Bringing Indigenous Goals and Concerns into the Progressive Trade Agenda

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Key Messages

In order to bring Indigenous goals and concerns into the progressive trade agenda, the following key messages must be considered:

1. There must be adequate and meaningful consultation with Indigenous peoples before and during trade agreement negotiations. This consultation must reflect the Crown's legal and moral responsibilities, as well as the unique context of trade agreement negotiations.

2. Protections for Traditional Knowledge are generally inadequate. In trade discussions, the tendency to fold TK into the intellectual property discussion can be problematic and insufficient.

3. Investor-state dispute settlement (ISDS) provisions – common in free trade agreements – are a particular concern for Indigenous peoples given the prospect that investor rights can trump Indigenous rights and government obligations.

4. Facilitating cross-border trade between and among Indigenous groups is a key goal for Indigenous peoples. This is not typically a prominent part of the broader conversation about trade.

5. Trade policy and trade agreement negotiations should comprise one component of a larger policy strategy to promote Indigenous economic development. Integrating Indigenous goals and concerns into the progressive trade agenda must be accompanied by complementary domestic policies, which might include Indigenous export promotion assistance and reforms to regulations governing business practices on and off reserve.

Executive Summary

Soon after the Trudeau government assumed office in 2015, they indicated that they would pursue a 'progressive trade agenda' (PTA). Officials still employ this term with great regularity. The objective of the PTA is to ensure that the benefits and opportunities of trade are distributed more equitably and that trade is not only free, but fair and inclusive.

The Trudeau government clearly saw and understood the various manifestations of anti-trade sentiment expressed in places like the United States and Europe in recent years. The PTA is at least partially a response to this backlash. While there has not been widespread opposition to trade agreements in Canada, the Trudeau government's adoption of the PTA strategy recognizes that such dissatisfaction is not impossible. A backlash against trade in Canada would be concerning given the Canadian economy's reliance on trade.

According to Minister of International Trade, François-Philippe Champagne, "Progressive trade means helping ensure that that all segments of society can take advantage of the opportunities that flow from trade and investment – with a particular focus on women, Indigenous peoples, youth, and small and medium-sized businesses" (Champagne 2017). Other elements, including attention to worker's rights, environmental protection, and the government's sovereign right to regulate in the public interest, are also key to the progressive trade agenda, but it is the inclusion of Indigenous goals and concerns that is the focus of this report. Indigenous issues are receiving particular prominence in NAFTA renegotiations following Canadian Minister of Foreign Affairs, Chrystia Freeland's call for inclusion of an Indigenous chapter in the trilateral agreement with the US and Mexico (Freeland 2017), as well as the appointment of the National Chief of the Assembly of First Nations, Perry Bellegarde, to the NAFTA Council advising Minister Freeland.

The inclusion of Indigenous peoples fits not only with the goal of fairer trade outcomes. It also aligns with the Trudeau government's purported commitment to Indigenous reconciliation, including full implementation of the Truth and Reconciliation Commission's 94 calls to action (Trudeau 2015). Indeed, the

observation that Canada is a trading nation grappling with Indigenous reconciliation captures two fundamental aspects of contemporary Canadian reality that we can – and often do – consider separately from one another. However, they intersect when we consider Indigenous goals and concerns as they relate to the progressive trade agenda. The myriad ways that Indigenous peoples are implicated in the promotion of Canadian prosperity through trade necessitates integration of Indigenous perspectives across the trade policy-making process as a critical component of reconciliation.

Indigenous peoples have a unique and complex relationship with international trade, both as active participants in markets and as rights-holders and stewards of territories and cultural practices that can be negatively affected by trade rules. A review of academic literature, think tank briefs, NGO materials, testimony to Parliament by representatives of Indigenous groups, among other resources, suggests five key issues that need our attention in order to bring Indigenous goals and concerns into the progressive trade agenda in Canada.

First, a key issue that emerges frequently in discussions of Indigenous peoples' goals for and concerns about trade is the importance of consulting Indigenous peoples and obtaining their free, prior and informed consent before any trade negotiations ensue. None of the various legal sources establishes a clear and binding duty to consult Indigenous peoples where trade negotiations are concerned (Richardson 2017). Nonetheless, while a legal obligation would be important and powerful, it is not the only consideration. One can also argue that there are moral and political reasons to consult Indigenous peoples given the commitment by the current government to reconciliation.

Consultation for the purposes of trade negotiations is particularly fraught because timelines are short. For example, in the early months of NAFTA renegotiations, four rounds of negotiations were held, each lasting roughly five days each. Typically, less than three weeks elapsed between rounds. Meaningful consultations are very difficult in this scenario. Ultimately, there must be a determination as to what constitutes adequate consultation of Indigenous peoples where trade agreements are concerned, including NAFTA and any prospective trade negotiation. This will

affect the legitimacy of trade agreements, as well as the broader reconciliation process, for Indigenous peoples in Canada.

Second, protections for Traditional Knowledge (TK) are generally inadequate. Article 31 of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes that "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions" (UNDRIP 2007). In trade discussions, the tendency is to fold TK into the intellectual property (IP) discussion. While some Indigenous peoples choose to avail themselves of patent, copyright, and geographical indication protections, among others, IP can be problematic and insufficient in other instances where the narrowly commercial notion of IP cannot accommodate the distinctive features of Indigenous knowledge (Drahos and Frankel 2012; Frankel 2015a; 2015b).

Third, investor-state dispute settlement (ISDS) provisions – common in free trade agreements – are a particular concern for Indigenous peoples. ISDS gives standing to companies or private investors to bring suit against sovereign governments to seek redress when they can show that their assets have been expropriated as a result of government action. This is a controversial practice for many, but especially for Indigenous peoples given the prospect that investor rights can trump Indigenous rights and government obligations.

Fourth, a key component of the trade discussion for Indigenous peoples is the possibility of conducting trade between and among Indigenous groups across North America and the world. In many instances, national borders divide Indigenous communities. Canadian Indigenous groups are calling for a process to allow free movement of goods and people, possibly grounded in the Treaty of Amity, Commerce and Navigation (also known as the Jay Treaty), signed in 1794.

Fifth, trade policy and trade agreement negotiations should comprise one component of a larger policy strategy to promote Indigenous economic development. Integrating Indigenous goals and concerns into the progressive trade agenda must include a discussion of the opportunities that exist across the range of trade agreements that Canada may negotiate with various partners. There should also be a focus on the broader aspects of trade policy beyond trade agreement negotiations, as well as complementary domestic policies, which might include Indigenous export promotion assistance and reforms to regulations governing business practices on and off reserve.

