Submission to the Canada-China Trade Consultations
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The Council of Canadians welcomes the opportunity to provide comments regarding the Canada-China Free Trade Agreement.

Founded in 1985, the Council of Canadians is Canada's leading social action organization, mobilizing a network of 60 chapters across the country. Through our campaigns, the Council of Canadians advocates for clean water, fair trade, green energy, public health care, and a vibrant democracy. The Council of Canadians is a registered non-profit organization and does not accept money from corporations or governments. Our work is sustained by the volunteer energy and generous donations of our supporters.

The Council of Canadians believes that trade should be fair and should benefit people and the planet. Instead, many recent trade deals have favoured corporate rights and corporate interests. The information provided in this brief explains how we believe the Canada-China Free Trade Agreement is another corporate rights deal that does not safeguard the environment, workers, democracy, or improve our economy.

Consultation process

To date, there has been little information released about the Canada-China Free Trade Agreement. Much of what is happening is being done behind closed doors, so it is very hard to comment on the China-Canada deal except in generalities. The Council of Canadians continues to be very concerned about the absence of meaningful public consultation. We also remain concerned about the balance of power in negotiations between the two countries and the negotiations process in general.

Secrecy of the process

From April 24 to 28, 2017, talks on the China-Canada free trade agreement were held in Ottawa. As with the Trans-Pacific Partnership talks a week later in Toronto, the Council of Canadians found out about them only through media reports. Locations were not revealed, members of the media were not invited, and no reports were issued about what was actually discussed in the talks. Members of Parliament and the Senate were not informed either.

Obviously, this is a far cry from the democratic process the Council of Canadians continues to advocate for. The Council of Canadians supports an approach to trade in which civil society, unions, First Nations groups, provinces and municipalities are consulted before, during and after negotiations.

Particularly at a time when trade escapes democratic control – with jobs, environmental protections and social legislation at stake – holding closed-door discussions increases the huge democratic deficit in these agreements. This deficit has contributed to rising world inequality and inadequate environmental protections and is pushing voters toward populist ideologues. It contributes to cynicism in the overall population about democracy in general. As trade agreements also eclipse nation-states and their democratic control, this tendency becomes even more alarming. It means populations are even less equipped to control their local economies and their destinies.

In the case of the China-Canada Free Trade Agreement, we are negotiating with a state that ranks 136th in democratic control, according to the Economist Intelligence Index. China is also classified as authoritarian.

For the Council of Canadians, a fair trade deal would involve benefits for the populations of both countries and economic development for everyone, not just large corporations. We can look to the Comprehensive Economic and Trade Agreement (CETA) between Europe and Canada as an example of how we can, in partnership with our European civil society partners, have some limited influence on the negotiations. But China's mostly government-run version of civil society lacks the ability to mount independent challenges and make suggestions on free trade deals. The few organizations that do exist, mostly in Hong Kong, are limited in their ability to bring up concerns without the fear of being accused of coercion. In that sense, the balance of power between large economic interests and overall populations in both countries is heavily skewed. As well, the hope of having a democratic deal is curtailed by negotiating with a country that curbs any use of the Internet. This will also likely put the brakes on any democratic negotiation of this deal. The Canadian government would be best advised, at a minimum, to facilitate an input process not just in Canada, but in China as well, and to monitor whether civil society organizations are facing retribution as a result of their criticism or comments. This lack of democratic participation is important because it sets precedents for the negotiation of other deals, even with democratic countries.

Just to be clear, a full consultation process is not:

1) Providing e-mailed responses without any record or reporting back on the process.
2) Asking for an opinion on the deal without providing details.
3) Asking for an opinion only after the deal has been fully negotiated.
4) Closed-door stakeholders' meetings that are by invitation only and without adequate notice.

A proper consultation would involve having a public discussion and debate on a negotiating mandate for Canada, with full cooperation and participation throughout the process.

Canadian strategy in the negotiations

Another major concern going into negotiations is that instead of properly developing and implementing a Canadian industrial and export strategy, negotiating free trade agreements seems be Canada's go-to position. While China has a very keenly honed national economic strategy and the ability to implement it, Canada's industrial strategy remains unclear. Canada's trade deficit with China was [$44 billion in 2016.]

