On May 21, 2014, five former U.S. ambassadors, Roy Stapleton (first left), Jon Huntsman (fourth left), Gary Locke (third right), Winston Lord (second right), and Joe Prueher (first right) gather in the New York Stock Exchange to commemorate the 35th anniversary of the establishment of China-U.S. diplomatic relations; Steve Orlins (second left), president of the National Committee on U.S.-China Relations, also joins in.

Promoting China-U.S. Economic Relations through the Bilateral Investment Treaty

By **QU BO**

MUTUAL suspicions concerning security among major countries and increasing economic competition among them are further complicating the situation in the Asia-Pacific region. The U.S. is proactively advancing talks towards the Trans-Pacific Partnership (TPP) Agreement in hopes of forging higher-level free trade agreements in the region, while China supports and is participating in the negotiations of the Regional Comprehensive Economic Partnership (RCEP). These moves signify the two powers' desire to gain a competitive edge in their economic arrangements. However, economically speaking, China and the U.S. can be mutually beneficial and achieve win-win results for their common economic interests, which would impel them to dissolve or alleviate tensions in certain areas. The two countries should plan economic cooperation and boost bilateral trade under the APEC framework and bilateral agreements. The China-U.S Bilateral Investment Treaty (BIT) which was jointly initiated in 2013, serves as a major move to promote bilateral cooperation and stabilize the Asia-Pacific region.

A Huge Breakthrough

The bilateral economic relationship has been taken as the hinge for stabilizing China-U.S. relations. Over the past 30-plus years since China started its reform and opening-up drive, China and the U.S. have witnessed a constantly deepening interdependency in economy. The 2013 bilateral trade volume topped US $520 billion, American direct investment in actual use in China totalled US $2.8 billion, and accumulative American direct investment in China stood at US $50-70 billion. As of 2012, China's accumulative direct investment in the U.S. reached US $17 billion.

The two countries' contradictions in economy and trade have nevertheless also become more striking. Such issues as imbalanced trade, RMB exchange rate, China's state-owned enterprises and the U.S. blocking investment from certain Chinese enterprises are factors disrupting Sino-U.S. economic relations.

To solve these problems, China and the U.S. started the China-U.S. Strategic Economic Dialogue in 2006, renamed the China-U.S. Strategic and Economic Dialogue after President Obama took office in 2008. Through this platform, the two countries discuss strategic, long-term and other important issues related to the development of bilateral relations.

At the fourth China-U.S. Strategic Economic Dialogue held in July 2008, the two sides proposed to start negotiations on a bilateral investment treaty. Negotiations restarted at the 2013 China-U.S. Strategic and Economic Dialogue.

The U.S. seeks to gain more benefits for American enterprises through BIT, including wider market access in China, national treatment, non-discrimination, protection of enterprise ownership, restriction on requirements for investment performance and impartial settlement of disputes. It has been taken as the most important bilateral investment treaty since the U.S. signed the investment agreement affiliated to the North American Free Trade Agreement.

The bilateral investment treaty will be also significant for China. It is expected to boost investment in the U.S. and ensure impartial settlement of disputes, thus avoiding unfair treatment of China's investors from the Committee on Foreign Investment in the United States (CFIUS).

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Negotiations on the bilateral investment treaty go through two stages: The first is mainly about documentation, and the second focuses on the negative list. As of July 2014, the two sides had conducted 13 rounds of negotiations. In July 2014, they entered the phase of negative list negotiations.

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Win-win Aim

In principle, several motives drive the U.S. to sign BITs with foreign countries. First, to protect the U.S.' investment in other countries; second, to adopt a more market-oriented policy towards foreign direct investment in the U.S. in an open, transparent and non-discriminating way; and third, to support the development and implementation of related international laws and practices compatible with the above motivations.

As far as the China-U.S. BIT is concerned, the U.S. stands to reap the following gains. First, the bilateral agreement, covering all investment phases and related industries, will smooth the way for U.S. firms to enter the Chinese market. The core of bilateral negotiations will focus on the negative list. Apart from industries ranked on the list, all other industries will be accessible to U.S. companies. Therefore, the U.S. takes the BIT as an important means to expand American firms' footholds in the Chinese market.

