

AMENDMENT TO SENATE AMENDMENT TO H.R.

1314

OFFERED BY MR. DOGGETT OF TEXAS

Page 99, after line 4, insert the following:

1 (7) FOR FAILURE TO REDUCE OR ELIMINATE
2 ARTIFICIAL OR TRADE-DISTORTING BARRIERS TO
3 FOREIGN INVESTMENT.—(A) The trade authorities
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—

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

17 (ii) further clarifying the “minimum stand-
18 ard of treatment” provision, consistent with the

1 award in Glamis Gold (as defined in subpara-
2 graph (B)), by—

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

8 (II) explicitly stating that customary
9 international law requires an investor to
10 prove a general and consistent practice of
11 states, and that evidence for such practice
12 cannot be based on a past tribunal's inter-
13 pretation of the minimum standard of
14 treatment, and that is followed based on a
15 sense of legal obligation (*opinio juris*); and

16 (III) explicitly stating that, unless an
17 investor is able to prove otherwise based on
18 the customary international law standard,
19 “arbitrary” conduct by a state or state ac-
20 tions that upset an investor's expectations
21 do not violate the minimum standard of
22 treatment;

23 (IV) establishing a mechanism where-
24 by the party being sued by an investor and
25 the investor's home country may agree

1 that a claim submitted to arbitration is not
2 a claim for which an award in favor of the
3 claimant may be granted by the tribunal;
4 and

5 (V) stating, in the preamble of the
6 agreement, that the agreement does not
7 accord greater substantive rights than do-
8 mestic investors have under domestic laws
9 where, as in the United States, protection
10 of investor rights under domestic law equal
11 or exceed those set forth in the agreement.

12 (B) In this paragraph, the term “Glamis Gold”
13 refers to the investor-state dispute settlement case
14 under the North American Free Trade Agreement
15 referred to as *Glamis Gold, Ltd. v. United States*
16 (award dispatched to parties on June 8, 2009).

