

**Submission by the
Canadian Labour Congress**

to

**The Standing Committee on the Economy,
Saskatchewan Legislative Assembly**

on

TILMA's Supposed Economic Benefits

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Introduction

The Saskatchewan Legislative Assembly's Standing Committee on the Economy is studying the possibility of joining the Trade, Investment and Labour Mobility Agreement (TILMA), which came into force between Alberta and British Columbia on April 1, 2007. This agreement gives business sweeping powers to sue provincial governments, municipalities and school boards over a wide range of public policies, laws and regulations.¹

TILMA's supporters acknowledge that "signing TILMA would reduce our sovereignty" through "reduced legislative independence",² but argue that the agreement's economic benefits would outweigh these costs. However, since there are almost no trade barriers between Saskatchewan, Alberta and BC, the agreement would deliver virtually no economic gain. The Canadian Labour Congress (CLC) recommends that Saskatchewan not join TILMA and instead work with other provinces toward transparent, incremental solutions to any minor inter-provincial barriers that may exist.

In February 2007, the CLC and the Canadian Centre for Policy Alternatives released a paper demonstrating that alleged inter-provincial barriers have almost no measurable economic effect.³ This paper revealed that the Conference Board's projection of TILMA adding \$4.8 billion to BC's economy was based on shoddy methodology and arithmetic errors.⁴

¹ Ellen Gould, *Asking for Trouble - The TILMA* (Vancouver: Canadian Centre for Policy Alternatives, February 2007) and Steven Shrybman, *Guide to the TILMA* (Toronto: Ontario Federation of Labour, February 2007).

² The first quote is from Eric Howe, *The Economic Impact of the TILMA on Saskatchewan*, prepared for the Government of Saskatchewan (January 2007), 6. The second quote is from Conference Board, *Assessing the Impact of Saskatchewan Joining the BC-Alberta TILMA*, prepared for the Government of Saskatchewan (December 2006), 6.

³ Marc Lee and Erin Weir, *The Myth of Inter-provincial Trade Barriers and TILMA's Alleged Economic Benefits* (Ottawa: Canadian Labour Congress, February 2007).

⁴ Conference Board, *An Impact Assessment of the BC/Alberta TILMA*, prepared for the Government of British Columbia (September 2005).

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In April 2007, the Government of Saskatchewan released another Conference Board study, which estimates that TILMA would add \$291 million to Saskatchewan's economy, along with two independent reviews of this study. This submission examines the myth of inter-provincial barriers, TILMA's promised economic benefits for Saskatchewan, the Conference Board's methodology, and TILMA's costs.

The Myth of Inter-provincial Barriers

Canadians share common legal and financial institutions and are free to live and work anywhere in the country. There are neither customs stations along provincial borders nor tariffs on inter-provincial trade. The federal government has constitutional jurisdiction over inter-provincial trade and the courts have consistently struck down provincial attempts to obstruct it.

What many commentators call "inter-provincial barriers" are, in fact, regulatory differences between provinces. According to the Conference Board's Saskatchewan study, "the most cited existing trade impediment was lack of inter-provincial harmonization of government standards and regulation. Most commonly, this barrier takes the form of occupational certification requirements, registration fees and standards and different inter-provincial freight load and dimension requirements."⁵

Federalism is intended to allow different provincial governments to establish different regulations in response to different provincial conditions. For example, Saskatchewan has less than one-third of Alberta's population, but thousands more kilometers of highway than Alberta. In maintaining its highway system, Saskatchewan might reasonably choose to regulate the "freight load and dimension" of heavy trucks more stringently than Alberta regulates them.

In fields where provincial governments wish to harmonize their regulations, they can do so by jointly adopting common standards. This process hardly requires a sweeping agreement like TILMA that purports to apply to all areas of the economy with a few exceptions. TILMA would

⁵ Conference Board, *Saskatchewan Joining TILMA*, 34.

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achieve harmonization by defining regulatory differences as trade barriers and pushing provincial standards down to the lowest common denominator.

Whether or not regulatory differences among provinces are justified, there is no evidence that they impede inter-provincial trade. Relative to distance and market size, trade between provinces is as intense as trade within provinces.⁶ By contrast, provinces are twelve times more likely to trade goods and thirty times more likely to trade services with each other than with American states.⁷

From 2000 through 2006, Saskatchewan's exports increased by 28% to other countries and by 38% to other provinces. Saskatchewan's imports increased by 18% from other countries and by 31% from other provinces.⁸ Despite the rising prices of commodities that Saskatchewan sells onto world markets, inter-provincial trade is growing faster than international trade. This fact contradicts the allegation that inter-provincial barriers are obstructing inter-provincial trade.

