



CANADA-UNITED STATES-MEXICO AGREEMENT (CUSMA) AND TRADE RELATIONS

OVERVIEW

The Assembly of First Nations' (AFN) work on the trade relations portfolio supports implementation of Chiefs-in-Assembly resolutions on economic and trade development.

The following resolutions affirm First Nations inherent right to trade, mandate efforts to advocate for First Nations economic growth and greater economic independence, and support working with Canada to include a Trade and Indigenous Peoples chapter in all trade agreements: Resolution 36/2017, *First Nations Trade Relations*; Resolution 104/2017, *Establishing a First Nations Advisory Committee under Section 6 of the Department of Foreign Affairs, Trade and Development Act*; and Resolution 38/2018, *Realizing Benefits for First Nations in the Implementation of International Trade and Investment Agreements*.

In August 2017, National Chief Perry Bellegarde was invited to participate on an advisory council to Canada's Minister of Trade on the North American Free Trade Agreement (NAFTA). This provided numerous opportunities for advocacy and a voice to ensure respect of First Nations rights and consideration of First Nations interests. The National Chief pressed for the inclusion of an Indigenous Peoples chapter in the new trade agreement, engagement with First Nations for such a chapter, and that a new trade agreement must align with the inherent and Treaty rights of First Nations as recognized and affirmed by the *Constitution* of Canada and international law.

Since the original NAFTA came into effect in 1994, the legal landscape regarding recognition of the rights of Indigenous peoples has developed significantly, including Canada's endorsement of the *United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)*.

Negotiations on the new NAFTA began in August 2017 and concluded in September 2018. The new Agreement is now named the Canada-United States- Mexico Agreement (CUSMA). This Agreement did not include an Indigenous Peoples chapter. However, the National Chief was successful in advocating for the addition of provisions to respect First Nations rights and provide preferences for First Nations' businesses.

The AFN continues to emphasize that the rights of Indigenous peoples must be respected and incorporated as an essential component of modern trade relations for all trade and investment agreements as they are a necessary aspect of sustainable development.

In December 2017, Resolution 104/2017, *Establishing a First Nations Advisory Committee under Section 6 of the Department of Foreign Affairs, Trade and Development Act*, was passed directing the AFN to work with the federal government to establish an advisory committee to assist and provide support to the Ministers of Foreign Affairs and International Trade to advocate for First Nations effective participation

in trade initiatives and existing trade mechanisms.

In July 2018, Resolution 38/2018, *Realizing Benefits for First Nations in the Implementation of International Trade and Investment Agreements*, was passed, directing the AFN to

work with the federal government to promote First Nations businesses through trade missions in new markets, developing procurement opportunities, and support First Nations trade capacities through the development of a First Nations centre of excellence on international trade and investment.

UPDATE

On September 30, 2018, Canada, the United States and Mexico concluded the renegotiations of NAFTA—renamed as CUSMA. The CUSMA was signed on November 30, 2018, and all parties will now undertake their domestic processes implementation which for Canada is ratification and implementation by legislation. New provisions in the CUSMA that benefit First Nations include: a general exception for Indigenous Rights which respects inherent and Treaty rights; language that recognizes and upholds the role of First Nations in protecting and preserving the environment; and preferences for First Nations in the area of government procurement, state owned enterprises and handicraft textiles.

Building on the work and proposed inclusion of an Indigenous Peoples Chapter in the CUSMA, Canada has introduced the concept of a Trade and Indigenous Peoples chapter at the Pacific Alliance Negotiations and in the Canada-Mercosur Free Trade Agreement negotiations. The Pacific Alliance Free Trade Agreement is being negotiated with Colombia, Chile, Peru, Mexico, and associated members: Canada, Australia, New Zealand and Singapore. Mercosur is a South American trading block composed of Argentina, Brazil, Paraguay and Uruguay. Canada is also exploring Free Trade Agreements (FTAs) with the Association of Southeast Asian Nations (ASEAN) and China. The AFN continues to participate in the Indigenous Trade Working Group to provide input and monitor opportunities.

Canada is also engaging on Foreign Investment Promotion and Protection Agreements (FIPAs) to make them more progressive. The National Chief has communicated concerns about the impacts on inherent and Treaty rights to the Minister of International Trade Diversification regarding FIPAs.

On December 10, 2018, the National Chief and members of the AFN Executive Committee attended the First Ministers Meeting focused on trade and the economy in Montreal, Quebec. The AFN stated clearly that attempts to disregard the *UN Declaration* and the lack of recognition of free, prior and informed consent are barriers to trade. Further, it was stated that decision-making processes for natural resource development projects must involve First Nations from the outset and include opportunities for procurement, employment for, and revenue sharing for First Nations. Recommendations were also made to the Premiers to improve opportunities for First Nations, including recruiting and retaining First Nations as part of advisory councils, corporate boards, and decision-making bodies; sharing the revenue and ownership; consideration of legislation that would require a percentage of procurement be set aside for First Nations businesses and service providers; and improving access to equity.

NEXT STEPS

- Continue to advocate for the addition of provisions that will respect First Nations rights and provide preferences for First Nations businesses in all trade agreements.
- Continue towards inclusion of Indigenous peoples' Chapters in future FTAs to advocate for environmental protection, gender equality, and other measures to be consistent with the rights of Indigenous peoples recognized and affirmed by the Constitution and international law.
- Continue to update the AFN Executive Committee, the AFN Chiefs Committee on Economic Development, and First Nations leadership regarding First Nations involvement in FTAs.
- Advance First Nations priorities on Trade, including a strategy for the enhancement of First Nations trade opportunities.
- Continue to participate on the Indigenous Trade Working Group established by Canada, which includes modern Treaty holders, First Nations technicians, the AFN, Inuit Tapiriit Kanatami, the Métis National Council, Indigenous technical organizations, and federal officials.

