



ASSEMBLY OF FIRST NATIONS

Submission to Standing Senate Committee on Foreign Affairs and International Trade (AEFA)

Study of Bill C-13, An Act to implement the Protocol on the Accession of the United Kingdom (U.K.) of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

April 17, 2026

ASSEMBLY OF FIRST NATIONS

The Assembly of First Nations (AFN) is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern. The AFN hosts at least two Assemblies a year where mandates and directives for the organization are established through resolutions of the First Nations-in-Assembly.

INTRODUCTION

First Nations have engaged in trade since time immemorial. First Nations hold an Inherent right to self-determination, including determining policies, regulations, and legislations that dictate their participation and engagement on inter-nation, international, and internal trade.

The AFN appreciates the opportunity to contribute to the Standing Senate Committee on Foreign Affairs and International Trade (AEFA) study of Study of Bill C-13, *An Act to implement the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland (the U.K.) to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*. Our recommendations align with several mandates identified by the First Nations-in-Assembly; however, the submission should only be seen as a starting point for further discussion. First Nations have the right to determine and develop priorities and strategies for the use of their lands, territories and resources: these priorities reflect our sacred responsibilities to our territories and may include partnering in the negotiation and implementation of trade and investment agreements. AEFA, as well as responsible federal departments, must work in full partnership with First Nations rights- and title- holders themselves, whose lands, waters, economies, rights, and interests will continue to be directly impacted by international trade and investment agreements entered by Canada.

Relevant resolutions include:

- AFN Resolution 99/2023, *Opposition to Investor-State Dispute Mechanisms*
- AFN Resolution 37/2019, *Continued Advocacy on Canada's International Agreements to achieve Economic Reconciliation*
- AFN Resolution 30/2018, *Realizing Benefits for First Nations in the Implementation of International Trade and Investment Agreements*
- AFN Resolution 37/2012, *International Trade Agreements and Indigenous Rights*

SUMMARY OF RECOMMENDATIONS

Canada's approach to trade diversification must be grounded in a rights-based approach that respects and upholds Inherent and Treaty rights and aligns with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration). This submission presents three recommendations to the Standing Senate Committee on Foreign Affairs and International Trade (AEFA) for consideration:

1. The committee recommend the Government of Canada to enter into a side letter with the United Kingdom of Great Britain and Northern Ireland (the U.K.) to disallow the application of Investor State Dispute Settlement (ISDS) provisions between the U.K. and Canada as a condition of ratification.
2. The committee submit a formal observation that the Government of Canada should enter a side letter with the United Kingdom of Great Britain and Northern Ireland (the U.K.) to disapply the ISDS procedure.
3. The committee recommend Government of Canada to engage directly with First Nations in the implementation of the CPTPP and any future trade and investment agreement to ensure that the benefits of Canada's trade diversification reach First Nations.

(1) ADDRESS ISSUE OF INVESTOR STATE DISPUTE MECHANISM WITHIN THE CPTPP

The CPTPP investment chapter includes a highly problematic mechanism known as Investor State Dispute Settlement (ISDS). ISDS enables foreign investors to make claims outside of domestic courts against states for compensation for their investment, including compensation for regulatory measures that impact the value of their investment. This has strong implications for Canada, including federal, provincial, and territorial governments alike, as the use of ISDS leads to "regulatory chill" wherein governments become less inclined to pursue new legislation or policy in the public interest at the fear of costly legal claims from foreign investors.

The CPTPP provides extractive companies based in states signatory to the CPTPP with a powerful tool to pressure governments to keep laws and policies favourable to their interests, potentially at the expense of the climate, health, and First Nations rights. If Canada ratifies the U.K. accession to the CPTPP, the ISDS provisions will become accessible to oil, gas and other extractive companies headquartered in London, including major investors in Canada such as Shell PLC and British Petroleum. U.K. investors have already demonstrated their comfort with using ISDS in other agreements to protect their interests, launching over 100 claims to date.

Since ISDS claims occur outside of Canadian courts and is based on principles of international investment law, they do not require consideration of First Nations Inherent, Treaty and constitutionally protected rights, contrary to Canada's commitments under the UN Declaration. As outlined in Articles 19 and 33 of the UN Declaration¹, Canada has the obligation to consult with First Nations before adopting and implementing legislation impacting First Nations people,

¹ Article 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Article 32 (1): "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources."

Article 32 (2): "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent prior to any project affecting their land or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources"

lands, territories, and other resources. Permitting the occurrence of ISDS processes is a direct threat to Canada's ability to uphold such responsibilities as it allows extractive companies to influence government decision, prioritizing foreign investors' interests over Canada's public policy priorities, such as respect for the minimum standards outlined in the UN Declaration.

