

TOWARD A CANADA-CHINA FTA



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INTRODUCTION

IS CANADA READY FOR FREE TRADE WITH CHINA?

The drivers of the global economy are shifting from the United States and Europe toward the Asia Pacific. In 2000, Asia Pacific made up 29 per cent of global gross domestic product (GDP), while in 2021 this region is projected to represent 45 per cent, or nearly half.¹ China's growth is a main contributor to this economic upswing. Currently, China is the second-largest economy in the world in terms of nominal GDP, and it is expected to become the largest economy in the next decade or so.

In response to the changing landscape of economic opportunity, the Canadian government is currently exploring greater economic integration with China in the form of a free trade agreement (FTA). Negotiating such a deal will be challenging given the complexity of the issues at hand and the need to secure Canadian public support for closer economic ties.

In the past year, Canadian attitudes toward greater economic engagement with China have improved. The Asia Pacific Foundation of Canada's (APF Canada) *National Opinion Poll 2017: Canadian Views on Engagement with China* shows that Canadians' support for an FTA with China has increased over the years. In the 2017 survey, 55 per cent of Canadians supported a Canada-China FTA (CCFTA) and 36 per cent opposed it, whereas in 2014, 36 per cent supported and 50 per cent opposed. Also, 76 per cent and 70 per cent of Canadians believe that greater engagement with China will lead to more opportunities for Canadian businesses and youth, respectively.

Notwithstanding the support, Canadians do acknowledge some concerns: 71 per cent are concerned that greater economic engagement will lead to greater vulnerability due to volatility in China's economy and 64 per cent believe Canada will be more susceptible to pressure from the Chinese government.

As trade negotiators are well aware, it is difficult to promote major changes to an FTA partner's core governance, rule of law and human rights systems through the framework of a trade agreement. Yet the general Canadian public lists addressing these issues as high priorities in furthering our relationship with China.²

1. International Monetary Fund, 2017, World Economic Outlook Database: April 2017, <https://www.imf.org/external/pubs/ft/weo/2017/01/weodata/index.aspx>.

2. Asia Pacific Foundation of Canada, 2017, National Opinion Poll 2017: Canadian Views on Engagement with China, <http://www.asiapacific.ca/surveys/national-opinion-polls/2017-national-opinion-poll-canadian-views-engagement-china>.

When asked to select the top issues that the Canadian government should give priority to in its relationship with China, from a list of eight choices, Canadians indicated that their top priorities included: environmental protection (27%), calling on China to have respect for human rights and introduce democratic reforms (15%), and collaborating on global security (12%).

When it comes to negotiating an FTA with China, there appears to be a gap between the public's perception of what it wants the Canadian government to push for in an FTA and what can actually be achieved in a trade negotiation. This presents unique challenges for how the Canadian government can address the Canadian public's concerns, while at the same time pushing for a robust agreement.

While Canada could approach the negotiation by proposing that the goal be a traditional FTA that focuses mainly on tariff reduction, APF Canada would suggest that this might not be the ideal starting point. Rather, in view of both the complexity of the economic issues to be addressed and the need to address the concerns of the Canadian public, a different strategy should be considered.

As a starting point, the Canadian government is likely to explore the scope of an agreement that the Chinese are willing to consider. In this discussion, it will be important to assess whether our counterparts would be open to discussing a broader set of issues that are associated with a new generation of trade agreements like the Trans-Pacific Partnership (TPP) and the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). These agreements have the merit of setting up frameworks that are forward-looking and respond to a range of trade barriers that have emerged as a function of growing complexity in inter-state economic transactions.

As part of a preliminary discussion, the Canadian government may want to explore whether the Chinese government would consider initially negotiating sector-specific arrangements prior to initiating a comprehensive formal FTA. This would allow Canada and China to address trade irritants not necessarily covered in an FTA. Focusing on sectors that would be considered low-hanging fruit, such as clean technology or certain natural-resource-based industries, and where Canada and China would immediately benefit from increased trade, would be a good place to start.

In light of the policy priority that the Canadian public has placed on Canadian collaboration with China on climate change, pollution, and human rights, the Canadian government might want to see whether China would be willing to consider negotiating strategic partnership agreements alongside trade discussions. Such a strategy was effectively deployed in the CETA negotiations and allowed the negotiating parties to discuss how they could enhance co-operation on issues that normally do not fall within trade agreements, such as international peace and security, counterterrorism, human rights and nuclear non-proliferation, clean energy and climate change, migration and peaceful pluralism, sustainable development, and innovation.

Finally, the Canadian government might want to see if there is an appetite to consider regulatory reciprocity, a form of conditional reciprocity.³ Such an approach could go a long way to assuaging concerns that parties might not hold to their commitments. If such an approach were to be used in a CCFTA, tariff and non-tariff barriers would be phased out only if each party succeeded in implementing previous commitments, as opposed to following a pre-agreed timeline that did not take into account actual performance.

A TRADE AGREEMENT WITH CHINA IS AN FTA ABOUT THE FUTURE

If the Canadian government begins FTA negotiations with China, it needs to take into account not only the political, economic, and social forces that are transforming the world we live in today, but also those that will shape the world we will live in tomorrow. The rationale behind this is simple: often, FTAs take years to negotiate and only reach full implementation decades after they enter into force.

Three major drivers of change will shape the future environment and need to be taken into account as Canada builds a framework for economic engagement with China: (1) global economic growth and technological development, (2) demographic shifts, and (3) environmental change.

TOWARD A CANADA-CHINA FTA

It is with the above considerations that APF Canada has developed this submission to the Government of Canada. The content is not exhaustive, but includes topics that APF Canada believes may not be covered in depth in other stakeholder submissions: (1) intellectual property rights, (2) temporary entry of business people, (3) selected services, (4) investment, (5) emerging technologies, (6) state-owned enterprise reform, and (7) human rights.

Each of the following sections introduces one of these topics, describes its current status as it relates to Canada and China, and highlights lessons learned from previous agreements signed by Canada and China, focusing specifically on “new generation” FTAs like the TPP and CETA as well as the China-Australia FTA and China-New Zealand FTA. A final section entitled “Next Steps” provides additional recommendations that the Canadian government may want to explore as it moves forward in its conversations with China.

3. James McGregor, 2017, How Trump Can Win with China, Foreign Policy, <http://foreignpolicy.com/2017/02/03/towards-a-trump-pacific-partnership-a-way-forward-to-win-on-trade-with-china/>.

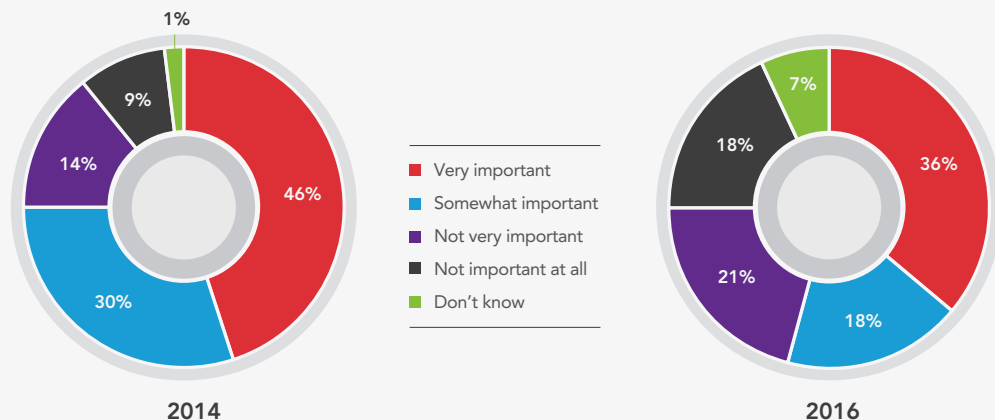
INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights (IPRs) is the term for the assignment of rights via patents, copyrights, and trademarks, which allows the holder of those rights to exercise a monopoly, through recognition or financial benefit, on the use of the item for a specified period. Since the 1990s, the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) has been the global standard on global trade and IPRs. However, today's FTAs, such as the TPP, are beginning to expand and strengthen international IPRs beyond the original TRIPS guidelines.

