The Council of Canadians appreciates the opportunity to provide comments on the Final Environmental Assessment (EA) of the Canada-China Foreign Investment Protection and Promotion Agreement (FIPA). However, we believe the assessment is insufficient and needs to be performed again for several reasons outlined below. The first half of our submission describes what we see as general procedural problems with the EA in this case. The remainder addresses several faulty assumptions in the EA on the impact that FIPA-like investment treaties have on the ability of governments to make or enforce environmental and other public policies. There is substantial evidence, including several NAFTA Chapter 11 investment disputes, that investment treaties such as the Canada-China FIPA fundamentally undermine the “right to regulate” even where the measures in dispute do not discriminate between foreign and domestic investors.

ABOUT THE COUNCIL OF CANADIANS

Founded in 1985, the Council of Canadians is Canada’s largest citizens’ advocacy organization with tens of thousands of members across the country. We work nationally through our network of volunteer chapters to promote progressive policies on fair trade, access to clean water and sanitation, climate justice and energy security, public health care, and other issues of social and economic concern to Canadians. We are completely member-funded and do not accept or seek out corporate or government funding. The Council of Canadians is also involved in international struggles for the human right to water, WTO reform and fair trade promotion, and a strong, binding multilateral agreement on climate change mitigation, among others.

A FLAWED ENVIRONMENTAL ASSESSMENT

As a citizens’ advocacy organization, our main concern is that the public be given a voice, wherever possible, in the direction of local, provincial and national policy decisions. This did not happen in the EA
process for the Canada-China FIPA. There is considerable public, political and First Nations concern about the FIPA which did not exist at the time of the original EA consultation in 2005, or the subsequent comment period on the Initial EA, which was published online in 2008. There is also now a completed FIPA text that was not accessible in either 2005 or 2008. It was only after the text of the FIPA was made public at the end of September 2012 that anyone had a chance to assess the potential impacts on the environment, provincial jurisdiction, First Nations rights or local democracy. There are therefore many unheard voices that deserve more than a four-week long consultation period, announced quietly on the Foreign Affairs and International Trade (DFAIT) website in mid-October, which may or may not have any effect on the decision to ratify the FIPA or not.

By not giving those voices adequate time to respond, the government would be violating the second objective of the EA process, which is “to respond to the environmental concerns expressed by the public.” The Framework “contains a strong commitment to communications and consultations throughout each EA of a trade or investment negotiation.” This commitment is neglected by the government’s shotgun ratification process, which left no room to discuss or debate the FIPA in the House of Commons and only a one-hour briefing for MPs during a single trade committee session.

We also question the assumption in the Initial EA, repeated with some uncertainty in the Final EA, that “the FIPA is not expected to generate significant economic or environmental effects in Canada.” It was this strange assumption, which on the surface negates the case for a FIPA, as well as the absence of public comments in 2005 and 2008, which led DFAIT officials to skip the draft EA process altogether. The Initial EA explains the normal course of events of the assessment process (emphasis mine):

The Initial EA is a preliminary examination to identify key issues. It occurs earlier on in the negotiations. The Draft EA builds on the findings of the Initial EA and requires detailed analysis. A Draft EA is not undertaken if the negotiation is not expected to yield large

---

2 The Final EA explains: “An Initial EA of the Canada-China FIPA was completed in January 2008. The Government of Canada opened the Initial EA for public comments from February 20 to March 21, 2008. No public comments were received. In the light of the Initial EA’s conclusions regarding the unlikelihood of significant environmental impacts in Canada, preparation of a Draft EA was subsequently deemed to be unnecessary. The findings of the Initial EA were communicated to Canada’s lead negotiator and were integrated into Canada’s negotiation strategy. The purpose of the Final EA is to document the outcome of the negotiations in relation to the EA process.” (http://www.international.gc.ca/trade-agreements-accords-commerce-confits/agr-acc/china-chine/finalEA-chine-EEfinale.aspx?lang=eng&view=d)
economic changes. The Final EA takes place at the end of the negotiations. At the conclusion of each phase, a public report is issued with a request for feedback.\(^5\)

Any assumption in 2005 that Chinese investment into Canada would not change markedly would not have held up in 2008, when it was clear that Chinese firms were expanding their investments globally, including into Canada, in particular in energy and resource projects. The government therefore had a responsibility to carry out stage two of the EA by producing a draft report. Instead, the government moved directly from an initial to final EA without revisiting its earlier assumptions or actively seeking public input.

