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**Navigating the Intersection of Trade and Human Rights: A Critical Analysis of the Impact of US-Canada Trade Tensions on Indigenous Communities.**



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# Navigating the Intersection of Trade and Human Rights: A Critical Analysis of the Impact of US-Canada Trade Tensions on Indigenous Communities.

 **Dr. Clement Appiah-Kubi**

Lecturer, Crandall University, Moncton New Brunswick, Canada.

<https://orcid.org/0009-0007-1302-2160>

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## Abstract

**Purpose:** The ongoing US-Canada trade tensions have sparked concerns about the potential human rights implications, particularly for Indigenous communities. This article critically examines the intersection of trade and human rights, analyzing the impact of tariffs and trade restrictions on the rights of Indigenous peoples. Through a review of international human rights law, trade agreements, and case studies, this article highlights the vulnerabilities of Indigenous communities in the face of trade tensions. It argues that governments, businesses, and Indigenous communities must work together to promote human rights and mitigate the negative impacts of trade tensions.

**Methodology:** This study adopts a case study approach to examine the specific ways in which US-Canada trade tensions have affected Indigenous communities, particularly in relation to economic rights, land sovereignty, and cultural sustainability. It integrates legal analysis, policy review, and qualitative data collection to assess the broader human rights implications. A detailed review of trade agreements, including CUSMA (USMCA), WTO rulings, and domestic policies affecting Indigenous trade and resource rights.

**Findings:** The ongoing trade tensions between the United States and Canada have had significant and often overlooked consequences for Indigenous communities whose economies, cultural practices, and sovereignty are deeply interconnected with cross-border trade.

**Unique contributions to theory, practice and Policy:** While the broader economic implications of tariffs, resource disputes, and trade agreements such as the Canada-United States-Mexico Agreement (CUSMA) have been widely analyzed, the specific impact on Indigenous nations remains understudied. This paper critically examines how trade restrictions, tariffs, and border enforcement measures disproportionately affect Indigenous economic stability, self-governance, and treaty rights.

**Keywords:** *US-Canada Trade Tensions, International Human Rights Law, Indigenous Communities*

## 1.0 INTRODUCTION

The US-Canada trade relationship has been a cornerstone of North American economic integration for decades. However, the recent trade tensions between the two nations have raised concerns about the potential human rights implications, particularly for Indigenous communities. As the world's largest trading nations, the US and Canada have a responsibility to ensure that their trade policies respect and promote human rights.

The economies of the United States and Canada are highly integrated, a process that has been accelerated by the bilateral U.S.-Canada free trade agreement (FTA) of 1989 and the North American Free Trade Agreement (NAFTA) of 1994. The two countries are natural trading partners, given their geographic proximity and their (partial) linguistic and cultural similarities. Because 80% of the Canadian population lives within 200 miles of the U.S. border and due to the impediments of Canadian geography, trade with the United States is often easier and less expensive than Canadian inter-provincial trade. Both are affluent industrialized economies, with similar (though not identical) standards of living. However, the economies of the two countries diverge in numerous ways. First, the U.S. economy dwarfs that of Canada. U.S. gross domestic product (GDP) is over 9 times that of Canada in nominal terms and nearly 11 times as large in terms of purchasing power parity.<sup>1</sup>

US-Canada trade tensions extend beyond economic and political disputes, directly impacting human rights in areas such as labor rights, Indigenous sovereignty, environmental justice, and access to essential goods. Addressing these concerns requires integrating human rights principles into trade policies, ensuring that economic agreements do not come at the expense of vulnerable communities. Strengthening legal protections, promoting Indigenous inclusion in trade negotiations, and balancing economic growth with environmental sustainability are essential steps toward a more just and equitable trade relationship between the US and Canada.

This article critically examines the intersection of trade and human rights, analyzing the impact of tariffs and trade restrictions on the rights of Indigenous peoples. Through a review of international human rights law, trade agreements, and case studies, this article highlights the vulnerabilities of Indigenous communities in the face of trade tensions.

### 1.1 THE ECONOMIES OF THE UNITED STATES AND CANADA

In the past decade from 2001, the average annual real GDP growth rate has been slightly higher for Canada (1.9%) than for the United States (1.6%) according to World Bank data. Per capita average annual growth rates over the period have shown a similar, if anemic trajectory (0.82% v. 0.62%). Canadian per capita income, in terms of PPP, has remained relatively constant at around 84% of U.S. per capita income. (Statistics Canada 1994-2002). The persistent per capita income

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<sup>1</sup> Purchasing power parity (PPP) is an economic theory which holds that exchange rates between currencies are in equilibrium when their purchasing power is the same in each of the two countries. PPP is useful for cross-country GDP comparisons because its measurement excludes exchange rate volatility and speculation.

gap has proven worrisome to Canadian policymakers as it raises questions about Canadian productivity and competitiveness.