CURRENT STATUS OF INTELLECTUAL PROPERTY PROTECTION IN CHINA

While Canadian companies have consistently identified weak and irregular enforcement of China's IPRs as a barrier to doing business in the country, the concern around IPRs is diminishing. In a 2016 survey by the Canada China Business Council, 36 per cent of respondents viewed IPR protection and enforcement as "very important," down from 46 per cent in 2014. As well, only 35 per cent of respondents indicated a serious impact of IPR infringements in China on their company's business, down from 67 per cent in 2014. The key types of IPRs causing concern for Canadian businesses in China were trade secrets, patents, and trademarks. Other kinds of IPRs causing concern were copyright, plagiarism, and branding.⁴ According to an APF Canada survey in 2014, the manufacturing sector has historically been the most often affected by IPR infringement, followed by the mining, quarrying, and oil and gas extraction sectors, and enterprises offering professional, scientific, and technical services.⁵

FIG. 1 The Importance of IPR Protection and Enforcement for Canadian Companies with Business Ties to China, 2014 and 2016

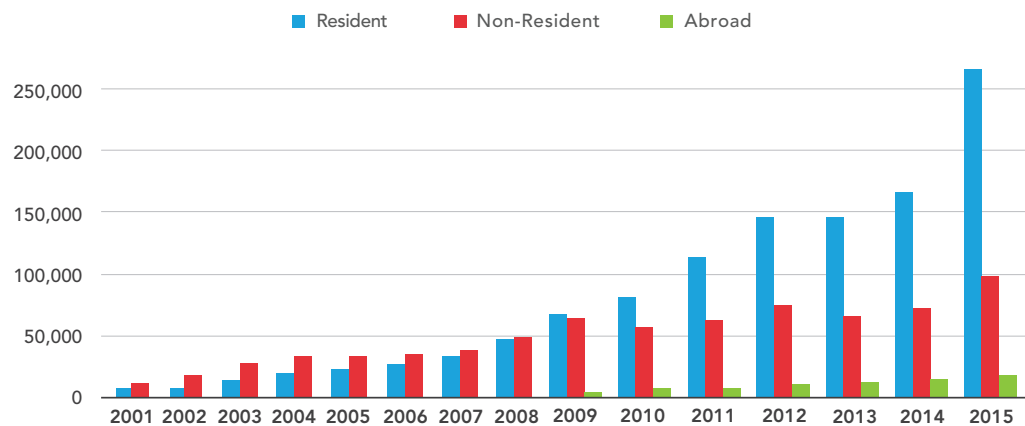


Source: Canada China Business Council Survey 2016

4. Sarah Kutulakos et al, 2017, Canada China Business Council Survey 2016, China Canada Business Council, https://www.ccbc.com/wp-content/uploads/2017/04/CCBC-Report-FINAL_SM.pdf.
5. Asia Pacific Foundation of Canada, 2014, Intellectual Property Rights Challenges Facing Foreign and Canadian Companies in China: *Survey Results and Analysis*, https://www.asiapacific.ca/sites/default/files/filefield/ip_report_phase_2.pdf.

China has made significant steps to update IPRs within the country, both for increased foreign investment as well as for national concerns. China is a growing source of international patents and trademarks. As innovators in China increasingly use their own patents and register trademarks, there is domestic pressure on the Chinese government to ensure intellectual property (IP) protection. In response to these concerns, China has been updating its laws governing IP frequently over the past few years. The government set up special IP courts in Beijing, Shanghai, and Guangzhou in 2014, and special IP trial courts in Nanjing, Suzhou, Wuhan, and Chengdu in early 2017. China also aims to set up an IP appeal court in the near future.

FIG. 2 Patent Grants in China, 2001 to 2015



Source: WIPO Statistics, China Profile

LESSONS LEARNED FROM PREVIOUS FTAS: TPP

TPP is the current golden standard for IPR in FTAs and includes some additional measures to IPRs that move beyond TRIPS and Canadian standards.

☒ ARBITRATION:

FTAs usually exclude IPRs from arbitration, which leaves rights holders to enforce their rights in local courts using local laws. The TPP goes a step further and includes arbitration for IPRs, with certain exceptions.

☒ TRADEMARKS:

The TPP requires at least 10 years' protection of regular trademarks and also requires parties to detain not only counterfeit goods but also goods bearing confusingly similar trademarks.

☒ **GEOGRAPHIC INDICATORS AND COLLECTIVE MARKS:**

Geographic indicators (marks that identify a product as originating from a specific place) are effectively subsumed into trademarks within the TPP, moving away from them being their own separate article. Protection of collective marks (marks that identify a product as coming from a certain organization or group) is also included.

☒ **PATENTS:**

The TPP includes expansion of market exclusivity on some products, such as pharmaceuticals, bringing other parties in line with current Canadian standards.

☒ **COPYRIGHT:**

Implementation of TPP guidelines would result in a major change for Canadian copyright law by extending copyright protection to the life of the author plus 70 years, up from the current standard of life plus 50 years.

☒ **ENFORCEMENT:**

The TPP requires that civil and criminal penalties (fines and imprisonment) be in place for infringement of IPRs, and it also requires legal enforcement for the protection of trade secrets.

☒ **STATE-OWNED ENTERPRISES:**

The TPP also includes a provision that TPP members cannot exclude state-owned enterprises from IP compliance rules.

☒ **TEMPORARY ENTRY OF BUSINESSPERSONS**

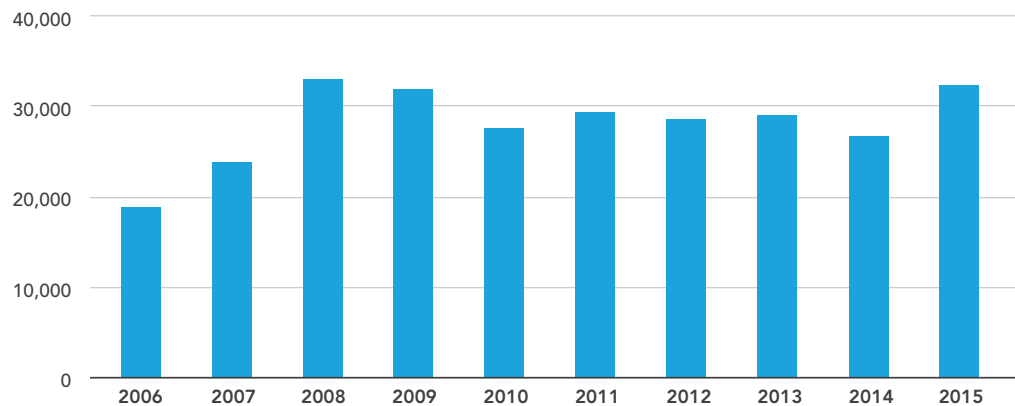
It is common for FTAs to establish regulations around the temporary entry of workers in order to facilitate the ease of doing business in collaborating countries. Several elements are worth exploring in examining what a chapter on the temporary entry of business people might look like in a Canada-China FTA.

