

The Canada-China Free Trade Agreement: Do human rights matter?

WORKSHOP REPORT

In partnership with the University of Ottawa's Human Rights Research and Education Centre, the Canada Tibet Committee (CTC) hosted a workshop on March 22, 2018 to consider how a free trade agreement between Canada and China might affect human rights in Tibet. This workshop report includes a summary of the panel presentations, a list of external resources, and a copy of the workshop agenda. The CTC assumes responsibility for any errors in the panel presentation summaries.

INTRODUCTION

In partnership with the University of Ottawa's Human Rights Research and Education Centre, the Canada Tibet Committee (CTC) hosted a workshop on March 22, 2018 to consider how an eventual free trade agreement between Canada and China might affect human rights in Tibet.

A panel of experts presented a range of viewpoints on various aspects of the debate. A background paper prepared for the workshop provided Tibet-specific examples to accompany the expert presentations.

The workshop was attended by thirty-five participants including representatives of non-governmental organizations, law students and professors, parliamentary staff, government bureaucrats, and business people.

The workshop was part of an ongoing initiative by the CTC to engage with a range of stakeholders about the proposed Canada-China Free Trade Agreement. A second workshop will be held at the University of British Columbia in May 2018. Workshop outcomes will inform a revision of the background paper which will be published in the fall of 2018.

SUMMARY OF PANEL PRESENTATIONS

Salvador Herencia-Carrasco, Director of the Human Rights Clinic at the University of Ottawa, opened the workshop. In his welcome words, Prof. Herencia-Carrasco said that the debate around trade and human rights is current and relevant for Canadians. Although the renegotiation of NAFTA has taken most of the headlines in recent months, Prof. Herencia-Carrasco proposed that the Canada-China negotiation offers a good entry point for this discussion.

Workshop moderator, Carole Samdup, former CTC Executive Director, thanked the University of Ottawa and Prof. Herencia-Carrasco for co-hosting the event and for providing a space in which these issues can be discussed and debated.

Presentation summaries:

- **GARNETT GENUIS MP**: Member of Parliamentary Standing Committee on Foreign Affairs; Co-Chair of Parliamentary Friends of Tibet; Conservative Party of Canada Deputy Shadow Minister for Foreign Affairs. **Presentation Topic**: The relevance of human rights in trade negotiations

Mr. Genuis believes that human rights ought to be the foundation of Canada's foreign policy. In that respect, human rights are an absolute. This doesn't mean, he said, that strategic engagement

with a country such as China is a bad idea. The application of human rights principles to foreign policy can be innovative and use various strategies.

Mr. Genuis cautioned however, that the strategy of engagement can become a “slippery road” and should not result in our government’s reluctance to raise human rights concerns with trading partners. He also cautioned that trade should not be used as a lever to advance human rights. Instead, Mr. Genuis believes that Canada should actively defend and promote human rights with China as part of its regular diplomatic interaction, even as it negotiates the free trade agreement.

As a member of the Parliamentary Standing Committee on Foreign Affairs, Mr. Genuis visited China in December 2017. He observed that in meetings with Chinese counterparts, human rights were raised in general terms but that mention of specific examples was avoided. In the opinion of Mr. Genuis, it is always best to “be specific about hard issues such as the Dalai Lama”.

In conclusion Mr. Genuis said that Canada should be consistent when it defends human rights around the world and that government officials should not hesitate to express concern about specific human rights violations in China in their bilateral exchanges.

- ALEX NEVE: Secretary General, Amnesty International Canada, Chair of Canadian Coalition on Human Rights in China, Officer of the Order of Canada. Presentation Topic: The human rights challenge in China.

Mr. Neve observed that we could take just about any human rights treaty ratified by China and identify a myriad of associated violations. For that reason, he added, across China “an incredibly wide array of society is affected”.

Mr. Neve noted that 2018 – a year in which Canada is expected to announce formal negotiations towards a free trade agreement with China – the human rights situation in China is particularly difficult. There is an ongoing crackdown on human rights lawyers, intensified campaigns against minority groups, and new laws that limit the activities of non-governmental organizations and impose cybersecurity measures that impinge on basic rights. Concerns expressed by the international community, including UN experts, have gone unheeded.

To illustrate the seriousness of the situation, Mr. Neve noted that Amnesty International has never been allowed to enter China and therefore does not have on-the-ground access to human rights defenders as it does in other countries.