Second, the U.S. expects the treaty to grant its companies national and non-discriminatory treatment. A survey by the U.S.-China Business Association shows that challenges facing U.S. companies in China cover administrative examination and approval, competition with Chinese firms, unfair law enforcement, as well as investment-related restrictions, standards and appraisal procedures. Therefore, the BIT is expected to afford more national treatment for U.S. firms.

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Third, the treaty will prompt China to improve labor and environmental standards. As per the 2012 BIT model of the U.S., the recipient countries for investment are required to meet high-level labor, environmental and administration standards. Fourth, via the treaty the U.S. will require China to relax or remove restrictions on the proportion of ownership for U.S. investors, thus changing the rules for U.S. firms operating in China. For example, China's current regulation stipulates that foreign ownership in its auto industry should be less than 50 percent, which is also true for the life insurance field. Therefore, the BIT will help U.S. firms to expand their business in China.

Before 2000, the investment flow between China and the U.S. had been lopsided, mainly in a one-direction flow. U.S. transnational corporations invested in China's labor-intensive manufacturing or processing industry, while Chinese enterprises were either unable or lacked motivation to invest in the U.S. China sought to preserve or increase the value of its official foreign exchange reserve mainly through purchasing U.S. government bonds or other bonds.

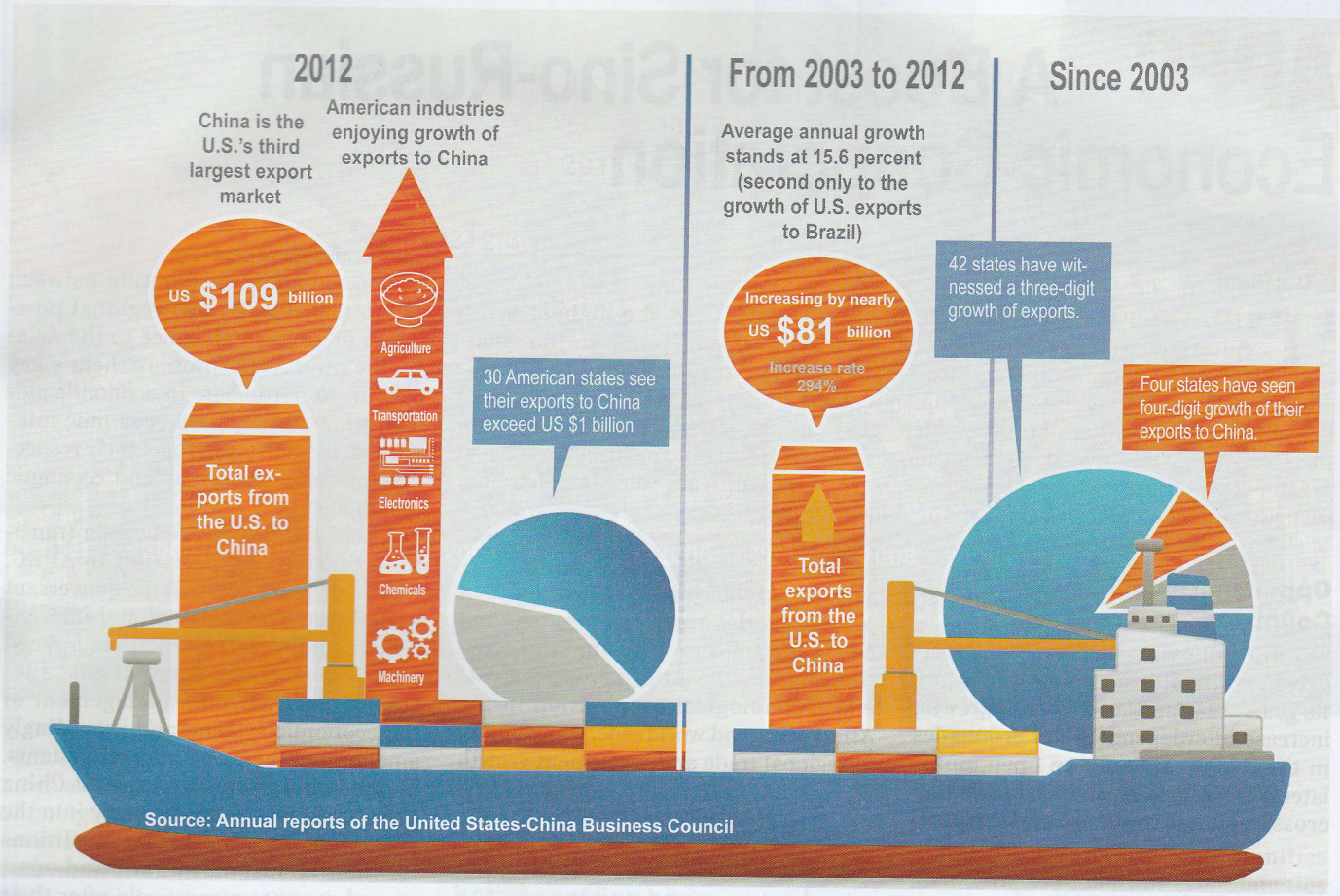
However, since 2000, more and more Chinese enterprises have been equipped with the capacity to invest in the U.S. as China's economy has developed in leaps and bounds. China's direct investment in the U.S. increased from US $587 million in 2007 to US $5.2 billion in 2012; today, China's direct investment in the U.S. has surpassed U.S. direct investment in China.

