



Another Bad Deal for Canada It's time to kill the Trade, Investment and Labour Mobility Agreement

In April 2006, without public consultation or legislative debate, the premiers of Alberta and British Columbia signed an unprecedented inter-provincial free trade deal called the Trade, Investment and Labour Mobility Agreement (TILMA). This deal extends privileges similar to those in the North American Free Trade Agreement (NAFTA) to corporations and individuals, allowing them to sue provincial governments and their official agencies for any regulation deemed harmful to investment (i.e. profits). Under TILMA, even provincial or municipal policies designed to protect the environment and public health are vulnerable to attack from corporate lawsuits.

TILMA creates a legally binding process for parties to the agreement as well as private individuals to challenge:

- Government programs and regulations if they "restrict or impair" investment (Article 3)
- Regulations in one province that are different from those in another (Article 5.1)
- The establishment of new, stricter regulations (Article 5.3)
- Initiatives by one province that the other does not agree with (Article 7.2)

TILMA disputes will be arbitrated by independent panels with the power to penalize governments with fines as high as \$5 million for violating the agreement, and governments can be hit with repeated complaints against the same program or regulation. Gary Mar, the cabinet minister responsible for negotiating TILMA for Alberta, says that its dispute

resolution process is "everything Canadian business asked for," and that it means TILMA "is backed by some very big teeth."

But TILMA was signed based on a myth that inter-provincial trade barriers are everywhere and costly. This ignores a 1998 study done for the British Columbia government that stated, "efforts to liberalize inter-provincial trade will have almost no effect on trade flows," and that "the reality is that inter-provincial trade barriers are already very low."

In fact there are no hard numbers on the true costs of inter-provincial trade, only best guesses from surveys commissioned by the very companies who stand to profit from TILMA at the expense of the public good. For instance, a 2006 Conference Board study used to justify TILMA describes higher safety standards as a "barrier" to trade and investment. Furthermore, TILMA's labour mobility component will be achieved on a national scale through the federal-provincial Agreement on Internal Trade (AIT). All of this suggests that TILMA is completely unnecessary.

So why did Alberta and B.C. sign this agreement that radically shifts the balance of power in favour of corporate interests and against public interests? And why did they sign it without even consulting with the public or our elected representatives first? These are questions that demand answers before TILMA goes into effect this April. The consequences to our public health, the environment, and the danger that TILMA will lead us quickly toward economic integration with the United States are all too severe to let this agreement pass without a fight.

For more information about TILMA, and for ideas on how to fight it, contact the Council of Canadians at 1-800-387-7177 or visit www.canadians.org.

TILMA and Deep Integration

Policy harmonization and investor rights are the goals of all free trade agreements. They were a main component of NAFTA and are acquiring new urgency within the Security and Prosperity Partnership of North America (SPP). This far-reaching continental agreement, signed by George W. Bush, Paul Martin and Vicente Fox in March 2005, contains over 300 provisions for the harmonization of national agricultural, security, immigration, environmental and aboriginal policies in all three countries.

Like TILMA, the process is being driven by big business lobby groups like the Canadian Council of Chief Executives. Their essential goal for the SPP is an erasing of the borders between Canada, Mexico and the U.S. in as many ways as possible. It's called "deep integration," which is a good way to describe what TILMA does to the border between Alberta and B.C. So it is not surprising that business lobbies in the U.S. are showing a keen interest in the agreement.

At the most recent meeting of the Pacific Northwest Economic Region, a bi-national association of Canadian and American businesses with heavy involvement from the oil and gas sector, representatives from north-western U.S. states alongside B.C. and Alberta officials committed to explore the possibility of "expanding the TILMA concept throughout the PNWER region." The US Trade Representative frequently complains about the Canadian Wheat Board and other agricultural policies. Entry to TILMA would give U.S. companies the legal means to dismantle or re-write them, and whatever other provincial or municipal government rules they didn't like.

Like these U.S. states, Industry Minister Maxime Bernier is clearly enamored with TILMA. "The Alberta-

B.C. agreement is a very good one," he told a Senate committee looking into inter-provincial trade barriers. "I hope that the other provinces will jump in. That will help us to improve the Agreement on [Internal] Trade at a federal level." The AIT has been trying to create a national TILMA-like agreement since 1995 with little success until B.C. and Alberta's free trade pact rejuvenated the discussion.

Unfortunately, a larger, national legal framework for TILMA, with U.S. participation, would give U.S. companies the same rights as Canadians to sue local governments, formalizing a process of integration that so far has no legal backing. Such an arrangement would require that Canadian and U.S. regulations on everything, including health care and the environment, be harmonized throughout the free-trade area, hastening a process of deep integration with the U.S. that Canadians have not had a chance to debate in public or in the House of Commons.

TILMA and Local Government

TILMA does not fully apply to existing local government policies until after a two-year transition period, but as soon as the agreement comes into force on April 1, 2007, new government initiatives will be challengeable by lawsuits if a company or private individual feels they restrict their trade or investment. Since all local government regulations in some way restrict investment, everything will be up for grabs. Government "entities" covered by TILMA, and therefore vulnerable to private lawsuits, include regional, local, district or other forms of municipal government as well as school boards.