Mr. Neve also pointed to a recent study by the Canadian Coalition on Human Rights in China, that documents examples of harassment and intimidation of human rights defenders here in Canada including through cyber-attacks; phone harassment; distributing hate propaganda; in-

person monitoring of individuals; harassment at demonstrations; harassment of Canadians in China; harassment of family members in China; interference with freedom of assembly and media. Although it is difficult to attribute incidents to Chinese authorities, the report presents an organized and sustained pattern of harassment and intimidation which is consistent with allegations that they are part of a coordinated Chinese government-sponsored campaign to target certain groups and individuals outside of China who monitor and report on violations of human rights in China.

Mr. Neve observed what he views as a prevailing discourse in Canada - that talking about human rights will hurt trade. He recalled past assurances from government officials and others that increased trade would automatically result in human rights improvements in China. In fact, that has not been the experience. Efforts by various governments including Canada to engage China via “human rights dialogues” drifted without result and now have little credibility.

The international community must confront this challenge. In Canada, Amnesty International and the Canadian Coalition on Human Rights in China, which it chairs, have advocated for a “whole of government approach” that would place human rights at the core of the Canada-China relationship. Given the failure of stand-alone dialogues, the proposed free trade agreement with China should be viewed as a new opportunity to promote human rights. The Coalition has therefore recommended that the Government of Canada conduct a full human rights impact assessment of the agreement to inform the negotiation.

- PENELOPE SIMONS: Professor, Faculty of Law, University of Ottawa. Presentation Topic: Protecting the human right to an effective remedy in the context of trade agreements

Typically, the foreign investments of businesses are protected through bilateral investment treaties or the investment chapters of free trade agreements. These legally binding agreements focus solely on the protection of business and do not offer protection to victims of corporate-related human rights abuse. Moreover, many of these international investment agreements provide for binding international investor-state dispute settlement which allows companies to seek financial compensation when terms of the treaty are allegedly violated. But they offer no pathway for citizens to obtain reparations when the activities of foreign investors violate their human rights. Where treaties provide investors with access to binding international dispute settlement, the investor can bring a claim against the host state. This right, along with the other core provisions of these treaties, can operate to restrict the capacity or willingness of the host state to regulate protection of human rights, the environment, labour rights, or indigenous peoples’ rights.

The UN Guiding Principles on Business and Human Rights, which Canada supports, require states to provide access to both judicial and non-judicial remedy for victims of business-related human rights abuses. According to the UN Working Group on Business and Human Rights, this should include a full bouquet of remedies that are tailored to address the particular harm suffered. For example, states negotiating international investment agreements could be expected to incorporate human rights obligations for investors and to provide a variety of complaint mechanisms that would allow victims of such human rights abuses - as well as home and host states - to hold investors to account and seek reparations.

Prof. Simons explained that Canada has not done enough to ensure access to remedy for individuals and communities in other countries who wish to make claims in Canada because domestic recourse is unavailable to them. In Canada, the court system is expensive and difficult to access particularly for claimants from other countries. Canada's OECD national contact point is unable to impose corrective measures at the project level. A recent announcement by the Government of Canada that it will create an Ombudsperson to examine cases of corporate abuse by Canadian companies abroad is a welcome step forward but untested. We don't yet know the extent of its powers or whether it will be able to undertake investigations in a country such as China, where governments tightly control access to people and locations.

There has been one Tibet-related case submitted to Canada's OECD national contact point and it concerns the operations of China Gold International Resources in the Gyama Valley near Lhasa. While the case outcome set an important precedent because it applied penalties to the company for failing to participate in the review process, it did not result in an improvement of the situation on the ground and the affected community was unable to obtain remedy despite the merit of its claim.

Prof. Simons suggests that in order to meet its obligations under the UN Guiding Principles to provide access to an effective remedy for victims of human rights abuses associated with the activities of Canadian companies operating in China, any new Canada-China FTA should incorporate human rights obligations for investors directly into the investment chapter. Such obligations on investors could be enforced through a number of different mechanisms mandated by the treaty, including the obligation on the state parties to provide a civil remedy for victims of corporate related human rights violations.