By choosing expediency over rigorous study of the FIPA, the government ignored the broader intent of the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals,\(^6\) which provided the genesis for the EAs of trade and investment agreements. The Directive explains that strategic environmental assessments should serve “to strengthen accountability and provide greater public confidence that federal government decisions are being made in full awareness of the potential environmental impact.”

As the Final EA admits, Chinese investment in Canada has increased nearly 100 per cent since 2008. That trend is expected to continue. While the Final EA is undecided about whether the FIPA will encourage or have a neutral effect on investment, it does suggest the treaty “allows investors to invest with greater confidence,” which “indirectly encourages increased investment, and potentially attendant benefits such as job creation and broader economic growth.” The Initial EA was more explicit, saying “We can expect an increased level of Chinese investment abroad, including from SOEs, in the future. We expect the FIPA to better position Canada as a recipient of such investment.”

Gus Van Harten, a professor of law specializing in investment arbitration at Osgoode Hall Law School who has written extensively about the FIPA since it was tabled in the House of Commons, suggests that because there is significantly more Chinese investment in Canada than vice versa, the investor protections will have disproportionate risks and constraints for Canada:

To illustrate, if current trends were to continue (tracking from inward Foreign Direct Investment flows during 2008 to 2011), the ratio of Chinese investment in Canada to Canadian investment in China would increase from about 2 to 1 now to 10 to 1 in approximately 10 years. Also, Chinese investment in Canada would exceed U.S. investment in Canada after roughly 17 years. Incidentally, this is just over halfway through the minimum 31-year lifespan of the Canada-China treaty. These investment outcomes are highly speculative and may not come to pass. But it is the governments' responsibility to

---


\(^6\) See link: http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=B3186435-1
indicate how much Chinese investment is anticipated under the treaty and in what areas so that the treaty’s risks and constraints can be assessed and debated in an informed way.\(^7\)

In fact, the 31-year minimum lifespan of the FIPA, another fact which only became known when the treaty was made public at the end of September, gives us even more reason to go back and revisit the assumptions in the Initial EA, and for the government to prepare a draft assessment as per normal procedure where there are clearly economic and environmental impacts from this much new investment from China.

**THE DIRECT IMPACT OF FIPAs ON PUBLIC POLICY**

The assertion in the Initial and Final EAs that “the Canada-China FIPA ensures that the Parties retain the ability to regulate in the public interest, including with respect to environmental issues,” and that the FIPA “will not inhibit Canada’s ability to develop and implement environmental policies” is highly misleading. So is the suggestion that foreign investors in Canada “are subject to the same laws and regulations as domestic investors, which includes laws aimed at protecting the environment.”

The Canada-China FIPA, like many other Canadian investment treaties, contains substantive protections for foreign investors which go beyond the right to be treated the same as national investors (National Treatment) or as well as the investors of any other country (Most Favoured Nation). There are clauses in the FIPA dealing with Minimum Standards of Treatment (Article 4) and Expropriation (Article 10), terms which arbitration panels in investor-state disputes have interpreted very broadly in the interests of foreign investors. These panels, which are made up of paid lawyers and judges selected by the investor and government involved in the dispute, have the authority to decide the legitimacy of government measures, to request the measures be changed or eliminated, and to order governments to pay awards to investors that have reached as high as $1.8 billion USD.