Canada is the largest single nation trading partner of the United States. Trade increased in 2010, after dropping in 2009 due to the global economic downturn. In 2010, total merchandise trade with Canada was \$481.5 billion (a 12.1% increase from 2009), consisting of \$275.5 billion in imports and \$206.0 billion in exports resulting in a trade deficit of \$69.5 billion.<sup>2</sup> Canada is the United States' largest supplier of energy—including oil, uranium, natural gas, and electricity—and the energy relationship has been growing.<sup>3</sup> Canada is the world's fifth largest petroleum producer, and its reserves are believed to be the third largest in the world only after those of Saudi Arabia and Venezuela; Canada's sources of oil include traditional and offshore wells and, increasingly, Alberta's oil sands.<sup>4</sup>

In 2010, the value of U.S. petroleum and natural gas imports from Canada reached \$82.2 billion from \$63.7 billion in 2009. Canada provides 22% of U.S. crude oil imports and supplies 85% of U.S. natural gas imports.<sup>5</sup>

In terms of sectoral components of GDP, the United States and Canada are similar. Over two thirds of both economies are devoted to the services sector, although the sector is larger as a percentage of GDP in the United States (76.9%-70.9%). The manufacturing sector's composition of GDP has fallen in both countries over time, but it is still relatively more important to the Canadian economy (27.2%-22.2%). Agriculture makes up the remaining 1.9% of the Canadian economy and 1.2% of the U.S. economy. (NationMaster GDP Stat)

## **2.1 INTERNATIONAL HUMAN RIGHTS LAW AND INDIGENOUS RIGHTS**

International human rights law has become a powerful tool for Indigenous advocacy, influencing domestic policies and holding governments accountable for violations. Indigenous rights in the United States and Canada have been shaped by a complex history of colonialism, discrimination, and legal battles. While both countries recognize Indigenous rights under domestic legal frameworks, international human rights law—particularly through instruments like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)—has played a significant role in advancing Indigenous sovereignty, land rights, and self-determination. International human rights law recognizes the rights of Indigenous peoples to self-determination, cultural preservation, and free, prior, and informed consent.

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<sup>2</sup> Trade figures are expressed in terms of imports for consumption (customs value), and domestic exports (FAS value) as compiled by the U.S. International Trade Commission. Canadian figures are from Statistics Canada.

<sup>3</sup> See CRS Report R41875, *The U.S.-Canada Energy Relationship: Joined at the Well*, by Paul W. Parfomak and Michael Ratner.

<sup>4</sup> U.S. Energy Information Administration (EIA), *Country Analysis Brief: Canada*, April 2011, <http://www.eia.gov/countries/cab.cfm?fips=CA>.

<sup>5</sup> U.S. International Trade Commission <http://dataweb.usitc.gov>.



The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a key instrument that outlines the rights of Indigenous peoples. Article 3 of UNDRIP recognizes the right of Indigenous peoples to self-determination, while Article 11 recognizes their right to cultural preservation. Indigenous peoples in North America have long faced systemic injustices, including forced displacement, land dispossession, cultural suppression, and economic marginalization. While domestic laws in Canada and the US provide certain protections, Indigenous communities

The International Labour Organization's (ILO) Indigenous and Tribal Peoples Convention (No. 169) is another key instrument that recognizes the rights of Indigenous peoples. Article 2 of the Convention recognizes the right of Indigenous peoples to free, prior, and informed consent and continue to fight for recognition, self-governance, and reparations for historical wrongs.

### **2.1.1 INDIGENOUS RIGHTS IN CANADA AND THE ROLE OF INTERNATIONAL LAW**

Canada has taken significant steps toward incorporating international human rights law into its Indigenous policies, yet many challenges remain. The Canadian legal system recognizes Indigenous rights through constitutional provisions, Supreme Court rulings, and various treaties and agreements. Section 35 of the Constitution Act, 1982, affirms and recognizes the rights of Aboriginal peoples, including treaty rights, but does not define their full scope.

The Supreme Court of Canada has played a critical role in interpreting Indigenous rights through landmark cases such as *R. v. Sparrow* (1990), which established the principle that Indigenous rights are constitutionally protected, and *Delgamuukw v. British Columbia* (1997), which affirmed Aboriginal title to land. Despite these legal affirmations, conflicts over land and resource development continue to challenge Indigenous sovereignty and self-governance.

