

Interprovincial trade deals: The corporate hammer on local governments

The current economic and financial crisis has generated calls for greater regulation of financial markets to help stabilize the economy and protect workers and communities. Yet, recent internal trade agreements between several provinces, and changes to the federal Agreement on Internal Trade (AIT), aim to accomplish the opposite. In fact, these deals will liberalize and deregulate financial markets, procurement, public services, and labour and environmental standards.

These trade agreements protect corporate rights and investments while restricting the ability of provincial and local governments to govern in the best interests of citizens and communities.

TILMA, the Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta went into effect April 1, 2009, without debate in the provincial legislatures or consultation with local governments, circumventing democratic process. The agreement provides unprecedented grounds for asserting the interests of private service providers, and a sympathetic forum for doing so.

TILMA covers all provincial departments and agencies as well as municipalities, utilities, regional districts, school boards, and health and social service agencies. Nearly every existing or future policy, bylaw, program or action of these democratically-elected governments and boards is subject to challenge. Decisions that can be “constrained” include:

- Land use planning and zoning bylaws
- Local or socially responsible procurement policies

- Business regulation and licensing
- Restrictions on noise, pesticide use and signs
- Heritage and cultural conservation
- Environmental and green space protection, including climate change initiatives
- Contracting in public services
- Restrictions on privatization to protect local control

TILMA dispute procedures can also be used to challenge regulations, programs and funding arrangements for public services on the grounds that such measures restrict, impair, or discriminate against private sector service providers.

TILMA is being promoted as an economic booster.ⁱ A Conference Board of Canada report claiming it would generate \$4.8 billion for the B.C. economy and create thousands of jobs – by removing “barriers” that simply don’t exist – has been critiqued by a number of economists.ⁱⁱ In reality, there are few barriers to interprovincial trade, investment and labour mobility. Canadians are free to live, work and invest anywhere in this country. There are no customs stations along provincial borders and no tariffs on interprovincial trade.ⁱⁱⁱ

Over the past year many citizens’ groups, enlightened politicians, community organizations and unions have raised concerns about the far-reaching measures used in TILMA to deal with largely non-existent “trade and labour mobility” issues. Municipal associations in both Alberta and British Columbia pressed for exclusion from TILMA. While the provinces accommodated some of the municipalities’ concerns, many key restrictions still apply.

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Ontario and Quebec, as well as New Brunswick and Nova Scotia, are negotiating similar TILMA-style agreements. The federal government has also negotiated changes to the AIT with the provinces to include similar provisions allowing corporations to sue provincial governments for any interference with their investments.

Alarming, few municipalities are aware of these trade agreements and their implications, and are excluded from negotiations.

The investor rights hammer

Under TILMA, corporations can sue provincial governments. A private tribunal hears and rules on complaints behind closed doors. If a provincial or municipal policy, bylaw, program or action is found to restrict a corporation's investment or profit-making potential, fines up to \$5 million may be levied against the province.

Provincial governments may face fines for failing to ensure compliance by local governments and authorities. The B.C. government has refused to rule out forcing local governments to pay such fines. Municipalities do not have the right to defend their actions at a TILMA tribunal.

There is no limit to the number of complaints that can be made on a single issue. Governments will be forced to deregulate, "pay to regulate" and suffer from a regulatory "chill" on all future decisions.

TILMA and our communities

Any provincial or municipal regulations or policies addressing climate change that impose costs on manufacturers could be open to challenge. Legitimate environmental protection measures can be defended, but the additional TILMA requirement that the measure not be "more restrictive than necessary" leaves plenty of room for arbitration. TILMA gives an unaccountable tribunal the power to determine the extent to which governments can protect the environment and avert climate change.

Labour standards may also be eroded. In December 2007, the B.C. government and the provincial teachers' college signed a teacher mobility agreement under TILMA. The deal "harmonizes" Alberta and B.C.'s teacher standards toward Alberta's lower requirements. B.C.'s program went from four to three years, and requires fewer courses for teacher certification. Skilled trades certification, such as the Red Seal Program, is also on the table for so-called harmonization across the country.

Saying no to internal trade agreements

Municipal, local and regional governments have responsibilities to protect citizen and community interests while developing public policy. TILMA seriously restricts local governments' power to protect the public sphere – and their very ability to govern.

Provinces and municipalities should call for a full public debate on TILMA and other trade agreements such as the AIT and a proposed Canada-European Union deal. We must raise our voices to oppose any further negotiation of this heavy-handed response to corporate demands.

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- i Conference Board of Canada (2005) "An Impact Assessment of the B.C./Alberta Trade, Investment and Labour Mobility Agreement," Prepared for the British Columbia Ministry of Economic Development, September.
 - ii Erin Weir and Marc Lee (2007) "The Myth of Interprovincial Trade Barriers and TILMA's Alleged Economic Benefits," Canadian Centre for Policy Alternatives, Research Paper No. 43, February 26.
 - iii Steven Shrybman (2009) "State of Play: Canada's Internal Free Trade Agenda". Sack, Goldblatt Mitchell LLP, March.