So, for instance, a TILMA dispute resolution panel could rule that land use regulations violate the agreement by restricting real estate investments. Local

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government zoning bylaws to prevent urban sprawl, green space requirements for housing developments, and height restrictions on buildings are further examples of potential TILMA violations. Local limits on billboard advertising, noise bylaws and pesticide restrictions could also be in jeopardy under TILMA, since these regulations restrict or impair investment. Even if TILMA's list of legitimate government objectives were expanded to include such everyday goals of local governance, a TILMA panel would still have to be convinced that measures designed to achieve these objectives were the least restrictive possible – an almost impossible task when you think about it.

A further attack on local government authority comes in Article 12 of TILMA, which prohibits direct or indirect government subsidies like grants, tax waivers or other kinds of assistance if they “distort investment decisions.” Downtown revitalization plans and focused development programs are clearly intended to “distort investment decisions” by promoting investment in areas where it would otherwise not happen.

Similarly, TILMA imposes strict rules on how local government purchases are made for amounts as little as \$10,000. Ethical procurement strategies and any measures intended to promote local business could be challenged under TILMA as unfairly restricting the investment of an out-of-town or out-of-province firm. To protect their authority, local governments need to obtain a complete exemption from TILMA.

TILMA, Public Health and the Environment

The Alberta/B.C. government guide to TILMA says that the agreement applies to “all government measures across all sectors,” and that if something is “not

clearly identified as an exception, it is subject to the rules of the agreement.” Proponents of TILMA will tell you that health and environmental policies are excluded from the agreement but this is not true. Governments and government agencies will still be required to defend their public health policies as the least restrictive means necessary for achieving their goals. This puts the onus always on government to prove it is not impairing investment, even when its policies are designed to protect our health and environment.

Examples of the kinds of health care policies that could be challenged by private individuals or corporations include:

- Restrictions on the private, for-profit use of public health facilities, which could violate TILMA's prohibitions on regulations that restrict investment.
- Stricter rules at nursing care homes, which would violate TILMA's prohibitions on new regulations that restrict investment.
- B.C.'s proposed ban on the sale of junk food in schools and hospitals, which could violate TILMA's prohibitions on maintaining regulations that are not the same as those in Alberta (Alberta has already rejected imposing such a ban).

Unlike NAFTA, TILMA does not exempt government programs and regulations with respect to health services. And in two years, the inter-provincial agreement will be extended to cover hospitals and health authorities. Public health care, already under threat from private insurance companies and other for-profit interests, could suffer constant attacks under TILMA's rules – attacks it might not be able to survive, and that could foster two-tier health care within the free-trade area.

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Like with public health regulations, the environmental exceptions in TILMA are limited and vague, putting all kinds of policies designed to protect the earth and our health into question. For instance, because they are not explicitly identified as exceptions, the following are just some of the environmental measures that could face TILMA-related lawsuits:

- Regulation of air pollution.
- Restrictions on tourism and recreation activities and development in ecologically sensitive areas.
- Establishment of ecological reserves and green belts.

TILMA does contain exceptions for measures enacted in the areas of: water (but not bottled water); energy and minerals; forestry, fish, and wildlife; and the management and disposal of "hazardous and waste materials." But all of these exceptions are to be reviewed annually to reduce their scope. Therefore, the agreement, over time, will pose an increasing threat to the right to regulate in the name of public health or the environment, even in these currently limited protected areas.

Make no mistake: TILMA is designed to give power to the corporate sector by taking it away from the public. TILMA has very forceful language designed to serve commercial interests. For instance, whereas governments are committed to "eliminate barriers that restrict or impair trade, investment or labour mobility," they are only committed to "promote sustainable and environmentally sound development." "Promoting" renewable energy is a lot easier than "eliminating" greenhouse gasses.

Similarly, TILMA asks that governments "shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility." But they "shall continue to work toward the

enhancement of sustainable development, consumer and environmental protection." When a TILMA dispute panel weighs these often conflicting objectives, they are unlikely to conclude the environment should come out on top.

What Can You Do?

There will be a transition period of two years once TILMA goes into effect on April 1, 2007, after which local government measures that are amended or renewed will be covered by the terms of the agreement. However, Article 8 of TILMA allows exceptions to be added to the agreement "by mutual consent of the Parties."

The B.C. and Alberta governments must be forced to negotiate a complete exception for local governments in Part 5 of TILMA, the section on General Exceptions. Outside of Alberta and B.C. there is a lot of provincial interest in signing on to TILMA, particularly in Saskatchewan and Ontario, but also in the Maritimes. These provinces must be discouraged from doing so based on the dangers that TILMA poses to local governance, public health, and deep integration with the U.S.

Citizens from across Canada must tell their local councillors and legislators to make fighting TILMA a priority at the municipal and provincial levels. Together we can stop TILMA. Our very health, the health of our environment, and our ability to create the kinds of communities we want to live in depends on it.

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