abroad. In the first half of 2012, for example, Chinese investors spent $3.6

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[2] Economic Effects of Reducing the Fiscal Restraint That is Scheduled to Occur in 2013, *Congressional Budget Office*, May 2012, http://www.cbo.gov/sites/default/files/cbofiles/attachments/FiscalRestraint_0.pdf.

[3] As U.S. Nears a "Fiscal Cliff," Concerns Rise for Future R&D, *Science*, May 25, 2012, http://www.sciencemag.org/content/336/6084/997.full.

billion on 33 foreign direct investment (FDI) projects in the United States, the highest half-year investment period on record.[3] Should pending deals be approved, Chinese direct investment will exceed $8 billion in 2012, far greater than the previous high of $5.7 billion recorded in 2010.

Going global brings new challenges, especially for companies that have previously concentrated on the China market exclusively and can count on government support on their home turf in a market heavily regulated by the ubiquitous government. The environment in the United States is very different. The philosophy in the United States relies on free markets first, before governmental policy is considered. The debate between the Democratic and the Republican Parties is not over the presumption that free markets are the most powerful tool of economic progress, it is over the definition of the circumstances, given various views of market failure and national security, in which government should intervene. The federal government's bailout of General Motors is a good example of this debate.

From talking to Chinese companies we know that there is a natural tendency to view events in the United States in terms of their impact on, and attitude towards, China. And, of course, there are significant issues that concern the direct relationship between the two nations, and their businesses.

But we believe that the starting point for understanding the United States as a destination for investment should be how the United States views itself – just as American visitors to China are advised to understand the long-view of Chinese history in order to gain better perspective on current events.

The United States is a different kind of nation than China. Its history as a state does not extend back for more than two millennia. It is very diverse – the proverbial melting pot of different ethnic, religious and racial groups.

The principle basis on which the United States is organized in the law. Because in the United States, core principles of governance start with the law.

That can manifest itself in day-to-day legal rules. For example, in China, control of a joint venture depends in part on who has the right to appoint the joint venture's "legal representative", who has apparent authority to act on behalf of the joint venture. It is common that a Chinese joint venture partner gives the American partner 51% or more of the shares and maintains control by keeping the right to appoint the legal representative. In the United States, however, a joint venture partner that obtains 51% of a company controls that company save where the partners agree otherwise.

The role of the law also means that the role of lawyers is different. In China, most firms either have no legal department or have only recently begun to establish expert legal departments headed by experienced General Counsels. In China, businesspeople often do not include lawyers when they enter into contracts or transactions. But the U.S. is a place

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[3] Chinese FDI in the United States: Q1 and Q2 2012 Update, Thilo Hanemann, *Rhodium Group*, July 25, 2012, http://rhgroup.net/notes/chinese-fdi-in-the-united-states-q1-and-q2-2012-update.

founded on a perspective of governance that brings lawyers to the heart of corporate (and often political) governance.

Thus, this article will provide an overview of key governance principles founded in the law and then review the three areas of U.S. law that are most common to the plans of foreign investors: the review of "national security" issues by the Committee on Foreign Investment in the United States ("CFIUS"), pre-closing approval of asset acquisitions by antitrust agencies, and application of U.S. securities laws.

AMERICAN POLITICS AND THE LAW

The Rule of Law

It is impossible to separate the American political system from the U.S. version of the rule of law. Arising from English and French political theorists, and forged in a time of colonial dependence on the United Kingdom, the U.S. political system was created to achieve very specific governance principles, among them:

- checks and balances should constrain impulsive decision-making by the federal government;
- the federal government's power should be limited, with additional powers to be exercised by the states;
- individuals should be guaranteed specific, enumerated rights, including the right to free expression and the right to equal treatment under the law, that cannot be violated by government; and
- the fundamental notion that constitutional law should constrain government (the "inalienable rights" of the Declaration of Constitution);

The American political system derives from these four core principles.

