

EDM

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Indigenous Peoples and Trade Agreements:

A Trade and Economic Cooperation Analysis and Proposed Good Practices

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About this Study

This study was funded through the Expert Deployment Mechanism for Trade and Development (EDM), a Global Affairs Canada project (2018-2026) implemented by Cowater International and the Institute of Public Administration of Canada. The EDM provides technical assistance to eligible countries to maximize the benefits of trade and development. The demand-driven investments support Canada's developing country trading partners to negotiate, implement, and benefit from trade and investment agreements with Canada.

This study investigates the scope and features of Free Trade Agreement provisions related to supporting Indigenous Peoples and discusses how trade agreements have evolved over recent years. The study provides systematically collected evidence and analysis to understand how trade agreements can create new economic opportunities for Indigenous Peoples while protecting their rights and respecting their cultural and social frameworks, thereby contributing to more equitable and sustainable trade outcomes. The analysis and policy recommendations will help governments and Indigenous groups understand what has been achieved so far in FTAs, what is still lacking, and what type of provisions and accompanying policies can allow for the pursuit of an inclusive trade strategy that genuinely benefits Indigenous Peoples.

The content of the study is intended to provide trade negotiators, trade policy practitioners, academics, and other trade professionals with a greater understanding of how Canada and other countries are addressing Indigenous Peoples issues in trade agreements as part of a broader strategy of advancing an inclusive trade agenda at the bilateral, plurilateral and multilateral levels.

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List of acronyms

Acronym	Full Title
ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
ANZCERTA	Australia–New Zealand Closer Economic Relations Trade Agreement
ANZTEC	Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation
CEPA	Comprehensive Economic Partnership Agreement
CETA	Canada- EU Trade Agreement
CIP	Crown-Indigenous Partnership (New Zealand context)
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CUSMA	Canada–United States–Mexico Agreement
CUFTA	Canada–Ukraine Free Trade Agreement
DEPA	Digital Economy Partnership Agreement
DFAT	Department of Foreign Affairs and Trade (Australia)
EDM	Expert Deployment Mechanism for Trade and Development
EFTA	European Free Trade Association
EU	European Union
FOMA	Federation of Māori Authorities
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GBA Plus	Gender-Based Analysis Plus
ICA	Indigenous Collaboration Arrangement
ILO	International Labour Organization
IPAC	Indigenous Peoples Advisory Council
IPAG	Indigenous Peoples Advisory Group
IPETCA	Indigenous Peoples Economic and Trade Cooperation Arrangement
IPEF	Indo-Pacific Economic Framework for Prosperity
IPR	Intellectual Property Rights
ISDS	Investor-State Dispute Settlement
ITAG	Inclusive Trade Action Group
ITO	International Trade Organization (historical reference, implied via GATT context)

Acronym	Full Title
MFAT	Ministry of Foreign Affairs and Trade (New Zealand)
MSME(s)	Micro, Small and Medium Enterprises
NAFTA	North American Free Trade Agreement
NCIP	National Commission on Indigenous Peoples (Philippines)
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
PACER Plus	Pacific Agreement on Closer Economic Relations Plus
RCEP	Regional Comprehensive Economic Partnership
SME(s)	Small and Medium Enterprises
SOE(s)	State-Owned Enterprises
TPK	Te Puni Kōkiri (New Zealand Ministry for Māori Development)
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UPOV	International Union for the Protection of New Varieties of Plants
USMCA	United States–Mexico–Canada Agreement
USTR	United States Trade Representative
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Executive summary

Indigenous Peoples—who number an estimated 476 million globally—have long engaged in trade as a means of fostering relationships, exchanging knowledge, and sustaining economic and cultural systems. Their trade practices are grounded in distinct worldviews, legal traditions, and collective responsibilities to land and community. From Indigenous trade networks to early treaties with colonial powers, Indigenous Peoples have exercised economic sovereignty and shaped trade landscapes for centuries.

Today, Indigenous Peoples continue to assert their rights under international frameworks such as the UNDRIP and International Labour Organization (ILO) Convention No. 169. These instruments affirm Indigenous Peoples as rights holders—not stakeholders—entitled to participate in decisions affecting their lands, resources, and economic futures. The principle of “Nothing about us without us” encapsulates their demand for meaningful inclusion in governance—including trade policymaking.

While trade has contributed to growth and innovation, its benefits have often been unevenly distributed. Indigenous Peoples continue to face structural barriers to market access, legal recognition of land and resource rights, and participation in emerging areas such as digital trade. Without appropriate safeguards, trade liberalization can also exacerbate threats to Indigenous territories, traditional knowledge systems, and cultural heritage.

Trade agreements have traditionally focused on liberalizing market access for goods and services, with limited attention to the actual beneficiaries of these agreements. This is because free trade agreements have primarily been designed to reduce barriers to trade in goods and services. Their focus has been typically sectoral—on products or services—rather than on the characteristics or identity of the producers or service providers.

In recent years, however, growing awareness of economic inequality has led to increased scrutiny of trade agreements and their distributive impacts. As a result, a new generation of trade agreements has begun to incorporate language, provisions, or even dedicated chapters aimed at promoting more inclusive trade outcomes. These efforts have focused on groups identified in the literature as historically underrepresented or disadvantaged in trade—commonly referred to as marginalized groups—including women, persons with disabilities, micro, small and medium enterprises (MSMEs), and Indigenous Peoples.

This study addresses a critical gap in the literature by analyzing how international trade agreements—especially Free Trade Agreements (FTAs)—have incorporated provisions relevant to Indigenous Peoples. It offers recommendations toward ways that future trade and investment agreements can better reflect Indigenous rights, knowledge and economic potential.

The study reviews 36 FTAs negotiated between 2005 and 2025 to identify the provisions that explicitly reference Indigenous Peoples or related terms (e.g., traditional knowledge, biodiversity, First Nations, Māori, and other relevant terms), and assesses the structure, legal character, and

institutional design of these provisions. The analysis is supported by insights from interviews with Indigenous and trade policy experts from multiple jurisdictions.

The study finds that a small but growing number of FTAs are beginning to address Indigenous-specific concerns. These provisions fall into four broad categories:

1. Affirmation of rights: recognizing Indigenous Peoples' distinct legal status and existing treaty rights;
2. Protection of interests: especially in areas such as intellectual property, genetic resources, and traditional knowledge;
3. Set-asides and exemptions: for example, Indigenous-specific procurement carve-outs and Treaty of Waitangi exceptions; and
4. Cooperative activities and capacity-building: measures intended to enhance Indigenous participation in international trade and support economic development.

These provisions are becoming more numerous and more substantive and are increasingly embedded across various chapters—such as those on the environment, intellectual property rights, SMEs, cooperation, sustainable development, and procurement—in recent FTAs. While it remains too early to fully evaluate the long-term economic impact of these provisions, this trend marks a step forward in recognizing and addressing Indigenous concerns in the trade domain. Early outcomes include the routine inclusion of Indigenous business leaders in trade delegations, the establishment of dedicated working groups and dialogues, and targeted initiatives to support Indigenous exporters. In some cases, these agreements have also led to capacity-building programs, recognition of traditional knowledge, and the emergence of Indigenous-led trade cooperation arrangements. One of the most innovative developments in this area is the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA). Although not a binding treaty, IPETCA represents a novel, plurilateral framework that elevates Indigenous leadership in trade policy. It is co-governed by Indigenous Peoples and state representatives and explicitly defines Indigenous trade as grounded in relational, values-based, and intergenerational exchange. Through a formal Partnership Council and topic-specific Working Groups, IPETCA facilitates cooperative activities and shared policy development—providing a new model for inclusive economic governance that centers Indigenous voices.

Such provisions and concrete steps represent significant progress in the use of trade agreements to address concerns of Indigenous Peoples and include their voices in the formulation and implementation of trade policy. However, it must be underlined that trade agreements are only one tool for governments to address these concerns. There are limits on how much trade agreements can actually do to achieve change in the economic situation of Indigenous Peoples. The objective of this study was not to review all the relevant domestic policies that the Government of Canada and other governments are carrying out in this regard, though there is evidence of significant progress in that area. Such domestic policies and programs must be a necessary complement to trade agreements, however, as they are an essential component of an overall policy package. Trade agreements should therefore not be seen as the main instrument

of transformation and response to Indigenous concerns but rather as part of a comprehensive policy approach.

Drawing from these recent developments and underscoring remaining gaps, this study offers recommendations to help governments move from symbolic recognition to inclusion of meaningful provisions in trade agreements. These include:

- Embedding enforceable legal language to protect Indigenous lands, traditional knowledge, and resource rights;
- Establishing inclusive processes for negotiation and implementation, including Indigenous co-representation;
- Designing capacity-building measures that are context-specific and led by Indigenous Peoples;
- Requiring transparency, reporting, and institutional accountability in the implementation of Indigenous-related provisions; and
- Conducting economic impact assessments of future trade agreements to evaluate their potential benefits, risks, and distributional effects on Indigenous Peoples, ensuring evidence-based policy responses and early mitigation of adverse impacts.

By centering Indigenous rights and perspectives, this report contributes to a more equitable and forward-looking vision of trade—one where Indigenous Peoples are not merely protected from the harms of globalization but actively participate in shaping the rules and benefits of international trade and economic cooperation.

I. Introduction

Indigenous Peoples have engaged in trade for millennia as a means of sustaining livelihoods, exchanging knowledge, and maintaining inter-community and intergenerational relationships. These trade practices have long been grounded in holistic worldviews, stewardship of land and resources, and collective legal systems.¹ Today, Indigenous Peoples continue to assert their role as economic actors and rights holders under international instruments such as the UNDRIP and ILO Convention No. 169 on Indigenous and Tribal Peoples.²

Yet despite this deep and ongoing engagement with trade, modern trade agreements have only recently begun to acknowledge the distinct economic and legal position of Indigenous Peoples. These agreements have generally focused on liberalization and regulatory convergence, often overlooking the specific rights, economic aspirations, and traditional knowledge systems of Indigenous Peoples. The growing call for more inclusive trade, driven by Indigenous advocates and progressive trade policymakers alike, has begun to shift this paradigm.

Trade has traditionally been credited as an engine of growth. While the growth dividends are welcome in terms of both poverty reduction and increased overall prosperity, it has also been recognized that the benefits of trade-led growth were not equitably shared and that such growth may have often neglected the principles of environmental and social responsibility. Economic growth and rapidly increasing trade have been accompanied by income and wealth inequalities and environmental degradation, leading some to question the value of further globalization. Although trade is not without controversy, it can certainly be part of the solution, as was most recently proven during the COVID-19 pandemic.³ Trade can be a powerful tool for driving more inclusive growth by offering the potential to extend economic opportunities and social benefits to a wider range of the population.

For Indigenous Peoples, trade can provide critical pathways to economic empowerment, enabling access to new markets, resources, and technologies that might otherwise remain out

1 The United Nations does not have a single, legally binding definition of Indigenous peoples. It does however identify key characteristics of Indigenous Peoples that include: historical continuity; distinctive characteristics, including distinct social, economic, language, cultural and political systems, and beliefs; self-identification; and strong ties to territories. See the United Nations Indigenous Peoples website: <https://www.un.org/en/fight-racism/vulnerable-groups/indigenous-peoples>.

2 Indigenous Peoples' rights to trade are grounded in a combination of international instruments and legal traditions. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms the right of Indigenous Peoples to maintain and develop their economic systems, including the right to engage freely in traditional and contemporary economic activities (Articles 3, 20, and 36). ILO Convention on Indigenous and Tribal Peoples (Convention No. 169) reinforces this by requiring governments to respect Indigenous institutions, participation in decision-making, and control over their own development priorities. These international standards complement inherent rights—those pre-existing state recognition—and treaty rights, which stem from formal agreements between Indigenous Nations and states. Together, these frameworks provide a legal and moral foundation for Indigenous participation in trade, both as rightsholders and economic actors with distinct status and interests.

3 World Trade Organization, 2022. The Role of Trade in Economic Recovery from the COVID-19 Pandemic. Geneva: WTO, https://www.wto.org/english/res_e/reser_e/ersd202210_e.pdf

of reach. By integrating Indigenous Peoples and marginalized groups into global trade networks, there is the potential not only to boost incomes and create jobs but also to address broader issues of inequality by fostering economic participation and reducing poverty. Moreover, trade can serve as a platform for amplifying their voices, ensuring that their specific rights, needs, interests, and aspirations are taken into account.

Indigenous Peoples hold a unique position, with trade not only providing pathways to economic prosperity, but also serving to preserve and promote their rights, cultural heritage, values, and traditional knowledge. Inclusive trade, as argued in this study must therefore be understood in a holistic sense—one that goes beyond only economic metrics to include cultural, environmental, and social dimensions, including health, education, and social well-being. Trade rules must be responsive to these broader concerns if they are to support Indigenous well-being and self-determination. As trade rules become more reliant on and regulated through FTAs, it is crucial to examine how these agreements can be structured to promote the active participation and prosperity of Indigenous Peoples.⁴ FTAs have become the primary vehicles through which trade policies are negotiated and implemented, making it imperative that they include provisions that address the unique needs and aspirations of Indigenous Peoples. Such provisions may include measures for protecting customary or collective rights to their land, resources, and traditional knowledge, enhancing access to global markets, ensuring that Indigenous voices are heard and accounted for in the negotiation and implementation processes, and also ensuring access to capacity building in areas that assist Indigenous Peoples in participating in the trade arena such as enhancing digital skills, incorporating them into trade missions and trade networking, and providing training in understanding trade policy and trade agreements.

That said, it is important to recognize that FTAs are not panaceas for solving complex economic and social inequalities. They are primarily designed to liberalize trade by reducing or removing barriers to the movement of goods and services, with the goal of achieving mutually beneficial economic gains and opportunities for participating countries. Traditional FTAs have focused on sectors—products and services—rather than on the characteristics or identities of the producers or service providers involved. As such, they have historically paid limited attention to how the benefits of liberalization are distributed, or whether certain groups may bear disproportionate costs.

In recent years, however, growing awareness of economic inequality, exclusion and environmental fragility has led to increased scrutiny of trade and investment policy frameworks. In response, a new generation of FTAs has emerged: trade agreements that incorporate language, provisions, or even dedicated chapters aimed at delivering more inclusive trade outcomes. These provisions increasingly target historically underrepresented groups in trade—commonly referred to as marginalized groups—including women, persons with disabilities, MSMEs, and Indigenous Peoples.

4 It should be noted that there are no specific provisions in the WTO agreements that mention Indigenous Peoples. However, WTO rules can and do create challenges for Indigenous Peoples. Recently some WTO bodies have begun to engage in discussion on the social impacts of trade on Indigenous Peoples, particularly the WTO Committees on Trade and Development and Trade and the Environment.

This study addresses a significant gap in the existing literature by systematically investigating the scope and provisions of all relevant FTAs with specific mention of Indigenous Peoples that have been negotiated over the past 20 years. By identifying where and how these references appear, and analyzing their legal and institutional design, the study offers insights into current practice and emerging models. It concludes with actionable recommendations for governments seeking to negotiate more inclusive FTAs that not only open new opportunities for Indigenous Peoples but also respect and reinforce their cultural and social frameworks, thereby contributing to more equitable and sustainable trade outcomes.

II. Objective of this study

This study responds to a gap in the literature and understanding of the way in which trade agreements have recently been expanded to cover concerns of Indigenous Peoples in trade. Though certain aspects of international legal treatment of Indigenous Peoples have been addressed, such as investment treaties or land ownership and stewardship, the content of provisions in trade agreements that target Indigenous Peoples has not been comprehensively addressed nor analyzed.

The objective of this study is to provide systematically collected evidence and analysis that will help interested audiences understand how trade agreements can create new economic opportunities for Indigenous Peoples while respecting their cultural, political and social frameworks, thereby contributing to more equitable and sustainable trade outcomes (and examine in what ways the current FTAs may be lacking). It is intended to provide novel insights into what type of areas and issues involving Indigenous Peoples have been the focus of trade agreements, how these provisions have been structured, what purpose they are meant to serve, and whether they have been effective to date in the pursuit of a beneficial and inclusive trade strategy.⁵

The study identifies four primary ways in which FTAs have begun to incorporate Indigenous interests: affirmation of existing rights; protection of traditional knowledge and related interests; set-asides or carve-outs for Indigenous economic actors; and cooperative activities aimed at building capacity and enhancing Indigenous trade participation.

The analysis is intended to help government officials, Indigenous groups and interested academics, analysts and policy makers understand what has been achieved so far in those FTAs worldwide that have incorporated text relevant to Indigenous Peoples through discussing how effective the implementation of these provisions has been to date, what is perceived to have failed in this regard, and how this situation can be improved upon in the future.

The study begins with an overview of the concerns raised by Indigenous Peoples regarding trade and trade agreements. This helps to better situate the analysis in an understanding of what Indigenous Peoples are looking for in terms of protection of intellectual property, traditional knowledge and access to genetic resources, as well as in areas of economic development and export promotion. The study then provides a comprehensive survey and analysis of the provisions in all the 36 trade agreements and arrangements negotiated worldwide over the past 20 years that explicitly mention Indigenous Peoples,⁶ together with a description of the following: area

5 While the recent ADB Brief by Cleto and Ramizo focused on provisions in FTAs in the Asia Pacific that covered traditional knowledge and genetic resources, it did not go beyond this area to canvas all the mentions of Indigenous Peoples in these FTAs. To the knowledge of the authors of this paper, such a comprehensive examination on either a regional or a worldwide basis has not yet been undertaken. Maria Lorena Cleto and Dorothea M. Ramizo, *Fostering Inclusive Trade: Leveraging Free Trade Agreements to Protect Indigenous Peoples' Rights in Asia and the Pacific*, ADB Briefs No. 315, October 2024, page 2. <https://www.adb.org/sites/default/files/publication/1002611/adb-brief-315-ftas-indigenous-peoples-rights.pdf>

6 Or the local name used to designate "Indigenous Peoples", for example, Māori in New Zealand, or First Nations, Inuit, or Métis in Canada, or Aboriginal and Torres Strait Islander Peoples in Australia.

of coverage; location of the provisions in the agreement; nature of the provisions (binding vs. non-binding); and the associated institutional mechanism. Trade agreements are grouped by their nature (bilateral or plurilateral) and the Parties involved (developed or developing country) rather than by geographic region, as this is felt to provide a better way of understanding the similarities and differences between them.

Based on this analysis, together with insights obtained from a series of interviews with trade policy and Indigenous experts from different countries and regions, the study then provides an assessment of good practices to date of the different ways in which trade agreements have been able to engage Indigenous Peoples in the formulation of trade policy and in the implementation of relevant provisions in trade agreements. An evaluation is made of the effectiveness of the provisions relevant to Indigenous Peoples that have been included in FTAs to date towards achieving expected outcomes. Importantly, recommendations are put forward in terms of what could be done to remedy identified shortcomings, particularly in terms of designing and implementing more effective and inclusive consultation and implementation processes in trade policymaking, so that Indigenous Peoples are better able to both contribute to, and benefit from, an inclusive strategy for trade agreements in the future.

III. Indigenous Peoples: background, collective rights frameworks, and principles of inclusion

Indigenous Peoples are an important part of the world's fabric of peoples and play a critical role in ensuring the links of populations to the land and its resources. Indigenous Peoples are estimated to number around 476 million worldwide, making up around 6 percent of the global population. It is of note that "Indigenous Peoples" has no official definition by the United Nations due to the many diverse identities and histories of the different groups involved. Instead, the United Nations and other organizations utilize an understanding based on self-determination that includes elements of the following: *historical continuity with pre-settler societies, distinct systems and culture, and a commitment to preserve heritage and environments*.⁷ According to the World Bank Group, Indigenous Peoples are:

"...distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced. The land and natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being."⁸

In addition to being custodians of cultural and ecological knowledge, Indigenous Peoples have historically been active participants in economic systems through extensive inter-Indigenous trade networks. From the potlatch economies of the Pacific Northwest to trade routes spanning the Andes and Amazon, Indigenous societies developed sophisticated systems of exchange, diplomacy, and regional integration long before the advent of modern trade agreements.

Indigenous Peoples speak more than 4,000 of the world's 7,000 languages, though many are at risk of becoming extinct by 2100. In addition to their distinct languages, they often follow representation or community structures that are distinct and separate from those of mainstream society and have been practiced and passed down for generations.

Indigenous Peoples manage or hold tenure rights to approximately a quarter of the world's surface area, which includes a significant portion of the world's biodiversity, almost half of the of the Earth's protected areas and a significant proportion of the planet's most ecologically intact landscapes.⁹ However, much of the land occupied by Indigenous Peoples is under customary ownership and only a fraction of it is recognized as formally or legally belonging to Indigenous Peoples. This makes it difficult to take legal and economic advantage of their lands and the ancestral knowledge and expertise they possess on traditional medicines and mitigation of climate and disaster risks, among others.

7 See *The World's Indigenous Peoples*, <https://www.visualcapitalist.com/cp/mapped-the-worlds-indigenous-peoples/>

8 The World Bank Group, *Indigenous Peoples*, <https://www.worldbank.org/en/topic/indigenouspeoples> (last updated 2023).

9 Ibid.

Much economic development, particularly that involving digital technology, has taken place worldwide while leaving Indigenous Peoples behind. Two striking results are that Indigenous Peoples now constitute around one-fifth of the world's extremely poor and have an average life span that is 20 years less than the life expectancy of non-Indigenous Peoples worldwide.¹⁰ This widespread poverty among Indigenous Peoples creates huge challenges not only for their economic advancement, but also for their ability to defend and advance their legal interests in contexts such as international trade agreements.

Indigenous Peoples live throughout all parts of the world and are not concentrated in any geographical location. The countries with the largest numbers of Indigenous Peoples in absolute terms (above 6 million) are listed in Table 1. Notably, these countries are all in Asia, Africa, and the Americas. In Europe there are negligible numbers of Indigenous population, with nearly all in the Nordic countries.¹¹ The relative importance of Indigenous groups out of the respective populations (also indicated in Table 1), changes considerably the appreciation of the presence of Indigenous Peoples in various national contexts. Fully one-fifth or more of the total population is identified as Indigenous in nearly half (seven) of these 15 countries.

A few countries with significant Indigenous populations in relative terms do not appear in Table 1 because the absolute number falls under the threshold of 6 million Indigenous Peoples. Canada, New Zealand, and Peru are all in this category. According to Statistics Canada, the 2021 census identified 1.8 million Indigenous Peoples in the country, representing 5 percent of the population. Of these, over one million were First Nations People, the majority of whom live in Western Canada.¹² In New Zealand, the Māori population numbered approximately 978,000 in 2023, representing about 20 percent of the total New Zealand population in 2023 of around 5 million people. The Māori population is younger and is growing faster than other groups.¹³ The Indigenous population of Peru is estimated at about 6 million people or roughly 20 to 25.7 percent of the total population of around 31 million people. This includes a large number of ethnic groups, with diversity reflected in 55 recognized Indigenous Peoples and 47 official Indigenous languages.¹⁴ As will be demonstrated in this study, there is no one-to-one correspondence between the absolute and relative presence of Indigenous Peoples in various countries and the level of attention given through the economic and social policies to the issues and concerns of these Peoples.

10 Ibid.

11 Estimates refer to up to 200,000 living in the Nordic countries of Denmark (Greenland), Finland, Norway, Sweden, and a few in Estonia, which is extremely small in terms of percentage of the total population. <https://indigenounavigator.org/indigenous-data>.

12 See <https://www.statcan.gc.ca/o1/en/plus/3920-canadas-indigenous-population>

13 Statistics New Zealand, 2023 Census Data <https://www.stats.govt.nz/information-releases/2023-census-population-counts-by-ethnic-group-age-and-maori-descent-and-dwelling-counts/>

14 Notably the Quechua (over 5 million) and Aymara (around 0.5 million) are among the most prominent, but there are also with many smaller Amazonian Indigenous Peoples. International Work Group for Indigenous Affairs, The Indigenous World 2025: Peru <https://iwgia.org/en/peru/5750-iw-2025-peru.html>

Table 1: Countries with the largest numbers of Indigenous Peoples

Country	Number of Indigenous Peoples (million)	Geographical Region	Percentage Indigenous Peoples in Population (estimates in percent)
China	125.3	Asia	9
India	104.0	Asia	8.6
Indonesia	60.0	Asia	23
Pakistan	35.0	Asia	12.5
Ethiopia	16.0	Africa	15
Algeria	12.0	Africa	20
Kenya	9.6	Africa	25
Mexico	16.9	Americas	20
Nepal	10.3	Asia	36
Philippines	10.2	Asia	15 (or more)
Vietnam	14.1	Asia	14.7
Bolivia	7.0	Americas	40
U.S.A.	6.6	Americas	2
Guatemala	6.5	Americas	50 (or more)
Thailand	6.0	Asia	7.5

Source: *Mapped: The World's Indigenous Peoples*, March 18, 2023. <https://www.visualcapitalist.com/cp/mapped-the-worlds-indigenous-peoples/> with author's additional calculations.

While the respect of Indigenous Peoples' rights is often problematic at the national level, these rights have been recognized at the international level through the adoption of two major instruments. The first is the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, adopted in 1989 and which entered into force in 1991.¹⁵ The second is the United Nations Declaration on the Rights of Peoples, which was adopted in 2007.¹⁶

15 The *ILO Convention No. 169 on Indigenous and Tribal Peoples* is a binding international treaty that deals specifically with the rights of Indigenous Peoples. The Convention includes provisions regarding administration of justice and Indigenous customary law, consultation and participation, rights over lands, territories, and natural resources, labour and social rights, bilingual education, and trans-border cooperation. However, it does not specifically address the protection of traditional knowledge. As of 2024, it has only been ratified by 20 countries, largely in Latin America and Europe. <https://biocultural.iied.org/ilo-convention-169-indigenous-and-tribal-peoples>.

16 The *United Nations Declaration on the Rights of Peoples* was adopted as a non-binding UN Resolution in 2007. It is the leading international instrument articulating the individual and collective rights of Indigenous Peoples, recognizing that Indigenous Peoples have fundamental rights to freedom, equality and non-discrimination, as well as rights related to self-determination, life, land, religion and culture. Although not a legally binding treaty,

An important regional instrument that can also be mentioned in this context is the American Declaration on the Rights of Indigenous Peoples (adopted in 2016).¹⁷ The ILO Convention No. 169 is binding for those countries (only 20) that have ratified it, while the other two instruments are non-binding resolutions.

Indigenous Peoples have also entered into various forms of agreements and arrangements to safeguard their rights and economic relations. These range from what have historically been known as “peace and friendship” treaties with colonial powers to modern-day land claim settlements and self-governance compacts. While these instruments are not always recognized within the international trade regime, they remain foundational to many Indigenous Peoples’ legal and socioeconomic claims.

A fundamental principle that has emerged from international rights frameworks is “Nothing about us without us.” Rooted in the right to self-determination, this principle asserts that Indigenous Peoples must be directly involved in any policy, decision, or agreement that affects them. It reinforces the notion that Indigenous Peoples are not passive beneficiaries but active rights holders and partners in governance. While foundational instruments such as the ILO Convention No. 169 and the UNDRIP affirm the economic rights of Indigenous Peoples, they do not specifically address trade. However, the principle of participation has increasingly been extended to the trade domain.¹⁸ In Canada, this principle has guided Indigenous engagement and consultation mechanisms across policy areas, including the environment, legislative reform, and trade policy. It is also embodied in the co-governance structure of the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA)—a plurilateral initiative that places representatives of Indigenous Peoples alongside state officials in decision-making roles related to trade and economic cooperation (discussed in more detail in Section VI).

Other jurisdictions have adopted analogous principles rooted in self-determination and participatory governance. In New Zealand, the Māori concept of “Tino Rangatiratanga”—often translated as sovereignty or self-determination—is a foundational principle of Māori political thought and has shaped engagement with the Crown under te Tiriti o Waitangi/ the Treaty of Waitangi. It is operationalized in trade through the Treaty of Waitangi exception clause and formal Māori-led initiatives such as the Aotearoa ki te Ao program. In Australia, Indigenous Australians have advanced the framework of “Voice, Treaty, Truth”, which calls for recognition through a constitutionally enshrined Indigenous Voice to Parliament, alongside treaty-making and historical truth-telling. While not yet formalized in trade policy, the principle reflects broader efforts to ensure Indigenous Peoples are active participants in national decision-making. In the United States, the principle of Tribal Sovereignty affirms the inherent right

it has been adopted by all 193 member states of the United Nations and carries significant moral force. <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>.

17 The *American Declaration on the Rights of Indigenous Peoples* was adopted at the General Assembly of the Organization of American States in 2016. Like the UN Declaration on the Rights of Peoples, it is not a binding international treaty but rather a non-binding document that delineates the rights of Indigenous Peoples of the Americas in many areas. It can be accessed at <https://www.oas.org/en/sare/documents/DecAmIND.pdf>.

18 The body of literature in the field includes a more recent and important volume edited by Borrows, J., Schwartz R, editors, *Indigenous peoples and international Trade: Building Equitable and Inclusive International Trade and Investment Agreements*. Cambridge University Press, 2020.

of Native American tribes to self-governance and participation in decisions affecting their Peoples, although its application to trade remains underdeveloped. Across Latin America, many Indigenous movements invoke the Andean principle of “Buen Vivir”—a vision of collective well-being that challenges extractive development models and insists on Indigenous participation in environmental, social, and economic governance.

As already mentioned, at the international level, the UNDRIP affirm the right of Indigenous Peoples to participate in decision-making in matters that affect their rights, through representatives chosen by themselves and in accordance with their own procedures. Taken together, these examples illustrate a growing recognition—both domestically and globally—that inclusive and respectful governance must begin with participation, not post-facto accommodation.

However, despite their normative strength, none of these international instruments—including ILO Convention No 169 and UNDRIP—explicitly address the treatment of Indigenous Peoples in international trade agreements. Nor have Indigenous treaty rights historically been integrated into the modern legal frameworks that govern trade and investment. Indigenous Peoples have long engaged in trade, both with other Indigenous Peoples and with other nations. They have also concluded treaties, although these have tended to have a different focus depending upon the parties. Historically, the treaties between Indigenous Peoples and non-Indigenous entities have focused on land and resource rights or “peace and friendship”, while agreements among Indigenous Peoples have focused on trade and other issues.¹⁹ A recent policy brief by the Asian Development Bank (ADB) notes that while some Indigenous treaties should be seen as pre-existing legal commitments under the Vienna Convention on the Law of Treaties, these are rarely acknowledged in today’s trade and investment agreements and often stand in direct conflict with them.²⁰

How Indigenous Peoples have fared in international trade is a topic that has been largely left aside until very recently, even though Indigenous Peoples have been involved in trade for millennia. However, the growing number of free trade agreements (FTAs) that have recently been signed as part of modern international treaty law that incorporate provisions explicitly focused on and referencing the rights and opportunities of Indigenous Peoples in trade justifies an examination of the content of these agreements. This study delves into the content of the trade agreements or arrangements negotiated over the past 20 years that fall into this category. It aims to significantly contribute to the current body of knowledge and understanding around Indigenous Peoples and trade.

