**Canadian lessons on Chinese links**

Written by Robert Henderson
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During the September 2012 APEC Summit in Vladivostok, Russia, Canadian Prime Minister Stephen Harper and then-Chinese president Hu Jintao (□□□) signed an investment treaty.

Formerly known as a foreign investment promotion and protection agreement, Harper tabled the agreement before the Canadian parliament for discussion on Sept. 26, 2012. Such trade deals do not require Canadian parliamentary approval and can be ratified by a Canadian Cabinet order-in-council, as it is a matter of national sovereignty.

Yet for two years, the Canadian government under Harper chose not to ratify the 31-year agreement into law — even though Beijing had already done so. Finally, in early September, Canada ratified the pact — with it coming into effect on Oct. 1.

Why was Canada hesitant to ratify an already negotiated international agreement with the People’s Republic of China? The answer has to be seen in its terms and duration, its impact on the development of Canadian energy resources and the country’s First Nations.

The Canada-China agreement is a different type of international treaty from the 2010 Economic Cooperation Framework Agreement, which is a preferential trade agreement between Taiwan and China.

In essence, the Canada-China pact is not a free-trade agreement — rather it is an international pact to “protect and promote” bilateral foreign investment under an agreed legally binding set of obligations.

With its deal with China now in effect, Canada is the only G9 industrial economy to have a ratified investment promotion and protection agreement with China. Even though Canada has signed 28 such deals with other countries and is negotiating several more, why is this one with China so different?

The obligations of the Canada-China deal include protection for foreign investments from discriminatory conduct and expropriation by the host country, as well as fair treatment in accordance with international laws, such as Most Favored Nation status.

Also, under the terms of the deal, foreign investors can bring claims for damages before an international arbitration panel — for monetary compensation — if they feel that they have been denied equitable treatment.

Critics of the deal have pointed to the agreement's duration. Under the terms agreed to, it will be in effect for 15 years — after which either country can cancel it with one year's notice. However, any foreign investment made prior to such a cancellation would still be covered under the obligations for a further 15 years. In effect, this gives the agreement a 31-year lifespan.

Canada's next concern is with the considerable amount of investment — and in effect, influence — in its economy that Chinese commercial enterprises already have. At present, China's investment in Canada is estimated at about C$25 billion (US$22 billion) — compared with Canada's investment in China of just over C$5 billion.

In 2012, the massive China National Overseas Oil Corp made an above-premium bid for the Alberta-based Nexen energy company for C$15 billion as a wholly owned subsidiary. The Canadian government, after much consideration, approved the Nexen sale, but Harper said in December of that year that foreign state-operated enterprises (SOE) investments for outright or controlling interests in Canadian energy companies would not be allowed in the future other than by government review under the Investment Canada Act.

On the issue of arbitration, Chinese investors, including Chinese SOEs, will be able to sue for decisions made by any level of government in Canada if the Chinese company feels that it has not been accorded the same rights as Canadian companies. Such arbitration would take place privately behind closed doors and before a three-person tribunal of arbitrators — one picked by the Canadian party, one picked by the Chinese party and one international party picked jointly. In effect, in any arbitration dispute, there would only be one Canadian vote on the arbitration tribunal.

What lessons can the now-ratified Canada-China investment treaty suggest for Taiwan?

First, it needs to be noted that interstate agreements are an issue of a nation’s sovereignty and should be open to public consultation and debate. Much of the Canadian opposition’s criticism of that nation’s deal with China was that there was basically no public debate and the agreement itself was tabled without debate in the Canadian parliament then passed into law by an order-in-council. In addition, Canadian First Nation’s have already brought considerable public opposition to planned oil sands energy projects and proposed pipelines, including initiating court injunctions to halt such projects.

In the case of the joint PetroChina SOE and Canada’s Athabasca Oil Corp oil sands project, development of the areas is being held up by First Nation demands for a buffer zone between the project area and Aboriginal lands.

Recently in Taiwan, there have been public protests over the cross-strait service trade agreement, calling for debate in the Legislative Yuan and in the public dominion. The protests, known as the Sunflower movement, appear to hold that Taiwanese should have an ongoing voice in cross-strait agreements — rather than being presented with signed pacts — as such agreements will dictate their lives and economy for years to come.

It is toward this end that a bill before the Legislative Yuan on overseeing cross-strait agreements is intended. With presidential and legislative elections in 2016, it seems to be essential that political parties agree to review and ensure that all cross-strait pacts guarantee citizens their future political and economic wellbeing.

Second, the Canada-China deal was signed by both governments to encourage and regulate direct investments from the other country. While this was and still is a Canadian government goal, the pact was signed in recognition that it could encourage a large number of Chinese SOEs to engage and invest in Canada’s key energy resources and high-tech industries.

Yet all the chief executive officers and other senior officials of such SOEs — while not necessarily being government officials — are appointed or approved by the Chinese Communist Party-run government, whether at the national, provincial or municipal level.

Such Chinese state-run companies are under considerable pressure to return profits — whether their operations are in China or overseas. In addition, SOEs with overseas operations are tasked with acquiring global commercial experience running a company in developed or developing economies.

While party-controlled SOEs are focused on profitable commercial goals, a Xinhua news agency article published on Aug. 29 said that senior SOE officials have become accustomed to receiving high salaries, extensive expense accounts and benefits.

As a result, the Political Bureau of the party's Central Committee had reportedly approved plans to reform their payment system — basically, cut down their high salaries and benefits. However, no mention was made of the provincial or municipal level SOEs, which are also manned by party members or at least approved by party committees at that level.

It is expected that the SOE officials will seek to gain higher profit margins — if only to ensure the retention of their superior remunerations. And, in the case of investments in Canada, this is expected to lead to claims for greater advantageous commercial rights — against the threat to take national or provincial government bodies or public institutions to arbitration if their profit goals are not met.

Taiwan's economy has a highly developed high-tech sector, an extensive services sector, as well as playing a key role in numerous regional manufacturing supply chains and as a regional transport hub. China is already seeking to involve itself in various commercial sectors in Taiwan as shown by the pending cross-strait services pact. And it seems certain that Chinese SOEs will seek to invest and influence the nation's economy — as soon as it is permitted by law — increasing concerns regarding external manipulation and threats to national security.

Third, Canada has agreed to an investment pact with the world's second-largest economy and its second-biggest trading partner. And key sectors of the Canadian economy, such as energy resources and high-tech development, are complimentary to those of the Chinese economy, whose manufacturing and energy production sectors need ever greater amounts of raw materials and energy-efficient technology from abroad.

Because of the complementary nature of their economies and Canada's need for increased amounts of investment capital to develop its world-scale natural resources, Canada signed the deal with China. The asymmetric difference in their economic size and financial wealth means that governments with a smaller economy will sign economic and financial pacts for the sake of increasing their business shares.

However, it does not mean that a country with a smaller economy will have the capacity to pressure a larger economic power that might pursue aggressive government activities in the future.

There are many reports that suggest greater economic and financial interdependence between countries or groups of countries can reduce hostile tensions between them. However, there appears to be a concurrent paradox as well, namely that it is difficult to use economic pressure on an aggressive country despite intertwined economies — as shown by the EUs sanctions against Russia for its seizure of Crimea, even while the EU countries are major purchasers of Russian oil and gas.

Canada and Taiwan are having their national economies increasingly interlinked with China, but there is little evidence that they can ensure an equitable relationship should the leadership in Beijing decide that China is entitled to a bigger voice on how such commercial interactions are regulated and to what purpose — whether economic or political advantage.

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