

Canada-China Trade Consultations
Global Affairs Canada, Trade Negotiations Division – Asia

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Summary: This paper is a preliminary screening of the Canada-China Free Trade Agreement and its potential human rights impact in Tibet. It introduces the local context, describes how Tibetans are particularly disadvantaged within the Chinese economy, and highlights specific trade objectives that raise concerns. The paper offers recommendations and calls for a full human rights impact assessment.

¹ The Canada Tibet Committee thanks the many individuals who provided comments and guidance during the writing of this paper including: Gabriel Lafitte; Greg Walton; Sophia Woodman; Robbie Barnett; Andrew Fischer; and Kunchok Yaklha.

TABLE OF CONTENTS

Introduction	page 3
• Progressive trade must include human rights	..... 3
• China’s human rights commitments	..... 4
• Canada’s human rights commitments	..... 5
Tibetan Vulnerability	..... 6
• The human rights deficit	..... 6
• Stalled political dialogue	..... 7
• Exclusion amidst growth	..... 8
Canada-China Trade and Human Rights in Tibet	..... 10
• Stakeholder engagement/consultation	..... 10
• National treatment	..... 11
• Market access	..... 12
• Labour rights & mobility	..... 16
• Investment and corporate social responsibility	..... 17
• Agriculture and food	..... 18
Conclusion	..... 19
• Recommendations	..... 20

Note on terminology:

The word “Tibet” is often used in reference to the Tibet Autonomous Region (TAR) of China. In fact, the TAR – which was established in 1965 - is only one of three provinces in historical Tibet: Kham, now incorporated into the western mountainous region of Sichuan, the northwestern tip of Yunnan and parts of Qinghai; Amdo, now comprising most of Qinghai and a western part of Gansu; and U-Tsang, now primarily the TAR. Outside the TAR, historical Tibetan regions where Tibetans live have, in large part, been designated as “Tibetan Autonomous Prefectures” or “autonomous counties” in accordance with the minority nationality policy of the Government of China. The TAR itself includes only about half of the total number of six million Tibetans in present-day China. For the purposes of this report, the word “Tibet” will be used in its broader historical sense and TAR will indicate only central Tibet (U-Tsang).²

Tibet’s landmass encompasses approximately 2.5 million square kilometres. The TAR encompasses 1.2 million square km., slightly smaller than the Province of Quebec. Often referred to as the “roof of the world”, Tibet’s elevation averages 4,500 meters (14,800 ft).

² *Poverty by Design: The Economics of Discrimination in Tibet*, Andrew M. Fischer, Canada Tibet Committee, 2002
http://tibet.ca/_media/PDF/PovertybyDesign.pdf

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

The Universal Declaration of Human Rights, Article 28

INTRODUCTION

Canada's relationship with Tibet can be traced back to 1895 when Canadian missionary Dr. Susie Rijnhart became the first western woman ever to reach the remote kingdom. Years later, she died in Tibet but not before writing what is likely the first Canadian eye-witness account of a country that was self-governed and that enjoyed a distinct cultural, economic, and political life.³

Half a century later, as Chinese forces solidified control in Tibet, Canada supported three UN General Assembly resolutions between 1959-1965 that highlighted violations of the fundamental rights and freedoms of the Tibetan people, including their right to self-determination.⁴ In 1970, Prime Minister Pierre Trudeau agreed to resettle the first Tibetan refugees in Canada following a request from His Holiness the Dalai Lama. In 2006, the Dalai Lama was awarded honorary citizenship of Canada. Over the years, Canada has steadfastly defended human rights in Tibet through bilateral exchanges, at the United Nations, and by providing financial assistance both inside Tibet and within the diaspora.

The announcement of negotiations for a Canada-China Free Trade Agreement (FTA) has been met with mixed feelings by the Tibetan community in Canada. While enhanced Canadian presence in Tibet might provide new opportunities to promote human rights, Tibetans fear that more trade with China is likely to entrench existing discrimination and inequality.

This paper is a preliminary screening of the Canada-China Free Trade Agreement and its potential human rights impact in Tibet. It introduces the local context, describes how Tibetans are particularly disadvantaged within the Chinese economy, and highlights specific trade objectives that raise concerns. The paper offers recommendations and calls for a full human rights impact assessment.

- **“Progressive trade” must include human rights**

The Government of Canada's commitment to promote a “progressive trade” strategy that is reflective of Canadian values invites a re-evaluation of the role human rights should play within economic policy development.

³ *With the Tibetans in Tent and Temple*, Susie C. Rijnhart, Asian Educations Services, New Delhi, 1904

⁴ UN General Assembly Resolutions 1353 (XIV) 1959, 1723 (XV1) 1961, 2079 (XX) 1965

There is broad support for such an approach. Numerous academic studies have acknowledged that while there is no inherent conflict between trade and human rights, the concept of social obligation requires that all government activities, including trade, respect human rights and decrease inequality. Trade policy expert and former Canadian diplomat Prof. Robert Howse wrote that “when properly interpreted and applied, the trade regime recognizes that human rights are fundamental and prior to free trade itself.”⁵

In response to the growing momentum for improved human rights due diligence in economic policy, in 2011 the United Nations Human Rights Council adopted *Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements*.⁶ The Guiding Principles describe the objective of human rights impact assessments (HRIA) as a means for States “to ensure that the trade and investment agreements they conclude are consistent with their obligations under international human rights instruments.” Subsequently, several UN treaty bodies and special procedures called upon states to conduct HRIA of their trade agreements.⁷

In Canada, the Asia Pacific Foundation has also recommended human rights impact assessments of trade agreements. In a 2013 report, the APF suggested that “in concluding trade and investment treaties in Asia, the Government of Canada should assess and publicize the potential impact of these agreements on human rights development in those countries.” And it went further to suggest that the government “provide assistance to communities to engage human rights impact assessment.”⁸

- **China’s human rights commitments**

The Government of China has ratified more than twenty human rights treaties including five of the seven core human rights treaties, including the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), but not its optional protocol which offers a mechanism for complaints.⁹ China has signed, but not ratified, the *International Covenant on Civil and Political Rights* (ICCPR). Although signature alone does not impose binding obligation, it does indicate

⁵ *Protecting Human Rights in the Global Economy*, Robert Howse and Makau Matua, Rights & Democracy, 2000 https://www.iatp.org/files/Protecting_Human_Rights_in_a_Global_Economy_Ch.htm

⁶ *Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements*, UN Human Rights Council, 2011 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf

⁷ For example: the Committee on Economic, Social and Cultural Rights; the Committee on the Rights of the Child; the Committee on the Elimination of Discrimination Against Women; the Working Group on Business and Human Rights; and the Special Rapporteur on the Right to Adequate Food.

