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TILMA: Trade, Investment and Labour Mobility Agreement

The Canadian Union of Public Employees raises serious concerns regarding the Trade, Investment and Labour Mobility Agreement (TILMA). TILMA, a British Columbia and Alberta deal, was signed without democratic process, without consultation in the provincial legislatures and municipalities. The Agreement creates a far-reaching deregulation that will benefit the economic considerations of corporations all while challenging governments right to create public policy. It eliminates the power of Municipalities and local and regional governments to act in the best interest of their citizens and communities.

A Brief Background:

- 1990's:** Canadian federal and provincial governments focused on the economic divide created by inter-provincial trade 'barriers'.
- 1995:** The federal and provincial governments negotiated the **Agreement on Internal Trade (AIT)**, despite ongoing debate about the need for such an arrangement.
- 2000:** Internal trade was back on the table with big business expressing ongoing frustration with AIT's failure to liberalize trade. Supporters want an agreement that will "expand coverage, provide stronger enforcement and create a greater capacity for corporations to challenge governments social policies."ⁱ
- 2003:** **TILMA** was conceived by the British Columbia and Alberta governments transforming AIT from a political arrangement to a legally binding agreement, without public consultation.
- 2006:** British Columbia and Alberta sign TILMA
- 2007:** April 30 - Most TILMA provisions are now in effect for BC and Alberta. Some Canadian provinces are seriously considering TILMA negotiations.
- 2009:** April 30 – The remaining TILMA measures will be implemented.

TILMA's Purpose

TILMA will liberalize trade, investment and labour mobility resulting in large economic benefits and advantages for the provinces that sign on.

Fact: Internal Trade

Interprovincial trade barriers have been overstated. The demand for a new trade agreement has less to do with trade than with deregulation and privatization.ⁱⁱ

- Internal trade flows with relative ease since there are no customs or tariffs between provinces.
- There is one common Canadian currency.
- Canadian legal, economic and financial institutions use the same framework.
- Canadians are free to work and live anywhere in the country.
- Trade between the provinces is a federal jurisdiction provided by our constitution. Canadian courts ensure that the provinces do not interfere. Any restrictions are based on public policies that reflect Canadian values of health, safety, quality of life and accessibility for all citizens.

Fact: Labour Mobility

AIT negotiations would have dealt with any outstanding labour mobility issues in the next two years.

Fact: Economic Benefits

The 'large economic benefits' have been overestimated. Figures based on a Conference Board of Canada's study of TILMA, commissioned by the BC government, are derived from small survey samples and the conclusions based on arithmetic error. Nowhere are the so-called trade barriers listed, or are costs attached to such barriers. Upon reviewing the calculations, TILMA's benefits will be far less than 1% of provincial GDP, certainly not a 'large' economic advantage for provinces and communities.ⁱⁱⁱ The cost to Canadians will far exceed even these modest gains, when taking into account the real financial implications, environmental impact, health and safety considerations and general quality of life.

How TILMA works:**No Obstacles to Trade, Investment and Labour Mobility**

TILMA will reduce trade barriers by ensuring that no government measure restricts or impairs trade, investment or labour mobility. (Article 3: No Obstacles)

Implications:

TILMA encompasses provincial and local governments, regional districts, school boards, health and social services. Nearly every action by a government, now and in the future, is potentially constrained unless expressly excluded in the agreement.

Measures are defined broadly and include *any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice, or other procedure.*

Corporations may promote their interests by vetoing municipal and regional governments' responsibility and right to protect its citizens. TILMA results in pressure to deregulate, placing corporate economic considerations above all others.

The following measures may be disputed under TILMA, since they may restrict or impair investment:

- Land use planning including limits on residential and commercial development.
- Zoning bylaws preventing urban or commercial sprawl.
- Green space requirements in urban development projects.
- Restriction on building height, noise, pesticide and sign bylaws.
- Heritage and cultural site protection.
- Environmental assessment projects.

Binding resolution of disputes

Under TILMA, any government measure that restricts or impairs trade, investment or labour mobility may be brought to a binding dispute resolution process. (Part VII: Dispute Resolution Procedure)

Implications:

- An unelected dispute resolution panel forms a TILMA tribunal authorized to make binding decisions. No qualifications are required for panel members who may be ill equipped to deal with the complexity of public policy, law and administration.
- Parties, private or other governments, are limited to monetary compensation up to \$5 million. There is no limit however to the number of complaints that can be brought forward on the same issue. Governments will be forced to deregulate or 'pay to regulate'.

- The need to defend before a tribunal will be expensive and time consuming. Progressive communities on the cutting edge, for example on environmental issues, are most at risk to TILMA challenges.

Defining legitimate objectives

Governments may supersede TILMA if they are able to prove that the measure is necessary and:

- 1) one of the few legitimate objectives as defined in the agreement;
- 2) that the measure is not more restrictive than necessary and;
- 3) that the measure is not disguised as a restriction on trade, investment and labour mobility.