However, China's investment in the U.S. has been hampered by frequent discrimination from the CFIUS. Chinese enterprises have undergone countless frustrations and failures in their investment and acquisition moves in the U.S., including CNOOC's failed purchase of the U.S. oil company Unocal Corporation and Sany Heavy Industry's frustrated attempts at investments in the U.S., which make the BIT negotiations seem even more necessary for China.

First, the BIT will ensure much fairer treatment for Chinese enterprises in the U.S., stemming the U.S.' tendency to politicize investment issues. Out of national security considerations, the U.S. Congress is often suspicious of Chinese investment. The BIT will ensure Chinese firms' national treatment. Moreover, whenever investment disputes arise, they can turn to an impartial third-party organization for settlement.

Second, the BIT will help to balance

On April 12, 2013, the California-China Office of Trade and Investment reopens in Shanghai.



bilateral trade. China's direct investment in the U.S. can alleviate such issues as imbalanced trade, exchange rate friction and employment – over the past five years, Chinese enterprises have created over 70,000 jobs in the U.S. through investment.

Third, the BIT will propel China's domestic economic reform. China's 30-plus years of reform and opening-up testify that external competitive forces can become driving forces for its domestic market-oriented reform. China's entry into the WTO in 2001 successfully promoted China's marketization level and economic development. The China-U.S. BIT is bound to become an external driving force for China to deepen reform.

Promoting China-U.S. Relations

China and the U.S. are shaping a new pattern of relationship between great powers, with a connotation covering non-conflict, non-confrontation, mutual respect, mutual benefit and win-win results. It can be said that the mutual beneficial and win-win economic bond is the foundation of the China-U.S. relationship. Therefore, the BIT will contribute to sound development of bilateral relations.

First, the investment treaty will provide a legal guarantee for bilateral economic relations, thus avoiding the tendency to politicize economic and trade issues. Moreover, Chinese enterprises will receive much fairer treatment in their investments and acquisitions in the U.S., with the impact of the CFIUS on these matters diminishing.

Second, the investment treaty will help the two countries to resolve the existing problems in economy and trade, including trade imbalance, disputes over exchange rates, and market access. Over the past 10 years, bilateral trade and economic friction have become even more salient, with solutions and relaxation urgently needed. The BIT will play a significant role in balancing bilateral trade and harmonizing economic relations.

Finally, legal and systematic guarantees provided by the investment treaty will promote the two-way flow of direct investment between the two countries. China's direct investment in the U.S. will create more job opportunities for American people, strengthen connections with China's domestic enterprises and market, and meanwhile introduce more innovative development to the U.S. Driven by the market forces, the peoples of the two countries will deepen their understanding of each other with more frequent communication, thus laying a solid foundation for a bilateral relationship. ■

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