19 See Gunn, Brenda L. in *International investment Agreements and Indigenous Peoples’ Rights*, edited by Borrows, J. and Schwartz R, *ibid*; pages 194-216. These treaty-like agreements with Indigenous populations were mostly signed by the British Crown, although the Dutch did also sign an agreement with Indigenous groups during their colonial rule in Indonesia. Furthermore, British ‘peace and friendship’ treaties were early trade agreements with Indigenous Peoples, as were European treaties (Treaty of Paris, Treaty of Ghent) and the British North America Jay Treaty. See more in James (Sa’kej) Youngblood Henderson’s Foreword to Borrows, J., Schwartz R, editors, *ibid*.

20 W. David. 2020. Recognizing the Rights of Indigenous Peoples in International Trade and Environment in J. Borrows and R. Schwartz, eds. 2020. *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements*. Cambridge University Press. pp. 133–163. Cited in Maria Lorena Cleto and Dorothea M. Ramizo, *Fostering Inclusive Trade: Leveraging Free Trade Agreements to Protect Indigenous Peoples’ Rights in Asia and the Pacific*, ADB Briefs No. 315, October 2024, page 2. <https://www.adb.org/sites/default/files/publication/1002611/adb-brief-315-ftas-indigenous-peoples-rights.pdf>.

IV. Concerns of Indigenous Peoples regarding trade and trade agreements

While Indigenous Peoples have long been engaged in trade and economic cooperation—both among themselves and with settler states—the expansion of modern trade and investment regimes has brought new risks and new opportunities. Across jurisdictions, Indigenous Peoples have raised concerns that trade agreements have often been negotiated and implemented without their involvement, and without due consideration of their distinct rights, knowledge systems, and priorities especially around the impacts of trade and investment on their lands and people. These touch on the exploitation of natural resources and on their lands and traditional knowledge without consent, and the lack of consultation and cooperation in both developing trade policies that affect their communities and implementing provisions in trade agreements, among others.²¹

Such views have been expressed in various ways, through public protest and strikes against corporations and investors from trading partners, through interviews with the press by representatives of Indigenous Peoples and their associations, and through websites and the writings of analysts (Indigenous and others) familiar with their positions.

The analysis in this section draws on a review of existing literature on Indigenous Peoples and trade, as well as the findings from interviews presented in Section X of this study. These interviews involved representatives of Indigenous Peoples, former and current trade negotiators, and individuals engaged in trade governance, providing direct insights into lived experiences, systemic barriers, and perceptions of how trade agreements have affected Indigenous Peoples. The evidence from interviews aligns closely with the broader literature in identifying five principal areas of concern, detailed in this section. Together, these sources underscore the structural and operational gaps that continue to impede Indigenous Peoples from participating equitably in and benefiting as fully as they should from international trade.

The main areas of concern as expressed by Indigenous Peoples around trade, and trade and investment agreements, are those below. Each will be discussed in turn in this section.

- Difficulties in expanding the current structure of Inter-Indigenous trade and investment beyond historical patterns and networks, with the need for better carve outs in trade agreements specific to Indigenous businesses (such as enforceable, more specific and/or larger quotas or set asides).
- Exploitation of traditional knowledge and access to genetic resources belonging to Indigenous Peoples through biopiracy and the consequent loss of available benefits and possible patents.

21 The authors acknowledge that Indigenous Peoples prefer to call their knowledge 'Indigenous knowledge' rather than 'traditional knowledge' because their knowledge is relevant today as it was in the past. However, 'traditional knowledge' is used in this study as it is the terminology found in the text of the free trade agreements examined.

- Exploitation of Indigenous lands under investment agreements/ projects signed or executed without their consent, particularly involving mining and extraction, creating environmental destruction and socially adverse consequences.
- Lack of participation by Indigenous Peoples in the development of relevant trade policy positions, and lack of consultation in the drafting of provisions for inclusion in trade agreements.
- Lack of precision of the commitments on capacity building included in trade agreements with respect to Indigenous Peoples together with their non-implementation.

At the same time, a few of the more recent trade agreements have begun to respond to these concerns—albeit unevenly—through provisions that affirm rights, offer protections, enable targeted economic participation, and/ or establish cooperative frameworks.

A. Difficulties in expanding the current structure of Inter-Indigenous trade and investment beyond historical patterns and networks

Many Indigenous experts feel that the current structure of Inter-Indigenous international trade and investment reflects the legacy of pre-colonial trade networks to a very large extent. Indigenous businesses and SMEs continue to trade more with economies that have large populations of Indigenous Peoples and have not been able to effectively move beyond these historic links. This could partly be the result of the difficulty in accessing markets due to a high degree of remoteness. However, other factors and difficulties also play a role.

While Indigenous businesses are mainly represented in primary industries, resource extraction, construction, and cultural goods and services (data compilation by the OECD—unpublished to date), there are few examples of Inter-Indigenous foreign direct investment that often precedes trade flows, perhaps due to the lack of access to capital and financial services.

View expressed by Indigenous Peoples: The view was expressed by Indigenous experts that trade agreements could help to move Inter-Indigenous trade beyond these historical patterns and constraints, but that their design would need to be accompanied by a rethinking of their contents, along with the adoption of complementary policies targeted at Indigenous Peoples. These policies would encompass inclusion in trade networks and trade missions and more favourable access to trade finance. Additionally, in some views, trade provisions in existing FTAs will need to better provide for support and carve outs such which will help Indigenous businesses to diversify and expand their trade orbit. The view was expressed that the lack of specificity of the carve-outs, such as the setting aside of specific quantities of Indigenous products or services for purchase by government or specific quotas for exports of Indigenous products, currently contained in these provisions do not help Indigenous businesses to diversify and expand their trade orbit. The view was expressed that these provisions make them relatively inaccessible and difficult to use. The development and/or expansion of Indigenous businesses through more specific carve-outs could be beneficial in helping them to acquire the skills, capital, know-how and contacts to be able to access foreign markets better, or to access foreign markets indirectly through participating in domestic supply chains.

Content of the trade agreements examined in relation to this concern

A few of the trade agreements examined contain carve-outs or “set asides” specifically to be filled by Indigenous businesses. This is the case for FTAs negotiated by Canada, New Zealand and Australia.

Such carve-outs are found in chapters on government procurement and state-owned enterprises, as well as in the chapter on textiles and apparel (in CUSMA).

B. Exploitation of traditional knowledge and access to genetic resources belonging to Indigenous Peoples and adverse impacts on environment

The linkages between trade and traditional knowledge, which is often very dependent upon the natural environment, are multiple and complex. However, such linkages do exist and are becoming increasingly important with the growing frequency and severity of natural disasters, the rising levels of ocean water, and the increasing temperatures associated with global warming. Most Indigenous Peoples, particularly those living in rural locations, are dependent upon certain temperatures and rain patterns for their livelihoods in agriculture and their access to traditional products. Any disruptions to this access will put them at a greater disadvantage and further jeopardize their potential for preserving their traditional knowledge and increasing their involvement in international trade. Destruction of the natural environment from lack of adequate environmental protection will prove more harmful to those least able to insulate themselves from these effects, particularly Indigenous Peoples. It will also harm their ability to protect and preserve their traditional knowledge for future generations if that knowledge is dependent upon environmental inputs and resources.

There is an inherent mismatch and challenge in protecting traditional knowledge within Western legal systems and intellectual property protection frameworks.²² This is because traditional knowledge is often communal and passed down orally from one generation to the next, while legal systems in Western countries prioritize individual ownership and patent rights.²³ This leads to misappropriation of Indigenous innovations and knowledge unless these can be adequately

22 Traditional knowledge is understood to encompass a wide range of cultural practices and expressions, including medicinal uses of plants, agricultural techniques, art, music, spiritual practices, and genetic resources. In this context it is essential to recognize that traditional knowledge is not merely a resource to be extracted, but a living tradition intertwined with the identity, values, and spirituality of the people who maintain it. See Laila Barqawi, *Indigenous peoples and intellectual property*, UN Today, 1 February 2025, <https://untoday.org/indigenous-peoples-and-intellectual-property/>.

23 Biopiracy and exploitation of traditional knowledge, Native Peoples and the Environment Review, August 21, 2024, <https://library.fiveable.me/native-people-their-environment/unit-12/biopiracy-exploitation-traditional-knowledge/study-guide/zUIlqetMGXYRm2Xz>.

protected. Indigenous Peoples have suffered significant financial and emotional loss in the past from the exploitation of their traditional knowledge that do not have Western intellectual property protection as companies exploit this knowledge through biopiracy and commercialize it without permission or fair compensation, impeding the ability of Indigenous Peoples to subsequently control and patent this knowledge themselves.

A similar situation occurs with traditional cultural expressions, which encompass designs or pictorial representations of cultural significance for Indigenous Peoples that are pirated and then exploited for profit by others. The misuse of traditional cultural expressions has also led to significant losses for Indigenous Peoples in the absence of its protection under intellectual property frameworks, with certification standards set and enforced.²⁴ This is particularly a problem in the fashion industry where many Indigenous designs have been expropriated and exploited without consent.

Examples of the problem:²⁵

The Hoodia Case: In Southern Africa the San people have used the Hoodia plant as an appetite suppressant for centuries. Pharmaceutical companies took advantage of the plant to develop a weight-loss drug without first consulting or compensating the San people. After years of legal battles, the San were eventually compensated.

The Turmeric Case: Indian communities have used turmeric for centuries for its properties to heal wounds. Without consultation, a patent was granted in the United States for turmeric. This action was contested, and the patent was eventually overturned, but only after significant and costly legal intervention.

The Ayahuasca Case: Ayahuasca is a sacred plant mixture used in Amazonian spiritual practices. It was patented in the United States in 1986 without consultation. Indigenous groups and NGOs challenged the patent, leading to its cancellation after many years in 1999. This raised issues of cultural appropriation and sparked debate on the patentability of sacred plants and traditional medicines.

View expressed by Indigenous Peoples: According to experts and the available materials, Indigenous Peoples wish to see provisions of a binding nature included in trade agreements that will guarantee protection over their ability to control, license and decide upon the use and exploitation of their traditional knowledge, traditional cultural expressions, and access to genetic resources. They also wish to benefit from the commercial use and exploitation of all three. The trade agreements response to this has been through the guarantee of intellectual property rights protection extended to cover traditional knowledge.

24 Esther Aburto Olague, *Misappropriation of traditional knowledge and traditional cultural expressions*, BPP Editions, December 2022, Volume 7, Number 4, <https://bpp.msu.edu/magazine/misappropriation-traditional-knowledge-cultural-expressions-december2022/>.

25 These examples are found in *The World's Indigenous Peoples*, <https://www.visualcapitalist.com/cp/mapped-the-worlds-indigenous-peoples/> and The World Bank Group, *Indigenous Peoples*, <https://www.worldbank.org/en/topic/indigenouspeoples> (last updated 2023).

Content of trade agreements examined in relation to this concern

The large majority (30 of the 36 trade agreements examined) incorporate some form of provisions for the protection of traditional knowledge, folklore, genetic resources, and biodiversity of Indigenous Peoples. These are found in the chapters on intellectual property, the environment, or sustainable development. Some provisions are more explicit and detailed than others. Most are binding.

However, the guarantee for Indigenous Peoples to be the beneficiaries of the financial gains from the commercial use of their traditional knowledge and genetic resources is found in many fewer of these agreements. Notable exceptions are the agreements between Colombia and Peru and Costa Rica.

C. Use of Indigenous lands under investment agreements/projects signed or executed without their consent, particularly involving mining and extraction

The lands inhabited by Indigenous Peoples often harbour valuable mineral resources while they constitute the foundation of traditional and sacred values for Indigenous Peoples and pristine areas of environmental beauty. These lands have usually been settled for thousands of years, though there are often not formal ownership documents.²⁶ The exploitation of these lands has created a collision between Indigenous rights and transnational business activity, particularly in mining and natural resource extraction. Multinational corporations have been driven by the profits to be obtained from foreign direct investment and the demand for natural resources of all types (critical minerals, metals, petroleum and natural gas, among others) which has skyrocketed in recent years, and have been supported in their quest by liberal investment regimes and risk mitigating investment treaties which have lowered the cost of these development projects. Confrontations with Indigenous Peoples who have tried to stop extractive and environmentally destructive projects on their lands have arisen in many instances, some of which have had deadly consequences for Indigenous life and environment.

Indigenous Peoples are affected in just over a third of all environmental conflicts documented in the crowd-sourced data from Global Atlas of Environmental Justice. Mining is the top sector involved. Loss of landscape, livelihood loss and land dispossession were the most frequent impacts mentioned across the 1,044 conflicts affecting Indigenous Peoples that researchers analysed for the study.²⁷ The environmental and social impacts resulting from these conflicts

²⁶ Except when explicitly recognised in early treaties.

²⁷ Global impacts of extractive and industrial development projects on Indigenous Peoples' lifeways, lands, and rights, *ScienceAdvances*, 7 June 2023, Vol 9, Issue 23, <https://www.science.org/doi/10.1126/sciadv.ade9557>. It should be noted that the dataset is incomplete, with gaps for Central Asia, Russia and the Pacific.

which violated specific articles of the UNDRIP were found to have affected 740 Indigenous groups, with Quechua people in South America at the top of the list.²⁸ The map below gives a visual impression of the extent of conflicts around land use and environmental exploitation and degradation involving Indigenous Peoples that are occurring at present around the world.²⁹

While most of the investment instruments that are involved in these conflicts are constituted by bilateral investment treaties (now numbering more than 3,000 worldwide), nearly all modern trade agreements include a substantive investment chapter which contains similar, and often identical guarantees to those in bilateral investment treaties for the protection of investors and their investments in the territory of a country's trading partner/s. In addition, many of these investment chapters are accompanied by an Investor-State Dispute Settlement (ISDS) mechanism that enables foreign investors to resolve disputes with the host state through international arbitration rather than in the national court system of the host country. The ISDS system has become very controversial over the past few years.³⁰ Indigenous Peoples, together with other groups, feel that it operates to their disadvantage, given the imbalance in legal power.

Examples of the problem:

*Peru and Copper Mining:*³¹ The Las Bambas copper mine in Peru which began production in 2016 has been the subject of more allegations overall than any other mining project. Predominantly owned and operated by the Chinese state China Minmetals Corporation, Indigenous Peoples have complained about land sale irregularities, water pollution and lack of consultation during years of protests, along with a failure to uphold commitments and agreements.

*India and Bauxite Mining:*³² The Dongria Kondh people in Odisha, India, have been fighting a long battle against mining giant Vedanta Resources (which extracts and processes a wide range of minerals, including zinc, lead, silver, copper, iron ore, and aluminium), to save their sacred mountain in the Niyamgiri hill range in Odisha state, from a bauxite mine that would destroy its forests. The battle is ongoing.

28 Note that free, prior and informed consent is the cornerstone of international human rights standards contained in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labor Organization Convention 169 (ILO Convention 169), both discussed in the first section of this paper. The authors of the study state that the real number of Indigenous groups affected by these violations was undoubtedly much higher. The Business & Human Rights Resource Centre has documented 510 allegations of abuses associated with the mining transition minerals between 2010 and 2022, including 65 new allegations in 2022 alone, according to the 'Transition Mineral Tracker: 2022 Analysis' [report](#) published in June 2023.

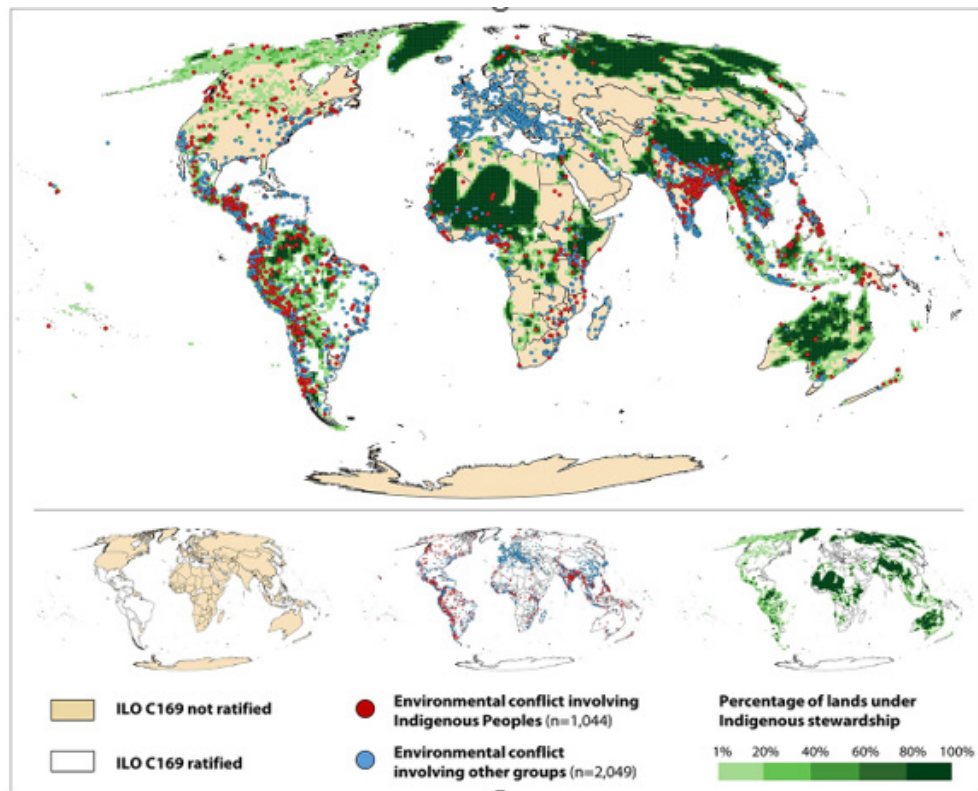
29 Sandra Cuffe, *Over a third of conflicts over development projects affect Indigenous people*: Indigenous Peoples and Conservation, 19 June 2023, <https://news.mongabay.com/2023/06/over-a-third-of-conflicts-over-development-projects-affect-indigenous-people-study/>.

30 Lauge N. Skovgaard Poulsen and Geoffrey Gertz, *Reforming the investment treaty regime*; Chatham House Briefing Paper, Global Economy and Finance Programme, March 2021, <https://www.chathamhouse.org/sites/default/files/2021-03/2021-03-10-reforming-investment-treaty-regime-poulsen-gertz.pdf>.

31 Example drawn from the Harvard Law Review, *The Double Life of International Law: Indigenous Peoples and Extractive Industries*, Volume 129, Issue 6, April 2016, <https://harvardlawreview.org/print/vol-129/the-double-life-of-international-law-indigenous-peoples-and-extractive-industries/>.

32 The Dongria Kondh, *Survival*, <https://www.survivalinternational.org/tribes/dongria>.

Figure 1: Map of environmental conflicts involving Indigenous Peoples and other groups, ILO C169 signatory countries, and Indigenous Peoples' lands



Source: Image by [Scheidel, A., et al.](#), ScienceAdvances, 7 June 2023.

*Ecuador and Copper Mining:*³³ The development of Ecuador's two largest copper deposits—the Mirador and San Carlos Panantza mines—has led in the past to protests on the part of several Indigenous Peoples who felt that the continued operation of the mines threatened ecologically and culturally significant areas in the Ecuadorian Amazon despite the protected legal status of the environment.

Ecuador and Gold Mining: In Ecuador, concerns relating to illegal gold mining in Ecuador's Amazon region have long been expressed by Indigenous Peoples.³⁴ Currently 12 of the country's most important mining projects (gold, silver and copper) face legal challenges or are paralyzed

33 The Mirador and San Carlos mines in Ecuador's Cordillera del Condor mountain range have faced opposition from local Indigenous Peoples over a period of several years. The mines are located in the provinces of Morona Santiago and Zamora Chinchipe, which are part of the Ecuadorian Amazon's ecologically and culturally sensitive Shuar territory. The mines are currently owned and managed by Corriente Resources, a subsidiary of the Chinese Railway Construction Corporation-Tongguan (CRCC-Tongguan) conglomerate. This conflict persists to the present day. See Cintia Quiliconi and Pablo Rodriguez Vasco, Chinese Mining and Indigenous Resistance in Ecuador, Carnegie Endowment for Peace, September 2021, <https://carnegieendowment.org/research/2021/09/chinese-mining-and-indigenous-resistance-in-ecuador?lang=en>.

34 Kimberley Brown, "Will Ecuador's Illegal Mining Crackdown Protect Indigenous People?", Thomson Reuters Foundation, May 2023, <https://www.context.news/nature/will-ecuadors-illegal-mining-crackdown-protect-indigenous-people>.

due to the opposition of Indigenous Peoples affected by the projects.³⁵ There is also growing concern about the link between criminal mining activities and drug trafficking in Ecuador, which has filtered into Indigenous Peoples.³⁶

Content of trade agreements examined in relation to this concern

The majority of the 36 trade agreements examined contain a chapter on investment as this has become a standard part of modern international trade treaties.

Many, but not all, of these trade agreements also include an Investor-State-Dispute-Settlement (ISDS) mechanism.

Only three of the trade agreements examined contain specific provisions relevant to Indigenous Peoples in the investment chapter.

View expressed by Indigenous Peoples: Indigenous Peoples wish to see provisions of a binding nature included in trade agreements that will guarantee their ability to protect their lands and natural environment from mining and other types of exploitation (such as building a dam). They also demand the right to be consulted by their respective government whenever discussions are undertaken with potential foreign investors that would affect the use of the land they own or have traditionally occupied for thousands of years and its natural environment.

D. Lack of participation by Indigenous Peoples in the development of trade policy positions and relevant provisions for inclusion in trade agreements

Indigenous Peoples emphasize the critical importance of consultation with them in the processes and dialogue around the formulation of trade policy in general, and more specifically in the process of negotiating provisions in trade agreements that directly affect them.³⁷ Some of those interviewed criticized government authorities for their reluctance to directly consult with Indigenous Peoples

35 “12 mining projects face opposition and legal procedures”, Primicias, March 18, 2025, <https://www.primicias.ec/noticias/economia/proyectos-mineros-ecuador-riesgo-oposicion/> Note: This opposition is shared by a number of civil society and environmental organizations in Ecuador. “Ecuador’s President Noboa Omits Major Challenges and Indigenous Opposition Facing Nation’s Mining Sector”, AMAZON WATCH, March 2024, <https://amazonwatch.org/news/2024/0304-ecuadors-president-noboa-omits-major-challenges-and-indigenous-opposition-facing-nations-mining-sector>.

36 Marcos Colon, “Criminal mining, militarization, and Indigenous challenges in the Ecuadorian crisis”, El Pais, January 2024, <https://english.elpais.com/international/2024-01-21/criminal-mining-militarization-and-indigenous-challenges-in-the-ecuadorian-crisis.html>.

37 From the research and interviews, it would seem that the Governments of Canada and New Zealand have made the most progress in formalizing the structure and practice of their consultative processes. In Canada, the consultation process is termed ‘meaningful engagement’. These processes are detailed in Section X. They are also discussed as part of good practices in Section XI.

on issues in recent negotiations or to include them as part of national delegations.³⁸ Based on inputs from interviews and literature reviews, the key problems in this area are set out below. Some of these problems result from insufficient or non-existent government support or funding. They also referenced the lack of existing consultative processes. Other contributing factors may include insufficient awareness of the need for this participation and a lack of capacity on the part of Indigenous groups (or government representatives) to participate.³⁹

Manifestations of the problem:

Under-representation or non-representation of Indigenous Peoples in the trade policy process: Indigenous Peoples are either under-represented or not represented at all during the development of trade policy positions. They are also not consulted during the negotiation of FTAs. The process and procedures required to engage this participation have often not been put in place. How to adequately and fairly engage the often-numerous different Indigenous groups has also been a challenge.

Weak capacity for Indigenous representation: Given the complexity and technical nature of the issues covered by trade negotiations, Indigenous groups often express a lack of sufficient capacity to effectively represent their rights and interests in these discussions. This results in limited engagement in trade policy design and in the implementation of FTAs. Government capacity for engagement with Indigenous Peoples may also be limited.

Lack of relevant research and data: There is a significant lack of research and data collection to better understand the potential impact of FTAs on Indigenous Peoples' participation and benefits from trade.

38 One example of the consequences of the lack of consultation of Indigenous Peoples in the trade policy process can be seen in the recent article by a journalist for CBC News that is quite explicit in this regard. Written shortly after the finalization of negotiations on a free trade agreement between Canada and Ecuador, the article describes how the Confederation of Indigenous Nationalities of Ecuador (CONAIE), the country's largest Indigenous organization representing 10,000 communities, has come out in opposition to the recently concluded FTA because they were not consulted as Indigenous Peoples, which they consider to be a violation of their rights. CONAIE feels that the trade agreement would mainly benefit Canada's mining sector, which is the largest foreign direct investor in Ecuador, and would result in destructive impacts on the environment in the Ecuadorian Amazon. CONAIE has stated that it will fight the ratification of the agreement. See Brett Forester, *Good for mining but bad for democracy? Why Indigenous groups in Ecuador oppose free trade deal with Canada*, CBC News article, February 10, 2025, <https://www.cbc.ca/news/indigenous/ecuador-canada-free-trade-agreement-finalized-1.7455450>.

Another example is the opposition of the *Rosebud Sioux Tribe (Sicangu Lakota Oyate)* and the *Fort Belknap Indian Community (Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes)* which sued the U.S. Government in 2018 for numerous violations of the law and for proceeding without due consultation in the Keystone XL pipeline permitting process. After filing several federal lawsuits, including against the U.S. Department of Interior and the Bureau of Land Management over their January 2020 issuing of the KXL permit, the permit was revoked in January 2021 and the project terminated in June 2021. See *Keystone XL Pipeline: Rosebud Sioux Tribe vs. Trump*, Native American Rights Fund, <https://narf.org/cases/keystone/>.

39 It should be noted that there may also be capacity constraints to engaging in consultations on the government side, which are not mentioned as often; however, these do exist. Government negotiators are usually under time pressures and may not possess the knowledge or the time to be able to engage with Indigenous Peoples effectively. This can be the case when there are hundreds of different Indigenous Peoples or groups, lack of national Indigenous representative organizations, many different languages and remote distances to deal with, as well as a lack of engagement experience.

Lack of sufficient effort (by governments and other allies/partners such as business) to enhance the capacity of Indigenous Peoples' capacity to participate in conventional trade: To broaden Indigenous Peoples' involvement in trade, more support activities are needed, including participation in trade fairs, trade delegations, access to business loans, and the provision of technical expertise for export/import business.

The points above underscore the need for more comprehensive approaches that develop and put in place the processes of consultation allowing Indigenous Peoples to discuss and provide input into the policies that shape their participation in global and regional trade, as well as enhancing their ability to take advantage of these opportunities. One Indigenous representative pointed to the inherent aversion of Indigenous People to take risks and therefore a greater need for risk reducing guarantees and incentives to foster an entrepreneurial spirit.

Content of trade agreements examined in relation to this concern

Trade agreements do not play a role in this area, as participation in the development of trade policy positions and consultation in the drafting of provisions for inclusion in trade agreements are both part of domestic policy processes that are carried out at the national level. However, these consultative processes are essential if trade provisions developed for the benefit of Indigenous Peoples are going to be considered as 'legitimate' and have their desired impact.

E. Failure to implement the commitments on capacity building undertaken in trade agreements with respect to Indigenous Peoples

Indigenous and other experts interviewed for this study mentioned the disconnect between commitments undertaken in trade agreements and the readiness and/or adaptation of domestic policy and legislation to implement these commitments in practice. Put simply, if the commitments and provisions in an FTA are not followed by the appropriate changes in domestic legislation (or policies, programs, processes, or budgets), these will clearly not have the intended beneficial impact. Likewise, there will be no possibility to hold other Parties in the agreement accountable in the eventual case that such commitments are not implemented.

Manifestations of the problem:

Imprecision in the text of the commitments agreed in free trade agreements for actions to be undertaken for the benefit of Indigenous Peoples. With the exception of the very recent FTA between Canada and Ukraine that contains a stand-alone chapter

on Indigenous Peoples and where the text is quite specific,⁴⁰ the provisions in other trade agreements that are concerned with capacity building actions to be carried out for the benefit of Indigenous Peoples are found in various chapters throughout the agreements, including in those on SMEs, on Competitiveness, on Trade and Capacity-building, and on Māori Trade and Economic Cooperation (for New Zealand's FTAs). These provisions are, however, very general in nature and do not contain recommendations for specific activities. This makes implementation of these provisions challenging in practice.

Lack of required reporting by the committees established in the trade agreements on the actions to be undertaken for the benefit of Indigenous Peoples. In most of the chapters that mention actions on behalf of Indigenous Peoples (and other marginalized groups) to increase their participation in international trade, a committee is established to facilitate cooperative activities and thus assist in the implementation of the chapter. This is the case for committees set up under the chapters on SMEs, Competitiveness, and Trade and Capacity-Building. However, there is generally no required reporting by these committees on the cooperation actions that are undertaken. In no case was it possible to find written records of the types of cooperative and/or capacity-building activities that were actually carried out. Likewise, there was no record of what discussion had taken place in the committee around this issue. The absence of this information makes tracking the impact of implementation of these FTAs quasi-impossible.

Content of trade agreements examined in relation to this concern

Several of the trade agreements examined contain one or more chapters that mention carrying out cooperation activities on behalf of Indigenous Peoples, associated with committees to help facilitate these activities. Most of these provisions are found in chapters on the environment or in chapters on cooperation and capacity building but are also present in the chapters on SMEs and trade and sustainable development. However, only the most recent trade agreements require the associated committee in question to provide written reports of the activities carried out in these areas.

40 This concerns the FTA between Canada and Ukraine (2023) with Chapter 25 on Trade and Indigenous Peoples. <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ukraine/text-texte/2023/25.aspx?lang=eng>. The FTA recently finalized between Canada and Ecuador also contains a chapter on Trade and Indigenous Peoples, but the text of this agreement has not yet been made publicly available. See Canada-Ecuador Free Trade Agreement: Summary of Negotiated Outcomes, at <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ecuador-fta-ale-equateur/summary-nego-resume.aspx?lang=eng>.

V. Expansion of trade agreements towards more inclusive trade

A. Rethinking trade in the context of inclusivity

Over the past decade, some free trade agreements have gone well beyond a focus on liberalization of trade in goods, services and investment to embrace issues of a broader societal nature. This has been due to several pressing concerns that have made their way into the trade arena. These include respect for human rights and labour laws, the support for women's economic empowerment and the pursuit of gender equality, the need to protect and manage the environment to ensure sustainable development, and the desire to make participation in and benefits from trade more socially and economically inclusive. The expansion of the scope of an ever-larger number of trade agreements in the latter area has been due in part to the greater appreciation of the fact that while opening the economy to a larger market may bring considerable efficiency gains to producers and benefits to consumers through lower prices and better quality and choice of products and services, it is not enough to guarantee that trade brings positive outcomes to all. To ensure that these benefits from trade are broadly shared, and to help reduce the potential losses to certain segments of the economy (which are often disproportionately borne by marginalized groups in society), governments are now paying attention to the incorporation of provisions in trade agreements that have the objective of promoting inclusive trade.

Concerns over inclusive trade are the most recent addition to this list of expanded issues added to trade negotiations.⁴¹ Inclusive trade refers to incorporating inclusion both in **processes** and **outcomes** as regards the negotiation and administration of agreements. Processes by bringing in voices and needs of more groups in society; outcome in terms of efforts to deliver a fairer distribution of gains obtained from trade agreements. The definition of inclusive trade is not agreed by all who use the term. Different approaches are discussed below, and a workable definition of inclusive trade is put forward. The focus of this study, however, is on the expansion of trade agreements to cover trade concerns of Indigenous Peoples.