First, the American political system is commonly characterized as a system of "checks and balances," a concept enshrined in the United States Constitution more than two hundred years ago. Such a description underlines the important fact that while the executive, legislative, and judicial branches of the federal government are considered equal in power, they are not entirely independent of one another. On the contrary, each individual federal branch possesses certain enumerated powers under the U.S. Constitution that it can use to check and balance the power of the other two branches, while performing its assigned function. On the federal level, the executive branch consists of the President, the Cabinet agencies, and the various Federal departments and agencies. The legislative branch is made up of the Senate and the House of Representatives. The judicial branch is made up of the Supreme Court and the other federal courts created by the legislative branch.

Thus, for example, while the legislative branch is empowered to enact federal laws, the executive branch has the power to veto those laws. In turn, the Congress can override the President's veto if it obtains a two-thirds majority in favor of passage. Similarly, while courts may deem acts of Congress unconstitutional, the legislative branch may remove

judges—who otherwise have life tenure—through the process of impeachment. Additionally, the President has the power to make appointments and enter into treaties, but the Senate must advise and consent to the President doing so. Although these are just a few examples of many, the system of checks and balances is central to the American political system. It's aim is "so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."[4]

Second, the American Constitution established a political system in the United States based upon the principle of federalism, in which a supreme but limited national government shares power with state and local governments. In form, the United States is a federal republic consisting of 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and a number of small territories. The national and state governments hold certain exclusive powers while sharing other powers concurrently. Put differently, the American political system divides power between the federal, state, and local governments, reflecting the ideals of self-representation and divided authority, ideals upon which the United States was founded. Consistent with one of the founding principles of the American republic: limited government. Political decentralization aims to give citizens and their locally elected representatives more power in public decision-making.

Third, and this was a contentious political question during the ratification of the US Constitution, protection of individual liberties does not rest only on the structure of the governments - checks and balances at the federal level, and the sharing of authority among the states. Instead, the American system guarantees certain specific, enumerated rights to individuals. The so-called "Anti-Federalists" successfully demanded that the Constitution contain ten original amendments, referred to as the Bill of Rights, which includes protections for free speech, exercise of religion, and fair criminal process, among others. Those individual rights were extended at the end of the Civil War to abolish slavery and limit the actions of states and have since been expanded, for example, by providing the right to vote to women in the early Twentieth Century.

Fourth, the American political system is expressed through a specific understanding of the Rule of Law; one in which legal principles are designed to constrain governments themselves. That concept is captured in the phrase, attributed to the second President of the United States John Adams, that the United States is "a government of laws, and not of men." It finds its fullest explanation in the Declaration of Independence, which rests on the identification of "certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness," and explains that to "secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed". The notion here is that "inalienable Rights" pre-exist, and cannot be limited, by government.

These four principles remain vitally important in understanding the United States today. Indeed, the American federalist system has proven remarkably flexible and

[4] The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments, *Federalist No. 51 - James Madison*, Feb. 6, 1788, http://www.constitution.org/fed/federa51.htm.

accommodating, while simultaneously durable and enduring over the last two and half centuries.

Sources of Law and Subjects of Law

OVERVIEW:

"It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137 (1803)

As noted previously, the United States prides itself on being a nation of laws. The statement quoted above, written by the most influential Chief Justice of the United States, established the additional principle that the judiciary has the duty to interpret the law, including the power to reject laws enacted by Congress and signed by the President, if they violate the United States Constitution. Broadly speaking, the centrality of the American legal system is felt continuously by citizens and visitors alike. Each day, courts hand down formal legal judgments on matters large and small. Each day, legal agreements dictate outcomes on million-dollar deals and minor personal disputes alike. In most of these circumstances, the law produces winners and losers. Predictably, losers are often displeased with the judgment or rationale that places them on the losing side. And yet, in this constant cycle, the basic proposition that the law itself should dictate the resolution of these disputes remains virtually unquestioned. The willingness of the American public to accept the legitimacy of judicial decisions and legal outcomes generally, even when specific outcomes threaten their personal or financial well-being, is perhaps the best evidence of the central role that the rule of law plays in American culture and society.