The very fact that these rights—to “minimum standards of treatment,” or “fair and equitable treatment,” or to be free from so-called regulatory expropriation as defined by arbitrators, not the government—can only be claimed by foreign investors already contradicts the claims in the EA that the FIPA treats Canadian and Chinese investment equally. This fundamental imbalance between the rights of national and foreign investors is a major reason why the Australian government, as of last year, refuses to negotiate FIPA-like investment protections in its treaties or free trade agreements. Australia has also said the investors, not the public, should insure the security of their investments abroad.\(^8\)

This submission does not provide an exhaustive list of investor-state cases where environmental measures have been disputed. We simply would like to point out a few cases where non-discriminatory government measures (policies, rules or decisions that treat foreign and national firms the same) have run afoul of these other substantive investor protections in a way that contradicts the claims in the EA. We show where arbitration panels have overstepped the intended reach of Minimum Standards of

---

\(^7\) Van Harten, Gus. Response to Conservative MP’s letter regarding the Canada-China FIPA: [http://thetyee.ca/Opinion/2012/11/05/Van-Harten-FIPA](http://thetyee.ca/Opinion/2012/11/05/Van-Harten-FIPA)

Treatment and Expropriation articles in FIPA-like agreements, usually in the interest of the investor. We feel these examples are important enough that the government should be required to reassess the potential impact of the Canada-China FIPA on environmental, conservation, economic and other measures which will be vulnerable to investor-state disputes by Chinese companies and investors.

**Minimum Standards of Treatment (Article 4)**

1. Each Contracting Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with international law.

2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidenced by general State practice accepted as law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

The second point is an important feature of Canadian and U.S. investment treaties, designed to limit the possible scope of “minimum standards of treatment” as understood by a foreign investor. The problem for Canada is that arbitration panels are not required to interpret minimum standards of treatment in this way (i.e. in accordance with international law) way but have already looked elsewhere, to other investor-state disputes for example, for much broader definitions of fair treatment. The U.S. consumer group Public Citizen explains how this played out in a recent Central America Free Trade Agreement (CAFTA) investment ruling in Railroad Development Corporation (RDC) v. Republic of Guatemala.

RDC had won a private contract in 1997 to operate Guatemala’s rail system but over the years, the company’s performance went down considerably. A corridor linking Mexico and Guatemala was never completed, for example. In 2006, the government declared one of RDC’s contracts to be *leviso*, or “injurious to the interests of the state,” explains the Public Citizen briefing note. The concept is fairly common in Latin America, and Guatemala had used it more than a dozen times since 1928. Declaring a project to be *leviso* opens up a legal process through which a company can dispute the claim that a project is against the public interest. RDC was in the middle of this process when it filed an investor-state dispute under CAFTA, demanding $64 million in compensation for the impact of the *leviso* on the company image, contracts, line of credit, etc.

In that case:

---


The tribunal explicitly rejected arguments raised by Guatemala, the United States, El Salvador and Honduras that under Customary International Law (CIL), the tribunal must base its MST analysis on actual state practice. Instead, the tribunal relied on a definition issued by a tribunal in the North American Free Trade Agreement (NAFTA) Waste Management II award to find against Guatemala. The $11.3 million judgment in favor of RDC also ordered compound interest to be paid dating back to the government action RDC challenged. Thus, Guatemala must pay at least $2 million in interest in addition to the over $11 million penalty. Guatemala was also ordered to pay nearly $200,000 for RDC’s tribunal fees from the jurisdictional phase, in addition to its own tribunal fees.\(^\text{11}\)

The panel in this case found that fair and equitable treatment should go beyond international law as practiced by states themselves—remember the leviso process is customary law—and that governments must avoid “idiosyncratic” decisions, “lack of transparency,” or actions “in breach of representations made by the host State which were reasonably relied on by the claimant.”\(^\text{12}\) Public Citizen adds that arbitral panels “have generated theories of investor expectations that have led to awards being issued simply because governments have altered policies of general application in response to changing circumstances, such as financial crises, or in response to public demands.”\(^\text{13}\) They cite the cases Occidental Exploration and Production Co. vs. Ecuador, Tecmed vs. Mexico, and El Paso vs. Argentina as examples.

The Occidental case, in which the Ecuadorian government has been asked to pay nearly $1.8 billion plus legal fees to the U.S. energy firm, provides a sobering caution to Canada as it contemplates ratifying a bilateral investment treaty with China. In that case, Occidental breached a 1999 contract with Ecuador which granted the firm rights to explore and extract oil from a section of the Amazon with conditions, including that Occidental not portion off any of its claim to other companies. This was part of Ecuador’s energy laws designed to give the government control over who can invest in the sector.

