



## **Red Alert: It's time to stop waltzing with TILMA**

*An assessment of the BC/Alberta Trade, Investment and Labour Mobility Agreement.*

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For some interest groups, the Trade, Investment and Labour Mobility Agreement (TILMA) between BC and Alberta, which is scheduled to take effect on April 1, 2007, is a very good deal indeed.

The Ministers who signed the deal call it a “bold approach.” They call it “Canada’s most comprehensive internal trade agreement.” More ominously, they say “there is no comprehensive list of what is included under TILMA simply because the agreement applies to all measures by all governments and regulatory bodies.”

All measures. By all governments. That’s pretty sweeping.

TILMA is slated to go into effect on April 1, 2007, but in reality the two governments say they are already in a transition period – they are already acting as if the agreement is in force.

### **The deal may spread**

This deal is for BC and Alberta only at this point. But there is clearly an expectation that it will spread. TILMA is designed to allow other provinces and territories and even the federal government to also sign on.

The Minister from BC says that “already Saskatchewan is looking to meet and consider signing on to this agreement, and there are at least three other jurisdictions that are actively kicking the tires as to whether or not they should sign on as well.” Ontario premier McGuinty has strongly indicated that he wants Ontario to join.

### **Business and right wing commentators love the deal**

Alberta’s Minister of International and Intergovernmental Relations, Gary Mar, has said that TILMA is “everything Canadian business asked for”.

The special interests in the business community certainly love the deal. Canadian Business Magazine in an editorial last May said: “For once, we find ourselves fully in agreement with political rhetoric. When the agreement comes into force, businesses and workers in BC and Alberta will be living in an inter-provincial free trade zone.”

Todd Hirsch, from the right wing Canada West Foundation, says that “within the TILMA are the seeds of a true economic union, an erasing of the provincial boundary for all purposes except voting and the colour of the license plate.”

Macleans magazine approvingly says the new deal will “effectively erase the border” between the two provinces.

Not long after the TILMA announcement, BC Premier Gordon Campbell and Alberta Premier Ralph Klein received a letter from the Canadian Council of Chief Executives. In the letter, the Council extends their warmest congratulations to the Premiers for “making an economic agreement that goes further than any other government in Canada to tearing down the barriers that for too long have stifled economic growth and competitiveness in our country.”

Business loves it, the right wing commentators love it – but what about the rest of the population?

## **What is TILMA? And why is it a bad idea?**

The core of TILMA is in Section 3: “Each party shall ensure that its measures do not operate to restrict or impair trade between or through the territory of the Parties, or investment or labour mobility between the Parties.”

It goes on to say: “Parties shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility.”

In other words, if any level of government tries to introduce a law or regulation that is in any way a restriction on the ability of companies to do whatever they want, which almost all relevant laws or regulations are, the government body can be overruled by a Disputes Panel.

Private individuals and corporations from either BC or Alberta can take complaints forward, and the Disputes Panel can make binding rulings.

Even if a regulation is accepted as being for a legitimate reason, it can still be overturned if the Disputes Panel feels it is not the least restrictive way to achieve the objective.

That is to say, democratically elected governments will have to prove to an appointed panel of “experts” that their proposed law or regulation is legitimate, and that the measure is not more trade restrictive than necessary to achieve the objective.

A whole lot, in fact most, of what governments do can be argued to “restrict trade” in some way or another. Municipal development policies, land use restrictions, local purchasing provisions – all of these could be argued to be restrictions on trade.

Environmental issues rank very high on the public agenda these days. This trade agreement will hobble governments from dealing with the environment if their environmental rules affect trade – which they must if they are to mean anything. The agreement only allows governments to pass measures “relating to the management and disposal of hazardous waste”. All other environmental issues will be covered by TILMA.

What about municipal bans on billboards, or municipal development restrictions to maintain the quality of neighbourhoods? These are restrictions on the right of companies to do as they please, so in some way they “restrict trade”.

TILMA seems designed to ensure the two provinces seek the lowest common denominator in their regulatory base. Any regulation that is better than the norm will have little chance of survival, and the lower the regulation aims, the more likely it will be the new standard. It is clear that the provinces are implicitly agreeing that neither of them will aim for higher standards or better benchmarks.