Three characteristics of the Constitution are central to understanding the operation of the American judicial system. First, the Constitution commits the United States to the preservation of a robust and independent federal judiciary. Second, the allocation of power between the federal and the state governments means that both federal and state legal systems are important. Third, rather than providing an exhaustive code of American laws, the Constitution is dependent upon a common-law system in which lawmakers, past precedent, and private litigants help craft governing law.

JUDICIAL INDEPENDENCE

Perhaps the most important evidence of the American elevation of the rule of law is found in the commitment to a robust and independent judiciary. All federal judges—meaning Supreme Court justices alongside federal trial court and appellate judges—are appointed by the President of the United States and then subject to a majority vote of the U.S. Senate. Once confirmed, however, federal judges are essentially guaranteed a lifetime position on the bench. They may only be removed from office through an impeachment process in which charges are brought by the House of Representatives and then the Senate convicts of the offenses following trial. In the long history of the United States, the handful of judges that have been impeached have all been removed based on serious misconduct. In addition to insulating federal judges from most efforts at removal, the Constitution also prohibits Congress from reducing judges salaries

once they are appointed. In combination, these measures are designed to allow federal judges to exercise independent judgment without political or outside interference.

In the summer of 2012, the Supreme Court of the United States, the highest court in the land, was tasked with deciding the constitutionality of the Affordable Care Act. That Act, which overhauled the U.S. health care system, is widely considered to be the signature achievement of President Barack Obama's current term in office. In this context, the case of *National Federation of Independent Business et al* v. *Sebilius*, is notable for two reasons. First, it demonstrates the robust role that the judiciary plays in the U.S. legal system. The health care reform bill had passed both houses of Congress with the full backing of the President of the United States. Nonetheless, if five members of the nine member Supreme Court had concluded that the law was unconstitutional, that would have provided the final word and the full bill could have been struck down. Second, the decision to uphold the law was written by the Chief Justice of the Court, who had been appointed by the party opposed to President Obama, the Republican party. Had the Chief Justice followed the political allegiances of the party that had nominated him to the Court, he would have been expected to strike down President Obama's signature achievement. The fact that he did not do so, even with strong public support for striking down the law[4], is seen in the United States by many as evidence of an independent federal judiciary focused on application of the laws rather than outcome-based efforts to achieve political outcomes.

FEDERAL AND STATE AUTHORITY

The divided authority between federal and state governments is one of the most notable aspects of the American system. Thus, the Constitution states that in all cases where authority to act is not granted by the Constitution to the federal government, state governments have the authority to set their own policies and laws.

With respect to the legal system, there are three primary areas where the federal government and states exercise authority.

First, federal and state legislatures are each tasked with lawmaking responsibilities. Congress legislates at the federal level by enacting new laws or by changing old laws. State legislatures exercise similar authority at the state level. Congress generally may pass legislation only when its action is based on a federal power set forth by the Constitution. Similarly, state governments may not pass legislation that conflicts with federal law. Each level of government has a role in the litigation of civil actions, alleging a violation of a statute or common law (for instance a business dispute), and criminal actions, involving governmental prosecution of an alleged action injurious to the public welfare.

Second, both federal and state governments rely on an executive branch to enforce their laws. At the federal level, the best example is the wide variety of powerful agencies that help enforce the laws on subjects ranging from the approval of new pharmaceutical drugs to the prosecution of improper trading activities on American financial markets.

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[4] Supreme Court in a No-Win Position on Obamacare?, David Gergen and Michael Zuckerman, *CNN Opinion*, June 12, 2012, http://www.cnn.com/2012/06/12/opinion/gergen-supreme-court/index.html

Officials at the state level exercise similar enforcement authority over matters of state law. State attorneys general, for instance, often exercise their authority to bring suit on behalf of their individual states under either state or federal law.

