Submission to the
Standing Committee on the Economy
Legislative Assembly of Saskatchewan

On the impact of the
Trade, Investment and Labour Mobility Agreement
(TILMA)

Presented by the
National Farmers Union

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Introduction

The National Farmers Union (NFU) welcomes this opportunity to bring the views of its family farm members to the Legislative Assembly of Saskatchewan Standing Committee on the Economy on the subject of the Trade, Investment and Labour Mobility Agreement (TILMA).

The NFU is a direct-membership, nation-wide organization made up of farm families. It was founded in 1969 and chartered in 1970 under a Special Act of Parliament. The NFU and its predecessor organizations [the Saskatchewan Farmers Union, the United Farmers of Canada – Saskatchewan Section, The Farmers Union of Canada – Saskatchewan Section, and the Saskatchewan Grain Growers Association], have always worked to implement policies that help ensure agriculture is socially, environmentally and economically sustainable.

While NFU members produce a wide range of commodities, we believe the problems facing farmers are common problems, and that producers of various commodities must work together to advance effective solutions. The NFU believes that the pursuit of only individual self-interest leads inevitably to self-destruction.

The NFU also believes that food production should lead to enriched soils, a more beautiful countryside, jobs for non-farmers, thriving rural communities and healthy natural ecosystems. The decimation of rural communities, growing environmental problems, plummeting farm numbers and the present farm income crisis raise serious questions about current agricultural and trade policies.

Saskatchewan agriculture and trade

There is no question that a strong linkage exists between Saskatchewan agriculture and trade. Historically, strong export markets for wheat have created boom periods within Saskatchewan. However, recessions in wheat export markets – which have inevitably followed the boom periods - have hit this province extremely hard. The boom and bust cycle resulting from our reliance on exports has been a double-edged sword. Short periods of prosperity followed wheat price increases, but the gains made by farmers and rural communities were quickly overtaken by the ability of input suppliers and grain companies to capitalize on the situation by raising prices and fees that farmers had to pay.

To counter this roller-coaster cycle of frantic expansion and devastating depression, Saskatchewan's people developed a strong cooperative movement and mutually self-reliant communities. We shared these movements in common with Alberta and Manitoba. Saskatchewan's social and economic development came about in spite of, rather than because of, this over-dependence on the vagaries of the export market. Solutions to the boom and bust cycle were created based on "stability" in agricultural production, pricing and distribution.

Farmers' single-desk marketing agencies for grains, livestock, dairy, poultry and eggs all contributed to the "stability" of farm incomes. These provincial and national marketing boards provided farmers with sufficient economic muscle to allow them to deal squarely and on an equal footing with large agribusiness companies.

Trade – both within Canada and globally - was viewed as an important component of these solutions, but trade expansion was not the primary motivating factor in the formation of agricultural policy.

Over the past two decades, however, under growing pressure from large, economically-powerful corporations, that has changed. The implementation of the Canada-US Free Trade Agreement in 1988, followed by the North American Free Trade Agreement (NAFTA) in 1993, has resulted in a wholesale redefinition of the role of government - from protecting the public interest - to facilitating the interests of corporations.

The threat of "globalization" has been used to advance the agenda of removing "barriers to trade" – a definite benefit to big business. But it has also had the effect of dismantling regulatory protections for Canadians. Advocates of globalization paint the process as inevitable and gloss over the fact that a small minority benefit while the vast majority pay a heavy price indeed. Critics of globalization, such as author Linda McQuaig, reveal the hidden agenda promoted by big business: "In short, globalization could be used to sell an idea. It could become a virtual marketing logo for an unpalatable agenda – an agenda that the business community wanted to put in place but was otherwise having trouble promoting…Central to the new business agenda, then, is the notion that the private sector should be expanded and given more power, and that the public sector should be reduced and its powers trimmed."[1]

Agriculture and TILMA

The TILMA agreement between Alberta and BC was concluded in April, 2006; and the deal came into force a year later - in April, 2007 – although some provisions will not take effect until April, 2009. This agreement encompasses many areas that were previously excluded from the 1995 Agreement on Internal Trade (AIT). In fact, under TILMA, all areas not specifically mentioned as exclusions are deemed to be included in the agreement.

The Alberta and BC governments have attempted to justify the implementation of TILMA by claiming an urgent need to eliminate inter-provincial barriers.

However, a study prepared in March, 2007 by Global Economics Ltd and International Trade Policy Consultants Inc. for Industry Canada and Human Resources Canada shows that the AIT has indeed eliminated many significant trade barriers since it came into effect in 1995: "To the extent that they are based on barriers that no longer exist, research estimates of the economic costs of impediments to internal trade are overstated."[2] This report also pointed out that since 1995, the AIT has grown to encompass a significant proportion of government procurement practices for municipalities, school boards, health and social services, as well as crown corporations. "This has significantly reduced the number of government bodies excluded from the AIT's procurement rules," notes the study.

