

Tibet and the Canada-China Free Trade Agreement

WORKSHOP REPORT

In partnership with the University of British Columbia's Himalaya Program, the Canada Tibet Committee (CTC) hosted a workshop on May 18, 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 British Columbia's (UBC) Himalaya Program, the Canada Tibet Committee (CTC) hosted a workshop on May 18, 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, UBC undergraduate and graduate students, professors, business people, and general public, including the members of the Tibetan community in British Columbia.

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 previous workshop was held at the University of Ottawa in March 2018 and the series will conclude with workshops in Toronto and Montreal. Workshop outcomes will inform revision of the background paper to be published in the fall of 2018.

SUMMARY OF PANEL PRESENTATIONS

Opening words of welcome and acknowledgement that the forum was taking place on the un-ceded territories of Musqueam people were provided by Sara Shneiderman, Associate Professor in the Department of Anthropology and the School of Public Policy and Global Affairs/Institute of Asian Research, and Himalaya Program Research & Outreach Coordinator, UBC.

Mati Bernabei, representing the Board of Directors of Canada Tibet Committee, introduced the discussion panel and thanked the Himalaya Program for cohosting the workshop and providing the venue at UBC.

Presentation summaries:

- **KUNCHOK YAKLHA:** Research Coordinator for Canada Tibet Committee. Presentation Topic: The contexts, purposes, and background to Canada Tibet Committee's project exploring the Canada-China Free Trade Agreement (FTA) and human rights.

Kunchok Yaklha provided an overview of the CTC's work on economic rights in Tibet, including past research on Canadian investment in Tibet and subsequent efforts to promote corporate accountability through the OECD National Contact Point within the Department of Foreign Affairs. Subsequently, in 2016 the Government of Canada announced a consultative process for a potential free trade agreement with China and the CTC actively engaged that process in cooperation with the Canadian Coalition on Human Rights in China (a grouping of NGOs and trade unions). The Coalition and the CTC did not oppose the FTA in principle but argued that human rights must be considered before formal negotiations

begin and that this purpose would best be realized by carrying out a “human rights impact assessment” (HRIA).

Ms. Yaklha emphasized that the CTC does not view discussion around the FTA as a debate about trade vs. human rights. Rather, she said, the question is how to identify human rights risks of increased trade and what trade agreement approaches would minimize those risks.

As an example of why Tibet requires innovative approaches, Ms. Yaklha described a current initiative by the Government of Canada to create an *Extractive Sector Ombudsperson* who would hear and investigate complaints from community representatives in countries where Canadian mining companies are active. While this is a welcomed initiative and positive step by our government, Ms. Yaklha argued that it will not help Tibetans who cannot travel to Canada to give testimony and because the Chinese government does not grant foreign governments access to Tibet.

The Chinese government claims that economic conditions for Tibetans are improving but Ms. Yaklha said that UN statistics show that Tibet remains the poorest region of China. Evidence compiled from Canadian economist Dr. Andrew Fischer’s research on development in Tibet indicates that Tibetans have not benefitted from Chinese policies and are in fact marginalized and excluded despite growth of GDP. She described some specific areas of vulnerability as: construction/land tenure; clean technology/environmental protection; technology transfer /surveillance; agriculture/food security; labour mobility/discrimination.

In conclusion, Ms. Yaklha reminded participants that the Government of Canada is currently focused on a process of reconciliation with indigenous people in Canada and that this principle should apply in international policy as well as in domestic policy. We must not allow a double standard to prevail in our international relationship with China, or any country.

- **MICHAEL BUCKLEY:** Author and documentary filmmaker. Presentation Topic: Impact of mining and industrial development on the people and the environment of Tibet.

Michael Buckley explained that there are many issues of concern in relation to industrial development, the natural environment, and Tibetan way of life. The mining industry encompasses all the issues, including the diversion of water, dam building, and loss of grasslands. The challenges have amplified since the Gormo-Lhasa railway was completed in 2006.

The Chinese government tends to blame climate change for the loss of grasslands and habitat destruction but actually, mining is more to blame than climate change. Due to cultural taboos, Tibetans did not engage in substantial mining in the past despite vast reserves. Now mountains sacred to Tibetans are being mined. One method of mining is mountain top removal which destroys the entire mountain and surrounding area. Tibetans have been protesting against mining at these sites at great personal risk, said Mr. Buckley.

In order to acquire the land for the mine sites, the government simply takes the land from the nomads who have grazed yaks in the area for thousands of years. There is no right to object. Approximately 54% of the Tibetan Autonomous Region (TAR) is currently designated as a national park or nature reserve. If the area was actually treated as a national park, it would make Tibet the largest protected area in the world. Unfortunately evidence shows us otherwise. Satellite images and photos taken by witnesses are evidence of active mining within the so-called National Parks. There is also photographic evidence of poor health and safety practices, such as at an asbestos mine where labourers work unprotected within the asbestos dust.

