

# CANADA & TAIWAN CONCLUDE FOREIGN INVESTMENT PROTECTION ARRANGEMENT

Posted on October 30, 2023

**Categories:** [Insights](#), [Publications](#)

The Canada-Taiwan Foreign Investment Protection Arrangement (“**FIPA**”)[1] has been [concluded](#) after a 22-month gestation. Exploratory discussions between Canada and Taiwan began in January 2022,[2] and formal negotiations commenced in February 2023.[3] The FIPA text is expected to be released publicly in 2023 in English, French, and Chinese after Canada and Taiwan finalize reviewing the legal text.[4]

This marks the first Canadian investment protection deal since Canada’s revision to its Model Foreign Investment Protection Agreement (“**Model FIPA**”) in 2021.[5] It is also the most significant bilateral deal between Canada and Taiwan since the 2016 Canada-Taiwan Income Tax Arrangement.[6]

Canada’s Model FIPA was revised in 2021 following the variations on investment protection negotiated in the investment chapters of Canada’s most recently negotiated treaties, namely the Canada-European Union Comprehensive Economic and Trade Agreement (CETA),[7] the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)[8] and the Canada-United States-Mexico Agreement (CUSMA).[9] It contains core common investment protections such as non-discrimination obligations (national treatment and most-favoured nation treatment) and an obligation to treat foreign investments in accordance with the minimum standard required under international law. The Model FIPA also contains modernized investor-state dispute settlement (“ISDS”) provisions that promote alternatives such as consultation and mediation, and objectives such as transparency and diversity. However, these are often controversial and were removed from the CUSMA.

The Canada-Taiwan FIPA will be embedded within both Canada and Taiwan’s existing regulatory frameworks. It will provide greater certainty and protection for bilateral investment between Canada and Taiwan.

The FIPA is expected to facilitate growth in cross-border investment between Canada and Taiwan. At the end of 2022, total investment from Canadian businesses into Taiwan amounted to nearly USD \$1 billion, and total investment from Taiwanese businesses into Canada amounted to USD \$600 million.[10]

When the FIPA comes into force, likely in 2024, Canadian businesses are expected to become more attractive for Taiwanese investors. Taiwanese investors have been investing in Canada’s renewable energy, ICT, biotechnology, transportation, finance, and retail sectors. Canadian companies have, for their part, invested in

renewable energy projects in Taiwan, including offshore wind energy projects.

This FIPA will incorporate comprehensive investment protection norms and restrict the host from imposing investment restrictions while allowing the host to regulate in accordance with its domestic policy objectives.<sup>[11]</sup> It is expected to ensure predictability and stability for investors, while recognizing the values of corporate social responsibility, cultural diversity, environmental protection, gender equality, labor rights, and inclusive growth.<sup>[12]</sup> It is not clear whether and what form of ISDS may be provided.

This new FIPA is an important milestone for Canada's Indo-Pacific Strategy ("IPS"), announced November 2022. The IPS is Canada's renewed and expanded strategy to engage with Asia,<sup>[13]</sup> highlighting the importance of the Indo-Pacific region to Canada in areas like trade and environmental protection, among others. Putting into place trade and investment architecture to support supply chain resilience, through agreements like the FIPA, is an important facet of the IPS.<sup>[14]</sup>

Canada and Taiwan are both members of APEC and the WTO, where they work together to develop responses to global challenges.<sup>[15]</sup> They are also both members of the new Indigenous Peoples Economic and Trade Cooperation Arrangement ("IPETCA").<sup>[16]</sup> Recently, a memorandum of understanding was concluded between the Taiwan Indigenous Peoples Business Association and the Dakota Ojibway Tribal Council.<sup>[17]</sup> The FIPA also builds on Canadian efforts to encourage transnational trade initiatives led by small-medium enterprises and encourage gender equity.

[1] Foreign Investment Protection Agreements (FIPAs) or Foreign Investment Protection and Promotion Agreements (FIPPAs) are Canadian names for Bilateral Investment Treaties (BITs). In this case, the FIPA is an arrangement and not an agreement.

[2] Global Affairs Canada, "[Readout: Minister Ng speaks with Taiwan's Minister Deng](#)" (January 2022).

[3] Global Affairs Canada, "[Minister Ng speaks with Taiwan's Minister Deng](#)" (February 2023).

[4] Office of Trade Negotiations, Executive Yuan, Republic of China (Taiwan), "[Taiwan and Canada Complete Investment Agreement Negotiations](#)" (October 24, 2023).

[5] Global Affairs Canada, "[Canada's 2021 Foreign Investment Promotion and Protection Agreement \(FIPA\) Model](#)" (2021).

[6] Finance Canada, "[Arrangement Between the Canadian Trade Office in Taipei and the Taipei Economic and Cultural Office in Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income](#)" (January 15, 2016).

[7] Global Affairs Canada, "[Comprehensive Economic and Trade Agreement – Chapter eight: Investment](#)" (accessed October 27, 2023); for more details, see our [previous bulletin on CETA](#).

[8] Global Affairs Canada, "[Comprehensive and Progressive Agreement for Trans-Pacific Partnership – Chapter 9 – Investment](#)" (accessed October 27, 2023); for more details, see our [previous bulletin on the CPTPP](#).

[9] Global Affairs Canada, "[The Canada-United States-Mexico Agreement \(CUSMA\)](#)" (accessed October 27, 2023); for more details, see our [previous bulletin on CUSMA](#) and our [CUSMA scoreboard](#).

[10] Office of Trade Negotiations, Executive Yuan, Republic of China (Taiwan), "[Taiwan and Canada Complete Investment Agreement Negotiations](#)" (October 24, 2023).

[11] Focus Taiwan, "[Taiwan, Canada Complete Negotiations on Investment Pact](#)" *Focus Taiwan* (October 24, 2023).

[12] Office of Trade Negotiations, Executive Yuan, Republic of China (Taiwan), "[Taiwan and Canada Complete Investment Agreement Negotiations](#)" (October 24, 2023).

[13] See e.g., Canada's previous "Pacific 2000 Strategy", Ronald C. Keith, "[China and Canada's Pacific 2000 Strategy](#)" *Pacific Affairs* (1992), 65:3, 319. This was followed, later, by Canada's Americas strategy, see Global Affairs Canada, "[Canada's Strategy for Engagement in the Americas](#)" (accessed October 25, 2023).

[14] For more details, see our [previous bulletin on the IPS](#).

[15] Global Affairs Canada, "[Canada-Taiwan relations](#)" (accessed October 27, 2023).

[16] Global Affairs Canada, "[Overview: The Indigenous Peoples Economic and Trade Cooperation Arrangement](#)" (accessed October 26, 2023).

[17] See "Memorandum of Understanding Between Taiwan Indigenous Peoples Business Association & Dakota Ojibway Tribal Council" (August 2023), referenced in Colin Clark, "[Taiwanese Delegation Stops in City](#)", *The Brandon Sun* (August 5, 2023).

by [Dr. A. Neil Campbell](#), [Hannibal El-Mohtar](#) and [Philip Kariam](#)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2023