ISDS has been condemned by the United Nations Special Rapporteur on the Rights of Indigenous Peoples as well as many civil society organizations. In 2016, the United Nations Special Rapporteur on the Rights of Indigenous Peoples identified that ISDS processes tend to block necessary advances and developments in domestic legal frameworks². The First Nations-in-Assembly have also warned of the potential threat of ISDS on First Nations' Inherent and Treaty rights as far back as 2012 through AFN Resolution 37/2012, *International Trade Agreements and Indigenous Rights* and reaffirmed opposition to ISDS through AFN Resolution 99/2023, *Opposition to Investor-State Dispute Settlement Mechanism*.

Aotearoa New Zealand and Australia have acknowledged the threat of ISDS and have entered side letters with the U.K., agreeing to disapply the ISDS procedure between their countries.³ Canada has not negotiated this type of arrangement. Agreeing to a side letter with the UK to reject ISDS provisions under the CPTPP would affirm Canada's ability to govern in the public interest while protecting First Nations rights.

RECOMMENDATION:

- The committee recommend the Government of Canada to enter into a side letter with the United Kingdom of Great Britain and Northern Ireland (the U.K.) to disallow the application of Investor State Dispute Settlement (ISDS) provisions between the U.K. and Canada as a condition of ratification.
- The committee submit a formal observation that the Government of Canada should enter a side letter with the United Kingdom of Great Britain and Northern Ireland (the U.K.) to disapply the ISDS procedure.

(2) UPHOLD INCLUSIVE TRADE THROUGH CAREFUL IMPLEMENTATION

New international trade and investment agreements are an opportunity to further support First Nations economic inclusion and self-determination. First Nations' businesses are expanding and

² A/HRC/33/42 Report of the Special Rapporteur on the rights of indigenous peoples (11 Aug 2016)

<https://docs.un.org/en/A/HRC/33/42>

³ See Annex for copies of the ISDS side letters.

Additionally, the Australia-U.K. and U.K.-Australia side letters on Investor State Dispute Settlement are available here: <https://www.gov.uk/government/publications/cptpp-associated-documents>

The New Zealand- U.K. and U.K.-New Zealand side letters on Investor State Dispute Settlement are available here: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/cptpp-information/seventh-commission-meeting-of-the-cptpp/united-kingdom-accession-to-the-cptpp>

seeking new markets, trade, and business opportunities with other Indigenous nations at the local, regional and international levels.

The U.K.'s accession to the CPTPP has potential to benefit the Canadian economy, including First Nations and First Nations businesses. However, without supporting policies and programs in place to ensure First Nations businesses are ready and able to take advantage of the new opportunities available, the benefits of expanded trade for First Nations will be limited. The value of expanded trade lies in the implementation of such trade agreements. First Nation business face unique challenges in expanding markets stemming from historic and ongoing discrimination. This can be mitigated through direct engagement with First Nations to ensure implementation of the CPTPP and well as any future trade agreements is inclusive. This includes ensuring First Nations are aware of new markets and have the tools and knowledge to reach them.

RECOMMENDATION:

- The committee recommend Government of Canada to engage directly with First Nations in the implementation of the CPTPP and any future trade and investment agreement to ensure that the benefits of Canada's trade diversification reach First Nations.

CONCLUSION

While the implementation of the U.K.'s accession to the CPTPP will provide opportunities for First Nations and Canadians alike, the AEFA must be attentive to the threat of ISDS on First Nations rights, environmental protections, and other important public interests against foreign influence. The AEFA must also be proactive in ensuring that benefits from expanded trade opportunities through the CPTPP and any other new or modernized trade and investment agreements flow to First Nations.

Annex 1 - Australia – U.K. Side Letter on ISDS



Senator the Hon Tim Ayres
Assistant Minister for Trade
Assistant Minister for Manufacturing

16 July 2023

The Rt Hon Kemi Badenoch MP
Secretary of State for Business and Trade
Department for Business and Trade
Old Admiralty Building
London
SW1A 2DY

Dear Secretary Badenoch

In connection with the signing on this date of the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Protocol), and in the context of the strengthening economic partnership of our two nations under the *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland* done at Adelaide and London, on 17 December 2021, I have the honour to confirm the following agreement reached between the Government of Australia (Australia) and the Government of the United Kingdom of Great Britain and Northern Ireland (United Kingdom) during the course of negotiations on the Protocol:

1. No investor of the United Kingdom shall have recourse to dispute settlement against Australia under Chapter 9, Section B (Investor-State Dispute Settlement) of the *Trans-Pacific Partnership Agreement* as incorporated into the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (the TPP as incorporated into the CPTPP).
2. No investor of Australia shall have recourse to dispute settlement against the United Kingdom under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP as incorporated into the CPTPP.

I have the further honour to propose that this letter and your letter of confirmation in reply shall constitute an agreement between Australia and the United Kingdom, which shall enter into force on the date on which the Protocol enters into force for both Australia and the United Kingdom.