But in 2000, Occidental ignored the contract (and the law) by auctioning off part of its Amazonian claim to an Alberta firm (AEC). A government audit in 2004 found that Occidental had not received proper government authorization for the transfer and the project was eventually seized. The U.S. firm went quickly to arbitration under a U.S.-Ecuador investment treaty. The panel award, released on October 5 this year, went further than the RDC case mentioned above to claim that fair and equitable treatment requires that “any penalty the State chooses to impose must bear a proportionate relationship to the violation which is being addressed and its consequences,” citing four investor-state cases where panels had also used proportionality in their deliberations.\(^\text{14}\) (Emphasis mine.)

It’s not difficult to imagine a situation where a Chinese firm claims a breach of Article 4 (Minimum Standards of Treatment) based on delays, cancellations or alterations to pipeline or tar sands projects.

\(^\text{11}\) Ibid
\(^\text{12}\) Ibid
\(^\text{13}\) Ibid
\(^\text{14}\) “Tribunal Slams Ecuador with Largest Ever Investor-State Penalty,” Public Citizen Eyes on Trade, October 23, 2012
considering the many public assurances from the Harper government about these projects moving ahead smoothly. “Idiosyncratic” moves by provincial governments—to seize a greater share of the benefits from these projects, for example, or to better regulate for environmental protection—could also violate the FIPA guarantees, despite Canadian assurances that these standards of treatment relate to international law only. In the end, it will always be up to an arbitral panel to make that decision, with expensive consequences.

**Expropriation (Article 10)**¹⁵

1. Covered investments or returns of investors of either Contracting Party shall not be expropriated, nationalized or subjected to measures having an effect equivalent to expropriation or nationalization in the territory of the other Contracting Party (hereinafter referred to as “expropriation”), except for a public purpose, under domestic due procedures of law, in a non-discriminatory manner and against compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation, or before the impending expropriation became public knowledge, whichever is earlier, shall include interest at a normal commercial rate until the date of payment, and shall be effectively realizable, freely transferable, and made without delay. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

The Canadian government has tried to give itself more policy flexibility in the China FIPA to decide environmental, public health and other regulations that would apply across the board, to all companies or investors in Canada. There is a general exemption (Article 33) for environmental measures, “provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment.” These measures are supposed to be justified provided they are:

(a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.¹⁶

---


However, just as the safeguards built into the article on minimum standards of treatment are insufficient, Canada is also vulnerable to investor claims against regulations on the grounds they are an indirect expropriation of profits, or potential future investment.

Canada has lost several high-profile NAFTA cases through arbitration panels finding the government had violated Article 1110 (Expropriation and Compensation) because of non-discriminatory environmental or other measures which are said to expropriate a portion of the investor’s investment, even where no government seizure of property has taken place as per the legal definition of expropriation in Canada. It’s important to note that Canada lost these cases despite a clause in NAFTA Chapter 11 (Article 1114) stating that, “Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.”

Two Canadian and one Mexican case under NAFTA illustrate the problem with the concept of regulatory (or indirect) expropriation and the real threats that this concept, and its enforcement through FIPAs and other investment treaties, poses to environmental measures as a result.

The first is the Ethyl Corporation investor lawsuit against Canada from 1997. For many years leading up to 1997, Ethyl Corp. was the sole supplier in Canada of MMT (methylcyclopentadienyl manganese tricarbonyl), a gasoline additive that contains a heavy metal (and suspected neurotoxin) that is still in production today. When the Liberal government of the day passed legislation restricting the import and inter-provincial transport of gasoline containing MMT, Ethyl Corp. invoked the expropriation clause in NAFTA and filed a $350-million claim. A preliminary tribunal report found against Canada, at which point the federal government repealed the MMT ban, issued an apology to the company and settled out-of-court with Ethyl for $13 million.