Third, federal and state governments each provide a judiciary to hear and resolve disputes: holding courtroom hearings, deciding cases on civil and criminal matters, and setting forth penalties. In general, the determination of whether a legal dispute goes before a federal or state judge is dependent on the body of law under which the claim is made and the parties to the dispute. Federal courts have jurisdiction only over certain matters, such as cases involving federal law, cases involving different states or foreign governments, or some cases involving citizens of different states. State courts exercise exclusive jurisdiction over the large majority of cases, which fall outside of these categories.

THE COMMON LAW

The United States is, for all essential purposes, a common-law system. In a common-law system, when no constitutional or statutory provision directs a particular judicial outcome, courts look to past judicial decisions, along with customs and general principles to reach their decision. This system is derived from English common-law, which gives precedential value to past judicial reasoning. The common-law arrangement stands in contrast to the code-based system in many countries, where exhaustive legal doctrines are defined and past judicial decisions are less important. In the U.S. the concept of "stare decisis," whereby courts give particular deference to past decisions on similar legal questions, is thought to provide many of the benefits of predictability that are generally attributed to a code-based system.

The common-law system, back to its English origins, depends heavily on the involvement of individual citizens. At a basic level, the American system requires private citizens to participate as jurors in many civil and criminal cases. Indeed, the right for individuals to be tried by a jury of their peers is considered one of the defining protections of the American Constitution. Accordingly, ordinary Americans are often asked to decide important factual questions in major legal disputes.

Outside observers of the American legal system may think more about individual citizens role as litigants rather than jurors. Although there is robust debate about whether the United States has actually experienced an explosion of private lawsuits in recent years, a pair of factors have contributed to this perception. First, there have been a number of high-profile cases where individual litigants have received substantial legal judgments for seemingly frivolous lawsuits. The most common example involved a near-$3 million initial verdict (but ultimate settlement) when hot coffee from a McDonald's spilled on a plaintiff's lap. Second, there are characteristics of the American system that are thought to make private litigation easier. For example, unlike many nations, the United States allows lawyers to handle cases where their compensation is calculated as a guaranteed portion of any potential recovery. This arrangement helps make lawsuits possible, particularly for individuals who otherwise could not afford legal fees. In addition, the United States does not impose the "loser pays" requirement present in some countries, so litigants are not necessarily financially burdened for bringing an unsuccessful suit. In part, these factors

help explain the common perception among outside observers that private parties play a more active role in the American legal system than in many other countries.

The Legal Regime For Foreign Investment in the United States

This section provides an introduction to a few areas of law likely to be of interest to global investors and trading partners as they consider entry into the American market.

REGULATION AT THE STATE LEVEL

The U.S. federal government imposes no general restrictions on foreign investment. To the extent that the United States directly regulates foreign investment, most of that regulation comes from the federal government or at least involves a prominent role for the federal government. However, state and local governments are important to the legal experience of outside investors. First, Governors, Mayors, local officials and local businesses are often the most critical elements in securing public support for new investments. At this stage, we believe only a handful of Chinese companies fully understand and are prepared to deal with this dynamic. Second, corporate law in the United States is set at the state not federal level. Thus, laws governing the formation of a company or contract disputes between businesses are generally set at the state level.

REGULATION AT THE FEDERAL LEVEL

The legal regimes of interest to prospective foreign investors are primarily federal. Some of these laws directly address the issue of foreign investment. For example, the United States maintains a small handful of sectoral restrictions on foreign investment that are primarily focused on regulated industries, such as defense, communications, and transportation. Other areas of law implicate foreign investors for the same reasons that they implicate other participants in the American marketplace.

In our discussion with non-US investors, the following three areas of US law typically attract the greatest interest: The national security review process, antitrust and competition laws, and the securities laws.

NATIONAL SECURITY REVIEW

Over the last decade, the aspect of American law that has gained the most attention from Chinese investors is the national security review process conducted through the Committee on Foreign Investment in the United States (CFIUS). The CFIUS review process authorizes the President to block foreign acquisitions of existing U.S. businesses if the acquisitions present national security risks that cannot be effectively mitigated. By law, CFIUS only reviews transactions for national security threats, not for broader economic or foreign policy concerns.