The governments appear to retain their ability to make taxation decisions unimpeded, but even here, if a company argues that a tax provision is an indirect subsidy then the agreement will be brought to bear, and government tax decisions could be challenged.

It isn't clear that even occupational health rules will be exempt. The TILMA does exempt what is called “social policy,” including “labour standards and codes, minimum wages, employment insurance, social assistance benefits and workers compensation.”

Interestingly, however, occupational health and safety is not listed as an exemption. Most occupational health and safety rules, obviously enough, clearly impact on the right of companies to operate without restriction.

The agreement applies to the provincial governments and “their government entities” and will therefore include municipal governments, school boards, and health and social service agencies.

That is to say, not only the provinces themselves but also all the governing bodies within those provinces will lose their right to react to the political choice of their populations, and will be extremely limited in what they can do even if the people are strongly demanding action.

Clearly, democracy will be forced to take a back seat to business interests. The Dispute Panel can force governments to change their policies, no matter how popular these policies are.

A new government in either province would be effectively handcuffed by TILMA, even if they had run on a program calling for a different approach. The agreement states that “parties shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility.”

The deal immediately restricts the ability of both governments to make decisions for their provinces. The provinces have committed to harmonization of existing regulation in BC and Alberta. The agreement obligates BC and Alberta to “mutually recognize or otherwise reconcile their existing standards and regulations that operate to restrict or impair trade, investment or labour mobility.”

And let’s face it – if the agreement “erases the provincial boundary for all purposes except voting and the colour of the license plate,” and “effectively erases the border” between the two provinces, what need is there for two provincial governments? Voting would be an exercise in choosing the colour of the license plates for the province.

The TILMA agreement will allow companies and private individuals to complain to a Disputes Panel, and the Panel can award up to \$5 million compensation if any level of government introduces, on behalf of the people they serve, any regulations, policies, or programs that they deem to “impair or restrict” investment, trade or labour mobility.

Each time a governmental body makes any decision, they will know that any company, from either of the two provinces, can seek damages of up to \$5,000,000 if the company thinks its right to act in its own interest has been interfered with. A school board or municipality is going to be very careful not to tread on any companies’ toes if they know that the companies can go after them for \$5,000,000 apiece.

TILMA will essentially eliminate local purchasing or the favouring of local suppliers. All purchasing decisions by provincial governments, local governments, Crown Corporations, school boards and universities that are worth more than \$10,000 for goods or \$75,000 for services, have to be tendered and there can be no favourable treatment for local or provincial suppliers.

The agreement would effectively eliminate government support for rural development, or small business, and would severely limit the ability of governments to deal with economically depressed regions. Government assistance that “distorts investment decisions” is a violation of the agreement.

A lot of attention has focused on the labour mobility provisions. But increased labour mobility can be easily obtained by specific agreements that don’t have the effect of emasculating the role of governments to the degree that this agreement does. This is not a labour mobility agreement. It is an investment and corporate mobility agreement, with labour mobility there to provide protective colouration.

The TILMA agreement is being hailed as a miracle cure that will create phenomenal new savings and a huge number of jobs. The specious claim that TILMA will somehow magically create 78,000 jobs is fascinating.

There is no evidence for, nor any logic to, that claim – it is simply dangled out there for the gullible to latch on to.

And the claim that this agreement will save over \$4 billion dollars is equally dubious. In fact, most studies have shown that the remaining inter-provincial barriers to trade have a negligible impact.

It is amazing that an agreement of this import is being adopted by BC and Alberta without any significant public involvement or debate. No government has the legitimate authority to undertake actions as significant as they themselves claim this is, without real public consultation, and full legislative debate.

The people of Alberta and BC need to insist on their right to get involved in this issue, and the governments of those two provinces must be made to account for this very problematic deal.

Governments of other provinces should look once, twice and three times, before they leap into a deal they will undoubtedly regret.

Governments need to actually study this agreement, not just accept the cheerleading statements of the Ministers and business leaders who have so enthusiastically welcomed this agreement which meets only their self interests.

There needs to be full public debate and consultation before anything that is so sweeping and so potentially limiting of provincial powers is adopted.