



# Trading Nations: Supporting International Indigenous-To-Indigenous Trade Policy Development

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## **Executive Summary**

## Executive Summary

For thousands of years, Indigenous peoples have engaged in trade and commerce across Turtle Island. However, the intervention of colonial authorities encumbered Indigenous international trade and continues to impact the prosperity and well-being of Indigenous peoples.

In 2021, the two-way flow of commodities and services contributed to approximately 61.4% of Canada's gross domestic product (GDP).<sup>1</sup> Foreign investment also plays a critical role in Canada's productivity. As a small domestic market, access to international markets is imperative to Canada's success. Trade policy is a key facilitator in advancing Canada's global interests. Most notably, the government has sought to reduce obstacles for businesses to facilitate a successful trading regime for all exporters across international boundaries.

In recent years, the Canadian government has made it a priority to share the benefits of trade and investment more equitably, both domestically and abroad. The Canadian government plans to accomplish this through a progressive trade agenda, specifically by "advancing trade policies and provisions in trade agreements that maximize the benefits of trade for traditionally under-represented groups such as women, small and medium-sized enterprises (SMEs) and Indigenous peoples."<sup>2</sup> Canada's progressive approach to trade has been viewed as a prime opportunity to repair Canada's relationship with Indigenous groups.<sup>3</sup> This is critical because, before European settlement, Indigenous peoples traded their knowledge and goods through well-established trade networks that connected neighboring communities and diverse Nations much further afield. Indigenous peoples freely choose their own conditions and partners to participate in constructive trade relationships. Moreover, this cooperation and negotiation among Indigenous peoples were in place long before colonial forces established state boundaries to consolidate resources and political power.

Despite past persecution and ongoing systematic exclusion from full economic participation in Canada, Indigenous entrepreneurship is resurging. Many Indigenous peoples are launching innovative business models that are redefining the purpose of business to include financial independence, community involvement, and care for the environment. However, Indigenous business owners frequently operate in remote environments with limited internet access and business support services and thus must expand their reach into new markets

to grow their operations. The intergenerational and systemic barriers resulting from colonization have suppressed Indigenous export potential. Despite these barriers, the observation that many Indigenous communities are found along the border with the United States, which is Canada's closest trading partner, might indicate that Indigenous firms are formed with the necessity to export built in or that they are "born global."<sup>4</sup>

Acknowledging the vast success and growth of Indigenous businesses, in addition to the systemic barriers endured by Indigenous exporters, trade policy can be a key facilitator in providing further opportunities for export growth. Moreover, trade policy has a substantial influence on how reliable and streamlined trade with foreign partners is, which can have knock-on consequences for the economic stability of other Nations, especially those with significant Indigenous populations. However, Indigenous exporters have limited preferential market access to provisions in Canada's trade agreements. Most recently negotiated trade agreements are extremely limited in the safeguarding and respecting of Indigenous rights and interests.<sup>5</sup>

Increasing Indigenous trade has been repeatedly shown, through research and in practice, to be a mechanism to improve the prosperity and well-being of Indigenous peoples. The Organisation for Economic Cooperation and Development's 2020 report titled, "Linking Indigenous Communities with Regional Development in Canada", highlighted the economic potential for the Indigenous economy in Canada through increasing access to markets for Indigenous businesses.<sup>6</sup>

This represents an important step to closing the economic gaps between Indigenous peoples and the non-Indigenous population, which, economic analysis conducted by the National Indigenous Economic Development Board, has shown would grow the Canadian economy by \$27.67 billion.<sup>7</sup> However, it is not an exercise in "progressive trade policy"; policymakers must understand it for what it is: economic reconciliation.

As an act of reconciliation, the journey to include Indigenous peoples as meaningful participants in the Canadian economy will require a change in the status quo. To activate this journey, it is paramount to recognize Articles 3, 20, and 36 of the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) which state that Indigenous peoples have the right to self-determination, the right to maintain and develop their political, economic, and social systems or institutions, and the right to trade internationally. This is in addition to

1 Global Affairs Canada, *Canada's State of Trade 2022*, Government of Canada, 2022.

2 Global Affairs Canada, *Canada's State of Trade 2020*, Government of Canada, 2020.

3 Patricia M. Goff, "Bringing Indigenous Goals and Concerns into the Progressive Trade Agenda," *Revue Interventions Économiques* 65, (2021): 1, <http://journals.openedition.org/interventionseconomiques/12777>.

4 Audrey B. Bélanger, *Indigenous-Owned Exporting Small and Medium Enterprises in Canada: A Joint Publication by the Office of the Chief Economist of Global Affairs Canada and the Canadian Council for Aboriginal Business* (Ottawa: Global Affairs Canada & Canadian Council for Aboriginal Business, 2019): 31, [https://www.ccab.com/wp-content/uploads/2019/07/CCAB\\_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf](https://www.ccab.com/wp-content/uploads/2019/07/CCAB_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf).

5 Sergio Puig, "Indigenous Peoples under International Economic Law," in *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge: Cambridge University Press, 2021), doi:10.1017/9781108596503.005.

6 An entire subsection of the OECD report was dedicated to the topic of Indigenous access to markets, including foreign markets through trade.

7 National Indigenous Economic Development Board (NIEDB), *Reconciliation: Growing Canada's Economy by \$27.7B*, (Gatineau, NIEDB, 2016) [http://www.naedb-cndea.com/reports/naedb\\_report\\_reconciliation\\_27\\_7\\_billion.pdf](http://www.naedb-cndea.com/reports/naedb_report_reconciliation_27_7_billion.pdf).

the recognition of Indigenous rights under Section 35 of the Canadian Constitution.<sup>8</sup> It is from these foundational points of departure that all other policy recommendations from the Indigenous procurement working group will follow.

From this recognition, it is essential that every federal organization acknowledges that Indigenous trade, as an act of reconciliation, is a priority for their department, agency, regulator, crown corporation, special operating agency, and board. Indigenous trade should be the first thought when any federal official seeks to design programs and services to support exporters from Canada. Another critical and overarching change is for the Government of Canada to acknowledge that reconciliation requires the resources necessary for Indigenous peoples to design and construct a resilient Indigenous institutional infrastructure. This infrastructure is required to support self-determination and rebuild Indigenous economies. Taken together, these critical changes represent economic reconciliation in action.

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## Summary of Trade Policy Recommendations

Included below is a summary of trade policy recommendations that are featured throughout the report:

### Indigenous Trade Facilitation

- Gather and distribute evergreen and accessible Indigenous exporter data
- Support Indigenous entities to provide Indigenous export development training
- Foster mutually beneficial Indigenous business relationships
- Build resilient Indigenous export ecosystems
- Support Indigenous organizations to deliver export development opportunities
- Build Indigenous capacity
- Increase access to finance to fuel Indigenous export growth
- Build capacity of Indigenous entities to provide connections to prospective foreign buyers and business partners
- Build economic infrastructure to support Indigenous economic growth
- Support Indigenous organizations to service certification, financial, and authenticity needs
- Ensure specificity within Indigenous Free Trade Agreement (FTA) provisions to maximize Indigenous trade
- Necessary relationship building between Indigenous entities and the Canadian Border Service Agency (CBSA)

- Indigenous access to trader programs – “FAST”
- Build Indigenous capacity by supporting Indigenous freight forwarders
- Ensure fulsome implementation of the Treaty of Amity, Commerce and Navigation (1794), the Jay Treaty to catalyze Indigenous export growth

### Incentivizing Economic Investment in Indigenous Communities

- Provide Indigenous communities with the opportunity to designate as a Special Indigenous Economic Zone

### Incentivizing Private Investment in Indigenous Businesses

- Introduce an Invest in Indigenous Credit (IIIC)

### Recommendations Towards an Intellectual Property (IP) Framework That Better Serves Indigenous Interests

- Include Indigenous Peoples’ views into IP Definitions
- Ensure conditions of IP applications encourage Indigenous applicants
- Leverage geographic indicators to support Indigenous knowledge and export growth
- Develop an Indigenous authenticity tag
- Utilize blockchain technology to recognize the importance of Indigenous protocols

### Free Trade Agreements (FTA)

- Ensure specific exemptions and provisions for Indigenous Peoples are within Canada’s FTAs to support Indigenous business owners and uphold the inherent rights of Indigenous communities
- Indigenous trade policy leaders that are “resilient and creative” to obtain results

### Government Procurement

- Build awareness of procurement and funding opportunities
- Develop partnerships

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## Methodology

The culmination of trade policy recommendations outlined in this report is the result of significant engagements with international and domestic Indigenous leaders and subject matter experts.

<sup>8</sup> Constitution Act, 1982, s. 35. <https://laws-lois.justice.gc.ca/eng/const/page-13.html>.

The findings from the Indigenous Trade Policy Advisory Council (ITPAC), CCAB's engagement efforts, and a review of current trade policies and agreements have informed the policy recommendations outlined in this report.

### **Indigenous Trade Policy Advisory Council (ITPAC)**

CCAB established an ITPAC composed of six Indigenous trade policy experts to share good practices and engage in an Indigenous-led conversation to develop a Made-In-Canada set of trade policy recommendations for Indigenous inclusion in Canada's FTAs and those under negotiation.

### **CCAB Engagements**

CCAB also conducted smaller, individual engagement meetings with key domestic and international Indigenous Nations, leaders, and organizations to share CCAB's initial findings, gain insights to support further inquiry, and build the domestic ecosystem and expertise concerning trade policy.

### **Acknowledgement**

The CCAB would like to thank all individuals for their participation in the development of trade policy recommendations that support Indigenous prosperity and well-being. The CCAB would also like to thank Indigenous Services Canada (ISC) for generously providing the funding and resources needed to develop this report. In addition, CCAB would like to also thank Kaitlin Littlechild (copy editing), Nations Translation Group (translation services), MadMacDesign (graphic design), and CCAB staff, including Patrick Watson, Kiana Therrien-Tomas, Martina Arcuri, and Cody Lewis, for their assistance in preparing and authoring this report.



## **Outline**

This report is organized as follows:

**Section 1** contains an overview of the current landscape of Indigenous business, trade, and export, including a review of up-to-date statistics. An overview of barriers and challenges facing Indigenous exporters is also provided.

**Section 2** includes information on the rights of Indigenous groups, specific to trade through a brief examination of the history of Indigenous peoples. Contributions that key documents, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), have made to Indigenous rights are identified.

**Section 3** explores key Indigenous provisions in Canada's FTAs, the relevance of the Jay Treaty to supporting Indigenous engagement in trade, and the impacts of FTAs on the Government of Canada's Indigenous procurement policies.

**Section 4** provides examples of international Indigenous trade policy initiatives, particularly efforts in Australia, Aotearoa/New Zealand, and the United States.

**Section 5** discusses multilateral efforts to support Indigenous economic development through trade, summarizing and analyzing the impact of efforts such as the Asia-Pacific Economic Cooperation (APEC), Organisation for Economic Cooperation and Development (OECD), the United Nations and Special Agencies, and the World Trade Organisation (WTO) on the facilitation of Indigenous trade.

**Section 6** explores several topics relevant to the discussion on international trade, including investment and financing, intellectual property (IP), and federal procurement. Each topic includes a discussion and policy recommendations.

**Section 7** provides recommendations that will enhance Indigenous participation in the development of trade policy solutions and, through that, Indigenous access to international markets.



**1.**  
**Background: Indigenous  
Trade and Export**

## A Brief History of Indigenous Trade

Turtle Island has been a land of trading Nations since time immemorial. The history of international Indigenous trade is well documented and was active before the establishment of Canada and the United States of America.<sup>9</sup> Amongst several examples noted in the Royal Commission on Aboriginal Peoples (1996), Indigenous peoples made long forays to trade with other Nations. Pemmican, buffalo robes, Blackfoot weapons, and other goods were exchanged for shells, beads, pipestone, paint, and religious products.<sup>10</sup> Well-established trade networks throughout the coastal region and into the mountainous interior allowed for the easy exchange of prized materials and manufactured goods. It should be noted that these trading relationships flourished amongst those speaking distinct languages, including Tlingit, Tsimshian (including Nisga'a and Gitksan), Haida, Nuxalk (Bella Coola), Kwakwa ka'wakw (formerly known as Kwakiutl), Nootka, and Salish.<sup>11</sup>

## Overview of Indigenous Trade and Export

CCAB found through its ground-breaking research project Indigenous-Owned Exporting Small and Medium Enterprises (SMEs) in Canada (2019) that Indigenous exporters possessed a higher propensity to export than their non-Indigenous counterparts. The report provided key insights into the Indigenous export landscape in Canada, most notably that:

1. Indigenous-owned SMEs are more than twice as likely to be exporters (24.4%) as non-Indigenous SMEs (11.8%).
2. Indigenous SMEs export at a high rate to both the United States (1 in 5 businesses) and to non-US overseas markets (1 in 7 businesses).
3. Higher education attainment by Indigenous firm leaders is associated with a higher tendency to export.
4. Exporting Indigenous SME owners report financing and connectivity (internet and infrastructure related) as important obstacles to growth at a higher rate than non-exporting Indigenous SMEs.
5. The status of Indigenous trade in Canada can partly be attributed to the tremendous growth of Indigenous entrepreneurship in Canada, with over 60,000 Indigenous

businesses representing a wide range of sectors and contributing approximately \$30 billion of Canada's GDP.

## Demographics

Statistics from 2016 to 2021 reveal that Canada's Indigenous population grew by 9.4 percent to reach 1,807,250. The rest of the Canadian population only grew by 5.2 percent over the same period.<sup>12</sup> This signals the economic opportunity, particularly export potential, of the Indigenous population. As outlined by the OECD, "Indigenous businesses demonstrate innovation and – while generally small they have a higher propensity to export."<sup>13</sup>

According to the 2016 Census, over half of Indigenous entrepreneurs operate a business in an industry with export potential, such as agriculture, forestry, fishing, hunting, and trapping; tourism and recreation; fabricated metal and machinery; clothing and textile; and oil and gas production.<sup>14</sup> The Conference Board of Canada observed that the percentage of engagements in high-export industries are dominated by Indigenous entrepreneurs; with Inuit entrepreneurs holding a share of 15.5 percent, the Métis holding a share of 10.4 percent, followed by a 9.1 percent share held by First Nations entrepreneurs, compared to a share of 10.2 percent held by non-Indigenous entrepreneurs.<sup>15</sup> Furthermore, according to Statistics Canada, manufacturing is the dominant export-intensive industry in terms of employment of non-Indigenous Canadians, while Indigenous employees are mainly found in the agriculture, forestry, fishing, hunting, and trapping export-intensive industries, except for Inuit who are more focused in the mining and quarrying industry.<sup>16</sup>

In terms of gender distribution, Statistics Canada found that from 2005 to 2018, most Indigenous businesses were male owned (73.4%), while women-owned or equally owned businesses accounted for 23.2% and 3.4% of Indigenous-owned businesses, respectively.<sup>17</sup> CCAB's research has also shown that Indigenous women engage in entrepreneurship (including self-employment) at higher rates than the Canadian average for women.<sup>18</sup> Furthermore, CCAB has found that Indigenous women-owned businesses export at higher rates than men-owned businesses (28% vs. 24% export to the US, and 21% vs. 15% export abroad).<sup>19</sup>

9 Royal Commission on Aboriginal Peoples. *Volume 1: Looking Forward, Looking Back* (Ottawa: Royal Commission of Aboriginal Peoples, 1996): 67.

10 Ibid.

11 Ibid, 73.

12 Statistics Canada. *Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed* (Ottawa, The Daily, 2022), <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>.

13 Organisation for Economic Cooperation and Development (OECD), "Linking Indigenous communities with Regional Development in Canada." (OECD, 2020), <https://www.oecd-ilibrary.org/sites/fa0f60c6-en/index.html?itemId=/content/publication/fa0f60c6-en>.

14 Statistics Canada. *Census of Population, 2016*.

15 Adam Fiser, *What are the business characteristics of Indigenous exporters in Canada?* (Conference Board of Canada – Northern and Aboriginal Policy, 2018), Working Paper.

16 Statistics Canada, *Census of Population, 2016*.

17 Statistics Canada, *Study: Identifying Indigenous business owners and Indigenous-owned businesses* (Ottawa, The Daily, 2022): 4, <https://www150.statcan.gc.ca/n1/en/daily-quotidien/221124/dq221124e-eng.pdf?st=XUFYOaBh>.

18 *Breaking Barriers: A decade of Indigenous women's entrepreneurship in Canada* (Toronto: Canadian Council for Aboriginal Business, December 2020): 1, [https://www.ccab.com/wp-content/uploads/2020/12/CCAB\\_Breaking-Barriers\\_English.pdf](https://www.ccab.com/wp-content/uploads/2020/12/CCAB_Breaking-Barriers_English.pdf).

19 Ibid.

The table below highlights the trend of Indigenous Peoples to work as entrepreneurs rather than as employees in export-intensive industries.

**Table 1 - Proportion of employees and entrepreneurs in export-intensive and export-oriented industries, 2016**

	High Export-Intensive (%)	Top High Export-Intensive Industry
First Nations	Employed - 7.3% Entrepreneur - 9.1%	Agriculture, fishing, hunting, and trapping
Inuit	Employed - 6.0% Entrepreneur - 15.5%	Mining and quarrying
Métis	Employed - 8.7% Entrepreneur - 10.4%	Agriculture, fishing, hunting, and trapping
Non-Indigenous	Employed - 9.3% Entrepreneur - 10.2%	Fabricated metal and machinery Agriculture, fishing, hunting, and trapping

The composition of employees and entrepreneurs in export-intensive and high export-intensive industries is most similar among Métis and non-Indigenous people. This data is closely followed by the high-export intensive percentage of First Nations in the agriculture, fishing, hunting, and trapping industry. Conversely, Inuit are mostly concentrated in the mining and quarrying industry. Furthermore, compared to Métis and First Nations, the percentage gap between Inuit employees and entrepreneurs is wider, with a 9.4 percentage point difference.

Moreover, the largest proportion (32.8%) of Indigenous exporters operates in the professional, scientific, and technical services industry, which is the industry with the fifth highest export propensity.<sup>20</sup> The high export potential of Indigenous businesses is attributable to the recognition of Indigenous expertise in resource development through hundreds of impact and benefit agreements, major land claims settlements, the introduction of resource revenue sharing, and a general expansion of Indigenous own-source (community-controlled and non-government fund) revenues.

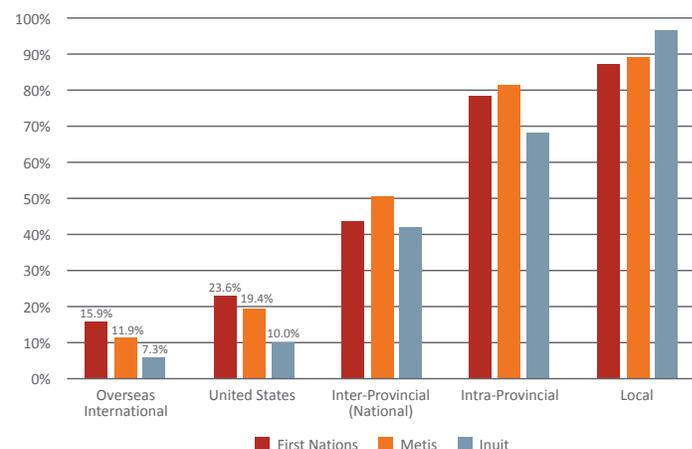
### Key Markets

The key market for Indigenous exporters is the United States, with 21.5 percent of Indigenous SMEs selling goods or services to America.<sup>21</sup> The high export prosperity in the United States is largely credited to its geographical location as most First Nations communities are located near the United States-Canada border. Moreover, due to the proximity to the border, some communities find it easier to trade with the United States than domestically.