- KUNCHOK DOLMA YAKLHA, Research Coordinator, Canada Tibet Committee.
Topic: Links between increased Canadian trade with China and human rights in Tibet

Ms. Yaklha explained that the CTC's Research Team, supported by its Board of Directors, has adopted a program priority to engage Canada's consultative process around the Canada-China

Free Trade Agreement. To that end, the CTC has completed preliminary research looking at the various debates around trade and human rights, and it is currently reaching out to various experts in an effort to better understand how increased trade with Canada might affect the enjoyment of human rights in Tibet. This workshop today is a key part of that research initiative.

In May 2017 the CTC submitted written comments to Global Affairs Canada (GAC) and subsequently met with trade officials at GAC to discuss elements of the submission in greater detail. At that time, the CTC's primary recommendation was that the Government of Canada should carry out a human rights impact assessment within the feasibility phase of negotiation (exploratory talks). To date, that has not taken place.

Ms. Yaklha emphasized that the CTC does not automatically oppose the free trade agreement and today's workshop is not designed to discuss trade *versus* human rights. Instead, the CTC and other civil society groups in Canada are voicing concern that increased trade and investment from Canada could have negative impacts on the human rights of vulnerable communities in China, and that those impacts need to be considered before the agreement is concluded.

The first step in a human rights impact assessment is to identify vulnerable communities in China and the human rights issues that are central to their experience. Ms. Yaklha noted that from a trade perspective, vulnerable communities might include migrant workers, rural women, landless peasants, factory workers, or ethnic minorities such as Tibetans. However, she added that in China vulnerable communities might also include political dissidents and human rights defenders.

The CTC research team believes that Tibet provides a useful template for the debate about trade and human rights in China. In terms of economic vulnerability, Tibet is the poorest area of the country despite massive subsidies provided by the central government. Within Tibet, Tibetans are poorer than Chinese and generally excluded from the opportunities that are associated with economic development in Tibet. Socially, Tibetans suffer from systemic discrimination as has been documented in numerous reports from Amnesty International, Human Rights Watch, Freedom House and others. Finally, Tibetans are politically disenfranchised and lack the basic freedoms such as freedom of expression, association, and self-determination needed to adequately participate in economic activity.

The draft background paper distributed to workshop participants is a first effort by the CTC to examine Canada's trade priorities from the perspective of human rights vulnerability in Tibet. This workshop in Ottawa, and a 2nd workshop planned at the University of British Columbia in Vancouver later this spring, seeks input from stakeholders to improve our understanding and to help the CTC to make useful proposals when formal negotiations are announced. The draft

paper will be revised following the two workshops and other stakeholder consultations. A final version is planned for release in the fall of 2018.

Ms. Yaklha's presentation was accompanied by a video presentation from Canadian development economist Andrew M. Fischer describing the economic vulnerability experienced by Tibetans.

- GREG WALTON: D. Phil candidate, Cybersecurity Centre, University of Oxford; Fellow at SecDev Canada. Topic: Technology as trade sector case study: Artificial intelligence, surveillance, and the right to security of the person

Speaking by Skype from Dharamsala, India, Mr. Walton is a researcher on state-sponsored hacking of civil society networks. For the past twenty years, he has studied the human rights implications of dual-use technology transfer, primarily surveillance technology flowing from western liberal democracies to the Peoples Republic of China. That research led to a report written for the International Centre for Human Rights and Democratic Development (Rights & Democracy) that was released in 2001 at the dawn of the algorithmic surveillance revolution. It analysed Canadian telecommunications exports to China, particularly by Canada's flagship company Nortel Networks, and the end use of that technology for surveillance purposes in China and eventually along the Gormo-Lhasa railway in Tibet.

In 2018, China boasts what is termed a "grid management" system in place across the country. In Tibet, the system, which is described in a report by Human Rights Watch, is based on a prototype project in Beijing that was, in turn, based on the City of Westminster's surveillance system in London UK. In Beijing's Dongcheng District, the prototype for China-wide deployment, the system is run on Oracle software. In the Chaoyang District the grid is run on IBM software.

Application of sophisticated technology that integrates information obtained across social activity and between military and civilian resources down to the local level - even micro level – enables state control and discourages dissent, a situation sometimes described as an invisible prison. The export of enabling technology from any country to China, where there are no democratic checks and balances, risks complicity in human rights violations.

When we ask if human rights matter, we should think not only in terms of human values and humanistic ethics, or even in terms of altruism, but rather, we should consider if there is a clear realpolitik case to be made for Canada assigning strategic value to international human rights law as it engages in world trade particularly with regimes like China. The lesson from the last 20 years is that trade with China is fraught with risk. In that context, corporate social responsibility

is not a luxury and human rights impact assessments are not an add-on. Defending human rights norms must be at the heart of Canada's engagement with China.