Inclusion is not unidimensional. A recent report by the Dag Hammarskjöld Foundation on the role of the United Nations in promoting inclusion in its work discussed this objective in three dimensions, namely the social, economic, and political dimensions.⁴² This study addresses the economic dimension of inclusion and centres the discussion in the perspective of trade. For this study, ***economic inclusion refers to creating equitable access to financial resources, opportunities, and support systems that enable individuals and communities, especially those historically marginalised, to participate fully in the economy.***⁴³

41 These issues are sometimes and inappropriately labelled as non-trade or non-economic issues. Yet it is clear that a disregard for inclusivity adversely affects economic performance.

42 Realising Inclusivity: The role of the United Nations in promoting Inclusion at the country level, Report by the Dag Hammarskjöld Foundation, Sweden, 2021, <https://www.daghammarskjold.se/wp-content/uploads/2021/03/realising-inclusivity.pdf>.

43 From the Oxford Review, <https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/economic-inclusion-definition-and-explanation/>.

In other words, economic inclusion is associated with the expansion of opportunities for more people. Five inter-related elements characterize an inclusive economy: participation, equity, growth, sustainability, and stability (Figure 2). This study extends the reach of economic inclusion to the area of participation in trade.

Figure 2: Five characteristics of an inclusive economy



Source: Authors’ representation of the concept described in Emily Garr Pacetti (2016).⁴⁴

McKinsey and Co. (2024)⁴⁵ similarly describes economic inclusion as a state **“when people not only have their basic subsistence needs met but also are productive, fulfilled, and fully empowered to make choices about their lives”**. Importantly, economic inclusion improves with higher productivity and in return contributes to productivity growth.⁴⁶

Applying this definition to the area of trade, one can consider trade to be inclusive if all segments of society can contribute to and benefit from the opportunities generated by international trade. This is difficult to grasp (and to put in place from a policy perspective) given historical evidence of sharply uneven distribution of benefits (and costs) of trade.⁴⁷ More equal enjoyment of trade outcomes will almost never be automatic; there is now an understanding that these must be generated by specific trade policy design and complemented by policies that assist in making the distribution of benefits from trade more equal (or at least less uneven). The 2024 World

44 Emily Garr Pacetti (2016), The Five Characteristics of an Inclusive Economy: Getting Beyond the Equity-Growth Dichotomy, Perspective, The Rockefeller Foundation, December 13, <https://www.rockefellerfoundation.org/perspective/five-characteristics-inclusive-economy-getting-beyond-equity-growth-dichotomy/>.

45 McKinsey and Company, What is Economic Inclusion?, 14 March 2024, <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-economic-inclusion>.

46 The same article refers to previous research which shows that economic inclusion within organizations is also linked to better organizational performance. See more details in McKinsey and Company, *ibid*.

47 Jakob Engel, Deeksha Kokas, Gladys Lopez-Acevedo, and Maryla Maliszewska, *The Distributional Impacts of Trade*, World Bank Group, 2021, <https://openknowledge.worldbank.org/server/api/core/bitstreams/f525eb64-cea2-5060-b7b6-25cccafeb768/content>.

Trade Organization (WTO) *Report on Trade and Inclusiveness* discusses the linkages between trade and inclusiveness without explicitly defining inclusive trade.⁴⁸

In this study, ***inclusive trade refers to the principle that all groups in society, including particularly Indigenous Peoples, should be able to gain from increased trade. It supports the policy goal of economic inclusion for groups that may currently be marginalized or challenged in their ability to exploit international trading opportunities.***⁴⁹

Definitions like these do not specify who exactly is included under “all.” In other words, which groups are to be included or not be excluded are not specified. The identification of the specific groups is left to the government. Such a choice will, therefore, be closely tied to the unique economic, cultural, and social contexts of the country (or region) in question. Some governments will focus on the rights of Indigenous Peoples, some on social inequalities, and others on regional inequalities. Therefore, each government’s choice of focus in its efforts to realize more inclusive trade will reflect its respective priorities and challenges. This means that a definition can, and typically will, vary from country to country. The focus of this study is on the way trade agreements can be used to develop more inclusive trade policies delivering greater gains from trade for Indigenous Peoples.

Both Canada and New Zealand have been worldwide leaders in the promotion of important and widely accepted societal objectives in the development of their trade strategy and the trade agreements they have negotiated. This is the case for gender equality and women’s economic empowerment, as well as environmental sustainability.⁵⁰ The Government of Canada has also developed a well-defined strategy towards inclusive trade known as the Trade Diversification Strategy. Through this strategy Canada “seeks to ensure that the benefits and opportunities that flow from trade are more widely shared, including with under-represented groups such as women, small and medium-sized enterprises, and **Indigenous Peoples.**”⁵¹ The strategy came

48 Dr. Ngozi in her foreword to the report states that the report discusses “how we can use trade and other policies to improve the lives and livelihoods of people who remain on the margins of the global economy” (p. 6). While the term “inclusive trade” gets mentioned in the report numerous times, there is no explicit definition of that concept. The WTO *Report on Trade and Inclusiveness* is available at https://www.wto.org/english/res_e/booksp_e/wtr24_e/wtr24_e.pdf.

49 The authors would like to point that they agree with the notion that there is no “one-fits-all” definition of inclusive trade and they align with the approach of Saha et al. (2022) which combines a deliberative approach with the distributive dimensions underscoring the need to see inclusive trade as trade policy for development. See more in Saha, A.; Abounabhan, M.; Di Ubaldo, M.; Fontana, M. and Winters, L.A. (2022) *Inclusive Trade: Four Crucial Aspects*, IDS Working Paper 564, Brighton: Institute of Development Studies, DOI: 10.19088/IDS.2022.009 available at <https://www.ids.ac.uk/publications/inclusive-trade-four-crucial-aspects/>.

50 Please see further information on gender, equality and social inclusion on Government of Canada, Overview of Gender Based Analysis Plus, https://www.international.gc.ca/trade-commerce/gender_equality-egalite_genres/gba_plus-acs_plus.aspx?lang=eng; further information available on Government of Canada Trade and Gender pages at <https://international.canada.ca/en/services/business/trade/policy/inclusive/gender>. More information of work on environmental sustainability is available on the Global Affairs Canada, Trade and Environment website at <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/env/trade-commerce-env.aspx?lang=eng>.

51 When pursuing economic inclusion through trade and investment agreements, the Canadian Government follows a three-prong approach: 1) putting more Canadians at the heart of the Canadian trade policy-making agenda; 2) expanding access for more Canadians through inclusive content in trade agreements, and 3) engaging with international partners to promote and advance inclusive trade initiatives. See Canada’s Inclusive

about as a result of extensive public comment during the negotiations of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The Canadian Government responded to these concerns through initiating cross-country consultations in a more systematic way, engaging with stakeholders throughout the country. A progressive trade agenda emerged from these consultations in 2017, with development of a GBA Plus assessment process for prospective FTAs to identify barriers and opportunities for new provisions. New elements around transparency and accountability with stakeholders, international engagement, and alignment with other domestic policies and priorities were also added. The Trade Diversification Strategy is now called an “Inclusive Approach to Trade.”⁵²

Canada is advancing this inclusive approach to trade both domestically as well as through the Inclusive Trade Action Group (ITAG), established on the margins of the 2018 APEC Leaders’ Summit. The ITAG took shape following their earlier Joint Declaration on Fostering Progressive and Inclusive Trade. ITAG members include Australia, Chile, Costa Rica, Ecuador, Mexico and New Zealand. Canada shares a commitment with its ITAG partners to work together to help make international trade policies more inclusive to ensure that the benefits of trade and investment are more broadly shared. In addition, the Government of Canada engages with Indigenous Peoples on Canada’s trade policies and negotiations through I-Trade, an Indigenous Trade Working Group, and through agreement-specific Indigenous Peoples Advisory Groups (IPAGs). Participation in the I-Trade and IPAGs is open to Indigenous Peoples in Canada. Originally created in 2017 to support trade negotiations, notably with respect to the Canada-United States-Mexico Agreement (CUSMA), the I-Trade continues to provide feedback to inform the government’s position on trade policy and negotiations.

In a similar vein, the Government of New Zealand formally introduced a well-defined strategy towards inclusive trade, under the name Trade for All Agenda. This Agenda was launched in March 2018 as a response to public concerns regarding the country’s participation in trade agreements and ensuring that trade policy delivers for all New Zealanders.⁵³ The initiative benefited from broad public consultation over several months in 2018, that provided public feedback on how to approach all phases in trade policy, from design to monitoring and evaluation to ensure fairer impacts. A Trade for All Advisory Board was subsequently established, which produced an independent report with recommendations to the Government on this Trade for All Agenda. The findings and recommendations of the report and the core principles approved by Cabinet provide the foundation of the Trade for All Agenda, which, along with other policies, aims to support sustainable and inclusive economic development. At the conclusion of New

Approach to Trade, Government of Canada website, https://www.international.gc.ca/trade-commerce/gender_equality-egalite_genres/approach-can-approche.aspx?lang=eng.

52 See Government of Canada websites: About Canada’s Inclusive Approach to Trade, <https://international.canada.ca/en/services/business/trade/policy/inclusive/about> and About the Inclusive Trade Action Group, <https://international.canada.ca/en/services/business/trade/policy/inclusive/action-group/about>.

53 This is the link to the launch speech “Modernising our trade policy with Trade for All: have your say” by Hon David Parker, then Minister of trade (<https://www.beehive.govt.nz/release/modernising-our-trade-policy-trade-all-have-your-say>). With the change in Government in November 2023, the new Coalition Government of National, Act and NZ First parties have removed all information on this progressive and inclusive initiative and the only information that is still available are the documents which are part of official Parliamentary document series which are not allowed to be deleted.

Zealand's Trade Policy Review at the WTO in 2022, this Agenda received a special mention by the Chairperson who noted that "Members applauded New Zealand for implementing its Trade for All Agenda that aims to ensure that trade benefits all New Zealanders,"⁵⁴

Following the introduction of the Trade for All policy, in 2019 the Government established the program Aotearoa ki te Ao to ensure trade policy helps Māori succeed internationally and to support Māori trade opportunities. The program positioned Māori to lead international efforts to expand Indigenous Peoples' participation in global trade, including through inclusive trade policies, rules and cooperation with our trade partners, and ultimately the establishment of Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) in 2021.⁵⁵

Box 1: The core principles of the New Zealand Trade for All Agenda

- Open conversation with the public and key stakeholders around the future direction of New Zealand's trade policy, including consultation with the Māori, consistent with their role as a Treaty partner;
- Creating new and more sustainable economic opportunities for New Zealanders of all incomes and backgrounds;
- Supporting the international rules-based system and New Zealand's contribution to its modernization;
- Supporting multilateral negotiations as a first-best option for New Zealand, followed by open plurilateral negotiations;
- Enhancing New Zealand's economic integration with the Asia-Pacific region, and economic connections to other regions, including through RTAs and FTAs;
- Supporting trade policy for maximizing the opportunities and minimizing risks associated with global issues;⁵⁶
- Preserving the right of governments to regulate in the public interest, including for national land markets, taxation of multinational businesses and public services; and
- Developing specific directives for future trade policies and negotiations to operationalize Trade for All.

Source: Appendix 1: Trade for All principles, Report of the Trade for All Advisory Board, Nov 2019 (ISBN: 978-0-473-50649-0)

54 Concluding remarks by the Chairperson at the New Zealand's Trade Policy Review in 2022, WTO, https://www.wto.org/english/tratop_e/tpr_e/tp526_crc_e.htm.

55 See more on IPETCA in Section VI.

56 Global issues include environmental issues such as climate change, protecting New Zealanders' health and wellbeing, labour rights, gender equity, the rights of Indigenous Peoples, SME participation in international markets, inclusive regional economic growth, poverty reduction and sustainable job creation, protecting traditional knowledge.

B. Expansion and broadening of trade agreements

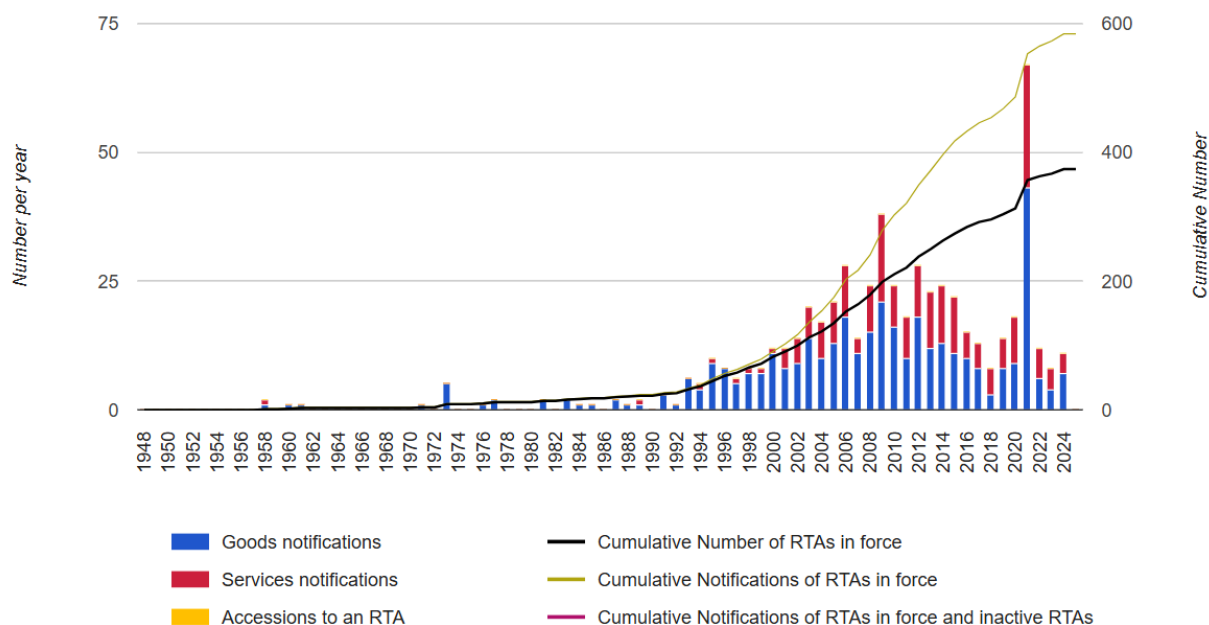
Over the past 25 years, the number and scope of trade agreements⁵⁷ have expanded significantly, with 374 in force as of March 2025 (see Figure 3). Initially focused on tariff liberalization and customs procedures, trade agreements since the mid-1990s have evolved to address regulatory issues, given the significant direct as well as indirect impacts that domestic regulations can have on trade. Starting with the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and the North American Free Trade Agreement (NAFTA), services, labour, and environmental concerns were introduced, setting a precedent for “deep” trade agreements. Trade agreements are sometimes viewed as a “laboratory” in which new types of provisions are designed to address new issues and challenges.

Modern trade agreements now commonly include provisions on investment, labour standards, environmental protection, state-owned enterprises, competition, and public procurement. These additions reflect growing recognition that trade impacts go beyond market access for goods and services and can affect labour rights, sustainability, and inclusion. For example, over 40% of reciprocal trade agreements concluded between 2010 and 2021 included labour or environmental provisions.

Research by the World Bank and others confirms that deeper trade agreements reduce trade costs, foster foreign investment, and support regulatory predictability. Studies also find that environmental clauses included in these agreements can serve to curb deforestation and reduce pollution-intensive exports.

⁵⁷ WTO's terminology refer to regional trade agreements (RTAs) and custom unions. In this study we chose to refer to a generic form of a reciprocal trade agreement as “free trade agreement” (FTA) and use it as a synonym for the RTAs.

Figure 3: Evolution in trade agreements notified to the WTO, 1948-2025



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately.

Source: WTO Secretariat - March 24, 2025

More recently, trade agreements have begun addressing gender equality and the participation of, *inter alia*, women, MSMEs, and Indigenous Peoples. While many such provisions are aspirational, some—like the WTO Reference Paper on Domestic Regulation of Services—establish binding commitments to non-discrimination. The WTO (2024) established that more than 80% of current trade agreements include “provisions that explicitly relate to some of the dimensions of inclusiveness, including human rights, workers’ rights, gender equality, indigenous peoples’ rights and MSMEs’ participation” (p. 131).⁵⁸

The WTO (ibid., 2024) introduces the Inclusiveness RTA index (see Figure 4) which considers 33 explicit types of provisions addressing different dimensions of inclusiveness and ranks the trade agreements between North-North, North-South and South-South over 1990-2021. The index ranges between 0 and 1. As can be observed in Figure 4, the number of provisions with inclusivity dimensions included in North-South and North-North trade agreements overshadows the South-South agreements. While many provisions on inclusiveness promote cooperation activities, other provisions establish specific level-playing-field disciplines or exemptions.⁵⁹

58 WTO, Report on Trade and Inclusiveness, 2024, https://www.wto.org/english/res_e/booksp_e/wtr24_e/wtr24_e.pdf.

59 WTO, ibid, 2024, page 131. The authors of this study also derived similar results in their research of the inclusivity dimensions in the ASEAN trade agreements (unpublished paper for EDM, 2024).

Figure 4: Increasing provisions on inclusiveness in trade agreements, 1990–2021



Source: WTO, 2024 as cited in José-Antonio Monteiro and Roberta Piermartini (2024).⁶⁰

The rising trend of including inclusiveness-related provisions into trade agreements reflects growing awareness that while trade brings aggregate benefits, it does not address existing economic inequalities and can in fact reinforce these.⁶¹ Promoting inclusive trade requires designing trade agreements that intentionally aim to expand participation in trade and the distribution of its benefits more equitably—particularly to groups historically excluded from the gains of globalization, such as Indigenous Peoples.

60 José-Antonio Monteiro and Roberta Piermartini, <https://cepr.org/voxeu/columns/trade-and-inclusivenessrade> and Inclusiveness, Vox EU Column on International Trade, 11 Nov 2024, <https://cepr.org/voxeu/columns/trade-and-inclusiveness>.

61 Despite growth in aggregate trade, the gains have not been proportionately shared by marginalized groups—for example, women account for only 40 percent of export-related employment in New Zealand (while representing 51 percent of the working-age population), and Indigenous peoples continue to face significant barriers to equitable participation. To address these persistent disparities, recent trade agreements and arrangements have adopted inclusiveness-focused provisions, such as the Global Trade and Gender Arrangement and designated clauses in modern free trade agreements, aiming to enhance the economic empowerment and participation of under-represented groups.

VI. Innovative ways to address the promotion of trade for Indigenous Peoples

Three recent initiatives that do not follow the conventional pattern of formal legal treaties taken on by free trade agreements are nonetheless noteworthy in the context of this study. These are the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA), the Digital Economy Partnership Agreement (DEPA), and the Indo-Pacific Economic Framework (IPEF). They display innovative features as regards Indigenous Peoples and trade and are discussed in this section.

A. Indigenous Peoples Economic and Trade Cooperation Arrangement

The Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) marks a significant milestone in international trade and economic cooperation by placing Indigenous Peoples at the forefront. This groundbreaking arrangement aims to empower Indigenous Peoples through inclusive economic development and trade opportunities.⁶² Concluded on the margins of the APEC Leaders Meeting in December 2021, the governments of Australia, Canada, Chinese Taipei and New Zealand reached agreement on IPETCA, with the support of Indigenous Peoples in those economies. The United States joined as an observer in 2024.⁶³

Since that date, several other economies have also expressed interest in joining IPETCA.⁶⁴ The arrangement is open to any World Trade Organization (WTO) member or other economy interested in pursuing inclusive trade and investment approaches for Indigenous Peoples. The World Bank estimates that 70 percent of the world's 476 million Indigenous people live in the Asia Pacific region, which is a key region for IPETCA.⁶⁵

While it is not a binding agreement, IPETCA is a first-of-its-kind plurilateral arrangement that fosters Indigenous-led, government-enabled, result-oriented collaboration between Indigenous Peoples and governments to address specific challenges and unlock the economic and trade

62 IPETCA is termed an “arrangement” rather than an “agreement” because it is a cooperation-based and voluntary instrument. Unlike binding agreements, arrangements like IPETCA focus on collaborative efforts among participating economies and Indigenous Peoples to enhance economic empowerment and trade opportunities. They are designed to facilitate cooperation and knowledge-sharing rather than enforce legally binding commitments, allowing more flexibility in addressing issues and opportunities related to Indigenous trade and economic inclusion. New Zealand MFAT, 2022, The Indigenous Peoples Economic and Trade Cooperation Arrangement, <https://www.mfat.govt.nz/en/trade/nz-trade-policy/the-indigenous-peoples-economic-and-trade-cooperation-arrangement>; Michael Woods and Gordon LaFortune, 2022, APEC's Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA), January, <https://www.slaw.ca/2022/01/13/apecs-indigenous-peoples-economic-and-trade-cooperation-arrangement-ipetca/>.

63 Office of the USTR Press Release 22 April 2024, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/april/united-states-granted-observer-status-indigenous-peoples-economic-and-trade-cooperation-arrangement>.

64 Chile, Peru and Mexico have all expressed interest in joining IPETCA.

65 World Economic Forum White Paper, Enabling Indigenous Trade: Actionable Guidance for Governments, March 2025, https://reports.weforum.org/docs/WEF_Enabling_Indigenous_Trade_2025.pdf

potential of Indigenous Peoples. In that regard, it follows the Asia-Pacific Economic Cooperation (APEC) tradition of putting in place path-finding mechanisms which allow for gradual but systematic transformation or design of new policies and regulations, which are often later used as a blueprint for global rules.⁶⁶

i. Key objectives and principles

IPETCA is rooted in a commitment to advancing Indigenous economic empowerment and cultural preservation. Its primary objectives include:

- 1. Increasing Indigenous Peoples' participation in trade:** IPETCA works towards removing barriers and creating pathways for Indigenous businesses and entrepreneurs to engage in international trade effectively.
- 2. Promoting economic development in Indigenous Peoples:** The arrangement seeks to facilitate investments, foster entrepreneurship, and encourage sustainable economic growth within Indigenous Peoples.
- 3. Preserving Indigenous values and cultural knowledge:** IPETCA acknowledges the importance of cultural heritage and traditional knowledge for Indigenous economic activities and seeks to protect and promote these valuable assets.
- 4. Enhancing collaboration between Indigenous Peoples and economies:** The arrangement establishes platforms for dialogue and collaboration between representatives of Indigenous Peoples and government officials to address shared economic and trade concerns.

IPETCA operates on principles of inclusivity, partnership, and mutual respect. It recognizes the diversity of Indigenous cultures and economic systems while emphasizing the importance of self-determination and community-led initiatives. IPETCA is unique in referencing Indigenous elders, youth, women, and gender diverse and non-binary people in a few places in its text.

ii. Institutional structure and scope

The main coordinating body guiding the implementation of IPETCA is the Partnership Council.⁶⁷ Composition of the Partnership Council is set by Article 4.2 of the Terms of Reference stipulating that the Council be composed of up to two government representatives of each participating economy; and up to two representatives of Indigenous Peoples from each participating economy. However, Article 4.3 allows for “each participating economy to appoint at its sole discretion, in accordance with paragraph 9(b)(ii) of the IPETCA, more than two representatives of Indigenous Peoples to the Partnership Council to ensure representation of Indigenous Peoples, including where there is a constitutional basis to do so.”

66 The most recent one being the APEC Non-Binding Principles for Domestic Regulation of the Services Sector that inspired the JSI on Services Domestic Regulation at the WTO.

67 See the Terms of Reference for the Partnership Council at https://www.international.gc.ca/trade-commerce/indigenous_peoples-peuples_autochtones/ipetca-partnership-tor-acecpa-partenariat-cdr.aspx?lang=eng.

In this regard, the three Constitutionally recognized Indigenous groups in Canada are involved in the Partnership Council. In the United States, the USTR will be engaging further with Tribal nations and Alaska Native, American Indian, and Native Hawaiian community-based organizations regarding U.S. observership and representation. In the case of New Zealand, various Māori iwis are represented at the Partnership Council (see also subsection VI.A below for more details).

The IPETCA Partnership Council, comprising government and Indigenous representatives from participating economies acting as equals, is considered to be the most innovative part of the arrangement. There is no other arrangement or treaty addressing trade and economic matters in which Indigenous Peoples jointly make decisions with state actors. The closest are the agreements between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation Agreement (ANZTEC) Chapter 19, Crown-Indigenous Partnerships (New Zealand context (CIP) and Te Puni Kōkiri (TPK) coordination meetings and the Canada-Ukraine FTA, Article 25.5: on Committee on Trade and Indigenous Peoples. This Council oversees the implementation of the arrangement, coordinates activities, and facilitates cooperation between stakeholders. Its first Indigenous Co-chairpersons are Pita Tipene (Ngāti Hine leader and chairman of the Waitangi National Trust) and Traci Houpapa (Federation of Māori Authorities leader). There is also a representative of the Ministry of Foreign Affairs and Trade for the New Zealand Government as co-chairperson.⁶⁸

IPETCA was negotiated during New Zealand's chairmanship of APEC in 2021. Due to the COVID-19 pandemic, the negotiation and early implementation of the arrangement happened online. The Partnership Council meetings, planned to take place quarterly, have mostly taken place virtually. The Council met for the first time in person in San Francisco in November 2023 during the APEC Leaders week as well as in November 2024 in Lima, Peru, on the same occasion.⁶⁹

In addition to the Partnership Council, IPETCA envisages the establishment of Working Groups for the purpose of addressing specific topics. The Working Groups are to be established at the discretion and direction of the Partnership Council including provision of the Working Groups' objectives and expected results, and their durations. The Partnership Council may also provide guidance on how the work will be done and how success will be measured. Working Groups may be composed of Indigenous Peoples, working level government representatives from participating economies, and other entities including Indigenous and non-Indigenous businesses and organisations (Section 10.3). Each participating economy will determine its level

68 It is of note that Pita Tipene is the Co-Convenor of Ngā Toki Whakarururanga, a by Māori for Māori collective, focused on ensuring New Zealand's trade agreements are compliant with Te Tiriti o Waitangi and mandated by a formal mediation agreement as a result of the WA2522 claim. Both he and Traci Houpapa are the co-chairs by virtue of joint chairing of Te Rangitūkupu, a collective of Māori trade advisory groups representatives that was established during APEC21 to input into the IPETCA negotiations. Maui Solomon, a Pūkenga (Technical Advisor) for Ngā Toki Whakarururanga, was also appointed to the partnership council as an Indigenous New Zealand representative in 2023.

69 According to news reported by *The New Zealand Herald*, <https://www.nzherald.co.nz/northern-advocate/news/new-zealand-leads-worlds-first-trade-agreement-between-indigenous-people/2K2RISJIL5FXHKOAZHXABSMNKA/>.

of engagement within a Working Group allowing for flexibility based on interests; therefore, not all economies will participate in each Working Group.

The arrangement covers a wide range of issues relevant to Indigenous economic development, as set out below. IPETCA encourages the development of action plans and initiatives that address specific challenges and opportunities within these areas:

- Responsible business conduct
- Traditional knowledge and intellectual property rights
- Micro, small, and medium-sized enterprises (MSMEs)
- Digital trade and e-commerce
- Tourism
- Agriculture and fisheries

An important part of the arrangement is that it defines Indigenous trade and investment (Article 2a) as “*forms of trade and investment with, between, and among, Indigenous Peoples from the participating economies*”, possibly including the following elements:

- “(i) trade and investment that is relational and aims to build long-term networks of exchange;
- (ii) Indigenous laws and values, including reciprocity, care, trust, respect, and generosity;
- (iii) operating within an intergenerational framework; and
- (iv) the responsibility of Indigenous peoples to protect their lands, resources, and the spiritual interrelationship of the human and natural world, as well as the integrity of the natural systems themselves, while acknowledging the right of Indigenous peoples to develop their economic and social systems, including through trade and investment with non-Indigenous peoples and through new technologies.”

iii. Impact and future prospects of IPETCA

IPETCA has garnered significant attention and support from Indigenous Peoples and governments worldwide. The arrangement’s emphasis on inclusive economic development and cultural preservation resonates with the growing global recognition of Indigenous rights and self-determination. While still in its early stages, IPETCA has already demonstrated the potential to create positive change. The arrangement has already facilitated dialogue and collaboration between Indigenous leaders and policymakers, resulting in greater understanding and awareness of Indigenous economic priorities. The arrangement is expected to generate the development of innovative projects and initiatives aimed at empowering Indigenous entrepreneurs and businesses. There appear to be no concrete outcomes to date that have been identified.

The innovative approach to the negotiation of IPETCA was also precedent setting and worthy of comment. There were two parallel tracks with Indigenous groups from the countries engaging in the discussions who set out to solve difficult issues that arose where consensus was challenging. Indigenous groups from the four participating economies sorted things out amongst themselves and thus allowed the government officials to move towards consensus at the negotiating table.⁷⁰

IPETCA holds the promise for further advancing Indigenous economic empowerment and fostering a more inclusive global trade system. The arrangement's open and flexible nature allows for new economies and Indigenous groups to join, expanding its reach and impact.⁷¹ As IPETCA continues to evolve and mature, it is poised to become a leading platform for Indigenous economic development and cooperation. By fostering partnerships between Indigenous Peoples and economies, the arrangement can help create a more equitable and sustainable future for all.

Box 2: Perceptions about the usefulness of IPETCA for engaging Indigenous Peoples in trade

The interviews with Indigenous Peoples and other experts (see more in Section X) also probed reactions about the potential of the IPETCA arrangement to serve as a model for engagement in trade matters. The IPETCA was widely recognized by interviewees as the most advanced model to date for engaging Indigenous Peoples in trade governance. Its defining feature—a partnership approach led by Indigenous Peoples and supported by governments—was praised as a major conceptual step forward. This partnership is carried throughout the three channels of engagement: capacity-building and information sharing; support for forming representative Indigenous trade bodies; and integration of Indigenous concerns into government trade agendas. The creation of a Partnership Council in IPETCA with Indigenous representation was noted as a valuable innovation.

However, some interviewees cautioned that implementation has been and remains uneven. At the time of interviews (late 2024 and early 2025), not all member economies have successfully nominated representatives of Indigenous Peoples to the Partnership Council, and in some cases domestic coordination challenges have impeded progress. Nonetheless, many viewed IPETCA's primary contribution not just in its specific mechanisms, but in its ability to drive internal policy reforms within member economies. It has created a platform where good practices can be shared and adapted, stimulating peer learning on Indigenous inclusion in trade.

B. The Digital Economy Partnership Agreement

The [Digital Economic Partnership Agreement](#) (DEPA) is an innovative trade agreement negotiated between Chile, New Zealand, and Singapore, and acceded by the Republic of Korea focusing on digital trade and the digital economy. Going beyond the content of traditional FTAs, DEPA addresses a broad range of digital issues including data flows, digital identities, artificial

70 The authors owe this insight to Georgina Wainwright Kemdirim.

71 As expanded in the General Dispositions paragraphs of the IPETCA text. One of the key outcomes of the arrangement is to enable economies to work with Indigenous Peoples to further develop and expand international Indigenous trade, and thus it requires economies to promote policies that increase Indigenous Peoples' participation in trade and investment.

intelligence, and digital inclusion. The agreement is structured into modules covering various aspects of the digital economy, facilitating a comprehensive and flexible approach to digital trade, a crucial area for development and which has become the most dynamic component of world trade. The main commitments of DEPA as presented by the New Zealand Ministry of Foreign Affairs and Trade (MFAT) website are summarized in Box 3.

