

HUMAN RIGHTS AND A CANADA-CHINA FREE TRADE AGREEMENT

Jason Lacharite and Caroline Clarke

Since 1994 Ottawa has attempted to negotiate a foreign investment promotion and protection agreement (FIPA) with China. But as Jason Lacharite and Caroline Clarke write, Canada would be better served by “focusing on a trade agreement that would protect and promote investment in both countries as well as protect and promote the existing exchange configurations that are currently on the rise.” Furthermore, the authors suggest that the Harper government can actually improve China’s human rights situation and facilitate a degree of political reform by collaborating on a comprehensive free trade accord with Beijing. They conclude that pursuing a course of constructive engagement (couched in a commitment to free trade) is likely to have a positive impact on Canada’s competitiveness and China’s political development.

Ottawa tente depuis 1994 de négocier avec la Chine un Accord sur la promotion et la protection des investissements étrangers (APIE). Mais comme l'observent Jason Lacharite et Caroline Clarke, le Canada serait mieux avisé de « centrer ses efforts sur un accord commercial qui protège et promeut les investissements dans les deux pays, tout en misant sur les nouvelles configurations d'échanges ». D'autant plus que le gouvernement Harper pourrait contribuer à l'amélioration des droits de l'homme en Chine et y favoriser une certaine réforme politique en collaborant avec Beijing à l'élaboration d'un accord commercial global. En visant ainsi un engagement constructif fondé sur le libre-échange, on renforcerait vraisemblablement la compétitivité du Canada tout autant que le développement politique de la Chine.

One of Canada’s main foreign policy objectives is to promote human rights and democracy in regimes that exhibit high degrees of political repression. We argue that in China’s case, establishing more open trade relations with the Middle Kingdom will ultimately lead to increased levels of political empowerment and social progress. Indeed, Ottawa’s attempt to finalize a foreign investment promotion and protection agreement (FIPA) with Beijing does not go far enough. China’s progress continues to defy expectations, but it remains somewhat narrow in intent and scope — *to get rich is glorious!* Even so, the Communist Party’s income redistribution and economic development campaigns have improved the living standards of millions of Chinese. The Harper government can actually accelerate this process and fulfill its dual commitment to human rights and international trade by negotiating a more robust set of voluntary exchange agreements with the People’s Republic of China (PRC).

A new consensus appears to have taken root on Parliament Hill. The pious sermonizing that has generally

characterized the Conservative administration’s approach to Sino-Canadian relations has now been skilfully displaced by a far more prudent tactic: diplomacy! The focus has now shifted to China’s enormous potential as an emerging consumer market and investment location for Canadian banking and insurance interests. This change in Conservative Party strategy is not surprising. To be sure, while taking a principled and (largely rhetorical) stand on China’s human rights record may appeal to some of the more credulous elements in Canadian society, it is unlikely to have any discernible impact on the Communist Party’s internal security or containment procedures. Nor is it particularly congruent with Canadian trade policy. As will be shown below, Ottawa has frequently sacrificed principle for profit to strengthen the country’s relative competitiveness. Moreover, China’s political elite recognize that many “liberal democratic” regimes have a history of racial discrimination, duplicity in foreign policy and other matters, and human rights violations. And they do not appreciate being unjustly patronized by countries — like Canada — that continue to confront grave and persistent social and



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there are good reasons (both historical and political) to believe that pursuing a course of constructive engagement and trade liberalization might actually defuse the Communist Party's coercive tendencies. Indeed, the most impressive development over this period has been the emergence of an increasingly cosmopolitan and assertive bourgeois caste keen to embrace modernity at multiple levels. China now has approximately 200 million middle-class consumers, and the most optimistic projections suggest that 25 percent of the country's population could achieve middle-class status by 2010. The implications and significance of this explosive rise in affluence should not be underestimated. As Barrington Moore's investigation into the "social origins of democracy and dictatorship" has shown, there is a compelling link between entrepreneurialism and middle-class prosperity and freedom and democracy. In essence, Moore asserted that the "democratic route to modern society" was contingent on the existence of a "vigorous and independent" wage-earning class — abridged in the now famous phrase "No bourgeois, no democracy."