Mr. Walton concluded by urging Canada to ensure that technology sector exports to China are compliant with its human rights commitments. Mr. Walton suggested that Canada develop a framework to govern surveillance technology transfer to China. A useful starting point, he said, is found in the conclusions of a 2017 report titled *A Comprehensive Approach to Digital Trade Provisions in NAFTA 2.0* published by the Canadian Centre for International Governance.

Finally, Mr. Walton suggested that all dual-use technology exports from Canada should be subject to human rights impact assessments especially when the exports are destined for authoritarian states such as China. Any failure by Canada to conduct due diligence in the face of reasonable expectations of human rights abuse, should be a serious concern for Canadians.

Note: As much of Greg Walton's presentation was difficult to hear because of connection difficulties, a recorded version accompanied by slides will be made available at YouTube/TibetChannel.

DISCUSSION

The moderator requested that workshop participants make suggestions for human rights friendly approaches Canada could integrate into its trade negotiation with China. These alternate approaches would respond to specific human rights concerns or, more ambitiously, seek trade agreement outcomes that would lead to an improvement of human rights in Tibet.

Participants had differing opinions about the usefulness of human rights impact assessments. Among the concerns raised were difficulties in establishing a causal link between trade and human rights, the volume of applicable human rights treaties and commitments that could render any impact assessment unwieldy, the difficulty accessing current reliable statistical information from China, and the unresolved academic debate over the use of indicators and specifically of qualitative indicators.

Some participants suggested that in order to avoid complicity in human rights violations, Canada could consider the adoption of "line-in-the-sand" principles that are non-negotiable and that must be resolved before free trade agreement negotiations move forward. Such principles might include independence of the judiciary, diplomatic reciprocity, and equal access to courts.

An engaged debate centred on the economic opportunities that increased trade would provide for Tibetans who are increasingly urbanized. Some participants felt that expanded international

trade with Canada would enhance those opportunities. Other participants cautioned that urbanization results in large part from forced relocation of nomadic communities which is itself a human rights violation. These participants felt that Canada's trade priorities should reflect the more traditional livelihood choices of Tibetans.

Other discussion themes included the so-called "NAFTA effect" – in which the Canadian public is increasingly ready to ignore or "normalize" human rights violations in China in order to access new export opportunities. Concerns were raised also about efforts by China to impose its policies of control on foreign companies. The example offered was the case in which the Marriott hotel chain fired a US-based employee following complaints in China that he had retweeted a pro-Tibet Twitter post.

CONCLUSION

In conclusion, the workshop moderator welcomed additional comments and recommendations from participants. Comments can be sent to Kunchok Dolma Yaklha at yaklha.kd@gmail.com and/or Carole Samdup at carole@tibet.ca. Workshop participants were invited to join the CTC email list by registering on our website at www.tibet.ca. The email list provides regular updates about this and other CTC projects.

RESOURCES

(This list compiles resources referred to by panelists during the workshop. The list is in alphabetical order by title).

Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/72/162, UN Working Group on the issue of human rights and transnational corporations and other business enterprises, July 2017, <http://undocs.org/A/72/162>

Alarming New Surveillance, Security in Tibet, Human Rights Watch, 2013 at <https://www.hrw.org/news/2013/03/20/china-alarming-new-surveillance-security-tibet>

Canada's Foreign Affairs Committee Concludes Successful Fact-Finding Mission to Asia, News Release, Standing Committee on Foreign Affairs and International Development, December 6, 2017 at <https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/news-release/9306719>

China Trade Consultations: Written Submission to Global Affairs Canada, Canada Tibet Committee, May 31, 2017 at <http://tibet.ca/blog/wp-content/uploads/2017/06/CCFTA.-screening.-May2017.pdf>

China's Golden Shield: corporations and the development of surveillance technology in the People's Republic of China, Greg Walton, Rights & Democracy, 2001.

<http://publications.gc.ca/site/eng/421743/publication.html>

China's subsidies to Tibet (video), Dr. Andrew Fischer, International Institute of Social Studies, Erasmus University, Netherlands, 2012. <https://www.youtube.com/watch?v=9xkEu2hYEtE&t=10s>

China National Human Development Report, UNDP-China, 2016,

<http://www.cn.undp.org/content/china/en/home/presscenter/pressreleases/2016/08/22/launch-of-china-national-human-development-report-2016.html>

Citing grave concerns, Amnesty International Canada withdraws from reporting process on Human Rights and Free Trade between Canada and Colombia, Amnesty International Canada, March 23, 2018.