The duty to consult and accommodate, established in *Haida Nation v. British Columbia (Minister of Forests)* (2004), requires the government to engage with Indigenous groups when their rights may be affected by legislative or administrative decisions. However, the implementation of this duty has been inconsistent, with many Indigenous communities arguing that consultation processes are often superficial and fail to achieve meaningful consent.

International law has influenced Canada's Indigenous rights policies through instruments such as UNDRIP, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of Racial Discrimination (CERD). UNDRIP, adopted by the United Nations General Assembly in 2007, outlines the rights of Indigenous peoples, including self-determination, land ownership, and cultural preservation. Initially, Canada opposed UNDRIP, arguing that it conflicted with national sovereignty and existing legal frameworks. However, in 2016, the Canadian government officially endorsed UNDRIP, and in 2021, it passed the UNDRIP Act, committing to aligning federal laws with its principles.

### **2.1.2 INDIGENOUS RIGHTS IN USA AND THE ROLE OF INTERNATIONAL LAW**

Indigenous rights in the United States have evolved through a combination of treaties, federal laws, and court rulings. However, despite legal recognition of tribal sovereignty, Indigenous communities continue to face challenges related to land rights, self-governance, and systemic discrimination. International law, particularly through human rights treaties and declarations, has played a role in shaping discourse on Indigenous rights, though its impact on U.S. domestic law remains limited. This article explores the legal framework for Indigenous rights in the U.S. and evaluates the role of international law in advancing their protection.

The legal status of Indigenous nations in the U.S. is based on treaties, the U.S. Constitution, federal laws, and Supreme Court decisions. The U.S. Constitution recognizes tribal sovereignty, and the federal government has a unique trust responsibility toward Indigenous nations. Early Supreme Court cases, such as *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832), established the foundational legal principles governing Indigenous affairs, recognizing tribes as “domestic dependent nations” with inherent sovereignty.

Federal laws such as the Indian Reorganization Act (1934), the Indian Self-Determination and Education Assistance Act (1975), and the Native American Graves Protection and Repatriation Act (1990) have sought to affirm Indigenous self-governance, protect cultural heritage, and restore certain rights. Despite these legal protections, the U.S. government has historically undermined Indigenous sovereignty through policies of forced assimilation, land dispossession, and resource exploitation. Court rulings such as *Lyng v. Northwest Indian Cemetery Protective Association* (1988) have also limited Indigenous religious and land rights, highlighting ongoing legal battles between Indigenous communities and the federal government.

One of the most significant recent cases, *McGirt v. Oklahoma* (2020), reaffirmed that much of eastern Oklahoma remains legally recognized as tribal land under existing treaties. This ruling strengthened tribal sovereignty but also underscored the historical disregard of treaty obligations by the U.S. government.

International law provides a framework for Indigenous rights through instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of Racial Discrimination (CERD). These international agreements establish principles related to self-determination, land rights, cultural protection, and non-discrimination.

The United States initially opposed UNDRIP when it was adopted by the United Nations General Assembly in 2007, arguing that certain provisions, such as Free, Prior, and Informed Consent (FPIC), were inconsistent with U.S. law. In 2010, the Obama administration reversed this position, expressing support for UNDRIP as an aspirational document. However, the U.S. government has not taken legislative steps to implement UNDRIP domestically, limiting its legal impact. Unlike

in Canada, where UNDRIP was incorporated into national law in 2021, U.S. adherence remains largely symbolic.

## **2.2 TRADE AGREEMENTS AND HUMAN RIGHTS**

Trade agreements can have a significant impact on human rights, particularly for Indigenous communities. The North American Free Trade Agreement (NAFTA) and the United States-Mexico-Canada Agreement (USMCA) are two key trade agreements that govern the US-Canada trade relationship.

While these agreements recognize the importance of human rights, they do not provide adequate protections for Indigenous rights. For example, NAFTA's Chapter 11 on investment allows corporations to sue governments for policies that affect their investments, potentially undermining Indigenous rights.

### **3.1 THE IMPACT OF US-CANADA TRADE TENSIONS ON INDIGENOUS COMMUNITIES**

The United States and Canada share one of the world's largest trading relationships, underpinned by agreements such as the Canada-United States-Mexico Agreement (CUSMA), formerly NAFTA. However, trade tensions between these two nations have fluctuated due to tariffs, disputes over natural resources, and economic protectionism. While much of the focus has been on the broader economic and political implications of these tensions, Indigenous communities—many of whom have historically engaged in cross-border trade—face unique challenges and consequences. The imposition of tariffs, restrictions on resource-based economies, and limitations on Indigenous trade rights have disproportionately affected Indigenous nations on both sides of the border.

