



**China's Attitude towards Investor-State  
Arbitration and its Implications for the Potential  
Canada- China Free Trade Agreement (FTA)**

Nanying Tao

# The Possible Canada – China FTA

## ▶ Opportunities from China

- The world's second largest economy
- China's economic relations with Canada: Canada's second largest single-country trading partner

## ▶ Consultation

## ▶ Main concern

- How will Canadian investments in China be protected under the FTA?

# China's position in investment dispute settlement: **Encouraging ISA but avoiding being a Respondent**

## ► Gradually liberalize access to investor-state arbitration (ISA)

No ISA clauses



Arbitration on the amount of compensation for expropriation or nationalization



ISA on “Any dispute concerning an investment”



NAFTA-like ISA clauses

## ► Limitations

- **Excluding dispute settlement mechanisms from most-favored-nation (MFN) treatment**

“...the [MFN] “treatment” does not encompass the dispute resolution mechanisms...in other international investment treaties and other trade agreements.”

Article 5 (3) of China – Canada BIT (2014)

- **Exhaustion of local remedies**

“China shall require that an investor make use of the domestic administrative reconsideration procedure. If the investor considers that the dispute still exists four months after the investor has applied for the administrative reconsideration, or where no such remedies are available, the investor may submit its claim to arbitration.”

Annex C.21 of China – Canada BIT (2014)

# Canada's position: Encouraging ISA but designing it in a radical way

## ▶ Investment Court System

- Roster of Tribunal Members
- Appeal Mechanism
- Code of Conduct
- Transparency

# What will the ISA in Canada-China FTA look like?

## Consensus: design of ISA

- ▶ More accountable and predictable
- ▶ Increase “government’s control”



A more court-like ISA?

## Divergence

- ▶ Admissibility of ISA