

**STATEMENT ON HOW  
THE UNITED STATES – BAHRAIN FREE TRADE AGREEMENT  
MAKES PROGRESS IN ACHIEVING  
THE APPLICABLE PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES OF  
THE TRADE ACT OF 2002**

**A. INTRODUCTION**

The United States-Bahrain Free Trade Agreement (“FTA” or “Agreement”) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act (“TPA Act”). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the Agreement.

Under the Agreement, 100 percent of bilateral trade in consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement. In particular, trade in textile and apparel goods will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Furthermore, Bahrain will provide immediate duty-free access to U.S. agricultural exports in 98 percent of agricultural tariff lines. Certain sensitive agricultural goods will have longer periods for duty elimination (up to 10 years) in both countries, or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (“TRQs”) during a 10-year transition period by the United States. Bahrain also will substantially reduce barriers to bilateral trade in services, including financial services. The Agreement includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The FTA forms an integral part of the Administration’s larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic and political ties with a long-time partner in the Middle East, and is a further step in achieving President Bush’s goal of a broader United States-Middle East Free Trade Agreement (“MEFTA”) by 2013.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, President Bush strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

**B. OVERALL TRADE NEGOTIATING OBJECTIVES**

The TPA Act sets out a variety of “overall trade negotiating objectives” that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2)

further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

## **1. Market Opening**

The Agreement will result in substantial market access across almost all economic sectors. For consumer and industrial goods (including textile and apparel goods), tariffs will be eliminated immediately on 100 percent of bilateral trade between the United States and Bahrain. Bahrain maintains an across-the-board tariff of approximately five percent on almost all such goods, though certain goods have tariffs as high as 20 percent. In addition, Bahrain will eliminate tariffs on virtually all U.S. agricultural exports immediately upon entry into force of the Agreement. For both countries, certain sensitive agricultural goods will have longer periods for duty elimination (up to 10 years) or will be subject to other provisions, including, in some cases, the application of TRQs during a 10-year transition period by the United States.

The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance, and financial services. It also opens Bahrain's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Bahrain is not a signatory to the World Trade Organization ("WTO") Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

## **2. Stronger International Trade Disciplines**

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The FTA prohibits tariffs when digital products are delivered over the Internet.

The Agreement recognizes that workers and firms can fully realize its market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO TRIPS Agreement and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. In addition, the FTA contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to enforce a Party's rights where a dispute settlement panel finds that the other Party has breached its obligations.

### **3. Foster Economic Growth**

U.S. exports to Bahrain have averaged about \$435 million per year over the last four years. While that figure is small in comparison to that of other U.S. trading partners, these exports have been concentrated in a narrow range of manufacturing categories: transportation equipment (motor vehicles and airplanes); machinery (other than electrical); computer and electronic products; fabricated metal products; food manufacturing; and chemicals. The removal of tariffs on all industrial goods will boost U.S. competitiveness in Bahrain, especially in the aforementioned product categories. Coupled with the gains expected to result from greater liberalization of trade in services, heightened protection of intellectual property rights, and increased transparency, the FTA is expected to make a positive contribution to U.S. economic welfare and the expansion of global trade.

### **4. Labor Rights and Environmental Protection**

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

Both countries reaffirm through the Agreement their respective obligations as members of the International Labor Organization (“ILO”) and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Agreement commits each country to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other country. Moreover, while recognizing each Party’s right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the Agreement commits both Bahrain and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each country to ensure that its laws and policies provide for high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the FTA contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party’s right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The Agreement also includes language similar to that on labor rights that requires each country to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and to consider establishing further consultative mechanisms to facilitate such cooperation.

## **C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES**

The TPA Act establishes a variety of “principal trade negotiating objectives.” The Agreement makes substantial progress toward each of the applicable goals set out in the act.

### **1. Opening Markets for U.S. Goods**

Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to Bahrain’s market. For example, in addition to cutting tariffs on agricultural goods, the United States and Bahrain will work together on sanitary and phytosanitary (“SPS”) matters, with a view to facilitating trade between the countries, while appropriately protecting human, animal, and plant life and health. They will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade (“TBT”) that hinder U.S. companies from taking advantage of open markets.

### **2. Opening Markets for U.S. Services**

The FTA creates new market opportunities in Bahrain for a range of key U.S. services suppliers and will lock in access in sectors where Bahrain’s services market is already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing “negative list” approach. This means that all services sectors are subject to the Agreement’s rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Bahrain’s services markets in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement’s market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the FTA, Bahrain will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation (“MFN”) treatment, and additional market access benefits to the other Party’s express delivery services. The FTA also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

### **3. Foreign Investment**

A principal trade negotiating objective of the United States is to achieve, in agreements with U.S. trading partners, strong and predictable legal frameworks for U.S. investors. In 1999,

the United States and Bahrain negotiated a comprehensive bilateral investment treaty (“BIT”), the *Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment* (1999). The BIT was based on the U.S. model for investment agreements and provides both substantially increased protections and improved transparency for U.S. investors in Bahrain. In particular, the BIT: (1) applies to all forms of U.S. investment in Bahrain; (2) requires that covered U.S. investments receive the better of national treatment or MFN treatment provided by Bahrain; (3) prohibits the imposition of performance requirements on covered U.S. investments by Bahrain; (4) allows expropriation of U.S. investments by Bahrain only in accordance with customary international law; and (5) allows U.S. investors to bring disputes with the Bahraini government to binding international arbitration, among other provisions.