Indigenous nations have long engaged in cross-border trade, predating the establishment of Canada and the United States. The Jay Treaty of 1794 recognized the rights of Indigenous peoples to freely travel and trade across the U.S.-Canada border, a provision that remains relevant today. However, the application of these rights has been inconsistent, with Canada refusing to formally recognize the treaty's provisions. Indigenous communities have continued to assert their trade rights, but modern trade policies often fail to account for their unique economic and political status.

#### **3.1.1 EFFECTS OF TRADE TENSIONS ON INDIGENOUS ECONOMIES**

Indigenous economies, particularly those reliant on natural resources, have been significantly affected by US-Canada trade disputes. Tariffs on aluminum and steel, imposed by the U.S. in 2018 and later lifted, disrupted supply chains and increased costs for Indigenous businesses engaged in manufacturing and construction.<sup>6</sup>

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<sup>6</sup> Government of Canada, "Canada-U.S. Trade Relations," Global Affairs Canada, 2019.

Both the U.S. and Canada are major producers of softwood, principally pine, which is used in the construction sector. However, the two countries' industries compete against each other in the huge U.S. market. American lumber producers insist that they are unfairly disadvantaged because Canada improperly subsidizes its producers, while Canada asserts that the U.S. position is pure protectionism. It also argues that since wood is used in a range of industries, any subsidy would not be subject to anti-subsidy ("countervailing") duties as it is not confined to a specific industry.<sup>7</sup>

Disputes over softwood lumber, a recurring issue between the two countries, have particularly affected Indigenous-owned forestry enterprises. Many Indigenous nations rely on forestry not only for employment but also for revenue-sharing agreements with provincial and state governments. The imposition of U.S. tariffs on Canadian softwood lumber has led to job losses and reduced economic opportunities for Indigenous workers.<sup>8</sup> Energy projects involving Indigenous lands and communities have also been impacted by trade tensions.

The Keystone XL pipeline, which was intended to transport oil from Canada to the U.S., was opposed by Indigenous groups due to environmental concerns and treaty violations. The project's cancellation, while seen as a victory for Indigenous sovereignty, also had economic repercussions for Indigenous workers and businesses involved in resource extraction.<sup>9</sup> In contrast, other disputes, such as restrictions on energy exports, have further complicated Indigenous participation in cross-border economic activities.

### **3.1.2 BORDER RESTRICTIONS AND THE EROSION OF TREATY RIGHTS**

Trade tensions have also led to increased border enforcement, disproportionately affecting Indigenous peoples who rely on cross-border movement for cultural, familial, and economic purposes. The Akwesasne Mohawk Nation, whose territory spans both the U.S. and Canada, has faced significant disruptions due to increased border security measures. Indigenous traders have reported difficulties in transporting goods, delays in customs processing, and inconsistent application of exemptions under the Jay Treaty.<sup>10</sup> In some cases, heightened enforcement has led to the seizure of goods and legal challenges that undermine Indigenous economic sovereignty.

The imposition of new trade policies, including stricter customs regulations under CUSMA, has created additional barriers for Indigenous communities seeking to expand their businesses beyond domestic markets. While the agreement includes provisions recognizing Indigenous trade rights, critics argue that enforcement mechanisms remain weak and do not fully account for Indigenous self-determination in economic affairs.<sup>11</sup>

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<sup>7</sup> "Top facts to understand about the softwood lumber dispute." A & A Customs Brokers. 2021. <https://www.aacb.com/facts-to-understand-about-softwood-lumber-dispute/>

<sup>8</sup> United States International Trade Commission, "Softwood Lumber Trade Dispute: Economic Impacts," 2020.

<sup>9</sup> Assembly of First Nations, "Keystone XL Pipeline and Indigenous Rights," Policy Brief, 2021.

<sup>10</sup> Mohawk Council of Akwesasne, "Border Challenges and Indigenous Trade," Report to Parliament, 2018

<sup>11</sup> CUSMA Agreement, Chapter 32, "Indigenous Peoples' Rights and Trade," Government of Canada, 2020.



