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CANADA'S PROGRESSIVE TRADE AGENDA AND A FREE TRADE AGREEMENT WITH CHINA: ARE THEY INCOMPATIBLE?

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SUMMARY

The “non-market” clause in the just-concluded update of NAFTA, now known as the US-Mexico-Canada Agreement (USMCA) would appear to limit Canada’s options in terms of negotiating a free trade agreement with China at the present time (given the de facto US veto over a Canada-China agreement that it provides), yet Prime Minister Trudeau has already reaffirmed Canada’s intention to pursue closer economic ties with China despite this apparent limitation. If negotiations proceed, negotiating a free trade agreement (FTA) with China will be very different from negotiating one with a country that shares Canada’s Western values. However, a trade agreement with China makes good economic sense, and while there are some unique obstacles to reaching such an agreement owing to differing views of progressive trade, these are not insurmountable. In fact, Canada can use the same models in negotiating with China that it has used with Western countries. Such an approach combines trade goals with respecting Chinese cultural and political differences, particularly those that fall into the category of progressivism. This category includes labour rights, Indigenous and gender issues, and governance.

Prime Minister Justin Trudeau’s government has been focused on progressive elements in trade deals, while China has made it clear it is not interested in including them in any such pact. Concluding an agreement would mean that China and Canada must both recognize the political requirements and dynamics on the opposite side of the negotiating table, while seeking common ground diplomatically.

Side agreements such as those that exist in the original NAFTA and in the Comprehensive Economic and Trade Agreement (CETA) are one way to work with the two countries' differences. Many of the provisions in a side agreement are not binding and thus not subject to the agreement's dispute settlement mechanism or trade sanctions. Instead, they are more aspirational and sometimes lay out a process for civil society groups to raise issues and help the thinking on those issues evolve, rather than simply holding the parties accountable for breaches.

Canada is rightly concerned about Chinese stances on human rights, labour, environmental and gender issues. However, instead of including these issues in the main document on trade, they can be dealt with as shared interests between the two countries. Establishing separate but parallel mechanisms to deal with these issues would be a practical way to make progress.

Focusing on micro, small and medium-sized businesses as one Chapter of the Trans-Pacific Partnership (TPP) did, could be another successful approach. Women own many of these businesses in developing countries, so such a focus would make a substantial contribution to their welfare.

None of this means Canada should kowtow to China or look the other way on important values and issues. Side agreements and special focuses have formed parts of agreements with other countries that already share Canada's Western values. This type of give-and-take is present even when Canada negotiates with countries that are not polar opposites. No country's interests are exactly the same as those of any other and it's unrealistic to expect unanimity on every issue.

Language and firm commitments on progressive issues are still evolving in many of Canada's free trade agreements, including the USMCA. It would be unreasonable to hope that everything can be achieved in an agreement with China on the first go-around. Rather, viewing a trade agreement with China as a work-in-progress means controversial elements can be brought into the negotiations and language used that reflects the understanding that these issues are evolving.

It will require creative thinking, flexibility and joint commitment to find a solution, but—assuming that the USMCA does not rule out Canada-China negotiations toward a trade agreement— it should be possible to find sufficient common ground without having to resort to obfuscation and “creative ambiguity”.

“By keeping our borders open and pursuing progressive trade deals that put people first and reflect our values, we give our businesses access to more customers and we give our customers greater access to the goods they want.” Prime Minister Justin Trudeau, in a speech to the Fortune Global Forum in Guangzhou, December 2017. [Bloomberg](#).¹

“We think that the notion of progressive trade maybe is not a good factor in the negotiation of an FTA because we don’t like factors which (have) no relation with commerce and trade (to be) included in the negotiations.” Lu Shaye, Chinese ambassador to Canada, April 10, 2018. [CBC Report](#).²

On the surface, there would seem to be an irreconcilable difference of opinion between Canada and China when it comes to the question of what should be covered in a trade agreement between the two countries. A Canada-China free trade agreement (FTA) has been talked about for some time. To prepare the ground, the two governments undertook a [“complementarities study”](#)³ (Ministry of Commerce-PRC, 2012), which identified a number of sectors where both sides could gain from more liberalized trade rules. This study sat on the shelf during the Harper years, but the current government resurrected the idea of negotiating a bilateral agreement with China and a bilateral working group was set up to discuss terms of engagement. There are good economic reasons for doing so (Dawson and Ciuriak, 2016) although Canadian public opinion reflects mixed views regarding closer relations with China. In the recent Asia Pacific Foundation of Canada [national opinion poll](#)⁴ (APF, 2017), a strong majority agreed that there were economic benefits to be gained and 55 per cent supported entering FTA negotiations with China. However, roughly two-thirds of Canadians polled were concerned that closer relations with China would leave Canada vulnerable to Chinese economic and political pressure. In addition to specific concerns about China, trade liberalization generally is unpopular with many (although fortunately not most) Canadians, as witnessed by numerous [anti-trade campaigns](#)⁵ carried out by the Council of Canadians (2018), among others.