Research conducted for the Royal Commission on the Economic Union and Development Prospects for Canada, chaired by Donald Macdonald, concluded that inter-provincial barriers cost no more than 0.05% of Gross Domestic Product (GDP). In 1985, the Macdonald Commission reported: "The direct costs of existing interprovincial trade barriers appear to be small . . . their quantitative effect on the level of economic activity in Canada is not sufficient to justify a call for major reform."⁹ Since the Agreement on Internal Trade (AIT) has eliminated most of the barriers that existed at that time, whatever remains is certainly not sufficient to justify TILMA's sweeping, legalistic approach.

⁶ John Helliwell, *Review of the Conference Board of Canada's Report, "Assessing the Impact of Saskatchewan Joining the BC-Alberta TILMA"*, prepared for the Government of Saskatchewan (January 2007), 9-10.

⁷ Lee and Weir, *Inter-provincial Trade Barriers*, 3.

⁸ Statistics Canada, Table 384-0002, "Gross Domestic Product (GDP), expenditure-based, provincial economic accounts, annual" (available at www.statcan.ca).

⁹ Government of Canada, *Report of the Royal Commission on the Economic Union and Development Prospects for Canada: Volume Three* (Ottawa: Department of Supply and Services, 1985), 133-134.

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A study conducted by the Canadian Manufacturers' Association in 1991 concluded that inter-provincial barriers cost \$6.5 billion - or 1% of national GDP at the time - including preferential procurement policies (\$5 billion), agricultural-marketing boards (\$1 billion), and local-production requirements for alcoholic beverages (\$0.5 billion). However, this study omitted the benefits of these policies to local suppliers, farmers, and breweries. Taking account of such benefits revealed the net cost of these barriers to be no more than 0.05% of GDP.¹⁰

Since 1991, local-production requirements for alcoholic beverages and some agricultural-marketing boards have been eliminated. In any case, TILMA exempts existing marketing boards. The AIT has liberalized most provincial procurement, but exempts Crown Corporations. Signing TILMA would prevent the Crowns from favouring Saskatchewan-based suppliers. According to the Conference Board: "Crown Corporations and [some] government organizations have a 'Buy Local' policy, which favours local companies and suppliers. This policy would not hold under TILMA, potentially disadvantaging small local firms."¹¹

There are very few genuine inter-provincial barriers. Academic analysis suggests that removing all barriers among all provinces would increase GDP by less than 0.05%.

TILMA's Promised Economic Benefits

The Conference Board projects that TILMA will add \$291 million (at 1997 basic prices) and 4,400 jobs to Saskatchewan's economy. These figures seem implausibly optimistic for three reasons.

First, \$291 million (at 1997 basic prices) equals 0.92% of Saskatchewan's GDP. In other words, the Conference Board is suggesting that a "free trade" agreement with two other provinces would produce gains

¹⁰ Brian Copeland, *Interprovincial Barriers to Trade: An Updated Review of the Evidence*, prepared for the Government of British Columbia (January 1998), 31.

¹¹ Conference Board, *Saskatchewan Joining TILMA*, 33.

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twenty times greater than those previously estimated for complete “free trade” with all provinces. John Helliwell, a former President of the Canadian Economics Association, judges “the maximum gain to be a small fraction of the 0.92% of GDP estimated by the Conference Board.”¹²

Second, TILMA would handicap Saskatchewan’s economic-development policies. Due to Alberta’s vast resource wealth, businesses located there enjoy lower tax rates and higher levels of public spending. Although Saskatchewan cannot match Alberta on this basis, it can currently use targeted incentives to compete in specific sectors. TILMA would not address the omnipresent subsidy created by Alberta’s overall tax rates and public spending, but would prohibit the more focused and affordable “business subsidies” provided by Saskatchewan.

According to Dr. Helliwell, “increases in mutual access will always tend to favour firms located in the richer province. This fundamental non-neutrality means that the playing field can never be level between Alberta and Saskatchewan firms. This may indeed be the most important fact affecting the evaluation of TILMA by Saskatchewan, even though it is not mentioned in the Conference Board report.”¹³ By aggravating this disadvantage, TILMA could slightly reduce Saskatchewan’s GDP rather than slightly increasing it.

