



FAIR TRADE
THE BC – ALBERTA TRADE, INVESTMENT AND LABOUR MOBILITY AGREEMENT
POSITION PAPER

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INTRODUCTION

On April 1, 2007, the Trade, Investment and Labour Mobility Agreement (TILMA) between the governments of Alberta and British Columbia came into effect. The Government of Alberta has committed to a two-year transition phase, during which it will consult with municipalities. This agreement has the potential to have a significant impact on how municipalities operate, particularly in the areas of procurement and legislation. The AAMDC is committed to advocating on behalf of municipalities to ensure that its members are not negatively affected by the TILMA.

TILMA

The TILMA is a trade agreement between the provinces of British Columbia and Alberta designed to decrease provincial barriers to trade, investment and labour mobility. The TILMA focuses on two key goals:

- **No obstacles:** Governmental measures (legislation, policy or other procedure) will not restrict or impair trade, investment or labour mobility between the two provinces; and
- **Non-discrimination:** There will be no preferential treatment of a province's people, investments and goods, except for justified actual cost-of-service differences.

The TILMA aims to build upon the provisions of the Canadian Agreement on Internal Trade (AIT) in dealings between Alberta and British Columbia. In the case of dealings with provinces outside of the TILMA, the AIT is still enforced. Further, according to Part II, Article 1.2, "In the event of an inconsistency between any provision in Parts II, V and VI of [the TILMA] and any provision of the AIT, the provision that is more conducive to liberalized trade, investment and labour mobility prevails between the Parties."

GUIDING PRINCIPLES

In preparing this position paper, the AAMDC ensured that all of the recommendations contained within are guided by the principles of:

- **Fair treatment and engagement** of all stakeholders;
- **Transparency** of the consultation and legislative process;
- **Consistency** between the TILMA and other Government of Alberta legislation;
- **Flexibility** in amending the TILMA to better reflect municipal realities;
- **Cooperation** between the various stakeholders;
- **Timeliness** of consultations; and
- **Clarity** of information and the Agreement.

RECOMMENDATIONS AND RATIONALE

1. **Increase procurement thresholds for municipalities and include a provision that factors inflationary increases into the thresholds.**

The TILMA significantly decreases the procurement thresholds (the minimum budget required to tender a project) as set by the Agreement on Internal Trade (AIT).

	Procurement Thresholds	
	TILMA	AIT
Goods	\$10,000	\$100,000
Services	\$75,000	\$100,000
Construction	\$100,000	\$250,000

By decreasing procurement thresholds, municipalities will be required to tender a greater number of projects – an expensive and time-consuming process. The administrative costs to municipalities incurred by increased tendering will most likely not be offset by the receipt of lower bids. The AAMDC insists that the thresholds be increased to no lower than the former AIT thresholds.

Further, the procurement threshold amounts are fixed, which does not account for inflation and the decrease in real dollar purchasing power. Construction costs in particular have increased dramatically; for example, capital expenditure on capital equipment and machinery in Alberta has leapt 111 per cent since 2001.¹ Fixed dollar amounts will quickly become obsolete and must be supplemented with provisions for inflation.

2. Include a section that allows municipalities to award contracts to local companies.

In its current form, the TILMA will negatively affect local companies. Under the TILMA, as with the AIT, local preference policies are prohibited; however, under the common law, local preferences are allowed, so long as they are expressly set out in the bidding documents. Confusion arising from this discord could be mitigated by including a provision in the TILMA that allows municipalities to employ local preference policies. This would ensure that the TILMA is in line with the aims of the *Rural Development Strategy*, which advocates increasing the viability of rural business opportunities.²

3. Clarify the dispute resolution process, roles and responsibilities and include a provision that protects against illegitimate or unreasonable claims.

In its current form, the TILMA does not clearly identify the roles and responsibilities of the provincial and municipal governments in the case of a dispute. In particular, it is unclear whether the provincial government or the municipality will defend a municipal policy or bylaw that has been accused of being inconsistent with the Agreement. Municipalities are concerned that, without clarification, they will not be aware of their role in the dispute resolution process and therefore not able to adequately defend their policies and bylaws.

Further, there is concern that, under the Agreement, a complainant may be able to circumvent its own provincial government and appeal directly to the provincial government of the defendant municipality. There is the potential for unreasonable or illegitimate claims being lodged, which would create a situation that would be overly burdensome for the defending municipality and provincial government.

4. a. Establish a framework for penalties and enforcement.

The TILMA does not explicitly state who is liable for financial penalties. The TILMA states that penalties of up to \$5 million may be imposed according to the level of the infraction. The Agreement, however, does not explicitly state who will be liable for these penalties. Municipalities are concerned that they may be held liable. On the other hand if, as is the case with the AIT, only the Government of Alberta is liable, municipalities are concerned that the government may introduce legislation to ensure municipal compliance and thereby limit a municipality's ability to serve the specific needs of its citizens.

b. Reconsider the maximum penalty as it relates to the financial capacity of Alberta's rural municipalities.

If municipalities are found to be liable for financial penalties under the Agreement, the current maximum amount of \$5 million must be decreased. This amount, if awarded, has the potential to significantly reduce a rural municipality's ability to provide services to its ratepayers.

¹ AAMDC, *Rural Constructions Options Report*, April, 2007.

² Various elements of the *Rural Development Strategy* propose measures, actions and goals that may run counter to the TILMA. For example, "Adapt and adjust programs and measures to take into account the unique aspects of rural communities" (page i); "The Government of Alberta's role is to create a positive environment for rural development and to work with rural communities to support locally developed initiatives, plans and projects." (page 5); "Work directly with rural communities that need assistance in... small business development." (page 8); and "Expand tourism opportunities in rural communities by... providing targeted funds to establish, expand and market tourism opportunities in rural Alberta, including plans for developing, packaging and marketing eco-tourism and ag-tourism." (page 12).

5. Clarify the responsibilities of municipalities during the transition period.

In spite of the transition phase, it is unclear whether municipalities are already required to comply with the TILMA. Article 9 of the Agreement states that municipal “measures” (policies, bylaws, etc.) may not be introduced, renewed or amended in any way that will decrease their consistency with the TILMA during the transition phase. The government will be consulting with municipalities during this time, which may result in amendments to the TILMA as it relates to municipalities. It is then unclear whether municipalities should be ensuring compliance with the TILMA as it stands, or as it may look at the end of the transition phase. Further, it is also unclear whether, at the end of the transition phase, municipalities will be required to be fully compliant.

6. Create a multi-stakeholder Advisory Committee that includes municipal representatives to advise the Minister during and following the transition period.

Municipalities were not consulted prior to the signing of the Agreement, nor was the Agreement subjected to legislative debate. The Association recognizes the government’s commitment to consult during the transition phase. The AAMDC, however, maintains that this consultation must extend past the transition phase to ensure that any issues will be addressed in a timely manner.

7. Establish a committee at the political level comprising the Minister of International, Intergovernmental and Aboriginal Relations, the presidents of the AAMDC, the AUMA and the Union of British Columbia Municipalities (UBCM), and the BC Minister of Economic Development.

The effect of the TILMA on municipalities has the potential to be significant. A cross-jurisdictional policy committee will ensure that all political bodies involved can share information and experience. Further, a high-profile committee will demonstrate to municipal stakeholders that the Minister is committed to ensuring that the Agreement does not unnecessarily burden any stakeholders.