CURRENT STATUS OF CANADA-CHINA PEOPLE-PEOPLE TIES

Between 2005 and 2016, nearly 291,000 permanent residents from China arrived in Canada,⁶ with over half (65.5%) of all Chinese immigrants in 2015 citing economic reasons for their move.⁷ And after the 2004 launch of the “Green Card” system that allowed qualified foreigners to work in China permanently, China has become a destination for an increasing number of Canadian professionals.⁸

The introduction of the 10-year visa program (established in 2012 for Chinese citizens entering Canada, and in 2015 for Canadian citizens entering China) provides individuals with multiple entry visas for business, tourism, and family purposes. In 2016, nearly 400,000 Chinese were approved for this 10-year visa to stay in Canada.⁹

FIG. 3 Permanent Residents from China Landing in Canada, 2006 to 2015



Source: Government of Canada (National Household Survey)

6. The Canadian Magazine of Immigration, 2016, Chinese Immigrants to Canada, <http://canadaimmigrants.com/chinese-immigrants-to-canada/>.
7. Asia Pacific Foundation of Canada, 2016, Immigration by Category: Economic Immigrants, <https://www.asiapacific.ca/statistics/immigration/arrivals/immigration-category-economic-immigrants>.
8. While an exact number is unknown because of a lack of reliable statistic, a report by the Asia Pacific Foundation of Canada found that Canadians in China are made up of three groups: “employees of Canadian or multinational corporations; Canadian students and teachers; and Chinese-Canadians who return for business reasons”. Kenny Zhang, 2010, Flows of People and the Canada-China Relationship, Canadian International Council, https://www.asiapacific.ca/sites/default/files/filefield/China_Papers_10_0.pdf.
9. Bob Mackin, 2016, 10-Year Canadian Visas for Chinese Hit Almost 400,000, Business in Vancouver, <https://www.biv.com/article/2016/7/ten-year-canadian-visas-chinese-hit-almost-400000/>.

LESSONS LEARNED FROM PREVIOUS FTAS: TPP, CETA AND ChAFTA

TPP AND CETA

Provisions around immigration in Canadian FTAs are all quite consistent. In the TPP and CETA, temporary entry is defined as “entry without the intent to establish permanent residence,” and four categories of businesspersons are: (1) business visitors, (2) intercorporate transferees, (3) investors, and (4) professionals and technicians. Canada does not use labour certification tests or quotas to limit the inflow of foreign workers in any of these categories. In a commitment to reciprocity, eligible workers can only enter Canada if the same types of Canadian workers can enter they other party’s country. Additionally, Canada provides temporary entry to spouses of all approved workers, with the exception of business visitors. The spouses are also exempt from labour certification tests and quotas, and receive an “open” work permit that is not restricted to an employer, industry, or region.

There are slight differences between CETA and the TPP, and the chapter on temporary entry in a CCFTA has the potential to adopt and collate them in an innovative way. For example, CETA provides a clearer definition of professions under the larger categories (such as the role of “specialist” under the intercorporate transferee category). CETA also contains language with respect to minimum wage and collective bargaining in Article 10.2(5).¹⁰ In terms of labour regulations and dispute settlement under the TPP, businesspersons who are treated unfairly cannot individually bring the case to a party; rather, their government would need to bring the case to the other party on their behalf.

The TPP makes it easier for investors to move within countries by providing temporary entry to the spouses of investors. The TPP also introduces new obligations for transparency and accountability in the visa application process, requiring the government to be as “expedient as possible,” respond to applicant inquiries “promptly,” and ensure that fees associated with visas are “reasonable.”

ChAFTA

Certain provisions in the China-Australia FTA (ChAFTA) are also worth considering. Firstly, for the first time in any FTA, China guarantees the equivalency of stay for Australian dependents and spouses who are staying for longer than 12 months. Second, and somewhat more controversially, ChAFTA includes a memorandum of understanding (MOU) allowing for investment facilitation arrangements – whereby Chinese-owned companies registered in

10. Hadrian Mertins-Kirkwood, 2016, *Migrant Workers and the Trans-Pacific Partnership: A Regulatory Impact Analysis of the TPP’s Temporary Entry Provisions*, Canadian Centre for Policy Analysis, <https://www.policyalternatives.ca/publications/reports/migrant-workers-and-trans-pacific-partnership>.

Australia undertaking infrastructure development projects worth over A\$150M are able to negotiate labour flexibilities for certain projects in the same way Australian businesses can. This allows Chinese companies to respond to unique labour challenges through bringing in workers whose permits are regulated under Australia's existing visa system. The agreement prevents either country from "imposing or maintaining any limitation on the total number of visas to be granted to natural persons of the other party."¹¹ If Canada were to consider such an MOU, it would have to guarantee that proper labour market testing would be enforced to ensure a genuine effort in recruiting Canadian workers prior to outsourcing labour, and that outsourced workers would be paid at similar wages as the domestic market. Finally, complementary to ChAFTA, both countries have implemented a nonreciprocal Work and Holiday Arrangement, in which Australia will grant visas for up to 5,000 Chinese applicants.

☒ TRADE IN SERVICES

One of the top priorities for President Xi Jinping's administration is to restructure China into a service-based economy. Toward this end, the Chinese central government has been injecting a significant amount of resources to bolster the services sector, including a recently announced plan to set up a fund worth roughly C\$5.9B to boost higher-value services exports.¹² Under similar top-down policies and initiatives, China's services sector has seen tremendous growth in the past few years. Last year, it was worth C\$7.6T, and made up over 50 per cent of the country's GDP.¹³ Experts project more growth over the coming years, as the government aims to raise the sector's contribution to between 70 per cent and 80 per cent of China's GDP, the average for middle-income countries.¹⁴

Furthermore, China's services sector, traditionally characterized by heavy state regulations and restrictions, has begun liberalizing and opening its doors to more private investment from domestic companies, as well as relevant foreign enterprises and institutions. Reflecting this liberalization is the fact that 61.1 per cent of total inward foreign direct investment (FDI) went toward China's services sector in 2015, a 13 per cent increase from 2012.¹⁵

11. Department of Foreign Affairs and Trade, 2015, Chapter 10: Movement of Natural Persons, Free Trade Agreement Between the Government of Australia and the Government of the People's Republic of China, Australian Government, <https://dfat.gov.au/trade/agreements/chafta/official-documents/Documents/chafta-chapter-10-movement-of-natural-persons.pdf>.
12. Shuiyu Jing, 2017, Nation Plans \$4b Fund for Services, China Daily, http://www.chinadaily.com.cn/business/2017-02/18/content_28249795.htm.
13. Sara Hsu, 2017, China Takes Another Step Towards A Service Economy, Forbes, <https://www.forbes.com/sites/sarahsu/2017/02/21/china-takes-another-step-towards-a-service-economy/#509e72128c12>.
14. Ibid.
15. Iris Jin and Valentine Ostaszewski, 2016, China's Inward FDI Flowing to Service and Advanced Manufacturing Sectors, Asia Pacific Foundation of Canada, <https://www.asiapacific.ca/blog/chinas-inward-fdi-flowing-service-and-advanced-manufacturing>.

Moreover, China's Ministry of Commerce and the National Development and Reform Commission will release a revised version of the 2015 Foreign Investment Industrial Guidance Catalogue later this year,¹⁶ reducing the 93 items currently subject to restrictions on foreign investments to 62. At the same time, however, China's services reform is uneven across sectors and sub-sectors. Although the revised Catalogue is another step toward liberalization, key sectors such as public education, health care, and legal services will remain under heavy state regulation with restrictions on foreign investment. Nevertheless, multiple official Chinese sources state that these sectors are also poised for orderly liberalization in the medium term.

CURRENT STATUS OF CANADA-CHINA SERVICES TRADE

In 2015, Canada's global services exports amounted to C\$100.1B, representing 5 per cent of the country's total GDP. Within this figure, 2.4 per cent of all Canada's services exports went to China, the fourth destination for Canadian services exports behind the United States (55.1%), the United Kingdom (5.5%), and France (2.5%). Furthermore, Canadian exports and imports in services to and from China in 2014 totalled C\$2.3B and C\$2.2B, respectively, with travel-related services and government and transportation services consistently taking the lion's share of exports.¹⁷

Although trade in services between Canada and China is relatively balanced, it is still much smaller in volume compared to two-way trade in merchandise, which was C\$86B in 2015. Considering these figures, there is plenty of opportunity for Canada to grow and diversify its services exports to China, and Canada can be strategic in its negotiations by targeting sectors that are still relatively closed to foreign investment but that are key to China's developmental and economic reforms in the longer term.