The Canadian government states that it wants access to a growing Chinese middle class and to an economy with nearly seven per cent growth, but it is unclear if a free trade agreement that focuses on holding back legislation and protecting investment is actually going to lead to export growth. It is even less likely that the gains from export growth will create jobs and prosperity for all. As economist Jim Stanford has noted, every free trade agreement (FTA) signed in the Harper era has led to higher trade deficits and lower export growth than with countries not covered by

FTAs. In the case of the agreement with South Korea, Canada's exports decreased. Another study from Tufts University found little relation between export growth and increased GDP.

And it is not necessarily evident that increased GDP always trickles down. There have been limited independent studies on the effects of free trade agreements. A recent study from the Parliamentary Budget Officer on CETA questioned the purported gains of the deal. In addition, Tufts University studies have pointed to problems with reduced tax revenues and reduced funding for social programs due to the increased competition between states for corporate investments that can use price difference opportunities in trade agreements and that seek tax-friendly regimes. The Council of Canadians worries about a similar dynamic in the Canada-China agreement.

It is also clear in the negotiations that China's appetite for natural resources will be well served in a trade agreement with Canada. This is a major challenge for Canada's industrial strategy, or lack thereof. As Jim Stanford and others have noted, Canada de-industrialized during the NAFTA years, with commodities accounting for a higher share Canadian exports as manufacturing and high-value industries continue to decline. This trend becomes a vicious circle: the more petroleum and mineral prices take off, the less Canada is able to develop manufacturing or high-value industries. As Harvard University Professor Michael Porter and others have noted, competitive advantage in the economy is based not on the development of commodity industries, but of high value industries. High value industries, as noted by the Canadian Centre for Policy Alternatives, are the key to higher-paid jobs. With China, we worry that this trend will only accelerate as their biggest demand is for Canadian commodities.

Jim Stanford says, when "someone says we should 'trade more' with China, we have to ask: 'What kind of trade? And going in which direction?' Achieving 'more trade' hardly helps Canada if that trade consists mostly of imports. And that has been increasingly the case in recent years."

Stanford also notes that Canada's main imports are low-technology manufactured goods, but its exports lean heavily toward natural resources, "Canada's top five exports to China (at the four-digit product code level) in 2015 were (in order): pulp, canola, lumber, copper, and potash. In essence, we export raw materials to China, which are manufactured into value-added products, and sold back to us – and in much greater quantity, to boot.''

Natural resources: water and oil

China has made no secret of its resource ambitions and of its resource scarcity, which has led China to seek them in any parts of Africa and Asia. Damien Ma, a fellow of the Paulson Institute in Chicago writes, "No matter which way you slice it, China just has a low natural-resources-to-population ratio to begin with. You could say that China's 'default setting' is resource scarcity – about the only thing it has in abundance is coal, which is also why it uses so much of it. But the reason this is going to be an ever-larger problem is [that] China's current growth model has severely exacerbated resource scarcities – from water to land to energy. And we suspect the full ramifications of that growth model on limited resources are going to be more evident in the coming decade as the country reckons with the environmental and resource cost of that growth. Not to mention how the intensification of climate change effects could put further pressure on this kind of scarcity."

Enter Canada with water and petroleum resources. Already, China has put pressure on Canada to approve pipelines to the Pacific coast so as to enhance its access to Canadian tar sands oil.

Canada has ceded resource companies to Chinese interests. Brent Patterson, Political Director of the Council of Canadians, writes, “In February 2013, Chinese state-owned CNOOC Ltd. purchased the Canadian oil and gas giant Nexen Inc. for $15.1 billion. At that time, Reuters reported, ‘[With this takeover} CNOOC gains control of Nexen’s Long Lake oil sands project in the oil-rich province of Alberta, as well as billions of barrels of reserves in the world’s third-largest crude storehouse – the oil sands in the province of Alberta.’ And in August 2009, PetroChina Co. Ltd. (whose parent company is the state-owned China National Petroleum Corp.) bought a 60-per-cent interest in two undeveloped projects near Fort McMurray that contain an estimated five billion barrels of tar sands oil.”

We are worried that Canada will yield to pressure for access to its natural resources, as it did under NAFTA, adopting an energy proportionality clause that prevents Canada from actively diminishing energy exports. Exporting resources to China would come at a huge price, straightjacketing Canada’s ability to respect two major treaties: the Paris climate change accord and the United Nations Declaration on the Rights of Indigenous People. It could also take precedence over Canada’s moral and constitutional duty to seek the consent of First Nations. As indigenous communities are on the front lines of resource projects, it is very possible that a trade agreement will impede the rights of First Nations to conserve resources, and protect their communities from environmental destruction.