⁸ *Advancing Canada’s Engagement with Asia on Human Rights*, Asia Pacific Foundation of Canada, 2013, p25, <https://www.asiapacific.ca/research-report/advancing-canadas-engagement-asia-human-rights>

⁹ The five core human rights treaties ratified by China are: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1980; Convention on the Elimination of Racial Discrimination (CERD), 1981; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1988; Convention on the Rights of the Child (CRC), 1992; the International Covenant on Economic, Social and Cultural Rights (ICESCR), 2001

that the state will refrain in good faith from actions that violate the spirit and purpose of the treaty.¹⁰

China regularly submits reservations when it ratifies treaties, meaning that it does not accept all obligations imposed by the treaty. For example, China maintains a reservation to article 8 of the ICESCR with respect to labour rights, and to article 20 of the Convention on Torture related to monitoring procedures.¹¹

Even when ratified, the domestic status of international treaties in China remains unclear. Although human rights were explicitly recognized in its constitution in 2004, inclusion does not have the same implications for domestic legislation in China as it does in countries where the constitution is a legal document rather than a statement of principles. Moreover, in recent years China has adopted domestic legislation that is potentially dangerous for human rights defenders, including the 2015 Security Law, the 2016 Management of Foreign NGOs Law, the 2016 Counter Terrorism Law, and the 2016 Cyber Security Law.¹² Conversely at the international level, the Government of China is vocal in expressing its commitment to human rights as seen in numerous White Papers published since 1991 and its cooperation with several “corporate responsibility” initiatives related to Chinese foreign investment.¹³

- **Canada’s human rights commitments**

Canada has ratified six of the seven core human rights treaties including both the ICCPR and the ICESCR.¹⁴ Although Canada, like China, has yet to ratify the optional protocol to the ICESCR, it accepts the authority of treaty monitoring bodies to hear complaints from individual Canadians under the ICCPR and the Convention Against Torture.

In 1982, Canada adopted its *Charter of Rights & Freedoms* which is entrenched in the Canadian constitution. The Charter endows Canadians with specific rights including free expression, equality, minority language education, mobility, and the protection of fundamental freedoms. It does not however, include economic, social and cultural rights.¹⁵ The Charter allows individuals

¹⁰ UN Fact Sheet “Understanding International Law”, 2011, https://treaties.un.org/doc/source/events/2011/Press_kit/fact_sheet_1_english.pdf

¹¹ *Measuring State Compliance with International Human Rights Standards: A Legal Framework-China*, Antonio José Almeida, Rights & Democracy, 2006. Copy on file

¹² “Canada and major powers tell China its new laws go too far”, *Globe and Mail*, March 1, 2016, accessible at <http://tibet.ca/en/library/wtn/13389>

¹³ *Corporate Responsibility and Sustainable Economic Development in China*, US Chamber of Commerce, 2012, https://www.uschamber.com/sites/default/files/legacy/international/files/17296_China%20Corp%20Social%20Responsibility_Opt.pdf

¹⁴ The exception is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

¹⁵ The Province of Quebec has adopted its own *Charte des droits et libertés de la personne*, which includes ESCR.

to seek judicial remedy when rights are violated. In addition, the courts may strike down any Canadian law if it is deemed to violate the Charter.¹⁶

Canada cooperates with various initiatives designed to promote corporate social responsibility (CSR) at home and abroad including the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the IFC Performance Standards on Social and Environmental Sustainability, and others. Canada has adopted a strategy to enhance CSR in the extractive sector and that strategy is understood to also guide company behaviour in other economic sectors.¹⁷ Although the strategy includes the application of penalties for companies that refuse to participate in the Canadian review process for the OECD Guidelines, it does not offer access to justice in domestic courts for foreign nationals whose human rights have been harmed by the activities of Canadian companies in their communities.¹⁸

TIBETAN VULNERABILITY

Within China, Tibetans are among the most vulnerable in terms of human rights, prosperity, and opportunity. In other words, they are under a constant human rights assault, experience the highest levels of poverty in China, and face discrimination when seeking to participate in economic activity.

- **The human rights deficit**

The U.S.-based organization Freedom House has listed Tibet as the second “least free” place in the world following only Syria.¹⁹ Lack of political freedom limits the rights of Tibetans to be fully informed, to participate in decision-making processes, and to freely express dissent.

With respect to economic and social rights, the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, reported following his recent mission to China that the plight of Tibetans is “highly problematic” and that “most ethnic minorities in China are exposed to serious human rights challenges, including significantly higher poverty rates, ethnic discrimination and forced relocation”.²⁰

¹⁶ *Your Guide the Canadian Charter on Rights & Freedoms*, Government of Canada, <http://canada.pch.gc.ca/eng/1468851006026#a7>

¹⁷ See *Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractive Sector Abroad* <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>

¹⁸ This weakness was highlighted by the UN Committee on ESCR in its concluding observations following Canada’s periodic review in 2016. See http://www.etoconsortium.org/nc/en/main-navigation/library/documents/detail/?tx_drblob_pi1%5BdownloadUid%5D=177, para 16

¹⁹ *Freedom in the World 2016*, Freedom House, <https://freedomhouse.org/report/freedom-world/freedom-world-2016>

²⁰ *Report of the UN Special Rapporteur on extreme poverty and human rights on his mission to China*, UN Human Rights Council, March 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/076/79/PDF/G1707679.pdf?OpenElement>

Human rights monitoring in Tibet is limited by the lack of freedom and by restricted access for international observers. For example, China officially invited the UN High Commissioner for Human Rights in 2008 but the visit has not yet taken place. Similarly, the UN Special Rapporteur on Freedom of Religion has been in lengthy negotiation for a country mission to China, but has so far been unsuccessful.²¹

Notably, the Government of Canada has also experienced challenges gaining access to Tibet. In its response to an order paper question, then Minister of Foreign Affairs Stéphane Dion revealed that officials in the Tibet Autonomous Region (TAR) regularly delay travel permit approval for Canadian diplomats citing insufficient staff or by imposing convoluted application procedures. In some cases, permits have been denied even when the visit purpose was to monitor Canada-funded projects. When a permit is provided, according to Minister Dion, visits by Canadian diplomats are “tightly managed by local authorities” with little or no opportunity to interact with local residents.²²

The 150 self-immolation protests that have been reported since 2009, including four so far in 2017, are perhaps the clearest indicator that something is wrong in Tibet.²³ As they burned, the self-immolators called out for freedom and the return of His Holiness the Dalai Lama to Tibet.

