

Report on the Trade, Investment and Labour Mobility Agreement and the Potential Impact on Saskatchewan's Urban Municipalities

**Prepared for:
The Saskatchewan Urban Municipalities
Association**

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Background

In 1994, Canada's provincial, territorial and federal governments recognized a need to reduce and eliminate barriers to the movement of goods, services, investments and people within Canada to develop a stable domestic market. The result was the creation and signing of the Agreement on Internal Trade (AIT). A section within the AIT allows for the creation of additional bilateral or multilateral agreements that enhance trade and labour mobility.

In April 2006, the Governments of Alberta and British Columbia took advantage of this opportunity and signed the Trade, Investment and Labour Mobility Agreement (TILMA). Under the authority of the Agreement on Internal Trade, TILMA will liberalize trade, investment and labour mobility beyond the level required by the AIT between the two provinces.

TILMA will come into effect on April 1, 2007 and will only affect provincial government measures pertaining to trade, investment and labour mobility. However, the agreement is scheduled to be fully implemented by April 1, 2009 at which time will extend to all municipalities, school boards, publicly funded academic, health and social service entities, financial institutions, financial services and Crown Corporations. During this two year period, the governments of Alberta and British Columbia will be consulting with these organizations to negotiate any required special provisions or exclusions.

Overview

General Rules

Under TILMA, the Provinces of Alberta and British Columbia have agreed to some general rules to guide the parties in the application of this agreement. The rules state that each party shall ensure:

- that its measures (i.e. legislation) do not restrict or impair trade, investment or labour mobility;
- that any person, service, investment or competitive good of the province is treated no less favourable than the best treatment it accords, in like circumstances, to its own or those of any non-party;
- that any existing standards or regulations that restrict or impair trade, investment or labour mobility be reconciled and that no new standards or regulations be implemented that do not comply with the agreement.

In addition, there are rules that address the list of designated exceptions to the agreement, transparency, transitional measures and regulations that do not comply with the agreement, but are allowed because they exist to achieve a justifiable objective.

Special Provisions

Investment:

The investment provision of the agreement requires that the business registration and reporting regulations are consistent between the provinces. Furthermore, neither province should require a business to hold residency, maintain an office or have an agent present for legal matters within their boundaries as a condition of conducting business. This provision also states that provinces still maintain the right to designate and regulate monopolies for the purpose of providing goods and services within its own boundaries (i.e. Crown Corporations).

Business Subsidies:

This section states that the provinces shall not directly or indirectly provide subsidies that provide an advantage, encourage or assist an enterprise to move from one province to the other or influence investment decisions. The provinces also agreed to encourage non-signatories to the agreement to eliminate business subsidies.

Labour Mobility:

The provinces agree that any worker certified to work in one province shall be recognized to work in the other. Any requirement to be licenced or registered with a professional association shall be acceptable as long as any additional training or certification is not required. The provinces have developed a list of occupations that do not comply with this agreement (e.g. lawyers, teachers and

dentists). The agreement states that the provinces shall work together to improve their consistency with the agreement.

Procurement:

Each province will provide open and non-discriminatory access to the procurement of government entities where the value for goods is greater than \$10,000, the value for services is greater than \$75,000 and the value for construction is greater than \$100,000. The parties shall also ensure that tendering is transparent and that an acceptable protest mechanism is in place.

Energy:

The provinces shall maintain electricity measures that are consistent with established and applicable North American standards. In addition, they should work to improve existing inter- provincial energy trade arrangements.

Transportation:

The provinces agree to certain measures concerning licensing of vehicles and registration.

Dispute Resolution

Both governments and individuals can access the dispute resolution process. However, if the dispute falls within the jurisdiction of a regulatory body (i.e. Alberta Energy Utilities Board) the complaint must first be dealt with through that process. If the dispute concerns a measure against the AIT and the TILMA, the complainant must choose which agreement dispute resolution process they want to pursue and will have no access to the other process regarding the same complaint.