In contrast, a small proportion (about 2.9 %) of Indigenous SMEs export to markets overseas.<sup>22</sup> CCAB's research further establishes that Indigenous businesses are set to expand their reach into the Asian market. Opportunities to export to markets overseas are further supported by fish sales in the Atlantic, adventure tourism in the Far North, Inuit art retailing, joint ventures with foreign-owned resource companies, environmental services, and many other commercial activities. Indigenous businesses are forging a substantial international presence, with about 14.8 percent reaching international markets.<sup>23</sup>

The figure below demonstrates the high percentage of internationalization of Indigenous SMEs within the three distinction-based groups, First Nations, Métis, and Inuit, in the US and Overseas International Exports categories as well as at the national and local levels:<sup>24</sup>

**Figure 1: Destination markets of Indigenous SMEs' sales by Indigenous identity, 2014**



Source: Office of the Chief Economist, Global Affairs Canada using data obtained from the CCAB

## Barriers to Indigenous Trade

### Lack of Data and Targeted Policies

**Limited evergreen, distinctions-based, and accessible data on Indigenous exporting precludes the development of sound and effective trade policies to support Indigenous engagement in export.**

- Available data focuses largely on First Nations peoples and their businesses due to their prevalence compared to Métis and Inuit. As a result, the needs of Métis and Inuit often go unaddressed.

<sup>20</sup> Indigenous Services Canada, *Indigenous Business Directory*, <https://www.sac-isc.gc.ca/eng/1100100033057/1610797769658>.

<sup>21</sup> Audrey B. Bélanger, *Indigenous-Owned Exporting Small and Medium Enterprises in Canada: A Joint Publication by the Office of the Chief Economist of Global Affairs Canada and the Canadian Council for Aboriginal Business* (Ottawa: Global Affairs Canada & Canadian Council for Aboriginal Business, 2019): 19, [https://www.ccab.com/wp-content/uploads/2019/07/CCAB\\_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf](https://www.ccab.com/wp-content/uploads/2019/07/CCAB_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

### **A lack of distinctions-based export training services and missions or engagements.**

- The lack of **distinctions-based data** on Indigenous exporting causes trade commissioner services to attempt to focus attention on the needs of First Nations businesses or treat Indigenous peoples as a homogenous group. As a result, the already limited export training services, trade missions, and other engagements often fail to reflect the needs of Métis and Inuit and target markets that are relevant to them.

### **Limited collaboration and bilateral engagement between international Indigenous trade organizations prevents substantive Indigenous engagement in trade and trade policy development.**

- Suggestions provided by Indigenous trade policy experts are often uncoordinated, and there is often no cohesive engagement strategy until it is too late. The lack of an Indigenous diplomatic community compounds this. This **lack of coordination** is problematic and limits substantive Indigenous involvement at international economic fora like the OECD. As a result, international trade rules often fail to recognize the historical trade patterns that existed before colonial intervention and exclude the interests of Indigenous communities and exporters. **Limited collaboration** has also led to failures to investigate, transmit, and develop shared understandings of best practices and the effectiveness of special economic zones, trade corridors, free trade zones, and other tools that may be of immense benefit to Indigenous exporters.

## **Challenges for Indigenous Businesses**

### **A lack of capacity and funding.**

- Indigenous businesses often lack the capacity, in the form of time or resources, to begin exporting or develop export plans. This precludes an effective engagement in trade and export. While export training programs and initiatives exist, they are often not developed in partnership with Indigenous peoples or delivered by Indigenous entities. As such, they fail to address the unique needs of Indigenous businesses. Indigenous-led trade missions have proven far more valuable to Indigenous exporters and have demonstrated commercial returns for participating Indigenous businesses; however, this is also limited by a **lack of capacity and funding**. The lack of substantive Indigenous youth involvement in trade discussions has also led to **significant knowledge gaps** between current Indigenous professionals and youth that must be addressed to enable future Indigenous engagement in trade.

### **Limited support for international Indigenous relationships.**

- Limited capacity and support to develop partnerships and

trade relationships between Indigenous peoples in Canada and throughout the world **limits collaboration and market access**. A **lack of investigation** limits the effectiveness of Indigenous-to-Indigenous trade and the establishment of Indigenous trade corridors. Moreover, the lack of **internationally recognized standards of authenticity** for Indigenous products and services also limits access to markets insofar as fears around brand and product protection deter Indigenous businesses from entering certain markets.

### **High cost of logistics and lack of reliable infrastructure including internet services.**

- Indigenous businesses located in certain rural and remote parts of the country face considerable **logistical issues** when shipping products. For example, many remote Indigenous communities lack airports and are forced to use winter roads and boats that are not accessible during different times of the year to transport their goods. As a result, Indigenous businesses in rural and remote communities, especially in the North, often experience exorbitant shipping rates. This mitigates the benefits of export, if not precluding trade and export altogether. Even in other parts of the country where shipping is more accessible and affordable, shipping costs may pose barriers to Indigenous SMEs. The lack of support for **Indigenous freight forwarders** that are more receptive and capable of understanding the unique needs and requirements of Indigenous businesses may also be driving these costs.
- A lack of reliable, high-speed internet connections in many remote Indigenous communities impedes trade. While most Indigenous businesses have an internet connection, one-third do not have reliable access. Though Indigenous businesses in Canada are leading the way in the use of online tools to do everything from selling products to providing online services, this lack of reliable internet connections prevents the full realization of their potential in e-commerce and digital export.

### **A lack of financial services.**

- Indigenous businesses have insufficient access to financial resources and assistance from banking institutions. The measures employed by banks often limit Indigenous businesses' access to finance, forcing them to pursue grants or loans, often with considerable administrative costs and time investment. Banking staff often lack an understanding of the unique needs of Indigenous businesses. Moreover, the formulaic lending schemes utilized by banks often preclude Indigenous businesses from acquiring loans because most Indigenous peoples cannot use their homes as collateral. This lack of support for Indigenous businesses by major banks, in combination with a lack of coordination among

Regional Development Agencies and limited large-scale investment opportunities, presents a barrier to the ability of Indigenous businesses to access finance, thereby limiting their engagement in export.

## Regulatory Barriers

### Substantial upfront costs and time commitments associated with expansion to international markets.

- To export goods across the border, exporters must adhere to country-specific technical regulations and standards. As a result, Indigenous exporters are forced to navigate complicated and expensive processes such as adjusting to international labelling, packaging, and product requirements. For example, a product's Canadian Standards Association (CSA) certification may not be valid in other countries for Canadian entrepreneurs whose products are certified. It is, therefore, necessary for the company to recertify the product in the country where they wish to sell it, a time-consuming and costly process that can pose challenges to Indigenous SMEs.
- Labelling requirements, like Country of Origin Labelling (COOL), are seen as an issue by many exporting Indigenous SMEs due to the complexities and associated costs. Country of origin clauses can pose issues because they influence admissibility, duty rates, and eligibility for special programs. As a result, Indigenous SMEs that need to outsource the manufacturing of their products to boost their margins are disincentivized to export products due to the potential tariffs they may face, especially if the goods they produce are determined to be from a third country due to the inputs involved. Complex product and licensing requirements can preclude Indigenous engagement in export due to a fear of repercussions and loss of revenue arising from incorrect documentation or placing too onerous of a burden on Indigenous businesses. For example, Indigenous businesses planning to export food to the United States must navigate a plethora of authorities, such as the USDA, the FDA, the FDA Food Safety Modernization Act, and the Foreign Supplier Verification Program, while also registering for an immense number of licenses and permits that depend on the specificities of the ingredients in their product.

- There is insufficient recognition of Indigenous fishing companies and the sale of animal parts from the Arctic. Regulations in other countries prevent Indigenous animal harvesters in the Arctic and remote northern communities from engaging in the sale of animal parts, such as narwhal tusks and seal skins. These barriers exist even while the potential customers are visiting Canada and represent a massive barrier to the exporting capabilities of Inuit and other northern Indigenous peoples. Current quotas imposed by the Department of Fisheries and Oceans also limit the engagement of Indigenous fishing companies in trade and export.





**2.  
Recognizing the Right of  
Indigenous peoples to Trade**

## United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Leading Indigenous and non-Indigenous trade and investment specialists agree that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) should be seen as an instrument to activate Indigenous economic self-determination.<sup>25</sup> It should also be perceived as an instrument to support the reconstitution of Indigenous economies and Indigenous Nations. There are five Articles that serve to underline this right:

### Article 3

1. *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

### Article 20

1. *Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*

### Article 21

1. *Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.*
2. *States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.*

### Article 23

*Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.*

### Article 36

1. *Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.*
2. *States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.*

Articles 3 and 20 underline the right to Indigenous self-determination as a necessary right to ensure their economic self-sufficiency and for Indigenous peoples to actively participate in economic activities that provide for their well-being, including international trade.<sup>26</sup> The rights to determine and advance their own economic interests are identified in Articles 21 and 23. Article 36 goes further and refers specifically to the right of Indigenous peoples to engage in international and intranational commerce. Furthermore, it requires that states undertake activities that effectively support Indigenous peoples to activate this right.

Given the Government of Canada's commitment to implement UNDRIP and "prepare and implement an action plan to achieve the Declaration's objectives,"<sup>27</sup> these Articles, taken together, provide sufficient justification for the Government of Canada to support the active participation of Indigenous peoples in international markets. Additionally, regarding Canada's trade policies, these Articles underline the requirement of provisions in bilateral and multilateral agreements that support Indigenous economic self-determination and the prosperity of Indigenous peoples.

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## Organization of American States (OAS) American Declaration on the Rights of Indigenous Peoples (ADRIP)

On June 15, 2016, the General Assembly of the Organization of American States (OAS) adopted the American Declaration on the Rights of Indigenous People (ADRIP). ADRIP enforces and strengthens the rights outlined in UNDRIP. In the context of trade, Indigenous inclusion in Canada's FTAs would be in accordance with the following ADRIP articles:

<sup>25</sup> John Borrows and Risa Schwartz, eds, *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements* (Cambridge: Cambridge University Press, 2020), doi:10.1017/9781108675321.

<sup>26</sup> Scott Harrison and Robin Asgari, *International Trade Inclusivity: The CPTPP and Indigenous International Trade and Investment* (Asia Pacific Foundation of Canada, 2020), <https://www.asiapacific.ca/publication/international-trade-inclusivity-cptpp-and-indigenous>.

<sup>27</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14), <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html#h-1301591>.

### Article XXIX.3

*Indigenous peoples have the right to be actively involved in developing and determining development programs that affect them and, to the extent possible, to administer such programs through their own institutions.*

### Article V.

**Full effect and observance of human rights:** *Indigenous peoples and individuals have the right to the full enjoyment of all human rights and fundamental freedoms, as recognized in the Charter of the United Nations, the Charter of the Organization of American States, and international human rights law.*

### Article VI.

**Collective rights:** *Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In that regard, States recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote with the full and effective participation of indigenous peoples, the harmonious coexistence of rights and systems of the different population groups, and cultures.*

### UN Sustainable Development Goals (SDGs)

Launched in 2015, the United Nations (UN) adopted the 2030 Agenda for Sustainable Development, “Transforming Our World: The 2030 Agenda for Sustainable Development.” Indigenous communities were engaged in the development of the Sustainable Development Goals (SDGs) and many, if not all, of the goals remain relevant for Indigenous communities.<sup>28</sup> Enhanced Indigenous-to-Indigenous trade is consistent with and will advance the following SDGs:

#### Goal 1

*End poverty in all forms everywhere.*

#### Goal 3

*Ensure healthy lives and promote well-being for all at all ages.*

#### Goal 8

*Promote sustained, inclusive, and sustainable economic growth, full and productive employment and decent work for all.*

#### Goal 10

*Reduce inequality within and among countries.*

### National Indigenous Economic Strategy for Canada (NIES)

Released in 2022, The National Indigenous Economic Strategy for Canada is the blueprint for achieving the meaningful engagement and inclusion of Indigenous Peoples in the Canadian economy. Developed by a coalition of national Indigenous organizations and experts in the field of economic development, the Strategy involves four Strategic Pathways: People, Lands, Infrastructure, and Finance. Trade is a key element of the Finance pillar, with the strategic statement arguing for the development of Indigenous free trade zones, the Government of Canada’s recognition of Indigenous-to-Indigenous trade agreements, and the honouring of existing Aboriginal and treaty rights.<sup>29</sup> The Calls to Economic Prosperity recommend specific actions to achieve the outcomes described in the Strategic Statements. Those highlighting actions to promote Indigenous trade include:

#### 102.

*Establish mechanisms to recognize Indigenous free trade zones, as defined and regulated by Indigenous Peoples.*

#### 103.

*Create an Indigenous Export Corporation.*

#### 104.

*Implement the Jay Treaty.*

#### 105.

*Establish Indigenous-to-Indigenous trade agreements and networks nationally and internationally.*

#### 106.

*Recognize and fulfill Treaty Rights to trade and commerce, nationally and internationally.*

#### 107.

*All free trade agreements include chapters on Indigenous Peoples and Trade, co-developed with Indigenous Peoples.*

<sup>28</sup> United Nations, *Indigenous Peoples and the 2030 Agenda* (United Nations – Department of Economic and Social Affairs), <https://www.un.org/development/desa/indigenouspeoples/focus-areas/post-2015-agenda/the-sustainable-development-goals-sdgs-and-indigenous.html>.

<sup>29</sup> *National Indigenous Economic Strategy for Canada* (2022): 34, [https://niestrategy.ca/wp-content/uploads/2022/05/NIES\\_English\\_FullStrategy.pdf](https://niestrategy.ca/wp-content/uploads/2022/05/NIES_English_FullStrategy.pdf).



**3.  
Current State of Indigenous  
Trade Provisions in  
Canada's FTAs**

## Canada-United States-Mexico Agreement (CUSMA)

### General Overview

The North American Free Trade Agreement (NAFTA), the precursor to the Canada-United States Mexico Agreement (CUSMA), included limited provisions for Indigenous Peoples. In 2018, NAFTA was renegotiated and renamed CUSMA (referred to as USMCA by the US government). CUSMA has received scholarly and international notice for its instrumental provisions to advance and uphold the rights of Indigenous Peoples, a significant improvement from NAFTA.<sup>30</sup> The following CUSMA chapters include provisions for Indigenous Peoples:

### Chapter 6: Textile and Apparel Goods

- 6.1: Provides duty-free treatment of Indigenous handicraft textiles and apparel goods. However, definitions are not provided for these goods, which is under discussion and negotiation through the CUSMA Chapter 6 implementation committee.

### Chapter 13: Government Procurement

- 13: This chapter outlines the rules surrounding government procurement between the United States and Mexico. However, there are exceptions created for government procurement that protect set-asides for SMEs or minority-owned businesses. These provisions only apply to the United States and Mexico and not to Canada. Additionally, the provisions do not make specific mention of Indigenous peoples as rightsholders, thereby contributing to a lack of clarity and usefulness.
- Public Services and Procurement Canada (PSPC) notes that: “Canada’s free trade agreements pose no impediment to the inclusion of measures for the benefit of Indigenous Peoples and/or businesses in a procurement. This includes setting aside procurements for Indigenous businesses under the Procurement Strategy for Indigenous Business (PSIB). If a procurement has been set-aside under PSIB, it is no longer subject to the obligations of the trade agreements and no longer falls under the jurisdiction of the Canadian International Trade Tribunal (CITT).”<sup>31</sup>
- However, if there is no impediment to protect Indigenous peoples or businesses in procurement, why are these

provisions not specified within the agreement, like provisions to protect minority groups that are not rightsholders?

### Chapter 25: Small and Medium-sized Enterprises

- 25.2 (b): makes a commitment to strengthen Canada-USA-Mexico collaboration on activities to promote SMEs owned by “under-represented groups” including, amongst other groups, Indigenous peoples.
- However, examples of activities are not outlined and are under discussion and negotiation through the CUSMA Chapter 25 implementation committee creating uncertainty about how they apply.

### Chapter 32: Exceptions and General Provisions

- 32.5: CUSMA is the first Canadian treaty with a general exception for Indigenous Peoples, which outlines that a state can take measures “deem[ed] necessary to fulfill its legal obligations to Indigenous peoples.”<sup>32</sup>
- Under this general exception, parties must act in the interest of Indigenous groups. For Canada, such actions must correspond with the rights outlined in Section 35 of the Canadian Constitution and other self-government agreements between Canada and Indigenous peoples.<sup>33</sup>
- It should be noted, as an observation, that some scholars stress the shortcomings of this exception, along with the reliance on exceptions in general.<sup>34</sup> For example, shortcomings include its limited and narrow application and the possibilities of non-compliance or lack of accountability on behalf of party states.<sup>35</sup>

## Canada and European Union Comprehensive Economic Trade Agreement (CETA)

### General Overview

The Canada-European Union Comprehensive Economic and Trade Agreement (CETA) is a bilateral agreement between Canada and the European Union<sup>36</sup>. As Canada’s second-largest trading partner, the agreement covers all sectors and aspects of trade between Canada and the EU and aims to eliminate or reduce barriers. CETA is also mostly defensive of current domestic provisions designed to support Indigenous economic

30 Patricia M. Goff, “Bringing Indigenous Goals and Concerns into the Progressive Trade Agenda,” *Revue Interventions Économiques* 65 (December 1, 2020), <https://doi.org/https://doi.org/10.4000/interventionseconomiques.12777>.

31 Public Services and Procurement Canada, 9.40.10. *Procurement Strategy for Indigenous Business and trade agreements* (Ottawa, Canada, 2022), <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9/40/10>.

32 Vanduzer, J. Anthony, and Melanie Mallet, “Indigenous Rights and Trade Obligations: How Does CUSMA’s Indigenous General Exception Apply to Canada?” *Canadian Yearbook of International Law/Annuaire Canadien De Droit International* 58 (2021): 11, doi:10.1017/cyl.2021.13.

33 Ibid.

34 Sergio Puig, “International Indigenous Economic Law,” *U.C. Davis Law Review* 52, no. 3 (2018), [https://lawreview.law.ucdavis.edu/issues/52/3/Articles/52-3\\_Puig.pdf](https://lawreview.law.ucdavis.edu/issues/52/3/Articles/52-3_Puig.pdf).

35 Sergio Puig, “Indigenous Peoples under International Economic Law,” in *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge: Cambridge University Press, 2021), doi:10.1017/9781108596503.005.

36 Global Affairs Canada, *CETA Explained* (Ottawa, Canada), [https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecq/ceta\\_explained-aecq\\_apercu.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecq/ceta_explained-aecq_apercu.aspx?lang=eng).

prosperity and does not include text that would enhance market access for Indigenous products. CETA chapters that include provisions for Indigenous Peoples are:

### Chapter 12: Domestic Regulations

- 12.2: exempts the provisions of the Chapter from pertaining to “licensing requirements, procedures and qualifications to the Aboriginal Affairs.”

### Chapter 24: Environmental Law

- 24.1: exempts the provisions of the Chapter from applying to “Aboriginal harvesting of natural resources.”

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## Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

### General Overview

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement between Canada and 10 other countries in the Asia-Pacific region.<sup>37</sup> Covering all sectors and aspects of trade in the region, CPTPP works to reduce trade barriers and facilitate trade.

The CPTPP is the first trade agreement to reference the rights of Indigenous Peoples.<sup>38</sup> Despite Indigenous populations among CPTPP member states and the obligations as outlined in the UNDRIP, the CPTPP is limited in upholding the inherent rights of Indigenous peoples. Scholars have observed that the text is defensive in nature and does not include wording that would enhance market access for Indigenous businesses. The following CPTPP sections mention Indigenous Peoples:

### Preamble

- Identifies that an inclusive and equitable trade regime that respects Indigenous rights is encouraged among states.<sup>39</sup>

### Chapter 15: Government Procurement

- 15-A, Section G, Article 3(b): states that Canada’s obligations under Chapter 15 exclude “any measure adopted or maintained for Aboriginal Peoples, not to set-asides for Aboriginal businesses, existing Aboriginal or treaty rights of any of the Aboriginal Peoples of Canada protected by section 35 of the Constitution Act, 1982 are not affected by Chapter 15 (Government Procurement).”<sup>40</sup>

### Chapter 20: Trade and Biodiversity

- 20.13: notes that the parties involved commit to respecting, preserving and maintaining the knowledge and practices of Indigenous and local communities that embody traditional lifestyles for conservation and biological diversity.

