

January 29, 2007

Re: A Very Short Synopsis of TILMA

In April, 2006 Alberta and British Columbia entered into a *Trade, Investment and Labour Mobility Agreement* (“TILMA”). Certain provisions of the scheme went into effect at that time, the others become operational on April 1st of this year. Other provinces may accede to TILMA at any time, and considerable pressure is being exerted by the Conference Board of Canada and others, for them to do so.

This is a very short, and incomplete, overview of the TILMA regime. It is intended simply to persuade those who are unaware of this latest neo-liberal project that it deserves their attention.

1. TILMA imposes a blanket prohibition on all government measures that “operate to restrict or impair” trade, investment or labour mobility unless such measures are exempt under the scheme. It is difficult to conceive of a government action, whether legislative, regulatory or programmatic, that would not violate this broad constraint. In this regard, the net cast by TILMA is larger than that of NAFTA and the GATS combined.
2. TILMA defines “government” very broadly to include all aspects of provincial government, including its agencies and Crown corporations; but also to include municipalities, school boards and other publicly funded academic, health and social service entities. This means that under TILMA, all actions taken by these institutions, agencies and public bodies must also comply with the sweeping restrictions imposed by the regime.
3. To ensure that government and public institutions comply, TILMA incorporates the most pernicious feature of NAFTA, which accords private parties the right to invoke arbitration to challenge measures that are alleged to offend TILMA constraints, including the right to claim up to \$5,000,000 in damages arising from each such government measure. Because private claims may be unilaterally asserted by countless individuals and corporations, they are likely to proliferate and exert enormous pressure on governments to abandon or weaken a broad and diverse array of public policies, laws, practices, and programs.

4. The overwhelming majority of government measures that are subject to TILMA have little if anything to do with inter-provincial trade, investment or labour mobility, *per se*. Rather, these measures, which run the gamut from environmental controls to health care insurance plans, were established to serve broad public or societal purposes and apply equally to persons or companies whatever their respective province of origin. While such measures may impact investment, trade and labour mobility, these effects are indirect or tangential to their essential purpose. Nevertheless, because of these indirect effects, they may be challenged for offending TILMA prohibitions.
5. TILMA also expands the scope of foreign investor rights that can be asserted under NAFTA. Moreover, these rights are bestowed on US and Mexican investors without any reciprocal gains for BC or Alberta investors in the US or Mexico. TILMA establishes a new high-water mark of investor entitlement that can now also be claimed by US and Mexican investors in consequence of NAFTA guarantees of National Treatment.

Taken together, the likely impacts of TILMA represent a profound assault on the capacity of present and future governments in BC and Alberta to serve the public interest.

Furthermore, there is no plausible rationale for TILMA, for as we know, Canada is a free society in which people are free to live, work and invest anywhere they choose. There are no customs stations along provincial borders and no tariffs of any kind on inter-provincial trade. Moreover, inter-provincial trade is a federal responsibility and provincial measures that interfere even indirectly with such trade have been consistently struck down by the courts.

The claim that we must remove the few, and largely warranted, barriers to inter-provincial trade, investment and labour mobility that do exist, is no more than a smokescreen for a corporate agenda that seeks to substantially reduce the role of government as regulator and service provider.

Nevertheless the Conference Board of Canada has published several papers promoting the TILMA cause, and the Council of the Federation has congratulated British Columbia and Alberta on its initiative.

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