



CHINA IS EYEING CANADA'S DAIRY SECTOR

Foreign Investment Protection Agreements can cause Chinese investors' rights to trump Canadian rights

FIPA. SOUNDS LIKE SOMETHING you might call an F cow-family heifer calf if you ran out of name options. In fact, FIPA stands for Foreign Investment Protection Agreement. You can cull a poor cow; a FIPA is forever. Well, for 31 years anyway: 15 years to back out, a year's notice to do so, and investment protections that survive for 15 years after the deal is terminated.

Why do we care? Because Chinese investment is the biggest global player in farmland acquisition. Because China is at the moment purchasing vast tracks of farmland in Canada. Because Chinese investor rights will trump Canadian rights once this FIPA is ratified.

CANADA'S FIPA PARTNERS

Since Canada's first FIPA agreement with Poland back in 1990, Ottawa has entered into 23 more such agreements with countries as diverse as Egypt, Russia, Barbados and Jordan. Bilateral FIPA negotiations have been concluded with another 11 countries; fourteen more are under negotiation. (See insert.)

With the exception of China, Russia and India, most of these agreements are with emerging and/or transitional, capital-importing economies. Since countries needing to import capital are usually prepared to open their trade

doors in return, market access is not what FIPA's are about; FIPA's are about protecting the rights of domestic capital when it goes abroad.

Theoretically, such protections are reciprocal. These are, after all, bilateral agreements.

But since most of our FIPA partners do not have significant investments in Canada, it is Canadian investors who reap the bulk of FIPA benefits: a safe haven where foreign laws and regulations by all levels of government are subservient to foreign capital. Disputes are adjudicated in secret by appointed panel members whose decisions trump the offending nation's judicial and legal system and apply equally to federal, territorial, regional and local governments.

In the words of Juan Fernández-Armesto, a Spanish arbitrator in 2009 dubbed one of the 20 most important [persons] in the global finance and economy within the last two decades by Spain's *El Mundo* daily paper:

"When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all ... Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and

[The writer is an award-winning agrologist based on Bowen Island wendy@theholmteam.ca]

regulations emanating from parliament.”

Easy to see why relatively powerless, developing nations sign FIPA's – it's the cost of entry to get foreign capital. But compared to Canada's other FIPA partners, China stands alone as a powerful economy. Second largest in the world. Why would China sign such an agreement with Canada? Because China's investments in Canada are far more extensive than ours in China, the lion's share of FIPA investment protection benefits are in China's court. And China has her eye firmly on Canada's dairy sector.

GOT MILK? CHINA'S BURGEONING DEMAND

Milk was never an important staple in Chinese diets, but all that is changing. Over the past three decades, as China's economy grew at an annual rate of ten percent and population increased by more than a third (to 1.344 billion today), higher incomes, urban lifestyle changes, the trend towards “westernization” and government policies encouraged people to drink more milk. And demand for dairy products exploded.

Building slowly, dairy consumption jumped in the late nineties, increasing threefold from 1996 to 2003. To meet emergent demand, China implemented policies to increase the size of the national dairy herd. Cow numbers grew from 577,000 head in 1980 to 14.4 million today. For the first 10 years, the herd size increased by an average of 12 percent a year. From 1990 to 2005, this jumped to 20 percent a year. Today, China is the fourth largest milk producer in the world.

Despite production increases - more cows; better technology - China couldn't keep pace with exponential demand. With scarce arable land and water and low quality forage, China was fast approaching limits to growth in milk production. In 2005, China's dairy expansion slowed dramatically, averaging only

3.3 percent for the past 8 years.

To compensate, China constructed large, mega-barns on small parcels of land and imported cheap feed. But as feed prices rose in response to competition from ethanol, higher transportation costs and drought, the writing was on the wall: if more dairy was to be consumed in China, it would have to

come from other countries.

Beginning in 2005, Chinese imports of dairy products increased dramatically. After the 2008 melamine scandal resulting in the poisoning of 294,000 Chinese children and the death of six, Chinese consumers no longer trusted domestic milk supply, adding to demand for foreign products. Between 2007 and 2012,

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total imports of dairy products increased 190 percent. In the last year alone, imports of skimmed milk powder grew by 49 percent, and are expected to increase an additional 18 percent this year. Today, China is the largest dairy importer in the world.