### Chapter 29: Exceptions and General Provisions

- 29.6: The agreement includes an exception for the Māori peoples in New Zealand, protecting the rights of the Māori peoples as outlined in the Treaty of Waitangi and other legal agreements. In addition, the exception provides several protections to expand and support Māori exporters in New Zealand.<sup>41</sup>
- 29.8: Traditional Knowledge and Traditional Cultural Expressions stipulate that each Party may establish appropriate measures to respect, preserve and promote traditional knowledge and traditional cultural expressions.

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## The Jay Treaty and the US Immigration and Nationality Act (1965)

### The Treaty of Amity, Commerce and Navigation (1794)

The Treaty of Amity, Commerce and Navigation, commonly known as the Jay Treaty, is often referenced with regard to Indigenous trade.

The American Revolutionary War led to the creation of a boundary between the US and British North America (Canada). In 1794, Britain and the US entered into the 1794 Treaty of Amity, Commerce and Navigation, commonly known as the Jay Treaty. Article III of the Jay Treaty provided free border crossing rights for “Indian” US and British citizens. After the War of 1812, the Treaty of Ghent promised to restore the rights of Indian Nations that had existed prior to the war. However, legislation implementing these rights in Upper and Lower Canada lapsed in 1820 and was not re-enacted. Instead, an informal practice between Canada and the US began, allowing Indigenous peoples free border crossing and an informal exemption on the collection of duties.

### Interpretation by the US Government

In the 1920s, because of the actions of the Indian Defense League and the court case of Paul Diabo, a Kahnawake

<sup>37</sup> Ibid.

<sup>38</sup> William David, “Recognizing the Rights of Indigenous Peoples in International Trade and Environment,” in *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements*, eds John Borrows and Risa Schwartz (Cambridge: Cambridge University Press, 2020), 133–63. doi:10.1017/9781108675321.008.

<sup>39</sup> Ibid.

<sup>40</sup> Patricia M. Goff, “Bringing Indigenous Goals and Concerns into the Progressive Trade Agenda,” *Revue Interventions Économiques* 65 (December 1, 2020), <https://doi.org/https://doi.org/10.4000/interventionseconomiques.12777>.

<sup>41</sup> Sergio Puig, “Indigenous Peoples under International Economic Law,” in *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge: Cambridge University Press, 2021), doi:10.1017/9781108596503.005.

Mohawk, the US changed its immigration laws. Canadian-born citizens with at least Indigenous (First Nations, Métis, and Inuit) 50% blood quantum can still enter, live in, and work in the US without immigration restrictions and cannot be deported for any reason. However, the US did not implement its promises about the duty-free carriage of “proper goods.”

The US codified the right in the provisions of Section 289 of the Immigration and Nationality Act of 1952 and as amended in 1965. As a result, the provisions of the Jay Treaty are upheld with respect to “Native Indians born in Canada, are therefore entitled to enter the United States for the purpose of employment, study, retirement, investing and/or immigration” if they can prove at least 50% blood quantum.

The US government states that to qualify for these privileges, eligible persons must provide evidence of their American Indian background at the port of entry. The documentation must be sufficient to show the bearer is at least 50% of the “American Indian race.” Generally, such evidence would include either a government-issued identification card or “a written statement from an official of the tribe from which you or your ancestors originate, substantiated by documentary evidence (tribe records and civil long-form birth certificate bearing the names of both parents).”<sup>42</sup>

### Interpretation by the Canadian Government

In 1956, in the case *Francis v. The Queen*, [1956] S.C.R. 618, the Supreme Court of Canada decided the following:

- The Jay Treaty and the Treaty of Ghent were not treaties with Indian Nations.
- The Jay Treaty was not part of the law in Canada because it had not been ratified by legislation; and
- Article IX of the Treaty of Ghent was a self-implementing peace treaty, not effective automatically, because it only “promised” to restore the rights of what was termed Indian Nations.

In 1981, the Watt case in British Columbia established the possibility of “Native citizens to bisect the border from the United States to Canada” as a right. In 1982, the new Constitution Act recognized and affirmed both treaty and Aboriginal rights, however, no Canadian court has upheld the right for Indigenous peoples to freely transit the Canada-US boundary.

### Rights provided to Indigenous peoples from Canada by the US Government

When a blood quantum of at least 50% is proven, rights include the ability to:

- Freely enter the US from Canada.
- Live, work, and study in the US.
- Be eligible for public benefits (Medicaid, SSI, Medicare, Unemployment Benefits, and other Public Assistance).
- Register for college or university in the US as a “domestic student” rather than a “foreign student” with appropriate fee adjustment. A green card or Form I-551 (alien registration) is not required. A work permit is not required. Military Registration is not required.
- Reside in the US without fear of deportation. The US government cannot deport Jay Treaty identified citizens, nor can the US government exclude entry or deny services.

However, the Jay Treaty does not permit the uninhibited transportation of goods into the US from Canada. Goods transported into the US from Canada by persons seeking to draw upon Jay Treaty provisions are subject to the provisions of the CUSMA and cannot be deported for any reason. Canadian-born Indigenous peoples residing in the US are, therefore, entitled to all public benefits and domestic tuition fees on the same basis as US citizens.

### Relevance of the Jay Treaty

The Jay Treaty pre-dates the Canadian government’s commitment to ensure the recognition and affirmation of existing Aboriginal rights and treaties under Section 35 of the Constitution Act, 1982, and should, therefore, be in effect. Moreover, Canada’s commitments through UNDRIP, and reconciliatory efforts, to maintain and strengthen the social and cultural characteristics of Indigenous peoples point to the interactions between members of groups split by international borders being a protected right.<sup>43</sup> Therefore, fulfilling its commitments to Indigenous peoples through Section 35, UNDRIP, and reconciliatory efforts involving the recognition of Aboriginal rights and treaties requires that the Canadian government ensures the implementation of the Jay Treaty provisions relating to the free movement of Indigenous peoples and their goods across the Canada-United States border.

<sup>42</sup> U.S. Embassy and Consulates in Canada, *First Nations and Native Americans* (Ottawa, United States of America), <https://ca.usembassy.gov/visas/first-nations-and-native-americans/>.

<sup>43</sup> Richard Osburn, “Problems and Solutions Regarding Indigenous Peoples Split by International Borders,” *American Indian Law Review* 24, no. 2 (2001): 483, <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1234&context=ailr>.

Implementing the Jay Treaty is particularly relevant to trade as it facilitates the establishment of Indigenous free trade zones, enabling increased Indigenous trade and improving Canada's trade performance with the United States, which has been identified as the number one market for Indigenous exporters.

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## Impact of FTAs on Government of Canada's Indigenous Procurement Policies

### Indigenous Procurement Set-asides

The Government of Canada notes that Canada's FTAs pose no impediment to the inclusion of measures for the benefit of Indigenous peoples and businesses in procurement. As mentioned earlier, this includes setting aside procurements for Indigenous businesses under the Procurement Strategy for Indigenous Business (PSIB). Canada has negotiated Indigenous exclusion clauses in some of its FTAs concerning procurement contracts.

### Indigenous Procurement Sole-Source Thresholds

It is important to note the thresholds for federal procurements subject to FTAs to which the federal government is a party. Every two years, the procurement thresholds that are subject to the provisions of the FTAs that Canada is a party to are updated. The new thresholds dated December 20, 2021, which are expressed in Canadian dollars, are outlined in the table below and include links to the respective agreements.<sup>44</sup>

Government departments are created by Acts of Parliament and deliver programs and policies of the government. They exercise extensive control over a wide range of policy concerns such as defence, foreign affairs, and health.<sup>45</sup> Crown corporations are government-owned corporations that provide commercial services. Unlike government departments, their goals involve commercial and public policy concerns. Crown corporations are established through various means under the Canada Business Corporations Act, wherein they are prescribed their name, mandate, powers, and objectives.<sup>46</sup>

The Canadian Free Trade Agreement (CFTA) entered into force on July 1st, 2017, replacing the Agreement on Internal Trade (AIT). The CFTA is targeted at reducing barriers to trade within Canada. The CFTA's rules apply automatically to nearly all areas of economic activity in Canada, unless otherwise noted.<sup>47</sup>

Overall, the CFTA establishes the conditions to ensure that Canadian firms may secure the same access to Canada's market as that secured by firms from Canada's international trading partners.

Although the CFTA intends to modernize internal trade to improve conditions for Canadian firms, it appears that it represents the lowest procurement threshold. Therefore, it appears to be the primary trade agreement barrier to amending the Government Contracting Regulations (GCRs) to introduce a new, targeted sole-source threshold of \$100,000.00 for Indigenous businesses. However, the CFTA, as outlined in Article 800, does not apply to any measure adopted or maintained with respect to Indigenous peoples.<sup>48</sup>



<sup>44</sup> Treasury Board of Canada Secretariat, *Contracting Policy Notice 2021-6 Trade Agreements: Thresholds Update*, Government of Canada, 2021, <https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/contracting-policy-notice-2021-6.html>.

<sup>45</sup> Edward Iacobucci and Michael Trebilcock, "The Role of Crown Corporations in the Canadian Economy: An Analytical Framework," *SPP Research Papers* 5, no. 9 (2012): 8.

<sup>46</sup> *Ibid.*: 10.

<sup>47</sup> Canadian Free Trade Agreement, "Canadian Free Trade Agreement (CFTA)", Government of Canada, <https://www.cfta-alec.ca/canadian-free-trade-agreement/>.

<sup>48</sup> Public Services and Procurement Canada, "9.35.75. Canadian Free Trade Agreement", Government of Canada, 2020, <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9/35/75#:~:text=Under%20Article%20800%3A%20Aboriginal%20Peoples,with%20respect%20to%20Aboriginal%20peoples.>

## Thresholds - (CDN\$ January 1, 2022 – December 31, 2023)

Free Trade Agreement	Entities (departments and agencies)			Crown corporations and other government enterprises		
	Goods	Services	Construction	Goods	Services	Construction
<b>Internal</b>						
Canadian Free Trade Agreement (CFTA)	30,300	121,200	121,200	605,600	605,600	6,056,100
<b>International</b>						
Canada – Chile Free Trade Agreement	120,400	120,400	9,100,000	602,200	602,200	19,200,000
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	238,400	238,400	9,100,000	651,000	651,000	9,100,000
Canada – Colombia Free Trade Agreement	120,400	120,400	9,100,000	602,200	602,200	19,200,000
Canada-European Union Comprehensive Economic and Trade Agreement (CETA)	238,400	238,400	9,100,000	Section A 651,000	Section A 651,000	9,100,000
				Section B 733,600	Section B 733,600	
Canada – Honduras Free Trade Agreement	120,400	120,400	9,100,000	602,200	602,200	19,200,000
Canada – Korea Free Trade Agreement	100,000	100,000	9,100,000	–	–	–
Canada – Panama Free Trade Agreement	120,400	120,400	9,100,000	602,200	602,200	19,200,000
Canada – Peru Free Trade Agreement	174,200	174,200	9,100,000	602,200	602,200	19,200,000
Canada – Ukraine Free Trade Agreement	238,400	238,400	9,100,000	651,000	651,000	9,100,000
Canada – United Kingdom Trade Continuity Agreement	238,400	238,400	9,100,000	Section A 651,000	Section A 651,000	9,100,000
				Section B 733,600	Section B 733,600	
World Trade Organization – Agreement on Government Procurement (WTO-GPA)	238,400	238,400	9,100,000	651,000	651,000	9,100,000



**4.  
International Examples of  
Indigenous Trade Policy  
Initiatives**

## Australia

### Indigenous Peoples Strategy: 2015–2019

In May 2015, in line with the framework of the Australian Department of Foreign Affairs and Trade's (DFAT) Indigenous Peoples Strategy, the Australian Government committed to providing opportunities to assist indigenous peoples, both in Australia and overseas, to overcome social and economic disadvantages.

### Indigenous Diplomacy Agenda

The Australian DFAT released its Indigenous Diplomacy Agenda<sup>49</sup> to elevate Indigenous issues in the work of the foreign affairs and trade portfolio. The Australian Government's commitment to work in partnership with Indigenous Australians frames this work. The Government of Australia underlines that this policy works to advance reconciliation in Australia and supports the rights of Indigenous peoples around the world.

In so doing, the Government of Australia states that it will pursue four objectives to achieve this vision:

1. Shape international norms and standards to benefit indigenous peoples
2. Maximize opportunities for indigenous peoples in a globalised world
3. Promote sustainable development for all indigenous peoples
4. Deploy Indigenous Australian diplomats to advance Australia's national interests

### Inclusive Trade: Unlocking the Export Potential of Australia's Indigenous SMEs

Leading Indigenous organizations in Australia, including i2i Development Global (i2i Global), have recently increased their trade policy engagements and trade policy capacity.

In December 2021, with the support of DFAT, i2i Global released its report "Inclusive Trade: Unlocking the Export Potential of Australia's Indigenous SMEs,"<sup>50</sup> which sought to "support Indigenous prospects into investment, trade and exporting by gathering intelligence and insight and shaping future policy and program considerations. However, this is just one small step in a bigger project."

Similar to research CCAB conducted for Global Affairs Canada (GAC) in 2019, i2i Global's research was framed to source evidence and data from Indigenous companies, interests, and business networks. A key objective was to spur further research and subsequent data collection of Indigenous exporters. The research and design teams submit that there is scope for additional research to deepen this data collection and to explore elements raised by this qualitative study; some of those possibilities include:

1. Advancing Australia's services exports action plan
2. Increasing development of and access to Indigenous trade data assets
3. Indigenous-led initiatives
4. Growth through new markets and old traditions

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## Aotearoa (New Zealand)

In keeping with its obligations to the Māori people of Aotearoa, the Government of New Zealand includes a Treaty of Waitangi exclusion in all new FTAs.<sup>51</sup> In doing so, the Government of New Zealand underlines that this exception respects and guarantees the rights of the Māori people and provides opportunities for Māori exporters.<sup>52</sup> The most notable achievement is the leadership seen to develop and launch the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) during its 2021 APEC host year.<sup>53</sup>

### New Zealand – United Kingdom Free Trade Agreement (NZ-UK FTA)

Published on February 28, 2022, this agreement breaks new ground in acknowledging and recognizing Māori interests across the agreement, recognizing the Treaty of Waitangi, and including a dedicated chapter on Māori Interests. Mr. Chris Insley, Chairperson of Te Taumata, said that the NZ-UK FTA is a "modern, forward-looking trade agreement estimated at \$1 billion (NZD) of new value that recognizes and respects our past and the special role of Māori in Aotearoa into the future."<sup>54</sup> The full text of the agreement is available here: <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/NZ-UK-Free-Trade-Agreement.pdf>

49 Department of Foreign Affairs and Trade, "Indigenous Diplomacy Agenda", Australian Government, 2021, <https://www.dfat.gov.au/sites/default/files/indigenous-diplomacy-agenda.pdf>.

50 Department of Foreign Affairs and Trade, "Inclusive Trade: Unlocking the Export Potential of Australia's Indigenous SMEs", Australian Government, 2021, <https://www.dfat.gov.au/sites/default/files/inclusive-trade-unlocking-export-potential-australias-indigenous-smes.pdf>.

51 Sergio Puig, "Indigenous Peoples under International Economic Law," in *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge: Cambridge University Press, 2021), doi:10.1017/9781108596503.005.

52 Scott Harrison and Robin Asgari, "International Trade Inclusivity: The CPTPP and Indigenous International Trade and Investment," Asia Pacific Foundation of Canada, December 17, 2020, <https://www.asiapacific.ca/publication/international-trade-inclusivity-cptpp-and-indigenous>.

53 New Zealand Ministry of Foreign Affairs, "Indigenous Peoples Economic and Trade Cooperation Agreement," Government of New Zealand, 2021, <https://www.mfat.govt.nz/assets/Indigenous-Peoples-Economic-and-Trade-Cooperation-Arrangement-IPETCA-FINAL-VERSION.pdf>.

54 Chris Karama, "NZ-UK FTA Officially Signed", Te Taumata, 2022, <https://www.tetaumata.com/news/2022/03/01/nz-uk-fta-officially-signed/>.

Key Māori provisions in the NZ-UK FTA are as follows:

### Chapter 15. Digital Trade

- Each Party is encouraged to expand the coverage of government data and information digitally available for public access and use, through engagement and consultation with interested stakeholders, and Māori in the case of New Zealand.
- Parties recognise the importance of expanding and facilitating digital trade opportunities by removing barriers to participation in digital trade, and that this may require tailored approaches, developed in consultation with Māori, enterprises, individuals, and other groups that disproportionately face such barriers.
- To promote digital inclusion, the Parties shall cooperate on matters relating to digital inclusion, including participation of Māori, women, persons with disabilities, rural populations, and low socio-economic groups as well as 15 other individuals and groups that disproportionately face barriers to digital trade.
- Parties recognise the role played by SMEs, including Māori-led and women-led enterprises, in economic growth and job creation, and the need to address the barriers to participation in digital trade for those entities.
- Parties shall also participate actively at the WTO and in other international fora to promote initiatives for advancing digital inclusion in digital trade.

### Chapter 17. Intellectual Property

- The Intellectual Property Working Group established under Article 30.10 (Working Groups – Institutional Provisions) (“the Working Group”) shall be composed of representatives of each Party and with Māori in the case of New Zealand for functions under subparagraph 3(b).
- The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, with the inclusive participation of Māori, if such participation is relevant and practicable, to enhance the understanding of:
  - (a) issues connected with traditional knowledge associated with genetic resources, and genetic resources; and
  - (b) matters of interest to Māori relating to intellectual property, and issues relating to genetic resources, traditional knowledge, and traditional cultural expressions.
- Relevant to promoting a multilateral outcome at the WIPO IGC the Parties shall, to the extent appropriate, cooperate through their respective relevant agencies and institutions

and, where relevant and practicable, with the inclusive participation of Māori, by:

- (a) sharing information with each other; and
- (b) in response to any reasonable request, engaging actively in dialogue

### Chapter 22. Environment

- In order to acknowledge the special relationship of Māori with the environment in New Zealand, the Parties include the following concepts for the purposes of this Chapter:
  - “kaitiakitanga” refers to the Māori concept of active stewardship, guardianship, and protection of natural surroundings (land, sea, water, and air), and of the mauri of the environment; and
  - “mauri” refers to the essential quality and vitality of a being or entity. It is also used for a physical object or ecosystem in which this essence is located. All objects have mauri. A waterway, for example, or a mountain have a mauri including through their connection to the land.
- The environment plays an important role in the economic, social, and cultural well-being of Māori in the case of New Zealand and acknowledge the importance of engaging with Māori in the long-term conservation of the environment.
- The Parties also recognise the importance of respecting, protecting, preserving, and maintaining knowledge, innovations, and practices of Māori in the case of New Zealand, embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

### Chapter 24. Small and Medium-Sized Enterprises

- Promote the participation in international trade of SMEs owned by under-represented groups, such as women, youth, Māori, and minority groups

### Chapter 25. Trade and Gender Equality

- The Parties recognise the importance of strengthening their trade relations and cooperation in the implementation of this Agreement and shall carry out cooperation activities with the aim of enhancing the ability of women including workers, entrepreneurs, businesswomen and business owners, and wāhine Māori<sup>55</sup> in the case of New Zealand, to fully access and benefit from the opportunities created under this Agreement. These activities shall be carried out in a transparent manner, as appropriate with the inclusive participation of women.
- Cooperation activities shall be carried out on issues determined by the Parties, through the interaction and coordination, as appropriate, with their respective government agencies, private companies, labour unions, civil society, academic institutions, and non-governmental

<sup>55</sup> Māori women.

organisations, among others, and with the participation of Māori in the case of New Zealand.

- In the case of New Zealand, providing opportunities for wāhine Māori to engage in trade activities including with a Te Ao Māori framework.
- Improving analysis and monitoring of access to trade for women-led or owned businesses and, in the case of New Zealand, wāhine Māori, including in relation to specific barriers to trade.