NAFTA renegotiation has brought trade to the top of the political agenda and ignited controversies about how best to mobilize free trade agreements to produce inclusive and equitable outcomes. Central to this conversation in Canada are Indigenous peoples, who are directly affected by free trade agreements, but have rarely participated in their negotiation. A significant part of the conversation about Indigenous reconciliation is inclusion in the economy. Trade negotiations – a fundamental activity in a trading nation like Canada – is a gateway to this aspect of reconciliation.

Context – The Issue

Soon after the Trudeau government assumed office in 2015, they indicated that they would pursue a 'progressive trade agenda' (PTA). Officials still employ this term with great regularity. The objective of the PTA is to ensure that the benefits and opportunities of trade are distributed more equitably and that trade is not only free, but fair and inclusive.

The Trudeau government clearly saw and understood the various manifestations of anti-trade sentiment expressed in places like the United States and Europe in recent years. The PTA is at least partially a response to this backlash. In the United States, Donald Trump repeatedly claimed during the Presidential election cycle that trade agreements had been unfair to the American worker and had also exacerbated the US trade deficit. He has received considerable support for this position. Shortly after assuming office, he vowed to renegotiate the North American Free Trade Agreement (NAFTA) or pull out of the agreement entirely. NAFTA renegotiations are currently under way and Trump continues to refer to the original agreement in very negative terms.

In Europe, hundreds of thousands of people poured into the streets in Vienna, Berlin and elsewhere through 2015 to protest the now-stalled United States-European Union (EU) Transatlantic Trade and Investment Partnership (TTIP). Europeans expressed concern about the challenge posed by some TTIP provisions to sovereign governments' ability to regulate in the public interest. They also worried that TTIP would invite foreign opposition to European food safety practices viewed unfavourably by US interests seeking to compete in the EU market (De Ville and Siles-Brügge 2015). While Europeans mostly feared the consequences of the agreement with the US, they soon recognized that some of the provisions that concerned them in TTIP could also be found in the Canada-EU Comprehensive Economic and Trade Agreement (CETA). Protests also started to target CETA.

In October 2016, opposition in some quarters seemed so strong that some worried that CETA would not pass through the various EU legislative hurdles. In particular, the Belgian region of Wallonia threatened to scuttle the deal until they received

assurances that CETA's worst provisions could be attenuated in some way. At the time of this writing, CETA has been provisionally applied pending ratification by EU member state governments, some of which still express skepticism about the agreement.

While there has not been widespread opposition to trade agreements in Canada, the Trudeau government's adoption of the PTA strategy recognizes that such dissatisfaction is not impossible. A backlash against trade in Canada would be concerning given the Canadian economy's reliance on trade. For example, in 2015, total exports of goods and services accounted for 31.5 percent of Canada's GDP (Cross 2016, 4). Almost 17 percent of jobs in Canada are linked to exports (Statistics Canada 2016).

The specifics of the progressive trade agenda were vague at first, but they are coming into focus. As Minister of International Trade, François-Philippe Champagne, described it, "Progressive trade means helping ensure that that all segments of society can take advantage of the opportunities that flow from trade and investment – with a particular focus on women, Indigenous peoples, youth, and small and medium-sized businesses….Progressive trade also means being open and transparent, and maintaining an ongoing dialogue with civil society and a broad range of stakeholders. It also means ensuring that trade agreements include strong provisions in important areas such as workers' rights, gender equality and environmental protection, and reinforce the continued right of governments to regulate in the public interest. In short, it's about efforts that help ensure international trade works for businesses and citizens alike. That it works for people" (Champagne 2017).

During eleventh hour efforts to promote passage of CETA, former Minister of International Trade, Chrystia Freeland, used the term to capture revisions to the agreement's investor-state dispute settlement (ISDS) mechanism, a key irritant for CETA opposition in Europe. Donald Trump's election and his expression of dissatisfaction with NAFTA provided a further opportunity for the Trudeau government to clarify the PTA. Two days before NAFTA renegotiations were set to launch, Freeland, now Minister of Foreign Affairs, laid out her negotiating objectives

in a speech at the University of Ottawa. She said, "we can make NAFTA more progressive first by bringing strong labour safeguards into the core of the agreement; second by integrating enhanced environmental provisions to ensure no NAFTA country weakens environmental protection to attract investment, for example, and that fully supports efforts to address climate change; third by adding a new chapter on gender rights, in keeping with our commitment to gender equality; fourth, in line with our commitment to improving our relationship with Indigenous peoples, by adding an Indigenous chapter; and finally by reforming the Investor-State Dispute Settlement process, to ensure that governments have an unassailable right to regulate in the public interest" (Freeland 2017).

In both Freeland's and Champagne's statements, there is direct reference to Indigenous concerns as a key component of the PTA. The inclusion of Indigenous peoples fits not only with the goal of fairer trade outcomes. It also aligns with the Trudeau government's purported commitment to Indigenous reconciliation, including full implementation of the Truth and Reconciliation Commission's 94 calls to action (Trudeau 2015).

Indigenous concerns were on Freeland's radar well before her August 2017 speech in Ottawa. In September 2016, as Canada's then-Minister of International Trade, she and Minister of Indigenous and Northern Affairs, Carolyn Bennett, met with national Indigenous leaders in Toronto. Freeland called the meeting, "the beginning of a really important dialogue between the government of Canada and First Nations, Métis and Inuit people about international trade." She continued, "it's a discussion that is long overdue" (Nahwegahbow 2016, 1).

Indigenous peoples have a unique and complex relationship with international trade, both as active participants in markets and as stewards of territories and cultural practices that can be negatively affected by trade rules. Decisions at the World Trade Organization (WTO) and in free trade agreement negotiations impact their livelihood and treaty rights in significant ways, though rarely with their consent. Indigenous peoples in Canada have both offensive and defensive trade interests (VanGrasstek 2013, 303). They participate directly in markets as traders and they seek to share in the benefits of trade. They also work to safeguard their

treaty rights, way of life, and cultural practices against encroachment by trading activity. Aligning these interests can be challenging and there is no consensus on trade priorities and preferences across Indigenous communities (UN General Assembly 2015).

Indigenous peoples have engaged in the debate about trade in various ways in the past, however they have not been directly involved in trade agreement negotiations. For example, they have commented on talks between the Canadian and American governments over softwood lumber. As recently as January 2016, the Canadian government has been engaged in talks with its American counterpart, talks that have been ongoing for over thirty years. US lumber producers have long accused their Canadian competitors of unfair advantage since they typically lease their lands from provincial governments at rates more favourable than those offered by private American landholders. Initiatives within NAFTA and the WTO dispute systems have failed to resolve this disagreement. Canadian Indigenous groups have been active in the debate, pointing out that many forested locations are not actually Crown lands, but are territories subject to Aboriginal title (Kukucha 2005; Robertson 2015). In 2002, an alliance of five Indigenous nations from British Columbia submitted an *amicus curiae* brief to the WTO, claiming that the Canadian lumber management system did indeed create an unfair advantage, not due to low stumpage fees, but because proceeds owed to Indigenous peoples were not being paid out (Manuel and Schabus 2005). Integrating Indigenous concerns alongside those of commercial lumber producers in current talks continues to be challenging.