Part of the originality of the DEPA lies in its inclusion of a dedicated digital inclusion provision (Module 11)—a feature not commonly found in other digital trade agreements. Notably, this provision explicitly references Indigenous Peoples as a group whose participation in the digital economy should be actively supported.

Box 3: DEPA's commitments at a glance

DEPA commitments include:



Cooperation

Implement the agreement and explore how to further enhance our digital economy partnership.



SMEs and the digital economy

Share information that SMEs need to operate in the digital economy and develop a Digital SME Dialogue.



Consumer trust

Promote online consumer protection to ensure consumers have the information to trade with confidence and access to appropriate redress if things go wrong.



Digital products

Affirm existing level of commitments relating to non-discrimination of digital products and ICT products that use cryptography.



Data issues

Protect personal information and affirm existing level of commitment relating to data flows and location of computer facilities.



Innovation

Enhance and encourage innovation in the digital economy, such as through open government data.



Trade facilitation

Facilitate paperless trading, e-invoicing, e-payments and streamlined customs procedures for parcels.



Digital identities

Start discussing digital identities, and share best practice on digital identity policies and regulations.



Emerging technologies

Explore new issues, including competition in the digital economy. Promote financial technology and develop frameworks to support the safe and responsible use of Artificial Intelligence (AI) technologies.



Digital inclusion

Establish a framework for future cooperation between partners on matters of digital inclusion and inclusive trade, including new people-to-people connections among Indigenous Peoples.



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

Source: MFAT, <https://www.mfat.govt.nz/assets/Trade-agreements/DEPA/DEPA-at-a-Glance-factsheet.pdf>.

The DEPA⁷² commits Parties to cooperate on removing barriers and expanding access to digital opportunities for Indigenous Peoples, women, rural populations, and low socio-economic groups. It encourages sharing of best practices, development of inclusive programmes, and disaggregated data collection to better understand participation gaps in the digital economy (Article 11.1.3). While these commitments are framed as cooperation—i.e., not legally binding obligations—they reflect a norm-setting innovation in digital trade agreements by recognizing Indigenous Peoples as actors in the digital transformation.

Further, the DEPA incorporates New Zealand's Treaty of Waitangi exception clause (Article 23.4). This clause affirms the right of the New Zealand Government to adopt any measures it deems necessary to fulfil its obligations to Māori under Te Tiriti o Waitangi, even if such measures are inconsistent with DEPA commitments. Importantly, this safeguard does not require that such treatment be extended to other DEPA Parties, preserving New Zealand's policy autonomy in relation to its Indigenous population.

The incorporation of a digital inclusion module referencing Indigenous Peoples and the Treaty exception clause signal an effort to ensure the digital economy evolves with a recognition of Indigenous rights and realities, even if the mechanisms remain non-binding. The DEPA therefore contributes to a broader conversation about equity and participation in digital trade governance.

C. The Indo-Pacific Economic Framework for Prosperity

The Indo-Pacific Economic Framework for Prosperity (IPEF), launched in May 2022 by the United States and 13 partner countries, represents a non-traditional approach to regional economic cooperation. Unlike a conventional free trade agreement, IPEF is not legally binding and does not offer market access. Instead, it is structured around four thematic pillars: Trade, Supply Chains, Clean Economy, and Fair Economy. As of September 2025, all but the Trade Pillar have been substantially concluded, signed and entered into force.⁷³ Although IPEF does not include Indigenous Peoples in its overall framework or joint statements, several references to Indigenous Peoples appear within specific pillar texts, particularly in the Clean Economy Pillar.

i. Scope and institutional approach

IPEF is a framework rather than a formal treaty. It is designed to allow for modular participation, enabling member countries to join only those pillars they find politically or technically feasible. The initiative currently includes 14 countries: Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, the United States, and Vietnam. IPEF's flexible structure means there is no single institutional body overseeing the entire agreement; rather, each pillar is managed through working groups and coordinated consultations.

72 Digital Economy Partnership Agreement, Module 11 and Article 23.4, MFAT <https://www.mfat.govt.nz/assets/Trade-agreements/DEPA/DEPA-Signing-Text-11-June-2020-GMT-v3.pdf>.

73 See further details about the entry into force in October 2024, as well as the texts of the signed agreements at the MFAT New Zealand website, <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/indo-pacific-economic-framework-for-prosperity/ipeftextresources>.

This flexibility has been seen as both a strength and a limitation. While it allows for issue-specific cooperation, it lacks the enforceability and clarity of obligations typically found in binding trade agreements. As a result, references to Indigenous Peoples—while noteworthy—do not carry legal weight and are largely limited to aspirational or cooperative language.

ii. Indigenous-related content in IPEF

The Clean Economy Pillar stands out for incorporating multiple references to Indigenous Peoples—nine in total—across its texts. These references reflect an acknowledgment of the role Indigenous Peoples can play in environmental stewardship, sustainable agriculture, forest management, and just transitions. The Clean Economy agreement recognizes the importance of engaging Indigenous Peoples in climate-related efforts and commits to inclusive stakeholder engagement. However, these references are general in nature and do not establish mechanisms for participation or specific benefits for Indigenous Peoples.

Examples include:

- Acknowledging Indigenous knowledge and contributions to climate solutions.
- Encouraging cooperation in areas such as sustainable land use and forest governance, with potential involvement of Indigenous Peoples.
- Promoting inclusive practices in clean energy transition, though without detailed guidance on implementation.

In contrast, the Supply Chains and Fair Economy pillars each include only two to three references to Indigenous Peoples. These are brief and largely limited to statements of principle—such as affirming inclusivity or respecting community rights in anti-corruption efforts or workforce development. The Overarching Agreement on IPEF includes no mention of Indigenous Peoples.

iii. Assessment and future considerations

While IPEF introduces inclusivity-related language and acknowledges Indigenous Peoples in some pillar texts, its treatment of Indigenous rights and interests remains limited and non-operational. The absence of binding commitments or participatory mechanisms means that Indigenous engagement will depend heavily on domestic follow-up and voluntary cooperation among parties.

Unlike IPETCA, which features direct Indigenous co-governance, or DEPA, which includes named protections in its digital inclusion provisions, IPEF stops short of institutional innovation. It does not provide for Indigenous representation in governance, nor does it include dedicated funding or capacity-building commitments targeting Indigenous economic actors.

However, IPEF's evolving nature may present future opportunities. As countries begin implementing pillar-specific commitments—especially those related to climate financing, workforce development, and regional sustainability initiatives—there may be scope for integrating Indigenous perspectives more systematically. Drawing on models like IPETCA, future updates to IPEF or its implementing programs could move beyond recognition toward structured Indigenous participation.

VII. Examining provisions on Indigenous Peoples in recent trade agreements

While almost 80 percent of FTAs globally include some type of inclusiveness-related provisions (WTO, 2024), there are less than ten percent of all agreements in force that include provisions explicitly related to the rights and trade interests of Indigenous Peoples. This study identifies and examines the content of provisions specifically relevant to Indigenous Peoples in those 36 free trade agreements worldwide negotiated and put into force during the past two decades, namely between 2005 and 2025. Parties to these trade agreements include both developed and developing countries and span the global economy. The purpose of this examination is to provide policy makers and Indigenous Peoples with the knowledge of how trade agreements have dealt with the interests of Indigenous Peoples in the recent period, and more specifically, in what areas and in what manner. This should provide a range of options for negotiating future FTA provisions aimed at both protecting the rights and trade interests of Indigenous Peoples as well as promoting their ability to better engage in regional and international markets through expanded trade opportunities. This research is one of only a few studies undertaken on Indigenous Peoples and trade⁷⁴ and should provide a contribution to the existing literature and knowledge in this field.

A. Methodology used to identify trade agreements and relevant provisions

For the purpose of this study, the authors opted to identify relevant trade agreements and provisions within them based on the explicit mention of terms associated with “Indigenous Peoples” in the legal text of the various agreements.⁷⁵ These terms include the following: *Indigenous*, *Indigenous Peoples*, *First Nations*, *Māori* (in the case of New Zealand), *aboriginal*, *traditional knowledge*, *biodiversity* and *genetic resources*. These keywords were selected based on their common usage in trade policy documents referring to Indigenous rights and interests. AI-driven text search embedded in Legal TINA was used for the identification of 36 relevant FTAs.⁷⁶ This was followed by manual text search within those agreements.

74 A recent White Paper by the World Economic Forum appeared in March 2025 entitled *Enabling Indigenous Trade: Actionable Guidance for Governments*, WEF, Geneva, March 2025, https://reports.weforum.org/docs/WEF_Enabling_Indigenous_Trade_2025.pdf. A study by the OECD is also underway examining trade agreements and Indigenous Peoples but has not yet been published. See a description of the OECD’s work in this area with links to various resources and webinars, <https://www.oecd.org/en/topics/sub-issues/trade-and-indigenous-peoples.html>. The OECD ongoing work is described in a report on Indigenous Peoples published by the ITC in March 2025 (on p. 30). See ITC, 2025, *Empowering Indigenous Peoples through trade, A comprehensive roadmap*, <https://www.intracen.org/resources/publications/empowering-indigenous-peoples-through-trade-a-comprehensive-roadmap>.

75 An explicit provision is one that directly refers to or mentions the terms relating to Indigenous Peoples in a clear and explicit manner.

76 Authors have used [Legal TINA](#) to make the first selection of the relevant trade agreements.

The search was conducted across publicly available FTA texts from a range of online sources, including the:

- WTO Regional Trade Agreements database.
- OAS Foreign Trade Information System (SICE) database.
- National government websites (e.g., New Zealand Ministry of Foreign Affairs and Trade, Global Affairs Canada).
- Asia-Pacific Trade and Investment Agreements Database (APTIAD database), and others.

The time frame for the agreements reviewed was from 2005 to 2025, capturing the period during which inclusive trade language and references to Indigenous Peoples have increasingly entered FTA texts. A total of 36 FTAs were identified on a worldwide basis that included one or more of the relevant terms. These agreements cover numerous parties, both individual countries as well as regional groups, as set out in Table 2.

This approach is narrower than one that examines both explicit as well as implicit provisions in FTAs that are felt to demonstrate responsiveness to the needs of marginalized groups in terms of promoting their greater economic inclusion in trade as well as their economic empowerment.⁷⁷ Such implicit provisions may relate to the interests of any or all of what may be several different marginalized or disadvantaged groups, including women, youth, persons with disabilities, Indigenous Peoples, and MSMEs. While it is true that provisions related to women and MSMEs are in principle closely entwined with the interests of Indigenous Peoples, this is also true of women and MSMEs, and women and youth, for example. However, these implicit provisions can be very broad and lack specificity. The authors therefore opted for an explicit identification of Indigenous Peoples in FTAs through the relevant specific terms for the following reasons:

- i. The large number of provisions that would have needed to be included in a research effort encompassing implicit terms would have made it very difficult to present these in a digestible manner.
- ii. The implicit nature of such provisions makes it difficult to impossible to assess how they have been implemented in practice and what type of impact they may have had on Indigenous Peoples.
- iii. Specific focus on Indigenous Peoples allows for a more detailed and factually oriented discussion of the trade provision in question in terms of its development, characteristics, and implementation.

Given the insufficiency of statistical data needed to carry out an economic impact assessment of trade agreements in quantitative terms, the number and nature of explicit mentions in a

⁷⁷ See Amrita Bahri, *Mainstreaming Gender Considerations in Free Trade Agreements: "Building Back Better" in a Post-COVID-19 World*, 2020. This paper was prepared for the Policy Hackathon on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and other Trade Agreement and focused on both explicit and implicit mentions of gender-related terms in free trade agreements, <https://wtochairs.org/sites/default/files/92%20Final-Amrita%20Bahri-Mexico.pdf>.

trade agreement of the terms specific to Indigenous Peoples were selected by the authors as the best indication of the recognition of the importance attributed to Indigenous concerns by parties to the agreements and the best benchmarks against which to assess implementation measures for Indigenous Peoples with respect to trade.

The assumption made in this study is that the greater the number of explicit mentions of Indigenous Peoples and relevant associated terms, and the greater number of binding provisions among these, the higher is the concern and therefore the focus on policies that might be summoned in response to the specific needs of this group. The authors do acknowledge that the frequency of an explicit mention does not guarantee the quality of depth of such concern, as it may also translate only superficial interest. There is no way, however, to attribute weights to the degree of seriousness of these explicit references to Indigenous Peoples in the FTAs, so this is considered the best option available for the study.

B. Grouping the trade agreements examined

For ease of analysis and presentation, the 36 FTAs examined have been placed into five groups. This was done based on geographical region as well as similarity of structure and content of the trade agreements in question for the first three groups and based on composition of membership for the second two groups. The five groups are shown in summary Table 2 and are the following:

- **European styled agreements** (those FTAs with European Union (EU) and European Free Trade Association (EFTA) members, as well as the UK). There are 12 of these agreements.
- **Canadian and U.S. free trade agreements**. There are five of these agreements, though one has not been ratified.
- **Pacific styled agreements** (those FTAs with New Zealand and Australia). There are seven of these agreements, though two have not been ratified.
- **Plurilateral agreements** (among parties at mixed levels of development). There are four of these agreements.
- **Bilateral agreements** (among developing country parties). There are eight of these agreements.

Comparative tables (available in Annex 1, Tables 1-5) are set out for each of these five groupings that contain references to all the relevant provisions identified in the 36 FTAs across all relevant chapters and associated annexes of the agreements. These tables facilitate both an overview as well as an appreciation of how each trade agreement treats Indigenous Peoples. For each provision identified, the comparative tables specify the following:

- Location in the FTA text/chapter in which the provision or article specific to Indigenous Peoples is found.
- Binding or “best endeavour” character of the provision in question.
- Associated institutional arrangement (if any) with the provision.

A detailed discussion of the content of the numerous provisions identified in the 36 trade agreements examined would be too lengthy for this study. However, the inclusion of the article and its location in each instance allows for reference to this provision in the legal text of the agreement in case of further interest. The discussion below does highlight areas of particular interest or innovative treatment of Indigenous Peoples in certain provisions under each grouping.

**Table 2: Summary table of trade agreements examined in the study
36 trade agreements signed between 2005 and 2025**

European styled agreements (EU, EFTA and UK agreements)	Canadian and U.S. agreements	Pacific styled agreements (New Zealand & Australia)	Plurilateral agreements (mixed level of development)	Bilateral agreements (developing country partners)
Total: 12	Total 5	Total 7	Total 4	Total 8
EU-Ukraine 2016	Canada-Ukraine 2024	New Zealand-EU 2024	RCEP 2022	Nicaragua-China 2024
EU-Colombia 2013	Canada-Ecuador (not ratified) signed 2025	New Zealand - Chinese Taipei 2013	PACER Plus 2020	Guatemala-Chinese Taipei 2006
EU-Peru 2013	Canada-EU 2017	New Zealand-UK 2023	CUSMA/USMCA 2020	Indonesia-UAE CEPA (2023)
EU-Central America 2012	US-Colombia 2013	New Zealand-UAE FTA (not ratified) signed 2025	CPTPP 2018 (UK accession 2023)	Colombia-Rep. of Korea 2016
EU-Rep. of Korea 2011	US-Peru 2009	Australia-UK 2023		Colombia-Costa Rica 2016
EU-CARIFORUM 2008		Australia-Peru 2020		Peru-Costa Rica 2013
		Australia-UAE (not ratified) signed 2024		Peru-Panama 2012
EFTA-Indonesia 2021				Peru-Rep. of Korea 2011
EFTA-Philippines 2018				
EFTA-Ecuador 2018				
EFTA-Colombia 2011				
EFTA-Peru 2011				
UK-Rep. of Korea 2021				

Note: Bolded are new agreements / arrangements that have been added to the analysis. The other agreements were already analysed and methodology explained in a previous paper on Ecuador and Indigenous Peoples under EDM funding. The text of Canada-Ecuador FTA was not available for analysis.

The date included with each respective trade agreement is the date of entry into force, unless specified otherwise. For the purposes of this analysis, countries were classified as “developed” or “developing” based on their self-declared status in the WTO.

Colour legend: Black: Notified to WTO and in force. Green: Not notified to the WTO but in force. Blue: Signed but not ratified.

VIII. Discussion of provisions relevant to Indigenous Peoples in the trade agreements examined

This section presents a comparative analysis of provisions related to Indigenous Peoples identified in the diverse set of 36 FTAs set out in Table 2. Recognizing the increasing visibility—but varying depth—of Indigenous inclusion in trade frameworks, the section systematically identifies and examines where such provisions appear, whether they are binding or aspirational, and what institutional mechanisms are in place to support their implementation. The goal is to distil key trends, contrasts, and innovations across different negotiating blocs and bilateral partnerships.

By grouping FTAs according to their geopolitical or institutional context—such as European-style agreements, North American models (Canada and the United States), Pacific styled approaches, plurilateral agreements, and bilateral agreements involving developing country partners—the analysis captures both region-specific approaches and evolving global practices.

Special attention is paid to whether provisions are integrated through general exceptions, mainstreamed or constitute a part of dedicated chapters; how enforceable they are; and whether Indigenous Peoples are meaningfully involved in institutional follow-up mechanisms. This evidence-based mapping highlights both the advances that have been achieved and the persistent gaps that remain in embedding Indigenous rights and participation in international trade agreements. The detailed tables containing all relevant provisions supportive of the analysis in this section are available in Annex 1.

A. EU and EFTA styled trade agreements

The European Union has included provisions of relevance to Indigenous Peoples in its trade agreements since 2008, beginning with its Economic Partnership Agreement with CARIFORUM.⁷⁸ Since that date it has negotiated five other trade agreements that include provisions related to Indigenous trade. It is notable that all the EU agreements (other than the trade agreement with Canada aka CETA) follow a similar approach and structure, with the inclusion of provisions designed to protect biodiversity and traditional knowledge, and/or genetic resources and folklore as their focus areas of relevance for Indigenous Peoples. The same is true of the five trade agreements negotiated by the European Free Trade Area (EFTA) since 2011, as well as the recent FTA negotiated by the UK (2021) which all follow the same structure. Thus, the approach and structure of the European styled trade agreements with respect to articles relevant to Indigenous Peoples has remained remarkably consistent over the past 15 years.

The text of the CETA agreement between the EU and Canada is an exception to this general European styled approach. There are no articles in the agreement relevant to biodiversity and

78 According to the European Union External Action website, the EU has been actively supporting Indigenous Peoples since the late 1990s and has committed itself to “maintain indigenous peoples as a focus of attention given their disadvantage in all societies.” This includes through the protection of Indigenous Peoples rights through various instruments, including trade agreements. See https://www.eeas.europa.eu/node/49097_en.

traditional knowledge. The focus instead is on exceptions made by Canada in favour of Aboriginal Peoples set out in several of the chapters in the agreement. These include chapters on Domestic Regulation, Government Procurement and Trade and Environment, as well as a reservation in its Schedule of Non-conforming Measures for Services specifying that Canada reserves the right to adopt or maintain a measure “*denying investors of the EU and their investments, or services suppliers of the EU, rights or preferences provided to aboriginal peoples.*”

Location in the FTA text/chapter in which provisions are found

The provisions on genetic resources, traditional knowledge and folklore in the EU and EFTA trade agreements (and in the UK trade agreement) are found in either the chapter or title of the agreement on Intellectual Property Protection. In the case of EU agreements with Peru and Colombia, there is also a provision on biodiversity in the Title on Trade and Sustainable Development as well as the Title on Intellectual Property. The objective of these provisions is to protect the holders of these resources and knowledge from commercial exploitation or use of these resources by outsiders without attribution or compensation. In the case of EFTA, all of its trade agreements reference biodiversity and traditional knowledge in the chapter on Intellectual Property. There are no other references of relevance to Indigenous Peoples in other chapters in either the EU, EFTA or UK trade agreements.

Binding or “best endeavour” character of the provisions

All of these references to protection of biodiversity and traditional knowledge found in the Intellectual Property chapters of the EU, UK and EFTA agreements are binding in nature, although some display a mixed set of articles that are both binding and non-binding. This is also the case for the articles on biodiversity located in the chapter on Trade and Sustainable Development. It is important to note that any violation of the provision through a non-respect of intellectual property right protection is not adjudicated through the trade agreement but rather in domestic tribunals.⁷⁹ It is also the case that the provision in question nearly always requires the individual with a claim to the rights over traditional knowledge or genetic resources to be in possession of a patent, which is often not the case for Indigenous or Aboriginal Peoples whose communities are structured along non-legal lines and do not have formal patent rights.^{80,81}

79 There is a parallel in this approach to the treatment of intellectual property rights protection under the WTO Trade-related Intellectual Property Agreement. In both cases the possibility for recourse to the violation of an intellectual property right (copyright, patent or otherwise) must be channelled through the domestic court system and not the dispute settlement mechanism of the trade agreement. The TRIPS Agreement does however describe intellectual property rights enforcement in detail, including rules for obtaining evidence, provisional measures, injunctions, damages and other penalties.

80 The World Intellectual Property Organization (WIPO) itself admits that the modern intellectual property system was not designed for traditional knowledge and traditional cultural expressions. See WIPO, Intellectual Property and Traditional Knowledge, Geneva, 2022, <https://www.wipo.int/export/sites/www/tk/en/docs/ip-tk-introduction-en.pdf>.

81 As noted in WIPO, Intellectual Property and genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, 2020 (https://www.wipo.int/edocs/pubdocs/en/wipo_pub_933_2020.pdf) and confirmed by the UN Special Rapporteur A/HRC/41/50, 2019, violations of provisions concerning traditional knowledge and genetic resources are typically addressed in domestic legal systems, not through trade agreement dispute settlement. Moreover, most such provisions assume that the rights holder possesses a formal patent or other registered intellectual property right—an assumption that often does not hold for Indigenous Peoples, whose knowledge is communal, orally transmitted, and not structured around Western legal forms of ownership.

Associated institutional arrangement with the provisions

In none of these trade agreements is a specific institutional committee established within the relevant Intellectual Property chapter to implement or monitor these provisions. In the majority of cases the Parties agree to exchange views and information on patent applications and granted patents, as well as on developments and issues discussed in WIPO in the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, and/or in the WTO within the TRIPS Agreement and its relationship to the Convention on Biological Diversity.

The trade agreements that have gone the furthest to ensure the rights of Indigenous Peoples in the area of intellectual property are the three most recent EFTA agreements with Indonesia (2021 FTA), The Philippines (2018 FTA) and Ecuador (2018 FTA) which all contain a detailed Annex to the chapter on Intellectual Property. The articles in the respective Annexes set out strong requirements for Parties to *“disclose the origin or source of the genetic resources or traditional knowledge if the invention is directly based on these, including a statement of free, prior and informed consent for their use”*. The Articles further require the Parties to take measures as appropriate to ensure the *“...fair and equitable sharing of benefits”* arising from the utilisation of genetic resources and traditional knowledge.

B. Canadian and U.S. free trade agreements

i. Canadian trade agreements

In its trade agreements, Canada is committed to “pursuing innovative provisions designed to increase Indigenous Peoples’ access to and participation in trade and investment opportunities created by the agreement”, in addition to including reservations and exceptions that allow the Government to maintain or implement measures related to Indigenous Peoples and businesses. This approach is set out on an official Government of Canada website.⁸²

Following the Canada-United States-Mexico Trade Agreement (CUSMA, 2020) which innovated in many ways with respect to the treatment of Indigenous Peoples (discussed in Section VIII.C on plurilateral agreements) Canada has more recently negotiated bilateral trade agreements with the Ukraine and with Ecuador that give significant prominence to Indigenous Peoples and feature standalone chapters as well as numerous provisions throughout the agreements designed to promote and protect their rights and interests in trade (see Table 2, Annex 1).⁸³ These chapters on Indigenous Peoples and Trade in the Canada-Ukraine FTA (CUFTA 2024) and the Canada-Ecuador FTA (2025) are the first of their kind for Canada and in the Western Hemisphere. They constitute two of only six trade agreements worldwide to incorporate a separate and comprehensive chapter on Trade and Indigenous Peoples, making them noteworthy in this

82 International Trade Agreements and Indigenous Peoples: The Canadian Approach, Government of Canada, https://www.international.gc.ca/trade-commerce/indigenous_peoples-peuples_autochtones/approach-approche.aspx?lang=eng.

83 A useful link to the specific provisions relevant to Indigenous Peoples in question can be found on the webpage available at https://www.international.gc.ca/trade-commerce/indigenous_peoples-peuples_autochtones/approach-approche.aspx?lang=eng.

regard and representing an innovative step toward greater focus on Indigenous rights in trade and investment.⁸⁴

The text of the most recent FTA Canada negotiated with Ecuador has not yet been made publicly available at the time of writing of this study (September 2025) and could therefore not be analysed. The official Canadian Government website describes the content of the chapter in this manner:

“This cooperation-based chapter (on Trade and Indigenous Peoples) recognizes the importance of identifying, reducing and removing trade barriers that Indigenous Peoples face when participating in international trade. The Chapter is economic-focused and establishes a bilateral committee to facilitate cooperation activities to increase participation of Indigenous Peoples in international trade and investment. It also includes a commitment to enforce and not weaken domestic laws and protections on Indigenous Peoples’ rights to attract trade and investment.”⁸⁵

Location in the FTA text/chapter in which provisions are found

In the Canada-Ukraine FTA (2024), there is not only a standalone chapter on Indigenous Peoples and Trade, but numerous provisions of relevance to Indigenous Peoples (21 in total) are found throughout the text of the agreement in seven different chapters as well as in the Preamble.

Several articles are focused on establishing legal exceptions to the treatment of Indigenous Peoples, namely in the area of Government Procurement (Chapter 11) and General Exceptions (Chapter 29 on the Rights of Indigenous Peoples). Others establish protections for Indigenous Peoples through non-derogation articles for responsible business conduct (in Chapter 15 on Transparency, Anti-corruption and Responsible Business Conduct), as well as in the areas of investment (Chapter 17 on Investment) and trade (Chapter 25 on Trade and Indigenous Peoples). Protection is also the aim of the provision in Chapter 13 on the Environment, through obligatory environmental impact assessments and protection of biological diversity as well as the requirement for sustainable forest management. Still other provisions aim to promote trade by Indigenous Peoples through cooperative activities in articles found in the Environment Chapter (Article 13.14) and in the Trade and Indigenous Peoples Chapter (Article 25.4 and 25.6).

The provisions in the Canada-EU CETA agreement are also located in various chapters throughout the agreement and similarly exempt the Government of Canada from applying certain disciplines contained in the FTA to Aboriginal Peoples. This is the case in the areas of Domestic Regulation

84 The text of the Chapter on Indigenous Peoples and Trade in the Canada-Ukraine FTA can be found at <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ukraine/text-texte/2023/25.aspx?lang=eng>. The other four trade agreements that have incorporated stand-alone chapters on Trade and Indigenous Peoples have been negotiated by New Zealand (namely with UK in 2023, with the EU in 2024, and with the UAE in 2025 that is not yet ratified, as well as with Taiwan in 2013). Additionally, one recent FTA containing a standalone chapter has been negotiated by Australia with the UAE in 2024. These are discussed in Section VIII.C.

85 Canada-Ecuador Free Trade Agreement: Summary of negotiated outcomes, Government of Canada, **January 2025**, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ecuador-fta-ale-equateur/summary-nego-resume.aspx?lang=eng>.

(Chapter 12), Government Procurement (Chapter 19), and Trade and Environment (Chapter 24).⁸⁶ Additionally, Canada has taken out an exemption in Annex II in its schedule of Future Non-conforming Measures which reads, “*Canada reserves the right to adopt or maintain a measure denying investors of the European Union and their investments, or service suppliers of the European Union, rights or preferences provided to **aboriginal peoples**.*”

Binding or “best endeavour” character of the provisions

The majority of the articles included in the Canada-Ukraine FTA of relevance to Indigenous Peoples are of a binding nature. This is the case for all of the exclusions mentioned above as well as for other provisions in the chapters on Investment, the Environment, and Transparency, Anti-Corruption and Responsible Business Conduct.⁸⁷ All but one of the articles relevant to Indigenous Peoples in the Canada-EU CETA agreement that set out exceptions in favour of Aboriginal Peoples are of a binding nature.

Associated institutional arrangement with the provisions

A Trade and Indigenous Peoples Committee is established within Chapter 25 in the Canada-Ukraine FTA to follow implementation of the content of the chapter. Its responsibilities should be highlighted, as these are much more explicit than committees established under the chapters on Cooperation and Capacity-building in previous trade agreements. Extensive functions are assigned to the Trade and Indigenous Peoples Committee, including:

- a. providing a forum to discuss and review any matters related to the operation and implementation of this chapter;
- b. providing coordination and oversight of the cooperation activities;

86 The text of the exception in the CETA Government Procurement Chapter explicitly states that the chapter does not apply to ... “any measure adopted or maintained with respect to **Aboriginal peoples**, nor 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 this Chapter.” (Annex 19.7)

The text of the exception in the CETA Trade and Environment Chapter explicitly states that the chapter does not include within the definition of the chapter “...a measure of a Party the purpose of which is to manage the subsistence or **aboriginal** harvesting of natural resources”. (Article 24.1)

87 These provisions require, among other, the Parties to do the following:

In the Environment Chapter to “...(d) promote research and development opportunities between and among researchers, academic institutions, and the private sector, including women and **Indigenous researchers and scientists**, and women-owned and **Indigenous-owned enterprises**, to encourage the growth of the environmental goods and services sectors, value chains, and the development of clean technologies”. (Article 13.23.3(d))

In the Investment Chapter to “...require their investors and their investments to ...comply with domestic laws and regulations of the host state, including laws and regulations on human rights, **the rights of Indigenous peoples**, gender equality, environmental protection, labour, anti-corruption, and taxation”. (Article 17.15.1)

In the Chapter on Transparency, Anti-Corruption and Responsible Business Conduct to ensure that “...enterprises operating within its jurisdiction comply with all applicable laws, particularly laws concerning human rights, **the rights of Indigenous Peoples**, gender equality, environmental protection, and labour”. (Article 15.14.3)

- c. working with other committees, working groups, and subsidiary bodies established under this Agreement to ensure that Indigenous Peoples can benefit fully from this Agreement;
- d. preparing and making publicly available, on an annual basis, a report with respect to its activities under this chapter; and
- e. providing recommendations, if necessary, to the Joint Commission, ...(Art 25.5).

For the Committee's discussions, the Parties can "*invite representatives of Indigenous institutions, including Indigenous rights holders and partners*" to participate (Article 25.1). Explicit mention of the participation by Indigenous Peoples in the discussions on the implementation of trade agreements has previously been lacking. Notable as well is the requirement to prepare and make publicly available an annual report on the activities of the Committee in implementing the chapter. This obligation for the Parties to submit an annual report and keep it in the public domain has been lacking in previous trade agreements.

Under the CUFTA a committee is also established under the Environment Chapter. This Committee has notable features as well, requiring the Parties to "*...designate and notify a contact point from its relevant authorities in order to facilitate communication between the Parties in the implementation of this Chapter*" (Art. 13.25.1). It also requires the Parties to "*...make summary records, decisions, reports, and recommendations of the Committee available to the public, unless otherwise decided...*" (Art. 13.25.6). Both obligations should make it easier in the future to follow the progress in implementation of the trade agreement.