Into this vortex, the Trudeau government has launched its progressive trade policy agenda. The term “progressive” has a long history in Canada and its meaning has changed over time. From roots in the 1920s when the Progressive Party of Canada arose as a flag bearer of western Canadian discontent, to the label still carried by some right-of-centre parties in Canada (e.g., Ontario’s Progressive Conservative Party), it is more commonly used today to describe somewhat left-of-centre voters who oppose socially conservative world outlooks and who embrace a role for an active rather than passive government in its citizens’ lives. However, there is no one clearly accepted definition.

Meredith Lilly (2018a) at Carleton University has attributed the popularization of the term “progressive” in a trade context to Foreign Affairs Minister Chrystia Freeland. According to Lilly, in Freeland’s world view there is a link between progressive social policies and increasingly liberalized trade. This linkage was used during the endgame of the negotiations to conclude the Canada-EU Comprehensive Economic and Trade Agreement (CETA) when it appeared as if popular protests in Europe against the “investor-state dispute settlement” (ISDS) elements of the agreement would derail its final conclusion. Freeland, at the time International Trade minister, made an impassioned plea when the Belgian region of Wallonia blocked final agreement, stating

¹ <https://www.bloomberg.com/news/articles/2017-12-06/trudeau-says-had-progressive-talks-on-trade-with-china-s-xi>

² <http://www.cbc.ca/news/politics/china-trade-canada-progressive-1.4613602>

³ <http://images.mofcom.gov.cn/www/accessory/201208/1345032379163.pdf>

⁴ <http://www.asiapacific.ca/surveys/national-opinion-polls/2017-national-opinion-poll-canadian-views-engagement-china>

⁵ <https://canadians.org/trade>

that it seemed evident that the European Union was not capable of having an international agreement, “even with a country with European values such as Canada ...” (Smith, 2016). She noted later that making the case that Canada was a progressive country with progressive values played an important part in securing ratification (Lilly, 2018b). Since then, the policy framework for progressive trade has been more fully fleshed out and includes a range of issues not traditionally included in trade or economic partnership agreements, although some of these are more closely linked to traditional trade concerns than others.

Thus, while there is no single definition of the meaning of “progressive trade”, at various times it has been described as including such issues as labour rights, environmental commitments, gender, Indigenous economic benefits and even governance, which could be read as a code word for human rights. In short, progressive trade attempts to bridge the dichotomy of values vs. interests. This is a false dichotomy (Dobson and Evans, 2015) but one which has been often pointed to as a choice that Canada has to make (*Globe and Mail*, 2014), particularly when it comes to dealing with an authoritarian, single-party state like China. Some progressive elements, however, such as labour standards and environmental commitments, have a closer linkage to trade barriers (or removal of trade barriers) – and thus economic interests – than others, given their potential influence on the cost of production of export goods.

It is worth noting that very few of Canada’s current trade agreements contain what could be considered meaningful progressive elements. When NAFTA was negotiated in 1994, labour and environmental issues were not part of the agreement. The addition of separate but related labour and environmental provisions through side agreements was part of the compromises made to achieve ratification. While the NAFTA labour and environmental agreements have existed for more than 20 years, and have led to some progress in labour and environmental standards in Mexico, they have received mixed reviews (Aspinwall, 2017a). Essentially, they sit alongside the agreement and provide a forum for addressing these issues, but for the most part they are not linked to binding commitments that can lead to trade sanctions under NAFTA. Under NAFTA’s replacement, the USMCA, labour and environment chapters have been fully incorporated into the text of the Agreement, but the original NAFTA model is still applicable.