Third, Saskatchewan imports substantially more from its prospective TILMA partners than it exports to them. Since no significant inter-provincial barriers exist, TILMA would not significantly increase trade flows. However, if TILMA fulfilled its objective of expanding these flows, it would increase Saskatchewan’s trade deficits.

¹² Helliwell, *Review*, 7.

¹³ *Ibid.*, 2.

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The most recent figures dividing Saskatchewan's inter-provincial exports and imports by province are for 2003. In that year, Saskatchewan's international trade surplus offset most of its inter-provincial trade deficit, leaving a net deficit of only \$43 million. If Saskatchewan had exported 10% more to Alberta and BC and imported 10% more from these two provinces, this deficit would have been \$288 million.

SASKATCHEWAN'S TRADE, 2003¹⁴

(in millions of dollars)

	BC	Alberta	Rest of Canada	International	Total
Exports	\$ 946	\$3,474	\$5,851	\$13,524	\$23,795
Imports	\$1,303	\$5,569	\$7,574	\$ 9,392	\$23,838
Balance	(\$ 357)	(\$2,095)	(\$1,723)	\$ 4,132	(\$ 43)

**SASKATCHEWAN'S TRADE IF TRADE
WITH BC/ALBERTA WERE 10% GREATER**

(in millions of dollars)

	BC	Alberta	Rest of Canada	International	Total
Exports	\$1,041	\$3,821	\$5,851	\$13,524	\$24,237
Imports	\$1,433	\$6,126	\$7,574	\$ 9,392	\$24,525
Balance	(\$ 392)	(\$2,305)	(\$1,723)	\$ 4,132	(\$ 288)

Other things being equal, a larger trade deficit (or smaller trade surplus) implies a lower GDP and less employment. Larger trade flows might increase productivity, which might increase GDP. However, productivity does not create jobs: "since the gain in GDP is coming from productivity increases, the increase in GDP is not based on hiring more workers but on reducing the number of workers required to produce a given amount of GDP."¹⁵ Even if TILMA were to increase GDP, it is completely unclear how it could create 4,400 jobs.

¹⁴ Figures from Statistics Canada, Table 384-0002 (cited above) and Institut de la statistique du Québec, Tableau 8.3, "Commerce interprovincial total, biens et services, 2003" (available at http://www.stat.gouv.qc.ca/donstat/econm_finnc/conjn_econm/TSC/pdf/chap8.pdf).

¹⁵ Helliwell, *Review*, 12.

The Conference Board's Methodology

Prior to its Saskatchewan report, the Conference Board had estimated that TILMA would increase BC's GDP by 3.8%. The CLC's critique of this document was endorsed by Patrick Grady, a former senior federal Finance official and eminently mainstream economist who describes the BC estimate as "not credible."¹⁶ Dr. Helliwell independently drew the same conclusion regarding the Saskatchewan report: "there is no empirical support for the Conference Board estimates of GDP and employment changes."¹⁷

Eric Howe, the other independent reviewer, came to the opposite conclusion: "the Conference Board's analysis has underestimated the economic benefits to Saskatchewan of signing TILMA."¹⁸ One might be tempted to view the Conference Board's projections as a reasonable compromise between the opposing perspectives of Dr. Helliwell and Dr. Howe. However, a detailed examination of the Conference Board's work strongly supports Dr. Helliwell's interpretation.

The Conference Board has displayed little confidence in its own numbers. It recently forecast that BC's economy will grow at the same moderate pace (2.2% annually) as the national economy, which seems inconsistent with the expectation of a 3.8% boost from TILMA.¹⁹ The Conference Board offers no explanation of why "free trade" with Alberta would expand BC's economy by 3.8% but "free trade" with both Alberta and BC would expand Saskatchewan's economy by one-quarter of this percentage: 0.92%.

In fact, both quantitative projections were arbitrarily inferred from small qualitative surveys of business organizations and government agencies. The Conference Board reports that its Saskatchewan "survey was sent to a total of 118 persons: 17 representing the public sector and 111 from the private sector." Unfortunately, 17 added to 111 does not equal 118. An appendix

¹⁶ Patrick Grady, *The Conference Board of Canada's \$4.8 Billion Estimate of the Impact of the BC-Alberta TILMA is Not Credible*, available at http://global-economics.ca/CB_TILMA.htm (April 2007).