Many areas that are not specifically exempted from TILMA include health, education, consumer protection, land use planning and heritage conservation. Other areas listed as exceptions under TILMA will eventually be reduced in number and scope.
Under TILMA, subsidies to the "agricultural and agri-food sectors" are covered under transitional measures, which permits the BC and Alberta governments to negotiate the extent to which the agreement should be applied to agricultural subsidies. The definition of what constitutes a "subsidy" goes well beyond those funds which are dispensed to farmers – they also include tax incentives and outright grants to large agribusiness corporations, such as the Alberta government grant of $1.5 million to Sun Valley Foods in October 2006 to fund an expansion of its beef processing plant.[3] While large agribusiness corporations will likely continue to be able to access public funds even if TILMA comes into effect; the ability of smaller, rural-based companies and producer-

[1] Linda McQuaig, The Quick and The Dead: Brian Mulroney, Big Business and the Seduction of Canada. Penguin Books 1992.
[2] "Inter-Provincial Barriers to internal trade in goods, services and flows of capital: Policy, Knowledge gaps and research issues" by Kathleen Macmillan and Patrick Grady, March 2007, Global Economics Ltd. And ITPC.
[3] "TILMA's restrictions and prohibitions" section of "Asking for Trouble: The Trade Investment and Labour Mobility Agreement" by Ellen Gould, published by the Canadian Centre for Policy Alternatives, BC Office, February, 2007.

owned co-operatives to receive funding will be hampered because these grants are often disbursed under the umbrella of "regional economic development". And under TILMA, any local government measure that "constitutes an obstacle to trade" or which favours local investors is deemed to be in violation of the agreement.

In 2006, the governments of BC, Alberta, Saskatchewan, Manitoba, Prince Edward Island and the Yukon signed the Interim Agreement on Internal Trade in Agriculture and Food Goods as part of the AIT's move to eliminate "technical barriers" to trade in food and agricultural products. This move not only indicates increasing pressure from business and governments to further erode agricultural regulatory institutions through the AIT, it also prepares the groundwork for a more all-encompassing deregulation through TILMA.

In keeping with the objective of transcending AIT, TILMA does not contain any broad exemption for agriculture. There are, however, specific exceptions made with regard to supply management and commodities regulated under the Natural Products Marketing Act. Because these exceptions are written into the agreement with the objective of eventually reducing the scope of the exception, this is most definitely one area where the agreement is likely to have a very negative impact.

TILMA represents a significant threat to farmers' orderly marketing agencies, particularly those in the supply-managed sectors, such as dairy, eggs and poultry. These orderly marketing systems are singled out by economists as the main area where internal "trade barriers" exist. In a 2005 background study, the International Monetary Fund (IMF) examined the flexibility of the Canadian economy and concluded its internal market was "relatively free of impediments"[4]. However, of the five areas where "barriers to trade" may be a consideration, "agricultural and food products" was singled out by a study published earlier this year by the consulting firm of Global Economics Ltd. Similarly, a survey of Chief Executive Officers conducted by COMPAS in 2004 indicated corporate decision-makers were anxious to eliminate inter-provincial barriers in "agriculture and food" as a top priority.

In the TILMA agreement, Alberta cites the following exception for Agriculture:

"1. Measures adopted or maintained relating to regulated marketing and supply management which restrict trade, or the right to invest in the production of, or to produce poultry, dairy and eggs."[5]

Likewise, BC lists this exception:

"1. Existing regulatory measures adopted pursuant to the *Natural Products Marketing (BC) Act* which restrict trade or investment in agricultural products or production regulated thereunder."[6]

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[4] Cited in "Inter-provincial barriers to internal trade in goods, services and flows of capital: policy knowledge gaps and research issues", Global Economics Ltd. and ITPC Research paper prepared for Industry Canada and Human Resources and Social Development Canada, by Kathleen Macmillan and Patrick Grady, March 31, 2007.

[5] Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta, April 2006, page 21.

These exceptions recognize the reality of the existing supply-management system rules governing production and market share between provinces. The pricing formulas, market share mechanisms, and production quotas, despite being complicated and comprehensive, have been updated and revised numerous times over the years to reflect population, production and marketing changes in the two provinces and in western Canada in general. There are also ongoing reviews within the dairy system to balance conflicting demands and ensure equity.[7] However, there is continual pressure within the TILMA agreement to deregulate all industries, including agriculture – and the gradual erosion of the supply-management system will result in downward pressure on prices received by farmers at the farm gate.

