



The British Columbia/Alberta Trade, Investment and Labour Mobility Agreement - Impacts on Local Government

Background

In April 2006, the Alberta and B.C. governments signed the Trade, Investment, and Labour Mobility Agreement (TILMA), which significantly expands the obligations imposed by the existing Agreement on Internal Trade. But TILMA also creates extensive new potential for litigation by giving individuals the right to take complaints to an independent panel empowered to issue binding rulings and award compensation.

Timing

Most of the agreement will enter into force on April 1, 2007 - there is no provision for public consultation or legislative debate.

TILMA allows a transition period for local government of up to two years from the date of implementation. Municipalities, regional, local, district or other forms of municipal government, municipal organizations and school boards are exempted in the transitional period from **SOME** parts of the agreement. During these two years, the provincial governments will undertake "further" consultations and negotiate possible exclusions.

However, as of April 1, 2007 a TILMA complaint could be launched against any local government measure if it is "amended or renewed in a manner that would decrease its consistency with this Agreement" (Article 9 - Rules Relating to Transitional Measures).

TILMA's Key Provisions of Relevance to Local Government

- Makes a wide variety of government “measures” vulnerable to challenge.

Under TILMA, no “measure” can impair or restrict “trade through the territory of the Parties, or investment or labour mobility between the Parties” (Article 3 - No Obstacles). A “measure” is defined broadly as “any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice or other procedure” (Part VII - General Definitions). An example of local government policies that could be challenged are land use restrictions, since they “impair or restrict” investment.

- Allows dispute panels to effectively overrule government decisions.

Private individuals and corporations from either B.C. or Alberta, as well as the provincial governments themselves, can take complaints to a TILMA dispute panel authorized to make binding rulings. TILMA goes far beyond NAFTA’s provisions for such suits by allowing complaints about “**any matter** regarding the interpretation or application of this Agreement” (Part IV: Dispute Resolution Procedures). TILMA limits monetary compensation to \$5 million, but since it does not restrict the number of challenges that can be taken on the same issue governments will have to change their regulations or pay to regulate.

- Requires not only *equal* treatment of goods, persons, services, investors and investments from across the provincial border, but the “*best treatment*” ever given under like circumstances (Article 4 - Non-discrimination).

- Requires harmonization of existing regulation in B.C. and Alberta.

Article 5 obligates B.C. and Alberta to “mutually recognize or otherwise reconcile their existing standards and regulations that operate to restrict or impair trade, investment or labour mobility.”

- Impedes introduction of stronger regulations.

Article 5 requires that “Parties shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility.” This could limit all attempts to introduce stronger regulation, since government regulation almost always restricts investment.

- Recognizes only a narrow list of governmental objectives as “legitimate.”

TILMA permits measures that violate the above provisions *if* these can be proved to be “necessary” *and* serve a limited list of objectives defined as “legitimate.” Among the local government objectives not recognized as “legitimate” are preservation of heritage sites, protection of views,

maintaining the character of neighbourhoods, and ensuring sufficient land is reserved for industrial uses.

- **Allows only limited exceptions (Part V).**

Some measures, such as those related to aboriginal peoples, are excepted from the agreement, but these exceptions are subject to annual review to reduce their scope.

- **Prohibits any business subsidies that “distort investment” (Article 12 - Business Subsidies).**

The limited exceptions permitted for business subsidies do not cover such local government measures as tax reductions for business improvement areas or heritage preservation.

- **Enforces procurement rules at very low thresholds.** Under the current Agreement on Internal Trade rules, local governments are supposed to be tendering and following AIT procurement obligations for purchases of \$100,000 for goods and services. TILMA would apply these obligations to purchases as small as \$10,000 for goods and \$75,000 for services. TILMA's existing provisions do not allow compensation to be awarded over complaints about procurement. But contractors can still take disputes to panels, whose decisions are binding.

Lack of Demonstrated Need for TILMA

TILMA will provide multiple grounds for challenging governments' right to regulate based on a myth - that there are substantial inter-provincial trade barriers. Economic assessments have repeatedly demonstrated that inter-provincial trade barriers are very low. As well, the labour mobility aspects of TILMA will be taken care of in two years through Agreement on Internal Trade negotiations.

What Can Local Governments Do About TILMA?

As it stands, local government measures that are amended or renewed will be covered by TILMA as soon as April 2007. However, Article 8 of the Agreement allows exceptions to be added to TILMA “by mutual consent of the Parties.” The B.C. government should be asked to negotiate a complete exception for local governments to Part V of TILMA, the section on General Exceptions.