Patterson continues, “In September 2016, more than 50 Indigenous nations signed the Treaty Alliance Against Tar Sands Expansion that vows to block all proposed pipeline, tanker and rail projects that impact First Nations land and water. That opposition extends to the Energy East project as well as the Kinder Morgan Trans Mountain pipeline.”

Damien Ma writes that water is particularly problematic. “If I must pick one, I’d say water scarcity is going to be the gravest challenge,” he explains. China has only about one-third of the world’s average in per-capita fresh water availability.”

Patterson agrees, “The rapid industrialization of China has consumed massive amounts of water and has contributed to a terrible water crisis there. It has been estimated that 90 per cent of groundwater in their cities and 75 per cent of their rivers and lakes are polluted, and as such, some 700 million people drink contaminated water every day. It has also been forecast that by 2020 there could be as many as 30 million environmental refugees in China due to water stress.”

Maude Barlow, former Senior Advisor on Water to the 63rdPresident of the United Nations and chairperson of the Council of the Canadians, notes in her recent report *Water for Sale* that water is not protected under GATT (superseded by the World Trade Organization) and is considered a tradeable good. As such, the Council of Canadians believes that the right to water will have high priority in a treaty with China. With China seeing Tibet as a source of bottled water, it is not unreasonable to think that China may also see Canada as a source for bottled water.

Eric Reguly of *The Globe and Mail* wrote in 2011, "Every few years, some Canadian entrepreneur hatches an idea to export bulk water to the United States or elsewhere by pipeline or tanker ship. Each effort has failed. But with bulk-water export legislation open to interpretation, and the United States getting thirstier, the next attempt could succeed. That would be economic stupidity. Best to make the jobs come to the water instead."

Once the Canadian government allows this to happen, under NAFTA's most favourable nation clause, Canada would not be able to constrain water exports to the U.S. and would be bound by NAFTA's proportionality clause not to limit average exports.

What Canada has given up already

So far, the record on Canadian concessions to Chinese government demands has been less than stellar.

What China has asked for:

- Chinese Vice-Minister of Financial and Economic Affairs Han Jun has said his government wants a tar sands pipeline to the Pacific Coast.
- Vice-Minister Han and China's Ambassador to Canada Lu Shaye have both stated that China wants unfettered access for Chinese state-owned firms to invest in tar sands projects.
- Ambassador Lu has also stated that Canada's invocation of security to block state-owned companies from buying Canadian companies would be seen as trade protectionism.
- Chinese Premier Li Keqiang wants an extradition treaty so that people accused of crimes who flee to Canada can be extradited back to China.

In turn, the Trudeau government:

- Has approved the 890,000-barrel-per-day Kinder Morgan Trans Mountain pipeline to the coast of British Columbia, with export capacity to China.
- Is reviewing and is expected to ease restrictions on investments by Chinese state-owned enterprises in tar sands operations.
- Has just approved the purchase by O-Net, (more than 25 per cent owned by a Chinese state-owned corporation) a Montreal high-tech firm that develops fibre-laser technology that can be applied to weapons.
- Is now negotiating an extradition treaty with China despite that country's use of torture and the death penalty.
  - Has recently approved Beijing-based Anbang Insurance Group's purchase of a chain of 24 seniors care facilities in British Columbia, Alberta and Quebec despite its murky ownership structure, civil society concerns, and the limits this places on new regulations to protect vulnerable seniors, ensure quality care, and maintain adequate staffing levels.

These actions suggest it will be very difficult to avoid getting locked into a resource economy with devastating consequences for First Nations and the environment.

Labour rights

As globalization reduces the power of organized labour, a fair trade agreement would ensure explicit labour regulations with enforceable penalties. Otherwise, as other trade agreements have demonstrated, there will be growth in inequality. Globalization mechanisms often enable corporations to seek ever-lower wages. It does not, however, give similar rights to individuals or to workers. Trade agreements facilitate this process by increasing the rights given to corporations, integrating economies, and making it easier for corporations to leave countries and seek the trade regimes most beneficial to their bottom line. While there have been some attempts to discuss including chapters in the deal on labour, no binding mechanism exists so far for corporations.

With China, this is particularly problematic. China has ratified only four of the eight basic International Labour Organization conventions, and has failed to ratify those on freedom of association, the right to collective bargaining, forced labour, and the elimination of compulsory labour. According to the International Trade Union Confederation's report to the World Trade Organization, "Workers do not have the right to organise in trade unions of their choice. Legal trade unions have to be affiliated to the ACFTU (China's main labour federation) and accept its control. Although there have been some efforts to establish collective wage consultation systems, the right to collective bargaining is restricted, as is the right to strike, both in law and in practice. The lack of proper representation is reflected in the number of protests and labour disputes that have been rising over the years."