### Chapter 26. Māori Trade and Economic Cooperation

- The Agreement contains a dedicated Māori Trade and Economic Cooperation chapter, recognising strong Māori interests in participating in and shaping trade approaches and outcomes that affect them. It also reflects the special relationship between Māori and the British Crown as original signatories to te Tiriti o Waitangi/the Treaty of Waitangi, and the unique context arising from this.
- The chapter is focused on promoting cooperation between the Parties to the NZ-UK FTA to enable and advance Māori economic and wellbeing aspirations, for example through cooperation to enhance the ability of Māori-owned enterprises to access and benefit from the trade and investment opportunities created under the FTA.
- In one specific case – the Haka Ka Mate – the chapter also contains an acknowledgement by the UK of the significance of this haka to Ngāti Toa Rangatira, as well as a commitment to work with New Zealand to identify appropriate ways to recognise and protect Ka Mate. New Zealand and the United Kingdom also agreed an understanding regarding the Haka Ka Mate as a side instrument to the FTA.

### Chapter 30. Institutional Provisions

- Inclusive trade Sub-Committee: For the purposes of the effective implementation and operation of Chapter 24 (Small and Medium-Sized Enterprises), Chapter 25 (Trade and Gender 30-5 Equality), Chapter 26 (Māori Trade and Economic Cooperation), and Chapter 27 (Trade and Development), an Inclusive Trade Sub-Committee established under Article 30.9 (Sub-Committees) shall be composed of representatives of each Party or their designees, and with Māori in the case of New Zealand.
- with respect to Chapter 26 (Māori Trade and Economic Cooperation):  
providing a forum to facilitate discussions on cooperation activities in Chapter 26 (Māori Trade and Economic Cooperation), and the exchange of information on the lessons learned through such activities

### Chapter 32. General Exceptions and General Provisions

- The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement.

This FTA text could serve as a model for Indigenous inclusions within Canada's FTAs under negotiation. It could also serve as a model text for FTA negotiations amongst states with Indigenous populations.

### United States of America

The US government has dedicated "Tribal Liaisons" within the International Trade Administration (ITA), an agency of the US Department of Commerce.

US State Department officials are exploring how the US can support cross-boundary Indigenous-to-Indigenous trade as a part of the "Build Back Better" efforts within the Roadmap for a Renewed US-Canada Partnership announcement by PM Trudeau and US President Biden on February 23, 2021.<sup>56</sup>



<sup>56</sup> Prime Minister Justin Trudeau and President Joe Biden, "Roadmap for a Renewed U.S.-Canada Partnership," Government of Canada, 2021, <https://pm.gc.ca/en/news/statements/2021/02/23/roadmap-renewed-us-canada-partnership>.



**5.  
Multilateral Efforts to Support  
Indigenous Economic  
Development through Trade**

## Asia-Pacific Economic Cooperation (APEC)

Comprised of 21 member “economies,” APEC is a regional economic forum that fosters inclusive and balanced economic growth within the Asia-Pacific.<sup>57</sup> Convening each year, APEC notes that its members work collaboratively to ensure that goods, services, and investment move freely across borders and provide training to communities (Indigenous communities, rural communities) to facilitate trading networks.

APEC 2021, hosted by New Zealand, had Indigenous economic development as one of its key priorities. Beginning with the meeting’s objective, APEC 2021 sought to demonstrate New Zealand’s partnership with Māori people, advocating for the inclusion of Indigenous communities within the work of APEC.<sup>58</sup> Convening to strategize on a regional response to the COVID-19 pandemic, APEC 2021 sought to enhance the economic participation of Indigenous communities, working in collaboration with the Māori and strengthening connections among Indigenous peoples in the APEC region. To support this work, a partnership was formed between the New Zealand Ministry of Foreign Affairs and Trade (MFAT) and Māori entities to create Te Rangitūkupu to support Māori participation at APEC 2021. APEC 2021 led to the following three key outcomes for Indigenous peoples:

### 1. APEC Leaders’ Declaration (November 21, 2021)

The Leader’s Declaration noted that particular attention had been paid to the economic empowerment of Indigenous peoples and that members will continue to deepen cooperation “to ensure their access to economic opportunities, including to improve access to global markets.”<sup>59</sup>

### 2. Aotearoa Plan of Action 2040

Aotearoa Plan of Action 2040 declared a new mission statement for APEC, calling for “an open, dynamic, resilient and peaceful Asia-Pacific community by 2040, for the prosperity of all our people and future generations,” achieved through trade and investment; innovation and digitalization; and strong, balanced, secure, sustainable, and inclusive growth.<sup>60</sup> Special mention was made that APEC economies will support Indigenous economic empowerment.<sup>61</sup>

### 3. The Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA)

The Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) is a non-binding cooperation-based arrangement initiated by New Zealand.<sup>62</sup> IPETCA was announced

on December 10, 2021, by New Zealand’s Minister of Foreign Affairs and Associate Minister for Māori Development, Nanaia Mahuta, and endorsed by Minister Ng. IPETCA acknowledges the importance of enhancing the ability of Indigenous peoples and Indigenous businesses to benefit from the opportunities created by international trade and investment. On June 23, 2022, Canada endorsed IPETCA, which reiterated its close partnership with Indigenous peoples to support Indigenous businesses in accessing global markets.<sup>63</sup> This endorsement signals the Government of Canada’s commitment to Indigenous trade and provides a clear justification for their support and active participation of Indigenous peoples in international markets.

IPETCA reaffirms several important existing Indigenous-specific international instruments, such as UNDRIP, and acknowledges the important role of the environment in the economic, social, and cultural well-being of Indigenous peoples.

The IPETCA is a new, open plurilateral arrangement across several economies, which creates a framework for economies and Indigenous Peoples to work together to increase trade and economic cooperation and empowerment. A joint decision-making body, the Partnership Council, will enable both economy representatives and Indigenous Peoples to oversee and implement the arrangement.

Commitments found within the IPETCA include the following:

- (a) The participating economies will, individually and collectively:
  - (i) work with Indigenous peoples to advance the objectives of this Arrangement, including enabling and empowering Indigenous peoples to identify, advance, and implement initiatives to develop and expand international Indigenous trade and investment opportunities and relationships, consistent with their values, development plans or priorities, and needs;
  - (ii) empower Indigenous peoples, consistent with the United Nations Declaration to freely pursue their economic, social, and cultural development, engaging freely in all their traditional and other economic activities, and determining strategies and priorities for their right to development and the use of their lands, territories, and resources, in accordance with their own development plans and priorities, and cultural values and norms;
  - (iii) work with Indigenous peoples to ensure their active participation in decision making on matters that affect their rights, responsibilities, and interests in relation to trade and investment;

<sup>57</sup> Asia-Pacific Economic Cooperation (APEC), “About APEC”, APEC, 2021, <https://www.apec.org/about-us/about-apec>.

<sup>58</sup> Ministry of Foreign Affairs and Trade, “Our Work with APEC,” Government of New Zealand, 2021, <https://www.mfat.govt.nz/en/trade/our-work-with-apec>.

<sup>59</sup> Asia-Pacific Economic Cooperation (APEC), *2021 Leaders’ Declaration* (New Zealand, 2021), <https://www.apec.org/meeting-papers/leaders-declarations/2021/2021-leaders-declaration>.

<sup>60</sup> Asia-Pacific Economic Cooperation (APEC), *Aotearoa Plan of Action* (New Zealand, 2021), <http://aotearoaplanofaction.apec.org/>.

<sup>61</sup> Asia-Pacific Economic Cooperation (APEC), *Strong, Balanced, Secure, Sustainable and Inclusive Growth* (New Zealand, 2021), <http://aotearoaplanofaction.apec.org/strong-balanced-secure-sustainable-and-inclusive-growth.html>.

<sup>62</sup> New Zealand Ministry of Foreign Affairs, *Indigenous Peoples Economic and Trade Cooperation Agreement* (New Zealand, 2021), <https://www.mfat.govt.nz/assets/Indigenous-Peoples-Economic-and-Trade-Cooperation-Arrangement-IPETCA-FINAL-VERSION.pdf>.

<sup>63</sup> Global Affairs Canada, *Government of Canada and Indigenous Leaders celebrate Indigenous Peoples Economic and Trade Cooperation Agreement* (Ottawa, Canada, 2022), <https://www.canada.ca/en/global-affairs/news/2022/06/government-of-canada-and-indigenous-leaders-celebrate-indigenous-peoples-economic-and-trade-cooperation-arrangement.html>.

- (iv) promote international trade policies and Indigenous policies that are mutually supportive in order to:
  - (A) increase Indigenous peoples' participation in trade and investment;
  - (B) enhance trade and investment with, between, and among Indigenous peoples to promote their collective economic, social, cultural, and spiritual wellbeing; and
  - (C) to further Indigenous peoples' worldviews regarding the sustainable management of natural resources, in order to advance economic development;
- (v) enhance the ability of Indigenous peoples and businesses, including those led by women, youth, persons with disabilities, and persons with diverse sexual orientations and gender identities, to fully access and benefit from the opportunities created by international trade, including facilitating Indigenous-to-Indigenous dialogue and trade;
- (vi) strengthen the capacity and commitment of the participating economies, working with Indigenous peoples, to understand and support, advocate for, and develop policies, laws, and practices, to enhance trade and investment with, between, and among Indigenous peoples;
- (vii) endeavour to ensure that the domestic laws, regulations, and policies of participating economies and the international instruments that they enter into, and which impact on Indigenous rights, interests, and responsibilities, are consistent with this Arrangement;
- (viii) facilitate, in partnership with Indigenous peoples and businesses, opportunities for international trade with, between, and among Indigenous peoples, including by considering, adopting, or strengthening domestic laws, regulations, policies, knowledge sharing arrangements, support programs, and capability and capacity building opportunities;
- (ix) work with Indigenous peoples to identify and promote means of providing and enhancing access to capital to support Indigenous trade, investment, and other economic initiatives;
- (x) enable and support Indigenous peoples to develop trade and other economic opportunities through access to and use of existing and new technologies, and recognize traditional knowledge and Indigenous worldviews in relation to digital issues;
- (xi) support Indigenous peoples to identify barriers to the achievement of the objectives of this Arrangement and appropriate solutions to eliminate such barriers, and carry out cooperation activities with Indigenous peoples that are designed to remove those barriers; and
- (xii) work with Indigenous peoples to identify the impacts

of trade and investment policies and agreements on Indigenous peoples, including where such policies may create barriers to participation, and exchange views on the means to address negative impacts.

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## Organisation for Economic Cooperation and Development (OECD)

In January 2020, the OECD published its first report regarding Indigenous prosperity and well-being in Canada: Linking Indigenous Communities with Regional Development in Canada. This report was part of the larger "Linking Indigenous Communities with Regional Development" series of reports that saw the active participation of Indigenous leaders as peer reviewers and presenters at OECD events and OECD Committees in Paris, France.

This report spotlighted numerous recommendations for Canadian governments at all levels to support Indigenous economic self-determination and prosperity, including through inclusive trade policies. These recommendations included:

1. The participation of Indigenous businesses in trade;
2. Supporting the expansion of Indigenous businesses in the tradeable sector (mining, fisheries, and tourism-related services);
3. Supporting export capacity and increasing access to foreign markets; and
4. Supporting access to markets through addressing the lack of access to capital.

Indigenous leaders met on the margins of the review of this report by OECD member states in November 2019 in Paris, France. At that time, a group of OECD members, an impromptu "Champions of Indigenous prosperity," formed to propose suitable next steps. OECD members of this Champions group included Australia, Canada, Chile, Colombia, Germany, Mexico, Norway, Peru, the United States, and Indigenous leaders from Australia, Canada, and Sweden.

This Champions group agreed to work collaboratively to finalize a draft Terms of Reference for a Network on Indigenous prosperity and well-being at the OECD. The OECD Secretariat presented the draft Terms of Reference for an OECD Indigenous Network on Prosperity and Well-being to the Regional Development Policy Committee (RDPC) of the OECD on November 22, 2019. The draft proposal received positive interventions from Aotearoa, Australia, Canada, Chile, Norway, Sweden, and the US. 41 OECD Member States, Partner Countries, and Associations were present at the RDPC. The draft Terms of Reference for an OECD Indigenous Network on Prosperity and Well-being was adopted unanimously.

The OECD Secretariat was tasked with working collaboratively with the Champions group to develop a costed proposal for the OECD Indigenous Network on Prosperity and Well-being for consideration of Member States at a future meeting of the RDPC.

Progress towards the development of a costed proposal for the OECD Indigenous Network on Prosperity and Well-being stalled with the onset of the COVID-19 pandemic. The next OECD meeting on this topic was not held until July 6, 2021,<sup>64</sup> which included Aotearoa, Australia, Canada, Chile, Colombia, and Indigenous leaders from Australia, Canada, and Sweden. At this meeting, Indigenous leaders reiterated their interest in a permanent Network on Indigenous prosperity and well-being at the OECD to foster Indigenous-to-Indigenous sharing of good practices concerning economic development and to provide an Indigenous lens to the work of the OECD.

The Governments of Aotearoa, Australia, Chile, and Colombia expressed support for enhanced Indigenous participation at the OECD. Canada, represented by ISC Senior Management, noted that they have been working with the OECD Secretariat and the NIEDB to “figuring out what the next steps are in terms of the implementation of the report,” including “the possible next steps in order to sustain the network ... of friendships that have been created across continents and around the world between Indigenous business leaders and how to sustain... more effectively over the long term or in a more sustainable way integrate Indigenous perspectives and an Indigenous lens on the work that the OECD does.”

However, ISC Senior Management did not support the specific proposal for an OECD Network on Indigenous Prosperity and Well-being, instead noting that “every other government especially coming out of the pandemic is strapped for resources, that battling for resources and prioritizing where we put our efforts on economic development or anything else Indigenous related is always critical and always poses a challenge to figure out how we can come up with the appropriate resources to support effective projects in the context of there being a lot of competition and competing priorities.”

Consideration may be given to how an OECD Indigenous Network on Prosperity and Well-being could influence trade policy discussions and evidentiary research at the OECD through the RDPC and Trade Committee, which could, in turn, influence

negotiations at the UN and other multilateral bodies, as well as trade policy positions of member states.<sup>65</sup>

## United Nations (UN) and Special Agencies

The UN has three advisory bodies mandated with the issues faced by Indigenous communities: the United Nations Permanent Forum on Indigenous Issues (UNPFII), the United Nations Expert Mechanism on the Rights of Indigenous People (UNEMRIP), and the Special Rapporteur on the rights of Indigenous peoples. Subsequent sub-sections will outline the mandates of the UNPFII and the UNEMRIP and opportunities for growth in the context of trade and economic development.

In the context of international trade agreements, the Special Rapporteur on the rights of Indigenous peoples 2017 Report outlined the potential for international trade agreements to have direct and systemic effects on the human rights of Indigenous groups.<sup>66</sup> To rectify such effects, the Special Rapporteur recommended that Indigenous groups are involved in the consultations and negotiating of FTAs.

### United Nations Permanent Forum on Indigenous Issues (UNPFII)

UNPFII, first established in 2000, is an advisory body to the United Nations Economic and Social Council (UNESCO).<sup>67</sup> UNPFII is tasked with resolving Indigenous issues related to economic and social development, culture, education, the environment, health, and human rights.<sup>68</sup> UNPFII is convened annually to discuss these issues in addition to issues relating to a specific theme or subject matter. Additionally, UNPFII is tasked with preparing and distributing information relating to Indigenous issues, raising awareness, and working to integrate them into the UN System.<sup>69</sup>

The advisory body has outlined Article 36 as a mechanism granting the communication between states and Indigenous groups to freely move across borders and participate in economic activity.<sup>70</sup> In the context of Indigenous economic development and trade policy, the UNPFII’s reporting function to UNESCO presents the opportunity to leverage the Forum to advocate for trade policies that benefit Indigenous businesses and Indigenous communities.

64 6 July – Indigenous Event,” video, <https://www.youtube.com/watch?v=rrgJJpwFJL0&t=4430s>.

65 The OECD also acknowledges that trade liberalization and globalization, while beneficial, are inequitable. For example, the OECD has noted that workers and SMEs are adversely impacted by trade liberalization. Thus, the OECD calls for an integrated policy approach that supports workers and broadly distributes the benefits of trade. In this realm, the OECD calls for the removal of barriers and the reduction of costs that prevent firms and workers from engaging in trade. One method is the use of trade facilitation, the use of transparent, and predictable border procedures that expedite the movement of goods across borders. The OECD has developed Trade Facilitation Indicators (TFIs) that act as a method to monitor state performance on trade facilitation. The OECD has supported the use of trade facilitation, noting the economic benefits of such efforts on a global level.

66 United Nations, *Rights of Indigenous Peoples* (UN, 2015), [https://www.culturalsurvival.org/sites/default/files/media/report\\_on\\_investments\\_vtc\\_1.pdf](https://www.culturalsurvival.org/sites/default/files/media/report_on_investments_vtc_1.pdf)

67 United Nations, *United Nations Permanent Forum on Indigenous Issues* (UN – Department of Economic and Social Affairs), <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>

68 Ibid.

69 Ibid.

70 [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/C.19/2015/9](https://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.19/2015/9)

## United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

The United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is mandated to provide the UN Human Rights Council with insight and advice on the rights of Indigenous peoples.<sup>71</sup> EMRIP assists member states in upholding the rights of Indigenous peoples as outlined in UNDRIP and conducting studies to support this objective.<sup>72</sup>

Amended in 2016, the EMRIP mandate includes aiding member states in developing domestic legislation concerning the rights of Indigenous groups and assisting those in implementing UN recommendations.<sup>73</sup> Each year, EMRIP mobilizes for a five-day session at the UN office in Geneva, Switzerland with Indigenous Peoples, state representatives, civil society groups/organizations, and academics. The purpose of this session is to provide a forum to report on intersessional activities, discuss pressing issues, and decide on work plans.

Recent reports published by EMRIP refer to Indigenous rights and their importance. Absent from these reports, however, are recommendations specifically referring to economic development or economic empowerment.

However, recent EMRIP reports, including *Efforts to Implement UNDRIP: Indigenous Peoples and the Right to Self-determination*, outline best practices, lessons, and recommendations drawn since the adoption of UNDRIP.<sup>74</sup> These include the encouragement of states to create Indigenous-led initiatives to “define, revitalize and strengthen” self-determination<sup>75</sup> and involve Indigenous peoples in international forums to fulfill and uphold self-determination rights. Additionally, the EMRIP report *Indigenous Peoples’ Rights in the Context of Borders* (2019)<sup>76</sup> underscores the UNDRIP Article 36 right and describes how “States should ensure that indigenous peoples’ right to freedom of movement across their traditional territories internally and across international borders is fully realized, by facilitating their voluntary migration, in collaboration with Indigenous peoples, whether it is to maintain relationships or engage in their livelihoods, including trade.” Furthermore, “States are encouraged to eliminate challenges and obstacles to self-government and self-determination created by internal State boundaries, such as multiple and differing jurisdictions, through treaties, agreements and other constructive arrangements. States

should ensure that differences among provincial or municipal jurisdictions do not create conditions of inequality, deprivation and discrimination among indigenous peoples.”<sup>77</sup>

Taken together, these reports, amongst other work underway by EMRIP, could be leveraged to support more extensive conversations concerning Indigenous economic prosperity and well-being, including liberalized labour mobility provisions for Indigenous peoples within FTAs.

## United Nations Conference on Trade and Development (UNCTAD)

The United Nations Conference on Trade and Development (UNCTAD) is a permanent body established in 1964 by the UN General Assembly.<sup>78</sup> UNCTAD acknowledges the unequal impacts of globalization, specifically the unequal benefits resulting from international trade and development.<sup>79</sup> Reflecting this acknowledgement, UNCTAD supports developing nations in the following ways to facilitate a more equitable approach to the benefits of trade:<sup>80</sup>

- Assists governments in the context of international trading agreements, supporting the implementation of trade-led growth strategies and facilitating integration into the multilateral trading system.
- Conducts concrete analysis to monitor trading trends and provide evidence to states.
- Provides training and capacity building to strengthen knowledge in the context of trade.
- Assists nations with transportation, trade logistics, and trade facilitation.<sup>81</sup>

The 15th session of the UNCTAD quadrennial ministerial conference (UNCTAD15) was held from October 3-7, 2021, virtually and chaired by Barbados. The conference was an opportunity to assess current trade and development issues and formulate global policy responses, focusing on reducing inequality and forwarding equitable trade.<sup>82</sup> UNCTAD15 provided a briefing on the effects of the pandemic on developing nations. Members noted the importance of strengthening the multilateral system and committing to reaching new agreements on global economic governance, trade, investment, debt, financing, and international cooperation to address the impacts of climate change.<sup>83</sup>

71 United Nations, *Expert Mechanism on the Rights of Indigenous Peoples* (UN – Office of the High Commissioner Human Rights), <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx#68> Ibid.

