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The BC/Alberta Trade, Investment, and Labour Mobility Agreement

A Model of What NOT to Do on Inter-provincial Trade

In April 2006, the BC and Alberta governments signed the Trade, Investment, and Labour Mobility Agreement (TILMA). This agreement will come into force in April 2007 without any consultation with residents in either province and apparently without any legislative debate. In the words of Todd Hirsch of the Canada West Foundation, the agreement has the potential to erase "the provincial boundary for all purposes except voting and the color of the license plate."

TILMA is primarily a cut and paste job drawing on the most extreme provisions of a variety of trade regimes - the WTO, NAFTA, and Canada's Agreement on Internal Trade - and combining them for maximum effect. The agreement is essentially a long list of things governments will be prohibited from doing, for all time, regardless of who gets elected provincially or at the local government level.

Under TILMA, no BC or Alberta government can ever provide support for rural or small business development. They are prohibited from engaging in regional economic development, unless there are "exceptional circumstances" and even then the assistance cannot "distort investment decisions". They will be forever barred from introducing standards or regulations that "restrict or impair" investment (and what regulation could not be seen as a restriction on investment?) Regulations will have to be reconciled between the two provinces. Or worse, governments will have to "mutually recognize" each others standards and regulations, whether or not these are lower. Preferences in government procurement for locally produced goods and services will be essentially banned, because purchases of as little as $10,000 made by any level of government, right down to school boards, will have to be opened up to contractors from across the provincial border. Exceptions to the agreement - including forestry and fishery management - will be subjected to annual reviews for the purpose of "reducing their scope."

Private investors will be empowered to enforce the agreement by taking their complaints to dispute panels, whose decisions will be binding. TILMA goes much further than NAFTA's Chapter 11 in creating grounds for private law suits against

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government regulation. It limits awards for compensation to $5 million, but since there are no limits on the number of challenges that can be taken about the same regulation, governments will either have to pay to regulate or eliminate the challenged regulation.

In an especially ironic twist given the lack of public consultation over the agreement, TILMA creates a binding obligation for each province to seek the opinion of the other province before they take any new initiative that might be covered by the agreement. Each province is required to take the comments of the other province into consideration before any such initiative is taken. TILMA consequently creates greater rights for non-residents of a province to be consulted and have their opinions considered than residents themselves enjoy.

BC and Alberta's provincial governments have not only drastically eliminated much of their own policy space. They have also tied the hands of other provincial bodies that have their own democratically determined mandates. School boards, universities, and all "regional, local, district or other forms of municipal government" are now bound by TILMA. During a two-year transitional period, the provincial governments of BC and Alberta will consult with representatives of these bodies to determine whether they want any exclusions from the agreement. But TILMA requires that as of April 2007 none of their regulations can be "amended or renewed in a manner that would decrease its consistency with this Agreement."

In promoting TILMA in a October 3, 2006 CBC radio interview, BC's Minister for Economic Development Colin Hansen claimed there are "huge barriers in terms of inter-provincial trade." Yet no convincing research has been provided to back up such a claim. According to CCPA trade expert Scott Sinclair: "There is no credible evidence of a crisis in Canadian internal trade relations. Trade barriers within Canada are relatively small. The policy effort to reduce these trade barriers should be proportionate to the scale of the problem." In addition, the labour mobility provisions of TILMA, that will reconcile professional requirements between the two provinces, will already be addressed under a Canada-wide harmonization project initiated by Manitoba Premier Gary Doer.

The BC and Alberta ministers responsible for TILMA have been talking to their counterparts across Canada, including in Manitoba, and claim to have found others interested in signing the agreement. A number of the Manitoba government's policies - such as its moratorium on hog barns - would be clear violations of TILMA and likely to be challenged if Manitoba signs the agreement. Yet residents of Manitoba may wake up one day to find that, without any democratic debate, their province too is bound by TILMA's draconian provisions.

- Ellen Gould

Ellen Gould is a Canadian Centre for Policy Alternatives – B.C. Research Associate. She is a consultant on trade and investment agreements. Ellen Gould is the author of Asking for Trouble, The Trade, Investment and Labour Mobility Agreement, *which is now available at www.policyalternatives.ca.*

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