- **Stalled political dialogue**

The Central Tibetan Administration (CTA), based in India, is recognized for its non-violent strategy to resolve the conflict in Tibet. It has abandoned a legitimate claim to political independence yet rejects the status quo in Tibet. Instead – inspired by the vision of His Holiness the Dalai Lama – the CTA proposes a reasoned solution described as the “Middle Way Approach” (MWA).²⁴ The MWA offers a compromise based on the constitution of the Peoples Republic of China and its legislative framework for regional autonomy.²⁵

²¹ According to UNSR Ahmed Shaheed during a briefing with civil society in Ottawa on April 6, 2017, the negotiations are ongoing. The UNSR on Religious Intolerance, Abdelfattah Amor, previously visited China in 1994.

²² The government’s “Answer to Order Paper Question 337”, can be viewed at http://randallgarrison.ndp.ca/sites/default/files/multisite/149171/field_content_files/order_paper_question_q-337_-_tibet_-_june_15_2016.pdf. The original question (no. 337) by MP Randall Garrison is posted at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=42&Ses=1&DocId=8380771&File=9>

²³ Self-immolation protests are documented by International Campaign for Tibet at <https://www.savetibet.org/resources/fact-sheets/self-immolations-by-tibetans/>

²⁴ For all documents related to the Middle Way Approach, see <http://mwa.tibet.net/>

²⁵ For a summary of China’s legislative framework for regional autonomy, see *Promoting Genuine Autonomy in Tibet: A value-added role for Canada*, Canada Tibet Committee, 2016 http://www.tibet.ca/tibet/public/media/PDF/CTC_written%20submission_SDIR_nov2016.pdf

Elements of the MWA were presented to Chinese authorities in 2009.²⁶ They rejected the proposal citing numerous reasons including that it did not respect the Chinese Constitution and challenged China’s socialist system; that it disrespected Chinese language by emphasizing the importance of Tibetan language; that it imposed unfair demands on in-migration; and that the idea of a single administration for all Tibetans in China was equivalent to seeking independence.²⁷ Subsequent efforts by envoys of the Dalai Lama to resolve such concerns through negotiation were rejected by their Chinese interlocutors and the Sino-Tibetan dialogue has not resumed since 2010.²⁸

- **Exclusion amidst growth²⁹**

Despite China’s rising prosperity and high levels of economic growth in Tibetan areas, poverty continues to plague Tibetans living under its authority. While the Government of China often highlights economic development in Tibet by pointing to an array of statistics illustrating reduced levels of poverty, increases in GDP, and ongoing investment from the central government,³⁰ the reality for Tibetans is that discriminatory policies coupled with ongoing political repression have entrenched a two-class economic and social system based primarily on race.

China is a collection of sub-regions, with cores and peripheries that operate in a manner similar to the international economy. The peripheral Tibetan areas experience a form of polarized, heavily dependent growth along with an increasing interprovincial trade deficit. This is true despite existing national law that promises preferential treatment for autonomous areas including the right to independently pursue foreign economic activity.³¹ In reality, economic policies are determined in Beijing by Party officials during the National Forum on Tibet Work and they commonly cite demands of the market economy as a reason why local decision-making is not possible. The TAR has never actually passed a province-level law.

²⁶ For a timeline of the Sino-Tibetan negotiation process, see <http://mwa.tibet.net/#/document/6>

²⁷ Yet, both Mongolian and Uighur minority groups fall under a single administration in China.

²⁸ *Note on the Memorandum on Genuine Autonomy for the Tibetan People*, Central Tibetan Administration, 2010 <http://mwa.tibet.net/#/document/10>

²⁹ For a detailed study of these issues, see *State Growth and Social Exclusion in Tibet: Challenges of Recent Economic Growth*, Andrew Martin Fischer, NIAS Press, 2005

³⁰ Tibet’s GDP grew by 11% in 2015 up from 10.8% growth in 2014. A selection of 2015 data is found at <http://china-trade-research.hktdc.com/business-news/article/Fast-Facts/Tibet-Market-Profile/ff/en/1/1X000000/1X06BVUL.htm> derived from The *Tibet Statistical Yearbook 2015* which compiles data by administrative region and county in the TAR including wage levels, amount of arable land, industrial output by sector, and with some gender disaggregation. Statistics are not disaggregated by ethnicity as “Chinese” or “Tibetan”.

³¹ “Regional Ethnic Autonomy Law of the People’s Republic of China”, adopted 1984, amended 2011, <http://www.cecc.gov/resources/legal-provisions/regional-ethnic-autonomy-law-of-the-peoples-republic-of-china-amended>

During the 1990's when China launched its “western development strategy” for Tibet, subsidies from the central government became a key driver of the local economy. Subsidies increased significantly after 2008 to the point where they reached 116% of GDP in 2012, an amount equivalent to 4.6 times the rural household income in the TAR.³² But subsidies have not led to an improvement in living standards for the average Tibetan family. Instead they have been associated with deepening integration of Tibet into China, ownership of Tibetan assets by external actors, and by increasing dependence of the Tibetan economy on an influx of money from Beijing.