Indigenous peoples expressed concerns about the original NAFTA agreement (Gunn 2006) and were central to the WTO dispute on seal products. In 2009, Canada filed a case against the European Union, protesting the EU prohibition on imports of seal products. A distinction was drawn between the commercial seal hunt and traditional Indigenous hunts tied to subsistence and cultural practices (Hossain 2011; Shaffer and Pabian 2015).

Despite these select examples of previous Indigenous efforts to influence trade policy, the Trudeau government's declaration of a progressive trade agenda and its commitment to an Indigenous chapter in NAFTA brings Indigenous issues into the

trade conversation in a new way. It gives Indigenous goals and concerns a new prominence and, therefore, creates a critical opportunity. As Schwartz (2017) points out, "participation of Indigenous peoples in negotiations of international trade agreements, which have the potential to impact their rights, is consistent with *international law* requirements" (2017, 2 emphasis added). Current developments may finally create a permissive *political* environment to enact these legal rights.

Implications

Several audiences may be interested in this report, including but not limited to policy decision-makers and Indigenous leaders. Canada is a trading nation grappling with Indigenous reconciliation. These are two fundamental aspects of contemporary Canadian reality that we can – and often do – consider separately from one another. However, they intersect when we consider Indigenous goals and concerns as they relate to the progressive trade agenda. Indeed, the myriad ways that Indigenous peoples are implicated in the promotion of Canadian prosperity through trade necessitates integration of Indigenous perspectives across the trade policy-making process as a critical component of reconciliation. This observation raises a series of key questions. Finding answers to these questions will greatly facilitate meaningful Indigenous involvement in Canadian trade policy-making and trade agreement negotiations. A key implication for decision-makers, then, is the imperative to answer these fundamental questions.

For the Canadian government:

1. What are the parameters of what is possible to integrate Indigenous concerns into free trade agreements?

2. How will Indigenous concerns be integrated into other trade agreements to which Canada is a party?

For Indigenous leaders:

1. What is the preferred outcome for Indigenous peoples where free trade agreements are concerned?

Approach

Indigenous goals and concerns with regard to trade span a number of areas. In some instances, indigenous peoples have what trade scholars call 'defensive interests' (VanGrasstek 2013). Trade agreements threaten to impinge upon cultural practices or legal rights, just to name two possibilities. The focus is on preventing or mitigating any potential damage. In other instances, indigenous peoples pursue 'offensive interests,' seeking the economic benefits and opportunities that can derive from trade agreements as participants in the market.

Therefore, in terms of substance, the first step was to canvas the literature for works that would capture these two perspectives. My research team (myself and two research assistants) identified several topics where Indigenous goals and concerns about trade seem to be most pronounced. These include investor-state dispute settlement, protections for Traditional Knowledge, trade in cultural heritage, inter-tribal trade, the duty to consult Indigenous peoples and to obtain free prior and informed consent, as well as the general desire to promote Indigenous economic development.

In terms of resources, we looked at peer-reviewed academic literature and publications, including working papers and reports from think tanks and non-governmental organizations. A key resource to understand Indigenous goals and concerns is testimony before Parliamentary committees by Indigenous representatives and advocates. Parliamentary consultations on the Transpacific Partnership (TPP) and on NAFTA renegotiations have been especially informative.

The research team worked both independently and collaboratively, as appropriate. In some instances, team members researched a particular topic and brought their findings back to the team. In other instances, we all explored a topic, then triangulated our respective findings. Ultimately, we distilled our findings down to the key topics that are presented in this report.

Our choice to accentuate certain key findings over others was driven by two considerations. First, which issues seem most pressing today? Second, which issues

seem most pressing to Indigenous peoples in Canada? In answering these questions, we were led to emphasize certain key issues. Therefore, our goal was to be relevant and timely in the Canadian context rather than comprehensive across worldwide Indigenous goals and concerns.

Results

Identifying and analyzing the range of Indigenous goals and concerns relating to the progressive trade agenda is a complex task. Here, I emphasize key issues that seem most pressing in the current moment.

The Duty to Consult

A key issue that emerges frequently in discussions of Indigenous peoples' goals and concerns about trade is the importance of consulting Indigenous peoples and obtaining their free, prior and informed consent before any trade negotiations ensue. The duty to consult is grounded both in international law and in the moral and political commitments that the Canadian government has made to reconciliation.

There are three places where one might locate the duty to consult in law. First, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) contains provisions that establish the right of Indigenous peoples to participate in decision-making that affects them (Schwartz 2017, 2). Several articles in the Declaration make relevant references (Schwartz 2017, 3).

Second, in Canadian law, a "procedural" duty to consult has emerged from case law (Schwartz 2017, 4). Some point to Section 35 of the Constitution to find the duty to consult, however no clear duty is found there. Richardson (2017) argues that "the duty to consult Indigenous peoples and, where appropriate, the duty to accommodate their interests, is a Crown obligation… This duty stems from the honour of the Crown, requiring it to act honourably in all dealings with Indigenous peoples" (Richardson 2017, 3). There is debate about when, exactly, the duty is triggered, as well as what counts as suitable accommodation when it is (Richardson 2017).

To date, there has been no specific challenge regarding Indigenous consultation in trade negotiations in Canada. However, closely related is the *Hupacasath First Nation v. Canada* case, which pertains to the bilateral investment treaty signed between the Government of Canada and China. Schwartz (2017, 4) points out that

the *Hupacasath* ruling on Indigenous participation turns on the practical and logistical challenges of consultation rather than on any moral or legal obligation. Richardson suggests that "the speculative nature of claims about the future consequences of FTAs [free trade agreements]," as well as practical obstacles, may make extensive consultation of Indigenous peoples challenging in trade agreements (Richardson 2017, 6).

The third place where one might locate a legal duty to consult is in modern treaties between Indigenous peoples and the Crown (Schwartz 2017; Richardson 2017). These treaties would not extend to all Indigenous peoples, but rather to some First Nations peoples who have negotiated agreements with the Canadian government.

None of the three legal sources establishes a clear and binding duty to consult Indigenous peoples where trade negotiations are concerned (Richardson 2017). While a legal obligation would be important and powerful, it is not the only consideration. One can also argue that there are moral and political reasons to consult Indigenous peoples given the commitment by the current government to reconciliation. Indeed, in NAFTA renegotiations, the Trudeau government seems to have taken this to heart, establishing a new body. In early August 2017, the Government announced the creation of the NAFTA Council, a bi-partisan advisory body composed of thirteen prominent Canadians from across the political and economic spectrum in Canada. Notable for our purposes is the appointment of Perry Bellegarde, National Chief of the Assembly of First Nations.