The negative effects on water supply are substantial. Effluent from mines flows into rivers, affecting livestock and drinking water. Pollution affects downstream populations, including in countries downstream, across international borders.

There are substantial undeveloped reserves of shale-gas, shale-oil and oil sands within China. These reserves require tremendous amounts of water to extract—and that water will most likely come directly from Tibet's rivers, via diversion. Chinese state-controlled companies have bought stakes in several Alberta-based corporations with technical expertise in oil-sands extraction. The Anglo-Dutch corporation, Shell, has a billion-dollar contract for fracking (shale-gas extraction) in the Sichuan Basin. A Chinese government website posted plans to divert large amounts of water from Tibet's rivers to the northwest. The only reasonable explanation for diverting that much water would be for use in the mining extractive industry.

Tibet is believed to have the world's fourth-largest reserves of Lithium, which is being actively mined. The demand for lithium has expanded substantially in recent years mainly due to the increased demand for electric vehicles. There is a case to be made for identifying sources of “conflict lithium”, where lithium extraction is taking place in unethical ways, but there is currently no process for tracing the source of the lithium in products that we buy.

Canadian companies have participated in the extractives industry in Tibet. Canadian technology and expertise was used to build railway tracks to Lhasa on permafrost, while the actual train cars and telecommunications technology were supplied by Canadian companies Bombardier and Nortel respectively. In the past there were several Canadian mining companies actively mining Tibet or engaged in the development of mines in Tibet. These have now been sold with the exception of the Vancouver-based China Gold International Resources which is actually a subsidiary of a Chinese state-owned enterprise. In Mr. Buckley's opinion, China is not interested in Canadian companies having an actual presence in Tibet, but it does require Canadian expertise and technology. Once Chinese joint-venture partners gain access to Canadian technological expertise, the Canadian companies are squeezed out.

- **PITMAN B. POTTER:** Professor of Law and Director of Chinese Legal Studies at the Peter A. Allard School of Law, UBC. Presentation Topic: Integrating trade and human rights policy.

Prof. Potter opened his remarks with a word of caution regarding managing expectations of the potential impacts of advocacy directed specifically toward government. He explained that formal government consultations with academics, NGOs etc. often have limited direct effect on policy behaviour. However, these advocacy initiatives do have an impact on public discourse at large, which has a stronger effect on policy and political decisions. Engaging public discourse and building public awareness are vital he said.

Prof. Potter provided a summary of the goals of an FTA. He indicated that China's economy is fragile and the country currently needs exports. But, the Chinese government also wants to shift to a domestic demand economy. Canada's imports from China (consumer durables, electronics, etc.) are funded by discretionary budgets and may not be a reliable source of income for China. China wants access to Canadian resources (forestry, mining, energy) but in Prof. Potter's opinion Canada should not lock itself into an FTA that binds it to unsustainable conditions associated with China's current resource-oriented economy. Rather, an FTA can stimulate the transition to value-added forms of trade, such as technology, services, etc.

There are possible advantages for Canada to engaging in a well-framed FTA. For example, Canada's positioning could be improved regarding NAFTA, the TPP, and a Japan FTA. This approach might be termed, "coordinated bilateralism" (a very imperfect replacement for robust multilateralism).

In addition, it is important that Canada complete a Human Rights Impact Assessment (HRIA), and embrace the Free Informed Prior Consent (FPIC) process whenever doing development projects in partner countries. When clarifying the meaning and feasibility of a Human Rights Impact Assessment (HRIA), Prof. Potter cited the example of the Canada-Columbia FTA, which included a HRIA, and set an important precedent. But, he also pointed to problems with the Canada-Columbia example. There is a strong argument for completing a HRIA, but the process must include an effective oversight mechanism. Prof. Potter also suggested that discussions about the HRIA should take place in advance of drafting treaty language and that the text of the treaty should be written bearing in mind the fact that a HRIA is pending. Then, once an initial draft of the treaty is available, work can be done to complete the HRIA.

When engaging in trade agreements, Canada should include precautionary principles with a focus on doing no harm, include principles of FPIC, and do not get into trade agreements that will do harm to indigenous peoples. The focus of this workshop and overall initiative is the case of Tibetans, but it is important to also include the Uyghurs in Xinjiang. In many ways the situation in Xinjiang is worse than in Tibet, but Uyghurs get much less global attention and support.