In the CETA agreement, committees are established within the chapter on Government Procurement and within the chapter on Trade and Sustainable Development that also oversees the implementation of the chapter on Trade and the Environment. The functions of these two committees are much narrower than those in the two committees under CUFTA and lack the obligations to prepare an annual report and provide recommendations to the Joint Commission.

ii. U.S. Trade Agreements⁸⁸

In the United States a few terms can be used interchangeably for Indigenous Peoples.⁸⁹ There appears to be no official policy of the United States Government towards Indigenous Peoples and trade that can be found on the website of the U.S. Trade Representative (USTR). Neither is there any information on the provisions that have been negotiated by the U.S. to focus on

88 For an analysis of how U.S. procurement rules—such as set-aside programs for Native American businesses—can intersect with trade obligations and opportunities for Indigenous economic participation, see Maria Panezi, in Burrows and Schwartz (eds.), *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements* (Cambridge University Press, 2020). Procurement access is a crucial element for Indigenous exporters, particularly in services and government contracting, and increasingly relevant in trade policy discussions.

89 In the United States, Indigenous Peoples are also referred to as Native Americans, American Indians, Indigenous Americans, or First Americans. Other terms include Alaska Natives (for those in Alaska) and Native Hawaiians. While all can be considered acceptable, the consensus is that whenever possible, Native people in the United States prefer to be called by their specific tribal name. See section on Terminology at the Smithsonian National Museum of the American Indian, <https://americanindian.si.edu/hk360/faq/did-you-know>.

Indigenous rights and interests in trade agreements. Attention to this issue has been notable at times, but it is unclear what is the status of these efforts at present.⁹⁰

An Office of Native Affairs and Economic Development exists under the U.S. Department of Commerce.⁹¹ The purpose of this office is to assist Native American businesses and Tribal governments, as well as firms that want to do business in Indian Country, to take advantage of the available resources of the Department of Commerce for this purpose. The International Trade Administration within the Department of Commerce is tasked with assisting firms with overseas market development and with promoting their participation in international trade, including those from Tribal businesses.⁹² However, there is no section on the ITA website specific to Indigenous businesses.

The bilateral trade agreements negotiated by the United States with Peru (2009) and Colombia (2013). contain references to Indigenous Peoples. They are similar in structure and content and modest in their scope on inclusive trade compared with the innovations that would come a few years later in the context of the updated NAFTA or CUSMA. Neither of these two FTAs mentions Indigenous Peoples explicitly, though there is a reference to the need to preserve biological diversity in the Chapter on the Environment. This provision is non-binding in both FTAs. An Environmental Affairs Council is established in the context of the Environment Chapter for oversight (see Table 2, Annex 1).

C. Pacific styled trade agreements (New Zealand and Australia)

A comparison of the New Zealand and Australian FTAs (Table 3, Annex 1) reveals divergent trajectories in the treatment of Indigenous Peoples. New Zealand has steadily developed a systemic approach, characterized by:

- Dispersed but explicit references to Māori across numerous chapters;
- A mix of binding and non-binding provisions, with select enforceable commitments (e.g., inclusive sub-committees with Māori participation); and

90 The most recent examples of attention devoted to Indigenous Peoples and trade was during the previous U.S. administration of President Biden. Notably, in 2023 the U.S. Government hosted a White House Tribal Nations Summit for the first time. And the United States, as the host of APEC, also convened the first ever dialogue with Indigenous tribal leaders at the APEC summit in November 2023. Tribal consultations were also initiated with Native and Indigenous Peoples in 2023 and efforts that were undertaken to improve disaggregated data collection together with research to examine the impact of trade on Indigenous workers and communities. It is unclear if these consultations and other efforts are continuing in the present Administration. See *Remarks by Ambassador Katherine Tai at 2023 White House Tribal Nations Summit*, <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/december/remarks-ambassador-katherine-tai-2023-white-house-tribal-nations-summit>.

91 See the U.S. Department of Commerce website on the Office of Native Affairs and Economic Development. The focus of its work is to assist tribes in their business development so that they can take advantage of opportunities in trade at home and abroad. See <https://www.commerce.gov/bureaus-and-offices/os/native-american-affairs>.

92 See the International Trade Administration website at <https://www.trade.gov/export-solutions>.

- Well-developed institutional mechanisms that integrate Māori perspectives into the implementation and review of the agreements.

Australia, by contrast, has until recently taken a more symbolic and compartmentalized approach, with Indigenous-related language largely limited to cooperation clauses on traditional knowledge and environmental stewardship.

The inclusion of a stand-alone chapter on Indigenous Peoples in the recently-concluded Australia–UAE CEPA (2024) marks a significant turning point. This chapter echoes several elements found in New Zealand’s practice: cross-cutting thematic scope, normative alignment with UNDRIP and SDGs, and a nascent institutional structure. Still, the Australian model, in contrast to that of New Zealand, remains non-binding, with its institutional mechanisms focused on an advisory role and coordination, and lacking both enforceable obligations as well as Indigenous-specific decision-making bodies. If sustained, however, Australia’s shift in the UAE agreement could lay the groundwork for more structured and inclusive trade frameworks in future FTAs, provided that commitments are deepened, institutionalized, and underpinned by enforceable responsibilities.

In 2020, the Governments of Australia and Aotearoa-New Zealand established the [Indigenous Collaboration Arrangement](#) (ICA) in recognition of the unique role of Indigenous Peoples in the identity of their respective countries, their rich cultures and languages, as well as their ancestral, spiritual and continuing connections to the land and sea.

i. New Zealand’s trade agreements

New Zealand’s trade policy integrates Māori rights and interests by embedding Te Tiriti o Waitangi/the Treaty of Waitangi as a foundational principle. This is operationalized through a Treaty of Waitangi exception clause included in all modern trade agreements, which ensures the Government retains the policy space necessary to meet its obligations to Māori, without the risk of breaching trade commitments. Beyond this protective mechanism, New Zealand is also proactively using international frameworks—such as the Digital Economy Partnership Agreement and the Indigenous Peoples Economic and Trade Cooperation Arrangement—to advance and uphold Māori economic interests. These were discussed separately in Section VI.

The Ministry of Foreign Affairs and Trade (MFAT) maintains formal partnerships with Māori entities, including through Memoranda of Understanding with Te Taumata and the Federation of Māori Authorities. Following a 2021 Mediation Agreement with the Crown in the Waitangi Tribunal’s inquiry into the Trans-Pacific Partnership Agreement (known as Wai 2522), Ngā Toki Whakarururanga was established, by Māori, for Māori, to advance and protect Māori rights and interests related to trade, particularly in the context of international trade agreements. These partnerships ensure Māori voices are heard throughout trade negotiations and policy development, supported by regional hui and outreach initiatives.

Recent FTAs—including those with the European Union, the United Kingdom, and the United Arab Emirates—feature dedicated chapters that support Māori economic advancement and the protection of mātauranga Māori (traditional knowledge). This approach not only safeguards

cultural heritage but actively promotes Māori participation and leadership in global trade. Further details are provided on the official MFAT website.⁹³

This study focuses on New Zealand's three most recent FTAs, namely the New Zealand-UAE FTA 2025 (NZ-UAE FTA), which is not yet ratified, the New Zealand-European Union FTA (NZ-EU FTA) 2024, and the New Zealand-United Kingdom FTA 2023 (NZ-UK FTA). All three of these agreements feature a separate chapter on Indigenous trade together with a range of provisions across other chapters of the agreements. The study also reviews the first FTA that included such a chapter, which is the 2013 Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC).

Location in the FTA text/chapter in which provisions are found

The analysis of the four New Zealand FTAs reveals that Māori-relevant provisions are no longer confined to general exception clauses (like the *te Tiriti o Waitangi*/Treaty of Waitangi exception) but now appear across a wide range of chapters.⁹⁴ This dispersion of provisions across multiple chapters in addition to a dedicated Indigenous chapter signals an intent to mainstream Māori economic interests throughout the agreement, rather than confining them to a siloed chapter or relying solely on blanket exceptions.

In the NZ-EU FTA, in addition to the preambular text, provisions referencing Māori appear in at least seven chapters, including Digital Trade, Sustainable Food Systems, Trade in Services and Investment, Intellectual Property, and Trade and Sustainable Development. Chapter 20 is specifically dedicated to Māori Trade and Economic Cooperation. In the New Zealand-United Kingdom FTA (NZ-UK FTA), similar breadth is seen, with provisions spanning Trade and Gender, Environment, Intellectual Property, and a dedicated Chapter 26 on Māori Trade and Economic Cooperation. The most recent agreement signed in January 2025 and still not ratified with the United Arab Emirates in the *New Zealand-United Arab Emirates Comprehensive Economic Partnership Agreement* (NZ-UAE CEPA) follows this trend by including a separate chapter and provisions recognizing, protecting and promoting opportunities for New Zealand Indigenous Peoples (Digital Trade, Intellectual Property, Trade and Sustainable development, Economic Cooperation, Investment Facilitation, SMEs).

The ANZTEC, while the first on the New Zealand part to treat Indigenous Peoples issues in a separate chapter (Chapter 19), contains relevant provisions in another two additional substantive chapters: Chapter 10 on Intellectual Property and Chapter 18 on Film and Television Co-production.

93 Māori Engagement and Interests in Trade, MFAT New Zealand available at <https://www.mfat.govt.nz/en/trade/trade-engagement-with-maori>

94 A typical wording of the clause is: "Nothing in this Agreement shall preclude the adoption, maintenance or application by New Zealand of any measure it deems necessary to adopt policies that fulfil its obligations to Māori, including under the *te Tiriti o Waitangi*/the Treaty of Waitangi." The clause belongs to the 'general exception' provisions in the texts of the FTAs, as it provides a legally authorized escape from commitments in any of the issue-areas covered by the FTAs. Because it is present in all New Zealand FTAs, it is not included in the tabular representations of New Zealand's commitments referring to the Māori (see Annex 1, Table 3).

Binding or “best endeavour” character of the provisions

The legal nature of these provisions varies significantly. While the inclusion of Māori-specific language across many parts of the agreements is commendable, most of the provisions are of a “best endeavour” nature. Only certain commitments—such as the requirement for Māori representation in domestic advisory groups (e.g., NZ-EU FTA Art. 24.6) and participation in Inclusive Trade Sub-Committees (e.g., NZ-UK FTA Art. 30.8)—can be clearly identified as *binding obligations*. Provisions found in the dedicated Māori chapters (e.g., NZ-EU FTA Chapter 20, NZ-UK FTA Chapter 26) tend to have stronger language and clearer procedural commitments. Notably, provisions within chapters such as *Digital Trade* or *Trade and Sustainable Development* often reaffirm rights or promote cooperation but lack enforceability. As such, these should be viewed as programmatic or aspirational rather than legally compulsory. The newest NZ-UAE CEPA offers a broad carve-out to address future policy developments in Digital Trade chapter (Art. 10.3e).

Associated institutional arrangement with the provisions

All three FTAs feature relatively well-developed institutional frameworks as they include separate chapters referring to institutional arrangements, but with *selective integration of Māori into implementation mechanisms*. The NZ-EU FTA establishes a range of implementation bodies in Chapter 24, but only Articles 24.6 and 24.7 explicitly reference Māori. These articles call for Māori representation in *Domestic Advisory Groups* and the *Civil Society Forum*, respectively. In the NZ-UK FTA, the *Inclusive Trade Sub-Committee* (Art. 30.8–30.9) is a more prominent mechanism supporting implementation of Indigenous-related chapters and explicitly includes Māori representatives. It oversees areas such as *SMEs*, *Gender Equality*, *Māori Economic Cooperation*, and *Trade and Development*. Additionally, institutional mechanisms related to *IP* (Art. 17.14) also refer to inclusive Māori participation. The NZ-UAE CEPA establishes a Joint Committee (Art 19.1) to address the Administration of the Agreement on a whole, while only stipulates nomination of Contact points in most of the substantive chapters. In the ANZTEC Chapter 22 prescribes establishment of the Joint Commission, committees and reviews but again without an obligation to include representatives of Indigenous Peoples.

ii. Australia’s trade agreements

Australia’s approach to Indigenous Peoples in trade focuses on enabling greater First Nations participation in the global economy and promoting Indigenous economic self-determination. Guided by the First Nations Trade Strategy and the Indigenous Diplomacy Agenda, Australia aims to integrate Indigenous perspectives into trade and investment policy, support Indigenous-owned businesses in accessing international markets, and ensure that trade negotiations are informed by First Nations interests. This policy direction is articulated on the official website of the Department of Foreign Affairs and Trade (DFAT).⁹⁵

⁹⁵ First Nations Trade and Investment available on the website of Australia’s Department of Foreign Affairs and Trade at <https://www.dfat.gov.au/trade-and-investment/first-nations-trade> and Indigenous Diplomacy Agenda at <https://www.dfat.gov.au/publications/indigenous-diplomacy-agenda>

Until recently, Australia's trade agreements included only *scattered and thematic references* to Indigenous-related matters, often framed around genetic resources, traditional knowledge, or biodiversity, and typically embedded within broader chapters on intellectual property, environment, or cooperation. The first FTA that has a dedicated chapter referring to Indigenous Peoples trade and Investment is the 2024 CEPA between Australia and UAE (signed but not ratified). Additionally, as mentioned earlier, Australia and New Zealand established the Indigenous Collaboration Arrangement (ICA) in recognition of the unique role of Indigenous Peoples in the identity of their respective countries, their rich cultures and languages, as well as their ancestral, spiritual and continuing connections to the land and sea. This study reviews three Australian FTAs, all signed in the last five years and with different trading partners with respect to the level of development and geographical region.

Location in the FTA text/chapter in which provisions are found

Mentions of Indigenous-related content appear in the Australia-UK FTA (2023) in Arts. 15.12 and 15.18 (IPR and cooperation on traditional knowledge) and Arts. 22.13–22.14 (environment and biodiversity). The Australia-Peru FTA (2020), includes cooperation on traditional knowledge in Arts. 17.16–17.18 and 20.2, but with no explicit mention of Indigenous Peoples. However, the Australia-UAE CEPA (2024) represents a paradigm shift. It includes a dedicated Chapter 17 titled *Indigenous Peoples Trade and Investment Economic Cooperation*. This chapter brings together references to First Nations Peoples across multiple domains, including trade, investment, biodiversity, sustainable agriculture, digital inclusion, and the environment. It reflects a *much broader and integrated treatment* of Indigenous economic participation and acknowledges the role of international instruments such as UNDRIP and the 2030 Agenda for Sustainable Development. This dedicated chapter mirrors the structural and strategic approach seen in New Zealand's FTAs, suggesting that Australia is beginning to embed a more holistic vision of Indigenous inclusion in trade policy.

Binding or “best endeavour” character of the provisions

Despite the evolution in visibility and breadth, the *legal nature* of these provisions with specific mention of Indigenous concerns remains largely *best endeavour* across all three agreements. The Australia-UK and Australia-Peru FTAs predominantly contain *non-binding commitments*, often framed as aspirations to “cooperate” or “promote understanding.” In the Australia-UAE CEPA, while Chapter 17 is extensive and specific, its commitments are still cast in *non-enforceable language*. For instance, parties “agree to cooperate,” “acknowledge,” “recognise,” or “encourage” action, but Article 17.12 explicitly excludes the chapter from dispute settlement mechanisms. Thus, while the Australia-UAE CEPA significantly advances normative recognition and policy coherence, it still stops short of creating enforceable obligations for either party with respect to Indigenous Peoples.

Associated institutional arrangement with the provisions

Institutional frameworks to support Indigenous-related provisions are thin or indirect in earlier agreements but are more explicitly articulated in the Australia-UAE CEPA. In the Australia-UK and Australia-Peru FTAs, oversight bodies such as the Intellectual Property Committee or Joint Commission are generic in nature and do not mention Indigenous participation. In contrast,

Article 17.11 of the Australia-UAE CEPA creates a dedicated *contact point mechanism* for First Nations issues, with functions including:

- facilitating coordination across the agreement,
- liaising with the Joint Committee and subsidiary bodies,
- and monitoring Indigenous-relevant implementation.

While this mechanism is still relatively modest (e.g., it is not a committee with decision-making power), it *represents the first institutional foothold* for Indigenous-related trade matters in an Australian FTA.

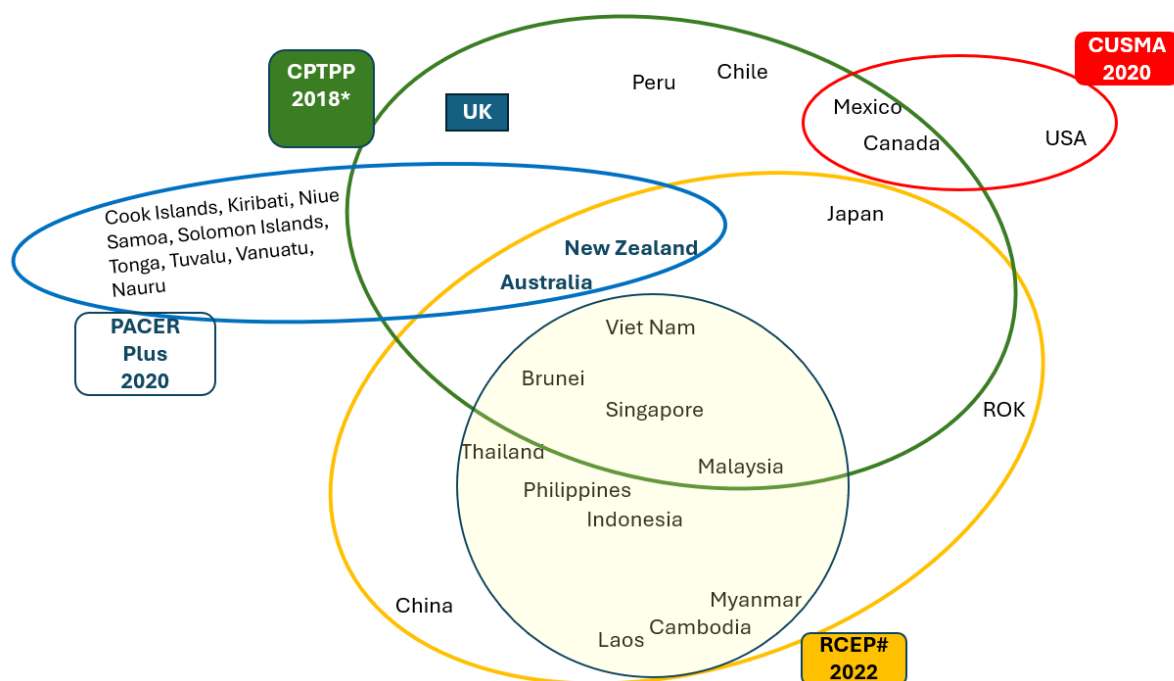
D. Plurilateral trade agreements (between partners with mixed level of development)⁹⁶

This grouping covers four plurilateral trade agreements, listed by date of entry into force: the Canada-United States-Mexico Agreement (CUSMA, 2020), the Pacific Agreement on Closer Economic Relations Plus (PACER Plus, 2020), the Regional Comprehensive Economic Partnership (RCEP, 2022), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2023) as listed in Table 4, Annex 1. These agreements differ significantly in terms of economic weight, geographic reach, and membership composition (see Figure 5). Australia and New Zealand are parties to three of the four agreements, while Canada, Mexico, Japan, and the ASEAN members of Brunei Darussalam, Malaysia, Singapore, and Vietnam each participate in two. Despite some overlap in membership, the agreements take distinctly different approaches to the recognition and inclusion of Indigenous Peoples' rights and interests.

While CUSMA embeds provisions relevant to Indigenous rights and concerns into multiple chapters with both binding and institutional dimensions, the CPTPP provides only symbolic or exception-based recognition. RCEP introduces protection of traditional knowledge but does not acknowledge Indigenous Peoples and lacks enforceable or inclusive frameworks. PACER Plus, perhaps because of its development framing, follows a primarily defensive model for Indigenous rights to preserve domestic regulatory space and treaty obligations rather than to create joint commitments or inclusive institutional frameworks. New Zealand's Treaty of Waitangi exception, Australia's Indigenous preference reservation, and recognition of traditional knowledge in technical standards illustrate how Indigenous rights are safeguarded across legal and policy domains. However, despite its regional Indigenous demographics, the PACER Plus agreement lacks mechanisms for Indigenous economic participation or structured consultation within its institutional arrangements (see Table 4, Annex 1 for more details).

⁹⁶ Level of development refers to the WTO differentiation on developed and developing members.

Figure 5: Overlapping membership of the four selected plurilateral trade agreements



Source: Authors' illustration based on membership as of April 2025.

Note: RCEP has not been notified to the WTO.

*Entry into force for the CPTPP started in 2018 for Australia, Canada, Japan, Mexico, New Zealand, and Singapore; 2019 for Viet Nam, 2021 for Peru, 2022 for Malaysia, 2023 for Chile and Brunei Darussalam, and 2024 for the United Kingdom.

Location in the FTA text/chapter in which provisions are found

The CUSMA features a significant number of references to Indigenous Peoples contained in the following places in the agreement text:

- *Preamble*: Explicit reference to Indigenous Peoples.
- *Chapter 6: (Textiles and Apparel)*: For rules of origin with direct reference to Indigenous made goods.
- *Chapter 14 (Investment)*: Art. 14.17 on Corporate Social Responsibility encourages ethical practices including toward Indigenous Peoples.
- *Chapter 24 (Environment)*: Several articles (24.2, 24.15.3, 24.19.2, 24.23.1) refer to Indigenous or traditional knowledge or practices—especially on biodiversity, sustainable forestry, and cultural whaling.
- *Chapter 25 (SMEs)*: Art. 25.2 includes commitments to improve trade and investment opportunities for underrepresented groups including Indigenous Peoples.
- *Chapter 26 (Competitiveness)*: Art. 26.1 mandates actions to enhance Indigenous participation in supply chains and innovation.

- *Chapter 13 (Government Procurement)*: Mexico's Indigenous development agency is listed under covered entities.
- *Chapter 15 (Cross-border Trade in Services)*: Canada's Non-conforming Measures.
- *Chapter 32 (General Exception)*: Article 32.5.

CPTPP, while including members with history of incorporating provisions with reference to Indigenous Peoples, does not show significantly larger cover of such provisions looking at the number of chapters and articles contained in the text:

- *Preamble*: Acknowledges the importance of Indigenous rights and cultural diversity.
- *Chapter 18 (Intellectual Property)*: Art. 18.16 encourages cooperation on traditional knowledge.
- *Annex 18-A (New Zealand)*: Allows a sui generis plant variety protection system consistent with the Treaty of Waitangi.
- *Annex II – Canada (Non-Conforming Measures: Cross-Border Trade in Services and Investment)*: Reserves Canada's right to deny foreign investors or service suppliers any rights or preferences granted to Indigenous Peoples (Aboriginal Affairs).
- *Chapter 4 (Rules of Origin and Related Matters)*: Art. 4.2 allows duty-free or preferential treatment for "traditional folklore handicraft goods" by mutual agreement between parties.
- *Chapter 20 (Environment)*: Arts. 20.1 and 20.13 mention biodiversity and cooperation, with potential indirect relevance.
- *Chapter 29 (Exceptions and General Provisions)*: Art. 29.8 refers to Traditional Knowledge and Cultural Expressions.
- *Chapter 29 (Exceptions and General Provisions)*: Art. 29.6 Treaty of Waitangi (for New Zealand).

RCEP's inclusion of the references to Indigenous Peoples are limited to Chapter 11 on Intellectual Property with a reference to Genetic Resources, Traditional Knowledge and Folklore (Art. 11.53) and encouraging consultation and cooperation in the area (Art. 11.76). Additionally in Chapter 17 on general provisions, Art 17.16 includes a Treaty of Waitangi clause specific to New Zealand.

Finally, PACER Plus includes a small number of provisions that are directly relevant to Indigenous Peoples' rights and interests. These appear across chapters on technical standards, services and investment (in the annexes with commitments of specific members) and dispute settlement (in relation to New Zealand).

Binding or "best endeavour" character of the provisions

These plurilateral agreements also differ in terms of weight given to enforcement of the provisions incorporated. The CUSMA is one of the few FTAs that has operational and enforceable Indigenous provisions. They are included in Art. 24.19.2 (Indigenous whaling), 25.2 (SMEs), and

26.1 (Competitiveness). Other provisions (in the Environment chapter or on CSR) are non-binding. In contrast, the CPTPP's Indigenous provisions remain aspirational and cooperative in their legal (enforceability) nature. Limited binding is associated with the Annex 18-A which is binding only in creating a domestic carve-out for New Zealand, and even then, not subject to dispute settlement. Similarly, RCEP's provisions in the Intellectual Property chapter have no binding power, while the Treaty of Waitangi exceptions bind New Zealand only. The PACER Plus Agreement, while not adopting a unified or proactive Indigenous inclusion model, incorporates binding exceptions, protective clauses, and legal safeguards that allow Parties—particularly New Zealand and Australia—to honour their domestic obligations to Indigenous Peoples.

Associated institutional arrangement with the provisions

There are several institutional arrangements directly associated with chapters where the relevant Indigenous provisions were identified.⁹⁷

- CUSMA establishes the Environment Committee (Art. 24.26), Committee on SME Issues (Art. 25.4) and the North American Competitiveness Committee (Art. 26.1). Each body is explicitly tasked with implementing commitments relevant to Indigenous Peoples.
- The North American Committee on Competitiveness under the CUSMA is mandated to provide recommendations aimed at “enhancing the participation of SMEs, and enterprises owned by under-represented groups including women, Indigenous Peoples, and minorities”.
- The CPTPP features an Environmental Committee (Art. 20.19) with procedures for public submissions (Art. 20.9) but contains no mechanisms on how to engage Indigenous Peoples.
- RCEP has put in place a host of committees and subsidiary bodies (Chapter 18) but relevant to this analysis is only the Committee on the Business Environment (Art. 15 in Chapter 18) which oversees the work on Intellectual Property.

E. Bilateral trade agreements

The fifth group of FTAs includes eight agreements negotiated bilaterally between developing countries—mostly involving Latin American economies—and partners from Asia and the Middle East. (Colombia-Rep. of Korea FTA, 2016; Peru-Rep. of Korea FTA, 2011; Nicaragua-China FTA 2024; and Guatemala-Chinese Taipei FTA, 2006). Three FTAs are regional in terms of membership: Colombia-Costa Rica FTA 2016; Peru-Costa Rica 2016; and Peru-Panama 2013. Only one FTA does not involve a Latin American party: Indonesia-UAE CEPA 2023.

As in the previous sections, the FTAs are examined along three key dimensions: the location of Indigenous-related provisions within the legal text, their legal character, and the institutional arrangements supporting implementation. Table 5 in Annex 1 provides a detailed record of all the provisions identified for this group of FTAs.

⁹⁷ It must be however noted that RCEP and PACER Plus have a dedicated chapters referring to Institutional Arrangements. It is Chapter 18 in RCEP and Chapter 12 in Pacer Plus.

Five of the eight FTAs in this group involve Colombia or Peru, and several of their agreements appear to draw on similar or even identical drafting templates. For example, the Colombia and Peru FTAs with Costa Rica include nearly mirrored provisions in key chapters. Despite this, all agreements are treated separately here for analytical clarity.

Location in the FTA text/chapter in which provisions are found

Explicit references to the relevant key terms (Indigenous Peoples, traditional knowledge, genetic resources, folklore, or similar terms) occur primarily in a small number of chapters:

- The most common location for these provisions is the chapter on *Intellectual Property Protection or Rights (IPR)*. These typically address the protection of traditional knowledge and benefit-sharing mechanisms, and appear in FTAs such as Colombia-Costa Rica, Peru-Costa Rica, and Guatemala-Chinese Taipei.
- *Environment or Sustainable Development* chapters also contain relevant language, often acknowledging the contribution of Indigenous Peoples and local communities to biodiversity conservation (e.g., Colombia-Rep. of Korea FTA, Peru-Rep. of Korea FTA).
- The UAE-Indonesia CEPA includes relevant provisions under Chapter 12 (*Intellectual Property Protection*), specifically Article 12.23, which acknowledges genetic resources and traditional knowledge in the context of the Convention on Biological Diversity, and with reference to international discussions such as those in WIPO and the WTO TRIPS Council.

Binding or “best endeavour” character of the provisions

Most provisions fall under the category of *best endeavour*, but there are important exceptions:

- *Binding provisions* appear in the *IPR chapters* of the Colombia-Costa Rica and Peru-Costa Rica FTAs. These include enforceable language on *free, prior and informed consent*, *benefit-sharing*, and *disclosure of origin* for patent applications involving traditional knowledge.
- The Guatemala-Chinese Taipei FTA also contains binding obligations supported by dispute settlement mechanisms.
- In contrast, the Peru-Korea and Colombia-Korea FTAs as well as the UAE-Indonesia CEPA use softer formulations—emphasizing cooperation and recognition, but without enforceable obligations.

Associated institutional arrangement with the provisions

Institutional arrangements related to Indigenous provisions are generally *limited or absent*, especially within IPR chapters:

- Where Indigenous-related provisions appear in chapters like *Environment or Sustainable Development*, there are broader oversight bodies (e.g., the *Council on Sustainable Development* in Colombia-Rep. of Korea in Art.16.11), but these are not Indigenous-specific.

- The Guatemala-Chinese Taipei FTA stands out by establishing an *Intellectual Property Committee*, which is at least potentially relevant for follow-up on traditional knowledge issues. No other FTA establishes a dedicated committee under the IPR chapter.
- The Peru-Panama FTA, rather than set up a committee, encourages the Parties to carry out discussions relating to traditional knowledge and cultural expressions in international fora including the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of WIPO, and the TRIPS Council of the WTO, among others (Article 9.5.4).

In summary, while references to Indigenous Peoples, traditional knowledge, and genetic resources are present across several of the FTAs reviewed in this grouping, the legal force and institutional support behind these provisions vary considerably. The most detailed and binding commitments are found in the IPR chapters of the Colombia-Costa Rica and Peru-Costa Rica FTAs, whereas most other provisions—including those in newer agreements like the Indonesia-UAE CEPA—remain non-binding and framed in aspirational terms. The general lack of dedicated institutional arrangements suggests a gap between textual recognition and operational implementation. This gap highlights the limitations of symbolic recognition and underscores the importance of embedding Indigenous interests in enforceable commitments and operational mechanisms.

The provisions that explicitly refer to Indigenous Peoples in the Intellectual Property chapter of the Colombia-Costa Rica FTA and the Peru-Costa Rica FTA are nearly identical indicating the trend of using a template. They relate to the protection of biodiversity and traditional knowledge (Article 9.5 in both FTAs). This provision reaffirms the obligations under the Convention on Biological Diversity and recognizes the importance of the “knowledge, innovations and practices of Indigenous Peoples and local communities” (Article 9.5.2).