UN statistics confirm that Tibetan areas of China remain the poorest in all of China. The UN Development Programme (UNDP) compiles information by province in China and assigns a “human development index” to each for comparison purposes. In 2016, the index for Tibet was just .600, the lowest in China.³³ The UNDP also produces a “living standard index” for China which looks at social and economic indicators including access to water, roads, internet, and more. Here Tibet again ranks lowest in all of China while Qinghai, a predominantly Tibetan area, is second lowest.³⁴

It is difficult to obtain disaggregated data based on ethnicity/nationality in China and therefore it is challenging to determine differences in wellbeing between Chinese and Tibetans within Tibetan areas. Some conclusions can be derived by using census data that differentiates between rural versus urban communities. This is because a majority of Chinese in Tibet are settled in urban areas, while most Tibetans are found in rural areas. In fact, 85% of Tibetans in the TAR lived in rural areas, and rural areas of TAR were 97% Tibetan, according to China's 2000 census.³⁵ Although the percent of Tibetans living in rural areas was reduced to 77.3% by the time of the 2010 census,³⁶ it is still true that Chinese residents in Tibet are overwhelmingly urban and the rural-urban divide allows some conclusions to be made about the situation of Tibetans compared to non-Tibetans in Tibet. Studies suggest that Tibetans are disadvantaged in numerous ways and generally experience lower incomes than their Chinese counterparts.³⁷

³² *Subsidizing Tibet: An Interprovincial Comparison of Western China up to the end of the Hu-Wen Administration*, Andrew M. Fischer, *The China Quarterly*, Vol. 221, 2015, p 73-99

³³ *China 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>

³⁴ *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>

³⁵ *The Disempowered Development of Tibet in China*, Andrew Martin Fischer, Lexington Books, 2014, p 27

³⁶ *County-level heat vulnerability of urban and rural residents in Tibet, China*, Li Bai and Alistair Woodward, US National Library of Medicine, 2016 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711018/>

³⁷ For a detailed analysis, see *The Disempowered Development of Tibet in China*, Andrew Martin Fischer, Lexington Books, 2014

Even though Chinese policy encourages rural-to-urban resettlement for Tibetans as a strategy to improve their situation,³⁸ available evidence indicates that even in cities where employment opportunities are diverse, Tibetans remain disadvantaged by their ethnicity, lower education levels, and lack of fluency in Chinese language. As a result they continue to struggle in an exclusionary economy and are often relegated to self-employment or to physical labour. The situation is reminiscent of First Nation communities in Canada who experienced marginalization even in the midst of economic growth.

CANADA-CHINA TRADE AND HUMAN RIGHTS IN TIBET

While not all issues fit into neat categories, this initial screening looks at some expected elements of an eventual Canada-China FTA and their potential impact on human rights in Tibet. For the purposes of this exercise, only human rights obligations assumed under the *International Bill of Human Rights* are considered (the Universal Declaration of Human Rights (UDHR), the ICCPR, and the ICESCR).

- **Stakeholder engagement / consultation**

Human rights affected: The human right to participate in public affairs (ICCPR, art.25.a, and UDHR art.21); the right to hold opinions (ICCPR, art. 19); the right to seek, receive and impart information and ideas of all kinds (ICCPR, art. 19); the right to self-determination (ICCPR, art.1 & ICESCR, art.1)

The absence of an enabling environment for stakeholder engagement and consultation, particularly in Tibetan areas of China, is an immediate and overarching concern for the Canada-China FTA. The UN Guiding Principles for HRIA make specific reference to the importance of public consultation during the negotiation of a trade agreement.

“...no trade or investment agreement should be concluded in the absence of a public debate, which in principle should be conducted by freely elected parliamentary assemblies for approval to ensure that the free expression of the will of the electors shall be fully respected (art. 25(b) of the Covenant.”³⁹

The specific reference to public debate, freely elected representation, and free expression as defining elements of any legitimate consultative processes, flies in the face of realities in Tibet where each is routinely denied. The expression of dissent, whether it is via peaceful assembly, journalistic reporting or other means, is commonly met with detention and lengthy

³⁸ See “Tibet’s urbanization rate expected to exceed 30% by 2020”, Xinhua News Agency, January 14, 2015, <http://www.globaltimes.cn/content/901927.shtml>

³⁹ *Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements*, para 1.2

imprisonment.⁴⁰ It was partly for this reason that in 2014 the Government of Canada allowed the Canada Tibet Committee to represent Tibetans in Tibet when reporting concerns about the activities of a Canadian mining company in the Gyama Valley.⁴¹

In Canada, the Government actively solicits the views of Canadians about trade. For example, in 2016 Canadian Foreign Minister Chrystia Freeland (then Minister of International Trade) reached out to indigenous communities for this purpose.⁴² Unfortunately, the Government of China will not do the same. Even potential efforts by the Government of Canada to independently solicit the views of Tibetans are unlikely to succeed because China routinely obstructs Canadian diplomats seeking permission to visit Tibet, as described earlier.

- **National treatment**

Human rights affected: The right to equality and non-discrimination (UDHR, art. 2 & 7, and ICCPR, art. 26); the right to an adequate standard of living (ICESCR, art.11)

The principle of “national treatment” applies in all trade agreements. It means that foreign goods, services, and nationals must be treated equally to their domestic counterparts. The essential challenge for a ‘progressive’ Canada-China Free Trade Agreement is that while Canadian nationals may receive treatment equal to that enjoyed by Chinese nationals in Tibet, Tibetans will still face systemic discrimination.

An illustrative example is the denial of travel documents to Tibetans. Travel documents are essential for participation in international trade but since 2012 almost no passports have been issued to ordinary Tibetans. This is despite the fact that the number of passports issued to Chinese nationals has risen by 20% each year in the same period of time.⁴³ For those few Tibetans who have managed to obtain travel documents, strict new regulations limit their activities outside of China and they are required to report for questioning by authorities upon return to Tibet – a discriminatory limitation not imposed on Chinese or foreign business travellers in Tibet.