LESSONS LEARNED FROM PREVIOUS FTAS: ChAFTA AND CNZFTA

In negotiating trade in services with China, Canada can pay special consideration to ChAFTA and the China-New Zealand FTA (CNZFTA), both of which included extensive sections on bilateral services trade. Negotiating preferential access to non-traditional service sectors, and to sectors where foreign investment is still limited but poised for further liberalization in the future, may lead to unique opportunities for Canadian businesses. Such sectors include: financial services, telecommunications services, legal services, education services, and health and aged-care services.

16. Valentine Ostaszewski and Iris Jin, 2016, The Untapped Potential in Canada-China Trade Relations, Asia Pacific Foundation of Canada, <https://www.asiapacific.ca/blog/untapped-potential-canada-china-trade-relations>.

17. Ibid.

FINANCIAL SERVICES

China's financial services sector has traditionally been one of the more government-controlled and restricted. However, recent economic restructuring has opened up the sector to domestic private investors, and is very slowly opening its doors to make more space for foreign investors as well. Most notably, the revised Foreign Investment Industrial Guidance Catalogue proposes to open China's credit rating market to foreign participants, meaning that international rating agencies will be able to take a greater ownership stake than is currently allowed, which is a minority stake in joint-venture operations.¹⁸

ChAFTA also included a robust subsection on commercial and financial services exports, wherein Australian banks, insurers, and securities firms are provided with exclusive liberties, such as the ability to establish joint-venture futures companies with up to 49 per cent Australian ownership.¹⁹

TELECOMMUNICATIONS SERVICES

ChAFTA can also provide a model for negotiating greater access to China's relatively closed telecommunications sector. For instance, under ChAFTA, Australian companies investing in specific value-added telecommunications services in the Shanghai Free Trade Zone (SFTZ) have greater market access and greater certainty for telecommunications investments in the SFTZ. Australian telecommunications providers are also able to enjoy increased foreign equity limits, which allows for wholly Australian-owned companies to supply domestic multi-party communication services, application store services, store and forward services, and call centre services in the SFTZ.²⁰ When it comes to joint ventures within the SFTZ, ChAFTA also stipulates that Australian-owned enterprises can enjoy increased equity participation of up to 55 per cent, greater than the standard 50 per cent limit for other foreign investors.²¹

In addition to the above benefits, China also agreed to specific commitments to address industry-specific concerns such as licensing and transparency. A Trade in Services Committee was established under ChAFTA, serving as a direct communication channel for Australian telecommunications industry participants to raise concerns and voice opinions.²²

18. Matthew Miller and Umesh Desai, 2016, China's Move to Open up for Global Rating Agencies May Lift Debt Credibility, Reuters, <http://www.reuters.com/article/us-china-ratings-idUSKBN13X168>.
19. Department of Foreign Affairs and Trade, 2015, Quick Guide: Key Services Outcomes, Australian Government, <http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Pages/quick-guide-key-services-outcomes.aspx>.
20. Ibid.
21. Daniel Chan and Peng Tao, 2014, New Chapter for Foreign Telecom Investment in Shanghai Free Trade Zone, Lexology, <http://www.lexology.com/library/detail.aspx?g=3e887f9a-5697-44a1-9365-3b59fc7cabdf>.
22. Department of Foreign Affairs and Trade, 2016, Factsheet: Trade in Services, Australian Government, <http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Documents/fact-sheet-trade-in-services.pdf>.

LEGAL SERVICES

There are still many barriers to entry into China's legal services that range from heavy government restrictions to cultural barriers. However, the legal sector is theoretically one of the most promising sectors in terms of growth of business opportunities for both international law firms and lawyers.²³ Through ChAFTA, Australia secured the first-ever treaty commitments from China on commercial associations between law firms. The commercial associations outlined by ChAFTA stipulate that:

- Australian qualified lawyers will be able to practise Australian and international law;
- Legal practitioners qualified to practise law in other foreign countries will also be able to practise the laws of those countries; and,
- Chinese-qualified lawyers will be able to practise Chinese and international law without suspension of their Chinese practising certificates.²⁴

EDUCATION SERVICES

China's public education system is heavily state-regulated. However, foreign investors can establish joint schools with foreign-majority ownership. Furthermore, according to the CNZFTA, individual education service suppliers from New Zealand are able to enter China to provide education services when invited by Chinese counterparts, or when employed by Chinese schools and other education-related institutions.²⁵

Although Canadian private schools already have a relatively large presence across China, Canada can strategically advance its standing to attract more students and resources in China through negotiations. Education is New Zealand's most important service export to China, and the CNZFTA guarantees that China will list eight New Zealand universities, 20 institutes and polytechnics, as well as six private training establishments on the government's official Ministry of Education website under the "Study Abroad" section.²⁶

23. Marialuisa Taddia, 2013, China: A Tough Market to Penetrate, *The Law Society Gazette*, <https://www.lawgazette.co.uk/practice/china-a-tough-market-to-penetrate/5038107.article>.

24. Department of Foreign Affairs and Trade, 2015, Quick Guide: Key Services Outcomes, Australian Government, <http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Pages/quick-guide-key-services-outcomes.aspx>.

25. New Zealand Ministry of Foreign Affairs and Trade, Annex 8: Schedules of Specific Commitments on Services, Free Trade Agreement Between the Government of New Zealand and the Government of the People's Republic of China, New Zealand Government, https://mfat.govt.nz/assets/_securedfiles/FTAs-agreements-in-force/China-FTA/Annex-8-Services-Part-A.pdf.

26. Ibid.

Above all, the CNZFTA also stipulates initiatives by both parties to establish a joint working group to look into possibilities for the mutual recognition of each party's respective vocational qualifications.²⁷

HEALTH AND AGED-CARE SERVICES

Similar to the education sector, China's health sector is heavily state-regulated; however, considering China's demographic shift toward an aging population, opportunities are opening up in the care economy. Long-term treatment and aged-care services will grow in demand, and China is already aware of Canada's expertise in this sector, as exemplified by the recent purchase of a C\$1B Canadian retirement-home chain, Retirement Concepts, by one of China's largest conglomerates, Anbang.²⁸

With respect to aged-care services, Australia received China's first-ever FTA commitment in this sub-sector. Under ChAFTA, China permits Australian aged-care service suppliers to establish profit-making institutions throughout the country with no geographical restrictions.²⁹ Furthermore, care services pertaining to mental health are also opportunities within the care economy that are worth exploring, and with China's two-child policy now underway, similar opportunities for Canadian services exports may be available in maternal care and related sectors as well.

INVESTMENT

Many recent regional and bilateral trade agreements include chapters on expanding investment protection. These chapters establish terms and conditions for private investment by foreign nationals and companies. Investment chapters frequently seek to place domestic investors, foreign investors, and third-state investors on an equal playing field through non-discrimination clauses on national treatment and most-favoured-nation treatment.

One of the most debated aspects of these chapters is the scope and methods of dispute settlement through a process known as investor-state dispute settlement (ISDS), which allows foreign investors access to an international dispute forum

27. New Zealand Ministry of Foreign Affairs and Trade, 2008, New Zealand-China Free Trade Agreement, New Zealand Government, https://www.mfat.govt.nz/assets/_securedfiles/FTAs-agreements-in-force/China-FTA/chinafta-booklet.pdf.

28. Steven Chase, 2017, Ottawa Approves Sale of B.C. Retirement-Home Chain to Chinese Group with Murky Ownership, The Globe and Mail, <https://www.theglobeandmail.com/news/politics/ottawa-approves-sale-of-bc-retirement-home-chain-to-chinese-group-with-murky-ownership/article34107591/>.

