

The National Mining Association (NMA) hereby applies for leave to file the attached non-party Submission in support of the Claimant, Glamis Gold Ltd. (Glamis), pursuant to the Statement of the Free Trade Commission on Non-Disputing Party Participation, adopted October 7, 2003, and in conformity with this Tribunal's Procedural Order Number Eight, adopted January 1, 2006.

DESCRIPTION OF APPLICANT AND STATEMENT OF INTEREST

The NMA is the only national not-for-profit trade organization that represents the interests of the mining industry before each branch of the United States government and the public. Keeping with the tradition set by its predecessor organizations – the National Coal Association and the American Mining Congress – over one hundred years ago, the NMA advocates public policies designed to protect and expand domestic mining opportunities that are of vital importance to the United States' economic prosperity and national security. Its membership comprises more than 325 corporations that span the entire spectrum of the mining sector. Among its members, the NMA counts the producers of most of the United States' coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral-processing machinery and supplies; bulk mineral and coal transporters; financial service, consulting and engineering firms; and other businesses that provide goods and services to the mining industry. The Claimant/Investor Glamis Gold Ltd. is a member of the NMA.

The NMA respectfully suggests that the Tribunal should accept its non-party submission because the submission satisfies each factor listed in Paragraph 6 of the Statement of the Free Trade Commission on Non-Disputing Party Participation. To begin with, the NMA has a significant interest in this arbitration, and it brings a unique perspective, one unable to be adequately put forth by any other party or non-party, to this dispute – that of the mining industry

as a whole. Many of NMA's foreign-owned members hold federal mining claims in the United States that are protected by the provisions of the North American Free Trade Agreement (NAFTA). As NAFTA directly aims to encourage foreign investments in the participating Parties' territories and shield them from confiscatory government actions, the NMA has an abiding interest in ensuring that these dual objectives are achieved and sustained. The NMA is deeply concerned that the unprecedented and arbitrary actions taken against Glamis's Imperial Project by the United States and California – collectively, the Respondent – will undermine NAFTA's central purpose and have far-reaching negative consequences for the United States mining industry.

NMA's Submission also addresses matters within the scope of the arbitration. As the Submission explains, NMA's members are acutely affected by unexpected and unjustified regulatory actions, like the ones at issue here, that destroy sunk investments in mining projects – capital investments that must be put into the ground years before any valuable minerals are extracted out of it. Because mining operations, by their very nature, require long-term and substantial commitments of capital, the stability of a host country's operative regulatory environment plays a crucial role in decisions to invest in a mining project there, and often represents the decisive factor for whether a particular project goes forward. As a result, the investments crucial for bringing a mining project to fruition tend to migrate toward projects planned in countries that offer predictable regulatory climates. The regulatory actions taken by the Respondent – which upset Glamis's reasonable expectations and wiped out its significant investment in the Imperial Project – will predictably result in the flight of investor capital from the U.S. market.

This mass departure of capital will only be hastened by the novel “complete backfilling” reclamation requirement adopted by California to block the Imperial Project. The conventional wisdom among the mining industry and government regulators holds that complete backfilling requirements are infeasible reclamation measures that operate to prohibit many otherwise economical open-pit mining projects, while securing only uncertain (if any) countervailing environmental benefits. Yet California instituted those measures anyway, in an action specifically undertaken to stop Glamis’s project from moving forward. The apprehension that such devastating requirements may proliferate in other United States jurisdictions in the wake of California’s unprecedented step works yet more uncertainty into the regulatory environment and further spoils investor appetites for mining projects in the United States.

The NMA thus offers this Submission because of the vital stake its members – and the public – have in ensuring that the Respondent does not disregard its NAFTA commitments by creating intolerable regulatory uncertainty in its mining laws or by imposing or countenancing *de facto* bans on the open-pit mining of valuable mineral resources through reclamation requirements inconsistent with accepted and economically feasible best practices.

Pursuant to the Statement of the Free Trade Commission on Non-Disputing Party Participation, the NMA states that no part of this Submission was authored by counsel for any

disputing party, and no person or entity other than the NMA made a monetary or other contribution to the preparation of this Submission.

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Respectfully submitted,



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