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## SENATE SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

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SENATOR  
LIZ FIGUEROA  
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August 31, 2004

California Congressional Delegation  
United States Congress  
Washington D.C. 20515

We are writing to express our deep concerns with the Central American Free Trade Agreement (CAFTA) and to urge your no vote when this agreement comes before you in Congress. As members of the California State Legislature, we are concerned that, as currently written, this trade and investment agreement could have far reaching impacts on our law making authority. There is no question of our State's economic interest and long-standing commitment to international trade. However, as the reach of trade agreements expands beyond tariffs and quotas to the ways in which we regulate the environment, the quality of food and water, public health and labor protections, state actions have increasingly fallen within the scope of these new trade rules. This disrupts the traditional plenary power of the states in our federal system as the principle guardians of the health, safety and welfare of our citizens and undermines more than two centuries of American constitutional values.

Of specific concern to us in the CAFTA is the inclusion and expansion of the troubling NAFTA investor to state provisions. These provisions undermine state and local laws by providing private foreign investors extraordinary powers to challenge legitimate governmental regulations before international tribunals, bypassing domestic courts. This provision exists in the agreement in spite of the Trade Act of 2002, which directed trade negotiators to ensure that greater rights are not given to foreign investors than United States investors enjoy under the United States Constitution. The CAFTA investment provisions not only fall short of that standard, but in fact include language that would allow foreign investors to challenge government decisions on natural resource agreements, such as oil extraction and mining contracts with a government. Additionally, the definition of "investment" has been expanded to include intellectual property, an expansion that could threaten the ability of governments to secure affordable drugs for their citizens. With California laws, yet again, being challenged in a private NAFTA dispute panel, we have cause to be alarmed.

The most recent NAFTA case, filed by Glamis Gold Ltd., provides a stark illustration of the threats posed to the traditional regulatory power of state governments as a result of current models of trade and investment agreements. In December, Glamis Gold, a Canadian gold mining corporation, used the NAFTA Chapter 11 provisions to file a \$50 million claim alleging that California's recently enacted reclamation requirements for open-pit mines located near Native American sacred sites violate the NAFTA investor protection provisions. After extensive debate, California found this reclamation law to be necessary to mitigate the devastating impacts



of hardrock mining, and took legitimate actions consistent with the authority granted to states. Domestic courts have repeatedly upheld the authority of states to regulate mining claims covered by the Mining Law of 1872, particularly in the context of environmental regulations.

Accordingly, under domestic law, in a court the Glamis claim would fail. A victory in this case for Glamis Gold would represent a substantial expansion of foreign investor rights beyond the rights granted to domestic investors under domestic law.

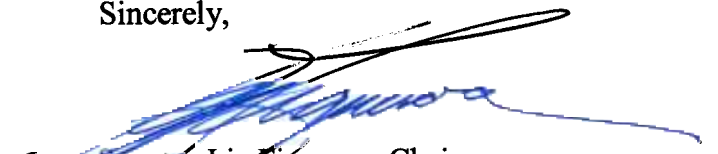
In addition, the massive scope, broad definitions and lack of clarity to which the Services Chapter of the CAFTA will apply to state and local law is troubling to us. The services language suggests that a wide range of public protections could be considered barriers to trade, including any law, regulation, rule, procedure or decree that has an effect on trade in services. This would include laws regulating a multitude of publicly provided services such as health care, the delivery of water, postal services, garbage delivery, education and many other services commonly provided in the public interest. The text exempts services "supplied in the exercise of governmental authority," but this is defined as a service "supplied neither on a commercial basis, nor in competition with one or more service suppliers." Currently, many public services are provided in that manner. For example, some government services include fees, such as water and electricity rates, national park fees or postal fees, and few government services, such as transportation and water delivery, are provided as an exclusive monopoly.

Finally, we remain concerned over the process being used by the U.S. Trade Representative (USTR) to bind states to procurement chapters of international trade agreements. In spite of repeated attempts by state and local legislators to be consulted on trade related matters, last fall the USTR sought approval only from state governors when committing states to the procurement chapters of upcoming trade agreements, including the CAFTA. As you are aware, determining procurement policies is a responsibility of state legislatures and city councils, the USTR's efforts undermine this authority. Any state consent to procurement agreements without consulting the Legislature could jeopardize important California procurement laws promoting economic development, environmental protection and human rights.

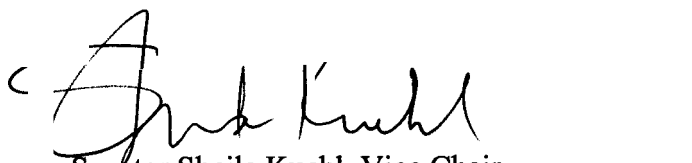
For these reasons, we urge you to vote no on the Central American Free Trade Agreement (CAFTA), and send a signal to the Administration that future trade agreements based on this model are unacceptable.

Thank you for your attention to our concerns. We look forward to continuing to work with you towards the creation of trade and investment agreements that preserve the efficacy and integrity of our long standing democratic institutions.

Sincerely,



Senator Liz Figueroa, Chair  
Senate Select Committee on  
International Trade Policy and State Legislation



Senator Sheila Kuehl, Vice Chair  
Senate Select Committee on  
International Trade Policy and State Legislation