⁴⁰ The *US State Department Report on Human Rights 2013* notes that “Tibetans who spoke to foreign reporters, attempted to provide information to persons outside the country, or communicated information regarding protests or other expressions of discontent through cell phones, e-mail, or the internet were subject to harassment or detention.” <http://www.savetibet.org/state-department-report-on-human-rights-2013/>

⁴¹ In the case of “Request for Review Submitted to Canada’s National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises”, Canada Tibet Committee, January 2014 http://tibet.ca/en/library/media_releases/345

⁴² “Government of Canada discusses trade with indigenous leaders and organizations”, Global Affairs Canada, September 9, 2016, <http://news.gc.ca/web/article-en.do?nid=1122419>

⁴³ *Denial of Passports to Tibetans as China Intensifies Control*, International Campaign for Tibet, 2015, <https://www.savetibet.org/policy-alienating-tibetans-denial-passports-tibetans-china-intensifies-control/>

Restricted access to the Internet is another example of how Tibetan entrepreneurs experience discrimination in relation to Canadian and even China-based competitors. China imposes a vast surveillance grid across Tibet denying the right to privacy of communication, to information, and to free expression – all essential elements in modern day competition and the conduct of international trade.⁴⁴

- **Market access and competition**

Human rights affected: The human right to an international order in which all rights can be fully realized (UDHR art. 28); the right to security of the person (UDHR, art. 3); the right to free expression and to information (ICCPR, art. 19); the right to privacy (ICCPR, art. 17)/ the right to take part in cultural life (ICESCR, art. 15); the human right to freedom of religion (ICCPR, art. 18) / the human right to intellectual property (ICESCR, art.15); the right to health (ICESCR art. 12); the right to food (ICESCR art. 11); the human right to water (ICESCR, GC.15).

An objective of the Canada-China FTA is to seek greater access to Chinese markets for Canadian goods and services, and conversely China will seek greater access to Canadian markets. Increased trade in some of these goods and services could have an impact on human rights in Tibet. Examples include information and communications technology, tourism and cultural exchange, clean technology, and bottled water.

Information and Communications Technology

Following the Tiananmen Square massacre in 1989, Chinese authorities tortured and interrogated thousands of people in an attempt to identify the demonstration's organizers. But the hapless demonstrators stood little chance of anonymity. Stationed throughout Tiananmen Square was a network of surveillance cameras that had been imported from the United Kingdom, designed to monitor traffic flows and regulate congestion. These cameras recorded everything that transpired in the months leading up to the tanks rolling into the square. In the days that followed, these images were repeatedly broadcast over Chinese state television and virtually all transgressors were identified in this way. Siemens Plessey, which manufactured and exported the cameras, and the World Bank which had paid for their installation, claim they never had any idea that their "technologically neutral" product would be used in this way. Nevertheless, in 1995 the World Bank authorized funds to set up the same traffic flow system in Lhasa, the capital of Tibet, which at the time had no problems with traffic congestion.⁴⁵

⁴⁴ *Alarming New Surveillance, Security in Tibet*, Human Rights Watch, 2013, <https://www.hrw.org/news/2013/03/20/china-alarmed-new-surveillance-security-tibet>

⁴⁵ This story is an excerpt from *China's Golden Shield: Corporations and the development of surveillance technology in the Peoples Republic of China*, Greg Walton, Rights & Democracy, 2001 found at: <http://publications.gc.ca/site/eng/421743/publication.html>

What this anecdote illustrates is the potential human rights risk presented by the export of sophisticated communications technology to non-democratic States such as China. It also raises numerous concerns about the inability of exporters or governments to monitor the end-use of such exports, or to apply appropriate safeguards in the interest of human rights protection.⁴⁶

An illustrative Canadian example is the participation of Nortel Networks – at the time Canada’s flagship corporation – in the construction of China’s nationwide digital surveillance network known as the “Golden Shield”. China’s Golden Shield enabled state suppression of dissent as never before and resulted in the arrest and detention of human rights defenders. Later in 2005 Nortel announced a contract with China’s Ministry of Railways to provide a digital wireless communications network for the controversial Gormo-Lhasa railway in Tibet. Reports later showed that the sophisticated technology had also been used to facilitate tactical communications for up to 10,000 soldiers deployed along the route of the railway.⁴⁷

More recently, in January 2017, the government of Canada approved the takeover of Montreal-based ITF Technologies by O-Net, a Chinese company owned in part by the Government of China. ITF is a leader in “fibre-laser” technology used in telecommunications and its website refers to possible military applications for its products. Canadian officials did not disclose information about the approval process citing security concerns.⁴⁸ Similarly there was no information provided about human rights compliance safeguards applied for the purpose of preventing the transfer to China of Canadian dual-use technology that might facilitate human rights violations in future.

Communications technology including technology for cyber-surveillance, can serve legitimate military, police and civilian uses, but it also has inherent capabilities that facilitate human rights violations when unfettered by the checks and balances taken for granted in most democratic states. It is this state of the art technology and communications equipment that enables the security apparatus of the Chinese state to identify and arrest human rights defenders in Tibet, and pro-democracy campaigners, trade union organizers and political dissidents across China.

Tourism and Cultural Exchange

The Chinese government estimates that 23 million visitors will enter the Tibetan Autonomous Region this year, an eleven-fold increase in the decade since it opened a train route across the

⁴⁶ Canada’s Military and Technology Export Control List includes “dual use” categories, but there are notable gaps and exceptions. See “What to do about dual-use digital technologies?”, Ron Deibert, Citizen Lab, University of Toronto, 2016 at <https://deibert.citizenlab.org/2016/11/dual-use/>

⁴⁷ *Sabotage angst along Tibet Railway*, Tibet Information Network, August 26, 2006, http://tibet.ca/en/library/wtn/archive/old?y=2006&m=8&p=26_2

⁴⁸ *Liberals reverse Harper cabinet order to unwind Chinese takeover deal*, Globe and Mail, Jan. 9, 2017, <http://www.theglobeandmail.com/news/politics/liberals-reverse-harper-cabinet-order-to-unwind-chinese-takeover-deal/article33560076/>

high-altitude plateau. It is projecting arrivals to rise to 35 million visitors by 2020 and of these the large majority will be tourists from China.⁴⁹

Notwithstanding claims made during Lhasa's annual "China Tibet Tourism and Culture Expo" which invites participation from foreign embassies including the Canadian Embassy, foreign tourists face significant obstacles when they seek to visit Tibet. Independent travel is not permitted and no less than three special permits are required for entry.⁵⁰ Unlike in other parts of China, constantly changing regulations mean that access to Tibetan areas can be cut off at any time without notice.