Of course, this is not to suggest that democracy or some other form of genuine republicanism is on the horizon

for China. However, we would be wise to reflect on our own history in order to better contextualize China's existing conditions and the prospects for democratic reform. For many Canadians, democracy and freedom are axiomatic realities. It is assumed that we have always had an entirely free and fair

political system characterized by a robust set of civil liberties and rights. But this has not always been the case. Canadian governments have removed and relocated indigenous peoples from traditional lands — sometimes violently; incarcerated and arbitrarily stripped certain ethnic groups of their possessions (on the basis of rather dubious pretenses); limited the franchise (voting rights); endorsed the spread of "workhouses"; sterilized people with mental illnesses; and only loosely enforced anti-child-labour laws. Exploitation and poverty were the norm for the better part of Canada's early history — and a largely unacknowledged truth. Our transition into an idealized democratic space was gradual, and we continue to evolve and tackle the myriad challenges that typically characterize free and open societies.

Can we expect the same from China? No country follows a developmental trajectory identical to another's. Indeed, China's comparative industrial expansion has proceeded far more rapidly than did development in Canada, the United States or Europe. However, there are a number of promising signs that might appease the skeptics on Parliament Hill. First, the incidence of civil disobedience has increased considerably over the past 20 years — despite

the Tiananmen crackdown in 1989. Protest movements and various other sorts of demonstrations now last for several months at a time. Furthermore, there is a growing consensus among China specialists and security analysts that the increased levels of unrest have generally evolved into highly coordinated and sophisticated political engagements. Land seizures are a particularly contentious matter, but there have also been reports of periodic resistance to police brutality and corporate malfeasance. In all, emboldened Chinese peasants students and city dwellers are beginning to oppose government suppression and/or indifference in far greater numbers, frequency and determination.

Second, these increased levels of civil unrest reflect a fundamental change in Beijing's internal containment strategies. To be sure, senior party members have clearly adopted a more permissive approach to petitioners and sympathizers in an effort to secure a measure of sustained legitimacy for the party's (long-term) economic plans. Moreover, the perceived shift in containment practices also appears to reflect recognition of the limited utility of deadly force in resolving distant local affairs. There is a new "fourth generation" of party apparatchiks committed to settling grievances in a more peaceful manner. Predictably, the deployment of paramilitary forces to maintain stability — which also occurs in North America — will continue to underlie internal security policy. The party will also continue to execute periodic suppression campaigns where incidences of dissent have the potential to manifest into extra-regional movements. Yet Beijing's official policy position on civil disobedience represents a remarkable departure from the characteristically violent strategies that were employed by Mao Zedong and Deng Xiaoping in the 1950s, 1960s, 1970s and 1980s.

Finally, Beijing is aware of the key sources of public discontent and is making an effort to redress the inequities and growing income disparities that have accompanied China's remarkable economic progress. In this sense, it can be judged that the State Council and Politburo have become more attuned to the needs of poorly represented citizens in the country's more marginalized regions. For example, the central government's fiscal

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agenda smacks of a form of neo-Keynesianism that many middle- to low-income countries would be envious of. China has now spent — and plans to spend — billions on infrastructure development and maintenance, billions on health care reform, billions on poverty reduction schemes and billions on education. The Communist Party would appear to be taking the appropriate steps to dampen the potential for widespread unrest and maintain a measure of consent. Certainly, an unusual break from the country's Soviet-inspired command and control past — where any form of interest articulation was brutally repressed — but a development that Canadians are not unfamiliar with. In all, China's political elite now seem to embrace a brand of reasonable accommodation that Canadians might find curiously recognizable.

As was suggested previously, Canada can actually become a more instrumental component of China's political development. Yet Ottawa's reluctance to endorse a more comprehensively oriented trade or investment accord with the PRC remains a mystery. The most plausible explanation is that the "human rights effect" has generally neutralized the federal government's enthusiasm for concluding an agreement with Beijing. However, since 1990 Ottawa has negotiated several FIPAs with a number of known human

rights violators. For example, Freedom House has labelled Argentina, Armenia, Jordan, Lebanon, Russia and Egypt as only "partly free" or "not free" political regimes. Hence, the human rights angle would seem to lack a measure of veracity. But this is largely incidental to the main issue under examination. Canada has also concluded agreements with countries that have fully or partially transitioned away from their authoritarian traditions. This is not to

assert that Canada's efforts — or even those of the United States or the European Union — have functioned as the ultimate harbinger of political reform, but the West's desire to maintain a multilateral trading system, broadly committed to the "free" and open exchange of goods and services, has certainly had a positive impact on the overall levels of freedom and democratization that have surfaced since the fall of the Berlin Wall.