Yours sincerely

Senator the Hon Tim Ayres
Assistant Minister for Trade
Australia

Annex 2 - U.K. – Australia Side Letter on ISDS



SECRETARY OF STATE
AND PRESIDENT OF THE BOARD OF TRADE



Department for
Business & Trade

The Rt Hon Kemi Badenoch MP
Secretary of State for Business & Trade
President of the Board of Trade
Minister for Women & Equalities
Department for Business and Trade
Old Admiralty Building
Admiralty Place
Whitehall
London
SW1A 2DY

Senator the Hon Tim Ayres
Assistant Minister for Trade
Assistant Minister for Manufacturing
Senate
Parliament House
Canberra ACT 2600

16 July 2023

Dear Senator Ayres,

I have the honour of acknowledging receipt of your letter of today's date, which reads as follows:

"In connection with the signing on this date of the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Protocol), and in the context of the strengthening economic partnership of our two nations under the *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland* done at Adelaide and London, on 17 December 2021, I have the honour to confirm the following agreement reached between the Government of Australia (Australia) and the Government of the United Kingdom of Great Britain and Northern Ireland (United Kingdom) during the course of negotiations on the Protocol:

1. No investor of the United Kingdom shall have recourse to dispute settlement against Australia under Chapter 9, Section B (Investor-State Dispute Settlement) of the *Trans-Pacific Partnership Agreement* as incorporated into the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (the TPP as incorporated into the CPTPP).
2. No investor of Australia shall have recourse to dispute settlement against the United Kingdom under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP as incorporated into the CPTPP.

I have the further honour to propose that this letter and your letter of confirmation in reply shall constitute an agreement between Australia and the United Kingdom, which shall enter into force on the date on which the Protocol enters into force for both Australia and the United Kingdom."

I have the further honour to confirm that your letter reflects the agreement reached between the Governments of the United Kingdom and Australia during the course of the negotiations on the Protocol, and that your letter and this letter in reply shall constitute an agreement between the Government of the United Kingdom and the Government of Australia, which shall enter into force on the date on which the Protocol enters into force for both the United Kingdom and Australia.

Yours sincerely,

THE RT HON KEMI BADENOCH MP

Secretary of State for Business & Trade and President of the Board of Trade
Minister for Women & Equalities

Annex 3 - New Zealand – U.K. Side Letter on ISDS

16 July 2023

The Rt Hon Kemi Badenoch MP
Secretary of State for Business and Trade
Department for Business and Trade
Old Admiralty Building
London
SW1A 2DY


Dear Secretary Badenoch

In connection with the signing on this date of the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Protocol), I have the honour to confirm the following agreement reached between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) during the course of negotiations on the Protocol:

1. No investor of New Zealand shall have recourse to dispute settlement against the United Kingdom under Chapter 9, Section B (Investor-State Dispute Settlement) of the Trans-Pacific Partnership Agreement (TPP), done at Auckland on 4 February 2016, as incorporated into the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), done at Santiago on 8 March 2018 (the TPP as incorporated into the CPTPP).
2. No investor of the United Kingdom shall have recourse to dispute settlement against New Zealand under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP as incorporated into the CPTPP.

I have the further honour to propose that this letter and your letter in reply shall constitute an agreement between our two Governments, which shall enter into force on the date on which the Protocol enters into force for both New Zealand and the United Kingdom.

Yours sincerely



Hon Damien O'Connor
Minister for Trade and Export Growth
New Zealand

Annex 4 - U.K. – New Zealand Side Letter on ISDS



SECRETARY OF STATE
AND PRESIDENT OF THE BOARD OF TRADE



Department for
Business & Trade

The Rt Hon Kemi Badenoch MP
Secretary of State for Business & Trade
President of the Board of Trade
Minister for Women & Equalities
Department for Business and Trade
Old Admiralty Building
Admiralty Place
Whitehall
London
SW1A 2DY

Hon Damien O'Connor
Minister for Trade and Export Growth
New Zealand

16 July 2023

Dear Minister O'Connor

I have the honour of acknowledging receipt of your letter of today's date, which reads as follows:

"In connection with the signing on this date of the *Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Protocol), I have the honour to confirm the following agreement reached between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) during the course of negotiations on the Protocol:

1. No investor of New Zealand shall have recourse to dispute settlement against the United Kingdom under Chapter 9, Section B (Investor-State Dispute Settlement) of the Trans-Pacific Partnership Agreement (TPP), done at Auckland on 4 February 2016, as incorporated into the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), done at Santiago on 8 March 2018 (the TPP as incorporated into the CPTPP).
2. No investor of the United Kingdom shall have recourse to dispute settlement against New Zealand under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP as incorporated into the CPTPP.

I have the further honour to propose that this letter and your letter in reply shall constitute an agreement between our two Governments, which shall enter into force on the date on which the Protocol enters into force for both New Zealand and the United Kingdom."

I have the further honour to confirm that your letter reflects the agreement reached between our two Governments during the course of the negotiations on the Protocol, and that your letter and this letter in reply shall constitute an agreement between the Government of the United Kingdom and the Government of New

Zealand, which shall enter into force on the date on which the Protocol enters into force for both New Zealand and the United Kingdom.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kemi Badenoch', written in a cursive style.

THE RT HON KEMI BADENOCH MP
Secretary of State for Business & Trade and President of the Board of Trade
Minister for Women & Equalities