



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*;
- Resolution 38/2018, *Realizing Benefits for First Nations in the Implementation of International Trade and Investment Agreements*
- Resolution 37/2019, *Continued Advocacy on Canada's International Trade Agreements to achieve Economic Reconciliation*.

In August 2017, National Chief Perry Bellegarde participated on an advisory council to Canada's Minister of Foreign Affairs, responsible for the renegotiation of the North American Free Trade Agreement (NAFTA). 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 protect inherent and Treaty rights of First Nations as recognized and affirmed by the *Constitution* of Canada and international law.

Since 1994, when the original NAFTA came into effect, 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 that respect and protect 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.

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In July 2019, a new resolution was passed, Resolution 37/2019, *Continued Advocacy on Canada's International Trade Agreements to achieve Economic Reconciliation*. This resolution focused on the need to implement trade agreements so that benefits for First Nations are realized, including advocating for mandatory requirements of at least 5% of

government procurement for First Nations. As well, this resolution called for Canada to work with AFN to continue improving and enhancing the participation of First Nations in international trade negotiations. Canada must move beyond engagement and invite First Nations to the negotiation table for international trade and investment treaties.

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 ratification processes, which is done via legislation in Canada. 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;
- preferences for First Nations in the area of government procurement, cross border services and investment, 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 potential impacts of the investor state dispute settlement provisions in FIPAs on inherent and Treaty rights to the Minister of International Trade Diversification.

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

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procurement be set aside for First Nations businesses and service providers; and improving access to equity.

On June 18, 2019, the National Chief appeared before the Standing Committee on International Trade to provide his views on Bill C-100, which was the proposed legislation to implement CUSMA. The National Chief informed the Committee that Bill C-100 must include a non-derogation clause to help ensure that the Act and, more

importantly, the Canada-United States-Mexico Agreement itself, is interpreted and implemented consistently with the rights of First Nations affirmed by section 35 of the Constitution Act, 1982. As Bill C-100 did not pass before the election was called, Canada will need to introduce a new Bill to implement CUSMA.

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 Trade and 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.
- Continue to advocate for the implementation of FTAs so that the benefits negotiated for First Nations are realized.