Prof. Potter emphasized that Canada must understand Chinese negotiating tactics that often start with China taking an extreme position (e.g. access to the entire Canadian economy, no discussion of human rights), such that the counterpart feels forced to make concessions just to bring the negotiations back to a middle ground. China also tends to make nominal commitments, but then extracts further concessions to support the fulfilment of the original commitments. In contrast, Canada is accustomed to trading/investment partners that make reasonable demands, and "get to the Yes" more smoothly. In this context, Canada should be careful about rushing (take time and care when negotiating the FTA), avoid artificial timelines, and avoid state planning approaches (e.g. "double trade in XX years"). It is better, he said, to commit to removing trade barriers, and let trade follow market conditions and incentives.

When negotiating with China, several key factors should be considered: *Treaty Performance*; *Human Rights*; and, *Reciprocity*. On treaty performance, it is important to differentiate between treaty “performance” vs “compliance” and look to China’s approach to existing treaties and agreements. For example, China has filed reservations to the International Labour Organization conventions provisions on independent labour unions and collective bargaining, such that China’s failure to provide these protections is not out of compliance with the ILO conventions but does indicate that China’s performance is outside the expected ILO norms. With the GATT/WTO, there have been a variety of issues with China, including subsidies and dumping where the technical legal issues of compliance differ from the normative expectations about performance. The Canada-China FTA could be viewed as an effort to reassert GATT/WTO standards, induce improved human rights performance, and ensure appropriate reciprocity for Canada. This should involve staged commitments based on performance benchmarks.

Prof. Potter suggested that the framing of human rights language not be limited to the political and civil rights where PRC abuses have been well documented, but should also include economic and social standards, where China’s performance has also been weak. As indicated by UN Special Rapporteur Philip Alston’s recent report, poverty reduction in China has been accompanied by growing inequality which is exacerbated by repressive policies of social control. When responding to comments from PRC diplomats rejecting the inclusion of labour rights or other human rights in an FTA, Canadian negotiators should understand that trade is managed from China’s Ministry of Commerce not the Foreign Ministry. Hence, statements by Foreign Ministry officials (Ambassadors and the like) should be seen as general negotiating tactics rather than the views of FTA negotiators.

China’s performance on human rights has been poor. The country is in violation of treaties it has signed (See comments by Alex Neve at CTC’s Ottawa Workshop and Potter’s 2014 Treaty Performance book.). The government has avoided making commitments on human rights but has continued discussions, taking a position of agreeing to disagree (Li-Trudeau in 2016). China adamantly refuses to allow inclusion of “domestic affairs” in agreements dismissing human rights as “political” rather than trade-related. In cases when commitments have been made (e.g. special rapporteur visits etc.), further concessions were then extracted to support the fulfilment of the original commitment. China has not been receptive to Canada’s approach to human rights and labour relations policies.

Integrating Trade and Human Rights

In response to the CTC Draft Report, and the Ottawa workshop summary, Prof. Potter noted that the report focuses on ICCPR (International Covenant on Civil and Political Rights), and ICESCR (International Covenant on Economic, Social, and Cultural Rights). China signed ICCPR in 1998, and promised to ratify, but not yet done so. China ratified ICESCR in 2001. These are essential standards that China has accepted. Canada should consider two additional perspectives, anti-discrimination and self-determination.

- a) Anti-Discrimination. Prof. Potter suggested also including consideration of the UN Covenant on the Elimination of All Forms of Racial Discrimination, ratified by China in 1981. This Covenant provides a useful set of principles on non-discrimination, including equal treatment, security of



person, freedom of movement, freedom of thought and expression, etc. Although enforcement mechanisms are limited (complaints are made through referrals to a UN Committee for transmission to China, and China declaration on Article 22 on ICJ dispute resolution.), China's negotiating approach often emphasizes reliance on principles (e.g., mutual benefit, non-interference etc.) and is sensitive to principled arguments. Article 5 specifies the wide scope of non-discrimination obligations articulated within the covenant (refer to the Appendix of this report). Canada might usefully emphasize these principles to improve treatment of minority nationalities in China such as Tibetan, Uyghurs, and Mongolians.

b) *Self-Determination* The case for self-determination should be addressed. On that theme, Prof. Potter pointed to the importance of paying attention to language and terminology changes for insight into shifting directions in Chinese policy. For example, the Chinese government's shift in terminology from "minority nationalities" to "ethnic minorities" is significant. Prof. Potter suggested referring to the Charter of the United Nations for principles in support of self-determination. The following Articles are relevant to the Tibetan case:

- Article 1: "Purposes of the United Nations . . . To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples
- Article 55: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples," the UN shall promote . . . "c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Additional assertions on the right to self-determination are found within the ICESCR, ratified by China in 2001:

- Article 1.1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

China relies upon the Charter of the United Nations to emphasise its state sovereignty: For example:

- NB: 2009 PRC Human Rights White Paper: "China, as always, upheld the basic tenets and principles stipulated in the Charter of the United Nations . . .".
- NB: 2012 PRC Veto of UN Security Council Resolution on Syria: "What China vetoed were violations of the basic principles of the Charter." Qu Qing, President China Institute of International Studies.