72 Ibid.

73 United Nations, *About the Mandate* (UN – Office of the High Commissioner Human Rights), <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Reviewofthemandate.asp>

74 United Nations, *Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples* (UN – Human Rights Council, 2021), <https://www.undocs.org/A/HRC/48/75>.

75 Ibid, 19.

76 United Nations, *Indigenous Peoples’ Rights in the Context of Borders Migration and Displacement* (UN – Human Rights Council, 2019), <https://www.undocs.org/A/HRC/EMRIP/2019/2/Rev.1>.

77 Ibid, 20.

78 United Nations Conference on Trade and Development (UNCTAD), *About* (UNCTAD), <https://unctad.org/about>.

79 Ibid.

80 Ibid.

81 United Nations Conference on Trade and Development (UNCTAD), *Topics* (UNCTAD), <https://unctad.org/topics>.

82 United Nations Conference on Trade and Development (UNCTAD), *About* (UNCTAD), <https://unctad.org/about>.

83 UNCTAD, *Strong declaration on COVID-19 vaccines, trade, debt and climate adopted at historic UNCTAD15 conference* (UNCTAD, 2021), <https://unctad15.org/external/news/strong-declaration-covid-19-vaccines-trade-debt-and-climate-adopted-historic-unctad15>.

UNTCAD15 also adopted the Bridgetown Covenant,<sup>84</sup> providing a plan for the transformation of economies, outlining valuable policy analysis on trade and development, and describing UNCTAD's role as a consensus-building partner on trade and development.<sup>85</sup> The Bridgetown covenant underlines that:

The impressive expansion of global trade, investment, and technology registered over the past decades have unfortunately not resulted in benefits for all. Support and consideration must be given to those who are vulnerable or in vulnerable situations, such as women and girls, youth, persons with disabilities, older persons, indigenous peoples, refugees, internally displaced persons, homeless and jobless people, migrants, and other marginalized groups, in order to leave no one behind.<sup>86</sup>

The reference to Indigenous peoples in the Bridgetown Covenant provides an opportunity to develop Indigenous-led proposals that “support and consider” plurilateral trade and development measures that would support post-pandemic Indigenous prosperity and well-being.

### World Intellectual Property Organization (WIPO)

Indigenous Peoples often seek intellectual property (IP) protection for traditional knowledge (TK) and traditional cultural expressions (TCEs) as intangible assets.<sup>87</sup> IP acts as an avenue to increase economic development and protect Indigenous TK under the right conditions.<sup>88</sup> The crux of intellectual property is the rights of ownership and control of knowledge when something of value is created or developed, and those rights are owned by those who create or develop that value. Research conducted by the CCAB has outlined widespread familiarity with IP among Indigenous entrepreneurs in Canada, however, only one in ten businesses utilize them<sup>89</sup>. TK and TCEs are used in a variety of business contexts, and their integration can advance innovation and bring a wide range of advantages to businesses. The evolving and sacred nature of TK and TCEs makes them difficult to protect under the current IP system. Regrettably, TK and TCEs cannot be fully protected by existing IP systems due to inadequacies of the system.

There are also certain challenges associated with utilizing copyright law to protect the cultural expressions of groups. First, copyright law generally protects individual rights and does not protect collective or group rights. Further, copyright law usually (though not exclusively) requires that protected subject

matter must be fixed in some material form as a pre-condition for protection. Thus, protection is not commonly provided for oral works, acting as a substantial barrier for Indigenous Peoples. Additionally, the arts and cultural expressions/TCEs are commonly pre-existing, passed from generation to generation, and may not satisfy the originality criteria outlined in copyright law. Due to these barriers, it is advised that individuals refer to protocols and contracts when gaps in protection remain to help raise awareness against misuse and misappropriation of TCEs and TK. Furthermore, WIPO provides assistance to Indigenous businesses to make strategic and effective use of existing intellectual property tools through training, mentoring, and match-making programs for Indigenous entrepreneurs.

In 2010, the World Intellectual Property Organisation's (WIPO) member states began negotiations on the development of international agreements on IP, TK, Genetic Resources (GRs), and TCEs.<sup>90</sup> The WIPO Intergovernmental Committee (IGC) was tasked with “finalizing an agreement on an International legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property, which will ensure the balanced and effective protection of GRs, TK and TCEs.”<sup>91</sup>

International outcomes from IGC negotiations would bring a wide range of benefits, with the most promising being that it would allow Indigenous peoples and communities to benefit from third-party use of TK and TCEs, empowering Indigenous peoples if they freely choose to exercise this right. Multilateral collaboration on this issue holds the promise that Indigenous communities could benefit from clear IP protections, thus providing clarity and predictability surrounding governance and rules.

Despite the wide range of benefits, negotiating an international legal instrument poses numerous challenges. The first challenge surrounds the technicality of IP, GRs, TK, and TCEs, all being distinct, requiring collaboration and expertise to negotiate. A second challenge is the lack of interdependence of issues outlined in IGC negotiations and IP negotiations on an international level. This complicates matters, providing little room for the extraction of concessions from countries seeking normative outcomes (*demandeurs*) and those who are not (*non-demandeurs*). Third, variance in the level of political willingness on behalf of countries to negotiate is an additional obstacle.

The IGC cites these challenges as barriers to negotiating an international legal instrument. In 2003, the IGC failed to agree

84 UNCTAD, *The Bridgetown Covenant: From inequality and vulnerability to prosperity for all* (Bridgetown, UNCTAD, 2021), [https://unctad.org/system/files/official-document/td541add2\\_en.pdf](https://unctad.org/system/files/official-document/td541add2_en.pdf).

85 UNCTAD, *Report of the United Nations Conference on Trade and Development on its fifteenth session* (Bridgetown, UNCTAD, 2021), Report of the United Nations Conference on Trade and Development on its fifteenth session (unctad.org).

86 UNCTAD, *The Bridgetown Covenant: From Inequality and Vulnerability to Prosperity for All* (Bridgetown, UNCTAD, 2021): 6, [https://unctad.org/system/files/official-document/td541add2\\_en.pdf](https://unctad.org/system/files/official-document/td541add2_en.pdf)

87 World Intellectual Property Organization (WIPO), *Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, <https://www.wipo.int/tk/en/>.

88 *Understanding Intellectual Property Awareness & Use by Indigenous Businesses* (Toronto: Canadian Council for Aboriginal Business, July 2021), [https://www.ccab.com/wp-content/uploads/2021/07/CCAB\\_\\_english\\_FINAL\\_DIGITAL-ERG.pdf](https://www.ccab.com/wp-content/uploads/2021/07/CCAB__english_FINAL_DIGITAL-ERG.pdf).

89 Ibid.

90 Wend Wendland, *International Negotiations on Indigenous Knowledge to Resume at WIPO: A View of the Journey so Far and the Way Ahead* (WIPO Magazine, February 2022), [https://www.wipo.int/wipo\\_magazine\\_digital/en/2022/article\\_0001.html](https://www.wipo.int/wipo_magazine_digital/en/2022/article_0001.html)

91 Ibid.

on a mandate for 2004–2005 due to conflicting objectives amongst its members. Text-based negotiations began in 2010 with the agreement of a mandate at which time the IGC sought to strike a balance between the expectations of *demandeurs* and *non-demandeurs*. Namely, text-based negotiations were established for GRs, TK, and TCEs, international legal instruments were agreed on, and the potential of an international conference to focus the negotiations was proposed. This mandate was renewed in 2016–2017 and 2018–2019.

However, progress was halted in 2019 by the IGC due to their perception of a lack of ongoing negotiation amongst member states. Despite its importance, an effective mechanism to successfully negotiate an international legal instrument continues to evade the IGC. As a result, IGC has referred the challenge back to member states, recommending that countries continue to work collaboratively to clarify policy goals and interests while deploying “consensual” decision-making processes to yield results.

Separately, WIPO has made progress on the issue of GRs. Negotiations surrounding GRs progressed in 2012 with the creation of a single negotiating text. In 2018, following pressure from IGC members, WIPO released a range of policy questions on a new patent disclosure. Following this, in 2019, a draft international legal instrument on GRs and associated TK was developed.<sup>92</sup> However, this draft has not been adopted by WIPO member states.

In comparison to other work undertaken by WIPO, the IGC has made significant progress in integrating the concerns and voices of Indigenous peoples into policy discussions. The WIPO Voluntary Fund and WIPO Indigenous Fellowship Program are two examples of their efforts to bring Indigenous voices into the WIPO process. WIPO’s Traditional Knowledge Division also provides resources (technical assistance, capacity-building services) to Indigenous communities to facilitate their participation in WIPO processes.

### **World Bank Group: International Finance Corporation (IFC)**

The International Finance Corporation (IFC), a part of the World Bank Group, a UN Special Agency, is the largest global development institution focused on the private sector in developing countries.<sup>93</sup> The IFC seeks to advance economic development by encouraging the growth of the private sector in developing countries. This work is done by “creating new markets, mobilizing other investors, and sharing expertise with

the goals of creating jobs and raising living standards, especially for the poor and vulnerable.”<sup>94</sup>

IFC has not published much of its work with Indigenous communities or how IFC-sponsored projects have supported Indigenous prosperity and well-being. The last published direction to IFC staff and recipients was on January 1, 2012, with the release of “Guidance Note 7 (GN7).”<sup>95</sup>

GN7 underlined the need to “ensure the Free, Prior, and Informed Consent of the Affected Communities of Indigenous Peoples when the circumstances described in this Performance Standard are present.” It also noted that the work of the IFC should promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.

However, IFC has not published examples of such projects, which presents an opportunity to explore how the IFC and the World Bank Group, as a whole, could reflect culturally appropriate Indigenous capacity-building activity that supports Indigenous trade facilitation.

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## **World Trade Organization (WTO)**

### **Agreement on Subsidies and Countervailing Measures (SCM Agreement)**

Provisions found within the WTO Agreement on Subsidies and Countervailing Measures<sup>96</sup> (SCM Agreement) are cited by the Government of Canada as the primary rationale preventing them from providing more comprehensive export development support to Indigenous businesses. Specifically, the provisions of Article 3 concerning “prohibited subsidies,” which includes “export performance,” have acted as a barrier to enhanced support for Indigenous exporters in Canada and other lands.<sup>97</sup> This includes “provision by governments of direct subsidies to a firm or an industry contingent upon export performance.” In practice, this is the explanation provided as to why export support programs offered by the Government of Canada have restrictive terms and conditions to ensure WTO compliance.

However, enhanced adoption and implementation by Canada and like-minded WTO members with proportional Indigenous populations, namely Aotearoa, Australia, and the US, could be leveraged to create Indigenous carve-outs in the SCM Agreement. This could fall within the ongoing “Ottawa Group” process of WTO Reform (Aotearoa and Australia are members of the Ottawa Group).

92 World Intellectual Property Organization (WIPO), *Chair’s Text of a Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources*, [https://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=558733](https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=558733).

93 International Finance Corporation (IFC), *About IFC*, [https://www.ifc.org/wps/wcm/connect/corp\\_ext\\_content/ifc\\_external\\_corporate\\_site/about+ifc\\_new](https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new).

94 *Ibid.*

95 International Finance Corporation (IFC), *Guidance Note 7: Indigenous Peoples* (IFC, 2012), [https://www.ifc.org/wps/wcm/connect/9baef8f6-9bd9-4d95-a595-7373059081d4/GN7\\_English\\_2012.pdf?MOD=AJPERES&CVID=nXqnhP5](https://www.ifc.org/wps/wcm/connect/9baef8f6-9bd9-4d95-a595-7373059081d4/GN7_English_2012.pdf?MOD=AJPERES&CVID=nXqnhP5).

96 *WTO Agreement on Subsidies and Countervailing Measures*, [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf).

97 *Ibid.*

## Declaration on Micro, Small and Medium-Sized Enterprises (MSMEs)

Another mechanism that could be utilized by like-minded WTO members to create Indigenous carve-outs in the SCM Agreement could be the recent WTO “Draft declaration on micro, small and medium-sized enterprises (MSMEs).” The following two areas of this declaration would be of great importance for Indigenous businesses and could focus on the implementation of the following two areas:

c. Recommendation on trade facilitation and MSMEs (Annex 3)<sup>98</sup> with special attention to:

- 3. Recommend that WTO Members, when conducting consultations in accordance with the WTO Agreement on Trade Facilitation (TFA), engage with stakeholders including MSMEs located within their territories;
- 4. Encourage WTO Members, when sharing their TFA implementation experiences in the WTO Committee on Trade Facilitation, to illustrate, as appropriate, how the interests of MSMEs are considered in order to identify and promote good practices for the implementation of the TFA in a MSME-friendly manner;

d. Recommendation on promoting MSMEs’ inclusion in regulatory development in the area of trade (Annex 4),<sup>99</sup> with special attention to:

- 1. Encourage WTO Members to promote the consideration of the specific needs of MSMEs in domestic regulatory development with respect to issues covered by the WTO agreements, consistent with their implementation capacities and to the extent practicable.



<sup>98</sup> World Trade Organization (WTO) *Declaration on Micro, Small and Medium-Sized Enterprises (MSMEs)* (WTO – Informal Working Group on MSMEs, 2021): 9, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q/INF/MSME/4R2.pdf&Open=True>.

<sup>99</sup> *Ibid.*



**6.  
Moving Forward: Improving  
Trade Conditions for  
Indigenous Business**

## Incentivizing International Investment in Indigenous Communities and Businesses

Foreign direct investment (FDI) is a key strategic opportunity for Indigenous economic development, helping to spur innovation and creating well-paying jobs and Own Source Revenues (OSRs) for Indigenous communities.

According to the OECD, FDI is a category of cross-border investment in which an investor resident in one economy establishes a lasting interest in an enterprise resident in another economy. FDI is a key element in international economic integration because it creates stable and long-lasting links between economies. FDI promotes international trade through access to foreign markets and can be an important vehicle for economic development.<sup>100</sup>

Canada benefitted from \$76.4 Billion in FDI in 2021;<sup>101</sup> however, data is not available that outlines the portion of Canada's FDI that was directed to Indigenous Communities or businesses. What is known is that international investment opportunities in Indigenous communities are often limited due to historical and institutional factors. Notably, the static provisions of the Indian Act are commonly understood as the "greatest impediment to economic and business development on-reserve." Regulations surrounding band government, taxation, lands, resources, and money management remain outdated. These outdated procedures leave Indigenous communities ill-equipped to navigate and compete in the growing economy. For example, land management provisions under the Indian Act can raise costs and slow decision-making, disincentivizing investment and limiting economic development and self-sufficiency. For the Métis Nation, the failure of the Government of Canada to recognize the Métis land base has brought unique and difficult challenges for the Métis People, contributing to their socio-economic marginalization.

However, there are active international examples of place-based investment incentives that seek to draw investment to particular regions. These arrangements can be used to inspire place-based economic strategies for Indigenous communities. It is important to consider the unique needs of Indigenous businesses and how to support these needs. No matter the form of support, place-based economic incentives that are designed to support Indigenous communities should reflect the teachings and insights gathered from Indigenous communities and institutions. Indigenous partners should be actively involved in the solution, development, and implementation processes.<sup>102</sup>

## How Can Indigenous Communities Maximize the Benefits of International and Foreign Direct Investment (FDI)

### Special Economic Zones (SEZ)

SEZs are geographically specific areas with unique regulations and administration within a country. A fundamental benefit of SEZs originates from their role as methods of trade and investment policy. SEZs are created to attract foreign investment and stimulate economic activity. When businesses operate within an SEZ, they benefit from tax incentives, such as reduced income tax.<sup>103</sup> This typically results in rapid economic growth for the region. Almost half of the world's SEZs are located in China, and such efforts have supported economic development and contributed to their level of international competitiveness.<sup>104</sup>

### Foreign Trade Zones (FTZ)

FTZs are one specific example of an SEZ. Similarly, FTZs are also areas designated by a government as eligible for tariff and tax exemptions. Often, goods and materials that are brought into an FTZ for re-exporting into foreign or domestic markets will not be subject to taxation or duties. Other benefits of an FTZ include duty elimination, duty deferrals, and inverted tariffs. Reduced inventory costs for businesses operating inside an FTZ can increase their international competitiveness.

In Canada, FTZs are not location-based, unlike FTZs in other jurisdictions. There are ten designated FTZ points in Canada, which act as "strategic locations of international trade," operating as a single point of access for information on government trade programs and policies.<sup>105</sup> Canada's FTZ regime comprises a series of programs administered by the Canadian Border Services Agency, including a Duty Deferral Program, the Export Distribution Centre Program, and the Exporters of Processing Services Program.<sup>106</sup> By contrast, in the United States of America, FTZs are location-based. The USA is the only country that has an FTZ utilized by an Indigenous community.

### Example: Citizen Potawatomi Nation's Iron Horse Industrial Park<sup>107</sup>

In 2014, The Citizen Potawatomi Nation requested the addition of a tribal industrial park to a pre-existing FTZ. This request was approved, and the outcome was the Iron Horse Industrial Park, located on traditional Indigenous trust land in Oklahoma, USA. This 700-acre general-use industrial park is close to several highways and railroads, which provides

100 Organisation for Economic Cooperation and Development (OECD), *Foreign Direct Investment (FDI)* (OECD), [https://www.oecd-ilibrary.org/finance-and-investment/foreign-direct-investment-fdi/indicator-group/english\\_9a523b18-en](https://www.oecd-ilibrary.org/finance-and-investment/foreign-direct-investment-fdi/indicator-group/english_9a523b18-en).

101 OECD, *FDI Flows* (OECD), <https://data.oecd.org/fdi/fdi-flows.htm>.

102 OECD, "Linking Indigenous communities with Regional Development in Canada," <https://www.oecd-ilibrary.org/sites/fa0f60c6-en/index.html?itemId=/content/publication/fa0f60c6-en>.

103 Intrepid Sourcing, "Special Economic Zones In China (SEZs): Characteristics & Benefits," <https://intrepidsourcing.com/trade-wiki/special-economic-zones-sezs-characteristics-benefits/>.

104 Investopedia, "Special Economic Zones," [https://www.investopedia.com/terms/s/sez.asp#:~:text=Key%20Takeaways-,A%20special%20economic%20zone%20\(SEZ\)%20is%20an%20area%20in%20a,foreign%20direct%20investment%20\(FDI\)](https://www.investopedia.com/terms/s/sez.asp#:~:text=Key%20Takeaways-,A%20special%20economic%20zone%20(SEZ)%20is%20an%20area%20in%20a,foreign%20direct%20investment%20(FDI)).

105 Government of Canada, "Foreign Trade Zone," <https://www.canada.ca/en/department-finance/programs/international-trade-finance-policy/foreign-trade-zone.html#a.1>.

106 Ibid.

107 Iron Horse Industrial Park, 2019, <https://www.ironhorsecpn.com/>.

connections to international ports and, in turn, access to foreign markets. According to the Citizen Potawatomi Nation, Iron Horse Industrial Park's close proximity to railways enables and lowers the cost of trade because it is less expensive to transport materials by rail.<sup>82</sup> Additionally, as the Iron Horse Industrial Park is an FTZ, duty deferral or elimination is offered on certain goods. For example, taxes are only applied when materials leave the FTZ to be sold in the USA.<sup>83</sup> Other benefits include inverted tariffs, quality control, increased flexibility, and reduced merchandise processing fee.<sup>1</sup> Iron Horse Industrial Park is an active example of an Indigenous community utilizing an FTZ to their advantage, enhancing their competitiveness as a hub for trade and export and stimulating Indigenous economic development.