An unfortunately similar scenario played out recently in the Dow AgroSciences NAFTA investment dispute against a cosmetic pesticide ban in Quebec. The company filed a $2-million claim, citing violations of NAFTA’s Article 1105 (Fair and Equitable Treatment) and Article 1110 (Expropriation). The Harper government settled before an arbitral decision. Though no money was paid to Dow, like in the Ethyl Corp. settlement the government apologized to the firm, and the Quebec government was required to publicly state “that products containing 2,4-D do not pose an unacceptable risk to human health or the environment, provided that the instructions on their label are followed.”

Canada’s trade minister, Ed Fast, suggested that the settlement “confirms the right of governments to regulate the use of pesticides,” and that this right “will not be compromised by Canada’s participation in

NAFTA or any other trade agreement.\textsuperscript{20} Canadian trade and investment lawyers, who (it must be said) stand to benefit financially from investment claims under NAFTA and other treaties, have taken the same position as Minister Fast in opinion pieces supporting the FIPA with China. For example, Milos Barutciski and Matthew Kronby of Bennett Jones LLP, said in a recent \textit{Globe and Mail} column that some critics of the FIPA:

have asserted that its investor-state dispute procedure will open the door to Chinese investor claims that will overrule the decisions of democratically elected governments or expose Canadian governments to ruinous liability awards. Both of these claims are misguided.\textsuperscript{21}

The Canadian Environmental Law Association, commenting on the Ethyl Corp. case, made a more realistic assessment of how NAFTA affects the freedom of governments to regulate for environmental protection:

For all intents and purposes, NAFTA gives corporate interests a form of veto power over national public policy. Not surprisingly, Ethyl used it. As Dalton Camp wrote in the Toronto Star on July 29th 1998 this "is a bizarre episode in Canada's own history-a government bill approved by the Parliament of Canada has been vetoed by Ethyl Corp. of Virginia."\textsuperscript{22}

The second notable Canadian case related to expropriation is S.D. Meyers vs. the Government of Canada. This case involved claims under Article 1110 (expropriation and compensation) as well as Article 1105 (minimum standards of treatment).\textsuperscript{23} S.D. Meyers was a U.S. company involved with the disposal of PCB waste with operations in Canada. In 1980, the U.S. government banned the import of PCB waste, shutting the border to exports of PCBs from Canada.

The company lobbied the U.S. Environmental Protection Agency and received a temporary waiver from the ban but the waiver was quickly made redundant when Canada, acting on its commitments to the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, banned exports of PCB waste to the U.S. Two years later, a U.S. court revoked S.D. Meyers’ waiver. The company filed a NAFTA Chapter 11 dispute and a panel eventually awarded the company $6 million USD, which the Government of Canada had to pay, along with most of the legal costs.

A summary of the case on the International Investment Arbitration and Public Policy website (www.iiapp.org) explains how it “raised significant concerns about the impacts of investment arbitration on health and environmental regulations [and] that investors could threaten lawsuits to pressure

\begin{itemize}
\item \textsuperscript{21} “Investment agreement with China will benefit Canada,” November 2, 2012: http://www.theglobeandmail.com/commentary/investment-agreement-with-china-will-benefit-canada/article4840680/?cmpid=rss1
\item \textsuperscript{23} See the summary of the case on the International Investment Arbitration and Public Policy website: http://www.iiapp.org/media/cases_pdfs/SD_Myers_v_Canada.rev.pdf
\end{itemize}
governments to loosen environmental measures, including restrictions on the transport of hazardous waste.” The Canadian policy was, after all, the result of another treaty obligation to ensure that the management of hazardous waste could take place domestically. The investment itself (exporting PCBs to the United States) was illegal under U.S. law. Though the investment tribunal recognized that Canada had a legitimate reason to worry that allowing PCB exports to the U.S. would upset its Basel Convention obligations, the decision discounted these worries.