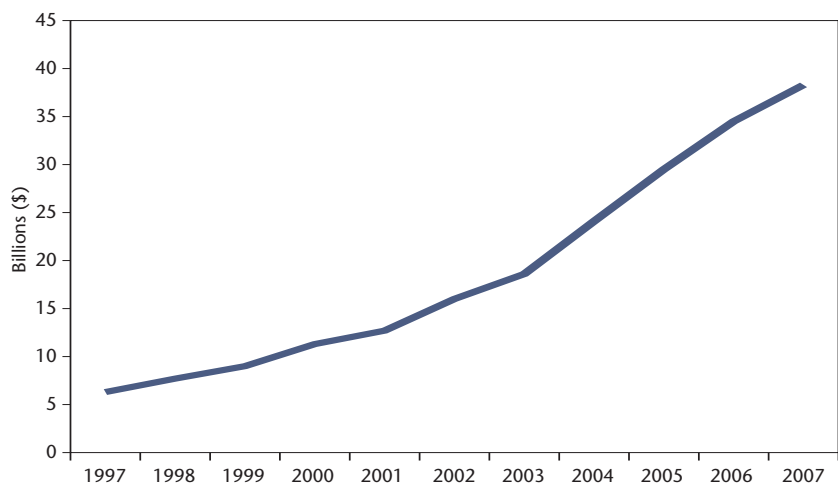
Should the Harper government be concentrating its efforts on finalizing a FIPA with China? The answer, of course, depends on the administration's immediate trade and investment priorities,

but we believe that dedicating any additional time or energy to this endeavour would represent a fundamental waste of critical resources. A FIPA is a binding bilateral investment agreement between Canada and a strategic investment partner. However, given the relatively low levels of inbound and outbound foreign direct investment (FDI) that exist between Canada and the PRC, it may be wise to reconsider the utility of a Sino-Canadian agreement. To be sure, the United States and Europe, by quite a substantial margin, continue to represent the two largest sources of foreign direct investment in Canada.

At the same time, Canadian direct investment abroad remains heavily concentrated in the US and Europe — again, by a rather significant margin. Simply put, China is a relative non-entity when it comes to the issue of foreign direct investment. Hence, Canada might be better served by focusing on a trade agreement that would protect and promote investment in both countries as well as protect and promote the existing exchange configurations that are currently on the rise. Figure 1 highlights the value of Chinese imports to Canada from 1997 to 2007.

Without doubt, bilateral trade between China and Canada is

FIGURE 1. VALUE OF CHINESE IMPORTS TO CANADA, 1997-2007



Source: Statistics Canada.

an entirely different matter. Since 1997 China has emerged as one of Canada's largest trading partners; that is, it has become a major export market for Canadian products (finished and unfinished) as well as a rich source of imported goods. In fact, despite the recent downturn in overall economic activity, Canadian exports to China continue to increase at an extraordinary pace. The empirical data actually show that, in Canada's case, genuine trade diversification and provincial export growth have been largely driv-

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en by China's demand for raw materials. Moreover, China has been identified on several finance-related provincial Web sites not as an investor, but as a key importer of industrial, agricultural and forestry products. What is of some concern is the existing balance of trade between Canada and the PRC. Over the past several years, imports from China have increased at a far greater rate than Canadian exports to China. Be that as it may, China's relative dependence on Canadian commodity exports (not to mention technical expertise and a consumer market) give Canada some comparative advantages that could be better managed. Yet, in the absence of any formalized trade protection measures, we can expect Canadian industry to continue to endure the unnecessary costs associated with the status quo arrangement. Figure 2 highlights the importance of merchandise trade to China from 1997 to 2008.

To be fair, it could be argued that finalizing an investment promotion and protection agreement is far less complicated than establishing more open trade relations with the PRC. This is certainly a defensible position. Ottawa's negotiating teams would

have to consider the issue of "labour standards" if they were to pursue a course of trade liberalization with China. Redressing deficiencies in the country's "labour management" practices constitutes an enormous problem that would be difficult to overcome. For example, China has approximately 30 special economic zones (SEZs) that employ roughly 13 million workers. In general, the working conditions are unpleasant. Moreover, scores of roving peasants from rural and remote regions migrate

