

Read the FIPA agreement, learn the facts

BY JOHN HUNTER, NORTH SHORE NEWS MAY 3, 2013

Dear Editor:

Trevor Carolan's March 31 column, Wanted: New Ideas in Pipeline Debate states: "Kinder Morgan had a serious leak and an oil tanker spill near Burnaby in 2007 and 2009."

The former is true, wherein a contractor hit Trans Mountain's pipeline five times with a machine in 2007, finally bursting it and causing a leak. However, I can find no record of any oil tanker spill in B.C. waters except a canola oil spill a few years ago. My several emails to Mr. Carolan for information on this purported spill have not been answered.

On a totally different subject, in the April 21 North Shore News, Mr. Carolan is claiming the Canada China "FIPA" trade treaty is "obscene," sells out Canadian interests to China, is "guaranteed for 31 years," and is "subject to unlimited compensation costs determined by secret courts if the Chinese feel hard done by. . . ." I wonder if Mr. Carolan has read this proposed treaty, which has been on the Department of Foreign Affairs and International Trade website for more than six months.

I led the development of Canada's first thermal power plant built in China, where we would have prayed for a FIPA to protect our British Columbia investment of more than US\$50 million, and I advised on US\$1.5 billion of energy projects in Mexico, where NAFTA protection was available to the Canadian participants. I claim some hands-on knowledge of trade treaties.

Canada has a well established rule of law such that foreign investors generally (with the Newfoundland Abitibi, MTBE, and a few other exceptions) have no need to fear real or de-facto expropriation of their projects in Canada. Unfortunately, the same is not true for Canadians in many other countries, including China. In our Shanghai project, we relied on Export Development Corporation political risk insurance, a good cover, but inferior to FIPA. If Canadians want to invest in China, FIPA is essential in my view. Far from selling out Canadian interests, it protects them.

The "secret courts" dissed by Mr. Carolan are in fact internationally recognized arbitration tribunals, including one under the arbitration rules of the United Nations. "Feel hard done by" is a ludicrous comment (I presume Mr. Carolan was talking of investor claims); most anti-FIPA parties claim that any loss of profits for any reason is actionable - both claims are false. Loss of profits, unless due to expropriation or other discriminatory action, is a simple business risk and not actionable. Expropriation is actionable if not done "for a public purpose, under domestic due procedures of law, in a non-discriminatory manner, and with compensation" (article 10 of FIPA). Who in Canada would want it otherwise?

"Discriminatory" means you can't apply the new rules only to Chinese companies, for example.

"Secret courts"? Article 28 covers "Public Access to Hearings and Documents." Other than redacted confidential information, tribunal decisions are public, and on the request of either disputing party all other documents are public as is the hearing itself. Some secret! Non-disputing parties may make written submissions if they have a significant interest in the proceeding, as of course can the Canadian government.

"Guaranteed for 31 years"? The term of the agreement is "at least 15 years." Thereafter either party can terminate the agreement on one year's notice; thankfully in such case investments made prior to termination shall be protected for a further 15 years.

Lastly, and contrary to what FIPA opponents claim, Article 33 specifically allows protection of the environment, health, safety, animal and plant life as long as any rule change is not applied in a discriminatory manner.

I encourage people to read the agreement to learn the facts. There are many more protections in the agreement (for both parties) than I have described above.

John Hunter North Vancouver

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