Likewise, CETA has chapters on trade and labour and trade and the environment. In addition, it mentions gender equity, although on the latter point there is only one explicit reference, where gender discrimination is listed as one of the grounds for claiming denial of fair and equitable treatment with regard to investment regulation (Leblond and Fabian, 2017). Other elements that could be considered progressive are contained in the Strategic Partnership Agreement (EUEA, 2017) that was signed with the EU at the same time as CETA. These include “upholding democratic principles and human rights”, “advancing democracy, including free and fair elections, and the importance of the rule of law for effective democratic governance”, promotion of sustainable development, reducing poverty, a commitment to fighting corruption and other associated objectives. The language is largely hortatory, non-binding and aspirational⁶ and there are good reasons for this. Trade agreements mean that countries voluntarily surrender some aspect of sovereignty (such as the ability to levy tariffs, for example) in return for reciprocal commitments from their trading partners. This willingness to curb their sovereign rights is becoming increasingly controversial, as we have seen with bilateral investment treaties (such as the Foreign Investment Promotion and Protection Agreement (FIPA) with China).⁷ To ask legislators to

⁶ E.g., “High-level dialogues on energy, environment and climate change shall be maintained under the new Agreement and experts’ dialogues and the exchange of best practice in other policy areas of common interest are encouraged.”

⁷ An example of the anti-FIPA rhetoric that was generated at the time the agreement was signed in 2014 can be found on the website of the Council of Canadians, *Canada-China FIPA in Depth*, and advocacy site *Open Letter to Conservatives*.

surrender a degree of control over what many see as purely or largely domestic issues (e.g., labour, environmental and gender legislation) is difficult.⁸

Other parts of the progressive agenda are even more removed from core trade issues in the views of some, as described by Carlo Dade, Director of Trade and Investment at the Canada West Foundation (Smith, 2018a). Gender is a good example. Although there is one reference to gender in CETA, as noted above, the first Canadian agreement to contain an explicit gender chapter (in the form of an [appendix](#)⁹ (Government of Canada, 2018a) to the original agreement) was the renewed Canada-Chile agreement signed on June 5, 2017. However, this “Trade and Gender” appendix is non-binding and is not subject to dispute settlement. At best, it is an aspirational first step to recognizing issues of gender discrimination in trade; at worst, it is a hollow declaration since it has no teeth. It was also an agreement signed with a progressive country under the leadership of a female president, Michelle Bachelet, a particular circumstance not likely to be widely replicated.

Then there is China. China has made plain its views that so-called progressive elements have no place in a trade agreement, as exemplified by Ambassador Lu Shaye’s comments to the press. It has been widely reported that the main reason for the failure of Prime Minister Justin Trudeau’s December 2017 visit to China to reach agreement on the formal start of bilateral trade negotiations was China’s refusal to accept the inclusion of progressive elements. An expected press announcement was delayed, and when the two principals, Trudeau and Chinese Premier Li Keqiang finally appeared, all they could announce was that further discussions were required before bilateral negotiations could be launched.

This seems to have come as a surprise to the Canadian side which had reportedly been told, during Li’s visit to Canada the year previous, that China was open to discussing items on the progressive agenda. What happened in the interim? First, it seems that while China may be prepared to talk about certain issues like labour (or even human rights), it is not ready to commit in a press release to a long laundry list of progressive, non-core topics that could end up being baked into a negotiating agenda. Second, China is becoming more assertive, as exemplified by the results of the 19th Party Congress and the First Session in March of this year of the 13th National People’s Congress, which extended President Xi Jinping’s mandate and tightened his grip on power through a series of personnel and structural changes. China would like an agreement with Canada, but not at any cost. It is notorious for taking the long view.

However, for China there are both symbolic and real attractions to a deal with Canada. It would be the first with a G7 country, yet given the size of the Canadian economy it would be a manageable endeavour. China wants recognition that it is a market economy and this will be one of its key negotiating objectives. This objective can no longer be achieved directly through bilateral negotiations with Canada, however, given the insertion of Article 32.10 (the so-called “non-market” clause) in the USMCCA. This article, inserted at the insistence of the United States, states that any of the three North American partners contemplating negotiation of a trade agreement with a non-market economy, must inform the other two partners in advance of their intentions and objectives, and share the text of any draft agreement prior to its conclusion. The other two partners then can either approve or reject the draft agreement. In the case of a rejection, the partner that has signed the agreement has the option of either renouncing it or being, in effect, expelled from the USMCA. This “poison pill” clause in effect gives the U.S. a veto over any free trade agreement that Canada

⁸ Thus it is not surprising that while CETA has provisions for panels of experts to resolve labour and environmental disputes, the panels can only recommend solutions, not force a binding resolution.

