

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

WORKSHOP REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

CONCLUSION

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

RESOURCES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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WORKSHOP AGENDA

March 22, 2018

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

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