According to the IIAPP report, the tribunal in the S.D. Meyers case also made some questionable legal interpretations. For example:

it adopted an expansive approach to the concept of investment; the only investment made by the corporate claimant in the case was a loan to a Canadian company, Myers Canada, that was not owned by the claimant. The tribunal also awarded damages to the claimant simply for loss of anticipated market share in Canada and did not elaborate how the investor’s expectation of business opportunities in Canada could have survived the eventual closure of the U.S. border to PCB imports.24

Perhaps the most notorious NAFTA example of FIPA-like investment protections interfering with environmental policy is the 1997 Metalcad decision. In that case, a tribunal found that a local Mexican municipality had no right to deny U.S. waste company Metalcad the right to build a hazardous waste plant because of environmental reasons. The company was awarded over $15 million USD. Metalcad was not granted a local permit because it was refusing to clean up the existing toxic mess from a previous owner, but it started building its plant anyway. The U.S. firm also used the NAFTA investment claim to challenge the establishment by the Mexican state government of an ecological preserve on the site. In this case, legitimate local zoning decisions were interpreted by the tribunal to be tantamount to expropriation, a definition that was knocked down by a subsequent legal review of the arbitral award by a Canadian court. But the chief justice in that review still upheld most of the award.

Steven Shrybman of Sack Goldblatt Mitchell LLP explains in a 2001 opinion that the Metalcad case is important for two reasons:

First, it demonstrates the enormous breadth of NAFTA’s expropriation rule. Second, it shows the wide latitude international arbitral tribunals will be allowed to interpret NAFTA investment disciplines as they see fit. As the law now stands, Canadian governments at all levels are vulnerable to such claims for taking measures that would never be considered acts of expropriation under Canadian law.25

Given these examples of arbitral decisions related to legitimate environmental measures under existing Canadian investment treaties, it stands that the concerns raised with respect to potential disputes by Chinese firms under the proposed FIPA are reasonable and should be taken seriously. Unfortunately, the

24 Ibid
25 Shrybman, Steven. “A legal opinion concerning the potential impact of international trade disciplines on proposals to establish a public-private partnership to design, build and operate a water filtration plant in the Seymour Reservoir,” May 2001: http://cupe.ca/updir/seymour.pdf
Initial and Final EAs for the FIPA make no mention of these cases. The reports simply brush aside any investor-state case law to suggest that FIPAs sufficiently protect Canada from investor challenges to public policy, environmental or otherwise, that treats foreign and national investors the same.

This oversight becomes even more dangerous as the current government lowers environmental standards and removes regulations in an effort to speed up resource, mining and energy-related infrastructure projects in order to attract investment to those sectors. Not only is expressly discouraged in the China FIPA, it also provides a new, lower expectation for Chinese and other foreign investors. Any future attempt by a province or the federal government to strengthen environmental rules (ex. through a carbon tax, or by tightening up water-taking permits for tar sands production) would be extremely vulnerable to investor-state disputes claiming expropriation and a violation of minimum standards of treatment.

SUMMARY

In summary and conclusion, the Final Environmental Assessment of the Canada-China FIPA is insufficient from a procedural perspective since it denies Canadians a meaningful opportunity to study and comment on the likely environmental impacts of the treaty. It also fails to acknowledge the importance of the qualitative and quantitative changes in Chinese investment into Canada, which should have sparked the second stage in the EA process, which is the production of a draft report between the Initial and Final EAs.

Finally, the EA is wrong to dismiss the threats to legitimate, non-discriminatory environmental, conservation, economic and other public measures or decisions from the substantive investment protections in the FIPA, such as those found in the articles on Minimum Standards of Treatment and Expropriation. A proper EA would consider actual investor-state case law—the actual decisions of arbitrators—before claiming, without evidence, that Canada’s right to regulate for environmental protection is safeguarded in this or other FIPAs.

Most importantly for the government, failure to consider how recently the public became aware of the FIPA, with its 31 years of protection for often controversial investments in resource and energy projects, has undermined public confidence in the EA process and the treaty itself. That confidence could be regained through holding another more comprehensive environmental assessment of the FIPA with a much more active public engagement. Ratification of the FIPA with China must be postponed until this new assessment has taken place.

---

26 Article 18.3 of the FIPA (Consultations) states: “The Contracting Parties recognize that it is inappropriate to encourage investment by waiving, relaxing, or otherwise derogating from domestic health, safety or environmental measures.”