29. Department of Foreign Affairs and Trade, 2015, Quick Guide: Key Services Outcomes, Australian Government, <http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Pages/quick-guide-key-services-outcomes.aspx>.

rather than having to rely on the host’s domestic legal system. ISDS, however, has been criticized for providing too much power to the foreign investor and too little to the host nation to protect domestic policy goals such as social and environmental protections. Although Canada currently has an ISDS provision in place with China through the Canada-China Foreign Investment Promotion and Protection Agreement (FIPA), ratified in 2014 under the Harper government, there are areas to improve if it were to be included in a CCFTA.

CURRENT STATUS OF INVESTMENT ISSUES IN CHINA

Investment between Canada and China has grown substantially over the past decade, though it can be difficult to determine by exactly how much due to large discrepancies between sources.

FIG. 4 Comparison of Statistics for Chinese Investment into Canada, 2007 to 2015

	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Statistics Canada (FDI stock)	4,224	5,665	12,220	12,112	15,359	11,619	13,742	15,617	19,616	110,174
China’s Ministry of Commerce (FDI stock) ¹	1,348	1,352	1,907	2,681	3,687	5,049	6,382	8,603	10,890	42,043
APFC Investment Monitor (FDI flows not including disinvestment)	660	4,831	7,703	13,614	12,177	13,795	44,921	8,959	39,592	146,252

(C\$ Millions)

Source: Statistics Canada (FDI Stock), China’s Ministry of Commerce, and APFC Investment Monitor

Note 1: Values converted from USD to CAD.

Due in part to confusion around the amount of Chinese investment, Canadians are generally concerned about investment from China into Canada. There has been significant criticism of the Canada-China FIPA. Critics of the FIPA argue that the treaty favours China by: (1) granting advantages to Chinese investors without reciprocity; (2) creating a liability for Canadian taxpayers by allowing China’s investors dispute settlement options that circumvent Canadian legal systems; (3) installing a dispute settlement system that allows arbitration panels to conduct their hearings with minimum transparency; and (4) implementing a deal that is binding for an excessive length of time – 31 years.

Canadian public opinion on Chinese investment may be shifting. In APF Canada's 2015 *National Opinion Poll on Asian Investment in Canada*, 42 per cent of Canadians supported Chinese investment and 49 per cent opposed it.³⁰ In the same poll, 48 per cent of Canadians associated Chinese investment with the phrase "loss of control over our resources." However, in the 2017 survey, 63 per cent of Canadians thought an FTA with China would encourage needed investment in Canadian businesses.³¹

LESSONS LEARNED FROM PREVIOUS FTAS: CETA, ChAFTA, CHINA-KOREA FTA, AND TPP

ISDS has been an increasingly debated topic as the number of international investment and trade agreements continues to grow, and, more importantly, as they continue to include ISDS provisions.

CETA

Canada's FTA with the European Union has one of the more innovative mechanisms for ISDS. While not officially labelled a "court," the agreement includes a new arbitration mechanism that includes a tribunal of first instance and, under certain circumstances, an appellate mechanism. This new "court" is more of a fixed mechanism than previous ISDS panels, and it requires arbitrators to avoid conflicts of interest and to refrain from providing legal counsel or acting as a witness or expert in other disputes. There is also hope that this new tribunal will improve consistency in treaty interpretation and arbitration outcomes. However, there is still significant criticism of ISDS in CETA, with experts stating that the changes are too modest to truly shift away from the deficiencies found in current ISDS systems. Critics point to the fact that the tribunals continue to use the same group of arbitrators because arbitrators are required to have "demonstrated expertise" in international investment law, and the fact that arbitrators are still given enormous discretion in determining treaty obligations. They also criticize the investment chapter in CETA for providing far more protection for foreign investors than national governments.

ChAFTA

ChAFTA provides a very narrow ISDS regime, showing the desire in both Australia and China to limit foreign investor protection. The only substantive right allowing investors to bring a claim in the context of ChAFTA is when foreign investors

30. Asia Pacific Foundation of Canada, 2015, *National Opinion Poll 2015: Canadian Views on Asian Investment*, <http://www.asiapacific.ca/surveys/national-opinion-polls/2015-national-opinion-poll-canadian-views-asian-investment>.

31. Asia Pacific Foundation of Canada, 2017, *National Opinion Poll 2017: Canadian Views on Engagement with China*, <http://www.asiapacific.ca/surveys/national-opinion-polls/2017-national-opinion-poll-canadian-views-engagement-china>.

are not afforded national treatment – meaning they are not treated by the host government in the same way a domestic investor would be. Australian investors in China have more limited protection than Chinese investors in Australia, with Chinese investors receiving national treatment at all stages of investment, while Australian investors in China only receive protection in the post-establishment phase. This allows the Chinese government to regulate certain sectors by restricting or prohibiting foreign investment. ChAFTA also establishes a “future work program” wherein the ISDS framework will be reviewed by both countries within three years of ChAFTA entering into force, and there is the possibility of adding further protections.

CHINA-KOREA FTA

While the China-Korea FTA investment provisions mostly reflect the terms within the China-Japan-Korea trilateral investment treaty, there are a few notable expansions. First, while Korea – like Australia – does not have pre-establishment-phase national treatment protection, there is a commitment within the treaty to conduct future negotiations on this. ISDS is included in the China-Korea FTA, and does not specifically exclude IPRs, as is the case in the China-Japan-Korea treaty. There is also a provision within the treaty regarding direct versus indirect expropriation that allows national governments to perform regulatory actions for the purpose of legitimate public welfare objectives, so long as it is non-discriminatory.

TPP

In general, the TPP’s ISDS provisions are similar to those in other international treaties. However, there are again a few innovations and unique arrangements to consider: documents relevant to arbitration proceedings must be made public; there are penalties for frivolous claims; and expropriation is defined and is generally not actionable. The agreement also exempts “tobacco control measures” from arbitration.

❏ **EMERGING TECHNOLOGIES AND THE FUTURE OF CANADA-CHINA TRADE**

Emerging technologies are at the forefront of how economies and societies will grow and transform. Key technologies that will shape the future of the global economy, and that Canada and China have vested interests in, include biotechnology, industrial robotics, artificial intelligence, information and communications technology, and cybersecurity. While trade and investment between Canada and China in these technologies is still embryonic, proactive engagement now can lead to establishing future global norms in their trade and use.³²

32. James Manyika et al, 2013, *Disruptive Technologies: Advances that will Transform Life, Business, and the Global Economy*, McKinsey Global Institute, <http://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/disruptive-technologies>.

CURRENT STATUS OF EMERGING TECHNOLOGIES

BIOTECHNOLOGIES

The Organisation for Economic Co-operation and Development (OECD) defines biotechnology as the application of science and technology to living organisms in order to change living or non-living materials for better production of knowledge, goods, and services.³³ The debates regarding biotechnology in trade agreements typically revolve around the trade-off between scientific risk and efficiency gains and the political use of this trade-off.

OECD data shows that Canada and China are very similar in terms of the number of biotechnology patents filed, with China's and Canada's share of all biotechnology patents from 2010 to 2013 being 3.5 per cent and 2.6 per cent, respectively. This made China and Canada the seventh and eighth top filers of biotechnology patents in the world, respectively.³⁴

In China, biotechnology is a growing industry. The Chinese government has recognized the importance of developing biotechnology, labelling it a strategic emerging industry in the 12th and 13th five-year plans. China is particularly emerging as a leader in biopharmaceuticals, and the Chinese biopharmaceutical market is predicted to be the second-largest, behind the United States, by 2020.³⁵

ROBOTICS AND ARTIFICIAL INTELLIGENCE

Advancements in robotics will play a critical role in the future for not only increasing productivity, but also filling in gaps due to labour shortages. An industrial robot is defined as an automatically controlled, reprogrammable, multipurpose manipulator programmable in three or more axes, which can be either fixed in place or mobile for use in industrial automation applications.³⁶

In 2015, approximately 68,600 robots were sold in China and 2,250 in Canada. While the number of robots was higher in China, industrial robot density, or the number of multipurpose industrial robots per 10,000 persons employed in an industry, was higher in Canada at 118 units, compared with 49 units in China.³⁷

33. Organization for Economic Co-operation and Development, 2005, Statistical Definition of Biotechnology, <http://www.oecd.org/sti/biotech/statisticaldefinitionofbiotechnology.htm>.