The dispute process encourages consultation in a cooperative manner between disputants to resolve the matter. Should consultations fail to resolve the issue; either party can request that an arbitrary panel be established to hear the dispute. The panel is required within an acceptable time frame to deliver a binding report on the matter. Should the panel determine failure of compliance, they can issue a monetary award or authorize retaliatory measures of equal economic effect if the dispute is between the two provinces. If the dispute is between a province and an individual they can only issue a monetary award. The agreement states that no monetary award should exceed \$5 million. It should be noted that only the provinces can be assigned the non-compliance fee, not the separate entities that fall under the agreement (i.e municipalities).

A disputant does have the option of a judicial review of the panels report (under the provincial arbitration acts) if they are not satisfied with the findings.

Exceptions

The agreement provides exemptions for provincial legislation for water, taxation, royalties, labour standards, occupational health and safety, procurement of health and social services, social policy and aboriginal polices and programs.

In addition, the agreement exempts other government objectives for public safety and security, environmental and consumer protection, health and social services and conservation of non-renewable, exhaustible or other essential resources.

Implications for Urban Municipalities

As the debate builds around the implementation of TILMA, several organizations including the Fraser Institute, the Conference Board of Canada, the Canada West Foundation, The Council of Canadians and the Canadian Centre for Policy Alternatives are providing their take on the merits and pitfalls of TILMA. Most of these observations fall within the scope of the provincial government, although a few have addressed the implications for municipal governments.

As the full implementation of TILMA will not occur until 2009, it is unclear at this time what impact this agreement will have on the urban municipalities of Alberta and British Columbia. Any suggestion of a specific outcome is solely based on speculation and interpretation of the agreement. However, these observations are extremely helpful in determining the positive and negative implications for Saskatchewan's urban municipalities.

Supporters of TILMA believe that this agreement will increase economic productivity and efficiency, create new investment and provide businesses the opportunity to bid on projects across the border with free access to compete and succeed in that market. In addition, TILMA will create a harmonized regime of business regulation that will make it easier for companies to operate and invest in both provinces, freer movement of skilled workers, and greater competition in government procurement leading to lower costs for taxpayers in both provinces.

Opponents to the agreement are concerned that TILMA would threaten a government's ability to offer support to struggling regions, that it provides too great authority to the arbitration panel to impose fines on government bodies and that provinces would be required to harmonize regulations leading to potentially weaker legislation. Even greater concern is the possibility that environmental protection policy would be at risk to challenges from business.

Within the context of municipalities, TILMA could have some far reaching implications, despite the currently stated protections and limitations. Some possible scenarios that could occur include challenges to:

- land use restrictions
- controls on pesticide use
- rules applying to signage
- business subsidies/grants to encourage development in certain locations within municipal boundaries
- housing standards and purchasing programs that favour local or regional suppliers and contractors.

In addition, TILMA could hinder a municipality's ability to introduce any new bylaws or regulations that may infringe upon the principles of this agreement.

The governments of Alberta and British Columbia have assured their respective municipal associations that these scenarios would not occur under TILMA. However, should an individual or business choose to challenge these measures, the provinces have the right to jointly declare their interpretation of the agreement to make their intent clear.¹

Recommendation

At the March 2007 SUMA Board of Directors meeting a motion was passed opposing Saskatchewan's involvement in the Trade, Investment and Labour Mobility Agreement. However, should the Province of Saskatchewan choose to begin negotiations with Alberta and British Columbia to join this agreement, Saskatchewan's urban municipalities should be fully engaged at the negotiation table beside the Province of Saskatchewan. It is the position of the Saskatchewan Urban Municipalities Association that our cities, towns and villages are governed by Mayors and Councillors who are duly elected by the citizens of their communities and, therefore should be treated as an autonomous order of government. Since urban municipalities will be affected by this agreement, then as an order of government we should be included in the negotiations, not simply consulted after the fact, as is happening in Alberta and British Columbia. Saskatchewan has made a similar consultation pledge – if it decides “to keep open the option of accession to TILMA.”²

If the Province of Saskatchewan does not support municipalities being a part of the negotiations, then the cities, towns and villages in Saskatchewan should strongly demand a complete exemption from this agreement.

¹ Letter to UBCM, AUMA and AAMDC from the Governments of British Columbia and Alberta, available at http://www.gov.bc.ca/ecdev/down/joint_municipal_letter_nosig_signed.pdf

² Letter to Town of Meadow Lake from Minister Harry Van Mulligen: March 20, 2007.