While legislation exists against sexual harassment, gender discrimination and child labour, it is not enforced adequately by the state. The report continues, "Child labour, although prohibited under the age of 16, is a serious problem in China. Children are sometimes employed under forced conditions, or performing the worst form of child labour. Law enforcement officers often fail to apply the law effectively."

Forced labour is also problematic in prisons and forced work camps. Because of the lack of application of China's existing ILO commitments and its unwillingness to sign on to basic labour rights, the Council of Canadians questions China's ability to adhere to a binding labour rights chapter. With a low-wage advantage for its industries and with a limited voice for labour, we cannot see a vision that does not worsen labour rights in Canada and China alike.

Experience with FIPA

In 2014 Canada signed a 31-year Foreign Investment Promotion and Protection Agreement with China that gives investor-state dispute rights to Chinese and Canadian companies. These are the rights, as the Council of Canadians has noted frequently, that give foreign investors and corporations the right to sue governments over changes to policies and laws that hurt their profits. The Council of Canadians has repeatedly spoken out about Canada's experience under NAFTA. Under NAFTA, Canada has had to defend against 39 corporate lawsuits, two-thirds of them for environmental regulations. This has hampered Canada's ability to set public policy. As well, these are one-way rights for investors and corporations – there are no similar rights for anyone else.

Alarmingly, drafters of the FIPA agreement did not consult First Nations people. The Hupacasath First Nation, a 300-member nation located on Vancouver Island, says the Canadian government failed to consult First Nations before signing the agreement. They argued in Federal Court that FIPA, and notably its investor-state provision, could be used to override Indigenous rights and give the balance of power in questions of resource management to corporations rather than affected communities. In short, they said, FIPA infringed on their inherent aboriginal title and rights.

In August 2013 the Federal Court of Canada rejected their claim, as did a subsequent Federal Court of Appeal decision in January 2015. The courts ruled that the First Nation had not established "a causal relationship" between FIPA and its "asserted rights," and that any effects of the Canada-China FIPA were "speculative." The courts ruled that Canada therefore did not have a duty to consult. The Council of Canadians is worried that this pattern will repeat itself with a China-Canada agreement.

Many have argued that the FIPA with China is an unequal deal. With more Chinese foreign investment in Canada than Canadian investment in China, Gus Van Harten, an international trade scholar at Osgoode Hall Law school, writes in in *Sold Down the Yangtze* that the deal gives unreciprocated rights to Chinese investors. While the deal allows China to limit Canadian investment in its non-market system, the reverse is not true. As well, China's requirements for foreign companies to operate within its system and not to challenge Chinese practices would make it difficult for companies to use dispute mechanisms under the FIPA. The Council of Canadians is concerned that the Canadian government will again make concessions in this area in order to strike the proposed Canada-China deal – no matter how high the price.

As Jim Balsillie, former head of BlackBerry, told a Parliamentary Committee, "It is like buying a house, or buying a business, or entering into a marriage with absolutely no facts whatsoever about what you're getting into because houses are good and businesses are good and marriages are good. No, they're not good any way, any time, any how. It's a function of understanding what somebody is looking for and making sure that it works."

Human rights

China's human rights record is another sensitive subject that Canada does not seem to address in its negotiations. Crackdowns on activists, human rights lawyers and dissidents are widespread in China, as are torture and imprisonment. The lack of press freedom or fair trials and Internet surveillance and controls and security laws requiring NGOs to register are all facets of Chinese life. The Council of Canadians believes strongly that these issues must be addressed before entering into a trade agreement with China.

Conclusion

The Canada-China Free trade Agreement is an unpopular deal with 88 per cent of the population against it. There are questionable benefits for the economy and red flags regarding the environment, labour, Indigenous and human rights. These serious concerns create doubts as to whether this agreement will be worth it for Canadians. Will the deal make things better for our economy, First Nations, the environment, workers and for people? Can it enhance labour and environmental rights? From the limited information that is available about the Canada-China deal it would appear that it will exacerbate Canada's trade deficit, augment our dependence on a resource economy, and provide few opportunities for Canadians.

The negotiation of the Canada-China deal has not been transparent or democratic. The Council of Canadians calls on the Canadian government to withdraw from these negotiations.

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