In the United States, broad public concerns with foreign investment have emerged several times during the past 40 years. In the 1970s, a wave of new investments, particularly from Middle Eastern countries, resulted in the creation of CFIUS and the enactment by Congress of foreign investment reporting statutes. In the 1980s, foreign

(particularly Japanese) acquisitions of U.S. advanced technology companies and various other assets caused much debate, ultimately leading to the enactment in 1988 of the Exon-Florio Provision (as part of the Omnibus Trade and Competitiveness Act of 1988), which grants the President the authority to review and to block foreign investments on national security grounds. Congress directed, however, that before this authority can be invoked the President must conclude that the proposed transaction presents a credible threat to U.S. national security and no other legal authority provides adequate and appropriate means to address that threat. Between 2000 and 2010, a series of transactions caused much public debate. These transactions included the bid by the China National Offshore Oil Corporation (CNOOC) in 2005 to acquire Unocal, and the acquisition by Dubai Ports World in 2006 of certain port facilities. Again, Congress reacted by enacting legislation in 2007 to clarify the authority, responsibilities, and procedures of CFIUS.

In practice, the national security review process captures more headlines than transactions. In a typical year, hundreds of direct investments are proposed and only around ten percent of those investments are even subjected to CFIUS review. In 2011, CFIUS processed only 110 cases, a small portion of all inbound merger and acquisition activity. Of those, most cleared without mitigation measures. Moreover, in its history, CFIUS has formally vetoed only one proposed investment. Nonetheless, the deals that do get derailed by national security concerns often become high-profile objects of media attention. As a result, the CFIUS review is often a central concern of outside investors.

Although CFIUS is not by itself a significant risk for most transactions, certainly an investment involving traditional defense industry companies, critical infrastructure, sensitive technologies or similar subjects will be reviewed closely and CFIUS may require mitigation measures. But for these and other transactions, it is equally important to plan for broader public consideration and debate, not just for the formal (and confidential) CFIUS process. CNOOC's bid for Unocal demonstrates this need as the bid never was reviewed by CFIUS. Rather, CNOOC effectively withdrew the bid because of the adverse Congressional and political reaction. Under similar Congressional pressure, Dubai Ports World agreed to sell the U.S. assets that it acquired.

By one recent estimate, there have been over 200 Chinese FDI transactions in the United States since 2003. Few of these have attracted public attention. Indeed, the recent CNOOC-Nexen transaction, which includes some U.S. assets, has thus far attracted relatively little public attention in the U.S.

The best approach to managing possible regulatory risksis to incorporate into transaction planning a careful assessment of the potential issues that could generate public debate, and then to develop a plan for (i) assessing the potential outcome of regulatory concerns, (ii) planning to address those issues, and (ii) understanding the benefits to the United States that can come from foreign investment. Political surprises can be minimized by careful study of the U.S. market and the specific political, as well as regulatory, environment relevant to the investment

ANTITRUST LAW

The other area of U.S. law that often comes into play in a cross-border transaction is American antitrust law, because it contains provisions assessing the impact of certain asset acquisitions. Set forth primarily at the federal level, U.S. antitrust laws are designed to promote free and robust competition in American markets. Foreign investors often first encounter a pair of federal antitrust laws, the Clayton Act and the Hart-Scott-Ridino ("HSR") Act. The Clayton Act prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly." The HSR Act, in turn, allows the Department of Justice ("DOJ") and Federal Trade Commission ("FTC") to review certain proposed mergers or acquisitions prior to closing. Specifically, transactions in the United States that involve parties of a certain size or a transaction value over a certain size must be cleared by federal antitrust regulators in advance of the closing of a transaction. If regulators have antitrust concerns that are not addressed by the parties, they may file suit in federal court to block these transactions.

