

B A C K G R O U N D E R

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Ministry of Economic Development

Fact, not fiction, on TILMA

There are some misconceptions circulating about the B.C.-Alberta Trade, Investment and Labour Mobility Agreement. Following are the fiction, and most importantly the facts, about what this agreement entails:

Fiction

This agreement gives exclusive privileges to business at the expense of every other sector of society.

TILMA will affect our government's ability to do what's right. Some critics have said for instance that a requirement to build earthquake-safe schools in B.C. would increase costs to contractors from Alberta, and thus be challenged.

TILMA was negotiated without public input.

We don't really need a TILMA.

Fact

TILMA's benefits would be realized by individuals who work, invest or own businesses. The positive hit on the economy, and thousands of jobs created would certainly benefit workers and consumers. The TILMA is not simply an investment agreement; it is a trade and labour mobility agreement as well.

This is misleading. TILMA does **not** require either province to get rid of measures that protect consumers, the environment, or which address other legitimate public policy objectives. The vast majority of such public policy measures are non-discriminatory and do not operate to restrict trade, investment or labour mobility and thereby are not affected by the Agreement whatsoever. Even if such legitimate measures may have an incidental effect on trade, investment or labour mobility, the Agreement contains a number of provisions which allow the parties to continue to act in the public interest.

TILMA was not negotiated in secret. Each of the joint cabinet meetings in the three years leading up to the Agreement issued news releases. Consultations were held with ministries, business groups and academic institutions. All regulatory bodies were consulted, including those responsible for labour mobility. All provinces, territories and the federal government were advised; country-wide consultations were initiated by the Agreement on Internal Trade's Ministerial Committee of Ministers on Internal Trade.

Non-tariff barriers are real and they do cost money. Labour mobility is a problem, which is why there are 60-odd occupations listed as still requiring work to obtain full labour mobility. The provinces, territories and the federal government have looked to TILMA as a model for establishing a fully open market in the rest of Canada.

Numerous timely and credible studies have pointed to the cost of impediments to internal trade -- most recently the Conference Board of Canada's study entitled "Death by a Thousand Paper Cuts", which focussed on the range of non-tariff barriers in Canada that add unnecessary costs and hamper productivity.

The agreement gives another province a veto on any decisions made. We will have to harmonize our regulations and standards with theirs, because their standards are lower.

TILMA will allow all purchasing decisions by provincial governments, local governments, Crown Corporations, school boards, and universities to be challenged and overturned for purchases costing as little as \$10,000.

TILMA bans government financial support for rural development, small business, and economically depressed regions. It also targets any agricultural support and government assistance that "distorts investment decisions" for elimination because they are "a violation of the agreement."

Municipal governments will be hard hit by TILMA - they'll face multiple challenges to their by-laws, from heritage designation to laws restricting the placement of billboards, to land use and zoning.

TILMA allows businesses to challenge municipal bylaws and claim damages even from small communities.

TILMA does not require harmonization of regulations. Nowhere in the Agreement does it say this. Nor does Alberta or British Columbia have a veto on any decisions made by the other province. Furthermore, nothing in the TILMA requires either B.C. or Alberta to lower standards. In fact, the bias is to improve the quality of consumer, health, environmental and other similar standards.

In some areas the parties have agreed to reconcile or mutually recognize their standards. However, in some areas, Alberta's standards are stricter. In other areas, British Columbia's are stricter. The TILMA does not dictate that only the "lower" standard will be adopted by both governments.

No, not all purchasing decisions can be challenged. TILMA's provisions are only intended to ensure that procurements are undertaken in an open and non-discriminatory manner so that taxpayers receive the best value for their tax dollars, and companies are able to grow and prepare to compete internationally. In B.C., provincial procurement is already undertaken in such a fashion.

TILMA only restricts the use of business subsidies in certain narrow circumstances, for the benefit of both provinces. For example, it prohibits governments from offering "one-off" subsidies that would favour one business over another. However, in many instances the provinces remain free to use generally available infrastructure and assistance programs, such as the Municipal Rural Infrastructure Fund, or the recently-announced Spirit Squares initiative to help small communities celebrate B.C.'s sesquicentennial celebrations.

Subsidies or grants bestowed on aboriginal people or to individuals for social policy reasons continue to be permitted, as are subsidies or grants for the arts, for academic research, to non-profit entities, disaster relief, as well as certain types of agricultural subsidies. TILMA also imposes no limitations on federal grants or programs or on B.C. businesses accepting federal grants or subsidies.

Nothing in the TILMA requires a municipality or the province to change laws to match those in the other province, or to match the desires of a business or any other person. Besides, no more than one dispute may be lodged on what is essentially the same complaint.

If bylaws apply equally to all contractors, there is no discrimination and no complaint under TILMA. The vast majority of municipal actions are non-discriminatory and have no restrictive effects on trade, investment or labour mobility and are thereby not affected by TILMA.

Municipalities are not required to defend their own measures or pay monetary awards. Only the provincial governments can be subject to the dispute settlement process.

TILMA allows business to sue the B.C. government time and again for up to \$5 million for each regulation that it thinks has a negative impact on its business.

This is not true. No more than one dispute may be lodged on what is essentially the same complaint.

TILMA includes a process whereby disputes concerning the interpretation of the Agreement can be settled by an independent panel. Provision for financial awards has been included as part of this process, not to allow for damage claims, but rather to ensure that the parties comply with the findings of these panels. Neither party can be sued for damages under the Agreement. The sole basis of complaint is that a province has allegedly violated its obligations. If a panel determines that this is the case, the province is then obliged to change its offending measure. If this occurs, the dispute comes to an end and no financial award can be made by the panel. If, however, the province continues to maintain the offending measure the panel is then able to make a limited financial award to the complainant in certain circumstances.

Frivolous complaints are unlikely for a number of reasons: emphasis is on resolution of disputes through consultations; the overall goal of the process is to obtain a correction to the subject measure, not damages; dispute panels may charge the full costs of the dispute settlement process to losing complainants (such costs will be significant in most cases); and only if a panel's recommendations are ignored can a complainant then ask that the panel be recalled to take further action. A monetary award would not be granted unless the party has failed to comply with the panel's recommendations and the damages caused by the measure have been significant.

The trade dispute panel will always side with business, not governments working in the best interests of their citizens.

There is no evidence of this. Only very serious complaints would go forward through the formal, costly dispute resolution process and would involve either discriminatory measures or measures intended to protect specific commercial interests.

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