⁹ http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng

signs with a non-market economy. While China is not specifically referred to in the text of the USMCA, the definition of “non market economy” can be unilaterally determined by any of the three partners at the time of the signing of the USMCA. At the present time, China is so designated by the U.S. Department of Commerce.

This raises questions about whether Canada will be able to realistically engage with China at the present time. Of course, any negotiations will take time (the negotiations between Australia and China took more than ten years) and so Canada could engage with China in the hope and expectation that by the time an agreement is concluded, China will have achieved market economy status. (The significance of market economy status is that it affects the way in which trade remedy measures are calculated).

Prime Minister Trudeau has confirmed that Canada still intends to pursue closer trade ties with China despite the “non-market” language in the USMCA. ([Parkinson](#), 2018).¹⁰ Perhaps an accord could be something less than a “free trade agreement”, which is the language used in the USMCA.

Canada’s recognition of China’s market economy status would mark a significant step forward toward Chinese global trade objectives. An agreement with Canada would provide China with a trade foothold in North America, in the U.S.’s backyard which in part explains the reason for the U.S. insistence on including this limitation on the ability of Canada and Mexico to conclude an agreement with China, at least for now. It is not known at this point how China will respond to this recent development. China is not only engaged in a tit-for-tat trade war with the U.S. but is also flexing its muscles and is acutely aware that whatever it may concede to Canada in a bilateral agreement will be seen as a template for other negotiations. So China is playing hardball.

The question that arises, therefore, is—should Canada-China negotiations get underway—whether or not there is any middle ground for China and Canada to be able to negotiate an agreement that meets both sides’ objectives from the perspective of progressive trade. I contend that with care and imagination the non-market is possible, although it will take time, will not be easy and could be derailed by other factors. One possible avenue was outlined in a paper last year by Robert Wolfe of Queens University ([Wolfe](#), 2017) who suggested that Canada and China could perhaps find areas of convergence on progressive issues by focusing on their common interest in promoting the UN’s Sustainable Development Goals.¹¹ Another is the approach below where Canada and China would develop a framework agreement that would include binding commitments in core areas but where other more aspirational objectives would be dealt with in parallel ways, with non-binding linkages back to the core agreement.

To move in this direction, first Canada needs to re-evaluate its insistence on openly including progressive elements in an agreement with China. Guy St. Jacques, Canada’s former ambassador to China, suggested this in an interview shortly after the failure of Trudeau’s December visit to get trade talks started. He was [quoted](#)¹² (Smith, 2018b) as saying, “There’s a need for an internal debate and maybe (to) make some revisions to the strategy. I think this is taking place now, so hopefully there will be progress in the next few weeks. There’s a bit of hard swallowing that is required.” St. Jacques also suggested that if allowed, diplomats could have found a form of words to bridge the gap between the two sides. However, Canada’s desire to push for explicit reference to progressive elements, including labour, in the press communiqué, led to the standoff. Neither side blinked, and the moment passed.

¹⁰ <https://www.theglobeandmail.com/business/article-prime-minister-trudeau-to-seek-trade-ties-with-china-despite-usmca/>

¹¹ <http://policyoptions.irpp.org/magazines/august-2017/a-progressive-trade-agenda-with-china/>

¹² <http://nationalpost.com/news/politics/discussions-underway-within-canadian-government-about-reworking-progressive-trade-agenda-former-ambassador-to-china>

It is easy to argue that Canada should put some water in its wine, as indeed this author did back in January of this year (Stephens, 2018), although we have to be careful not to sell out our values or make concessions even before the negotiations have started. However, the message needs to be tailored to the market. What is possible with the EU, Chile or the United States (although the progressive agenda did not go down well with the Americans and is only faintly reflected in the USMCA) is a much more difficult sell with countries where there is a wide gap in both cultural values and economic development. China is a good example.¹³ While it has made remarkable progress in lifting hundreds of millions of people (including women) out of poverty, growth in Western-style democratic institutions has not matched economic growth. In the area of labour, while China has unions, they are firmly under the thumb of the Chinese Communist Party. China is willing to commit to combating child labour and a number of other items on the International Labour Organization's (ILO) agenda, but it is not about to allow a Chinese version of Solidarity. The case of Solidarity in Poland shows that unions can become vehicles for broader public opposition to regimes and hasten their downfall.

One of the casualties of China's rapid economic growth was its environment. Air, water and land pollution are rampant, but things are changing rapidly. China is becoming a leader in renewable energy and electric-powered vehicles. It still burns a lot of coal (which Canadian and U.S. firms continue to sell to China),¹⁴ but soon it will no longer be a traditional laggard in environmental protection. This will have significant implications for an FTA in terms of China's increased willingness to reduce barriers to trade in green technologies (products and services) as it seeks markets for its own renewables industry (Chinese solar panels and wind-powered generators are a good example).