<https://www.amnesty.ca/news/citing-grave-concerns-amnesty-international-canada-withdraws-reporting-process-human-rights-and>

A Comprehensive Approach to Digital Trade Provisions in NAFTA 2.0, Susan Ariel Aaronson, Canadian Centre for International Governance, 2017.

<https://www.cigionline.org/sites/default/files/documents/Paper%20no.154web.pdf>

Development of guiding principles for assessing the human rights impact of economic reform policies, Report of Mr. Juan Pablo Bohoslavsky, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, UN Human Rights Council 37th session, A/HRC/37/54, March 2018.

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/54

Disempowered Development of Tibet in China: The economics of marginalization, Andrew Martin Fischer, Lexington Books, 2014 at <https://www.amazon.ca/Disempowered-Development-Tibet-China-Marginalization/dp/0739134388>

Final Statement on the Request for Review regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region, Global Affairs Canada, OECD National Contact Point, 2015 <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng>

Guiding Principles on Business and Human Rights, Office of the UN High Commissioner for Human Rights, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Integrating Sustainable Development into International Investment Agreements: A Guide for Developing Country Negotiators, Anthony Van Duzer, Penelope Simons, Graham Mayeda, Commonwealth

Secretariat, May 2013, <https://books.thecommonwealth.org/integrating-sustainable-development-international-investment-agreements-hardback>

Living Standard Dimension of the Human Development Index: Measuring Poverty with Big Data in China, UNDP-China, 2016 <http://www.cn.undp.org/content/china/en/home/library/poverty/the-living-standards-dimension-of-the-human-development-index--m.html>

Marriott sacks employee who 'liked' Twitter post from Tibet independence group, South China Morning Post, January 13, 2018. <http://www.scmp.com/news/china/society/article/2128124/marriott-sacks-employee-who-liked-twitter-post-tibet-independence>

No End to Tibet Surveillance Program, Human Rights Watch, 2016, <https://www.hrw.org/news/2016/01/18/china-no-end-tibet-surveillance-program>

State of the World's Human Rights 2017-18, Amnesty International, February 22, 2018 (China chapter at p.125-130) at <http://www.amnesty.ca/news/annual-report-201718-state-sponsored-hate-spurs-new-era-social-activism>

Subsidizing Tibet: An interprovincial comparison of Western China up to the end of the Hu-Wen administration, Andrew M. Fischer, *The China Quarterly*, 221 pp 73-99 at <https://www.cambridge.org/core/journals/china-quarterly/article/subsidizing-tibet-an-interprovincial-comparison-of-western-china-up-to-the-end-of-the-huwen-administration/A8D76083EC819AE12A34A57DACF3859E>

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WORKSHOP AGENDA

March 22, 2018

- 09:00 Salvador Herencia-Carrasco, Director, Human Rights Clinic
Welcome words
- 09:05 Carole Samdup, Project Coordinator, Canada Tibet Committee
Speaker introduction

- 09:10 Garnett Genuis, Member of Standing Committee on Foreign Affairs, and
Co-Chair Parliamentary Friends of Tibet
Trade policy: The relevance of human rights in trade negotiations
- 09:20 Discussion
- 09:30 Alex Neve, Secretary General, Amnesty International Canada
Country overview: The human rights challenge in China
- 09:45 Discussion
- 10:00 Prof. Penelope Simons, Faculty of Law, University of Ottawa
*Human rights accountability: Protecting the human right to an effective
remedy in the context of trade agreements*
- 10:15 Discussion
- 10:30 Kunchok Dolma Yaklha, Research Coordinator, Canada Tibet Committee
*Tibet as vulnerability case study: Establishing links between increased
Canadian trade with China and human rights in Tibet*
- 10:45 Discussion
- 11:00 Greg Walton, D.Phil candidate, Cybersecurity Centre, University of
Oxford and Fellow at SecDev Canada
*Technology as trade sector case study: Artificial intelligence, surveillance,
and the right to security of the person*
- 11:15 Discussion
- 11:30 Facilitated discussion
Recommendations: Proposals for Government of Canada
- 12:30 Concluding remarks and refreshments