

Sorry, just circling back now on this.

The dispute mechanism is very similar to NAFTA. Dispute documents can be public under the Canada – specific language is as follows: “Any Tribunal award.. shall be publicly available, subject to the redaction of confidential information. Where a disputing Contracting Party determines that it is in the public interest to do so ... all other documents submitted to, or issued by, the Tribunal shall also be publicly available.”

Feds’ line on this is as follows: “Canada is committed to ensuring that any treaty-based investor-state arbitration is open to the public.”

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**From:** Lansdell, Hayden GCPE:EX  
**Sent:** Thursday, October 25, 2012 12:34 PM  
**To:** Mentzelopoulos, Athana GCPE:EX; MacIntyre, Sara GCPE:EX  
**Subject:** FIPA QAs

Response to PO questions on the FIPA with China.

#### **What benefits would FIPA bring to BC?**

The main purpose of a FIPA is to encourage foreign investment by providing foreign investors with greater protection against discriminatory and arbitrary practices in the host state, providing a process for adequate and prompt compensation in the event of an expropriation, and enhancing the predictability of regulations affecting foreign investors and their investments.

Canada has 24 FIPAs in force with countries, another 8 (including China and India) that have been negotiated but are not yet in force, and another 12 under negotiation.

Canadian businesses make significant investments in China in the transportation, biotechnology, education, finance, information technology, manufacturing and natural resources industries. By the end of 2011, the amount of Canadian direct investment in China was C\$4.5 billion.

British Columbia will benefit from a more stable and predictable investment regime for BC businesses and investors doing business with China and Chinese state owned enterprises. Further, through the FIPA, BC businesses and investors will have recourse to dispute mechanisms which will allow them to challenge discriminatory and unfair practices.

#### **How does this agreement protect investment Canadians make in China and that China makes in BC?**

The agreement provides for non-discriminatory treatment of investors on:

- a) A most favoured nation treatment basis - no less favourable treatment than accorded investors from other countries with respect to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, and

- b) A national treatment basis – no less favourable treatment than it accords its own investors with respect to expansion, management, conduct, operation and sale or other disposition of investments, and
- c) Ensures that the treatment of investors by governments at all levels meets the minimum standard under customary international law.

This FIPA also offers:

- Protection from expropriation, except for a public purpose and with fair and prompt compensation;
- Assurances that transfers of investment related funds, such as contributions to capital, profits, capital gains, interest, dividends, proceeds from sales of investments, etc. can be made freely and without delay.
- A dispute settlement process through independent international arbitration panels
- Commitment to ensure laws and regulations related to investment are publicly and readily available.

#### **Does the agreement protect jobs for British Columbians and Canadians?**

By providing a more stable/predictable investment environment, this agreement will encourage increased investment flows and provide an enhanced opportunity for BC-based companies to expand operations in China. This will in turn lead to expansion and growth of BC businesses, and direct and indirect job creation.

#### **What do we give up if the Feds sign the agreement?**

Since Canada has transparent and fair investment rules today, we do not give up anything by committing to treat Chinese investors by minimum international, most favoured nation and domestic industry standards.

#### **Why a 31 year agreement?**

We are seeking information from the federal government on this issue.

#### **Is Canada selling off our natural resources with this agreement?**

No. The agreement is about security of investment. It has explicit provisions that allow countries to take measures necessary to protect human health and the environment.

MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING  
AND MINISTER RESPONSIBLE FOR LABOUR  
**INFORMATION NOTE**

Cliff #:

Date: October 18, 2012

**PREPARED FOR:** Honourable Pat Bell, Minister

**ISSUE:** Canada-China Foreign Investment Promotion and Protection Agreement

**BACKGROUND:** The Canada-China Foreign Investment Promotion and Protection Agreement (FIPA) was signed on September, 2012 during Prime Minister Harper's participation at the Asia-Pacific Economic Co-operation (APEC) summit. It will be ratified once Canada and China complete their respective ratification processes.

**DISCUSSION:** Elizabeth May, and the Green Party is a vocal opponent of the FIPA and has written to the Premier. A professor of Osgoode Hall Law School, Gus Van Harten published an article against the FIPA and wrote to the Premier stating his concerns. Various media have become involved restating the concerns.

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The FIPA permits either country to take measures necessary to protect human and animal health or plant life, as well as allowing measures taken for prudential reasons to maintain the safety, soundness, integrity or financial responsibility of financial institutions.

If a dispute arises, the FIPA contains direct access for investors to an effective, impartial dispute resolution system through international arbitration.

Prepared by: Gail Greenwood, Director Trade Policy  
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Reviewed by				
Dir:	ED:	ADM:	DM:	MIN:

## ADVICE TO MINISTER

<b>CONFIDENTIAL ISSUES NOTE</b>  Ministry of Jobs, Tourism and Skills Training Date: October 19, 2012 Minister Responsible: Hon. Pat Bell	<b>Canada-China Foreign Investment Promotion and Protection Agreement</b>
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### ADVICE AND RECOMMENDED RESPONSE:

- Our government continues to believe that expanding our economic relationship with China will lead to greater prosperity and more jobs in British Columbia.
- The Canada-China Foreign Investment Promotion and Protection Agreement helps move B.C. closer to our goal of enhanced economic and trade relations with China by promoting Chinese investment in British Columbia.
- It also provides more protection for British Columbia companies investing in China, which can lead to more exports and jobs.

