Protecting Canadian Sovereignty from Perverse Trade and Investment Agreements

Success for Canada in the international sphere starts at home, where we can build on the strengths of our land, our people, and our economy. In negotiations abroad to rebalance trade and investment flows, our stance must be a principled one. The Green Party supports fair trade that protects sovereignty, human rights and the environment, and does not undermine health, safety, consumer and labour standards. Investor state agreements like Foreign Investor Promotion and Protection Agreements (FIPAs) and the Trans-Pacific Partnership (TPP) are not fair trade agreements. The Green Party does not support FIPAs and the TPP, which elevate corporate interests over the public interest by allowing corporations to sue governments over environmental, labour and consumer regulations that reduce their profits.

Of all the damaging things done to Canada in the last nine years, ratifying the Canada-China Investment Treaty – in secret, by Cabinet alone, without any parliamentary or public hearings – poses the greatest long-term threat to our sovereignty.

The treaty, known as a Foreign Investment Promotion and Protection Agreement or FIPA, is lop-sided, benefiting the Peoples' Republic of China, while providing no advantage to Canada. In fact, it locks us in until the year 2045, giving State Owned Enterprises (SOEs) of the People's Republic of China (PRC) superior rights to those of Canadian companies. Beijing's SOEs now have the right to bring arbitration claims against Canada in secret tribunals. These are not courts, but private arbitrations in which arbitrators gain personally and financially through a system that lacks the fairness and predictability of our national courts. Thanks to Stephen Harper, our sovereignty has been significantly eroded.

In the next Parliament, Green MPs will press for legislation to require that any and all complaints from Beijing under this treaty, even early diplomatic complaints, must be made public. We must ensure that all the other party leaders understand that Canadians want to fight for our laws and push back against complaints from SOEs from the Peoples Republic of China.

If Beijing complains about a municipal by-law or proposed legislative change, such as reversing the damage to the Fisheries Act, Environmental Assessment or Navigable Waters Protection Act, we will not cave. We will not let FIPA-chill cause government to pull back from doing the right thing. We need a transparent commitment to aggressively defend Canada's policies and decisions, and, if we must, to write a cheque for damages under FIPA, rather than cancel planned laws or repeal existing ones.

Greens will vigorously oppose the Trans-Pacific Partnership (TPP) and the Comprehensive Economic Trade Agreement (CETA).

The Green Party believes that the federal government must only pursue fair trade negotiations adhering to clear goals and principles. To facilitate negotiations, we must first successfully conclude international negotiations for a Multilateral Agreement on Corporate Rights and Responsibilities.

Investor-State Provisions

$300 million: *The amount U.S. corporation Bilcon is claiming in damages against Canada under NAFTA Chapter 11 for acting to protect the most endangered whale species on the planet. In spring 2015, Bilcon won in arbitration. Canada is attempting to appeal. The damage award has not yet been made.*

Canada can build on the strengths of our land and our people to grow our economy and expand our trade relationships. Although managing our economic and diplomatic relations with the United States will remain the primary focus of Canada's attention, emerging economies such as those of China, India, Brazil, and South Korea are rising rapidly in priority. However, global trade has developed a negative underbelly. Trade agreements that extend their reach beyond fair trade in goods and services to expand transnational corporations' power and influence in our country can be anti-democratic.

The Green Party is particularly concerned with investor-state agreements otherwise known as Foreign Investment Protection Agreements or FIPAs. While investor-state agreements are sometimes associated, or even confused, with free trade agreements, they are not the same. A trade agreement opens up areas or sectors of national economies to allow other countries access to them. An investor-state agreement is different. FIPAs and now the Trans-Pacific Partnership Agreement (TPP) elevate corporate interests over the public interest by allowing corporations to sue governments over laws and regulations that reduce their profits. This undermines Canadian legislation, especially laws protecting the environment, health, labour and consumers.

An investor-state agreement gives a foreign company (an "investor") the right to seek damages from a country (a "state") in private arbitrations. These are not court actions, although the word "sue" is often used. These are claims for damages arbitrated by a panel of three arbitration lawyers – usually in a posh hotel room somewhere. The first investor-state agreement in the world was Chapter 11 of the *North American Free Trade Agreement* (NAFTA). In the late 1990s, an attempt was made through the Organization for Economic Cooperation and Development (OECD) to extend Chapter 11 principles to all industrialized countries. The OECD proposal was called the *Multilateral Agreement on Investment* (MAI). In what is viewed as the first global citizens' campaign using the Internet effectively, the MAI was defeated. The pro-MAI community then turned to advancing bilateral investment treaties. These are generally referred to as "FIPAs" which stands for Foreign Investor Promotion and Protection Agreements. Hundreds of these FIPA agreements now exist, crisscrossing the globe with treaties that are, by their very precepts, fundamentally antithetical to democracy.