These trade agreements enter into considerable detail on a number of aspects of intellectual property protection for Indigenous Peoples. They require that access to the traditional knowledge of Indigenous Peoples and local communities be “...subject to the free, prior and informed consent of the holders or possessors of such knowledge, on mutually agreed terms” (Article 9.5.3). Additionally, the provisions address the sharing of benefits from the utilization of traditional knowledge of Indigenous Peoples and require that the Parties “shall take measures to ensure fair and equitable sharing” of these benefits, as well as measures to ensure full compliance with the conditions of access to traditional knowledge (Articles 9.5.4 and 9.5.5). The agreements go on to specify that any intellectual property rights arriving from the use of traditional knowledge of Indigenous Peoples “...must comply with national and international standards” on the matter (Article 9.5.6) and that “...patent applications developed from...traditional knowledge, of whatever country of origin, demonstrate legal access to such resources or knowledge, as well as disclosure of the origin of the resource and/or traditional knowledge accessed” (Article 9.5.7). This set of articles constitutes a very detailed set of specific obligations regarding the conditions of commercial exploitation of traditional knowledge of Indigenous Peoples in contrast to the more general treatment found in many of the FTAs examined. These provisions are binding.

As is customary in all of the chapters on Intellectual Property, there is no compliance mechanism that is set out within the chapter itself. Rather, the Parties are required to develop their own legislation to comply with the intellectual property obligations of the chapter. In particular, the articles address specific procedures to ensure compliance with around intellectual property obligations in the case of presumed infringement of rights (Article 9.7 on Compliance).

IX. Common elements and differences in approach to treatment of Indigenous Peoples in the trade agreements examined

Trade agreements have become an essential platform for addressing the rights and interests of Indigenous Peoples, reflecting broader economic, socio-political objectives and legal obligations of the countries involved. While all the parties to the 36 trade agreements examined have incorporated provisions related to Indigenous Peoples in their trade policies and negotiated legal agreements (although to a significantly different extent), the approaches and even the motivations behind these provisions vary significantly. These differences are shaped by each party's historical context, legal framework, and specific socio-cultural dynamics. These all influence the degree to which each party is able or wishes to rely on domestic policies to promote and protect the interests and rights of Indigenous Peoples. While some may view trade and economic integration as crucial drivers of inclusive and sustainable development, others may take a narrower perspective. Thus, parties to the agreements examined do not necessarily use these drivers equally or in a similar manner to enhance participation of Indigenous Peoples in trade.

A. Common elements in approach

Across jurisdictions, trade agreements increasingly include references to Indigenous Peoples, but the approach can vary significantly depending on domestic legal traditions, constitutional arrangements, and the political weight attached to Indigenous engagement in economic governance. Broadly speaking, four approaches have emerged:

- The first is an **affirmative approach** through the inclusion of provisions or often statements (such as those in the Preamble) that affirm the importance of recognizing and protecting the rights of Indigenous Peoples in various areas as well as the importance of participation in decision-making (as done in IPETCA). This recognition is often embedded within broader commitments to human rights and sustainable development goals. Notably, the UNDRIP serves as a critical international instrument guiding these commitments. UNDRIP establishes the minimum standards for the survival, dignity, and well-being of Indigenous Peoples worldwide, emphasizing rights such as self-determination, cultural preservation, and participation in decision-making processes. Furthermore, Article 36⁹⁸ is often cited in the context of cross-border trade and cooperation among Indigenous Peoples, especially in North America (e.g., U.S.-Canada tribal trade), and has growing relevance in trade and procurement frameworks.

98 Article 36 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) reads:

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.

- The second is an **exclusionary approach**, where governments preserve their regulatory autonomy through general exceptions and chapter-specific reservations that shield policies and obligations adopted on behalf of Indigenous Peoples from trade disciplines. These carve-outs serve to ensure that FTAs do not override constitutional protections, treaty commitments, or self-government agreements. Canada and New Zealand are the most prominent examples. Canada's FTAs traditionally include a wide range of chapter-specific exceptions—in services, investment, environment, procurement, and state-owned enterprises (SOEs)—that explicitly incorporate a legal right to maintain policy flexibility in support of Indigenous Peoples. In the Canada-United States-Mexico Agreement (CUSMA), Canada also introduced for the first time a general exception on behalf of Indigenous Peoples (IGE), affirming its ability to adopt measures necessary to fulfil obligations under Section 35 of the Constitution Act, 1982 and related self-government arrangements. This IGE coexists with other trade-related provisions aimed at Indigenous advancement and was developed in close consultation with the Indigenous Working Group on trade convened by Global Affairs Canada in September 2017.

New Zealand, for its part, has embedded a Treaty of Waitangi exception clause in all FTAs since 2001. This clause is non-negotiable (a redline) and is grounded in the Treaty which is a foundational document that guides New Zealand's approach to Indigenous rights. It emphasizes partnership, protection, and participation, which are reflected in the country's trade agreements. It allows the Government to implement policies to meet its obligations under Te Tiriti o Waitangi, including preferential treatment or targeted support for Māori, without the requirement to extend equivalent benefits to other trading partners. These types of exceptions do not require the elaboration of economic development strategies for Indigenous Peoples—but they are essential for maintaining constitutional integrity and legal certainty.

- The third is a **protective approach**, through ensuring that trade agreements incorporate legal safeguards for upholding Indigenous rights in various areas. Notably this has been the case for provisions that uphold the right of Indigenous Peoples to preserve and benefit from the use of their traditional knowledge and cultural expressions through international trade. A large number of trade agreements, and notably all of those with European Union and European Free Trade Areas partners, focus on and include these types of protective provisions.

Another prominent area of protective rights is that designed to ensure that trade agreements include commitments to protect the environment and traditional way of life of Indigenous Peoples. These commitments intersect with the interests of Indigenous Peoples to ensure environmental conservation on their lands and the sustainable use of natural resources and protect their treaty rights to hunt (in the case of Canada). Additionally, protective provisions may be included to prevent governments from weakening Indigenous rights to attract trade or investments (non-derogation clause). These may also take the form of clauses to ensure Indigenous Peoples' rights are upheld in regulatory and dispute settlement processes.

- The fourth is an **opportunity-oriented approach**, focused on creating economic opportunities for Indigenous Peoples. Many parties to these trade agreements feel that trade agreements can be a vehicle to reduce inequality and socio-economic disparities

between Indigenous and non-Indigenous populations through broadening economic opportunities. Rather than shielding Indigenous-related measures from trade disciplines, this approach incorporates provisions that seek to create new opportunities for Indigenous Peoples by enhancing their ability to participate in and benefit from international trade. These are most often found in chapters on cooperation and capacity-building, which are present in several of the FTAs, particularly those negotiated by Canada.

Such provisions can include cooperation on Indigenous business development, support for Indigenous entrepreneurs in small and medium-sized enterprises (SMEs), dedicated access to government procurement, capacity-building initiatives, digital trade initiatives, and opportunities for participation in trade fairs and networking groups. Other affirmative, or opportunity-enhancing provisions focus on support for Indigenous participation in economic activities, such as fostering Indigenous-owned businesses and promoting their involvement in clean technology and environmental initiatives

Table 3 sets out a comparison of the approaches followed by the countries and/or parties that have negotiated three or more FTAs with provisions relevant to Indigenous Peoples.

Table 3: Comparison of the type of provision incorporated into the trade agreements examined as characterised by its intent

Party to the agreements	Affirmative provisions	Protective provisions	Exclusionary provisions	Opportunity-creating provisions
Australia	✓	✓	✓	✓
Canada	✓	✓	✓	✓
Colombia		✓		
EFTA		✓		
EU		✓		
Republic of Korea		✓		
New Zealand	✓	✓	✓	✓
Peru		✓		
United States		✓		
CPTPP	✓	✓	✓	✓
CUSMA	✓	✓	✓	✓
PACER Plus			✓	
RCEP		✓	✓	

Source: Authors

This categorisation of FTA provisions into four groupings according to the commonality of their intent allows for interesting observations to be made based on the information summarized in comparative Table 3, namely:

- Of the nine countries or parties that have negotiated three or more trade agreements with explicit reference to Indigenous Peoples since 2005, Australia, Canada and New Zealand are notable for having incorporated provisions that embrace all four approaches or objectives into their FTAs. The large number of provisions they have included relevant to Indigenous Peoples are found throughout six to seven different chapters and are set out in the various tables in Annex 1.
- Also notable are the two plurilateral agreements of the CPTPP and the CUSMA whose members have likewise followed all four approaches or objectives for the relevant provisions they have incorporated into these agreements, with provisions found in six different chapters as well as several reservations. These two plurilateral agreements are significant for the size represented by the combined GDP and trade of their members in the global economy.⁹⁹
- The other six countries and members of the other two plurilateral agreements have followed a narrower approach to the treatment of Indigenous interests and have focused on incorporating protective provisions into their agreements. The relevant provisions included in the agreements of the EU, EFTA, Colombia, Peru, the Republic of Korea, and the United States are all found in chapters on intellectual property, the environment or sustainable development, that have the objective of protecting Indigenous traditional knowledge, folklore, genetic resources or sustainable development.

In conclusion, a few countries to date have followed a more ambitious and common approach to advance the interests of Indigenous Peoples in their FTAs, incorporating provisions with several different objectives to simultaneously affirm the rights of Indigenous Peoples, retain the legal safety net of general exceptions, ensure protective provisions, and lay the groundwork for cooperation and the creation of greater trade opportunities. These agreements by Australia, Canada, New Zealand, along with the members of the CPTPP and the CUSMA can be considered as the most balanced and advanced in forwarding the interests of Indigenous Peoples from a multi-dimensional perspective.

This multi-track model reflects an evolving understanding: that Indigenous Peoples are not only rights holders whose legal protections must be respected, but also economic actors whose greater participation in trade is essential for inclusive and sustainable development and must be promoted.

99 The CUSMA is estimated to represent approximately 30% of global GDP and the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) about 15% of global GDP. These are two of the four largest trade groupings in the world economy (the other two being the European Union and the RCEP). See The World Economic Forum Growth Summit, *The World's Biggest Trading Blocs*, April 28, 2023, <https://www.weforum.org/stories/2023/04/growth-summit-2023-world-biggest-trading-blocs/>.

B. Differences in motivations and approaches

Governments adopt different approaches to integrating Indigenous Peoples into trade agreements, which reflect their legal frameworks, domestic obligations, and broader policy goals. As seen earlier, the most advanced countries in this respect are Canada and New Zealand, both of which have constitutional or treaty-based commitments to Indigenous Peoples that influence how FTAs they negotiate are designed. In contrast, Colombia and Peru emphasize cultural heritage protection and environmental stewardship, reflecting their own historical and socio-environmental contexts. The Philippines is somewhat a hybrid case as it lacks legal obligations embedded in constitutional or treaty frameworks that would compel proactive Indigenous inclusion in FTA negotiation, but it does have in place a national consultation based on Indigenous Peoples' Rights Act (IPRA, 1997). Australia, the EU, and the United States add further variation in approach, with differing levels of formality and institutionalization in recognizing Indigenous interests in trade. These differences illustrate that the integration of Indigenous rights in trade policy is not only a matter of technical drafting but also of political will, legal tradition, and national identity. The contrasts between these national approaches is set out in summary form below.

- In Canada, the Constitution Act, 1982 affirms the rights of Indigenous Peoples, creating a legal obligation to ensure that international agreements do not violate these rights. This has led to growing emphasis on inclusive trade policymaking, including specific chapters in FTAs and institutional mechanisms for Indigenous input. Canada's role in the IPETCA underscores its commitment to international frameworks that support Indigenous economic participation. The Canadian approach is shaped by both domestic legal imperatives and a broader policy consensus that trade should help reduce inequality and expand opportunity.
- New Zealand and Canada both view trade as a tool for inclusion and equity. New Zealand's trade policy is uniquely grounded in the Te Tiriti o Waitangi/Treaty of Waitangi, which enshrines partnership, participation, and protection as guiding principles. The Waitangi Tribunal has repeatedly addressed the implications of trade agreements on Māori rights, prompting the government to embed protective mechanisms into its FTAs. A notable example is the Treaty of Waitangi exception clause, which has been consistently included in New Zealand's FTAs since 2001. New Zealand has also committed to Māori economic development through affirmative provisions that protect traditional knowledge, promote Māori SMEs, and recognize culturally significant exports. Its role as chair of the IPETCA Partnership Council (2024–2025) reflects its continued leadership in advancing Indigenous rights in trade.
- Australia's approach is evolving, driven by policy commitments rather than constitutional or treaty-based obligations. Initiatives like the Indigenous Diplomacy Agenda and the First Nations Trade Strategy aim to promote Indigenous economic self-determination and participation in global trade. While Australia has begun integrating Indigenous considerations into recent FTAs (e.g., UK and UAE), its approach remains consultative rather than legally binding, relying on formal partnerships and capacity-building efforts rather than enforceable obligations.

- Colombia and Peru (both have ratified ILO 169) lack treaty-based or constitutional obligations regarding Indigenous trade inclusion but approach Indigenous interests through cultural and environmental protections. Their trade policies emphasize the preservation of biocultural heritage, prevention of biopiracy, and recognition of traditional knowledge within intellectual property frameworks. This approach prioritizes safeguarding Indigenous ways of life, particularly in regions where biodiversity and ancestral lands intersect, rather than focusing on direct Indigenous economic integration into FTAs.
- The European Union and the European Free Trade Association (EFTA) primarily focus on traditional knowledge and protection of genetic resources. These provisions are found in intellectual property or sustainable development chapters, designed to prevent biopiracy and promote benefit-sharing. While binding, enforcement relies on domestic mechanisms, and most EU agreements lack Indigenous-specific institutional arrangements. One exception is CETA, where Canada's Indigenous carve-outs exist; however, these are not EU-driven trade provisions. The European focus on Indigenous Peoples in trade is concentrated on intellectual property protections and does not extend beyond this.
- The United States has not articulated a formal Indigenous trade policy and has no dedicated institutional framework for Indigenous inclusion in FTAs. Earlier bilateral agreements with Peru and Colombia included non-binding provisions on biodiversity under environmental chapters, but these do not directly reference Indigenous Peoples. The U.S. Department of Commerce supports Tribal businesses through general export promotion efforts, but this is disconnected from trade negotiations. In contrast to CUSMA (negotiated alongside Canada and Mexico), U.S. bilateral FTAs remain limited in scope on Indigenous inclusion.

Interviews (see next section) confirm that the “fitness” of FTAs to address barriers to greater Indigenous participation in international trade varies widely. Where national frameworks exist to enable participation, representatives of Indigenous Peoples have shaped provisions more actively—as seen in New Zealand's Māori Trade Board or Canada's Indigenous Working Group on Trade. Where such frameworks are absent, there is greater reliance on government-led cultural and environmental protections, often without Indigenous co-governance.

Recognizing these diverse approaches is essential for future FTA design. There is no one-size-fits-all model, but common principles—such as respect for Indigenous rights, inclusive consultation, and alignment of domestic policy with international commitments—can guide more equitable and effective outcomes. Moving forward, the challenge is not only to protect Indigenous interests but to empower Indigenous Peoples as active partners in shaping the trade agenda.

Table 4 summarizes the main differences in the motivation and context of the main actors involved in negotiating provisions relevant to Indigenous Peoples in trade agreements, contrasting their legal foundation, core motivation, approach in trade agreements and any consultation mechanism with Indigenous groups they have in place.

Table 4: Main differences in motivation and approaches to the negotiation of provisions in FTAs relevant to Indigenous Peoples

FTA Member	Legal Foundation	Core Motivation	FTA Features	Indigenous Consultations
Australia	Policy Framework (no constitutional base)	Reconciliation and Economic Opportunity	Carve-outs (reservations), consultation, dedicated chapter	MoUs, advisory partnerships
Canada	Constitution Act, 1982 Treaties, UNDRIP Act (2021)	Inclusion and Economic Equity Reconciliation Gender Based Analysis (GBA) Plus (where the Plus reflects intersectional considerations including Indigeneity)	Carve-outs, exceptions, reservations, participation, dedicated chapters	IWG (now called I-Trade as of Feb. 2025), national platforms IPACs (FTA specific Indigenous Peoples Advisory Councils) I-trade (replaced IWG in 2025)
Colombia	National Cultural Heritage Laws ¹⁰⁰	Cultural and Environmental Protection	Traditional knowledge recognition, biodiversity protections	Ad hoc
EU / EFTA	-	Protection of Traditional Knowledge	IP-focused biodiversity clauses, benefit-sharing	No formal mechanisms
New Zealand	Treaty of Waitangi	Treaty Obligations and Equity	Treaty exception, participation, dedicated chapters	Māori Trade Board (or Te Taumata); MFAT structures
Peru	Indigenous Law, Biocultural Norms ¹⁰¹	Safeguarding Traditional Life	IP and Traditional knowledge protections, benefit sharing	Ad hoc
Rep. of Korea	No domestic Indigenous framework	Recognition of international frameworks and initiatives (UNDRIP, WIPO, Arctic Council)	Recognition of role and stewardship of Indigenous Peoples	None
United States	No direct constitutional or policy framework or treaties	Administrative support to small business, SMEs	Non-binding biodiversity references	None in FTAs; Department of Commerce programs

¹⁰⁰ Colombia's national cultural heritage law is primarily embodied in Law 397 of 1997, as amended by Law 1185 of 2008. This law, along with the 1991 Political Constitution, defines and protects the nation's cultural heritage, encompassing tangible and intangible elements.

¹⁰¹ Constitution acknowledges and protects the Andean indigenous legal system and allows for a degree of autonomy within communal lands, where indigenous Peoples can govern according to their customary law. Additionally, national laws, such as those on biodiversity conservation and exchange of goods, recognize Quechua customary laws. Law 27811 establishes a regime for protecting the collective knowledge of indigenous peoples related to biological resources, requiring prior informed consent for access and equitable benefit sharing.

X. Shortcomings of trade agreements: insights from interviews

A very important component of understanding the ways in which trade agreements may have fallen short of the objectives and aspirations of Indigenous Peoples has been obtained from interviews with government officials and representatives of Indigenous Peoples, mainly from Canada and New Zealand, with supplemental perspectives from Costa Rica, Mexico, Papua New Guinea, Peru, and The Philippines.¹⁰² The purpose of these interviews was to provide insights from those either impacted by or knowledgeable in this area on how effective trade agreements have been in addressing Indigenous economic inclusion—both in their design and their implementation. Additionally, those interviewed were asked to reflect on the IPETCA as a model for engaging Indigenous Peoples in trade matters.

Despite growing awareness, the prevailing view of those interviewed is that trade agreements often fail to respond adequately to the deep historical, and specific domestic barriers impacting the ability of Indigenous Peoples to access and benefit from trade. These agreements are frequently viewed as misaligned with Indigenous realities, lacking the necessary flexibility and institutional mechanisms to reflect cultural, legal, and economic distinctiveness. Moreover, limited participation, or even outright exclusion, of Indigenous voices in trade negotiations persists—even when requests for engagement are put forward. This undermines trust and the potential for Indigenous Peoples to both accept the outcome of these negotiations as legitimate and to derive meaningful benefits from the agreements.

The perceived shortcomings expressed by the representatives of Indigenous Peoples and other experts in these interviews overlap with the areas of concerns of Indigenous Peoples around trade and trade agreements discussed in Section IV. The interview findings are summarized under the five broad categories below, nearly all of which reflect the issue areas of concern.

A. Entrenched patterns of inter-Indigenous trade and investment

Interviewees highlighted that current patterns of inter-Indigenous trade continue to reflect pre-colonial ties, largely constrained by geographic isolation and limited access to affordable trade finance.¹⁰³ Most Indigenous SMEs operate in primary sectors like resource extraction, construction, and cultural goods, with minimal engagement in foreign direct investment. Although FTAs could help expand these linkages, provisions currently found in the FTA texts are not designed with these unique trade patterns in mind. Interviewees expressed concern that carve-outs and flexibilities included in some FTAs remain too vague to be usable. Moreover,

¹⁰² In total, 17 interviews were conducted. A background document (found in the Annex) was distributed prior to the discussions. A list of those who were interviewed can also be found in the Annex. The views of those interviewed have been summarized, without specific attribution.

¹⁰³ Affordability of trade finance for Indigenous Peoples is significantly constrained by systemic barriers, limited access to collateral, and higher perceived risk. However, targeted government initiatives and the development of Indigenous-led financial institutions are helping to address these challenges and make trade finance more accessible and affordable. See study on *Addressing Gaps in Existing Access to Finance*, Momentus Pre-scoping Report, https://fnfmb.com/sites/default/files/2024-01/2023-10-16_idb_pre-scoping_study_final_report.pdf.

without incorporation of provisions to target specific areas important to create opportunities for Indigenous trade (for example trade facilitation, access to finance, access to markets), these agreements do little to overcome persistent trade barriers faced by small Indigenous businesses.

B. Unsatisfactory design and content of Indigenous provisions in FTAs

Several interviewees emphasized that FTA language often ‘reaffirms’ commitments to international instruments like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Yet such reaffirmations remain symbolic if not accompanied by actionable mechanisms and measurable outcomes. They feel that little impact from these international instruments has been felt on the ground by Indigenous Peoples.

When commenting on trade agreements that go beyond re-affirmation and recognition, interviewees differentiated between two types of provisions: defensive and proactive. Defensive provisions include reservations, exceptions, or carve-outs allowing governments to uphold Indigenous rights and support without breaching trade disciplines. These are often found in services or investment chapters. Proactive provisions, on the other hand, entail commitments—either binding or best-endeavour—to protect traditional knowledge and genetic resources, promote Indigenous economic development, and ensure non-discrimination in licensing and market access.¹⁰⁴

Many interviewees viewed the inclusion of even non-binding language as a positive step that legitimizes Indigenous trade concerns and can influence policymaking. However, most agreed that binding provisions have the greatest transformative potential—particularly in areas like government procurement, intellectual property,¹⁰⁵ and SME support. The potential of tools like Geographic Indications for culturally distinctive goods was emphasized.

There was a division of views over whether a general non-discrimination clause (like the one used by New Zealand) should be included across all chapters, or whether chapter-specific obligations were more effective. Either way, clearer drafting and operational language were seen as necessary to translate FTA text into real opportunity.

104 This characterization of existing provisions broadly corresponds to two of the four approaches that we have outlined earlier in this study. Those ‘defensive’ provisions would correspond to the *exclusionary approach*, while the ‘proactive’ provisions would correspond to the *protective approach*. The other two approaches (namely the *affirmative approach* and *opportunity-creating approach*) were not separated out as such.

105 Even though the enforcement of IPRs depends on domestic legislation and not on the FTA’s dispute settlement.

C. Failure to incorporate provisions into trade agreements of significance and importance to Indigenous Peoples

The interviews have allowed the authors of this study to put together a set of priority objectives of Indigenous peoples for the content of provisions they would like to see incorporated into FTAs.¹⁰⁶ These include the following:

- Include a standalone chapter on Indigenous Peoples and Trade in all future trade agreements.
- Include provisions as well throughout the trade agreement that reference and reinforce Indigenous rights and interests along the lines of the four approaches described in Section IX.A.
- Acknowledge the importance of enhancing the ability of Indigenous Peoples and Indigenous businesses to benefit from the opportunities created by international trade and investment.
- Reaffirm important existing Indigenous-specific international instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples.
- Recognize the important role of the environment in the economic, social and cultural well-being of Indigenous Peoples and the importance of respecting, preserving and maintaining the knowledge and practices of Indigenous Peoples that contribute to the conservation of the environment.
- Include provisions to protect traditional knowledge and folklore, along with genetic resources and sustainable development. Ensure that these include requirements and mechanisms that allow Indigenous Peoples to benefit from the exploitation of this knowledge and resources.
- Ensure that trade agreements contain exceptions that allow Governments the right to regulate and discriminate favourably towards Indigenous Peoples and businesses.
- Include 'carve out' provisions in trade agreements that allow Governments to source inputs or products from Indigenous Peoples and businesses.
- Facilitate cooperation activities between the Parties, including the sharing of information and establishment of a dedicated website containing information on the agreement that is useful to Indigenous entrepreneurs and businesses.
- Establish an institutional mechanism under the agreement to determine and facilitate cooperation activities between the Parties to support the trade related interests and objectives of Indigenous Peoples.

¹⁰⁶ Many of these suggestions can also be found on the website of the Government of Canada at <https://international.canada.ca/en/services/business/trade/policy/inclusive/indigenous/approach>.

D. Inadequate involvement of Indigenous Peoples in trade policy formulation

A consistent theme across interviews was the inadequate involvement of Indigenous Peoples in the development of trade policy positions and the negotiation of trade agreements. This has been manifested through the lack of effective consultation mechanisms and the underrepresentation—or total exclusion—of Indigenous Peoples from information sharing during trade negotiations and follow-up mechanisms. Where engagement does occur, it was felt to be often sporadic and insufficiently resourced. Some also observed that governments have ignored direct requests for inclusion—such as calls to be part of national delegations or to provide commentary on FTA text. This contributes to disillusionment and the perception that FTAs are externally imposed rather than co-developed. As one participant put it, the ‘fitness’ of FTAs to address the specific, historically rooted barriers faced by Indigenous Peoples remains largely unproven. Several good practices towards resolving this issue have been outlined in Section XI.

E. Gap between negotiated provisions in FTAs and meaningful outcomes

Despite progress in some agreements, many interviewees noted a persistent gap between the inclusion of provisions and their translation into meaningful outcomes for Indigenous Peoples. Recurring problems were cited as the lack of binding obligations within trade agreements and the adoption instead of *best endeavour* intentions for implementing cooperation activities.

A critical concern raised by multiple interviewees was the lack of domestic policy alignment. Even meaningful commitments within FTAs were rendered ineffective if domestic laws, budgets, or administrative processes were not adjusted to support implementation. Several pointed out that without these follow-up steps, there is also no way to ensure enforceability or accountability.

Capacity was considered an important barrier—many Indigenous organizations lack the institutional strength and funding to consistently participate in trade-related processes. This challenge was felt to extend to several areas including technical knowledge, legal support, and participation in policy forums. At the same time, some interviewees noted a tendency by governments to bypass Indigenous Peoples even when capacity exists, reflecting either political convenience or reluctance to share decision-making power.

A final issue raised was felt to be the imbalance between trade support (e.g., trade fairs, capacity-building missions) and policy inclusion. While some governments are quick to offer promotional tools, they were viewed as lagging behind with respect to integrating Indigenous Peoples into upstream policy formulation—where the real levers of inclusion lie.

F. Insufficient statistics and measurement of Indigenous participation in trade

Many interviewees pointed to serious limitations in the availability, quality, and comparability of data related to Indigenous Peoples' participation in trade. Data are often scattered, inconsistently collected, or entirely absent—especially in economies without robust Indigenous registries or SME tracking systems. This lack of data makes it difficult to monitor the effectiveness of trade provisions or identify where interventions are most needed.

There are no statistics at present that record the trade flows in goods and services that are generated by Indigenous Peoples, apart from the recent new statistical information focused on the business and trade performance of Māori businesses in New Zealand.¹⁰⁷ For Canada, two recent studies by the Canadian Council for Indigenous Business and Global Affairs Canada look at the characteristics and challenges faced by Indigenous-owned small- and medium-size enterprises that export.¹⁰⁸ It contains some data, but these are not disaggregated enough to separate out the impacts of the FTA provisions. Nor have they been collected with this purpose in mind, and the statistical survey questions at present do not ask for these types of details.

Given that the collection of trade statistics does not differentiate the value of trade flows generated by Indigenous businesses engaged in trade, it is currently impossible to know the value or the percentage of trade at the national level, regional or multilateral level that can be attributed to Indigenous traders or to track this over time. Without these statistics at hand, it is likewise not feasible to analyse impacts of policy changes.

Several experts suggested proxy indicators—such as Indigenous SME ownership—as a practical method to estimate engagement in trade. Linking these data with trade performance, sectoral distribution, and participation in value chains could offer a more complete picture of both barriers and opportunities. Still, the consensus was that significant investment in disaggregated data is required. Without it, progress toward Indigenous economic empowerment through

107 The August 2024 New Zealand Statistics publication [Tatauranga umanga Māori](https://www.stats.govt.nz/information-releases/tatauranga-umanga-maori) reports on Māori authorities (MAs, businesses that manage and administer assets on behalf of collectives) and other Māori enterprises (OMEs, businesses that have some Māori ownership, identify as Māori, and are not Māori authorities). Business demography data on Māori tourism businesses is also included in the release. Due to the addition of more sources to identify Māori businesses, this release includes many more OMEs than previous releases. Tatauranga umanga Māori (TUM) is published in both English and [te reo Māori](https://www.stats.govt.nz/information-releases/tatauranga-umanga-maori-statistics-on-maori-businesses-2023-english/), and includes data about the number of businesses and employees, their industries and regions, financial performance, exports of goods, business performance, and data about Māori farms. <https://www.stats.govt.nz/information-releases/tatauranga-umanga-maori-statistics-on-maori-businesses-2023-english/>.

108 The Canadian Council for Indigenous Business, together with Global Affairs Canada, has produced two joint reports based on a national survey of more than 2,600 Indigenous businesses conducted from May to September 2021. These joint reports are the first of their kind. The first published report provides a portrait of Indigenous exporters, including their characteristics and their export markets of interest. The second report investigates the barriers to firm growth and exporting while exploring the supports and policies reported by Indigenous SMEs as being helpful. However neither report contains statistical data on the value of trade by Indigenous businesses. See: <https://international.canada.ca/en/global-affairs/corporate/transparency/reports-publications/chief-economist/inclusive/2023-09-indigenous> and <https://international.canada.ca/en/global-affairs/corporate/transparency/reports-publications/chief-economist/inclusive/2024-09-indigenous>. In addition to the national survey analysis, these studies include case studies from three First Nations communities, including extensive interviews with businesses and economic development officers.

trade will remain anecdotal and difficult to scale. Moreover it was felt vitally important that data be accompanied by analysis sensitive to local contexts, culturally grounded, and informed by Indigenous perspectives themselves. Experts recommended that quantitative indicators should not overshadow qualitative dimensions—such as recognition of rights, control over cultural assets, and the ability to wield decision-making power—which are central to a meaningful evaluation of trade inclusion.

XI. Good practices for engagement with Indigenous Peoples on trade

Effective engagement with Indigenous Peoples in the context of trade is fundamental to ensuring that free trade agreements (FTAs) and broader trade strategies respect Indigenous rights, reflect community priorities, and result in equitable benefits. This section outlines good practices across three critical areas: (1) types and structures of engagement, (2) engagement during negotiations, and (3) engagement for implementation. It also incorporates lessons from diverse country practices, providing insights for policymakers aiming to establish or strengthen engagement processes that align with Indigenous rights, including those affirmed under the UNDRIP and ILO Convention No. 169.

A. Types and structures of engagement

A consistent theme across interviews and country experiences covered in the other sections of this paper is the insufficient or inconsistent involvement of Indigenous Peoples in the development of trade policy positions and the negotiation of trade agreements. Where engagement mechanisms do exist, they are often under-resourced or sporadic. This reinforces the perception that FTAs are externally imposed and unresponsive to Indigenous concerns. Establishing inclusive, transparent, and well-functioning engagement mechanisms is therefore essential. Experiences from Canada, New Zealand and some other countries can offer illustrative examples.¹⁰⁹

Inclusive representation: Canada's trade-focused Indigenous Working Group (IWG), created during the CUSMA negotiations, brought together representatives from all three constitutionally recognized Indigenous groups—First Nations, Inuit, and Métis—alongside modern treaty and self-government partners, Indigenous groups and business associations and legal and policy experts. Participation was broad, and confidentiality was protected through the application of the Chatham House Rule, reducing political sensitivities and supporting trust.

