

AMENDMENT TO H.R. 1890 OFFERED BY REP. DOGGETT

This amendment would strip fast track authority from any agreement that fails to improve the investor state dispute settlement system.

Amendment to H.R. 1890 Offered by Mr. Doggett of Texas

Page 97, after line 7, insert the following:

1 (6) FOR FAILURE TO REDUCE OR ELIMINATE 2 ARTIFICIAL OR TRADE-DISTORTING BARRIERS TO FOREIGN INVESTMENT.---(A) The trade authorities 3 4 procedures shall not apply to any implementing bill 5 submitted with respect to a trade agreement or 6 trade agreements that does not reduce or eliminate 7 artificial or trade-distorting barriers to foreign in-8 vestment, while ensuring that foreign investors in 9 the United States are not accorded greater sub-10 stantive rights with respect to investment protections 11 than United States investors in the United States 12 by---

(i) freeing the transfer of funds relating to
investments, except where a restriction on the
transfer of funds is necessary to prevent or
mitigate a financial crisis; and

 (ii) further clarifying the "minimum standard of treatment" provision, consistent with the award in Glamis Gold (as defined in subparagraph (B)), by—

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(I) explicitly stating that the investor
bears the burden of establishing that a state has violated a principle of customary international law regarding the minimum standard of treatment of aliens;
(II) explicitly stating that customary

international law requires an investor to prove a general and consistent practice of states, and that evidence for such practice cannot be based on a past tribunal's interpretation of the minimum standard of treatment, and that is followed based on a sense of legal obligation (opinio juris); and

(III) explicitly stating that, unless an investor is able to prove otherwise based on the customary international law standard, "arbitrary" conduct by a state or state actions that upset an investor's expectations do not violate the minimum standard of treatment;

(IV) establishing a mechanism whereby the party being sued by an investor and the investor's home country may agree that a claim submitted to arbitration is not a claim for which an award in favor of the F:\M14\DOGGET\DOGGET_035.XML

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claimant may be granted by the tribunal; and

3 (V) stating, in the preamble of the 4 agreement, that the agreement does not 5 accord greater substantive rights than do-6 mestic investors have under domestic laws 7 where, as in the United States, protection 8 of investor rights under domestic law equal 9 or exceed those set forth in the agreement. 10 (B) In this paragraph, the term "Glamis Gold" 11 refers to the investor-state dispute settlement case under the North American Free Trade Agreement 12 13 referred to as Glamis Gold, Ltd. v. United States 14 (award dispatched to parties on June 8, 2009).

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