While this is a step in the right direction, there are still questions as to whether it constitutes adequate and meaningful consultation in NAFTA. First, Bellegarde is the National Chief of the Assembly of First Nations. Therefore, while he may be well-intentioned, he does not speak for the Métis or Inuit peoples of Canada. Second, it is not clear that Bellegarde has solicited or received input from the broader First Nations leadership or membership.

In Canada, processes exist for stakeholders to register their support or concern for trade agreements. The Standing Committee on International Trade is one example. However, these opportunities have their limits. Interested groups must get to the consultation venue. Interventions are typically five minute presentations to

Committee, followed by time-limited questions. These interventions can be accompanied by a written submission, but these modes can be insufficient to communicate the range and depth of Indigenous concerns. In addition, as the Canadian Council on Aboriginal Business notes in its testimony, "it's a very complicated technical subject to provide input on" (CCAB 2017). This affects both preparation and presentation of an intervention or submission.

The pace of NAFTA negotiating rounds also makes meaningful consultation very difficult. Depending on the pace of negotiating rounds, less than three weeks, and sometimes considerably less, can elapse between rounds.[1] As the IITIO representative put it in testimony before Parliamentary committee, the tight timelines do not allow for "full, frank, fair and meaningful consultation with rights holders" (IITIO 2017b).

Furthermore, it is the nature of trade negotiations that a range of stakeholders communicate their goals and desires to the government. Then, negotiators enter a room where they must bargain with their counterparts, standing firm on some non-negotiable items and conceding others. Indigenous perspectives may be at odds with those of other domestic stakeholders or they may not align with broader goals as expressed by negotiating partners. For this reason, some Indigenous groups have asked for a seat at the negotiating table (IITIO 2017a). IITIO also draws the distinction between "stakeholders" and "rights holders" (IITIO 2017b). In this formulation, sectors and industries, for example, are stakeholders in trade agreements, while Indigenous peoples are rights holders. As such, a higher level of consultation for the latter group would be warranted.

Ultimately, there must be a determination as to what constitutes adequate consultation or meaningful engagement where trade agreements are concerned. This will affect the legitimacy of trade agreements, as well as the broader reconciliation process, for Indigenous peoples in Canada.

[1] Round 1 Aug 16-20, 2017 (Washington); Round 2 Sept 1-5, 2017 (Mexico City); Round 3 Sept 23-27, 2017 (Ottawa); Round 4 Oct 11-17, 2017 (Washington).

Traditional Knowledge

Traditional Knowledge (TK) can be defined as "the summation of all knowledge, information, and traditional perspectives relating to the skills, understandings, expertise, facts, familiarities, justified beliefs, revelations, and observations that are owned, controlled, created, preserved, and disseminated by a particular Indigenous nation" (AFN n.d., 4). Article 31 of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes that "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions" (UNDRIP 2007).

Unlicensed use and misappropriation of TK have led not only to commercial losses for Indigenous peoples, but also to spiritual losses as sacred beliefs, practices, traditions, songs, and other aspects of cultural heritage intimately linked to Indigenous identity are used without respect for or permission of the steward community. However, finding adequate TK protections is elusive (Oguamanam 2004; Davis 2006; Dagne 2014; Graber and Kuprecht 2012). Efforts to protect TK exist in domestic policy around the world. In the last twenty years, international initiatives have been taken to protect TK.

One prominent example is at the World Intellectual Property Organization (WIPO). Established in 1970, WIPO's core tasks include "assisting governments and organizations to develop the policies, structures and skills needed to harness the potential of IP for economic development; working with Member States to develop international intellectual property (IP) law; administering treaties; running global registration systems for trademarks, industrial designs and appellations of origin and a filing system for patents; delivering dispute resolution services; and providing

a forum for informed debate and for the exchange of expertise" (WIPO: An Overview).

In the late 1990s, WIPO turned its attention to the protection of traditional knowledge (TK) and traditional cultural expression (TCE), and to benefit sharing for genetic resources. An ad hoc committee was struck to study how the IP system might accommodate TK, TCE, and genetic resources and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was born. The IGC was convened in 2001 for the first time and it has met, on average, twice yearly since then. Its activities have been accompanied by much data-gathering and analysis on the part of the WIPO Secretariat, including scores of fact-finding missions to indigenous and traditional communities around the world.

Several scholars have illuminated the differences between Western IP law and Indigenous TK as distinct knowledge systems (Anderson 2009; Bowrey 2009, 2011; Coombe and Aylwin 2014; Dutfield 2004; Munzer and Raustiala 2009; Zografos 2010). TK protection is often broached as part of the IP conversation, as is the case at WIPO. However, IP frameworks are founded on different philosophical and cosmological commitments. Early WIPO fact-finding missions showed that, "while many forms of TK are or could be protected as IP, existing IP mechanisms are not able to fully protect all forms of TK. This is because existing IP mechanisms cannot fully respond to the characteristics of certain forms of traditional knowledge, namely, their holistic nature, collective origination and oral transmission and preservation" (WIPO 2001, 2016). Similarly, Drahos (2011) describes distinctive features of Indigenous innovation systems, including the development of "systems to maintain ecological systems" (Drahos 2011, 4) as opposed to mainstream notions of innovation "often conceptualized in terms of firms developing new products and processes" (Drahos 2011, 3). As a result, TK has not been adequately protected by international IP law.

WIPO acknowledges that the current IP system was created during the early period of industrialization to reward and incentivize invention (WIPO 2016a, 1). That is not to say that the current system is irrelevant to Indigenous groups who, in some

instances, choose to avail themselves of patent or trademark law, industrial design or neighboring rights IP protections (Dagne 2014b, 45). Yet the narrowly commercial notion of IP enshrined in the trading regime is not wholly compatible with Indigenous interests (Drahos and Frankel 2012; Frankel 2015a; 2015b). TK holders often seek protections for indefinite rather than limited time periods; for knowledge that may not be classed as 'original' by IP standards; and for rights that are collectively rather than individually held. For these reasons, Geographical Indications (GI) may be the IP category that most resembles TK. "GIs mainly designate products originating from places, towns, regions or countries, instead of from specific private individuals" (Dagne 2014, 142). The relation to place and to collectively-held rights creates synergies between GIs and TK, but GIs like feta cheese are ultimately still commercial products. Thus, there are limits to the protections that GIs can offer to Indigenous knowledge (Dagne 2014a, 2014b, 2015; Gervais 2009, 2010; Frankel 2011a; Singhal 2008; van Caenegem 2015), making IP and TK an uneasy fit.