Capacity building: Recognizing the need for mutual understanding, Canada initiated regular and intensive two-way learning during the early stages of the IWG. Trade negotiators received input on Indigenous rights, interests, and development models, while Indigenous participants gained insights into trade policy and negotiations. These exchanges—often held weekly or biweekly—established trust and technical fluency that continue to serve the process today.

Ongoing relationships and advisory bodies: Over time, Canada adapted this model by creating FTA-specific Indigenous Peoples Advisory Councils/Groups (IPAC/Gs), whose members sign non-disclosure agreements (NDAs) to allow deeper involvement in sensitive discussions. These

¹⁰⁹ Additionally, there is an example of Indigenous Peoples' organisations (IPOs) that are Permanent Participants in the Arctic Council, with equal standing to states in decision-making processes. This model demonstrates how representatives of Indigenous Peoples can shape policy on an equal footing. Similarly, the current Canada-U.S. discussions on the Columbia River Treaty include formal participation by First Nations and Tribal governments, recognising their historical exclusion and knowledge of ecosystem-based management. This serves as a model for integrating Indigenous governance into transboundary economic cooperation.

are activated selectively, based on Indigenous interest and agreement relevance. New Zealand has similarly built a network of partnerships with Māori entities, including Te Taumata (a trade advisory board), Federation of Māori Authorities (FOMA), and the National Iwi Chairs Forum, backed by memoranda of understanding.

Remuneration and recognition: The value of Indigenous expertise has prompted calls—especially in Canada—for financial compensation to participants. While this is not yet formal practice in Canada, New Zealand has reportedly allocated funding for Māori participation in Te Taumata, a model that merits further assessment.

Alternative models: In the Philippines, the National Commission on Indigenous Peoples (NCIP) coordinates consultations through regional gatherings, often funded by the state (see Box 4). Though not directly involved in trade negotiations, the NCIP has a regulatory role when trade-linked investments impact Indigenous lands. Similarly, Costa Rica’s strong constitutional recognition of Indigenous rights has not yet translated into operational trade engagement mechanisms—highlighting the gap between legal recognition and procedural inclusion.

Box 4: The Role of the National Commission on Indigenous Peoples

The National Commission on Indigenous Peoples (NCIP) is the primary government agency in the Philippines mandated to promote and protect the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs), as established under the Indigenous Peoples’ Rights Act (IPRA) of 1997 (Republic Act No. 8371). The NCIP’s mandate encompasses the recognition of ancestral domain rights, self-governance, and the right to Free, Prior and Informed Consent (FPIC) for activities affecting Indigenous Peoples.

While the NCIP does not have a direct role in trade negotiations, which are led by the Department of Trade and Industry (DTI), it plays a consultative and regulatory role when trade-related policies or investments—particularly those linked to land use, extractive industries, infrastructure, or agriculture—have potential impacts on Indigenous territories. The FPIC process is the primary mechanism through which Indigenous Peoples are consulted; however, this process is most often activated in response to specific projects, not as part of broader trade policymaking.

In practice, Indigenous concerns related to trade and investment are sometimes addressed only after agreements have been concluded or once implementation results in development proposals affecting ancestral domains. For example, disputes have arisen where resource extraction or infrastructure development linked to foreign investment, protected under trade and investment agreements, proceeded without full FPIC compliance. In several such cases, NCIP was brought in reactively¹¹⁰—once community resistance or legal petitions had emerged—rather than proactively consulted during the negotiation or ratification stages of the trade agreement.

¹¹⁰ Most (if not all) of these cases were linked to implementation of foreign direct investment and infrastructure projects. See for example the Didipio Mine case (Nueva Vizcaya), where NCIP’s involvement followed Indigenous resistance to the renewal of a mining permit absent FPIC (Legal Rights and Natural Resources Center, 2020); or the Kaliwa Dam project similarly proceeded with bilateral investment support before a valid FPIC process was completed, triggering delayed NCIP engagement after protests and Congressional scrutiny (Philippine Human Rights Commission, 2021).

In contrast, the Philippines has been an active participant in the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) negotiations, emphasizing the importance of respecting Indigenous Peoples' rights over genetic resources and traditional knowledge. Its submissions consistently reference the Indigenous Peoples' Rights Act (IPRA) and the need for Free, Prior and Informed Consent (FPIC) before the use of any genetic resources and traditional knowledge associated with Indigenous Peoples.

The next step to strengthen this consultation mechanism would be the establishment of formal channels for coordination between the DTI and NCIP, and the inclusion of Indigenous perspectives upstream in the policy process, as well as downstream in project implementation.

B. Engagement during trade negotiations

Incorporating Indigenous voices into the negotiation process enhances legitimacy, policy relevance, and outcomes. Three particularly promising practices stand out:

Parallel negotiating tracks: The negotiation of the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) introduced a dual-track model: while state negotiators engaged through formal processes, representatives of Indigenous Peoples from participating economies held their own discussions. This allowed Indigenous Peoples to find common ground on sensitive issues and support government negotiators to overcome impasses to successfully conclude the IPETCA negotiations. It also demonstrated the value of Indigenous leadership in shaping trade instruments directly affecting them.

Advance arrangements for transparency: New Zealand negotiators have secured prior agreement from their trading partners to consult with Māori more openly than standard diplomatic protocols usually permit.¹¹¹ This recognition of Māori as Treaty partners rather than ordinary stakeholders has allowed for deeper and more timely engagement in negotiation phases, balancing transparency with diplomatic discretion.

FTA-specific advisory mechanisms: Canada's Indigenous Peoples Advisory Council model has allowed substantive engagement of Indigenous experts in the FTA negotiations with the UK and Ecuador, but not for others (e.g., Ukraine, ASEAN), reflecting varied levels of community interest or perceived relevance. This flexible model, rooted in consent and confidentiality, allows for tailored participation and offers a replicable structure for others.

¹¹¹ In 2022, New Zealand signed a non-disclosure agreement (NDA) in the form of a side letter with the United States as part of the Indo-Pacific Economic Framework for Prosperity (IPEF) negotiations. This arrangement was intended to allow limited disclosure of negotiating documents to Māori representatives, recognising the government's obligation under Te Tiriti o Waitangi to inform and engage with Māori on matters that may affect their rights and interests. https://ustr.gov/sites/default/files/foia/US-New%20Zealand%20Signed%20IPEF%20Confidentiality%20Arrangement_04132022.pdf

C. Engagement for implementation

Implementing FTAs that include Indigenous-related provisions requires more than technical compliance. It demands co-ownership and co-leadership of implementation strategies.

Co-development of action plans: Canada's approach to IPETCA implementation reflects this principle, with the Partnership Council comprising representatives from both government and Indigenous Peoples. This body co-develops work plans, coordinates implementation, and reflects the spirit of Indigenous-led, government-enabled delivery.

Monitoring and accountability: A key next step for many countries will be the establishment of mechanisms to monitor outcomes and measure impact of FTAs (as advocated in the recommendations of this study) and report back to Indigenous Peoples. This requires institutional structures capable of sustaining transparent communication, evaluation, and iterative policy adjustment.

Institutional continuity: Meaningful implementation is a long-term undertaking. Mechanisms must be built to endure beyond electoral cycles, with dedicated personnel, secure funding, and clear mandates to ensure continuity of engagement and responsiveness to evolving Indigenous priorities.

In summary, meaningful engagement with Indigenous Peoples in trade should not be approached as a one-time or an optional consultative process, but as a sustained and continuous obligation consistent with international commitments and national legal frameworks. The principle of “nothing about us without us” must be embedded across the trade policy cycle—from design to negotiation to implementation and review.

While Canada and New Zealand have made notable advances, their experiences show that no single model is perfect or complete. Other countries—such as the Philippines—offer alternative models with potential for adaptation. Strong legal frameworks, such as Costa Rica's constitutional provisions, are necessary but not sufficient; operational tools must follow. As Indigenous Peoples continue to assert their economic and political agency, trade institutions and government models for interaction must evolve to reflect their roles as rights holders, not just stakeholders.

XII. Assessment of progress to date

As has been mentioned, it is not yet possible to carry out empirical estimates of the economic impact that the provisions incorporated into the 36 trade agreements identified and discussed in this paper have had on Indigenous Peoples. This is due to two factors: the lack of disaggregated statistical data on Indigenous economic activities and Indigenous trade; and the recent nature of many of these provisions, with many FTAs only recently entered into force or still pending implementation. This said, an economic analysis is not the only way to evaluate the outcomes of these important efforts to recognize and promote Indigenous Peoples' concerns through trade agreements. It is important to distinguish results from impacts in this context. While it is not yet possible to assess the economic impacts, it is certainly possible to comment on the broader results of Indigenous inclusion in FTAs to date.

The results reported on in this study are considerable. They reflect significant progress in responding to and incorporating Indigenous concerns into an expanded scope of trade issues over the past few years. A few governments, in particular Canada, New Zealand, Australia, and Taiwan, have made substantial strides in this direction. They are paving the way with initiatives in the area of trade, accompanied by significant supportive domestic policies to help these trade provisions achieve their objectives.

Several areas where results have been achieved over a short period of time can be highlighted. These are canvassed in various sections of this study. Pulling them together, they encompass a variety of legal, institutional and policy mechanisms, including outreach, consultation, training and financing steps which can be summarized as follows:

- **The frequency of references to Indigenous Peoples** in the 36 FTAs examined is significant. Across these agreements negotiated between 2005 and 2025, there are 180 explicit mentions of terms relevant to Indigenous Peoples (as recorded in the analysis of the agreements contained in the comparative tables in Annex 1, under “Location of the Provision”).
- **An increase in the number of provisions with a binding character** has occurred over the past two decades. From just one such provision in the 2006 FTA between Guatemala and Chinese Taipei, the number has risen to 40 binding provisions in agreements negotiated between 2007 and 2025 (as recorded in the analysis of the agreements contained in the comparative tables in Annex 1, under “Legal nature-binding”). While this is only 22 percent of total number of provisions, it nonetheless marks a stronger commitment by parties involved in the more recent FTAs to take concrete steps in support of Indigenous Peoples.
- **Creation of numerous trade consultation mechanisms** to engage Indigenous Peoples in shaping trade priorities, negotiating positions, and the implementation of FTAs. Examples include Canada's Indigenous Peoples Advisory Council, IPETCA's Partnership Council, and mechanisms established in Taiwan and the Philippines, as mentioned in Section X above. In 2019, the New Zealand's Ministry of Foreign Affairs and Trade (MFAT) signed a

Memorandum of Understanding establishing Te Taumata (known as Maori Trade Board) to provide a dedicated platform for deeper discussion on trade policy issues.¹¹²

- **Incorporation of representatives of Indigenous Peoples in the development of negotiating positions** on matters affecting their interests. This is now being practiced in both Canada and New Zealand. In Canada members of FTA-specific Indigenous Peoples Advisory Councils or Groups (IPACs/Gs) sign non-disclosure agreements (NDAs) to enable deeper involvement in sensitive trade discussions. In New Zealand, members of Te Taumata (Māori trade board) and other selected Māori representatives are granted limited access to negotiating documents during FTA negotiations on relevant issues.¹¹³
- **Mutual capacity-building activities** have been initiated to enhance understanding of perspectives and priorities on both the government and Indigenous sides. This has been done in Canada through two-way learning sessions within the Indigenous Working Group. In New Zealand, regular and sustained consultations are conducted by government officials with the representatives of Māori throughout the country during dedicated trade missions.
- **Provision of financial assistance to enable Indigenous participation in trade policy consultations** is under consideration in Canada and already in practice in The Philippines where Indigenous gathering with government are often state-funded. In New Zealand, the government established and fully funds Te Taumata and provides resources for its various activities (as per Art. 8 of the MOU with MFAT).
- **Government support for Indigenous-focused trade capacity-building building** Global Affairs Canada established the [Expert Deployment Mechanism for Trade and Development \(EDM\)](#) in 2018 to help developing countries negotiate, implement, adapt to—and benefit from—their trade and investment agreements with Canada. One of the main objectives of this eight-year, \$16.5 million project is increased access for underrepresented groups, including Indigenous Peoples to the benefits of sustainable and inclusive trade and investment agreements to which Canada and its developing country partners are signatories.

EDM activities have included technical assistance to Ecuador to negotiate Indigenous Peoples and Trade provisions in their free trade agreement with Canada and export development training to promote Indigenous Peoples' trade between Canada and Ecuador. EDM has also provided export development training for Indigenous agricultural producers in Panama, for Indigenous handicraft producers in Paraguay, for Indigenous tourism service providers in Colombia. In Peru, EDM worked with INDECOPI and published its Environmental Advertising Guide in Quechua

112 Memorandum of Understanding between Te Taumata and the MFAT is available at <https://www.mfat.govt.nz/assets/About-us-Corporate/Maori-engagement/MFAT-Te-Taumata-MOU.pdf>

113 Art. 7.2 of the MOU (ibid) states: "Some of the information MFAT shares with Te Taumata will be highly sensitive, including information that is confidential to negotiations or to other states or entities. Retention of confidentiality is critical to maintaining the trust of these states or entities. Te Taumata agrees that it is appropriate that its members sign legally binding confidentiality agreements in the attached form. MFAT will explain at the time whether the shared information is covered by the confidentiality agreement. The members of Te Taumata may share with others information they receive from MFAT if it is not covered by the confidentiality agreement."

Chanka and Aymara—becoming the first consumer protection authority in the region to offer regulatory tools in Indigenous languages. In the Indo-Pacific region, EDM worked with trade negotiators of the Association of Southeast Asian Nations (ASEAN) on provisions in trade agreements aimed to promote the participations of marginalized groups in trade, including Indigenous-owned businesses. A focus on inclusivity more broadly is evident in Canada through Global Affairs Canada’s funding of technical assistance programmes on inclusive trade over the past eight years. This funding is delivered via the Canadian Expert Deployment Mechanisms with beneficiaries all around the world.

XIII. Recommendations for incorporating provisions relevant to Indigenous Peoples in future trade agreements

The analysis and discussion in this study have focused on trade agreements and how they have broadened in recent years to incorporate the objective of promoting greater inclusion of Indigenous Peoples into trade, both as actors and as beneficiaries. Whether they have succeeded or not is still an open question. However, **it is necessary to be sanguine about what trade agreements can and cannot do in the context of inclusivity.** While the objective is important and laudatory, trade agreements should not be viewed as a primary tool for improving the economic prosperity of Indigenous Peoples. **Rather trade agreements are one of several tools to carry out a more inclusive trade agenda and should be viewed as part of an integrated strategy implemented through a set of mutually reinforcing and coherent domestic and foreign and trade policies.** This study and set of recommendations below should be seen through this lens, as only one of many policies to achieve certain government policy objectives. Other pieces of an integrated strategy necessary to implement a more inclusive trade agenda are equally if not more important. They are, however, the subject of a different study and not addressed comprehensively in this report.

Realism should also be cautioned around the pace of change. Achieving societal change is very challenging and takes time and efforts. Just as free trade agreements can be seen as incremental steps in distinct points of time towards a much longer process of opening markets and improving regulatory outcomes to reach more liberalized trade, the goal of achieving more inclusive trade for Indigenous Peoples is a long-term process. It cannot be achieved overnight. Considerable advances have been made over the last decade, but they should still be seen as steps in a process that will continue to evolve and hopefully improve over time.

It is within this context that this study has been carried out—to track progress to date and set out the recommended actions and conditions that can be put in place in the medium and longer term so that this inclusivity agenda in partnership with Indigenous Peoples can be realized as fully as possible by those governments committed to do so. Advances in recent FTAs underscore both the potential and the possibility to build on emerging good practices around the integration of binding commitments, inclusive institutions, and whole-of-agreement approaches as regards Indigenous Peoples.

An understanding of the goals that Indigenous Peoples would like to see in trade and particularly elaborated through provisions in trade agreements can be discerned from engagements with Indigenous partners, as well as the priorities that they have expressed over time in the context of dialogues with their respective government counterparts and that they have expressed in the interviews conducted for this study, as summarized in the previous section.

The recommendations below aim not only to preserve Indigenous rights but also to actively facilitate Indigenous participation in global trade as innovators and economic actors. These are ranked in order of priority, starting with those whose adoption would provide a basis to lay a

solid foundation for the suggested policies that follow. This order of priority should also allow for progress to be achieved in the shortest period of time, assuming that the political will and resources are available to make these changes happen.

RECOMMENDATION #1: Improve the consultation and engagement mechanisms between national governments and representatives of Indigenous Peoples.

Ensuring that Indigenous Peoples are consulted and can participate in decision-making processes related to trade agreements is an essential objective and priority of Indigenous Peoples. This aligns with international standards such as UNDRIP, which mandates that states consult and cooperate in good faith with Indigenous Peoples through their own representative institutions before adopting and implementing legislative or administrative measures that may affect them.

Putting in place effective consultation and engagement mechanisms at the national level and within FTAs should be a top priority to ensure that the views of Indigenous Peoples are heard and reflected in the development of trade policies that affect them, as well as in the elaboration and negotiation of relevant provisions in FTAs. These mechanisms should consist of clear institutional arrangements requiring the consultation and engagement of Indigenous Peoples in all aspects of trade policy and trade provisions of relevance in the negotiation and implementation of trade agreements, as determined by Indigenous Peoples. Good practices for consultation with Indigenous Peoples on trade issues in existing and future FTAs are set out in Section XI, with a listing of what would be desirable for governments to follow in this regard.

RECOMMENDATION #2: Incorporate priority areas expressed in the interviews and consultations into the content of provisions to be negotiated in trade agreements.

Following the putting into place of a well-functioning and structured consultative mechanism, it should be possible for governments to identify, understand, and act upon the priorities of their respective Indigenous Peoples with respect to the content of provisions they would like to see incorporated into FTAs.

The priorities specified in the interviews are set out in Section X, which summarizes ten specific objectives that Indigenous Peoples would like to see incorporated into trade agreements or to improve upon in future trade agreements. These range from the incorporation of a stand-alone chapter on Indigenous Peoples and Trade to the inclusion of provisions throughout the trade agreement that reaffirm and protect Indigenous rights in the area of the environment and traditional knowledge, to exceptions and carve out provisions in favour of positive discrimination towards Indigenous businesses, and chapters and provisions that facilitate cooperation activities between the Parties that are of a nature to support the ability of Indigenous Peoples to engage in and benefit from trade under the agreement. Ideally governments should pursue concurrently the development of a standalone chapter as well as the incorporation of relevant provisions throughout the agreement, as these are complimentary and work hand in hand to achieve the desired objectives.

Adhering to this recommendation by governments through ongoing consultations to would ensure that the principle of “nothing about us without us” discussed in Section IV that is vital to Indigenous Peoples and is considered to be the framework for the respect of their fundamental rights would be respected.

RECOMMENDATION #3: Include representatives of Indigenous Peoples into the discussions and the evaluation of the implementation of relevant trade provisions which should be monitored on a regular basis.

Indigenous Peoples have a tremendous interest and stake in the success of the concrete implementation of commitments made in trade agreements in many areas. The institutional mechanisms established within relevant chapters of the trade agreements examined are mandated to discuss the ways in which the provisions are carried out, some of which specifically reference Indigenous Peoples. Representatives of Indigenous Peoples should be included in these discussions and involved as well in the design and execution of any specific capacity-building or cooperation activities that affect them.

Specifically, it is recommended that representatives of Indigenous Peoples sit on each of the committees created to implement the provisions of chapters where they are specifically referenced in the relevant FTA. In addition, it is recommended that Indigenous experts be invited to join the committee or commission created for the general oversight of the entire trade agreement. This would be, for example, the Free Trade Commission for the CUSMA or the Trans-Pacific Partnership Commission for the CPTPP. These oversight bodies are particularly important as they allow for discussion of the progress and challenges raised by the trade agreement as a whole and work to solve them. In so doing they provide a forum to review the work of all the various committees, working groups and other subsidiary bodies established under the FTA chapters. Participation of Indigenous experts at both levels would be desirable.

Indigenous experts to fill these roles in the committees or commissions established under the FTA chapters should be selected through making use of existing consultation mechanisms or through active outreach to Indigenous Peoples in the instances where such mechanisms do not exist at present, according to the good practices set out in Section XI.

A report on the activities carried out along with an evaluation of progress of the implementation of the chapter or trade agreement in question should be carried out on a regular basis by the relevant bodies established under the FTA chapters or agreement. These reports should also specify the way in which implementation of the provisions has affected Indigenous Peoples, to the best extent possible. Such implementation reports should be maintained and kept for public record.

RECOMMENDATION #4: Actively pursue collection of necessary quantitative and qualitative data in support of producing evidence needed to negotiate the agreements as well as to estimate the impacts on Indigenous Peoples (and other marginalized groups) in the context of the overall impact of the FTAs.

To improve on the current lack of adequate disaggregated statistics on the value of trade flows generated by Indigenous businesses in trade, governments will need to change the way in which statistics on trade of goods and services are collected and published. While some disaggregation and collection of statistics can be done at the national level, it would be preferable to go about such an important effort through an established statistical unit within an international or regional organization, ideally the United Nations Statistics Division. This would provide a guarantee that the definitions of the agreed statistical categories are collected following a similar methodology, which is of critical importance to ensure that these statistics are comparable and consistent over time on an international basis.

Better and more-disaggregated statistics are essential to enable governments to carry out a national impact analysis on the potential effects or impacts of a trade agreement on the Indigenous population. A few countries require the preparation of a national impact analysis as part of the ratification procedure for any signed trade agreement.¹¹⁴ However, few countries other than Canada mandate that such analysis contain impacts on specified social and economic groups. Canada is a notable exception in this regard, where an Economic Impact Assessment is a precondition for implementing any policy changes, including trade agreements, but must also include a gender impact analysis and an environmental impact assessment as well.¹¹⁵

Formalizing an impact analysis on Indigenous Peoples' economic wellbeing related to a proposed FTA as part of the ratification and/or review process of a trade agreement would help assess the benefits and opportunities for Indigenous Peoples from any future FTA. Such an analysis should include assessment of the potential impacts on the economic, cultural, and environmental dimensions of the FTA on Indigenous Peoples, with special attention to the encroachment of large-scale extractive activity on their territories or other infrastructure developments (e.g., pipelines, dams, etc.)

Ultimately, the incorporation of Indigenous Peoples' priorities into trade agreements must be seen not only as a policy innovation, but as part of a broader shift toward recognition of Indigenous Peoples as rights holders with distinct legal, cultural, and economic status. Trade

114 The EU requires an impact analysis in this regard. This is also the case for New Zealand where an impact analysis is part of a set process before any trade agreement can be ratified and put into force. International Treaty Making, ISBN: 978-0-477-10258-2, Ministry of Foreign Affairs and Trade, September 2021, p.5, <https://www.mfat.govt.nz/assets/About-us-Corporate/Treaties-Model-instruments/International-Treaty-Making-Guide-2021.pdf>.

115 The Government of Canada requires an Economic Impact Assessment for all FTAs which must be carried out in advance and presented to Parliament. Additional required impact analysis must be carried out under the GBA Plus in the form of an intersectional analysis, examining the potential effects of a trade agreement on women and men and non-binary (including Indigenous). And an environmental impact assessment must also be conducted, which includes considerations around the effects on Indigenous Peoples of the future trade agreement. However, there is no separate required impact analysis to specifically examine the impact of an future FTA on First Nation or Aboriginal communities.

policy, if designed and implemented in partnership with Indigenous Peoples, can serve as a vehicle for advancing their economic self-determination and participation in global markets. However, doing so requires more than the insertion of provisions; it demands meaningful, sustained engagement, reliable institutional mechanisms, and a commitment to data-driven and rights-based policymaking. The recommendations presented above offer a foundation for governments willing to pursue this path. Their successful implementation will depend not just on technical feasibility, but on political will, adequate resourcing, and a willingness to listen and act in partnership with Indigenous Peoples over the medium and long term.

Annexes

Annex 1: Tables

Annex Table 1: Provisions relevant to Indigenous Peoples identified in European styled (EU, EFTA and UK) trade agreements

Annex Table 2: Provisions relevant to Indigenous Peoples identified in Canada-US styled trade agreements

Annex Table 3: Provisions relevant to Indigenous Peoples identified in Pacific styled trade agreements (Australia and New Zealand)

Annex Table 4: Provisions relevant to Indigenous Peoples identified in Plurilateral agreements (between parties of mixed level of development)

Annex Table 5: Provisions relevant to Indigenous Peoples identified in Bilateral agreements (between developing country partners)

Annex 2

Interview Note

Annex 3

List of Interviewees

TABLE 1: Provisions relevant to Indigenous Peoples identified in European styled (EU, EFTA and UK) trade agreements

(Note: blank cells in the table indicate that there are no provisions in the agreement with respect to this element)

EUROPEAN UNION TRADE AGREEMENTS

	Chapter on Trade and Sustainable Development	Preamble/ General and Institutional Provisions	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
EU-UKRAINE FREE TRADE AREA (2016)				
Location of the provision in the FTA / chapter			Article 229 – Genetic resources, Traditional knowledge and Folklore	
Legal nature: – Binding – Non-binding			Binding	
Institutional arrangement associated with provision			Art. 252 – Cooperation*	
EU-CENTRAL AMERICA ASSOCIATION AGREEMENT (2012)				
Location of the provision in the FTA / chapter		PART II – Political Dialogue Art. 13.2 – Areas Art. 25 – Principles Art. 43 – Education & Training Art. 44 – Public Health Art. 45 – Indigenous Peoples and Ethnic Groups	TITLE VI – Intellectual Property Art. 229.4 – Nature and Scope of Obligations Art. 259.2 – Plant Varieties	
Legal nature – Binding – Non-binding		Non-binding	Non-binding	
Institutional arrangement associated with provision		NONE	Art. 274.1 & Art. 274.2 – Sub-committee on Intellectual Property	

	Chapter on Trade and Sustainable Development	Preamble/ General and Institutional Provisions	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
EU-REPUBLIC OF KOREA FREE TRADE AGREEMENT (2011)				
Location of the provision in the FTA / chapter			Art. 10.4 – Genetic resources, Traditional knowledge and Folklore	
Legal nature – Binding – Non-binding			Binding	
Institutional Arrangement			Art. 10.69 – Cooperation**	
EU-CARIFORUM ECONOMIC PARTNERSHIP AGREEMENT (2008)				
Location of the provision in the FTA / chapter			Art. 150 – Genetic resources, Traditional knowledge and Folklore	
Legal nature – Binding – Non-binding			Binding	
Institutional arrangement associated with provision			Art. 164.2(c) Cooperation***	
EU-PERU FREE TRADE AGREEMENT (2013) and EU-COLOMBIA FREE TRADE AGREEMENT (2013)				
Location of the provision in the FTA / chapter	TITLE IX – Trade and Sustainable Development Art. 272 on Biological Diversity		TITLE VII – Intellectual Property Chapter 2, Art. 201 on Protection of Biodiversity and Traditional Knowledge	
Legal nature – Binding – Non-binding	Binding		Binding	
Institutional arrangement associated with provision	Sub-committee on Trade and Sustainable Development (Art. 280)			

EFTA TRADE AGREEMENTS

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
EFTA-INDONESIA FREE TRADE AGREEMENT (2021)				
Location of the provision in the FTA / chapter	Art. 8.10 on Sustainable Management of the Vegetable Oils Sector and Associated Trade		Annex XVII to Chapter 5 on Intellectual Property Protection of Intellectual Property Art.11 of Annex XVII Biodiversity and Traditional Knowledge	
Legal nature –Binding –Non-binding	Binding		Binding (Articles 10 and 11 of the Annex)	
Institutional arrangement associated with provision	Art. 8.13 Review by the Joint Committee		Art. 5.5 Protection of Intellectual Property Rights (through Joint Committee)	
EFTA-PHILIPPINES FREE TRADE AGREEMENT (2018)				
Location of the provision in the FTA / chapter			Annex XVIII to Chapter 8 on Intellectual Property Art. 10 Measures Related to Biological Diversity and Traditional Knowledge Art. 11 of Annex XVIII Acquisition & Maintenance	
Legal nature –Binding –Non-binding			Binding (Articles 10 and 11 of the Annex)	
Institutional Arrangement			Art. 8 Protection of Intellectual Property Rights (through Joint Committee)	

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
EFTA-ECUADOR FREE TRADE AGREEMENT (2018)				
Location of the provision in the FTA / chapter			Annex XVI to Chapter 5 on Intellectual Property Protection of Intellectual Property Art.11 Biodiversity and Traditional Knowledge	
Legal nature –Binding –Non-binding			Non-binding and Binding (Art. 11.5, Art. 11.6 and Art. 11.9)	
Institutional arrangement associated with provision			Art. 5.4 Protection of Intellectual Property(through Joint Committee)	
EFTA-COLOMBIA PERU FREE TRADE AGREEMENT (2011)				
Location of the provision in the FTA / chapter			Chapter 6 Protection of Intellectual Property Art. 6.5 Measures related to Biodiversity	
Legal nature –Binding –Non-binding			Non-binding and Binding: Articles 6.5.5, 6.5.6 and 6.5.7, 6.5.9	
Institutional arrangement associated with provision				

UNITED KINGDOM-REPUBLIC OF KOREA TRADE AGREEMENT

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
UK-REPUBLIC OF KOREA FREE TRADE AGREEMENT (2021)				
Location of the provision in the FTA / chapter			Art. 10.39 Genetic Resources, Traditional Knowledge and Folklore	
Legal nature –Binding –Non-binding			Binding Art. 10.39.1	
Institutional arrangement associated with provision			Art. 10.39.3 Review through the Trade Committee	

Table 2 Provisions relevant to Indigenous Peoples identified in Canada and US-styled trade agreements

(Note: blank cells in the table indicate that there are no provisions in the agreement with respect to this element)

CANADIAN TRADE AGREEMENTS

	Preamble	Chapter on Government Procurement	Chapter on Environment	Chapter on Transparency, Anti-corruption and Responsible Business Conduct	Chapter on Investment	Chapter on Trade and Indigenous Peoples	Chapter on Good Regulatory Practice	Chapter on Exceptions
CANADA-UKRAINE FREE TRADE AGREEMENT (2024)*								
Locations of the provisions in the FTA/ chapter	Preamble	Annex 11-A.6: General Notes Exclusion of Indigenous Peoples	Art. 13.2.4 Context and Objectives Art. 13.8.2 Environmental Impact Assessment Art. 13.10.4 Climate Change Art. 13.19.2 Trade and Biological Diversity Art. 13.22.1 Sustainable Forest Management and Trade Art. 13.23.3 Environmental Goods and Services Art. 13.24.2 Cooperation	Art. 15.14.3 Responsible Business Conduct	Art. 17.4 Right to Regulate Art. 17.5 Non-derogation Art. 17.15.1 Responsible Business Conduct Art. 17.34 Expert Reports	Art. 25.1 General provisions Art. 25.2 Non-derogation Art. 25.3 Responsible Business Conduct Art. 25.4 Cooperation Activities to facilitate Indigenous Peoples' Participation in International Trade and Investment Art. 25.6 Provisions in the Agreement that Benefit Indigenous Peoples	Art. 26.2.4 General Provisions	Art. 29.6 Indigenous Peoples' Rights
Legal nature –Binding –Non-binding		Binding	Non-binding: Art. 13.2; 13.10.4; 13.22.1; Binding: Art. 13.8; 13.19.2; 13.23.3(d) 13.24.2	Binding	Binding: Art. 17.4; 17.5; 17.15.1	Non-binding	Non-binding	Binding

	Preamble	Chapter on Government Procurement	Chapter on Environment	Chapter on Transparency, Anti-corruption and Responsible Business Conduct	Chapter on Investment	Chapter on Trade and Indigenous Peoples	Chapter on Good Regulatory Practice	Chapter on Exceptions
Institutional arrangement associated with provision [#]			Art.13. 25 Environmental Committee*		(Arbitration and Dispute Settlement including ISDS)	Art. 25.5 Committee on Trade and Indigenous Peoples Art. 25.5.1 Participation of Indigenous Peoples on the committee		

& This is a modernized version of the agreement that was put in force in 2017.