Including gender equality in a trade agreement with China might be a harder sell, as will Indigenous trade, another element of the progressive agenda. While Chairman Mao once proclaimed that "women hold up half the sky", there are only 10 females among the 204 members of the Chinese Communist Party Central Committee.

With regard to Indigenous trade, we run into problems of definition in dealing with China. According to various sources (Asia Society, 2018), China officially recognizes 55 or 56 national minorities, which could roughly be considered to be the equivalent of Canada's First Nations. However, among them are groups that exist uneasily within the Chinese state, such as the Tibetans and Uighurs, nationalities that the Chinese consider generally subversive or at least suspect, and which they go to considerable lengths to control. To state the obvious, China is never going to provide for special treatment within a trade agreement for Tibetans, Uighurs or any other group that might be considered an Indigenous minority. Canada needs to think this through as well. What would be the impact on incoming foreign investment if an Indigenous chapter endowed First Nations with a veto over certain projects, often referred to as prior and informed consent (Stephens, 2017)? This would add a major degree of uncertainty and would be certain to deter investment.

¹³ Ironically, if Canada wished to negotiate a "progressive" trade deal with a "progressive" economy in Asia, it should negotiate an FTA with Taiwan. Taiwan meets all the criteria: small, relatively open economy, democratic government, free unions, active civil society engaged in environmental and gender issues, and so on. It even has an aboriginal community (known as the "yuanzu min", or "original peoples" in Taiwan), an ethnic group that the Taiwanese government is trying to bring into the economic mainstream. However, in the real world this unlikely to happen. Given the relative economic weights of Taiwan versus China, the mainland holds the leverage, and has made it plain (at least in the past) that while it does not object to bilateral agreements between Taiwan (known in WTO parlance as the "Customs Territory of Taiwan, Penghu, Jinmen and Mazu") and other countries, such an agreement should only come after the country in question has first reached a bilateral agreement with China. This was the formula that was used in the case of both Singapore's and New Zealand's bilateral trade agreements with Taiwan. It is worth noting however that even though Australia signed an FTA with China in 2015, it has yet to resume talks with Taiwan on a bilateral agreement.

¹⁴ The majority of Canada's coal sales to China are metallurgical coal, used in steel making, but roughly half of Canada's coal production is thermal coal used for electricity generation. Canada still sells considerable thermal coal to China. Natural Resources Canada, *Coal Facts*.

China will find it difficult if not impossible to accept the Canadian progressive agenda in the form and format that Canada would like – but it would be politically humiliating and would undermine its overall trade objectives and messaging for the Trudeau government to walk away from progressive trade, assuming there is still interest in exploring an agreement with China. Therefore, how and where can China and Canada find common ground? It will require imaginative thinking and joint commitment to find a solution, but it should be possible without resorting to “creative ambiguity”. Both the original NAFTA and CETA offer possible routes to a solution.

The labour and environmental side agreements in the original NAFTA were not originally part of the pact but were added later to address specific concerns that arose during ratification. Many of the provisions in the side agreement are not binding in that they are not subject to the agreement’s dispute settlement mechanism. Instead, they lay out more of a process for civil society groups to raise issues than to hold the parties accountable. Nevertheless, despite criticisms (e.g., from organized labour) that they have not been effective (CLC, 2015), other observers point out that they have led to some positive impact (Aspinwall, 2017b), although the provisions could be strengthened. Based on this experience, and using the NAFTA agreements as a base, it should be possible to find common principles in the area of labour and the environment that Canada and China could work on together.

In NAFTA, the labour side agreement gave civil society labour groups the ability to bring complaints to the attention of the other two partners’ departments of labour. China will certainly not want to empower its labour groups with this ability but other mechanisms could be found to address labour issues in a side agreement. China is an ILO member and subscribes to a number of, although not all, ILO conventions (ILO, 2018). Conceivably, there could be a commitment to work together with the ILO to assist China to accede to more conventions. China, along with Canada, is also a committed member of the Paris Agreement on Climate Change, which came into effect in 2016. This agreement on fundamental environmental principles should allow the two parties to find a common landing zone from which to begin discussions for co-operation in this area.