In the last twenty years, provisions intended directly to protect traditional knowledge and genetic resources have started to appear in free trade agreements, with a marked increase after 2009 (Covarrubia 2011; Valdés and McCann 2014, 27; Morin and Gauquelin 2016). Some provisions are more extensive than others. Nonetheless, this trend is noteworthy for two reasons. First, it signals disappointment with multilateral processes at the WTO and WIPO, and a potentially fruitful new strategy to protect Indigenous interests (WIPO 2016). Second, FTAs have repeatedly been portrayed as vehicles for developed countries to lock in higher IP standards that would advantage corporate investors (Drahos 2003). TK and GR provisions in free trade agreements turn this assumption on its head, although some Indigenous groups remain skeptical that they will serve their interests. At a minimum, FTAs have emerged as an alternative forum where Indigenous objectives can be pursued, if indeed Indigenous interests are driving the appearance of TK provisions in free trade agreements. Further research is required to determine the motivations and consequences of this phenomenon.

Investor-State Dispute Settlement

Investor-state dispute settlement (ISDS) or investor-state arbitration (ISA) is a form of dispute settlement that gives standing to companies or private investors to bring suit against sovereign governments. Investors seek redress from governments when they can show that their assets have been expropriated as a result of government action. ISDS mandates a separate tribunal, outside regular courts, typically composed of three appointed arbitrators.

ISDS first appeared in the late 1950s at a time when governments were trying to signal to foreign investors that their money would be safe in their country. These investors were reticent for a variety of reasons – they had seen the same governments nationalize foreign assets or they worried that courts in the host country would not give a fair hearing should conflict arise between the investor and the government. In many instances, governments struck special bilateral investment treaties (BITs) that established ISDS to allay these fears. (In the Canadian context, these are often referred to as Foreign Investment Protection and Promotion Agreements (FIPPAs)). The prospect of neutral tribunals would ostensibly mitigate risk for foreign investors and increase the likelihood that they would invest.

While governments continue to negotiate BITs and FIPPAs, ISDS provisions are increasingly appearing in trade agreements. The North American Free Trade Agreement (1994) was one of the first to contain such a provision. NAFTA's Chapter 11 spawned a number of prominent and controversial cases. Subsequent FTAs, including the recent Transpacific Partnership (TPP) and Canada-EU Comprehensive Economic and Trade Agreement (CETA), often contain ISDS provisions, though later versions of CETA offered significant reforms.

ISDS is generally controversial for many reasons. Provisions give rights to foreign investors that domestic investors do not enjoy. There has been a notable increase in ISDS cases in recent years, causing concern that the mechanism is being overused and, perhaps, abused (UNCTAD, 2014). There is a worry that ISDS unnecessarily sidesteps legitimate courts. Arbitrators who serve on tribunals have often represented the very companies bringing suit against governments.

Arbitrators are also paid by the hour, creating an incentive for arbitration to take longer than the merits of a case might require. In most instances, ISDS decisions cannot be appealed. ISDS cases can be very expensive to defend. Some worry that governments faced with the threat of an ISDS suit may opt not to implement the offending regulation, even if it is in the public interest to do so, creating a prospective "regulatory chill." It is in answer to this concern that the Trudeau government's progressive trade agenda commits to the government's "right to regulate."

Indigenous peoples have their own concerns about ISDS. They were perhaps most eloquently expressed in a 2015 report by the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz. "The Special Rapporteur's research reveals an alarming number of cases in the mining, oil and gas, hydroelectric and agribusiness sectors whereby foreign investment projects have results in serious violations of indigenous peoples' land, self-governance and cultural rights" (Tauli-Corpuz 2016, 7). She continues, "Inadequate respect and protections for indigenous peoples' land and free, prior and informed consent rights when granting rights to investors over their territories are the root causes for subsequent and broader violations of indigenous peoples' rights" (Tauli-Corpuz 2016, 8). In their testimony to Parliament on the Transpacific Partnership, the Union of British Columbia Indian Chiefs expressed a similar view about ISDS in the Transpacific Partnership. "ISDS provides a loophole to ignore Indigenous rights and title" (UBCIC 2017).

Indigenous peoples are not the only ones to express concern about ISDS. Indeed, CETA negotiations were stalled over this issue. Both the EU and the Canadian government were moved in this instance to shift focus to the possibility of creating an international investment court to allay the concerns of opponents to ISDS. However, this initiative has not yet fully taken shape leaving us to inquire how Indigenous interests will be protected given the prevalence of ISDS.

Inter-Indigenous Trade

A key component of the trade discussion for Indigenous peoples is the possibility of conducting trade between and among Indigenous groups across North America and the world. Historically, before colonization, Indigenous groups traded extensively with one another. For example, Jobin's (2013) study of the Plains Cree shows highly developed trading relations, as well as a sophisticated network of trails and trading routes to support them. Jobin argues that Cree trading practices were a critical manifestation of their status as a self-determining people (Jobin 2013, 603). "If, as the research evidence proves, international trade occurred, then it stands to reason that Indigenous rights in Canada should include the redeployment of international alliances including Indigenous international trade agreements" (Jobin 2013, 635).

The National Aboriginal Economic Development Board asserts something similar in their testimony before the Standing Committee on International Trade. "Traditionally, our people had free and open borders. Trade between nations that today fall on both sides of the US and Canadian borders was unencumbered…" The NAEDB noted in their testimony that opportunities for inter-tribal trade across the Canada-US border "depends on the border crossing." It is easier in some locations than others. Much of this discussion relates to acknowledgement of the 1794 Treaty of Amity, Commerce and Navigation, or Jay Treaty. According to IITIO representatives, the Jay Treaty "has no force or effect in Canada," however the spirit of the Treaty can be upheld and legislation can apparently be passed to do so (IITIO 2017b). Canadian Indigenous groups, therefore, are calling for a process to allow free movement of goods and people to facilitate inter-Indigenous trade, a process that will likely sit within (and differ from) regulations governing the movement of goods, services and people in the non-Indigenous community.

The Limits of Trade Agreements

As we think about how to bring Indigenous goals and concerns into the progressive trade agenda, our focus is understandably on NAFTA given its current prominence. However, this observation raises at least three sets of questions. First, how will Indigenous perspectives fit into trade negotiations with other partners? The

Government of Canada has indicated that it is exploring possible agreements with China, the Association of Southeast Asian Nations (ASEAN) and the Pacific Alliance (Chile, Columbia, Mexico and Peru), among others. Wolfe (2017) suggests that China would be unreceptive to the progressive trade agenda. "That's because this agreement could well be a template for its negotiations with other OECD countries – meaning that what China agrees to with Canada, may become its default negotiating position expected by other countries" (Wolfe 2017, 2). Will the Trudeau government remain committed to a progressive trade agenda that includes Indigenous perspectives in these prospective agreements? Does the identity of the trading partner affect possible outcomes for Indigenous peoples in trade negotiations?