(Article 6: Legitimate Objectives)

Implications:

This article imposes strict conditions since **all three requirements** must be proven in a dispute to justify a measure. Despite the measure being part of the limited list of legitimate objectives, it becomes near impossible to prove that the objective could have been met in a less restrictive fashion. The onus falls to the respondent to show that there was no other option available to meet the objective. Protecting heritage sites, ecological reserves and neighbourhood character are not considered legitimate objectives under TILMA.

Limited Exceptions

There are several general exceptions broadly framed under TILMA including Aboriginal peoples, water, and services and investments pertaining to water, regulated rates for public good and interest and social policy exceptions. (Part V: Limited Exceptions)

Implications:

The intent in TILMA is to eventually reduce the list of exceptions. TILMA requires that the list be **reviewed annually “with a view to reducing its scope”**. Some exceptions are broadly defined such as water where bottled water is not already covered under this clause. Other exceptions such as social policy are narrowly defined and do not include health and social services.

Equal Treatment, Procurement Policies and Business Policies

TILMA provisions require equal treatment for procurement of goods, services, investors and investments. Such treatment requires “the best treatment” ever given under like circumstances, and non-discrimination among suppliers from across provincial borders, for purchases to lower thresholds than AIT. (Article 4: Non-discrimination, Procurement Policies; Article 12: Business subsidies)

Implications:

TILMA restricts the use of **subsidies and procurement policies** that promote local economic development^{iv}

- Local governments **cannot favour local businesses** and must submit for tender to anyone who is part of the agreement. Construction of a local playground by a school board could be awarded to a large multinational corporation if they underbid.
- Local governments will be required to submit to a **competitive bidding process** at much lower levels than under AIT: \$10,000 for goods and services (AIT: \$25,000); \$75,000 for purchases of service; and \$100,000 construction.
- **Ethical purchases** favouring enterprises such as not-for-profit, environment-friendly or fair trade would come into dispute.
- **Direct or indirect business subsidies** are prohibited under TILMA. Grants for downtown revitalization, on-site subsidized day care in local businesses, tax incentives for heritage preservation would “distort investment decisions”.

Municipalities and local or regional forms of government are exempt from TILMA for the transition period, until April 1, 2009. However, local governments remain bound during the transition phase and afterward.

Harmonization and Standstill on Municipal, Local and Regional Measures

TILMA requires work on reconciling differences in standards and regulations, investment, business subsidies, labour mobility, and procurement of professional services of architects and engineers. It will restrict new, amended or renewed standards or regulations that operate to restrict or impair trade, investment or labour mobility. (Article 5)

Implications:

All of TILMA will eventually apply to municipal governments unless explicitly excepted in negotiations with the provinces and industry.

- TILMA prohibits discordant standards and regulations because it interferes with trade and investment. During the transitional period, provincial and local governments will be required to **harmonize differences** in standards and regulations to the least restrictive measure. Unique regional situations are not recognized under the agreement. BC's proposed ban on junk food sales in its schools for instance, would be challenged given that Alberta has already rejected such a ban.
- TILMA requires the **least restrictive** standard in trade and investment to prevail, ensuring a regulatory race to the bottom for provincial and local governments.
- TILMA places a **standstill on any new measures** or amendments to existing measures upon signing of the agreement. Standards or regulations that restrict trade and investment, now or in the future, are not allowed and subject to immediate complaint. Improved or strengthened standards will be all but eliminated, given that almost any government measure will restrict trade and investment.

Where do we go from here?

Trade barriers are not on the radar for most Canadians, because these barriers are for the most part mythical. Perhaps for this reason Canadians have not been consulted in a democratic process. Municipal, local and regional governments have responsibilities to their citizens to protect their interests while developing public policy, standards, regulations and laws. TILMA will seriously hamstring their power as stewards of the public sphere, their very ability to govern.

Municipalities, local and regional governments can require a full public debate to expose the rationale for TILMA. They can bring their voices to their respective provincial governments and oppose any further negotiations of this radical and heavy-handed response to internal trade. British Columbia and Alberta need to negotiate a complete exemption under Part V of TILMA for Municipalities and Local governments.

The attack on democracy and the public sector cannot go unchecked. The Canadian Union of Public Employees strongly opposes the Trade, Investment and Labour Mobility Agreement.

ⁱ Lee, Marc, In Search of a Problem: The Future of the Agreement on Internal Trade and Canadian Federalism, CCPA, October, 2000.

ⁱⁱ Lee, Marc, Weir, Erin, *The Myth of Interprovincial Trade Barriers and TILMA's Alleged Economic Benefits*, CCPA (BC), February, 2007.

ⁱⁱⁱ Ibid, p7.

^{iv} Ellen Gould, Asking for trouble: The Trade, Investment and Labour Mobility Agreement, CCPA (BC), February, 2007.