34. Organization for Economic Co-operation and Development, 2016, Key Biotechnology Indicators, <http://www.oecd.org/sti/inn/keybiotechnologyindicators.htm>.

35. KPMG Global China Practice, 2016, The 13th Five-Year Plan – China's Transformation and Integration with the World Economy, KPMG, <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/10/13fyp-opportunities-analysis-for-chinese-and-foreign-businesses.pdf>.

37. Ibid.

Although artificial intelligence (AI) may sound as if it belongs more in a science fiction novel than a trade negotiation, the truth is that machine learning will potentially become a major fixture in how technology will evolve going forward. AI is the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.³⁸

Canada is emerging as a world leader in AI technologies. Pioneering research at the University of Toronto, University of Montreal, and University of Alberta in AI and deep learning are helping to build a Canadian brand in emerging technologies. The Canadian government has also recognized the merit of developing its AI industry by creating a \$125M Pan-Canadian Artificial Intelligence Strategy.

In the case of China, a recent announcement by Lei Jun, deputy to the National People's Congress, signalled that the Chinese government also has plans to develop AI by calling on the government to “lay down top-down structures and special planning on the development of AI.” Also, three of China's largest technology companies – Alibaba, Baidu, and Tencent – have scheduled plans for AI laboratories and projects worth billions of dollars.

ICT AND CYBERSECURITY

The World Bank defines information and communications technology (ICT) as hardware, software, networks, and media for the collection, storage, processing, transmission, and presentation of information.³⁹

Cybersecurity is the act of protecting ICT systems and their contents.⁴⁰ One way of thinking about cybersecurity in the context of a CCFTA is in terms of the possible trade-off between security and efficiency, or “imposing some loss on domestic economies in exchange for less systematic risk to critical information infrastructures,” and how this may be affected by current and future laws and political interests.⁴¹

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- 38. Christopher Thomas and Gang Liang, 2016, *The Rise of the Machines: How Chinese Executives Think About Developments in Artificial Intelligence*, McKinsey & Company, <http://www.mckinsey.com/industries/semiconductors/our-insights/the-rise-of-the-machines-how-chinese-executives-think-about-developments-in-artificial-intelligence>.
 - 39. The World Bank Group, 2003, *ICT and MDGs: A World Bank Group Perspective*, <http://documents.worldbank.org/curated/en/538451468762925037/pdf/278770ICT010mdgs0Complete.pdf>.
 - 40. Eric A. Fischer, 2016, *Cybersecurity Issues and Challenges: In Brief*, Congressional Research Service, <https://fas.org/sgp/crs/misc/R43831.pdf>.
 - 41. Allan A. Friedman, 2013, *Cybersecurity and Trade: National Policies, Global and Local Consequences*, Brookings Institution, <https://www.brookings.edu/wp-content/uploads/2016/06/BrookingsCybersecurityNEW.pdf>.

Regarding foreign investment in Canadian telecommunications companies, comprehensive restrictions were first enshrined in the Telecommunications Act of 1993 for national sovereignty and security reasons. Despite the Act being amended in 2012 to allow foreign investment for telecommunications companies of less than a 10 per cent share of the total Canadian telecommunications market in 2012, as of mid-2015 no well-established foreign player had entered the Canadian market.⁴²

Regarding China, the United States has raised concerns over a series of Chinese measures that would “impose severe restrictions on a wide range of foreign ICT products and services with a long-term goal of replacing foreign ICT products and services,” to make certain ICT in critical sectors be “secure and controllable.”⁴³ One example is the measure drafted by the China Banking Regulatory Commission, which commissioned “75 per cent of ICT products used in the banking system to be ‘secure and controllable’ by 2019 and that imposed a series of criteria that would shut out foreign ICT providers from China’s banking sector.”⁴⁴

LESSONS LEARNED FROM PREVIOUS FTAS: TPP AND CETA

Given the relative infancy of biotechnology, robotics and AI, and ICT and cybersecurity, there is relatively little application on their treatment in the context of FTAs. Due to the emerging nature of the technologies, in some instances FTA working groups have been established to facilitate co-operation and exchange between parties.

TPP

The TPP includes a provision to establish a working group on biotechnology. Although the provisions are aspirational in nature, the creation of the working group under the Committee on Agricultural Trade for information exchange and co-operation on trade-related matters associated with products of modern biotechnology is a model that could be adopted for biotechnology, robotics, AI, and ICT. In terms of cybersecurity, Article 14.16 of the TPP states that parties recognize the “importance of cooperating on cybersecurity matters, including using ‘existing collaboration mechanisms’ to identify and mitigate malicious intrusions and malicious code” but the text “contains no specific obligations with respect to such cybersecurity cooperation.”⁴⁵

42. Martin Masse and Paul Beaudry, 2015, The State of Competition in Canada’s Telecommunications Industry – 2015, Montreal Economic Institute, http://www.iedm.org/files/cahier0215_en.pdf.

43. United States Trade Representative, 2015, 2015 Report to Congress on China’s WTO Compliance, <https://ustr.gov/sites/default/files/2015-Report-to-Congress-China-WTO-Compliance.pdf>.

44. Ibid.

45. Rajesh De et al, 2016, Trans-Pacific Partnership Takes on E-Commerce, Cybersecurity and Encryption, The Mayer Brown Practices, <https://www.mayerbrown.com/trans-pacific-partnership-takes-on-e-commerce-cybersecurity-and-encryption-02-04-2016/>.

CETA

The strategic partnership agreement negotiated on the margins of CETA to enhance co-operation on non-trade issues is a good model for a potential CCFTA to incorporate greater collaboration on issues like cybersecurity.

☐ SOE REFORMS

State-owned enterprises (SOEs) are “enterprises where the state has significant control through full majority, or significant minority ownership.”⁴⁶ China’s SOE landscape consists of 113 very large monopolies controlled by central government, and an uncertain number of smaller SOEs controlled by provincial and municipal governments. They play a large role in China’s international transactions and investments, and contributed approximately 70 per cent of China’s stock of outward investment in 2008 to 2009.⁴⁷ According to the APF Canada Investment Monitor, Chinese SOEs were linked to C\$65.26B of investment announcements in a total of 116 deals from 2003 to 2016.⁴⁸

CURRENT STATUS OF SOE REFORM IN CHINA

Chinese SOE reforms are continually discussed with uncertainty regarding the development of their implementation. The reforms signal a move toward more distinct classifications and privatization, addressing government subsidies and fair competition under market rules. Four major SOE reforms have recently been proposed by China. One to take note of during CCFTA negotiations is the “mixed-ownership economy” reform, which aims to promote equity diversity through enabling private capital and other state-owned investments to hold shares in SOEs. In this reform, state capital is encouraged to seek opportunities and profits in private enterprises.⁴⁹

LESSONS LEARNED FROM PREVIOUS FTAs: TPP AND ChAFTA

TPP

A CCFTA would benefit from adopting provisions set out in Chapter 17 of the TPP, which addresses the commercial activities of SOEs and private companies in

46. PwC, 2015, State-Owned Enterprises: Catalysts for Public Value Creation?, <https://www.pwc.com/gx/en/psrc/publications/assets/pwc-state-owned-enterprise-psrc.pdf>.

47. Wendy Dobson, 2014, China’s State-Owned Enterprises and Canada’s FDI Policy, The School of Public Policy, University of Calgary, <https://www.policyschool.ca/wp-content/uploads/2016/03/chinas-soes-dobson.pdf>.