Second, how can trade agreements best reflect or incorporate Indigenous interests? Previous Canadian trade agreements have included carve-outs (Schwartz 2017, 12). The NAFTA renegotiation is considering an Indigenous chapter. What do such strategies achieve or exclude? What would an Indigenous chapter contain? For example, a chapter can include language that reaffirms the Canadian government's commitment as a signatory of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Is this desirable? Would indigenous concerns be confined to its chapter? Presumably, Indigenous peoples have concerns that cut across other chapters. How would that be handled? Which approach is best-suited to Indigenous goals as they pertain to trade?

Third, what other aspects of trade policy, in addition to trade agreement negotiations, should draw our attention? On their own, trade agreement provisions are arguably not enough to provide the support for economic development that Indigenous peoples in Canada seek. Domestic flanking policies are also required, including reform to the Indian Act, programs to promote Indigenous economic development, and incentives for Indigenous businesses to avail themselves of government export promotion services. How can this best be encouraged and through what means?

State of Knowledge

This research has revealed a number of gaps in our knowledge of how to integrate Indigenous goals and concerns into the progressive trade agenda. I list some key gaps here as questions to which we do not yet have satisfactory answers.

1. What is the preferred outcome for Canadian Indigenous peoples in trade agreements and in trade policy more generally? Is a chapter devoted to Indigenous issues the preferred outcome? If not, what would be?

2. What policies have been most successful in the past to promote or protect Indigenous interests? What best practices, either from Canada or elsewhere, can guide the current discussion about trade?

3. What constitutes adequate and meaningful consultation of Indigenous peoples where trade agreements are concerned?

4. What is the most effective way (or the most appropriate platform) for ensuring that Indigenous voices from First Nations, Inuit and Métis communities are heard in conversations about trade?

5. Which policies are most promising for promoting Indigenous economic development? How can trade agreements and trade policy promote these policies?

6. What resources exist to help indigenous peoples to build capacity for participation in trade negotiations, policy-making, and export practices? How well are these resources matched to Indigenous community needs?

Additional Resources

There is an extensive academic literature relevant to this report. Actually, one could say that there are multiple relevant literatures from law, political science and elsewhere. The list below is not exhaustive, but it highlights some other key resources.

1. Testimony and submissions by indigenous representatives and advocates to Parliament. In particular, Indigenous participation in the 2017 Standing Committee on International Trade consultations on "Priorities of Canadian Stakeholders Having an Interest in Bilateral and Trilateral Trade in North America, Between Canada, United States and Mexico" and the "Trans-Pacific Partnership Agreement (TPP) Public Consultation."

2. The body of law and legal analysis on the duty to consult Indigenous peoples.

3. Research publications of the Canadian Council for Aboriginal Business.

4. Research publications of the Chiefs of Ontario.

5. The Institute for Research on Public Policy (IRPP) Policy Options series on Indigenous reconciliation in Canada.

6. The Centre for International Governance Innovation (CIGI) International Law Program series on International Indigenous Law.

7. Research and analysis on New Zealand and the Treaty of Waitangi as a possible best practice.

8. The United Nations Declaration on the Rights of Indigenous Peoples – the document itself, as well as the analysis of what it commits signatories to doing, are key resources for this conversation.

Knowledge Mobilization

The Knowledge Mobilization Plan aims to reach key audiences, primarily Indigenous communities and stakeholders in the national and global conversation about trade; policy makers from all levels of government, particularly in Canada; the scholarly community; and the informed public.

Indigenous Stakeholders

This Knowledge Synthesis Grant project is intended to help Indigenous stakeholders to participate effectively in the debate about international trade. The Synthesis Report will ideally provide a comprehensive and informative resource to support Indigenous engagement with policy makers. Two targeted policy briefs will highlight specific pressing challenges. One will focus on the opportunities that trade rules and agreements can provide to Indigenous peoples, the obstacles to taking full advantage of those opportunities, and strategies for surmounting these obstacles. The other will focus on the challenges that trade agreements pose to Indigenous treaty rights, ways of life, and cultural practices, as well as recommendations for government policy that can most effectively mitigate the harm to Indigenous communities from trade. Podcasts will also be of interest to Indigenous stakeholders. They will shift focus from the substance of trade policy and agreements to process issues, namely key access points for influencing the policy-making process, including trade agreement negotiation.

Policy-Makers

The Canadian government has recently signalled a shift in its trade policy, toward a "progressive trade agenda." This opens a policy window and creates an opportunity for influence as the content of this new trade agenda is taking shape. The Synthesis Report will be a useful reference for policy makers at all levels by incorporating the range of Indigenous interests into one document. In addition, policy briefs will underline specific Indigenous concerns relating to their offensive and defensive trade interests.

Scholarly Community

With some notable exceptions, scholars active in debates about trade (economists, political scientists, legal scholars) tend not to engage in an ongoing way with scholars working with and for Indigenous peoples. The range of project outputs may resonate with various scholarly constituencies, but the open-access scholarly article on the prospects for traditional knowledge provisions in recent trade agreements to advance Indigenous interests is intended to speak directly to – and enter into conversation with – both scholarly communities. This article will also be of interest to policy makers and Indigenous communities. Therefore, in keeping with the Tri-Agency Open Access Policy on Publications, this research will be made available free of charge, thus having a wider impact beyond academics.

Informed Public

Recent world events – including calls to renegotiate NAFTA and European street protests against the Canada-EU Comprehensive Economic and Trade Agreement (CETA) and the US-EU Transatlantic Trade and Investment Partnership (TTIP) – show that the public's attention is on trade. As the SSHRC Knowledge Synthesis Grant call for applications notes, "strong support for or opposition to free trade dominates political agendas worldwide." Public attentiveness to the consequences of international trade creates a critical opportunity to convey Indigenous interests and perspectives. Evidence-based policy briefs and podcasts are especially effective formats for engaging public awareness about the costs and benefits of trade for Canada's First Nations, Métis, and Inuit peoples and eliciting support for a progressive trade agenda that takes their concerns seriously.

Three key objectives underpin the Knowledge Mobilization plan: 1) to facilitate the flow and exchange of knowledge across stakeholder boundaries in trade discussions to deepen understanding of various, sometimes competing positions; 2) to synthesis and disseminate the state of knowledge on Indigenous trade preferences to inform policy choices and best practices at all levels of government and among private and non-governmental sector stakeholders; and 3) to mobilize social

science research to inform public debate on the complex constellation of factors that influence trade policy in the contemporary era.