If asked re: criticism of FIPA

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### KEY FACTS:

The Canada-China Foreign Investment Promotion and Protection Agreement (FIPA) was signed during Prime Minister Harper's participation at the Asia-Pacific Economic Co-operation summit in September 2012. The agreement will come into force on October 31, 2012 once Canada and China have concluded their respective ratification processes. The agreement will last 31 years and is described as the most significant trade deal since NAFTA.

The Green Party (Elizabeth May) is a vocal opponent of FIPA and has written to B.C.'s Premier with her concerns. In addition, a professor of international law at Osgoode Hall (Gus Van Harten) has also been widely quoted in the media on his concerns that 1) the agreement will make it easier to build the Northern Gateway Pipeline and 2) open up the BC government to lawsuits from Chinese investors if the pipeline isn't built. He has also written to the Premier.

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S 13 and supports the agreement, believing FIPA will provide a more predictable and stable investment climate in China for Canadian investors.

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China is B.C.'s second-largest trading partner and the second-biggest economy in the world. Goods shipped from British Columbia to China rose to \$5.1 billion last year, a 24 per cent increase over 2010.

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Program Area	Comm. Director	ADM	DM	Sent to MO

## Hayes, Dana GCPE:EX

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**From:** Watson, Andy GCPE:EX  
**Sent:** Wednesday, October 31, 2012 12:02 PM  
**To:** Stickney, Matthew JTST:EX; Parhar, TJ S JTST:EX; Ehl, Cameron JTST:EX  
**Cc:** Lansdell, Hayden GCPE:EX; McAndrews, Caroline GCPE:EX; Colbourne, Scott GPCE:EX; Watson, Andy GCPE:EX  
**Subject:** For Approval - Statement on FIPA

CBC Radio South is still looking for a statement on FIPA. As Hayden mentioned, we do have messaging prepared and this is what we have drafted something for your approval.

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- Our Government continues to believe that expanding our economic relationship with China will lead to greater prosperity and more jobs in British Columbia. The *Canada-China Foreign Investment Promotion and Protection Act* helps move B.C. closer to our goal of enhanced economic and trade relations with China by promoting Chinese investment in British Columbia. It also provides more protection for British Columbia companies investing in China, which can lead to more exports and jobs. The Province is actively working with our federal counterparts where B.C.'s interests are at stake and supports this agreement.

**Andy Watson | Public Affairs Officer**

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## Questions and Answers

*Ministry of Jobs, Tourism & Skills Training and Minister Responsible for Labour*

### **Canada-China Foreign Investment Promotion and Protection Agreement**

#### **1. What benefits would the Canada-China FIPA bring to BC?**

The main purpose of a FIPA is to encourage foreign investment by providing foreign investors with greater protection against discriminatory and arbitrary practices in the host state, providing a process for adequate and prompt compensation in the event of an expropriation, and enhancing the predictability of regulations affecting foreign investors and their investments.

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British Columbia will benefit from a more stable and predictable investment regime for BC businesses and investors doing business with China and Chinese state owned enterprises. Further, through the FIPA, BC businesses and investors will have recourse to dispute mechanisms which will allow them to challenge discriminatory and unfair practices.

#### **2. How does this agreement protect investment Canadians make in China and that China makes in BC?**

The agreement provides for non-discriminatory treatment for investors on:

- a) A most favoured nation treatment basis - no less favourable treatment than accorded investors from other countries with respect to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, and
- b) A national treatment basis – no less favourable treatment than it accords its own investors with respect to expansion, management, conduct, operation and sale or other disposition of investments, and
- c) Ensures that the treatment of investors by governments at all levels meets the minimum standard under customary international law.

This FIPA also offers:

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## Questions and Answers

- protection from expropriation, except for a public purpose and with fair and prompt compensation;
- assurances that transfers of investment related funds, such as contributions to capital, profits, capital gains, interest, dividends, proceeds from sales of investments, etc. can be made freely and without delay.
- A dispute settlement process through independent international arbitration panels
- Commitment to ensure laws and regulations related to investment are publicly and readily available.

### 3. Does the agreement protect jobs for BCers and Canadians?

By providing a more stable and predictable rules-based investment regime, this agreement should encourage increased investment flows from BC to China, providing an enhanced opportunity for BC based companies to expand operations in China, thereby increasing expansion and growth of BC businesses, leading to both direct and indirect job creation.

### 4. What do we give up if the Feds sign the agreement?

Since Canada has transparent and fair investment rules today, we do not give up anything by committing to treat Chinese investors by minimum international, most favoured nation and domestic industry standards.

### 5. Why a 31-year agreement?

- The terms of FIPAs vary around the world – anywhere from 5-20 year terms.
- The FIPA's Canada has been a party to historically looked like the Canada-China one with a 15 year initial term, and then an opportunity to terminate with one year's notice. Upon termination, existing investors are subject to an additional 15 year "standstill" protection.
- However, FIPA agreements Canada has signed in last few years can be terminated with one year's notice from the time it was signed. Same as above, upon termination existing investors are subject to a 15 year "standstill" protection where the provisions of the agreement apply.
- The agreement with China having the initial 15 year term before possibility of termination is a result of the timing of negotiations which began pre mid-2000. At that time the initial 15 year term was the standard.
- Since the agreement is really more about protecting Canada's interests in China rather than China's interests in Canada, where there are transparent and open investment rules, Canada is comfortable with the 15 year term before parties are allowed to terminate the agreement.

### 6. Is Canada selling off our natural resources with this agreement?



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## **Questions and Answers**

No. The agreement is about security of investment. It has explicit provisions that allow countries to take measures necessary to protect human, animal or plant life or health, and related to the conservation of living or non-living exhaustible natural resources.

DRAFT