48. Asia Pacific Foundation of Canada, 2017, Investment Monitor, <http://investmentmonitor.ca/data-visualizer#visualizer-filters>.

49. Yingqiu Kuang, 2016, State-Owned Enterprises at a Crossroads: Key Features of China’s New SOE Reform, Asia Pacific Foundation of Canada, <https://www.asiapacific.ca/sites/default/files/filefield/soe-report-final.pdf>.

international trade. There are several elements the TPP takes into account to level the playing field between foreign private enterprises and SOEs. First, it includes subsidy rules to services exports of SOEs and operations of SOE manufacturers in foreign territory, as well as the strengthening of “non-discrimination rules to apply to all commercial purchases and sales of SOEs wherever they operate in the TPP trade area.” Second, the TPP prohibits SOEs from discriminating against other TPP firms when buying or selling goods or services.⁵⁰ Third, the chapter ensures that TPP parties agree not to cause “adverse effects to the interest of other TPP parties by providing non-commercial assistance to an SOE that produces and sells goods in the territory of another party.” Fourth, the TPP also contains transparency provisions, whereby member countries must, on request, provide fellow TPP countries with a list of all SOEs or list them on a public website. This list is to include the percentage of shares held in an SOE, the titles of government officials serving as officers or on the board, annual revenues, special legal benefits, and information on subsidies.⁵¹ Finally, on immunity, the TPP requires countries to provide courts with jurisdiction over commercial activities of foreign SOEs “so that a foreign SOE operating in a TPP country could not evade legal action regarding its commercial activities merely by claiming sovereign immunity.”⁵²

ChAFTA

ChAFTA has set out its own provisions concerning SOEs. All investments made by Chinese SOEs will be screened by the Australian Foreign Investment Review Board (FIRB), regardless of transaction size. This is subject to a review in three years, with the next occurring in 2018. In order to safeguard “national interest,” decisions made by the FIRB concerning SOEs cannot be challenged by any party using ISDS. There are similar provisions in the Investment Canada Act, which states that the Canadian government will “ensure that the governance and commercial orientation of SOEs are considered in determining whether reviewable acquisitions of control in Canada by the SOE are of net benefit to Canada.” The Act’s ambiguous definition of SOEs – “an enterprise that is owned, controlled, or influenced, directly or indirectly by a foreign government” – gives Canada similar breathing space regarding screening and ISDS decisions.⁵³

50. Sean Miner, 2016, Chapter 19: Commitments on State-Owned Enterprises, in Jeffrey J. Schott and Cathleen Cimino-Isaacs (eds), *Assessing the Trans-Pacific Partnership*, Vol 2: Innovations in Trading Rules,

51. Ibid.

52. United States Trade Representative, 2015, TPP Chapter Summary: State-Owned Enterprises, <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-State-Owned-Enterprises.pdf>.

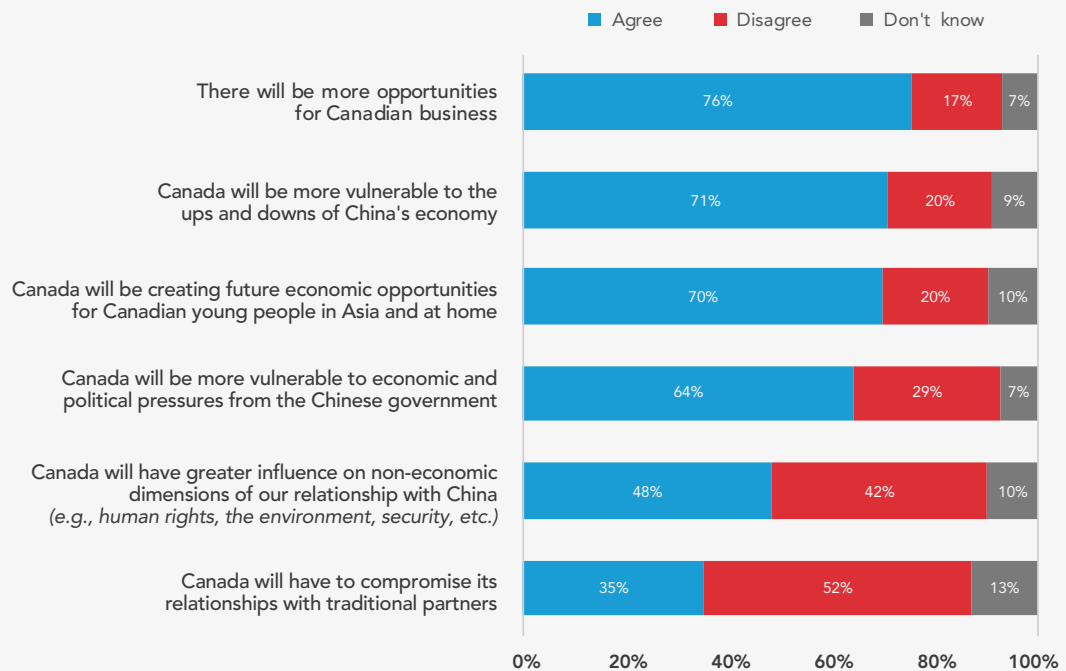
53. Innovation, Science and Economic Development Canada, 2016, Industry Canada, Investment Canada Act, <https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk00064.html>.

☒ HUMAN RIGHTS

Over the past three years, the Canadian media has been observantly reporting on human rights issues in China. Beyond the news headlines, however, a deeper understanding of Canadian public opinion is needed to understand how Canadian attitudes on an FTA could impact bilateral relations.

APF Canada’s 2017 National Opinion Poll revealed that, when asked to select the top issues the Canadian government should give priority to in its relationship with China, from a list of eight choices, 15 per cent of Canadians ranked publicly calling on the Chinese government to have respect for human rights and introduce democratic reforms in the Chinese political system. This was the second-most chosen option. Also, 48 per cent of those surveyed agreed that Canada will have greater influence on the non-economic dimensions of its relationship with China (e.g., in areas such as human rights, the environment, and security) if economic ties are intensified. These results suggest that these elements of the non-economic relationship must also be discussed in some capacity, as they are unlikely to be substantively covered in a CCFTA.

FIG. 5 Canadians See Benefits of Strengthened Economic Engagement with China; Although They Have Some Concerns



Base: All respondents: (n = 1,654)

Q10: Do you agree or disagree with the following statements regarding the impact on Canada of establishing closer economic ties between Canada and China? Establishing closer economic ties between Canada and China means..

Source: National Opinion Poll, 2017

STATUS OF CHINA'S HUMAN RIGHTS RECORD

The Human Freedom Index, which provides a global measurement of personal, civil, and economic freedoms, ranked China 141st out of 159 countries indexed. China was also ranked one of the three most significant backsliders in scores, with the report noting that President Xi Jinping's campaign has "intensified into much-increased efforts to suppress freedom among the population as a whole." In contrast, Canada was ranked the sixth-freest country in the world. Nonetheless, it has also been involved in human rights controversies surrounding its treatment of Indigenous Peoples, something China's state-run news agency Xinhua has pointed out in its commentary on Canada.

LIMITATIONS ON THE INCLUSION OF HUMAN RIGHTS IN FTAS

In recent years, the inclusion of human rights language within FTAs has been discussed more frequently. However, Canada's FTAs have focused predominantly on economic rights, which pertain to labour and environmental standards.

While civil and political rights are important elements of discussion, experiences from previous FTAs with China show that Canada may have difficulty with such negotiations. China's FTA-negotiating strategy with Australia, for instance, was described as driven by the principle of "non-interference in the internal affairs of other countries," making discussion on issues of human rights especially challenging. Instead, Canada may need to turn to other avenues of discussion pertaining to human rights more broadly, such as holding human rights dialogues. In the past, Canada hosted nine bilateral human rights dialogues with China from 1997 to 2005 under the Department of Foreign Affairs and International Trade (now known as Global Affairs Canada). These dialogues provided a forum to share views on policies and practices with respect to human rights, and an opportunity to voice concerns. However, Australia hosted its 15th dialogue with China in 2014, putting Canada behind in its engagement in human rights.