Conclusion

The renegotiation of the North American Free Trade Agreement (NAFTA) has brought trade to the top of the political agenda and ignited controversies about how best to mobilize free trade agreements (FTAs) to produce inclusive and equitable outcomes. Central to this conversation in Canada are Indigenous peoples, who are directly affected by FTAs, but have rarely participated in their negotiation. This report flags key issues in this conversation with the intention of deepening our understanding of how to integrate Indigenous concerns into the progressive trade agenda. In particular, attention to the duty to consult Indigenous peoples before and during trade agreement negotiations, to the special protections that are required to safeguard Traditional Knowledge, to the significant threat posed to Indigenous rights and practices by investor-state dispute settlement, and to the prospects for inter-Indigenous trade is critical. A significant part of the conversation about Indigenous reconciliation is inclusion in the economy. Trade negotiations – a fundamental activity in a trading nation like Canada – is a gateway to this dimension of reconciliation.

References and Bibliography

Abdel-Latif, Ahmed. 2017. "Revisiting the creation of the IGC." In *Protecting Traditional Knowledge*, eds. Daniel F. Robinson, Ahmed Abdel-Latif and Pedro Roffe. (New York, NY: Routledge): 10-30.

Anderson, Jane E. 2009. *Law, Knowledge, Culture: The Production of Indigenous Knowledge in Intellectual Property Law* (Cheltenham, UK: Edward Elgar Press).

Assembly of First Nations. N.d. "Traditional Knowledge," Assembly of First Nations Environmental Stewardship (Ottawa, ON). Available at http://www.afn.ca/uploads/files/env/ns_-_traditional_knowledge.pdf

Bannerman, Sarah. 2015. "The World Intellectual Property Organization and Traditional Knowledge," In *Indigenous Intellectual Property*, ed. Matthew Rimmer (Cheltenham, UK: Edward Elgar): 83-105.

Bowrey, Kathy. 2009. "Economic Rights, Culture Claims and a Culture of Piracy in the Indigenous Art Market: What Should We Expect from the Western Legal System?" *Australian Indigenous Law Review* 13(2): 35-58.

Bowrey, Kathy. 2011. "Indigenous Culture, Knowledge and Intellectual Property: The Need for a New Category of Rights," In *Emerging Challenges in Intellectual Property*, eds. Kathy Bowrey, Michael Handler and Dianne Nicol (Oxford, UK: Oxford University Press).

CCAB. 2017. "Testimony by Max Skudra on behalf of the Canadian Council for Aboriginal Business to the Standing Committee on International Trade," Priorities of Canadian Stakeholders Having an Interest in Bilateral and Trilateral Trade in North America, Between Canada, United States and Mexico, Standing Committee on International Trade, Parliament of Canada (September 18).

Champagne, François-Philippe. 2017. "Address by Minister Champagne at the Inaugural Commonwealth Trade Ministers Meeting," London, UK.

Coombe, Rosemary J. and Nicole Aylwin. 2014. "The Evolution of Cultural Heritage Ethics via Human Rights Norms," In *Dynamic Fair Dealing: Creating Canadian Culture Online,* eds. Rosemary J. Coombe, Darren Wershler, and Martin Zeilinger (Toronto, ON: University Of Toronto Press): 201-212.

Covarrubia, Patricia. 2011. "The EU and Colombia/Peru Free Trade Agreement on GIs: Adjusting Colombian and Peruvian National Laws?" *Journal of Intellectual Property Law & Practice* 6 (5): 330-338.

Cross, Philip. 2016. "The Importance of International Trade to the Canadian Economy: An Overview," *Fraser Research Bulletin* (Vancouver, BC: Fraser Institute).

Dagne, Tesh W. 2014. *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (London, UK: Routledge Press).

Dagne, Tesh. 2014a. "Protecting Traditional Knowledge in International Intellectual Property: Imperatives for Protection and Choice of Modalities" *The John Marshal Review of Intellectual Property Law* 14(1): 25-49.

Dagne, Teshager W. 2014b. "The Identity of Geographical Indications and their Relation to Traditional Knowledge in Intellectual Property Law" *The World Intellectual Property Organization Journal* 5(2): 137-152.

Dagne, Tesh W. 2015. "Beyond Economic Considerations: (Re) Conceptualizing Geographical Indications for Protecting Traditional Agricultural Products," *International Review of Intellectual Property and Competition Law* 46(6): 682-706.

Davis, Megan. 2006. "International Trade Rules and Indigenous Knowledge: A Basic Introduction," *Indigenous Law Bulletin* 38 6(20): 10.

Drahos, Peter. 2003. "Expanding Intellectual Property's Empire: the Role of FTAs," Available at http://www.ictsd.org/downloads/2008/08/drahos-fta-2003-en.pdf

Drahos, Peter and Susy Frankel. 2012. *Indigenous Peoples Innovation: Intellectual Property Pathways to Development* (Canberra: ANU Press).

Fitzgerald, Oonagh and Risa Schwartz. 2017. "UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws," (Waterloo, ON: Centre for International Governance Innovation).

Frankel, Susy. 2011. "The Mismatch of Geographical Indications and Innovative Traditional Knowledge," *Prometheus* 29(3): 253-267.

Frankel, Susy. 2012. "Attempts to Protect Indigenous Culture through Free Trade Agreements," In *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues*, eds. Christoph B. Graber, Karolina Kuprecht and Jessica C. Lai (Cheltenham, UK: Edward Elgar).

Frankel, Susy. 2015a. "Using intellectual property rules to support the self-determination goals of indigenous peoples," In *Research Handbook on Human Rights and Intellectual Property,* ed. Christophe Geiger (Cheltenham: Edward Elgar Publishing): 627-640.

Frankel, Susy. 2015b. "Traditional Knowledge and Innovation as a Global Concern," In *International Intellectual Property: A Handbook of Contemporary Research*, ed. Daniel J. Gervais (Cheltenham: Edward Elgar Publishing): 217-245.

Gervais, Daniel. 2005. "Traditional Knowledge and Intellectual Property: A TRIPS-Compatible Approach," *Michigan State Law Review* 137-166.

Gervais, Daniel. 2009. "Traditional Knowledge: Are We Closer to the Answer(s)? The Potential Role of Geographical Indications," *ILSA Journal of International & Comparative Law* 15(2): 551-567.

Graber, Christoph B. and Karolina Kuprecht (eds). 2012. *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues* (Cheltenham: Edward Elgar Publishing).

Gunn, Brenda. 2006. "Impacts of the North American Free Trade Agreement on Indigenous Peoples and Their Interests," *Balayi: Culture, Law and Colonialism* 9: 5-25.

Hansen, David R. 2011. "Protection of Traditional Knowledge: Trade Barriers and the Public Domain," *Journal of the Copyright Society of the USA* 58(4).

Haugen, Hans Morten. 2014. "How are Indigenous and Local Communities' Rights over Their Traditional Knowledge and Genetic Resources Protected in Current Free Trade Negotiations? Highlighting the Draft Trans-Pacific Partnership Agreement." *The Journal of World Intellectual Property* 17(3-4): 81-95.