Efforts to promote tourism in Tibet emphasize the unique Tibetan culture but Tibetans themselves point to a "disneyfication" of their traditions and institutions. In a recent and stark example in Kardze Autonomous Prefecture, Larung Gar Buddhist Institute – the largest Buddhist study centre in Tibet – was placed under official order in July 2016 to cut the number of residents from 10,000 to 5,000. Residences and other buildings were demolished while expelled students were forced to undergo "re-education" and barred from ever returning to Larung Gar.⁵¹ Reports that the demolitions and evictions were part of a plan to re-develop the area for tourism were confirmed when in 2016 several foreign delegations, including from Canada, were invited to visit Kardze and to invest in Tibet's "cultural industries".⁵² Construction of a new tourist village is now underway in the valley at the foot of Larung Gar.⁵³

Clean Technology

In 2016, Chinese multinational BYD announced that it was partnering with the Province of Alberta to develop "smarter, safer transit buses with advanced zero-emissions transportation technology."⁵⁴ BYD's "environmentally friendly" buses run on lithium-ion batteries. Much of the lithium used in BYD batteries comes from its exclusive rights to the precious lithium salts in

⁴⁹ Observers dispute official numbers arguing that only 3 million tourists visited Tibet during 2015. "China's Tibet tourism statistics just don't add up", Simon Denyer and CongCong Zhang, Washington Post, October 6, 2016, https://www.washingtonpost.com/news/worldviews/wp/2016/10/06/tibettourism/?utm_term=.85862b1046b3

⁵⁰ See *One Passport, Two Systems*, Human Rights Watch, 2015 <https://www.hrw.org/report/2015/07/13/one-passport-two-systems/chinas-restrictions-foreign-travel-tibetans-and-others>

⁵¹ See "China takes a chain saw to a center of Tibetan Buddhism", New York Times, November 28, 2016, https://www.nytimes.com/2016/11/28/world/asia/china-takes-a-chain-saw-to-a-center-of-tibetan-buddhism.html?_r=0

⁵² See the promotion of Kardze at the Shenzhen International Cultural Industries Fair: <http://www.prnewswire.com/news-releases/charming-ganzi-tibetan-autonomous-prefecture-welcomes-global-investors-and-visitors-to-ganzi-at-the-12th-china-shenzhen-international-cultural-industries-fair-300269615.html>

⁵³ See *Shadow of Dust Across the Sun: How tourism is used to counter Tibetan cultural resistance*, International Campaign for Tibet, March 2017, p.5. There is no known foreign investment in Kardze's tourism project.

⁵⁴ "BYD, Alberta to Develop Enhanced Zero-Emission Transportation Tech", ACAMP, September 1, 2016, <http://www.acamp.ca/byd-alberta-develop-enhanced-zero-emission-transportation-tech/>

Tibet's Chabyer Tsaka Lake in southwest Tibet. Chabyer Tsaka Lake has an extraordinarily high concentration of naturally-occurring lithium carbonate in its waters.⁵⁵

Tibet holds more than 90% of China's lithium reserves and is developing large lithium mining projects on the Tibetan plateau.⁵⁶ Lithium extraction has significant environmental impact, resulting in water and soil pollution that affects the rights to health and to food. In one example in May 2016, the sudden mass death of fish in the Lichu River in Kardze Prefecture brought hundreds of local Tibetans out onto the street to protest against the lithium mining company that had released mine waste into the Lichu River.⁵⁷

This example demonstrates that without adequate safeguards, it is possible to import "clean technology" to Canada from China and in so doing cause environmental harm in Tibet. Beyond this, the BYD partnership with Alberta raises concerns about appropriate oversight of supply chains in Chinese-made goods particularly when they include Tibetan raw materials.

Bottled water

Tibet is referred to as the "earth's third pole", the "roof of the world", and the "world's water tower". The references are derived from Tibet's unique topography as the world's largest and highest plateau encompassing the source of Asia's six largest rivers flowing into the world's ten most densely populated countries with a third of its population. Tibet is home to the third largest store of ice and largest source of accessible fresh water on the planet - attributes that represent a common cause between the Tibetan and Canadian people.

In late 2014, China's Ministry of Industry and Information Technology announced it would strongly support the growth of the natural drinking water industry in Tibet. To attract investors and entrepreneurs and boost sales nationally and overseas, major incentives were announced such as tax exemptions and reduced interest rates. According to the announcement, the Ministry plans to raise the amount of Tibet's natural water output to more than 5 million metric tons by 2017 to 2019—an industry that could be worth more than USD 6 billion.⁵⁸

Not surprisingly, Chinese companies are rushing to bottle water from Tibet's massive groundwater reserves, natural springs, and melting glaciers. One such company, *Tibet Water Resources Ltd.*, who's CEO Mr. Liu Chen graduated from York University in Ontario, has

⁵⁵ *Lithium: Tibet's Green Energy Treasure*, Free Tibet, 2017, <https://www.freetibet.org/lithium-tibet>

⁵⁶ *China's hi-tech ambitions to supplant the world's top manufacturing countries by extraction of rare strategic metals from Tibet*, Gabriel Lafitte, 2017, <http://rukor.org/innermost-veins-of-our-planet-1/>

⁵⁷ *Lithium, water, and protest at Tibet's Minyak Lhagang Mine*, Tibet Policy Institute, June 2016
<http://tibet.ca/en/library/wtn/13458yak>

⁵⁸ "The Ice-Box: Bottling Tibet's water", Michael Buckley, 2014, http://www.meltdownintibet.com/f_icebox.htm

expressed ambitions to market that water internationally. According to its website, the company sources its water in Tibet from a “unique glacial spring at 5,100 meters above sea level”.⁵⁹

Unregulated growth of the bottled water industry in Tibet could worsen existing environmental problems on the plateau - problems that have a human rights impact. The opening of Canada’s market to imports of bottled water from Tibet would require a clear mitigation strategy.

- **Labour rights & mobility**

Human rights affected: The right to freedom of association (UDHR, art.20); the right to equal pay for equal work (UDHR, art. 23.2); the right to equal remuneration (ICESCR, art. 7); the right to form a trade union (ICESCR, art. 8).