These discussions do not need to be related directly to a trade agreement but would clearly have a long-term impact in terms of both labour and environmental standards. More important, they would be consistent with the Trudeau government’s focus on these elements of progressive trade. There are various ways to do this. Separate forums or commissions could be established to cover these issues, perhaps under the umbrella of, or linked to, a bilateral trade secretariat, but without being binding on either side or being subject to dispute settlement. Even though labour and environment have been integrated into the text of the new USMCA and are no longer side agreements, the model of the original NAFTA is still valid.

The Strategic Partnership Agreement signed between Canada and the EU to parallel CETA is another form that can be used to deal with issues such as human rights and gender, issues that Canada considers to be germane to trade but which China does not want to include in an agreement. It is significant that even with an entity like the EU, with whom Canada shares many common views and values, governance issues were put in a separate agreement, and were not included in the CETA text. If we can live with this kind of practical arrangement in dealing with the EU, why could we not do so with China?

In practical terms, if Canada wants to make progress on gender issues, a focus on micro, small and medium-sized enterprises (MSMEs) would go a long way toward improving gender outcomes regarding economic welfare, since women start and operate many micro and small enterprises in developing countries. While the Australia-China agreement does not have a chapter dealing with SMEs or MSMEs, the Trans-Pacific Partnership (TPP) had a specific chapter dealing with small

and medium-sized enterprises ([Chapter 24](#))¹⁵ (Government of Canada, 2018b) that, among other things, sets up a committee on SMEs to help small business take advantage of the agreement. This provision was included in the revised TPP, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that Canada signed in March of this year, and is non-controversial. While China is not a CPTPP signatory, there is no reason why Canada and China could not find common ground in promoting business opportunities for SMEs within a bilateral agreement, a provision that would have a positive impact on gender opportunities in business as well as assist small Indigenous businesses.

These compromises from a Canadian perspective would not be a sellout to China. Language and firm commitments on these issues, even with trading partners with whom we share common values and level of economic development like the EU and the U.S., are still evolving. It is not reasonable therefore to expect that Canada should be able to significantly push existing boundaries on progressive trade with developing countries such as China. Yet it is still possible to incorporate progressive elements into the negotiations. Establishing separate but parallel mechanisms to deal with these new issues would be a practical way to make progress.

For China, these are issues that sooner or later are going to have to be addressed, so why not find a way to deal with them in a non-threatening manner? In his interview with *The Canadian Press* (2018) when he dismissed progressive trade as not being appropriate for inclusion in a trade agreement, Ambassador Lu conceded that labour issues were relevant to trade but “not now”. In fact, China will want to discuss labour issues with Canada and have provisions relating to labour mobility, just as it did in the Australia-China agreement (Government of Australia, 2018). Given that both sides have an interest in this topic, it should be possible to find some common ground and build from there. It’s all about finding the right terminology and framework.

I suspect that the differences between the two sides are not that great, but there is a risk that hubris or stubbornness, or just plain miscommunication, could impede the launch of negotiations. Timing is always a critical factor and the right alignment of interests is important. A moment of opportunity comes when both sides are ready to launch negotiations. Extraneous factors, such as disputes with other trade partners internal politics (elections, party congresses) and other issues can intervene. Canada’s recent [decision](#)¹⁶ (Aecon, 2018) to block the acquisition of Canadian construction company Aecon by the giant Chinese state-owned enterprise CCCI chilled the bilateral atmosphere. More important of course, is the backdrop of the U.S.-China “trade war” and the “poison pill” of Article 32.10 in the just-concluded USMCA. Because of developments like this, the momentum for negotiations can suddenly dissipate and the moment of opportunity slips away.

That is the main risk arising from the failure to launch talks last December. The longer the hiatus continues, the greater the possibility that the window will close – for both Canada and China, as recent developments would seem to indicate.

Both sides need political will and creative negotiating mandates, allowing both parties to find a way to meet their respective negotiating and political objectives. Each needs to accept a slightly different package in design and wording, recognizing the political requirements and dynamics they each face, while finding the diplomatic common ground that will allow them to proceed.

Whether they will now find a way to proceed notwithstanding the handcuffs of Article 32.10 that Canada had to accept as part of the price of concluding the USMCA remains to be seen. If they do, the progressive trade agenda does not have to be an insurmountable obstacle. China’s non-market economy status might be a more serious hurdle.

¹⁵ <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/24.aspx?lang=eng>

¹⁶ http://www.aecon.com/Media_Room/~1430-Government-of-Canada-Rejects-Aecon-Sale-to-CCCI

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