IITIO. 2017a. "Submission by the International Inter-Tribal Trade and Investment Organization to the Government of Canada for the Renegotiation and Modernization of the North American Free Trade Agreement," available at http://iitio.org/nafta/

IITIO. 2017b. "Testimony by Wayne Garnon-Williams on behalf of IITIO to the Standing Committee on International Trade," Priorities of Canadian Stakeholders Having an Interest in Bilateral and Trilateral Trade in North America, Between Canada, United States and Mexico, Standing Committee on International Trade, Parliament of Canada (September 18).

Kamau Maina, Charles. 2011. "Power Relations in Traditional Knowledge Debate: A Critical Analysis of Forums." *International Journal of Cultural Property* 18(2): 143-178.

Kukucha, Christopher. 2005. "Lawyers, trees and money: British Columbia forest policy and the convergence of international and domestic trade considerations," *Canadian Public Administration* 48(4): 506-527.

Manuel, Arthur and Nicole Schabus. 2005. "Indigenous Peoples at the Margin of the Global Economy: A Violation of International Human Rights and International Trade Law," *Chapman Law Review* 8(1): 222-252.

Morin, Jean-Frédéric and Mathilde Gauquelin. 2016. "Trade Agreements as Vectors for the Nagoya Protocol's Implementation," Centre for International Governance Innovation CIGI Papers 115.

Nahwegahbow, Barb. 2016. "Indigenous interests must be part of international trade discussions," *Windspeaker* 34(13): 1-2.

NAEDB. 2017. "Testimony by Dawn Madahbee Leech on behalf of the National Aboriginal Economic Development Board to the Standing Committee on

International Trade," Priorities of Canadian Stakeholders Having an Interest in Bilateral and Trilateral Trade in North America, Between Canada, United States and Mexico, Standing Committee on International Trade, Parliament of Canada (September 18).

Oguamanam, Chidi. 2004. "Localizing Intellectual Property in the Globalization Epoch: The Integration of Indigenous Knowledge," *Indiana Journal of Global Legal Studies* 11: 135-169.

Oguamanam, Chidi. 2012. *Intellectual Property in Global Governance* (Oxford, UK: Routledge Press).

Popova, Ulia. 2014. "Conservation, Traditional Knowledge, and Indigenous Peoples," *American Behavioural Scientist* 58(1): 197-214.

Richardson, Katya Lena. 2017. "Finding a Duty to Consult Aboriginal Peoples During the Negotiation of Free Trade Agreements (FTAs) and Foreign Investment Promotion and Protection Agreements (FIPAs)," *Western Journal of Legal Studies* 7(2): 1-17.

Robertson, Sean. 2015. "Natives making space: The Softwood Lumber dispute and the legal geographies of Indigenous property rights," *Geoforum* 61: 138–147.

Roffe, Pedro. 2017. "Preferential Trade Agreements and the Protection of Genetic Resources and Associated Traditional Knowledge," In *Protecting Traditional Knowledge*, eds. Daniel F. Robinson, Ahmed Abdel-Latif and Pedro Roffe. (New York, NY: Routledge): 303-316.

Schwartz, Risa. 2016. "Realizing Indigenous Rights in International Environmental Law," CIGI Paper No. 109 (Waterloo, ON: Centre for International Governance Innovation).

Schwartz, Risa. 2017. "Toward a Trade and Indigenous Peoples' Chapter in a Modernized NAFTA," CIGI Paper No. 144 (Waterloo, ON: Centre for International Governance Innovation).

Shaffer, Gregory and David Pabian. 2015. "European Communities – Measures Prohibiting the Importation and Marketing of Seal Products," *American Journal of International Law* 109: 154-161.

Singhal, Shivani. 2008. "Geographical Indications and Traditional Knowledge," *Journal of Intellectual Property Law & Practice* 3(11): 732-738.

Siswandi, Achmad Gusman. 2015. "The Nagoya Protocol: Unfinished Business Remains Unfinished," In *Indigenous Intellectual Property*, ed. Matthew Rimmer (Cheltenham, UK: Edward Elgar): 334-364.

Statistics Canada. 2016. Table 381-0032: Value-Added Exports, by Industry. Government of Canada. http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=3810032.

Suiseeya, Kimberly R Marion. 2014. "Negotiating the Nagoya Protocol: Indigenous Demands for Justice," *Global Environmental Politics* 14(3): 102-124.

Trudeau, Justin. 2015. "Statement by Prime Minister on release of the Final Report of the Truth and Reconciliation Commission," https://pm.gc.ca/eng/news/2015/12/15/statement-prime-minister-release-final-report-truth-and-reconciliation-commission

UBCIC. 2017. "Testimony by Brenda Sayers on behalf of the Union of British Columbia Indian Chiefs to the Standing Committee on International Trade," Trans-Pacific Partnership Agreement (TPP) Public Consultation, Standing Committee on International Trade, Parliament of Canada (April 18).

United Nations, Declaration on the Rights of Indigenous Peoples adopted by General Assembly Resolution 61/295 13 September 2007 (New York). Available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

UN General Assembly, "Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples on the impact of international investment and free trade on the human rights of indigenous peoples," 7 August 2015, A/70/301.

Valdés, Raymundo and Maegan McCann. 2014. "Intellectual Property Provisions in Regional Trade Agreements: Revision and Update," Staff Working Paper ERSD-2014-14 (Geneva: World Trade Organization).

VanGrasstek, Craig. 2013. *The History and Future of the World Trade Organization* (Geneva: WTO Publications).

Vivas Eugui, David. 2009. "Landmark Biodiversity, TK Provisions Accompany EFTAColombia FTA" (Geneva, SW: International Centre for Trade and Sustainable Development).

Von Lewinski, Silke. 2008. *Indigenous Heritage and Intellectual Property: Resources, Traditional Knowledge and Folklore*. Kluwer Law International, 2008.

World Intellectual Property Organization. N.d. "Traditional Knowledge: Frequently Asked Questions," Available at http://www.wipo.int/tk/en/resources/faqs.html#a2

World Intellectual Property Organization. 2001. "Intellectual Property Needs and Expectations of Traditional Knowledge Holders," WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999) (Geneva). Available at http://www.wipo.int/edocs/pubdocs/en/tk/768/wipo_pub_768.pdf

World Intellectual Property Organization. 2016a. "Traditional Knowledge and Intellectual Property," Background Brief #1 (Geneva).

World Intellectual Property Organization. 2016. "The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore," Background Brief #2 (Geneva). Available at http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_2.pdf

Zografos, Daphne. 2010. *Intellectual Property and Traditional Cultural Expressions* (Cheltenham, UK: Edward Elgar Press).