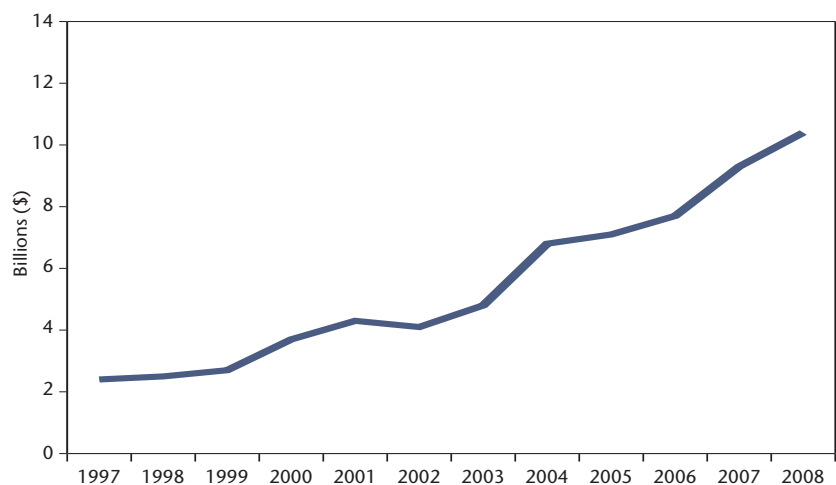
to these zones each year looking for work. This itinerant army of unemployed peasants unintentionally strengthens the bargaining position of employers and has a depressing impact on wages and health and safety standards. Still, while Canada does not operate any SEZs (more commonly known as export processing zones [EPZs]), it does have experience negotiating trade agreements with countries that do. The prime example is

Mexico (which uses the term *Maquiladoras* instead of EPZs) and has a similar history of worker exploitation and poor working conditions.

While the North American Free Trade Agreement and its labour side agreement have not addressed or fixed all of Mexico's labour issues, the agreement established important precedents that Canada has followed with its other trade agreements, ensuring that they address the social needs of workers affected by economic linkages through trade. Canada currently has 11 pending trade negotiations under review including one with India — another regime that is hardly sensitive to the issue of labour rights. Again, Ottawa's apparent desire to delay a trade and/or investment pact with China remains somewhat odd, inconsistent and unproductive.

A trade agreement that includes a labour component would not hinder China in any way. Mexico has not had to give up the *Maquiladora* industries; it has, however, had to address issues that fall under the 11 key labour rights and employment standards. And while the top three

FIGURE 2. VALUE OF CANADIAN MERCHANDISE TRADE TO CHINA, 1997-2008



Source: Statistics Canada.

labour rights — freedom of association, the right to collective agreement and the right to strike — would be part of any labour side agreement, the deal would not immediately translate into a sweeping unionization (or workers' rights) movement in the PRC.

In Mexico, the prospects for independent unionization are actually quite limited — and frequently subjected to different forms of state coercion and violence. Yet Mexico has never been penalized under the North American Agreement on Labour Cooperation (NAALC). Nevertheless, some degree of communication between governments, businesses and unions has occurred. Typically, public institutions or agencies are held responsible (similar to the arrangements that have been established under International Labour Organization and World Trade Organization agreements — of which China is already a member) for rectifying labour and trade disputes. The key point to be made here, though, is that a labour side agreement would give Canada an opportunity to work more closely with China and within China to help improve labour conditions. This is no different from the \$65 million in foreign aid that Canada gifted to China in 2005 to improve its legal system. A free trade agreement would be a long-term agreement between the two countries, and it would likely commit both parties to increasing trade and improving working conditions, which, from a human rights perspective, China would clearly benefit from.

The stalled FIPA negotiations are not helping anyone in Canada or China. But Ottawa should really be focusing its attention on establishing a free trade agreement with Beijing. Prime Minister Harper's trip to the People's Republic in December 2009 could be used to explore the possibility of establishing a meaningful bilateral trade accord between the two countries. Indeed, should the initial discussions prove successful, it would



Jason Ransom, PMO

Prime Minister Stephen Harper is greeted by Hu Jintao, President of the People's Republic of China, as he arrives in the Great Hall of the People, Beijing, in December. Trade was at the top of the bilateral agenda.

mark a defining moment in the Conservative government's trade policy. It would also send an undeniable signal to the international community that Canada remains firmly committed to multilateralism and diplomacy, and firmly opposed to any form of protectionism. Equally important, a Sino-Canadian FTA would likely assist China's economic development and enhance the living, working and social conditions of many of the country's impoverished citizens. To this end, the Conservative Party should not let its principles interfere with any initiative to promote free trade with the PRC. China is certainly a human rights violator, but it is not beyond repair, and chastising Hu Jintao's government in public is unlikely to bear

fruit. If Canada wants to improve the human rights conditions of China's workers and dissenters, Ottawa should pursue a course of constructive engagement couched in a commitment to establishing a mutually beneficial trade agreement with Beijing. Taking a pragmatic stand — over a principled one — will ultimately yield better results for Canada and China over the long run.

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