Despite impressive economic growth in Tibet, most Tibetans face high levels of unemployment and discriminatory treatment in the work place.⁶⁰ Like all workers across China, Tibetans are denied the right to form a free trade union or to bargain collectively for better health, safety, and remuneration. Tibetan workers face additional discrimination based on their ethnicity.

The education gap between Tibetan areas and the rest of China is so great that even as education levels slowly improve, skills development remains outpaced by evolving demand. Migrant workers from other parts of China fill the shortfall and entrench inequalities. Even with respect to menial work, Chinese applicants are overtly favoured. When Tibetans are hired, they can be paid lower wages than their Chinese counterparts in the same position.⁶¹ Tibetans should enjoy employment advantage in traditional industries such as wool processing and textiles, but these sectors have not received sufficient support in Tibet’s development strategy and are unlikely to benefit from international trade opportunities.

Government spokespeople counter that new opportunities will increase as Tibetans move away from traditional livelihoods and develop different skills. History has shown, however, that this will not happen in the absence of affirmative and pro-active policies to support Tibetan workers and assist their businesses. Such affirmative action approaches – while appropriate in human rights terms – are often viewed as discriminatory in the practice of international trade.⁶²

⁵⁹ Tibet Water Resources Ltd. website at http://www.twr1115.net/pages/corporate_profile

⁶⁰ “Tibetans protest unemployment”, Free Tibet, April 15, 2013, <https://freetibet.org/news-media/na/tibetans-protest-unemployment>

⁶¹ See *Evidence of overt Chinese discrimination against Tibetans in the job market*, International Campaign for Tibet, January 2012, <https://www.savetibet.org/evidence-of-overt-chinese-discrimination-against-tibetans-in-the-job-market/>

⁶² For example, South Africa’s policy of Black Empowerment has been challenged by foreign investors. See *Human Rights and Bilateral Investment Treaties*, Luke Peterson, Rights & Democracy, 2009. p.40. http://publications.gc.ca/collections/collection_2012/dd-rd/E84-36-2009-eng.pdf

- **Investment and corporate social responsibility**

Human rights affected: the right to an effective remedy (ICCPR, art. 2); the right to freedom of expression and opinion (ICCPR, art.19)

In 2012, research by the Canada Tibet Committee identified 36 Canadian companies that had invested in Tibet since 1999. Of these, 21 were mining companies while others included companies providing construction services and materials primarily for dam-building or completion of the Gormo-Lhasa railway. A telephone survey of these companies revealed that none had conducted a due diligence exercise to assess human rights risks in project areas, nor had they received information about sensitivities in Tibet from Canada’s trade commissioner or Embassy staff. Several claimed they were unaware of any political sensitivity in Tibet. At least 20 companies had become the target of public advocacy campaigns at some point.⁶³ Almost all ignored the campaigns, two threatened lawsuits, and one responded by funding a tour-guide training program for 20 Tibetans.⁶⁴

By 2017 virtually all investors identified in our research had abandoned their investment or sold their interests to Chinese companies, citing difficulty obtaining needed licenses and/or rampant corruption of local officials. The so-called Canadian companies still operating in Tibet today are increasingly Chinese companies, often state-owned, that have registered in Canada for a myriad of reasons including to attract investment.⁶⁵

An enhanced investment chapter in the Canada-China FTA will likely include “full protection and security” for Canadian companies in Tibet. Despite the sensitive political situation in Tibetan areas, Canadian companies (including Chinese companies flying Canadian flags of convenience) could require that China protect them from leafleting, public protest, Internet activism or other peaceful means of expression and dissent. Under the guise of complying with the agreement, Chinese security forces could increase the number of police in the project area or impose even tighter restrictions on the right of the Tibetan people to freely express dissent.

When corporate rights are breached, companies will enjoy the right to move straight into international arbitration. There will be no such recourse for Tibetan people in the project area,

⁶³ Unpublished research by the Canada Tibet Committee. On file

⁶⁴ *Connecting the Dots: Moving forward responsibly*, Bombardier, 2011, p.8
<http://www.bombardier.com/content/dam/Websites/bombardiercom/supporting-documents/Sustainability/Reports/CSR/Bombardier-CSR-Overview-2011-en.pdf>

⁶⁵ For example, Vancouver-based China Gold International Resources operates a mine in Tibet’s Gyama Valley. The CTC submitted a “request for review” to Canada’s National Contact Point for the OECD Guidelines on Multinational Enterprises. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng>

either in Tibet where judicial rights are insufficient, or in Canada where foreign victims of Canadian corporate harm have no access to domestic courts.⁶⁶

In its final observations following Canada's sixth periodic review, the UN Committee on Economic, Social, and Cultural Rights recommended that this government "ensure that trade and investment agreements negotiated by Canada recognize the primacy of Canada's international human rights obligations over investors' interests."⁶⁷ A useful approach might be to take a look at the US *Tibetan Policy Act of 2000*. The Act identifies conditions for "US entities" seeking to participate in the economic development of Tibet. These conditions include conducting ex-ante impact assessments, ensuring Tibetan participation, allowing independent monitors, excluding resettlement components, and excluding the transfer of land or natural resources to non-Tibetans.⁶⁸

- **Agriculture and food**

Human rights affected: The right to self-determination (ICESCR, art.1); the right to an adequate standard of living including the right to be free from hunger (ICESCR, art. 11).

The United Nations has interpreted that the right to adequate food includes access to culturally appropriate food.⁶⁹ Barley and dairy are traditional staples of the Tibetan diet and sources of rural livelihoods in Tibet.⁷⁰ They are also important Canadian exports.