WHERE DOES FIPA COME IN?

To meet exponential demand, China's only options today are to import feed and dairy products. Both are costly and subject to price and supply fluctuations. Clearly, another option would be to find somewhere close, with good land and

water, a stable economy and trusted food safety regulations where they could invest in farmland, produce milk, process it, and ship it home...

The Canada-China FIPA opens those doors, inviting and protecting direct foreign investment in Canada's farming sector. This has direct implications for dairy farm ownership, farm size, quota prices and – since exports will be the primary focus – the integrity of Canada's supply management program.

How could Chinese dairy processing plants based in Canada obtain Plant Supply Quota (PSQ) and

export product?

China's new baby formula plant in Scarborough doesn't need PSQ because it will be using skim milk powder - 5,000 tonnes a year to start with a target of 30,000 tonnes a year when fully operational, equivalent to half Canada's annual SMP surplus.

For fluid milk, plant supply quota is available on a trial basis under CDC's Domestic Dairy Products Innovation Program. After three years of successful operation, new Plant Supply Quota would be allocated based on the plant's highest usage during the trial period.

CANADA'S FOREIGN INVESTMENT PROTECTION AGREEMENTS

AGREEMENTS IN FORCE		BI-LATERAL NEGOTIATIONS CONCLUDED - AGREEMENTS PENDING	BI-LATERAL NEGOTIATIONS UNDERWAY
Nov-90	Poland	Aug-08 Madagascar	Albania
Jun-91	Russian Fed (now Russia)	Feb-10 Bahrain	Burkina Faso
Apr-93	Argentina	Sep-11 Kuwait	Côte d'Ivoire
Nov-93	Hungary	Oct-11 Mali	Ghana
Jul-95	Ukraine	Sep-12 China	Guinea
Jul-96	Trinidad and Tobago	Sep-12 Senegal	India
Nov-96	Philippines	Nov-12 Cameroon	Indonesia
Jan-97	Barbados	Jan-13 Bénin	Kazakhstan
Jun-97	Ecuador	Jan-13 Zambia	Moldova
Nov-97	Egypt	Apr-13 Nigeria	Mongolia
Jan-98	Venezuela	May-13 Tanzania	Pakistan
Feb-98	Panama		Serbia
Sep-98	Thailand		Tunisia
Mar-99	Armenia		Vietnam
Jun-99	Lebanon		
Jun-99	Uruguay		
Sep-99	Costa Rica		
Jan-01	Croatia		
Jun-07	Peru		
Dec-09	Jordan		
Nov-11	Latvia		
Nov-11	Romania		
Jan-12	Czech		
Mar-12	Slovak Republic		

With respect to exports, one possibility is using Canada's 5 percent allowable export sleeve (often unfilled). The other (more likely scenario) is by exporting a "blend" or a "food preparation product" that doesn't fall within existing tariff categories (like baby formula).

The University of Calgary's School of Public Policy September 2012 report *Dancing with the Dragon*, Chinese Investment in Canada and Canadian Investment in China concludes with the advice:

"...In a future world... control over agricultural production capacity and distribution will become a highly strategic part of geopolitical considerations... aggressive Chinese overseas direct investment in farmland and agricultural projects, by both SOEs and private investors, may, in the future, lead to bitter public debates among the Canadian public about growing foreign control over Canadian land... much as it did in New Zealand and Africa... It is not too early for Canada to consider its position regarding foreign ownership of farmland and agricultural production before foreign investors from the Middle East, China, and the EU arrive in large numbers..."

Not too early? More like "almost too late" – FIPA's National Treatment provisions foreclose any options that give Chinese investors second-class rights to Canadians.

In a classic David and Goliath move, the tiny, 300 person Hupacasath First Nation in Port Alberni, B.C. has challenged the Canada-China FIPA in federal court, holding up ratification. A ruling is expected in early fall. **D**

The writer is an award-winning Professional Agrologist writing from Bowen Island.

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