However, China appears to ignore aspects of the Charter that refer to self-determination and non-discrimination. The UN Charter can be useful to remind China of its obligations on non-discrimination and self-determination.

Prof. Potter suggested resources that may prove useful in developing mechanisms for integrating trade and human rights including the Asia Pacific Dispute Resolution Project and research published by the Asia Pacific Foundation (see appendix).

Reciprocity

Prof. Potter suggested that in its negotiations with China, Canada should insist upon appropriate reciprocity of access, in line with China's access to Canada. This includes access to markets and natural resources, access to locations (e.g. there is currently a ban on foreign access to Tibet), and access to information on markets and human conditions. But, Canada should expect challenges from China when negotiating for this form of reciprocity.

Approaches to FTA Going Forward

In the development and negotiation of an FTA, Prof. Potter emphasized that adhering to the "3 Ps" approach is important (preparation, patience, and persistence): *preparation* - deal with China as it is, not as we would like it to be. Read what the PRC regime says and pay attention to what it does both in Tibet and generally including in Xinjiang and link with assertions on Tibet; *patience* – do not be hurried, there is no rush and the party in a hurry is usually in the weaker position; *perseverance* - apply consistent, polite, principled, firmness while keeping Canada's interests in the forefront. Canada is diminished as a country and society by tolerating complicity in human rights abuses elsewhere. There are links between abuses of international law/principles on human rights, and abuses of law/principles on business. Do not be bullied. Canada has much leverage to bring to the table in terms of approval and legitimacy.

As a closing piece of advice, Prof. Potter stated that Canada should be cautious against exporting any particular ethical model. Rather, Canada can provide examples of approaches that work here and then "let the chips fall where they may". But, Canada can expect tension in China's response because the Chinese government does not want the chips to "fall where they may". Canada cannot, and should not, impose or attempt to force China to copy Canada, but we can encourage discussion. Canadians should not underestimate Chinese people. Within China many people have as vigorous a perspective on human rights as people in Canada, but they are not living in a context where they can speak openly about these issues.

- TSERING SHAKYA holds the Canadian Research Chair in Religion and Contemporary Society in Asia at the Institute for Asian Research, UBC. He is co-lead of the Himalaya Program and currently serves as the President of the International Association of Tibetan Studies. Prof. Shakya launched discussion about the presentations.

Prof. Tsering Shakya reflected upon the issues raised by the previous speakers and provided further examples and insights that illuminated the importance of the issues. He emphasized that Canada has a

long history of connections and relations with China and Tibet and thus Canada can be influential. In terms of trade, beyond industrial development, there are potential opportunities for relationships in media, scholarship, and in research. Canada must enter into these relationships wisely. It is concerning that many people assume that Canada is a weaker power. This is not the reality. China's negotiation tactics typically include portraying itself as a strong power, but Canada is also strong, in particular as source of knowledge, technology, and skills. Canada is not in deficit.

In the 1980s, when Tibet was opened to outside visitors, the Chinese government's idea of building a railway to Lhasa included interactions with Canada to solve technological challenges. The completion of construction of the railway in 2006 was followed by acceleration in mineral resource extraction. In the mining industry, the appropriation of common land for illegal mining is a major concern. Currently, most mines in China are in national parks, and there is little, if any, scrutiny of the work. If Canada is involved in mining operations it must demand access to the sites in order to monitor the operations it's involved with. In the past, Canada's involvement in industrial development, such as mining, seems to have been welcome during project development phases. But, once those industries became profitable the Canadian corporations were blocked from further involvement. These experiences offer lessons for Canada: be wary of being utilized only as a source of capital and technical expertise while being denied access to downstream benefits.

With increased modernization and industrialization, Tibet is shifting from a rural to an urban economy. But, with this shift, many Tibetans are becoming urban peasants. Nations and foreign corporations that engage in trade must not do so in ways that diminish local industry, economy, and way of life. For example, barley and wool have traditionally produced by Tibetan nomads but these products are now being imported from Canada and New Zealand. Barley has traditionally been a staple food crop for Tibetans and a linchpin in rural economy. But, a major modern consumer of barley, Lhasa Beer, imports barley from Canada to its factory in Lhasa rather than purchasing locally sourced barley. Thus, Canadian exports are implicated in diminishing the viability of the local barley trade in Tibet. Additionally, wool is now imported from New Zealand to make carpets because locally sourced Tibetan wool is more expensive. Nomads are being moved off their land to settlements and thus disenfranchised, in part because the products they produce have no commercial value locally, having been replaced by imports.