### Qualified Opportunity Zones (QOZ)

QOZ in the USA are defined by the Internal Revenue Service (IRS) as "economically-distressed communities where new investments, under certain conditions, may be eligible for a preferential tax treatment."<sup>108</sup> The purpose of QOZs is to act as an economic development tool designed to spur economic development and job creation in distressed communities through tax incentives for those who invest new capital in businesses operating in QOZs.<sup>109</sup> QOZs are still relatively recent, having been added into the US tax code in December 2017. However, QOZs have been designated to cover parts of all 50 states, the District of Columbia, and five US territories, and as of April 2018, the first set of QOZs covers parts of 18 states. Despite the broader focus covered by QOZs, which is not directly related to trade, they remain a prime example of a geographically specific area made to incentivize investment.

### Recommendations to Incentivize Economic Investment in Indigenous Communities

#### Provide Indigenous communities with the opportunity to designate as a Special Indigenous Economic Zone.

Allowing Indigenous communities to designate as Special Indigenous Economic Zones (SIEZ) would provide a geographically specific area to incentivize investment. In doing so, Canada's current FTZ regime would be changed to allow for location-based international SEZs, QOZs, and FTZs like Citizen Potawatomi Nation's Iron Horse Industrial Park. This would allow for increased engagement with Indigenous businesses and make these businesses more competitive in the trade market. In addition, a SIEZ has the potential to improve the economic status of Indigenous communities by reducing

costs, encouraging the growth of new and existing businesses, and attracting private investment. To allow for Indigenous communities to be designated as a SIEZ, an amendment to the Income Tax Act is necessary, as was done with the US Tax Code to allow for the addition of QOZ.

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## Incentivizing Investment in Indigenous Businesses

As a result of historical and institutional factors, Indigenous businesses have unique needs and interests, many of which set them apart from other Canadian businesses. For example, Indigenous businesses have a prolonged struggle to access capital, often having an impact on their ability to succeed.<sup>110</sup> One method to contribute to positive Indigenous economic recovery is to ensure that Indigenous businesses have increased access to capital.

The Government of Canada can open a new source of capital from the private sector by providing incentives for private investors to invest in Indigenous businesses. Potential models to incentivize investment in Indigenous businesses are outlined in subsequent sections.

### Models to Incentivize Investment

#### Canadian Capital Gains Deferral for Investment in Small Business

The Canadian Capital Gains Deferral for Investment in Small Business (2019) is not designed to incentivize investment in Canadian businesses; however, it does provide an example of a capital gains tax deferral that could act as a model to incent investment in Indigenous businesses.

This measure allows individuals to defer capital gains incurred on certain small business investments disposed of in 2020. This deferral applies to disposed items where the proceeds are used to acquire another small business investment. The adjusted cost base (the cost of an asset plus any expenses to acquire it, such as commissions and legal fees) of the new investment is reduced by the capital gain deferred from the initial investment.<sup>111</sup>

However, the Canadian Capital Gains Deferral for Investment in Small Business is difficult for businesses to utilize for several reasons. First, to qualify, one may only acquire shares from a spouse, common-law partner, or parent due to circumstances such as a death or the breakdown of a marriage or common-

<sup>108</sup> Internal Revenue Service, "Opportunity Zones," <https://www.irs.gov/credits-deductions/businesses/opportunity-zones#:~:text=Opportunity%20Zones%20are%20an%20economic,providing%20tax%20benefits%20to%20investors>.  
<sup>109</sup> Ibid.

<sup>110</sup> Audrey B. Bélanger, *Indigenous-Owned Exporting Small and Medium Enterprises in Canada: A Joint Publication by the Office of the Chief Economist of Global Affairs Canada and the Canadian Council for Aboriginal Business* (Ottawa: Global Affairs Canada & Canadian Council for Aboriginal Business, 2019): 15, [https://www.ccab.com/wp-content/uploads/2019/07/CCAB\\_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf](https://www.ccab.com/wp-content/uploads/2019/07/CCAB_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf).

<sup>111</sup> Government of Canada, *Capital Gains Deferral for Investment in Small Business* (Canada, 2022), <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-12700-capital-gains/capital-losses-deductions/capital-gains-deferral-investment-small-business.html>.

law partnership. Second, for the purposes of the capital gains deferral, the Canada Revenue Agency (CRA) considers one to have acquired such shares at the time and under the same circumstances that the related individual originally acquired them. In other words, this does not provide capital gains relief but rather defers the capital gains payable upon the final sale of the asset at a future date.

Furthermore, an eligible small business corporation does not include any of the following: professional corporations; specified financial institutions; corporations whose principal business is leasing, renting, developing, or selling real property that it owns; and corporations where more than 50% of the fair market value of its property (net of debts incurred to acquire the property) is attributable to real property.<sup>112</sup> Thus, this acts as a potential barrier to accessing the Canadian Capital Gains Deferral.

### **UK Business Asset Rollover Relief (BARR)**

Unlike the Canadian Capital Gains Deferral for Investment in Small Business, the purpose of the UK Business Asset Rollover Relief (BARR) program is to provide capital gains relief, not deferral, which incentivizes re-investment in business assets once another business asset is sold or disposed of. One example would be: A shop is sold for £75,000, and a new shop is bought for £90,000. If the BARR is claimed, no tax will be paid on the gains made on the sale of the old shop until the new shop is sold. In other words, 100% of the Capital Gain Tax is deferred on the sale of the original business asset if 100% of the gross value of that asset is reinvested into a new business asset.<sup>113</sup>

To qualify for BARR, a business owner must satisfy the following requirements: They must buy the new assets within three years of selling or disposing of the old ones (or up to one year before); the business must be operating when they sell the old asset(s) and buy the new one(s); and if it is a stand-alone asset, the old and new assets must be utilized in the business. One can claim relief on land, buildings, fixed plant, and machinery assets.<sup>114</sup>

### **Recommendations to Incentivize Private Investment in Indigenous Businesses**

#### **Introduce an Invest in Indigenous Credit (IIIC).**

A Canada-wide program modeled like the UK BARR could incentivize private investment in Indigenous businesses. Unlike the Canadian Capital Gains Deferral for Investment in Small Business, CCAB proposes that this new Invest in Indigenous

Credit (IIIC) would be free from the restrictions in the Canadian Capital Gains Deferral. This would ensure that Indigenous businesses in all industries have the option to invest in their business through the IIIC.

The UK BARR is specifically designed to incentivize investment in businesses. The IIIC, like the UK BARR, would allow for the capital gains from the sale of a non-Indigenous business to be reinvested in an Indigenous business. This means that Indigenous businesses would see an increase in capital because of these investment incentives. Additionally, the introduction of an IIIC would require an amendment to Income Tax Act to operate to the capacity that it needs to.

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## **Intellectual Property**

### **Protecting Indigenous Traditional Knowledge in Canada**

#### **Recommendations towards an IP Framework that Better Serves Indigenous Interests**

##### **Include Indigenous Peoples' views into IP definitions.**

The protection of Indigenous authenticity, TK, and intellectual property is rudimentary to preserving the full commercial potential of Indigenous exports. In terms of TK and CEs, the absence of a universally accepted definition impacts the difficulties of protecting TK and CEs, as jurisdictions have different parameters as to what is considered TK and CEs, depending on local interpretations. The Canadian Constitution must adopt a definition that aligns with Indigenous peoples. Current IP law promotes cultural interpretations of knowledge, ownership, authorship, and property, yet these protections do not necessarily correspond to or complement Indigenous peoples' understandings of the role and function of knowledge and knowledge practices. The concept of ownership in the IP context may contrast with Indigenous notions of ownership of TK and CEs. The requirement that an idea must take on a fixed form to be protected under existing copyright laws may prevent the protection of intangible TK or CEs that are transmitted or shared orally. The collective and evolving character of TK and CEs makes them difficult to protect under the current IP system. Moreover, TK and CEs are often viewed as sacred; thus, they are not always meant to be shared. TK and CEs must be protected to ensure that their value is not diluted or misused by non-Indigenous people.

<sup>112</sup> Ibid.

<sup>113</sup> Government of the United Kingdom, *Business Asset Rollover Relief* (United Kingdom), <https://www.gov.uk/business-asset-rollover-relief>.

<sup>114</sup> Ibid.

### **Ensure conditions of IP applications encourage Indigenous applicants.**

IP usage can be improved by updating the current IP laws to reflect the unique needs of Indigenous businesses. Updates to terms of the application process are necessary to include Indigenous business needs. For example, the limited term of protection for some IP does not protect Indigenous knowledge and cultural expressions indefinitely.

There are certain challenges associated with utilizing copyright law to protect the cultural expressions of groups. For one, copyright law generally protects individual and not collective or group rights. Further, copyright law usually (though not exclusively) requires that protected subject matter must be fixed in some material form as a pre-condition for protection, and protection is not usually provided for oral works. Moreover, the fixed period of protection may require certainty as to the date of its creation or first publication, which is often unknown. Additionally, the recognition and effective protection of traditional arts and cultural expressions in Canadian law is beyond current copyright legislation. The arts and cultural expressions/ TCEs are usually pre-existing, passed from generation to generation, and, therefore, may not satisfy the originality criteria in copyright law. It is advised to look to protocols and contracts where there are gaps in protection. Protocols and Guidelines are a good way to help raise awareness against the misuse and misappropriation of TCEs and TK.

### **Leverage Geographic Indicators to support Indigenous knowledge and export growth.**

Geographical Indicators (GI) consist of the link between a given natural environment, producers, and a specific product. For products complying with the specifications, GIs confer exclusive rights to the name. They ensure the right to proscribe others from using the name for non-compliant products and combat against parroting and forging of the name. The Government of Canada should further investigate how GIs could be leveraged to support Indigenous knowledge and Indigenous export growth. In addition to preserving and promoting Indigenous TK, GIs are well adapted for promoting local biodiversity. They benefit Indigenous communities and people across the world. Moreover, indications of geographic origin ensure that consumers are not misled as to where their products come from.

If used, GIs should not only protect names, such as community names, but also methods of production, knowledge, designs, traditions, and biodiversity. GI specification should be based

on the practices of Indigenous peoples and local communities. Furthermore, the Canadian government ought to make attempts to become a signatory of the Nagoya Protocol on Access and Benefit Sharing<sup>115</sup> to Indigenous and local communities negotiated since the adoption of the UN<sup>116</sup> Genetic resources (GR) and benefits derived from their use are protected by the Nagoya Protocol. In addition to GRs covered by the Convention on Biological Diversity, the Nagoya Protocol also covers TK associated with these resources.

### **Develop an Indigenous Authenticity Tag.**

In response to issues faced by Indigenous communities arising out of authentication, the creation of a First Nations, Métis, and Inuit digital authentication tag would highly benefit Indigenous producers. As such, an Indigenous tag would aid in verifying authenticity, fueling market growth and educating consumers. It is recommended to follow the success of the Igloo tag.<sup>117</sup> Developed by the Government of Canada in 1958, the Igloo Tag Trademark is the internationally recognized seal of authenticity for Inuit visual arts and distinguishes works produced by Inuit artists from those made by non-Inuit artists or mass producers who utilize Arctic imagery.

The proposed Indigenous Authentication Tag would cover the verification of authenticity for products and knowledge beyond forms of art. For ease of accessibility, it is suggested that the authentication tag could take the form of a QR code that may store URLs or other information relating to the product. Similar to the Igloo Tag Trademark, the Indigenous Authentication Tag would verify that the product is authentic. Importantly, it could also serve as an educational piece for consumers, sharing product information and contributing to the promotion and support of Indigenous-made products.

### **Utilize blockchain technology to recognize the importance of Indigenous protocols.**

Blockchain technology is an efficient way to collect data on sales, track digital use, and pay content creators, such as wireless users or musicians for example. Innovation must be recognized and tied to the importance of Indigenous protocols. Blockchains have the potential to provide a solution to this issue. In doing so, Indigenous peoples' rights and property would be better protected, as they are often victims of the unintended impacts of industrialization and globalization. Indigenous businesses could, at a minimum, utilize blockchain technology as a marketing tool to show the Indigeneity of their product. Blockchain technology could be used to activate Indigenous geographical indicators.

115 Unit, Biosafety, "The Nagoya Protocol on Access and Benefit-Sharing," *Convention on Biological Diversity*, Secretariat of the Convention on Biological Diversity, 5 July 2022, <https://www.cbd.int/abs/>.

116 Unit, Biosafety, "Nagoya Protocol on Access and Benefit-Sharing and Traditional Knowledge," *Convention on Biological Diversity*, Secretariat of the Convention on Biological Diversity, 23 Jan. 2012, <https://www.cbd.int/traditional/Protocol.shtml>.

117 Inuit Art Foundation, "About the Igloo Tag," *Inuit Art Foundation*, <https://www.inuitartfoundation.org/igloo-tag-trademark/about-igloo-tag#:~:text=The%20Igloo%20Tag%20Trademark%20is%20the%20internationally%20recognized,mass-produced%20works%20made%20by%20non-Inuit%20using%20Arctic%20imagery>.

Moreover, as a result of blockchain technology, transactions can be tracked and are irreversible, allowing for consensus without arguments between participants. Essentially, blockchain technology can act as an impartial judge without needing to intervene. By employing the former, land ownership disputes could be settled by an impartial third party. The provision of decentralized alternatives to settlements can thus help foster constructive relationships between local governments and indigenous communities.

Furthermore, Blockchain technology may allow Indigenous peoples to gain greater control over their narratives and preserve cultural practices for future generations. With blockchain technology, Indigenous cultural heritage can be preserved more effectively by creating an immutable storage of Indigenous historical data. As a permanent and irreversible means of safeguarding Indigenous heritage, blockchain technology helps to safeguard Indigenous properties, historical data, works of art, languages, and religions, among a multitude of other activities.

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## Free Trade Agreements (FTA)

There is progress being made with the inclusion of Indigenous provisions in the free trade agreements (FTAs) of which Canada is a party, but there is still much more work to be done. Currently, Indigenous provisions in FTAs are largely reserved to Indigenous general rights exemptions. These exemptions represent a bare minimum effort insofar as they highlight that Canada will not detract from its obligations to Indigenous peoples in the pursuit of FTAs. The exemptions accomplish nothing in regard to the betterment of Indigenous economies. These provisions merely serve the purpose of highlighting that some consideration of Indigenous peoples went into the creation of the FTA, essentially serving as a diversity checkbox. The provisions do not provide Indigenous peoples with any capacity to advance their interests regarding trade and should not be regarded as a favor to Indigenous peoples. All that these provisions represent is that Canada is not defaulting on its obligations to Indigenous peoples with no more and no less effort than is needed; this is not in the true spirit of reconciliation. A first step down the right path would be to recognize the sovereignty of Indigenous Nations by ensuring that Indigenous peoples and organizations have a real voice in these FTAs and that they build the capacity of Indigenous peoples to effectively engage in international trade.

While Indigenous provisions in FTAs have done little to reinforce Indigenous rights and generate rich Indigenous participation, Indigenous-led engagements on trade policy have certainly done so and have the potential to in the future. When non-

Indigenous governments support Indigenous entities to engage Indigenous peoples on trade policy, participation by Indigenous peoples is greater, and inputs hold more substance, thereby reinforcing the validity of the principle ‘*by Indigenous, for Indigenous*’. On the other hand, consultations led by non-Indigenous authorities on trade policy have not produced considerable input from Indigenous peoples, largely resulting from a lack of understanding of target markets and the context relating to Indigenous exporters. However, Indigenous business leaders have repeatedly noted that face-to-face engagements with government officials with decision-making powers are critical to ensure follow-up and encourage participation by Indigenous peoples.

An opportunity that could have supported international Indigenous collaboration on trade policy is the USA-proposed Indo-Pacific Economic Framework (IPEF). While Canada is not included as a partner in the proposed IPEF, Indigenous peoples reside in 10 of the 13 partner countries. Through substantive Indigenous engagement, amplification of their voices, and the development of a cohesive strategy, Indigenous provisions could have been included in an IPEF trade agreement. However, the window to engage in the IPEF has passed, which is why this example was chosen. This example demonstrates the challenges induced by a lack of capacity insofar as if Indigenous peoples had the capacity to engage and collaborate internationally on these initiatives, they would certainly be included and potentially accrue several benefits, but they do not have this capacity and, therefore, cannot engage. This leads to many missed opportunities.

### Recommendations:

**Ensure specific exemptions and provisions for Indigenous Peoples are within Canada’s FTAs to support Indigenous business owners and uphold the inherent rights of Indigenous communities.**

Specific exemptions and provisions are necessary to effectively safeguard and promote Indigenous rights and engagement in international trade. Exporters noted a lack of advocacy and support for Indigenous trade, often forcing business owners to act with minimal assistance, a process which can be costly and thus exclusionary (for SMEs).

**Indigenous trade policy leaders need to be “resilient and creative” to obtain results.**

Indigenous trade policy leaders agree that the ‘*status quo modius operendi*’ has not generated substantive Indigenous provisions within trade policy. During FTA negotiations, Indigenous entities may find success engaging “all sides” of the negotiations. This means speaking to multiple government negotiating teams to deliver and explain the value of their

positions in their own voice and not having government officials articulate the positions of Indigenous peoples. It is common for governments, on many sides, to initially push back on the viability of Indigenous provisions in an FTA under negotiation, in addition to a stand-alone Indigenous peoples chapter. Some have been so blunt to say that such provisions are “never going to happen.” Persistence is required to continually engage negotiators and create opportunities for substantive participation of Indigenous subject matter experts and staff employed by Indigenous entities in the negotiation process. This work also includes briefing elected representatives of all political parties to strengthen the case for the inclusion of Indigenous provisions in FTAs. The example of the Māori people successfully obtaining a specific chapter in the New Zealand and United Kingdom FTA shows that this can be effective.

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## Improving Free Trade Agreement Text

### 1. General Definitions and Initial Provisions

- An agreement on what defines an Indigenous business. This should parallel the currently accepted definition for procurement efforts: an Indigenous business is defined as “businesses of which 51% or more equity ownership is held by a registered Indigenous individual, with attestations stating that at least 51% of the gross profit margin is retained by the Indigenous partners.” However, the definition should be revisited as necessary to match the definition of Indigenous businesses provided by National Indigenous Organizations.

### 2. National Treatment and Market Access for Goods

- Indigenous businesses receive “National Treatment” to allow access to Indigenous set-asides under the procurement policies and strategies of the respective countries.

### Protocol I: Rules of Origin and Origin Procedures

- Authentic Indigenous-designed products should be exempt from import duties resulting through COOL regulations.

### 3. Trade Remedies

- Activities to protect the competitiveness of Indigenous businesses should be excluded from consideration of whether either country has reason to invoke trade remedies.

### 4. Technical Barriers to Trade

- The Parties should make specific provision to implement strategies to eliminate technical barriers to trade that affect Indigenous businesses.

### 5. Customs and Trade Facilitation

- Authenticity standards for Indigenous products should be developed and strategies to eliminate the trade of inauthentic Indigenous products should be implemented.

### 6. Subsidies

- Subsidies to enable substantive Indigenous participation in international trade should be accepted and encouraged by all Nations involved in the agreement.

### 7. Investment

- Strategies to drive Foreign Direct Investment in Indigenous Nations, which may include Indigenous communities, infrastructure, and businesses, should be developed and included.

### 9. Temporary Entry and Stay of Natural Persons for Business Purposes

- Special visa categories that enable Indigenous professionals to freely move between the respective countries for business purposes should be implemented.

### 10. Mutual Recognition of Professional Qualifications

- Professional qualifications issued by Indigenous organizations in their respective countries should be mutually recognized.

### 11. Financial Services

- Strategies to improve Indigenous businesses access to capital and financing, including export financing should be developed and implemented through consultations with First Nations, Métis, and Inuit authorities.
- The Parties should work with Indigenous peoples in their respective countries and collaborate at multilateral economic fora to promote the development of a World Indigenous Bank that supports Indigenous businesses access to finance.

### 12. International Maritime Transport Services

- The Parties should investigate, develop, and implement strategies, in collaboration with Indigenous peoples, to mitigate the costs of international marine transport services for Indigenous businesses. This may include supporting Indigenous freight forwarders and other measures as identified.