Barley

This year, Canada expects to harvest 8 million tonnes of barley, one quarter of which (1.9m tonnes) will be exported.⁷¹ Barley is also the primary grain crop in Tibet, grown by farmers across the plateau, as a staple of human diet (roasted and ground into a porridge called "tsampa"), along with many other uses. Although China traditionally regards wheat as its staple

⁶⁶ Canadian NGOs are campaigning for an extractive sector ombudsman – see, "Open for Justice Campaign", Canadian Network on Corporate Accountability: <http://cnca-rcrce.ca/campaigns-justice/>

⁶⁷ *Concluding observations on the sixth periodic report of Canada*, UN Committee on Economic, Social, and Cultural Rights, 2016, http://www.etoconsortium.org/nc/en/main-navigation/library/documents/detail/?tx_drblob_pi1%5BdownloadUid%5D=177

⁶⁸ *The Tibetan Policy Act of 2002*, H.R.1646, Foreign Relations Authorization Act, Fiscal Year 2003, P.L. 107-228, Subtitle B–Tibet Policy at <https://www.savetibet.org/policy-center/tibetan-policy-act/>

⁶⁹ General Comment 12 on the Right to Adequate Food, UN Committee on Economic, Social and Cultural Rights, 1999, para 8,

http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/General_Comment_12_EN.pdf

⁷⁰ A detailed study of food security challenges in Tibet is found at *Making Tibet Food Secure: Assessment of scenarios*, International Centre for Integrated Mountain Development, 2002, <http://agris.fao.org/agris-search/search.do?recordID=QZ2013000101>

⁷¹ Statistics and Market Information, Agriculture and Agri-food Canada, <http://agr.gc.ca/eng/industry-markets-and-trade/statistics-and-market-information/by-product-sector/crops-industry/outlook-for-principal-field-crops-in-canada/canada-outlook-for-principal-field-crops-2017-02-17/?id=1487697356376#a2>

crop in the north and rice in the south, barley is in increased demand across China for both beer production and as a feed grain for livestock.

As an outcome of the Canada-China FTA, it is likely that Canada and Tibet will become direct competitors for China's barley market. Although Tibet has a climate suited to barley cropping and thousands of years of experience breeding varieties best suited to the plateau climate, Tibetan agriculture has not received adequate investment in production or processing and there is scant support for the Tibetan farmer. Canadian barley producers on the other hand, operate on large-scale, highly mechanized farms and enjoy various types of government support including subsidised fuel costs. For those Tibetans who depend on barley production for their livelihoods, the Canada-China FTA is not good news.

Dairy

Demand for dairy has increased sharply in China in recent years. Yoghurt and other products made in Tibet for thousands of years are now highly fashionable among hip urban Chinese consumers with plenty of discretionary income and an inclination towards what is fashionable. Yet, as with barley, Tibet has largely missed the opportunity to satisfy Chinese urban demand being unable by circumstance to compete with dairy imported from Canada, New Zealand or Australia. Last year Canada exported 99.7 thousand tonnes of dairy products, worth C\$235.46 million.⁷² Of this, 2750 tonnes were sold to China, worth C\$ 5.9 million in 2016.⁷³

As with barley, China has not sufficiently invested in Tibet's dairy processing industry. Nor has it developed the capacity of Tibetan producers to create added-value products and to access the supply chains capable of getting them quickly and safely to market with required health certification. The Canadian dairy industry will be in direct competition with disadvantaged Tibetan producers, not only for the Chinese market but even for the Tibetan market. As a result, Tibetan dairy producers could face the loss of traditional livelihoods and cultural traditions.

CONCLUSION

International trade does not take place in a vacuum. While there is no inherent conflict between trade and human rights, it is nevertheless true that trade can have an identifiable impact on human rights, particularly when discrimination based on ethnicity is already evident within the trading partnership. It is incumbent on both parties of a bilateral trade agreement to determine where vulnerabilities lie and to make efforts to avoid additional harm inadvertently caused by implementation of the agreement.

⁷² Agricultural Industry Market Information System , Government of Canada,

http://www.dairyinfo.gc.ca/index_e.php?s1=dff-fcil&s2=imp-exp&s3=exp

⁷³ Exports of Dairy Products by Country of Destination, Government of Canada

<http://aimis-simia-cdic-ccil.agr.gc.ca/rp/index-eng.cfm?action=rR&pdctc=&r=139>

This overview has demonstrated that within China, Tibetans areas are the poorest ethnic or minority group and the Tibetan economy is highly dependent on the central government. Within Tibetan areas of China, Tibetans are poorer than Chinese. Tibetans lack political rights sufficient for defending their human rights and for participating in international trade, including with Canada.

The paper has highlighted some, but not all, of the trade issues likely to have an impact on human rights in Tibet. Among the important issues not addressed here is access to land which will be relevant in any discussion about Canadian investment in Tibet. In order to better understand the full range of potential human rights risks and to avoid harm, the Government of Canada should carry out a complete HRIA and take the necessary steps to mitigate foreseeable impacts before concluding a Canada-China FTA.

- **Recommendations to the Government of Canada**

1. Canada should carry out an ex-ante HRIA in Tibetan areas of China before proceeding with negotiations for a Canada-China FTA. The assessment should include attention to stakeholder engagement and to the preparation of indicators for ongoing monitoring and evaluation after the trade agreement is in effect.
2. Canada should seek to establish a “trade office” in the Tibetan capital city Lhasa as part of the FTA exploratory discussion with China and before a decision to proceed with formal negotiations is made.
3. Canada should require the immediate lifting by China of discriminatory restrictions on travel documents for Tibetans as a pre-requisite of the Canada-China FTA.
4. Canada should establish policies to ensure that Canadian investment in Tibet meets international human rights standards and reflects Canadian values. The policies should include an annual and public reporting process.
5. Canada should facilitate access to justice for Tibetan people, whose rights have been violated by Canadian corporate activity or other impacts of the trade agreement, including by creating an extractive sector ombudsman or other mechanism.
6. Canada should adopt affirmative action approaches in support of Tibetan agricultural producers, including by encouraging local production of culturally appropriate food that supports traditional livelihoods.
7. Canada should require that China ratify the International Covenant on Civil and Political Rights.

8. Canada should require that China lift its reservation to article 8 of the International Covenant on Economic, Social and Cultural Rights, related to labour rights.

7. Canada should encourage renewal of the Sino-Tibetan dialogue without preconditions and based on the Middle Way Approach.

The Canada Tibet Committee (CTC) is a federally-registered not-for-profit organization founded in 1987. The CTC defends and promotes human rights and democratic freedoms in Tibet. The CTC is a founding member of the Canadian Coalition on Human Rights in China, and a member of the Canadian Network on Corporate Accountability.

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