#### **4.1 INTERNATIONAL LAW AND INDIGENOUS TRADE RIGHTS**

International human rights law, particularly UNDRIP, affirms Indigenous rights to self-determination, economic development, and control over traditional lands and resources. Canada has formally adopted UNDRIP into domestic law, committing to aligning its policies with the declaration's principles. However, Indigenous trade rights remain a contested issue, as trade agreements continue to prioritize national interests over Indigenous sovereignty. The United States, while expressing support for UNDRIP, has not legally incorporated it into domestic law, limiting its effectiveness as a tool for protecting Indigenous economic rights.<sup>12</sup>

The World Trade Organization (WTO) and other international trade bodies have largely failed to integrate Indigenous perspectives into trade policy, leaving Indigenous nations without adequate representation in trade negotiations. Calls for Indigenous participation in trade dispute resolution mechanisms have gained traction, but meaningful reforms have yet to materialize.

#### **5.1 RECOMMENDATION.**

The intersection of trade and human rights, particularly in the context of US-Canada trade tensions, highlights the complex and often adverse effects on Indigenous communities. While economic agreements such as the USMCA seek to enhance trade relations, they frequently fail to adequately address the socio-economic disparities and legal challenges faced by Indigenous populations. Trade policies that prioritize economic growth over Indigenous sovereignty, environmental protection, and cultural preservation perpetuate systemic inequalities. To enhance the protection and recognition of Indigenous rights in the USA and Canada, both countries must take significant legal, political, and economic measures that align with international human rights standards and respect Indigenous sovereignty. Strengthening legal frameworks by fully incorporating the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic law is essential. Canada has taken steps toward implementation, but further legislative and policy reforms are needed to ensure that Indigenous communities have full access to land rights, self-governance, and economic opportunities. The USA, which has expressed support for UNDRIP without making it legally binding, should take concrete steps to incorporate its principles into federal and state laws.

Self-governance should be reinforced by expanding the jurisdiction of Indigenous legal and political institutions. In the USA, the restoration of tribal sovereignty over criminal justice matters, as seen in the Violence against Women Act (VAWA) reauthorization, should be further strengthened by increasing tribal control over law enforcement, education, and economic policies. In Canada, Indigenous self-government agreements should be expanded, with increased federal support for Indigenous-led governance structures. Governments must also reform funding mechanisms to ensure that Indigenous nations receive adequate resources without bureaucratic restrictions that limit their autonomy and Economic development opportunities must be expanded

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<sup>12</sup> United Nations, "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Trade Policy," Human Rights Council Report, 2022.

through increased support for Indigenous entrepreneurship, education, and employment programs. Trade agreements, including CUSMA, should explicitly recognize and enforce Indigenous trade rights, allowing Indigenous communities greater participation in cross-border trade without restrictive customs regulations. Strengthening Indigenous representation in economic decision-making and ensuring that Indigenous-owned businesses have equitable access to markets, resources, and financial services will promote long-term economic sustainability.

## REFERENCES

1. United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. Retrieved from <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
2. United Nations. (1966). *International Covenant on Civil and Political Rights (ICCPR)*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
3. United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
4. United Nations. (1965). *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>
5. Assembly of First Nations. (2021). *Implementation of UNDRIP in Canada: Challenges and Opportunities*. Retrieved from <https://www.afn.ca/>
6. Native American Rights Fund. (2020). *Legal Challenges Facing Tribal Nations in the United States*. Retrieved from <https://www.narf.org/>
7. Truth and Reconciliation Commission of Canada. (2015). *Calls to Action Report*. Retrieved from <https://www2.gov.bc.ca/gov/content/governments/indigenous-people>

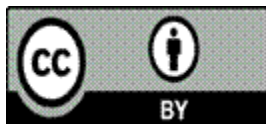
## BOOKS

1. Anaya, J. (2009). *International human rights and Indigenous peoples*. Aspen Publishers.
2. Barsh, R., & Henderson, J. (1996). *The road: Indian tribes and political liberty*. University of California Press.
3. Borrows, J. (2010). *Canada's Indigenous constitution*. University of Toronto Press.
4. Coulthard, G. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.
5. Green, J. (2017). *Indigenous nations within modern states: A reader*. Fernwood Publishing.

6. Wilkins, D. E., & Lomawaima, K. T. (2001). *Uneven ground: American Indian sovereignty and federal law*. University of Oklahoma Press.

#### JOURNAL ARTICLES

1. Egan, B., & Place, J. (2013). The Canadian duty to consult, Aboriginal communities, and the politics of resource extraction. *Human Geography*, 6(1), 17-32.
2. Gunn, B. (2013). Self-determination and Indigenous women: Increasing Indigenous women's participation in international law. *Indigenous Law Journal*, 12(1), 147-166.
3. Napoleon, V. (2007). Thinking about Indigenous legal orders. *National Centre for First Nations Governance*, 1-18.
4. Whyte, K. P. (2018). Settler colonialism, ecology, and environmental injustice. *Environment and Society*, 9(1), 125-144.



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