### 13. Telecommunications

- The Parties should investigate, develop, and implement strategies, in collaboration with Indigenous peoples, to enable Indigenous equity ownership of airwaves used for telecommunications, the right to which was not ceded through treaties.

#### **14. Electronic Commerce**

- The Parties should investigate, develop, and implement strategies, in collaboration with Indigenous peoples or their representatives, to eliminate all barriers to Indigenous engagement in e-commerce.

#### **15. Competition Policy**

- The Parties should investigate, develop, and implement strategies, in collaboration with Indigenous peoples, to ensure the competitiveness of Indigenous businesses in their respective jurisdictions.

#### **16. State Enterprises, Monopolies, and Enterprises Granted Special Rights or Privileges**

- The Parties should endeavor to dissolve state enterprises, monopolies, and enterprises granted special rights or privileges that disproportionately limit opportunities for Indigenous businesses and their engagement in international trade.

#### **17. Government Procurement**

- The Parties should mutually recognize Indigenous businesses verified by Indigenous authorities for government Indigenous procurement set-aside programs.

#### **18. Intellectual Property**

The Parties should establish an Intellectual Property Working Group, composed of representatives of each Party and with First Nations, Métis, and Inuit authorities to cooperate through their respective agencies responsible for intellectual property and enhance the understanding of:

- (a) issues connected with traditional knowledge associated with genetic resources, and genetic resources; and
- (b) matters of interest to First Nations, Métis, and Inuit relating to intellectual property, and issues relating to genetic resources, traditional knowledge, and traditional cultural expressions.

#### **19. Regulatory Cooperation**

- Best practices to reduce the cost of exporting amongst Indigenous SMEs, including cooperative shipping and cooperative packing should be investigated, developed, and implemented in collaboration with Indigenous peoples.
- The Parties should harmonize rules, regulations, and policies where feasible to eliminate technical barriers that preclude the substantive engagement of Indigenous businesses in international trade.
- The Parties should establish separate licensing systems for Indigenous businesses in various industries to reduce costs

and barriers for Indigenous businesses engaging or seeking to engage in international trade.

#### **20. Trade and Environment**

- The Parties should establish joint environmental committees, with inclusive representation of Indigenous authorities from the respective countries, to investigate the efficacy of environmental provisions or measures and further develop them if necessary to ensure environmental protection. The Parties acknowledge that Indigenous peoples have been effective environmental stewards for thousands of years and they must be enabled to regain and maintain this role.

#### **21. Bilateral Cooperation and Dialogues**

- The Parties should engage in cooperative activities designed to facilitate dialogue among Indigenous businesses regarding their views on the efficacy of the overall trade agreement and how it may be improved to further promote substantive Indigenous inclusion.

#### **22. Administrative and Institutional Provisions**

- The Parties should investigate, develop, and implement strategies, in collaboration with Indigenous peoples, to mitigate the administrative and institutional burden placed on Indigenous businesses engaging in international trade.

#### **23. Transparency**

- The Parties should establish a joint committee, led by Indigenous representatives from the respective countries, to investigate and publicly report annually on the progress towards fulfillment of the Indigenous provisions of this agreement.

#### **24. Exceptions**

- No provision of the agreement should limit or eliminate the Government of Canada's commitments to Indigenous peoples.

#### **25. Trade and Gender Equality**

- The Parties should develop strategies to enhance the ability of women including workers, entrepreneurs, businesswomen and business owners, and First Nations, Métis, and Inuit women in the case of Canada, to fully access and benefit from the opportunities created under the trade agreement. These efforts should be carried out in a transparent manner with the inclusive participation of women.

## Government Procurement

According to GAC, foreign government procurement markets are worth hundreds of billions of dollars annually. It is estimated that government procurement represents between 13% and 20% of a country's gross domestic product.<sup>118</sup> Moreover, the Government of Canada is one of the largest public buyers of goods and services in Canada, purchasing approximately \$22 billion worth every year on behalf of federal departments and agencies.<sup>119</sup> Although the Government of Canada has mandated a 5% Indigenous Procurement Target, Indigenous businesses could have provided 24.2 percent of the total annualized value of federal procurement contracts in 2017.<sup>120</sup> Given this potential and CCAB's projections that the Indigenous economy's contribution to Canada's GDP will reach over \$100 billion by 2024 and soon after surpass the Maritimes with the right support, it is apparent that the facilitation of foreign government procurement opportunities for Indigenous businesses can contribute immensely to the Canadian economy and its journey toward becoming a key player on the world economic stage.<sup>121</sup> These opportunities also have immense potential to benefit Indigenous peoples, businesses, and communities on economic, social, and cultural levels by providing the capital necessary to substantively engage in self-determination. Given these factors, mandatory set-asides for Indigenous businesses are required to ensure that they can substantively engage in procurement opportunities and contribute to Canada's economy.

To ensure that Indigenous businesses can effectively navigate through the complex and bureaucratic process of procurement, it will be necessary to facilitate the establishment of joint ventures and partnerships, the merits of which have been widely acknowledged and reported on. Given that the Government of Canada is one of the largest public buyers of goods and services through procurement, it is uniquely positioned to utilize the FTAs of which Canada is a party to facilitate the development of procurement networks and collaboration through the lens of international economic cooperation. CUSMA and the United States is an ideal place to start due to its geographical proximity and the strong relationships between Indigenous communities on both sides of the border. A prime example of this is the Mohawk Nation of Akwesasne, which is located directly on the Canada-US border. While the establishment of the border bisected Akwesasne, community members have maintained strong relationships across the border and regularly travel across to

interact. Another example is the Coast Salish Nations of the Pacific Northwest, which held strong trading relationships prior to colonization and now reside in British Columbia or Washington state but continue to hold strong ties. However, other areas like Australia and New Zealand may also serve as good starting points, given their shared commonwealth legacies and similar progress toward reconciliation. There are many National Indigenous Economic Organizations (NIEOs), including CCAB, that are strongly positioned to serve a role of connecting Indigenous businesses between Canada and the United States. With Canada's support, these NIEOs can play a significant role in establishing international procurement opportunities built on strong mutual understandings and a common end goal of ensuring Indigenous prosperity.

To ensure substantive Indigenous engagement in procurement and the development of international Indigenous procurement networks, CCAB recommends the following:

### **Build awareness of procurement and funding opportunities.**

There is a clear interest among Indigenous businesses to access government procurement opportunities, but a lack of experience bidding on government contracts and capacity precludes them from engaging at their full capacity. To resolve these issues, Canada must improve access to these opportunities and the relevance of the information provided so that Indigenous businesses may substantively engage in and benefit from procurement opportunities. Expanding outreach to trusted Indigenous institutions and organizations is a key factor in achieving this goal.

### **Develop partnerships.**

For Indigenous entrepreneurs, building partnerships is an important growth strategy but also provides other benefits, including opportunities to increase capacity, gain access to mentorship, provide access to capital, and unlock crucial procurement opportunities. Through the provision of funding and support to NIOs that focus on Indigenous businesses, different levels of government may play an integral role in facilitating these relationships or joint ventures.

<sup>118</sup> Global Affairs Canada, *Government Procurement* (Canada), <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/gp-mp/index.aspx?lang=eng>.

<sup>119</sup> Public Services and Procurement Canada, *The Procurement Process* (Canada), <https://buyandsell.gc.ca/for-businesses/selling-to-the-government-of-canada/the-procurement-process>.

<sup>120</sup> *Industry and Inclusion: An Analysis of Indigenous Potential in Federal Supply Chains* (Toronto: Canadian Council for Aboriginal Business, 2019): 1, [https://www.ccab.com/wp-content/uploads/2019/05/CCAB\\_Research-Report\\_web.pdf](https://www.ccab.com/wp-content/uploads/2019/05/CCAB_Research-Report_web.pdf).

<sup>121</sup> Derek Burleton and Sonya Gulati, "Debunking Myths Surrounding Canada's Aboriginal Population" TD Economics, 2012, 1, <https://www.ccab.com/wp-content/uploads/2016/11/Debunking-Myths-Surrounding-Canadas-Aboriginal-Population.pdf>.



## **7. Recommendations**

### **Gather and distribute evergreen and accessible Indigenous Exporter Data.**

There is minimal data currently available on Indigenous exporters. This hinders Indigenous Governments and organizations from developing policies and programs to support the economic development, specifically the export readiness and growth, of Indigenous businesses. A data set of Indigenous exporters should be distinctions based to ensure that the unique export profiles of First Nations, Métis, and Inuit exporters can be clearly understood. This data should be held by Indigenous authorities and be available on demand for Indigenous researchers and officials of Indigenous Governments. Access to such a data set would help to support policy and program development by Indigenous entities. Recognized Indigenous business directories, maintained and audited by Indigenous organizations, are suggested as a solution that could house distinction-based Indigenous exporters' data sets. CCAB has started to develop data on Indigenous exporters to fill this gap, yet much more needs to be done.

### **Support Indigenous entities to provide Indigenous export development training.**

Indigenous exporters have noted the absence of a central body or resource to turn to for support and guidance in this area. Although some exporters have had positive experiences with existing export development entities, including Export Development Canada (EDC), some have endured challenges:

- Indigenous exporters noted that although support is given, the information is often overwhelming and confusing to business owners.
- Exporters noted that, following discussions with EDC, significant direction is given, but with minimal support to execute. Members also mentioned a gap between the support provided for larger corporations and SMEs. Thus, a more tailored approach to support the needs of Indigenous SMEs was suggested.
- Some Indigenous businesses view EDC as an outsider colonial institution, which pushes business owners to work with non-Indigenous financial institutions instead of supporting Indigenous financial institutions.
- Indigenous exporters also recognized that some business owners might be unaware of EDC and the Business Development Bank of Canada (BDC), acknowledging room for these Crown Corporations to increase ties with Indigenous Nations, businesses, and organizations. This could be facilitated by an Indigenous-led organization.

### **Foster mutually beneficial Indigenous business relationships.**

Indigenous businesses in Canada and abroad seek to build meaningful relationships informed by a common Indigenous principle of reciprocity. Reciprocity involves exchanges for mutual benefit. Such efforts will facilitate knowledge sharing and support export development.<sup>122</sup> This can be implemented through Indigenous-to-Indigenous relationship-building exercises following adequate research to ensure a common sectoral focus. Supporting Indigenous-to-Indigenous relationship-building exercises with a common sectoral focus will require an investment of time and resources. However, virtual exchanges, encouraged by the pandemic, have revealed an opportunity to effectively build preliminary and exploratory business relationships to support fruitful in-person meetings. It is recommended that the government facilitate through resources the development of mutually beneficial, Indigenous-to-Indigenous virtual business dialogues.

### **Build resilient Indigenous export ecosystems.**

Critical elements of building an export plan include market entry strategies, local legal implications, and local financial services. CCAB has found that this training is most effective when delivered by Indigenous experts, who understand the unique needs of Indigenous businesses, and can bring Indigenous peoples together, and can identify gaps in existing programs. These supportive export ecosystems, consisting of Indigenous experts, produce mutually beneficial outcomes that catalyze Indigenous export growth.

An Indigenous trade and export ecosystem, by design, requires diverse Indigenous experts who understand Indigenous ways of knowing and being. Indigenous experts can help to build and implement effective export strategies that meet the fundamentals of reciprocity and collaboration. To build a resilient Indigenous economic ecosystem, specialists must contribute to programs and procedures, even at a micro-level, to ensure that Indigenous exporters are better equipped to launch products in external markets.

Indigenous trade and export ecosystems have the meta-effect of spotlighting and crowd solutioning trade and export policy gaps that are grounded in the needs of businesses. This concept of Indigenous crowd solutioning international trade barriers may also present an area for further research. CCAB recommends supporting Indigenous organizations to build their circle of Indigenous export catalysts to support Indigenous exporters.

122 Audrey B. Bélanger, *Indigenous-Owned Exporting Small and Medium Enterprises in Canada: A Joint Publication by the Office of the Chief Economist of Global Affairs Canada and the Canadian Council for Aboriginal Business* (Ottawa: Global Affairs Canada & Canadian Council for Aboriginal Business, 2019), [https://www.ccab.com/wp-content/uploads/2019/07/CCAB\\_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf](https://www.ccab.com/wp-content/uploads/2019/07/CCAB_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf).

### **Support Indigenous organizations to deliver export development opportunities.**

To foster the development of Indigenous export ecosystems, CCAB proposes that all levels of government support Indigenous organizations to deliver export development initiatives and bring together Indigenous experts and Indigenous exporters. These initiatives must be driven by the identified needs as articulated by Indigenous businesses and must foster the growth of Indigenous institutional infrastructure. It is recommended that governments devolve the delivery of 5% of their export development programs to Indigenous organizations. Additionally, all government organizations should work in partnership with Indigenous organizations to ensure that the design and delivery of their general business development programs also serve to build Indigenous capacity.

### **Build Indigenous capacity.**

Presently, Indigenous exporters are largely reliant on non-Indigenous organizations to support export development. These entities are often inadequately informed or equipped to support the unique legal or place-based circumstances of Indigenous business owners. Furthermore, government programs that fund organizations to deliver export services are often not designed to facilitate equitable Indigenous access nor Indigenous institutional capacity development.

Indigenous organizations must build their circle of Indigenous export catalysts and professionals to support and facilitate knowledge-sharing initiatives for Indigenous exporters.<sup>123</sup> CCAB proposes that the Government of Canada leverage its resources in international trade to build capacity amongst Indigenous businesses and Indigenous organizations that deliver export services. This work includes adding Indigenous capacity support and 5% Indigenous set-aside provisions to the terms and conditions of the Government of Canada's suite of programs designed to support exporters, including the CanExport Program (GAC), AgriMarketing Program (Agriculture and Agri-food Canada), Creative Export Canada (Heritage Canada), and the Expanding Market Opportunities Program (Natural Resources Canada).

### **Increase access to finance to fuel Indigenous export growth.**

CCAB recommends the provision of increased support for Indigenous-owned businesses to address gaps in financing. To address the unique needs of Indigenous businesses, financial institutions should also employ Indigenous staff to serve as a point of contact for Indigenous peoples and businesses. Another step to increase access to finance is

ensuring the broader coordination of policy development and program delivery amongst Regional Development Agencies. Furthermore, there is a need for large-scale investment opportunities, including access to large-scale capital, to ensure that Indigenous communities can obtain equity stakes in large infrastructure projects. A key aspect of these initiatives would be the development of other Indigenous institutions, similar to the First Nations Finance Authority, that could support the distinctions-based needs of Métis and Inuit communities.

### **Build capacity of Indigenous entities to provide connections to prospective foreign buyers and business partners.**

To ensure the development of Indigenous export capacity, it is essential to break the cultural and systemic barriers facing Indigenous entrepreneurs, including those that limit their ability to navigate and compete within Canada and internationally. CCAB has found through research that Indigenous businesses need support and tools delivered by Indigenous entities to scale their business and grow their export sales as effectively as possible. The exploration of micro-credentialing opportunities for Indigenous export training courses and business courses more broadly is recommended to build the capacity of Indigenous business professionals, prepare them for export success, and recognize expertise built through training programs. This should also involve Indigenous youth and young entrepreneurs to build the next generation while sharing the opportunities of international Indigenous best practices and benefits of international trade. Targeting youth is particularly important given the relatively young age of the Indigenous population and the importance of youth to Indigenous culture. The development of Indigenous identity-based trade commissioner services would ensure that the culturally unique needs of First Nations, Métis, and Inuit exporters are understood, and their businesses are best serviced abroad in a way tailored to each group. Furthermore, re-establishing the Indigenous Peoples Partnership Program (IPPP), which, under the Chrétien and Martin Governments, supported Indigenous knowledge sharing regarding economic development amongst Indigenous peoples in the Americas, would also strengthen Indigenous export capacity.

### **Build economic infrastructure to support Indigenous economic growth.**

Currently, many Indigenous communities lack the economic infrastructure required to effectively engage in trade. Given the need for enhanced economic infrastructure to support Indigenous economic growth, it is recommended that deep-water ports and/or longer runways be developed within

<sup>123</sup> Ibid.

rural and remote Indigenous communities. For example, if infrastructural investments were made in Inuit Nunangat, fish that are currently caught in the North could be processed in the Inuit homeland, thereby reducing costs, creating jobs, and limiting economic leakage, as opposed to having that economic activity take place in Greenland or St. John's, NL. The sale of animal parts in the Arctic and the potential for additional fishing quotas should be investigated to ensure that policies and regulations facilitate Indigenous trade to the greatest extent possible. The investigation of methods to reduce shipping costs is another key aspect of the economic infrastructure to support Indigenous trade given the high costs and seasonal availability of shipping in some rural and remote communities.

### **Support Indigenous organizations to service certification, financial, and authenticity needs.**

Through engagements, CCAB has determined that a lack of capacity among Indigenous institutions to service the certification, financial, and authenticity needs of Indigenous businesses, nationally and internationally, serves as a barrier to the development of Indigenous trade capacity. Therefore, targeted support is necessary to address these issues.

### **Ensure specificity within Indigenous FTA provisions to maximize Indigenous trade.**

Chapter 6.1 of CUSMA provides duty-free treatment of Indigenous handicraft textiles and apparel goods. However, definitions are not provided for these goods, which are under discussion and negotiation through the CUSMA Chapter 6 implementation committee. This acts as a substantial barrier for business owners, who are unsure if their products are eligible for duty-free treatment. Adding a clear and specific definition of "handicraft textiles and apparel goods" would both educate business owners and make for more expansive use of Chapter 6.1.

Small and Medium-sized Enterprises (Article 25.2 (b)) makes a commitment to strengthen Canada-USA-Mexico collaboration on activities to promote SMEs owned by "under-represented groups" including, amongst other groups, Indigenous peoples. However, examples of activities are not outlined and, again, are under discussion and negotiation through the CUSMA Chapter 25 implementation committee.

Moreover, Chapter 13 on Government Procurement does not apply to "any set-aside on behalf of a small-or minority- owned business," providing protection for Indigenous businesses. Despite this recognition, Chapter 13 does not acknowledge

Indigenous groups as inherent rights holders, which contributes to a lack of clarity regarding set-asides and whether they apply.

### **Necessary relationship building between Indigenous entities and the Canadian Border Service Agency (CBSA).**

Due to the number of impediments that arise due to a lack of understanding surrounding Indigenous businesses and products, relationship building between Indigenous entities and the CBSA is required. The first objective would be to provide education on what defines an Indigenous product so that border agents can identify genuine Indigenous products and allow them through while preventing the proliferation of duplicates made by non-Indigenous businesses. The second objective of this relationship-building process is to build Indigenous capacity and an export ecosystem to support it. Given the weight held by the CBSA in determining what can and cannot cross the border, it is evident that substantive partnerships between Indigenous entities and the CBSA are necessary to facilitate the exchange of Indigenous goods across the border. The third aspect of this relationship would involve investigating the reform of current procedures put in place by the CBSA to include a challenge function and other things that may benefit Indigenous exporters.

### **Indigenous access to trader programs – "FAST."**

Indigenous firms are often left out of or overlooked for trusted trade programs due to exclusive eligibility requirements and limited relationships between Indigenous firms and agencies like CBSA and GAC. As a result, non-Indigenous firms can engage in and derive benefit from initiatives like the Free and Secure Trade (FAST) program, wherein they enjoy greater speed, certainty, and reduced costs of cross-border shipping, while Indigenous firms are precluded such access.<sup>124</sup> To address these issues and ensure the involvement of Indigenous businesses in trusted trade programs, investigation should be undertaken to determine whether infrastructure to become FAST compliant is eligible under Regional Development Agencies' programming.