Given the comprehensive nature of the BIT and the fact that it was concluded so recently, the Agreement contains no investment chapter. However, certain provisions of Chapter Ten (Cross-Border Trade in Services) extend additional benefits to investors and investments that are covered under the BIT. Chapter Eleven (Financial Services) provides supplementary obligations regarding the treatment of financial institutions.

#### **4. Intellectual Property Rights**

The FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that Bahrain will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The FTA requires Bahrain to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the FTA, Bahrain will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires Bahrain to direct its agencies to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require Bahrain to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Bahrain to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The FTA will also require Bahrain to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory

approval for their patented products. Under the Agreement, Bahrain will protect information generated in connection with pharmaceutical and agricultural chemical product approvals for five and 10 years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The FTA also commits Bahrain to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them.

## **5. Transparency**

The Agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes provisions that will ensure that Bahrain observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing cross-border trade in services, financial services, government procurement, customs administration, telecommunications, TBT, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The FTA contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives.

## **6. Regulatory Practices**

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on telecommunications, cross-border trade in services, government procurement, TBT, SPS, and customs administration. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

## **7. Electronic Commerce**

Under the FTA, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The FTA includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to

a duty based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

## **8. Trade in Agricultural Products**

The FTA includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. Under the Agreement, which covers all agricultural products, Bahrain will provide immediate duty-free access for U.S. exports in 98 percent of agricultural tariff lines, and will phase out its remaining tariffs within 10 years.

In addition, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

## **9. Labor Rights and Environmental Protection**

Under the Agreement, Bahrain and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their laws provide for labor standards that are consistent with internationally recognized labor rights, as set forth in the Agreement. The Agreement makes clear that it is inappropriate for a Party to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with the other Party or investment in its territory by investors of the other Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedure, is a commitment by each country not to fail to effectively enforce its labor laws. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The Agreement also commits Bahrain and the United States to cooperate on labor issues, in part through the Labor Cooperation Mechanism described in an annex to the labor chapter.

Environmental commitments are also included in the core text of the FTA. As is the case for labor rights, a key component of the FTA's environmental provisions is an enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The Agreement also commits Bahrain and the United States to ensure that their domestic laws and policies provide for high levels of environmental protection and to strive to continue to improve these laws and policies. Through the Agreement, Bahrain and the United States expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. The Agreement also commits

Bahrain and the United States to cooperate on environment issues, in part pursuant to a United States-Bahrain Memorandum of Understanding on Environmental Cooperation.

## **10. Dispute Settlement**

The FTA includes innovative procedures for settling disputes that may arise between the Parties over its implementation. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two countries to release their legal briefs and other filings to the public, and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

The FTA's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the other Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism allows the prevailing Party to suspend tariff benefits under the Agreement if the losing Party fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Finally, dispute settlement is available under the Agreement for labor or environmental disputes relating to the Parties' obligations not to fail to effectively enforce their labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, again while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

## **11. Trade Remedies**

The FTA does not address antidumping or countervailing duty issues. Thus, the Agreement does not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The Agreement includes a bilateral safeguard procedure, similar to the procedures in past U.S. free trade agreements, which will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty elimination under the Agreement could result in damaging levels of textile or apparel imports. The FTA does not affect U.S. rights to take safeguard actions under sections 201 to 201 of the Trade Act of 1974, which implement the WTO Safeguards Agreement and General Agreement on Tariffs and Trade (GATT) 1994.

## **D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS**

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

### **1. Labor Cooperation**

The United States and Bahrain are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on U.S. and Bahraini labor laws and how their respective systems operate. The two Parties will continue to consult and work together to promote respect for the principles embodied in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. Officials of the U.S. Department of Labor and Bahrain's Ministry of Labor and Social Affairs and other appropriate agencies will participate in these consultations and future cooperation.

### **2. Domestic Policy Objectives**

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run counter to the Agreement's services rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

### **3. Multilateral Environmental Agreements and GATT Article XX**

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are important concerns for both the United States and Bahrain. The FTA expressly recognizes the importance of multilateral environmental agreements ("MEAs"),

including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Bahrain to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the two countries will cooperate in promoting effective implementation of MEAs to which they are both parties.

#### **4. Currency and Exchange Rate Manipulation**

Section 2102(c)(12) of the TPA Act states that “[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.”

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement, along with the BIT, promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund (“IMF”), and to consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

#### **5. Reporting Requirements**

As required under the TPA Act, the Administration has provided a report to the Congress describing Bahrain's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Bahrain, which will be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen Bahrain's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.