As the background paper prepared for Industry Canada noted: "The highly contentious issue of supply management will likely continue to impede progress in agricultural negotiations in the future. Despite assurances that Canada's supply management system will not be affected by the negotiations, some parties are still reluctant to enter into discussions of technical barriers to trade since some of these measures could have consequences for the supply management system."[8] It notes in passing that internal trade arrangements in Canada will eventually be deregulated as a result of global or bilateral trade agreements. It is a fact that supply-management has been under tremendous pressure as a result of the ongoing World Trade Organization (WTO) negotiations, and David Emerson, Minister of International Trade, has admitted the Harper government is prepared to sacrifice supply-management at some point in order to secure a WTO deal.[9]

Deregulation the end goal of trade agreements

The analysis of TILMA by the Canadian Centre for Policy Alternatives (CCPA) confirms that deregulation is the end goal of TILMA and other trade agreements. "TILMA's provisions dealing with regulations are an example of an overall trend to cast regulatory differences between all jurisdictions…as barriers to trade and investment." As trade agreements are increasingly used to determine whether regulatory differences constitute "unnecessary" barriers, "This has the perverse effect of delegating to dispute panels composed of trade lawyers, who are looking through the lens of what is best from a commercial perspective, decisions over whether regulatory differences are to be permitted."[10] The CCPA goes on to note that TILMA "can only result in pressures to deregulate" because "the requirement to reconcile regulations and standards is subject to enforcement by private investors, who are far more likely to launch complaints over regulations because they are too high rather than because they are too low."

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[6] Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta, April 2006, page 22.
[7] "The Canadian Dairy Commission: A 40-year Retrospective" by Erin Scullion. Canadian Dairy Commission, Ottawa, 2006
[8] Inter-Provincial Barriers to internal trade in goods, services and flows of capital: policy, knowledge gaps and research issues, Macmillan and Grady, Global Economics and ITPC, March 31, 2007
[9] "Supply management days numbered: minister", by Barry Wilson, Western Producer, December 21, 2006
[10] "Asking for Trouble: The Trade, Investment and Labour Mobility Agreement" by Ellen Gould, CCPA February 2007

In addition to creating downward pressure on regulatory protection for the public, the dispute settlement mechanism in TILMA encourages private investors to sue governments and be awarded compensation by independent panels. This has the further effect of "freezing" regulations at minimal or near-minimal levels and preventing the introduction of new, tougher, regulations aimed at protecting the public interest.

A 1998 study prepared for the BC Government indicated clearly that the real objective of trade agreements is "regulatory reform" rather than any substantial dismantling of actual trade barriers: "The fundamental issues in this policy debate are not principally issues of trade. Rather, they have to do with the appropriate division of powers between governments, the tradeoff between diversity and harmonization in policies, and the proper role of government in influencing the direction of the economy. Instead of muddying the waters by framing the debate in terms of trade barriers, the focus should be on the real issue, which is regulatory reform."[11]

TILMA, Land Use and local government initiatives

TILMA enhances the ability of private investors to define regulatory "reform" and enforce penalties which benefit the business sector over the public interest in a variety of areas, including, but not limited to:
* land use restrictions
* controls on pesticide applications
* rules applying to signage
* targeted grants to encourage local or regional economic development
* construction standards
* purchasing programs that favour local or regional suppliers and contractors.

A study prepared for the Saskatchewan Urban Municipalities Association (SUMA) in April, 2007, explored the implications for local governments of the TILMA agreement. Following the release of the study, the Board of Directors of the SUMA voted to oppose Saskatchewan's involvement in the TILMA.

In a letter to the SUMA President, Allan Earle, NFU President Stewart Wells indicated support for the SUMA position on TILMA. "At the heart of the NFU's opposition to TILMA is our concern over the erosion of the power of democratically-elected governments to determine policies and implement bylaws on behalf of their constituents. Under the guise of encouraging investment and boosting efficiency, the TILMA agreement effectively transfers considerable decision-making power from publicly-accountable elected representatives to privately-held corporations and trade arbitration panels."[12] The NFU President pointed out that even if governments are able to mount a strong case in defense of policies which until now have always been regarded as the purview of democratically-elected bodies, they must now also prove these measures do

[11] "Interprovincial Barriers to Trade: A Review of the Evidence", by Brian R. Copeland, January, 1998, prepared for the BC Ministry of Employment and Investment.
[12] Stewart Wells, NFU President, letter to SUMA President Allan Earle, April 18,, 2007

not “restrict” or impair” trade and investment. Given that regulation, by definition, impairs or restricts trade and investment, it is not unreasonable to suggest that TILMA will lead to more deregulation at the expense of the public interest.

Conclusion

The National Farmers Union is strongly opposed to the implementation of the Trade, Investment, and Labour Mobility Agreement. This agreement has justifiably been labeled as a “corporate bill of rights” that provides private corporations with extensive powers to re-write and enforce regulations which will be in their interests.

The ability of democratically-elected governments to legislate and regulate economic and social policies in the public interest will be greatly curtailed under the TILMA agreement. Agriculture, particularly commodities produced under supply-management systems, will be among those areas which will be adversely impacted by the implementation of this agreement.

Family farmers are currently facing a serious income shortfall due to low commodity prices and high input costs caused by the imbalance of economic power in the marketplace between farmers on the one hand and large corporations on the other. The implementation of the TILMA agreement will exacerbate this crisis by providing the corporate sector with even greater market power at the expense of farmers.

The NFU strongly urges the Saskatchewan Government to reject the TILMA agreement.

All of which is respectfully submitted by

The National Farmers Union