### **Build Indigenous Capacity: Support Indigenous Freight Forwarders.**

A necessary step in developing Indigenous export capacity is supporting the development of Indigenous freight forwarders or shipping companies. Indigenous freight forwarders have the potential to be the most affordable and effective method of shipping Indigenous products because of their increased understanding of the Indigenous business ecosystem, remote representation, and having the connections needed to

<sup>124</sup> Canada Border Services Agency (CBSA), *About the Free and Secure Trade Program* (Canada), <https://www.cbsa-asfc.gc.ca/prog/fast-expres/about-apropos-eng.html>.

effectively service their needs. This is demonstrated through partnerships between Indigenous companies and communities that have formed regional distribution networks to address food and supply shortages, such as that developed by CreeWest GP with the Lac Seul and Kitchenuhmaykoosib First Nations.<sup>125</sup> Additional government support and grants are necessary to properly fund the development of these organizations and networks. Government agencies, such as the CBSA and GAC, should engage in the provision of grants to support these ventures. Expanding the conditions of the CanExport and other funding programs to accept these organizations might be one way to accomplish this.

**Ensure fulsome implementation of the Treaty of Amity, Commerce and Navigation (1794), the Jay Treaty to catalyze Indigenous export growth.**

Another necessary step in catalyzing Indigenous export growth is the fulsome implementation of the Jay Treaty. While the origins and broader implications of the provisions of the Jay Treaty are not well understood and are highly disputed, the provisions of the Jay Treaty go beyond mere labour mobility such as it is currently interpreted by the US government. Meanwhile, the Government of Canada completely fails to recognize even the labour mobility aspects. The Jay Treaty provisions represent an acknowledgement that Indigenous peoples across Turtle Island have the right to move across their traditional territories internally and across international borders that were established later without Indigenous consent. This right to move includes the ability to move with their goods to engage in commerce, and governments should enable this age-old tradition. CCAB recommends that a commercial test case be developed to demonstrate the validity of this stance and bring about this change.



125 Ian Ross, "Food Distribution Network Gets Off Ground," (Northern Ontario Business, January 2016), <https://www.northernontariobusiness.com/industry-news/transportation/food-distribution-network-gets-off-ground-371704>.



## References

Asia-Pacific Economic Cooperation (APEC). “2021 Leaders’ Declaration.” 2021. <https://www.apec.org/meeting-papers/leaders-declarations/2021/2021-leaders-declaration>.

Asia-Pacific Economic Cooperation (APEC), “About APEC.” 2021. <https://www.apec.org/about-us/about-apec>.

Asia-Pacific Economic Cooperation (APEC), “Aotearoa Plan of Action.” 2021. <http://aotearoaplanofaction.apec.org/>.

Asia-Pacific Economic Cooperation (APEC), “Strong, Balanced, Secure, Sustainable and Inclusive Growth.” 2021. <http://aotearoaplanofaction.apec.org/strong-balanced-secure-sustainable-and-inclusive-growth.html>.

Bélanger, Audrey B. *Indigenous-Owned Exporting Small and Medium Enterprises in Canada: A Joint Publication by the Office of the Chief Economist of Global Affairs Canada and the Canadian Council for Aboriginal Business*. Ottawa: Global Affairs Canada & Canadian Council for Aboriginal Business, 2019. [https://www.ccab.com/wp-content/uploads/2019/07/CCAB\\_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf](https://www.ccab.com/wp-content/uploads/2019/07/CCAB_GAC-Indigenous-Exporting-SMEs-in-Canada-EN.pdf).

Biosafety. “Nagoya Protocol on Access and Benefit-Sharing and Traditional Knowledge.” *Convention on Biological Diversity, Secretariat of the Convention on Biological Diversity*, (23 Jan. 2012). <https://www.cbd.int/traditional/Protocol.shtml>.

Biosafety. “The Nagoya Protocol on Access and Benefit-Sharing.” *Convention on Biological Diversity, Secretariat of the Convention on Biological Diversity*, (5 July 2022). <https://www.cbd.int/abs/>.

Breaking Barriers: A decade of Indigenous women’s entrepreneurship in Canada. Toronto: Canadian Council for Aboriginal Business, 2020. [https://www.ccab.com/wp-content/uploads/2020/12/CCAB\\_Breaking-Barriers\\_English.pdf](https://www.ccab.com/wp-content/uploads/2020/12/CCAB_Breaking-Barriers_English.pdf)

Borrows, John, and Risa Schwartz, eds, *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements*. Cambridge: Cambridge University Press, 2020. doi:10.1017/9781108675321.

Canada Border Services Agency (CBSA), “About the Free and Secure Trade Program.” Government of Canada. <https://www.cbsa-asfc.gc.ca/prog/fast-expres/about-apropos-eng.html>.

Canadian Council for Aboriginal Business. *Understanding Intellectual Property Awareness & Use by Indigenous Businesses*. Toronto: Canadian Council for Aboriginal Business, July 2021. [https://www.ccab.com/wp-content/uploads/2021/07/CCAB\\_\\_english\\_FINAL\\_DIGITAL-ERG.pdf](https://www.ccab.com/wp-content/uploads/2021/07/CCAB__english_FINAL_DIGITAL-ERG.pdf).

Canadian Free Trade Agreement. “Canadian Free Trade Agreement (CFTA).” Government of Canada. 2022. <https://www.cfta-alec.ca/canadian-free-trade-agreement/>.

Constitution Act, 1982, s. 35. <https://laws-lois.justice.gc.ca/eng/const/page-13.html>.

David, William, “Recognizing the Rights of Indigenous Peoples in International Trade and Environment.” In *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements*, edited by John Borrows and Risa Schwartz, 133–63. Cambridge: Cambridge University Press, 2020. doi:10.1017/9781108675321.008.

Department of Foreign Affairs and Trade. “Inclusive Trade: Unlocking the Export Potential of Australia’s Indigenous SMEs.” Australian Government. 2021. <https://www.dfat.gov.au/sites/default/files/inclusive-trade-unlocking-export-potential-australias-indigenous-smes.pdf>.

Department of Foreign Affairs and Trade. “Indigenous Diplomacy Agenda.” Australian Government. 2021. <https://www.dfat.gov.au/sites/default/files/indigenous-diplomacy-agenda.pdf>.

Fiser, Adam. “What are the business characteristics of Indigenous exporters in Canada?” *Conference Board of Canada – Northern and Aboriginal Policy*, (2018).

Global Affairs Canada. “Canada’s State of Trade 2020.” Government of Canada. 2020. [https://www.international.gc.ca/gac-amc/assets/pdfs/publications/State-of-Trade-2020\\_eng.pdf](https://www.international.gc.ca/gac-amc/assets/pdfs/publications/State-of-Trade-2020_eng.pdf).

Global Affairs Canada. “Canada’s State of Trade 2022.” Government of Canada. 2022. <https://www.international.gc.ca/transparence-transparence/assets/pdfs/state-trade-commerce-international/2022/sot-2022-eng.pdf>.

Global Affairs Canada. “Canada-United States-Mexico Agreement (CUSMA) – Chapter 13 – Government Procurement.” Government of Canada. <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/13.aspx?lang=eng>.

Global Affairs Canada. “CETA Explained.” Government of Canada. [https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta\\_explained-aecg\\_apercu.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceta_explained-aecg_apercu.aspx?lang=eng).

Global Affairs Canada. “CPTPP Explained.” Government of Canada. [https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/cptpp\\_explained-ptpgp\\_apercu.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/cptpp_explained-ptpgp_apercu.aspx?lang=eng).

Global Affairs Canada. “Government of Canada and Indigenous Leaders celebrate Indigenous Peoples Economic and Trade Cooperation Agreement.” Government of Canada. 2022. <https://www.canada.ca/en/global-affairs/news/2022/06/government-of-canada-and-indigenous-leaders-celebrate-indigenous-peoples-economic-and-trade-cooperation-arrangement.html>.

Global Affairs Canada, "Government Procurement." Government of Canada. <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/gp-mp/index.aspx?lang=eng>.

Goff, Patricia. "Bringing Indigenous Goals and Concerns into the Progressive Trade Agenda." *Revue Interventions Économiques* 65, (2021). <http://journals.openedition.org/interventionseconomiques/12777>.

Government of Canada. "Capital gains deferral for investment in small business." 2022. <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-12700-capital-gains/capital-losses-deductions/capital-gains-deferral-investment-small-business.html>.

Government of Canada. "Foreign Trade Zone." <https://www.canada.ca/en/departement-finance/programmes/international-trade-finance-policy/foreign-trade-zone.html#a1>.

Government of the United Kingdom. "Business Asset Rollover Relief." <https://www.gov.uk/business-asset-rollover-relief>.

Gulati, Sonya, and Burleton, Derek. *Estimating the Size of the Aboriginal Market in Canada*. Toronto: TD Economics, 2011. <https://www.ccab.com/wp-content/uploads/2016/11/TD-Economics-Estimating-the-Size-of-the-Aboriginal-Market.pdf>.

Harrison, Scott, and Robin Asgari. *International Trade Inclusivity: The CPTPP and Indigenous International Trade and Investment*. (Asia Pacific Foundation of Canada, 2020). <https://www.asiapacific.ca/publication/international-trade-inclusivity-cptpp-and-indigenous>.

<https://www.ironhorsecpn.com/>.

[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/C.19/2015/9](https://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.19/2015/9)

<https://www.youtube.com/watch?v=rrgJjpwFJL0&t=4430s>.

Iacobucci, Edward, and Michael Trebilcock. "The Role of Crown Corporations in the Canadian Economy: An Analytical Framework." *SPP Research Papers* 5, no. 9 (2012).

Indigenous Services Canada. *Indigenous Business Directory*. <https://www.sac-isc.gc.ca/eng/1100100033057/1610797769658>.

Industry and Inclusion: An Analysis of Indigenous Potential in Federal Supply Chains. (Toronto: Canadian Council for Aboriginal Business, 2019). [https://www.ccab.com/wp-content/uploads/2019/05/CCAB\\_Research-Report\\_web.pdf](https://www.ccab.com/wp-content/uploads/2019/05/CCAB_Research-Report_web.pdf).

Internal Revenue Service. "Opportunity Zones." <https://www.irs.gov/credits-deductions/businesses/opportunity-zones#:~:text=Opportunity%20Zones%20are%20an%20economic,providing%20tax%20benefits%20to%20investors>.

International Finance Corporation (IFC). "About IFC." [https://www.ifc.org/wps/wcm/connect/corp\\_ext\\_content/ifc\\_external\\_corporate\\_site/about+ifc\\_new](https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new).

International Finance Corporation (IFC). "Guidance Note 7: Indigenous Peoples." 2012. [https://www.ifc.org/wps/wcm/connect/9baef8f6-9bd9-4d95-a595-7373059081d4/GN7\\_English\\_2012.pdf?MOD=AJPERES&CVID=nXqnhP5](https://www.ifc.org/wps/wcm/connect/9baef8f6-9bd9-4d95-a595-7373059081d4/GN7_English_2012.pdf?MOD=AJPERES&CVID=nXqnhP5).

Intrepid Sourcing. "Special Economic Zones in China (SEZs): Characteristics & Benefits." <https://intrepidsourcing.com/trade-wiki/special-economic-zones-sezs-characteristics-benefits/>.

Inuit Art Foundation. "About the Igloo Tag." <https://www.inuitartfoundation.org/igloo-tag-trademark/about-igloo-tag#:~:text=The%20Igloo%20Tag%20Trademark%20is%20the%20internationally%20recognized,mass-produced%20works%20made%20by%20non-Inuit%20using%20Arctic%20imagery>.

Investopedia. "Special Economic Zones." [https://www.investopedia.com/terms/s/sez.asp#:~:text=Key%20Takeaways-,A%20special%20economic%20zone%20\(SEZ\)%20is%20an%20area%20in%20a,foreign%20direct%20investment%20\(FDI\)](https://www.investopedia.com/terms/s/sez.asp#:~:text=Key%20Takeaways-,A%20special%20economic%20zone%20(SEZ)%20is%20an%20area%20in%20a,foreign%20direct%20investment%20(FDI)).

Karamea, Chris. "NZ-UK FTA Officially Signed." *Te Taumata*. 2022. <https://www.tetaumata.com/news/2022/03/01/nz-uk-fta-officially-signed/>.

Ministry of Foreign Affairs and Trade. "Our Work with APEC." Government of New Zealand. 2021. <https://www.mfat.govt.nz/en/trade/our-work-with-apec>.

National Indigenous Economic Development Board (NIEDB). "Reconciliation: Growing Canada's Economy by \$27.7B." 2016. [http://www.naedb-cndea.com/reports/naedb\\_report\\_reconciliation\\_27\\_7\\_billion.pdf](http://www.naedb-cndea.com/reports/naedb_report_reconciliation_27_7_billion.pdf).

National Indigenous Economic Strategy for Canada. 2022. [https://niestrategy.ca/wp-content/uploads/2022/05/NIES\\_English\\_FullStrategy.pdf](https://niestrategy.ca/wp-content/uploads/2022/05/NIES_English_FullStrategy.pdf).

New Zealand Ministry of Foreign Affairs. "Indigenous Peoples Economic and Trade Cooperation Agreement." Government of New Zealand. 2021. <https://www.mfat.govt.nz/assets/Indigenous-Peoples-Economic-and-Trade-Cooperation-Arrangement-IPETCA-FINAL-VERSION.pdf>.

Organisation for Economic Cooperation and Development. "Linking Indigenous communities with Regional Development in Canada." 2020. <https://www.oecd-ilibrary.org/sites/fa0f60c6-en/index.html?itemId=/content/publication/fa0f60c6-en>.

Organisation for Economic Cooperation and Development, "FDI Flows." <https://data.oecd.org/fdi/fdi-flows.htm>.

Organisation for Economic Cooperation and Development. “Foreign Direct Investment (FDI).” [https://www.oecd-ilibrary.org/finance-and-investment/foreign-direct-investment-fdi/indicator-group/english\\_9a523b18-en](https://www.oecd-ilibrary.org/finance-and-investment/foreign-direct-investment-fdi/indicator-group/english_9a523b18-en).

Osburn, Richard. “Problems and Solutions Regarding Indigenous Peoples Split by International Borders.” *American Indian Law Review* 24, no. 2 (2001). <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1234&context=ailr>.

Prime Minister Justin Trudeau and President Joe Biden. “Roadmap for a Renewed U.S.-Canada Partnership.” Government of Canada. 2021. <https://pm.gc.ca/en/news/statements/2021/02/23/roadmap-renewed-us-canada-partnership>.

Public Services and Procurement Canada. “9.35.75. Canadian Free Trade Agreement.” Government of Canada. 2020. <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9/35/75#:~:text=Under%20Article%20800%3A%20Aboriginal%20Peoples,with%20respect%20to%20Aboriginal%20peoples>.

Public Services and Procurement Canada. “9.40.10. Procurement Strategy for Indigenous Business and trade agreements.” 2022. <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9/40/10>.

Public Services and Procurement Canada. “The Procurement Process.” Government of Canada. <https://buyandsell.gc.ca/for-businesses/selling-to-the-government-of-canada/the-procurement-process>.

Puig, Sergio. “International Indigenous Economic Law.” *U.C. Davis Law Review* 52, no.3 (2018). [https://lawreview.law.ucdavis.edu/issues/52/3/Articles/52-3\\_Puig.pdf](https://lawreview.law.ucdavis.edu/issues/52/3/Articles/52-3_Puig.pdf).

Puig, Sergio. “Indigenous Peoples under International Economic Law.” In *At the Margins of Globalization: Indigenous Peoples and International Economic Law*. Cambridge: Cambridge University Press, 2021. doi:10.1017/9781108596503.005.

Ross, Ian. “Food distribution network gets off ground.” *Northern Ontario Business*, (January 2016). <https://www.northernontariobusiness.com/industry-news/transportation/food-distribution-network-gets-off-ground-371704>.

Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward, Looking Back. Ottawa: Royal Commission on Aboriginal Peoples, 1996.

Statistics Canada, “Study: Identifying Indigenous business owners and Indigenous-owned businesses.” (Ottawa, The Daily, 2022). <https://www150.statcan.gc.ca/n1/en/daily-quotidien/221124/dq221124e-eng.pdf?st=XUFYOaBh>.

Statistics Canada. “Census of Population.” (2016).

Statistics Canada. “Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed.” (Ottawa, The Daily, 2022. <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>.

Treasury Board of Canada Secretariat. “Contracting Policy Notice 2021-6 Trade Agreements: Thresholds Update.” Government of Canada. 2021. <https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/contracting-policy-notice-2021-6.html>.

United Nations Conference on Trade and Development (UNCTAD). About (UNCTAD). <https://unctad.org/about>.

United Nations Conference on Trade and Development (UNCTAD). “Development on its fifteenth session.” (Bridgetown, UNCTAD, 2021). [https://unctad.org/system/files/official-document/td541\\_en.pdf](https://unctad.org/system/files/official-document/td541_en.pdf).

United Nations Conference on Trade and Development. Strong declaration on COVID-19 vaccines, trade, debt and climate adopted at historic UNCTAD15 conference (UNCTAD, 2021). <https://unctad15.org/external/news/strong-declaration-covid-19-vaccines-trade-debt-and-climate-adopted-historic-unctad15>.

United Nations Conference on Trade and Development. The Bridgetown Covenant: From inequality and vulnerability to prosperity for all. (Bridgetown, UNCTAD, 2021). [https://unctad.org/system/files/official-document/td541add2\\_en.pdf](https://unctad.org/system/files/official-document/td541add2_en.pdf).

United Nations Conference on Trade and Development (UNCTAD). Topics (UNCTAD). <https://unctad.org/topics>.

United Nations Declaration on the Rights of Indigenous Peoples Act (S.C. 2021, c. 14). <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html#h-1301591>.

United Nations. “About the Mandate.” UN – Office of the High Commissioner Human Rights. <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Reviewofthemandate.aspx>

United Nations. “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples.” UN – Human Rights Council. 2021. <https://www.undocs.org/A/HRC/48/75>.

United Nations. “Expert Mechanism on the Rights of Indigenous Peoples.” UN – Office of the High Commissioner Human Rights. <https://www.ohchr.org/en/hrc-subsiaries/expert-mechanism-on-indigenous-peoples>.

United Nations. “Indigenous Peoples and the 2030 Agenda.” UN – Department of Economic and Social Affairs. <https://www.un.org/development/desa/indigenouspeoples/focus-areas/post-2015-agenda/the-sustainable-development-goals-sdgs-and-indigenous.html>.

United Nations. “Indigenous peoples’ rights in the context of borders migration and displacement.” UN – Human Rights Council. 2019. <https://www.undocs.org/A/HRC/EMRIP/2019/2/Rev.1>.

United Nations. “Rights of Indigenous peoples.” 2015. [https://www.culturalsurvival.org/sites/default/files/media/report\\_on\\_investments\\_vtc\\_1.pdf](https://www.culturalsurvival.org/sites/default/files/media/report_on_investments_vtc_1.pdf)

United Nations, “United Nations Permanent Forum on Indigenous Issues.” UN – Department of Economic and Social Affairs. <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>.

U.S. Embassy and Consulates in Canada. First Nations and Native Americans. Ottawa, United States of America. <https://ca.usembassy.gov/visas/first-nations-and-native-americans/>.

Vanduzer, J. Anthony, and Melanie Mallet. “Indigenous Rights and Trade Obligations: How Does CUSMA’s Indigenous General Exception Apply to Canada?” *Canadian Yearbook of International Law/ Annuaire Canadien De Droit International* 58 (2021): 11. doi:10.1017/cyl.2021.13.

Wendland, Wend, “International negotiations on Indigenous knowledge to resume at WIPO: a view of the journey so far and the way ahead.” *World Intellectual Property Organization Magazine* (February 2022). [https://www.wipo.int/wipo\\_magazine\\_digital/en/2022/article\\_0001.html](https://www.wipo.int/wipo_magazine_digital/en/2022/article_0001.html)

World Intellectual Property Organization (WIPO). “Chair’s Text of a Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources.” [https://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=558733](https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=558733).

World Intellectual Property Organization (WIPO). “Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions.” <https://www.wipo.int/tk/en/>.

World Trade Organization (WTO) “Agreement on Subsidies and Countervailing Measures.” [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf).

World Trade Organization (WTO). “Declaration on Micro, Small and Medium-Sized Enterprises (MSMEs) (WTO – Informal Working Group on MSMEs)” <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/MSME/4R2.pdf&Open=True>.





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