LESSONS LEARNED FROM PREVIOUS FTAS: ChAFTA, CNZFTA, AND COCFTA

As of April 25, 2017, China had 23 FTAs underway, with 14 signed and implemented. The majority of these FTAs did not contain any provisions relating to labour standards, with the exceptions of Chile, Iceland, New Zealand, Peru, and Switzerland. In these cases, discussions on human rights were linked to the main FTA text through a separate MOU regarding labour standards and/or environmental protections. This approach may be more productive for Canada to examine further, rather than including human rights provisions in the FTA itself. While the TPP did bring about agreement in areas of much-needed labour reform, that reform still lacks a clear implementation process. In countries with poor labour rights records, there are also no discussions of how these TPP provisions will be enforced under each country's domestic law.

ChAFTA

Similar to Canada, Australia underwent a similar debate process during negotiations of ChAFTA, with its supporters noting the opportunity to “unlock significant opportunities” by trading with China. Meanwhile, Australian critics argued that signing an FTA would result in retrogressive effects on the protection and promotion of human rights, including labour standards. Concerns were raised that signing an FTA without human rights provisions would weaken Australia’s economic power to negotiate with China, and could put trade relations at risk if Australia were to push any future human rights issues.

CNZFTA

New Zealand is one example of a successful negotiating party that has incorporated environmental and labour standards into FTAs, which is a requirement of the country’s Ministry of Foreign Affairs and Trade. Canada may look to the CNZFTA as an example, as it contains additional provisions that “impose legally binding obligations on China to co-operate with New Zealand on matters such as sustainable development, abolition of child and compulsory labour, and elimination of employment discrimination.”

CoCFTA

Canada may also refer to its own FTA with Columbia (CoCFTA), which includes one of the most extensive sections on human rights. One of the agreements resulting under the CoCFTA is for both parties to submit and make public an annual report on human rights that outlines the effect of the measures taken under the FTA on human rights in the territories of both countries.⁵⁴

☐ NEXT STEPS

At its core, a CCFTA will better position Canada to achieve greater economic prosperity by increasing opportunities for the growth of Canadian businesses in China and attracting more job-creating investment in Canada. However, the success of the agreement will be judged not only by the extent of economic liberalization achieved in the agreement, but also by the support it receives from the general Canadian public. It is with this understanding that APF Canada provides the following recommendations to the Canadian government as it deliberates on its free trade negotiations with China.

54. Global Affairs Canada, 2014, Agreement Concerning Annual Reports on Human Rights and Free Trade Between Canada and the Republic of Colombia, <http://www.treaty-accord.gc.ca/text-texte.aspx?id=105278>.

1. COMMENCE NEGOTIATIONS:

Given the economic complementarities between Canada and China's economies, as well as China's continued economic growth trajectory, beginning negotiations on a Canada-China FTA is a must for the Canadian government. An FTA with China is not only about securing greater preferential access to the world's second-largest economy, but also enhancing Canada's trade diversification. A CCFTA must be a non-partisan, whole-of-government initiative, as the governments that start agreements are often not the ones that end up signing and ratifying them. A key hurdle will be to address the Canadian public's trade- and non-trade-related concerns regarding deeper economic engagement with China.

2. LEARN FROM PREVIOUS FTAS:

Canada and China's previous FTAs will form the basis to frame negotiations and targets to achieve in a CCFTA. While it is important for Canada to push for TPP-level and ChAFTA+ standards, Canadian negotiators must also be pragmatic about the degree of liberalization China's government is willing to undertake in the next decade. For example, drawing from experiences from ChAFTA and the CNZFTA, Canada can push for more ambitious services access in areas such as: financial services, telecommunications services, legal services, education services, and health and aged-care services. Also, introducing TPP provisions on intellectual property and SOEs would be a progressive strategy to complement China's ambitious domestic policies for greater IPR and SOE reform.

3. CONSIDER SECTOR-SPECIFIC ARRANGEMENTS:

Through negotiating sector-specific arrangements prior to focusing on a comprehensive formal FTA, the Canadian government can address trade irritants not necessarily covered in an FTA. Sectors that would immediately benefit from increased trade should be given priority, such as clean technology and certain natural-resource-based industries.

4. PUSH FOR GREATER PEOPLE FLOWS:

In terms of the temporary entry of businesspersons, it would be beneficial to Canada to expand the categories of skilled workers in ChAFTA to reflect the reality of skilled work professions and jobs today, as opposed to inheriting the categories from previous trade agreements and ease immigration of businesspersons' spouses. An expansion of Canada's Start-Up Visa Program, which targets immigrant entrepreneurs, could be considered.

A ChAFTA-like MOU that facilitates the temporary entry of labour for large infrastructure projects should only be implemented if companies meet Canadian standards in labour market testing practices and wages. Negotiating a reciprocal “working holiday” program parallel to an FTA should also be considered. Although the International Experience Canada programs have had an imbalance between foreign inbound visa holders and outbound Canadians, a Canada-China program would still provide youths in both countries greater exposure to the working environments in their destination country.

5. CONSIDER REGULATORY RECIPROCITY:

A CCFTA has the potential to be a unique trade agreement for Canada. As a result, novel mechanisms of implementation should be considered. If negotiators believe China would not follow up on its commitments, Canada could use a form of regulatory reciprocity to phase out tariffs or other barriers to trade based on whether each party has successfully implemented its previous commitments. This could be used in place of a tariff schedule or in addition to a schedule to ensure that both parties are held accountable to the agreement.

6. PLAN FOR THE FUTURE:

A negotiation for an FTA with China will take considerable time to negotiate and will possibly only be fully implemented decades after the agreement enters into force. Trends in demographics present opportunities in China’s health-care economy that Canada will benefit from through securing greater preferential access to the market now. Although trade between Canada and China in emerging technologies such as biotechnology, robotics, AI, and ICT may be still nascent, a CCFTA provides a platform for greater collaboration in establishing norms of trade in these goods. This could be achieved by creating working groups to enhance co-operation and exchange information on issues, including on actual and proposed laws, regulations, and policies related to the trade of these products.

7. IMPROVE INVESTOR STATE DISPUTE SETTLEMENT:

One of the major criticisms of the Canada-China FIPA, and of bilateral investment treaties in general, is their use of ISDS. Although a CCFTA provides a platform to address some of these criticisms, not all can be addressed without eliminating ISDS, which is not prudent.

An investment chapter within a CCFTA should include improved ISDS provisions that allow governments the right to regulate, especially when it comes to: favouring public policy welfare objectives; instituting penalties for frivolous claims to reduce unnecessary burden on the government; increasing transparency by making filing documents, witness expert testimonies, amicus briefs, and final dispute settlement decisions publicly available; and creating a standing database of ISDS arbitrators who can serve as arbitrators for disputes but who cannot serve as legal counsel in such disputes, thereby eliminating the conflict of interest.

8. ADDRESS NON-TRADE ISSUES:

While collaboration on non-trade issues like human rights, cybersecurity, and environmental protection is not extensively covered in FTAs, they remain key issues that the Canadian people want to see addressed in forming deeper relations with China. Through forming a strategic partnership agreement similar to the one conceived on the margins of CETA, Canada can pursue greater co-operation on issues such as international peace and security, counterterrorism, human rights, clean energy and climate change, migration, sustainable development, and innovation. In respect to human rights specifically, Canada should reinstate its bilateral dialogues with China. Such a forum will provide both countries the opportunity to remind each other of their international obligations on human rights standards.

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APPENDIX

FIGURES

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- FIG. 5. Canadians See Benefits of Strengthened Economic Engagement with China; Although They Have Some Concerns *(p.25)*



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