As referenced above, Chapter 11 of the *NAFTA* was the first investor-state agreement in the world. It fundamentally erodes any Canadian government's ability (whether federal, provincial, territorial, municipal, or Indigenous), to enact laws, regulations, and policies that protect its environment or the health of its citizens. In particular, insufficient attention has been paid to an analysis of the arbitrations under Chapter 11 of *NAFTA*. Canada has been subjected to arbitration complaints numerous times by U.S. corporations, but we have rarely been successful when we are brought to a Chapter 11 tribunal. Our most recent loss due to *NAFTA* was to Bilcon of Delaware over a controversial quarry proposed for Digby Neck, Nova Scotia.

When Canadian companies have sought to rely on Chapter 11 of *NAFTA* to sue the United States, only one company has ever succeeded. This is the pattern of the growing reliance on these FIPAs – arbitrators are neither fair, nor neutral. A clear pattern exists globally: the larger economic power almost invariably profits at the expense of smaller economies.

Canada-China Foreign Investment Promotion and Protection Agreement (FIPA)

31: *Number of years Canada is locked into agreement with China*

The Green Party supports the re-opening of the Canada-China FIPA and will firmly insist on renegotiating the agreement with the Peoples' Republic of China (even if this means going to arbitration and potentially paying Beijing to restore the right to protect our laws).

The investment treaty with China will be in force for 15 years. At that time, Canada or China could give a one year written notice to exit the trade agreement, but all existing investments would be covered by the terms of the agreement for a further 15 years, ultimately amounting to a 31-year “lock-in.” Even though it is true that U.S. (or theoretically Mexican) corporations can bring multi-million dollar claims against Canada for laws passed with no intent to discriminate in trade terms, the “investors” from China are not individual corporations. State Owned Enterprises of the Peoples’ Republic of China are all branches of the Chinese government, with boards and CEOs appointed by the politburo of the Communist Party of China. The ramifications of this, for Canada, are huge.

Trans-Pacific Partnership (TPP)

$0.27/L: *The amount Australian domestic milk prices increased when supply management was phased out*[1]

In 2010, Canada joined the TPP negotiations as an observer, and formally joined the negotiations in October 2012. Although the TPP’s goal claims to create a ‘free-trade zone for 12-countries representing 40% of the world’s population’, the agreement has been fraught with controversy. Since the negotiations opened in 2008, the release of information is heavily classified. Although lobbyists and corporations were given access to all documents in the negotiations, the public is not allowed to know what is being discussed – all public information originates from leaked documents published by organizations like WikiLeaks.

According to these leaked documents, the TPP will change a number of existing laws and policy areas in Canada, including:

- Drastic changes to copyright laws (including criminalizing small-scale downloads, empowering Internet Service providers to police customers, and allow corporations to control the browsing histories of Canadians);
- Requiring Crown corporations, like the CBC, to operate at a profit or lose government support:
- Reduced access to generic drugs;
- Troubling investor-state provisions that would strip Crown Corporations like the CBC and Canada Post of government funding;
- Elimination of dairy supply management[2]

[1] http://www.dairyfarmers.ca/what-we-do/supply-management/myths-realities

[2] http://www.huffingtonpost.ca/2014/07/07/tpp-talks-ottawa-vancouver_n_5564683.html

In 2013, dairy farmers contributed $18.9 billion to Canada's GDP and was one of the top two agricultural sectors in seven provinces[3]. However, Canada's system of supply management, in which quotas for dairy products are used to regulate dairy prices, is one of the key points of contention in the TPP negotiations. Even though the evidence suggests otherwise[4], critics of supply management argue that it inhibits free trade. What is clear however, is that 81% of Canadians want to retain supply management.

If the TPP is signed in its current form, Canadians could see increased milk prices, a decrease in the quality of Canadian content, and a further erosion of our sovereignty. **The Green Party opposes the Trans-Pacific Partnership, which would undermine Canadian civil liberties and unduly increase the price of Canadians' grocery bills.**

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[3] http://www.dairyfarmers.ca/what-we-do/our-economic-contribution

[4] A Canadian Dairy Farmer commissioned study concluded that Canada, which does not subsidize its dairy currently allows up to 5% of tariff free imports from the EU, while the EU, who provides up to $55 billion in subsidies, imports significantly less products, despite being a larger dairy market (http://www.dairyfarmers.ca/what-we-do/supply-management/myths-realities)