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
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
19 award in Glamis Gold (as defined in subpara-
20 graph (B)), by—

1 (I) explicitly stating that the investor
2 bears the burden of establishing that a
3 state has violated a principle of customary
4 international law regarding the minimum
5 standard of treatment of aliens;
6 (II) explicitly stating that customary
7 international law requires an investor to
8 prove a general and consistent practice of
9 states, and that evidence for such practice
10 cannot be based on a past tribunal's inter-
11 pretation of the minimum standard of
12 treatment, and that is followed based on a
13 sense of legal obligation (opinio juris); and
14 (III) explicitly stating that, unless an
15 investor is able to prove otherwise based on
16 the customary international law standard,
17 "arbitrary" conduct by a state or state ac-
18 tions that upset an investor's expectations
19 do not violate the minimum standard of
20 treatment;
21 (IV) establishing a mechanism where-
22 by the party being sued by an investor and
23 the investor's home country may agree
24 that a claim submitted to arbitration is not
25 a claim for which an award in favor of the

1 claimant may be granted by the tribunal;
2 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
12 under the North American Free Trade Agreement
13 referred to as Glamis Gold, Ltd. v. United States
14 (award dispatched to parties on June 8, 2009).