¹⁷ Helliwell, *Review*, 7.

¹⁸ Howe, *Review*, 8.

¹⁹ Grady, *Estimate Not Credible*.

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seems to indicate that there were, in fact, 17 public-sector and 101 private-sector entities.²⁰

The Conference Board then explains, “we received a total of 34 responses, 9 from the public sector and 23 from the private sector.” Unfortunately, 9 added to 23 does not equal 34. It subsequently reports receiving 31 complete responses: 9 from the public sector and 22 from the private sector. Perhaps it also received 3 incomplete responses from the private sector, for a grand total of 34 responses.²¹

More than three-quarters of private-sector entities did not respond to the survey, which suggests that alleged inter-provincial barriers are not an important issue for Saskatchewan business. Larger national surveys confirm this point. In the Canadian Manufacturers and Exporters’ 2005-2006 “Management Issues Survey”, the top five economic-policy priorities had each been identified by more than 30% of companies. By contrast, only 13% of companies identified “reduce barriers to trade and investment” as a priority.²² Since some of these companies presumably meant international barriers, the proportion concerned about inter-provincial barriers must have been very low.

Dr. Howe argues, “Some Saskatchewan businesses that have successfully sought protection from outside competition will not be pleased by the lowering of trade barriers, giving them an incentive to under report the gains from Saskatchewan signing TILMA.”²³ If these unnamed barriers exist, most other businesses would have an analogous incentive to overstate the gains from signing TILMA. In fact, most of the private-sector organizations surveyed by the Conference Board were not individual businesses, but chambers of commerce and industry associations which tend to be strongly committed to deregulation. Clearly, the “self-serving biases”²⁴ among respondents would generally favour TILMA.

²⁰ Conference Board, *Saskatchewan Joining TILMA*, 5 and Appendix A.

²¹ *Ibid.*, 5 and 31.

²² Canadian Manufacturers & Exporters, *2005-2006 Management Issues Survey: Winning Strategies for the Future* (Toronto: Rogers Media, 2005), 15.

²³ Howe, *The Economic Impact of the TILMA on Saskatchewan: A Critique of Professor Helliwell's Analysis*, prepared for the Government of Saskatchewan (February 2007), 2.

²⁴ *Ibid.*

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The Conference Board used these survey results to “score” eleven industries in seven regions of Saskatchewan. As Dr. Helliwell notes, “Since there was no research or quantitative base for this translation, it has no empirical basis, and hence cannot be treated as evidence.”²⁵ The Conference Board combines its regional/industrial scores into a province-wide score, which it then treats as a percentage of GDP.

Dr. Howe defends this approach as follows: “There are arbitrary elements to the quantitative analysis by the Conference Board just as there are arbitrary elements to any quantitative analysis.”²⁶ Conventional approaches to projecting the benefits of “free trade” agreements are at least based on explicit, if arbitrary, models of how the economy works and how much trade barriers cost. By contrast, the Conference Board does not even pretend to estimate the cost of existing barriers. Dr. Howe’s position seems to be that, since some arbitrariness is inevitable, any amount of arbitrariness is acceptable.

However, even if one accepts the Conference Board’s basic approach, most of its projected benefits are based on industries that are exempt from TILMA or that barely engage in inter-provincial trade. TILMA’s exemptions in the areas of energy, mining, forestry and fishing throw into question the high positive scores assigned to “primary” industry outside Regina and Saskatoon as well as the consistently positive scores assigned to “utilities”. Factoring out these non-existent benefits reduces the credibility of forecast spin-offs for industries that barely engage in inter-provincial trade.

²⁵ Helliwell, *Review*, 6.

²⁶ Howe, *Critique of Professor Helliwell*, 3.