	Preamble/ General and Institutional Provisions	Chapter on Government Procurement	Chapter on Trade and Environment	Chapter on Domestic Regulation	Annex II on Future Measures
CANADA- EU TRADE AGREEMENT CETA (2017)					
Location of the provision in the FTA / chapter	Protocol on Rules of Origin and Origin Procedures	Annex 19.7	Art. 24.1 On Definition	Art. 12.2.2(b) On Scope	Annex II on Non-Conforming Measures
Legal nature –Binding –Non-binding	Non-binding	Binding	Binding	Binding	Binding
Institutional arrangement associated with provision		Committee on Government Procurement Art. 19.9	Committee on Trade & Sustainable Development Art. 26.2.1(g)		

U.S. TRADE AGREEMENTS

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection	Chapter on Cooperation & Capacity-building
UNITED STATES-COLOMBIA FREE TRADE AGREEMENT (2013)				
Location of the provision in the FTA / chapter		Art. 18.11 on Biological Diversity		
Legal nature –Binding –Non-binding		Non-binding		
Institutional arrangement associated with provision		Environmental Affairs Council (Art. 18.6)		
UNITED STATES-PERU FREE TRADE AGREEMENT (2009)				
Location of the provision in the FTA / chapter		Art. 18.11 on Biological Diversity		
Legal nature –Binding –Non-binding		Non-binding		
Institutional arrangement associated with provision		Environmental Affairs Council (Art. 18.6)		

Table 3: Provisions relevant to Indigenous Peoples identified in New Zealand and Australian-styled trade agreements

(Note: blank cells in the table indicate that there are no provisions in the agreement with respect to this element)

NEW ZEALAND TRADE AGREEMENTS

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Indigenous Peoples Economic and Trade Cooperation	Chapter on Trade and Sustainable Development	Chapter on Economic Cooperation	Chapter on Investment Facilitation	Chapter on SMEs	Chapter on Exceptions
NEW ZEALAND–UNITED ARAB EMIRATES COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (2025) – NOT RATIFIED								
Location of the provisions in the FTA/ chapter	Art. 10.2.1 Objectives Art. 10.3(e) General Provisions* Art. 10.22.2 Art. 10.22.3 Digital Inclusion	Section I Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions Art.13.35.1 Art. 13.35.2 Genetic resources, Traditional Knowledge and Traditional Cultural Expressions	Art. 15.1 Definitions Art.15.2.1 Art. 15.2.2 (a,b,c,d,e,f) Art.15.2.3 Objectives and Principles Art.15.3 Provisions Across the Agreement Art.15.4.1 (a,b,c,d,f,g) Art. 15.4.2 Cooperation Activities	Art. 14.2.4 Context Art. 14.6.3(d) Women's Economic Empowerment Art. 14.7.3 Art. 14.7.4(e) Climate Change Art. 14.9.2(e) Sustainable Agriculture Art. 14.15.2 Conservation of Biological Diversity	Art. 17.2.2 Scope	Art. 8.2.(b) Promotion of Investment Art. 8.3.3 Facilitation of Investment	Art. 16.2(e) Cooperation to Increase Trade and Investment Opportunities for SMEs	Art. 21.1 General Exceptions (Māori arts) Art. 21.4.1 Art. 21.4.2 Treaty of Waitangi OTHER Exclusions- see notes below the table
Legal nature –Binding –Non-binding	Binding for Art.10.3e for New Zealand providing a broad carveout to address future policy developments	Non-binding	Non-binding	Non-binding	Non-binding	Non-binding	Non-Binding	Binding for New Zealand

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Indigenous Peoples Economic and Trade Cooperation	Chapter on Trade and Sustainable Development	Chapter on Economic Cooperation	Chapter on Investment Facilitation	Chapter on SMEs	Chapter on Exceptions
Institutional arrangements associated with provision**			Art.15.5.3.(b) Contact points Art.15.4.2	Art.14.17 Contact Points	Art. 17.7 Contact Points		Art.16.4 Contact Points	

***Digital chapter** – exclusion (Art.10.3e) says: “This chapter shall not apply...to measures adopted or maintained by New Zealand that it deems necessary to protect or promote Māori rights, interest, duties and responsibilities in respect of matters covered by this Chapter, including in fulfilment of New Zealand's obligations under te Tiriti o Waitangi / the Treaty of Waitangi. Chapter 20 (Dispute Settlement) does not apply to the interpretation of te Tiriti o Waitangi / the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it”.

-Annex 9A (Trade in Services) New Zealand Specific Commitments - **Limitation to Market access** Independent Professional (1)(2)(3)(4) Unbound with respect to all measures necessary to protect cultural heritage of national value; including ethnological, archaeological, historical, literary, artistic, scientific, or technological heritage, or measures necessary to support creative arts of national value.

(1)(2)(3)(4) Unbound with respect to all measures New Zealand deems necessary to protect or promote Māori rights, interests, duties and responsibilities in respect of trade enabled by electronic means, including in fulfilment of its obligations under Te Tiriti o Waitangi/The Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of another Party or as a disguised restriction on trade in services and investment. The Parties agree that the interpretation of Te Tiriti o Waitangi/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

-Limitation on National Treatment in Audio-visual Services - (1)(3) The Broadcasting Commission has a statutory obligation to promote Māori language and culture and allocates a proportion of its funding for this purpose. Te Reo Whakapuaki Iirangi (the Māori Broadcasting Funding Agency) allocates government funding for the promotion of Māori language and culture.

****Chapter 19** Administration of the Agreement establishes the Joint Committee (Art. 19.1)

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Māori Trade and Economic Cooperation*	Chapter on Trade and Sustainable Development**	Chapter on Sustainable Food Systems	Chapter on Trade Services and Investment	Chapter on Trade and Gender Equality	Chapter on SMEs
NEW ZEALAND–EUROPEAN UNION FREE TRADE AGREEMENT (2024)								
Location of the provisions in the FTA chapter	Art. 12.1.2 Scope Art. 12.3 Right to regulate Art. 12.4 Cross-border data flows	Art. 18.45 Protection of plant variety rights	Art. 20.1 Definitions Art. 20.2 Context and purpose Art. 20.4 Provisions across this agreement benefiting Māori Art. 20.5.2 and 20.5.3 Cooperation activities Art. 20.6.2 Institutional mechanism	Art. 19.4.7 Trade and gender equality Art. 19.8.3 Trade and biological diversity	Art. 7.4.4 Cooperation to improve the sustainability of food systems	Art. 10.1.2 Objectives		
Legal nature –Binding –Non-binding	Non-binding	Binding	Binding for 20.6 Non-binding for other provisions	Binding for Art.19.4.7 Non-binding for Art.19.8	Binding	Non-binding		
Institutional arrangements associated with provisions#	Committee on Digital Trade Art 24.4	Committee on Intellectual Property, including Geographical Indications Art. 24.4	Art. 24.6.1 Domestic Advisory groups Art. 24.7.3 Civil Society Forum	Committee on Trade and Sustainable Development Art. 24.4	Committee on Sustainable Food Systems Art.24.4	Committee on Investment, Services, Art 24.4		

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Māori Trade and Economic Cooperation*	Chapter on Trade and Sustainable Development**	Chapter on Sustainable Food Systems	Chapter on Trade Services and Investment	Chapter on Trade and Gender Equality	Chapter on SMEs
NEW ZEALAND–UNITED KINGDOM FREE TRADE AGREEMENT (2023)								
Location of the provisions in the FTA chapter	Art. 15.2 Objectives Art. 15.17 Open Government Data Art. 15.20.2 Digital Inclusion Art. 15.22 Review	Art. 17.17.2 Cooperation Art. 17.19 WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (17.19.2)	Art. 26.2 Context and Purpose Art. 26.3 International Cooperation Art. 26.4 Provisions Across the Agreement Benefitting Māori Art. 26.5 Cooperation Activities	Art. 22.2 Māori Environmental Concepts Art. 22.3 Context and Objectives Art. 22.12 Conversation of Biological Diversity			Art. 25.1 Māori Terminology Art. 25.5.1 and 25.5.2 Cooperation Art. 25.7 Contact Points	Art. 24.3 Cooperation to Increase Trade and Investment Opportunities for SMEs
Legal nature –Binding –Non-binding	Binding (Art. 15.20.2) Other provisions non-binding	Binding (Art. 17.14) Binding (Art. 17.17) Binding (Art. 17.19)	Non-binding	Non-binding			Binding (Art. 25.5) Others non-binding	Non-binding
Institutional arrangements associated with provisions #2	Art. 15.22 Review	Art. 17.14.1 The Intellectual Property Working Group composition++	Art. 30.8.1 Art. 30.8.2 Inclusive Trade Sub-Committee Art. 26.5.2 participation of relevant stakeholders in cooperation activities	Art. 30.8.1 Art. 30.8.2 Inclusive Trade Sub-Committee Art. 22.20 Institutional Arrangements		Art. 30.9(f) The Services and Investment Sub-Committee and working groups	Art. 30.8.1 Art. 30.8.2 Inclusive Trade Sub-Committee	Art. 30.8.1 Art. 30.8.2 Inclusive Trade Sub-Committee

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Māori Trade and Economic Cooperation*	Chapter on Trade and Sustainable Development**	Chapter on Sustainable Food Systems	Chapter on Trade Services and Investment	Chapter on Trade and Gender Equality	Chapter on SMEs
NEW ZEALAND–CHINESE TAIPEI (ANZTEC) Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (2013)								
Location of the provisions in the FTA chapter		Art. 6 Genetic Resources, Traditional Knowledge and Folklore	Art. 1(a,b) Objectives Art. 2.2.1 (a,b) Art. 2.2.2 (a,b,d,e,f,h,j) Implementation Art. 3.3.1 Consultation					Chapter on Film and Television Co-production Art. 9.9.1 Soundtrack
Legal nature –Binding –Non-binding		Non-binding	Non-binding					Binding
Institutional arrangements associated with provisions								

**In NZUKFTA this chapter is titled Environment

++Refers to representatives of each Party and with Māori in the case of NZ (based on Art. 30.10)

AUSTRALIAN TRADE AGREEMENTS

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Indigenous Peoples Trade and Investment Economic Cooperation#	Chapter on Environment **	Chapter on Sustainable Agriculture and Food Systems	Chapter on Investment Facilitation	Chapter on Cooperation/ Chapter on Cooperation and Capacity Building	Chapter on SMEs
AUSTRALIA-UK FREE TRADE AGREEMENT* (2023)								
Location of the provisions in the FTA chapter		Art. 15.12 Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions Art. 15.18.1 Art. 15.18.2 (a,b,c) Cooperation in the Area of Traditional Knowledge Associated with Genetic Resources		Art. 22.13.1 Sustainable Forest Management and Trade Art. 22.14.3 Trade and biodiversity				Art. 19.1.4 General provisions
Legal nature –Binding –Non-binding		Binding		Non-binding				Non-binding
Institutional arrangements associated with provisions		Art. 15.15 Committee on IPR (but no mention Indigenous Peoples)		Art. 22.21 Environmental working group Art. 22.24 Joint Committee Consultations Art. 22.25 Ministerial Consultations			Art. 27.4 Committee on Cooperation (#4)	

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Indigenous Peoples Trade and Investment Economic Cooperation#	Chapter on Environment **	Chapter on Sustainable Agriculture and Food Systems	Chapter on Investment Facilitation	Chapter on Cooperation/ Chapter on Cooperation and Capacity Building	Chapter on SMEs
AUSTRALIA-PERU FTA (2020)								
Locations of the provisions in the FTA chapter		Art. 17.16 Cooperation on Genetic Resources and Traditional Knowledge Art. 17.17 Cooperation on Request Art. 17.18 General Provisions		Art. 19.4 Multilateral Environmental Agreement			Art. 20.2.2 Areas of Cooperation and Capacity-Building	
Legal nature –Binding –Non-binding		Non-binding		Non-binding			Non-binding	
Institutional arrangements associated with provisions							Art 20.4 Committee on Cooperation and Capacity-Building	

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Indigenous Peoples Trade and Investment Economic Cooperation#	Chapter on Environment **	Chapter on Sustainable Agriculture and Food Systems	Chapter on Investment Facilitation	Chapter on Cooperation/ Chapter on Cooperation and Capacity Building	Chapter on SMEs
AUSTRALIA-UAE CEPA (2024) (SIGNED BUT NOT RATIFIED)								
Locations of the provisions in the FTA chapter	Art. 12.25.2 Digital Inclusion	Art. 6 Genetic Resources, Traditional Knowledge and Folklore	Art. 17.1 Art. 17.2 Art. 17.3 Art. 17.5 Objectives and General provisions Art. 17.2.2 First Nations International Instruments Art. 17.4.2 (a,b,d,e,f,g) Areas of Cooperation Art. 17.5 Relation to Other Chapters * Art. 17.6 Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions Art. 17.7 Sustainable Agriculture and Food Systems Art. 17.8 Digital Inclusion Art. 17.9 Investment Art. 17.10 Environment		Art. 7.3(d,e) Principles of Sustainable Agriculture and Food Systems	Art. 11.2(b) Promotion of Investment Art. 11.3.3 Facilitation of Investment		Art. 16.1.4 General Principles

	Chapter on Digital Trade	Chapter on Intellectual Property	Chapter on Indigenous Peoples Trade and Investment Economic Cooperation#	Chapter on Environment **	Chapter on Sustainable Agriculture and Food Systems	Chapter on Investment Facilitation	Chapter on Cooperation/ Chapter on Cooperation and Capacity Building	Chapter on SMEs
Legal nature –Binding –Non-binding	Non-binding	Non-binding	Non-binding		Non-binding	Non-binding		Non-binding
Institutional arrangements associated with provisions#3			Art. 17.11(b) Contact Points					

* In the Australia-UK FTA there are several exclusions related to the Indigenous persons. For example, in Chapter 18 on State-Owned Enterprises (SOE) and Designated Monopolies, Subparagraphs 1(a) and 1(b) of Art.18.4 (Non-discriminatory treatment and commercial considerations) do not apply where a SOE accords more favourable treatment to Indigenous persons and organisations in the purchase of goods and services.

Additionally, in the same FTA, Annex II, Schedule of Australia (for Services), under National Treatment for all sectors, Australia reserves the right to adopt or maintain any measure that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation. In Sector of Recreational, Cultural and Sporting Services (other than AV services), under National treatment, Australia reserves the right to adopt or maintain any measure with respect to the creative Art, Indigenous traditional cultural expressions, and other cultural heritage.

** In Australia-UAE CEPA, Chapter is titled Environment and the Transition to Net Zero

For Australia, First Nations or indigenous Peoples refers to Aboriginal and Torres Strait Islander Peoples of Australia. Mentioned in the Preamble too.

Table 4 Provisions relevant to Indigenous Peoples identified in the plurilateral trade agreements

(Note: blank cells in the table indicate that there are no provisions in the agreement with respect to this element)

	Preamble	Chapter on Investment	Chapter on Environment	Chapter on SMEs	Chapter on Textile and Apparel	Chapter on Exceptions and General provisions	Other
CANADA-UNITED STATES-MEXICO FREE TRADE AGREEMENT (CUSMA, 2020)							
Location of the provision in the FTA/chapter	Preamble	Art.14.17 on Corporate Social Responsibility	Art. 24.2.4 Scope & objectives Art. 24.15.3 Trade & Biodiversity Art. 24.19.2 Conservation of Marine Species Art. 24.23.1 Sustainable Forest Management	Art. 25.2(b) Cooperation to increase Trade & Investment Opportunities for SMEs	Art. 6.2 on Handmade, Traditional Folkloric or Indigenous Handicraft Goods	Art. 32.5 Indigenous Peoples Rights	Canada:* Reservation relating to Aboriginal affairs* in Annex II to chapters on Cross-border Services Trade and Investment Mexico: ** Commission on Indigenous Peoples included among list of covered entities in Annex to Gov't Procurement chapter. Canada: Reservation to allow more favourable treatment for Aboriginal Peoples in Annex IV of the State- Owned Enterprises Chapter****
Legal nature –Binding –Non-binding	Non-binding	Non-binding	Non-binding, except for Art. 24.19.2 applying to whaling by Indigenous Peoples	Binding Art. 25.2(b)	Binding Art. 6.2.2	Binding	Binding
Institutional arrangement associated with provision			Art. 24.26 Environment Committee	Art. 25.4 Committee on SME Issues	Art. 6.8 Committee on Textile and Apparel Trade Matters		

* Canada maintains a reservation in Annex II on Non-conforming Measures for Cross-border Trade in Services and Investment that reads as follows:

Aboriginal Affairs: Canada reserves the right to adopt or maintain a measure denying investors of and their investments, or service suppliers of a Party, any rights or preferences provided to aboriginal peoples.

**Mexico includes the Comisión Nacional para el Desarrollo de los Pueblos Indígenas among its list of covered entities in the Annex to Chapter 13 on Government Procurement.

An article setting out preferential treatment is included in the Textile and Apparel Chapter which reads as follows:

Article 6.2: Handmade, Traditional Folkloric, or Indigenous Handicraft Goods 1. An importing Party and an exporting Party may identify particular textile or apparel goods that they mutually agree are: (a) hand-loomed fabrics of a cottage industry; (b) hand-made cottage industry goods made of those hand-loomed fabrics; (c) traditional folklore handicraft goods; or (d) indigenous handicraft goods. 2. The goods identified pursuant to paragraph 1 shall be eligible for duty-free treatment by the importing Party provided that any requirements agreed by the importing and exporting Parties are met.

+In the CUSMA Article 32.5 from Chapter 32 on Exceptions and General Provisions reads as follows:

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to indigenous peoples.

	Preamble	Chapter on State-owned Enterprise	Chapter on Environment	Chapter on Intellectual property	Chapter on Exceptions and General Provisions	Chapter on Government Procurement	Other
COMPREHENSIVE AND PROGRESSIVE AGREEMENT ON TRANS-PACIFIC PARTNERSHIP (CPTPP, 2018)							
Location of the provision in the FTA/ chapter	Preamble	Canada: Reservation in Annex IV to allow more favourable treatment for Aboriginal Peoples by State Owned Enterprises****	Art 20.1 Definitions Art. 20.13.3 and 20.13.4 Trade and Biodiversity	Art. 18.16.2 Cooperation in the Area of Traditional Knowledge Annex 18-A to Chapter 18 Cooperation includes exception by New Zealand for Treaty of Waitangi***		Canada: Section G of Annex to Government Procurement Chapter Reservation to exempt set-asides for Aboriginal businesses *****	Canada: Reservation relating to Aboriginal affairs* in Annex II to chapters on Cross-border Services Trade and Investment
Legal nature –Binding –Non-binding	Non-binding		Non-binding	Non-binding Art.18.16.2 Binding Annex 18-A exception by New Zealand		Binding	Art. 29.8 Binding
Institutional arrangement associated with provision			Art. 20.19 Environmental Committee and Contact Points				

***The CPTPP Chapter 18 on Cooperation contains a reservation by New Zealand with for the Treaty of Waitangi in Article 18.7.2 which reads as follows:

Notwithstanding the obligations in Article 18.7.2 (International Agreements), and subject to paragraphs 2, 3 and 4 of this Annex, New Zealand shall: (a) accede to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand; or (b) adopt a sui generis plant variety rights system that gives effect to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand. 2. Nothing in paragraph 1 shall preclude the adoption by New Zealand of measures it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against a person of another Party. 3. The consistency of any measures referred to in paragraph 2 with the obligations in paragraph 1 shall not be subject to the dispute settlement provisions of this Agreement. 4. 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. Chapter 28 (Dispute Settlement) shall otherwise apply to this Annex. A panel established under Article 28.7 may be requested to determine only whether any measure referred to in paragraph 2 is inconsistent with a Party's rights under this Agreement.

Article 4.2. on Rules of Origin and Related Matters refers to Treatment for Certain Handmade or Folkloric Goods as 10. An importing Party may identify particular textile or apparel goods of an exporting Party to be eligible for duty-free or preferential tariff treatment that the importing and exporting Parties mutually agree fall within: (d) traditional folklore handicraft goods...

****The CPTPP text in Annex IV of Canada's Schedule to the Chapter on State-owned Enterprises reads as follows:

With respect to all existing and future state-owned enterprise, Canada may accord more favourable treatment to aboriginal persons and organizations in the purchase of goods and services.

*****The CPTPP text in Section G of Canada's Annex to the Chapter on Government Procurement reads as follows:

This Chapter does not apply to: (b) any measure adopted or maintained with respect to Aboriginal peoples, nor 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.

Canada maintains a reservation in Annex II on Non-conforming Measures for Cross-border Trade in Services and Investment that reads as follows:

Aboriginal Affairs: Canada reserves the right to adopt or maintain a measure denying investors of and their investments, or service suppliers of a Party, any rights or preferences provided to aboriginal peoples.

	Chapter on Intellectual Property	Chapter on Technical Regulation, Standards and Conformity Assessment Procedures	Chapter on General Provisions and Exceptions	Other
REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP, 2022)				
Location of the provision in the FTA	Art. 11.53.1 Art. 11.53.2 Art. 11.53.3 (a,b,c) Genetic Resources, Traditional Knowledge and Folklore Art. 11.76.12 Cooperation and Consultation		Art 17.16 Exception by New Zealand for the Treaty of Waitangi	
Legal nature –Binding –Non-binding	Non-binding		Binding	
Institutional Arrangement				
PACIFIC AGREEMENT ON CLOSER ECONOMIC RELATIONS PLUS (2020)				
Location of the provision in the FTA / chapter		Art.13 (b) Special and Differential Treatment	Art. 6 Exception by New Zealand for the Treaty of Waitangi	Annexes on Services and Investment [#] Annex 7A- Schedules of specific Services Commitments Annex 9A and 9B Schedules of specific commitments on Services and Investments by Australia, Vanuatu and Tonga
Legal nature –Binding –Non-binding		Non-binding	Binding	Binding

	Chapter on Intellectual Property	Chapter on Technical Regulation, Standards and Conformity Assessment Procedures	Chapter on General Provisions and Exceptions	Other
institutional arrangement associated with provision		Chapter 6 Art.12 Meetings on Technical Regulations, Standards and Conformity Assessment Procedures		

#Notes on PACER Plus Services and Investment Annexes:

-Australia's schedules in services and investment (Annexes 9-A and 9-B) include a horizontal reservation allowing it to adopt or maintain any measure that accords preferences or favourable treatment to Indigenous persons or organisations. This applies across all commercial and industrial undertakings and is legally binding.

-Vanuatu's investment schedule affirms that land ownership is restricted to Indigenous Ni-Vanuatu under customary law. Leasehold arrangements may be available, but the protection of land rights is explicitly preserved in PACER Plus.

-Tonga reserves several cultural and artistic sectors (e.g. folk songs, handicrafts, indigenous textiles) from foreign investment, restricting foreign ownership to 25% in these areas. These provisions, while not framed explicitly as Indigenous, function to preserve traditional cultural expressions from external control.

Table 5 Provisions relevant to Indigenous Peoples identified in the selected bilateral trade agreements

(Note: blank cells in the table indicate that there are no provisions in the agreement with respect to this element)

LATIN AMERICAN FTA PARTNERS

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
COLOMBIA-COSTA RICA FREE TRADE AGREEMENT (2016)				
Location of the provision in the FTA / chapter			Art. 9.5 Measures related to the Protection of Biodiversity and Traditional Knowledge	
Legal nature --Binding --Non-binding			Binding	
Institutional arrangement associated with provisions				
PERU-COSTA RICA FREE TRADE AGREEMENT (2013)				
Location of the provision in the FTA/ chapter			Art. 9.5 Measures related to the Protection of Biodiversity and Traditional Knowledge	
Legal nature --Binding --Non-binding			Binding	
Institutional arrangement associated with provisions				
PERU-PANAMA FREE TRADE AGREEMENT (2012)				
Location of the provision in the FTA / chapter			Art. 9.5 Traditional Knowledge	
Legal nature --Binding --Non-binding			Non-binding	
Institutional arrangement associated with provisions				

LATIN AMERICAN – ASIAN FTA PARTNERS

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection or Intellectual Property Rights	Chapter on Cooperation and Capacity-building
COLOMBIA-REPUBLIC OF KOREA FREE TRADE AGREEMENT (2016)				
Location of the provision in the FTA / chapter	SECTION A Environment Art. 16.5 on Biological Diversity			
Legal nature –Binding –Non-binding	Non-binding			
Institutional arrangement associated with provisions	Council on Sustainable Development (Art. 16.11)			
PERU-REPUBLIC OF KOREA FREE TRADE AGREEMENT (2011)				
Location of the provision in the FTA /chapter		Art. 19.6 Biological Diversity (#4,5)	Art. 17.5 Genetic Resources and Traditional Knowledge (#1,2,3,4,5*)	
Legal nature –Binding –Non-binding		Non-binding	Non-binding	
Institutional arrangement associated with provisions				

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection or Intellectual Property Rights	Chapter on Cooperation and Capacity-building
GUATEMALA-CHINESE TAIPEI FREE TRADE AGREEMENT (2006)				
Location of the provision in the FTA / chapter			Art. 15.03 protection of Traditional Knowledge (#1,2,3) Art. 15.05 Protection of Folklore Art. 15.05 Relation between Access to Genetic Resources and Intellectual Property (#1,2,3)	Technical cooperation in Ch 15 (Art. 15.09) training programs
Legal nature –Binding –Non-binding			Binding (dispute settlement)	
Institutional arrangement associated with provision			Art. 15.07. Intellectual Property Committee	
CHINA-NICARAGUA FREE TRADE AGREEMENT (2024)				
Location of the provision in the FTA /chapter		Chapter 15 Environment and Trade Art. 15.4 Levels of Protection	Art. 14.17.1 Art. 14.17.2 Art. 14.17.3 Art. 14.17.4 Genetic Resources, Traditional Knowledge and Folklore	
Legal nature –Binding –Non-binding		Non-binding	Non-binding	
Institutional arrangement associated with provision		Contact points		

OTHER DEVELOPING FTA PARTNERS

	Chapter on Trade and Sustainable Development	Chapter on Environment	Chapter on Intellectual Property Protection	Chapter on Cooperation and Capacity-building
INDONESIA-UAE CEPA (2023)				
Location of the provision in the FTA /chapter			Section F Art. 12.22 Exceptions Art. 12.23 Genetic resources and Traditional Knowledge	
Legal nature –Binding –Non-binding			Non-binding	
Institutional arrangement associated with provision				

Annex 2: Interview Note

Examining FTA Provisions on Economic Inclusivity and Indigenous Trade: Their Content, Implementation and Effectiveness

INDIGENOUS PEOPLES and TRADE AGREEMENTS:
A Trade and Economic Cooperation Agreement Analysis and Best Practices
EDM's Knowledge Management and Learning Activities¹¹⁶

February/ March 2025

Introduction

This Technical Assistance Activity (TAA) is funded by the Government of Canada and is entitled **Indigenous Peoples and Trade Agreements: A Trade and Economic Cooperation Agreement Analysis and Best Practices.**

The objective of the TAA is to provide systematically collected evidence and analysis that will help an interested audience understand how trade agreements can create new economic opportunities for Indigenous Peoples while respecting their cultural and social frameworks, thereby contributing to more equitable and sustainable trade outcomes. The analysis and policy recommendations will help governments and Indigenous groups understand what has been achieved so far in FTAs, what is still lacking, how effective implementation has been to date, and what type of provisions and accompanying policies can allow for the pursuit of an inclusive trade strategy that genuinely benefits Indigenous Peoples.

The treatment of Indigenous Peoples in FTAs is a relatively new and unconventional area. The current literature and research under this TAA indicate that few countries have incorporated provisions that address the opportunities, rights, and challenges of Indigenous Peoples in trade. Among those countries that have trade agreements with these provisions, 31 have been selected for study. (The full list of the FTAs is provided in the Appendix). These FTAs provide valuable insights into how these clauses have been structured, where they are located in the agreement, whether or not they are binding, and the institutional arrangements that are the oversight for their implementation.

However, merely examining the text of the relevant provisions in these FTAs does not identify potential challenges in implementation, nor does it suggest possible responses to these challenges. The interviews will address these gaps, by exploring Indigenous Peoples' and governments' views both on the FTAs examined and on the *Indigenous Peoples Economic and Trade Cooperation Arrangement (IPECTA)*, the first international initiative aimed at promoting Indigenous trade.

¹¹⁶ The research and the paper are targeted mainly at governments and Indigenous groups that are involved directly in developing, negotiating and implementing trade and economic cooperation agreements to advance the participation of Indigenous Peoples in the benefits of trade.

These interviews are thus a crucial component of the technical assistance activity. The interviews will explore the issues around advancing economic inclusion through FTAs, especially as it pertains to enhancing Indigenous Peoples' role in the design and negotiation of the FTA and other trade arrangements, as well as the assessment of impacts of those on Indigenous Peoples.

Objective of the Interviews

The interviews aim to reveal and systematize challenges and outcomes related to the negotiation and implementation of FTAs with provisions relevant to Indigenous Peoples. The insights obtained will contribute to a research paper summarizing interviewees' opinions around the impact and benefits that have been derived from the inclusion of these provisions. Selected experts and representatives of Indigenous groups will also be interviewed.

Interview Logistics

The interviews will be conducted virtually via Zoom or Microsoft Teams in March 2025, fully adhering to research ethics standards. To ensure accuracy and efficiency, the interviews will be recorded. If any interviewee objects to the recording, detailed notes will be taken instead. The exact dates and times for the interviews will be arranged as expeditiously as possible.

Expected Outcomes

The insights gathered from the research, FTA text analysis, and interviews will inform the development of recommendations as to necessity or not to improve the content of trade provisions relevant to Indigenous Peoples along with their oversight and implementation in the future in order to ensure their effectiveness and beneficial impact.

Background on Inclusive Trade

A substantial body of literature shows that the benefits of free trade agreements are not uniformly distributed across communities and economies. While some groups may benefit, others—often those in disadvantaged or marginalized situations—may not experience gains and can even face negative outcomes. Governments are increasingly prioritizing strategies to anticipate and mitigate these adverse effects prior to and during trade negotiations rather than addressing them after the fact. To negotiate trade agreements with these objectives in mind, it is crucial to understand the linkages between trade liberalization through FTAs and the well-being of specific disadvantaged groups and marginalized populations, as well as how best to achieve the benefits and mitigate any potential adverse impact. For trade to be a “win-win” situation for all, trade agreements—and the implementation of commitments made therein—must reflect these objectives as best as possible.

Thank you for your cooperation!

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and

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Consultants for the EDM/Cowater Technical Assistance Activity on Trade and Inclusivity

Annex 3: List of Experts Interviewed on Issues of Indigenous Peoples and Trade

CANADA

Jennifer Hopkins (jennifer.hopkins@international.gc.ca)

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Inclusive Trade Policy | Politique commerciale inclusive

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