China's strongest claim to having improved life for Tibetans is economic progress. The economy has indeed improved everywhere in China but Tibet remains the most impoverished region, at the bottom of all social index measures. China and others have rushed into signing UN covenants on Human Rights and on the Rights of Indigenous People, not because they want to uphold those principles, but to obstruct criticism. These covenants lack enforcement mechanisms so having signed them does not hold signatories to account for following through in practice.

Nonetheless, China is mindful of human rights accusations. There is a common perception that China is immune to influence from outside, but this is not the case. China is significantly impacted by what happens elsewhere, including in the West. For example, China's labour laws were copied from the British. There are many people from China who have moved away, for example to Vancouver, as immigrants or students. While here (outside of China), many become more conscious of global issues,

and concerned about things such as the environment. They take this heightened consciousness back to China.

Dr. Shakya concurred with Dr. Potter's "PPP" approach, emphasizing the importance of the first "P", *preparation*. Before finalizing a trade agreement, it is vital that Canadians develop greater awareness and understanding of the Chinese Government's approach to international relationships, and to contexts within Tibet.

CONCLUSION

In conclusion, the workshop moderator welcomed additional comments and recommendations from participants. Comments can be sent to Mati Bernabei at mbernabei@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 or that reflect their research on the issues presented. The list is in alphabetical order by title).

Advancing Canada's Engagement with Asia on Human Rights: Integrating Business and Human Rights, Asia Pacific Foundation, 2013

http://www.asiapacific.ca/sites/default/files/filefield/human_rights_taskforce_v3.pdf.

Asia Pacific Dispute Resolution (APDR) Project, University of British Columbia, 2017

<https://circle.ubc.ca/2017/08/31/asia-pacific-dispute-resolution-apdr-project/>

Assessing Treaty Performance in China: Trade and Human Rights, Pitman B. Potter, UBC Press, 2014

<https://www.ubcpres.ca/assessing-treaty-performance-in-china>

Beyond development and diversity (interview with Tsering Shakya), Himal Magazine, June 2018

<http://himalmag.com/beyond-development-and-diversity-historian-tsering-shakya-interview/>

Charter of the United Nations, 1945 <http://www.un.org/en/charter-united-nations/>

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>

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>

International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

Meltdown in Tibet: China's Reckless Destruction of Ecosystems from the Highlands of Tibet to the Deltas of Asia, Michael Buckley, St. Martin's Press, 2014 <https://www.amazon.ca/Meltdown-Tibet-Destruction-Ecosystems-Highlands/dp/1137279540>

The Disempowered Development of Tibet in China: A Study in the Economics of Marginalization, Andrew M. Fischer, Lexington Books, 2013 <https://www.amazon.ca/Disempowered-Development-Tibet-China-Marginalization/dp/0739134388>

The Dragon in the Land of Snows: A History of Modern Tibet Since 1947, Tsering Shakya, Penguin Books, 2000 <https://www.amazon.com/Dragon-Land-Snows-History-Compass/dp/0140196153>

The Canada-China Free Trade Agreement and Tibet

Discussion Forum co-hosted by Canada Tibet Committee (www.tibet.ca)
and the Himalaya Program, UBC (<https://himalaya.arts.ubc.ca/>)

Friday May 18, 2018, at the Liu Institute for Global Issues, Multipurpose Room

Program:

9:30am – Welcome and Introductions

- Sara Shneiderman – *Himalaya Program, UBC*
- Mati Bernabei – *Canada Tibet Committee (CTC)*

9:40am to 10am:

- Kunchok Yaklha - *Research Coordinator, Canada Tibet Committee*
 - Overview of the contexts of the project and the *Draft Background Paper*

10:05am to 10:25am:

- Michael Buckley - *Author and filmmaker*
 - Impacts and issues associated with mining and industrial development in Tibet

10:25am to 10:40am

- Break

10:40am to 11:00am

- Pitman Potter - *Professor of Law and Director of Chinese Legal Studies, Peter A. Allard School of Law, UBC*
 - Integrating human rights and trade policy

11am to 12pm

- Tsering Shakya - *Canadian Research Chair in Religion and Contemporary Society in Asia at the Institute for Asian Research, UBC*
 - Discussant
- Q & A