As much as any area of law, the level of activity in the antitrust arena often reflects recent political trends, specifically with respect to the presidency. For instance, there has been a notable rise in antitrust enforcement activity during the Obama Administration relative to the Administration of George W. Bush.[5] In high-profile cases involving AT&T's proposed acquisition of T-Mobile and H&R Block's proposed acquisition of Tax Act, the threat of regulatory enforcement and litigation ultimately derailed major prospective transactions.

Chinese investors face no unique regulatory burden in the area of antitrust law. Nonetheless, given their increased deal activity within the United States, Chinese investors should expect to navigate a steady stream of regulatory reviews from U.S. officials on competition matters. As a result, investors should structure transactions to comply with the pre-filing requirements and substantive obligations of the HSR and Clayton Acts.

SECURITIES LAW

For Chinese companies and investors, legal risks in the United States can arise from an apparent lack of familiarity with relevant regulations, and inexperience operating within a similarly structured regulatory framework. The most notable recent example of such difficulties has occurred in the area of securities law. The capital markets in the United States are among the most active and attractive in the world. They are, however, also among the most heavily regulated.

In general, securities sold in the United States must be either registered or exempt from registration. The two primary laws are the Securities Act of 1933 and the Exchange Act of 1934, and they are enforced by the Securities and Exchange Commission (the "SEC"). The primary objective of these statutes is to ensure that investors receive truthful, important information about their potential investments. The securities laws do not exempt

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[5] Evaluating Merger Enforcement During the Obama Administration, Jonathan B. Baker and Carl Shapiro, *Stanford Law Review*, August 21, 2012, http://www.stanfordlawreview.org/merger-enforcement-obama-administration.

foreign issuers of securities from their mandates, but they do not impose unique regulatory burdens on foreign entities either. Generally, if U.S. investors have a large enough stake in the securities of a foreign company, that company will need to satisfy the registration and reporting requirements imposed by U.S. federal law.

In the first months of 2012, the SEC has brought a number of enforcement actions against Chinese companies that entered the U.S. market via so-called "reverse merger" arrangements, which allow a company to bypass the regulatory scrutiny for an initial public offering where the foreign company buys existing U.S. public shell companies and then sells the listed shares to U.S. investors.

The SEC actions followed high-profile allegations from an American financial firm, Muddy Waters Research, that a Chinese company, Focus Media, misreported key financial information. The so-called Muddy Waters incident and the regulatory activity that has followed has raised concerns among Chinese investors about the openness of the American capital markets. American regulators and investors, on the other hand, remain concerned about the willingness and ability of Chinese companies to meet the stringent requirements of U.S. securities laws. Unless the various parties can address these lingering concerns, the relationship between major Chinese economic entities and one of the world's foremost capital markets may come under further strain.

CONCLUSION

The story of the United States is in many ways a story about engagement between different peoples and different cultures. From its founding, the United States has been grounded on an openness to other nations and other cultures. The result is that a core part of American communities and the American workforce are immigrants, including many of Chinese descent. With respect to foreign investment, the United States works from a similar position of openness. Embracing an "open-door" approach to foreign investment, each American President since President Reagan in the 1980s has made the case to the American public that foreign direct investment benefits the U.S. and global economy. As China assume global responsibilities and as Chinese companies pursue international ambitions, that dialogue may increasingly focus on issues of reciprocity. Speaking with respect to United States policy towards China, a senior member of the U.S. Treasury Department recently stated: "We are willing to make progress on these issues, but our ability to do so will depend on how much progress we see from China."[6]

Those principles are, of course, subject to both international diplomacy and legal regimes. A civil discussion on reciprocity will be a far cry from any perceptions that one country is trying to block the other's economic progress and global investment. And, as we hope this article has explained, for Chinese companies looking to do business in the United States, the law has independent importance that it is important to understand.

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[6] Remarks by Under Secretary Lael Brainard on China at the Center for American Progress (CAP), July 18, 2012, http://www.treasury.gov/press-center/press-releases/Pages/tg1643.aspx.