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BREAKDOWN OF CONFERENCE BOARD SCORES²⁷

Region	Total Score	Portion of Score From:		
		Wholesale, Retail & Commercial	Primary & Utilities	Other Industries
Southeast	0.87	0.41	0.13	0.33
Swift Current/Moose Jaw	1.07	0.41	0.05	0.61
West-Central	0.93	0.35	0.13	0.45
Yorkton-Melville	1.02	0.41	0.05	0.56
Prince Albert and North	0.90	0.42	0.08	0.40
Regina	0.86	0.67	0.01	0.18
Saskatoon	0.89	0.64	0.01	0.24

Retail and wholesale trade serve local consumers rather than out-of-province markets. To the extent that commercial services can be traded, the Conference Board suggests that Saskatchewan suppliers will suffer due to “increased competition from the more mature commercial services sectors of Alberta and BC.”²⁸ Nevertheless, it assigns strongly positive scores to the “wholesale and retail trade” and “commercial services” industries in all seven regions. Factoring out these industries along with “primary” industry and “utilities” reduces the Conference Board’s projected benefits by three-quarters in Regina and Saskatoon, and by half in other regions.

In summary, the Conference Board sent questionnaires to a significant number of business organizations and some government agencies, miscounted the relatively few responses it received, used these responses to generate high scores for industries that do not engage in inter-provincial trade or that are largely exempt from TILMA, and then treated the final score as a fraction of GDP. This procedure does not inspire confidence in the Conference Board’s estimates. Since Dr. Howe presents no additional evidence, one is left with Dr. Helliwell’s conclusion that the impact of TILMA on Saskatchewan’s GDP would certainly be small and might be negative.²⁹

²⁷ Conference Board, *Saskatchewan Joining TILMA*, 40.

²⁸ *Ibid.*, 44.

²⁹ Helliwell, *Review*, 7.

TILMA's Costs

Whether TILMA slightly increases or slightly reduces GDP, its most important effect would be to allow private interests to sue the provincial government, Crown corporations, municipal governments, and school boards for up to \$5 million for each alleged violation. Rather than simply preventing measures that discriminate among provinces, TILMA purports to “eliminate barriers that restrict or impair trade, investment or labour mobility.” Almost everything governments do influences the market and could be challenged under the agreement.³⁰

TILMA's extremely broad language will be interpreted and applied by commercial tribunals that meet behind closed doors. While such tribunals may be necessary in adjudicating international disputes, there is no good reason to empower them in place of Canadian courts in adjudicating internal disputes. At worst, these tribunals may interpret TILMA in ways that severely restrict public policy. At best, uncertainty about possible interpretations would have a chilling effect on policy-makers who fear being sued.

To quote Dr. Helliwell, “unrestricted private access to the dispute mechanisms, combined with a commitment to neutrality of treatment, would make almost any provincial or municipal programme subject to attack. This is no doubt part of the appeal of TILMA for some. However, using expensive legal procedures to advance particular private interests is surely not the best way of providing a non-intrusive and efficient network of trade-supporting public rules and institutions.”³¹

Defenders of TILMA argue that its exceptions would shield important public policies from challenge. However, these exceptions protect a policy only if the government can prove that there is no conceivable alternative policy. In practice, it would be extremely difficult for government to prove this negative case and extremely easy for business to suggest possible policy alternatives.

³⁰ Gould, *Asking for Trouble* and Shrybman, *Guide to TILMA*.

³¹ Helliwell, *Review*, 4.

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TILMA's dispute-settlement process is based on the North American Free Trade Agreement's (NAFTA) Chapter 11. A recent review of this notorious chapter concluded, "there are ongoing challenges related to water exports, log export controls, public postal services, Canada's agricultural supply management system, Canadian cultural policy, and other matters which were supposedly excluded from the NAFTA."³² There is no reason to believe that TILMA's exceptions will be any more effective.

Conclusion

TILMA's tiny potential economic benefit pales in comparison to its significant economic, social and environmental costs. Fortunately, there are far better approaches to internal trade. A more sensible process would begin with Saskatchewan businesses compiling publicly-available lists of inter-provincial barriers. Citizens could respond by assessing the economic, social and environmental purposes of these alleged barriers.

The Government of Saskatchewan could then work with other provincial governments and/or the federal government to reform measures that entail economic costs, but do not serve important policy goals. Indeed, provincial governments have already established mutually recognized credentials in many skilled trades and are currently working to harmonize licensing by professional bodies to enhance labour mobility.³³ The few remaining inter-provincial barriers are so small that any measurable benefit could be achieved only by addressing them on a multi-lateral basis among all provinces.

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³² Scott Sinclair, *NAFTA Chapter 11 Investor-State Disputes* (Ottawa: Canadian Centre for Policy Alternatives, March 2007), 14.

³³ Lee and Weir, *Inter-provincial Trade Barriers*, 7 and 9.