

**STATEMENT ON HOW
THE UNITED STATES—MOROCCO FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The United States-Morocco 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, customs duties on almost all non-textile industrial and consumer good exports originating in the United States and Morocco will be eliminated as soon as the Agreement enters into force. The Agreement covers all agricultural goods in both countries and, in some cases, provides new access to a market previously closed to U.S. exports. Certain sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (“TRQs”). In addition, the Agreement contains a provision that affords U.S. exporters of products such as wheat, beef, poultry, corn, soybeans, and corn and soybean products equal or better access to Morocco’s market, as is provided to all other trading partners, thereby giving U.S. exporters a new tool to compete with Europe and others in Morocco’s market. Morocco also will substantially reduce barriers to bilateral trade in services and investment. 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 North Africa.

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 industrial (non-textile) products, tariffs will be eliminated immediately on more than 95 percent of bilateral trade between the United States and Morocco. Morocco's tariffs on these products now average 28 percent, and duties on some products of export interest to U.S. firms are as high as 50 percent. In addition, Morocco will eliminate tariffs on many U.S. agricultural exports immediately upon entry into force of the Agreement. For both countries, certain sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of TRQs. Finally, duties on all "originating" textile and apparel goods traded between the two countries will be eliminated either immediately or progressively under the Agreement. The Agreement contains exceptions regarding the staging of tariff reduction and elimination for specific textile and apparel articles, and provides that all such duties will be eliminated after nine years.

The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance, and financial services. It also opens Morocco's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Morocco 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 implement the 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 trade and investment in 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 dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan model of World Production and Trade (“Michigan model”) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual global welfare by \$7.5 billion when fully implemented. In absolute terms, a major share of this positive welfare effect will be enjoyed by the United States (\$6.0 billion, or 0.05 percent of GNP). Morocco’s annual welfare will increase by \$0.9 billion (2.0 percent of GNP). However, the Michigan model assumes that all services barriers are removed in the United States, which is not the case. As a result, the study overestimates the welfare benefits for the United States by including the welfare benefits due that result from the removal of U.S. services barriers. On the other hand, formal models, such as the Michigan model, may tend to underestimate the benefits of free trade agreements because their scope does not include assessment of the impact of rule changes such as improved IPR protection, because they group many industries and products into a limited number of categories for analysis, and because not all the expected effects of the Agreement are necessarily measured (*i.e.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will 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 United States-Morocco Free Trade 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 Morocco 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 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 Morocco’s market. For example, in addition to cutting tariffs on agricultural goods, the United States and Morocco 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 Morocco for a range of key U.S. services suppliers and will lock in access in sectors where Morocco’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 Morocco’s services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, 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, Morocco 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 confirms that market access restrictions that Morocco includes for its postal sector do not pertain to 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

The FTA commits Morocco to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Morocco. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Morocco on the same basis as Moroccan investors or other foreign investors across the full spectrum of economic activity.

Under the Agreement, Morocco will provide U.S. investors due process rights and recourse in the event of expropriations that are consistent with U.S. legal principles and practice. For example, the FTA includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The Agreement thus makes explicit that the treatment required by this obligation is grounded in the due process standards embraced by the United States and other major legal systems of the world.

With regard to recourse in the event of expropriations, the FTA draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The FTA clarifies, for example, that takings are limited to property rights and property interests, not other types of interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as is the case in U.S. practice, non-discriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely result in expropriation. While the FTA commits the United States to continue to provide Moroccan investors a high level of protection and due process, the Agreement gives Moroccan firms no greater substantive rights than U.S. companies already enjoy in the United States.

The FTA also commits Morocco not to burden U.S. investors with protectionist “performance requirements” – such as rules requiring investors to buy local products – and ensures that Morocco will allow U.S. investors to transfer funds related to their investments into and out of Morocco.

The FTA provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the countries to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The

Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

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 Morocco 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 FTA requires Morocco to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

Under the FTA, Morocco will ensure that copyright owners maintain rights to temporary copies of their works that others have on their computers, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two countries 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 Morocco to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Morocco 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 Morocco to protect against unauthorized disclosure or unfair commercial use of 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, Morocco will protect product information generated in connection with pharmaceutical and agricultural chemical product approvals for five and ten years, respectively.

These standards are made more meaningful through requirements for tough penalties to combat piracy and counterfeiting, including, in civil cases, procedures for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The FTA also commits Morocco to ensure that its 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. Morocco must also authorize its enforcement officials to act against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against such illegal products.

5. Transparency

The Agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade and investment commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes provisions that will ensure that Morocco 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 services, government procurement, customs administration, investment, telecommunications, 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 in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties that take into account the gravity of 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 most-favored-nation status and national 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 safeguards for producers of import-sensitive agricultural products.

Under the FTA, 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.

The Agreement also includes safeguard procedures to aid domestic industries that are facing increased imports or imports below a price threshold of certain agricultural goods. For the United States, such goods include canned olives, dried onion and garlic, canned fruit, processed tomato products, and orange juice.

9. Labor Rights and Environmental Protection

Under the Agreement, Morocco 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 principles and rights as an encouragement for trade or investment with 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 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 Morocco and the United States to cooperate on labor issues, in part by creating a Subcommittee on Labor Affairs to oversee the operation of 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 Morocco and the United States to ensure that their domestic laws provide for high levels of environmental protection and to strive to continue to improve these laws and policies. Through the Agreement, Morocco 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 Morocco and the United States to cooperate on environment issues, in part by creating a Subcommittee on Environmental Affairs to oversee the operation of the environment chapter.

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 equivalent remedies to enforce panel decisions under the Agreement, regardless of whether they address the Agreement's commercial, labor, or environmental provisions. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism allows a prevailing Party to suspend tariff benefits under the Agreement if a 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' effective enforcement of their labor or environmental laws. If a panel determines that a Party has not met its enforcement obligations 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 established by the Joint Committee for appropriate labor or environmental initiatives. 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 fully preserves 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 those 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 section 201, which implements 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 United States-Morocco FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Morocco 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 Moroccan 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 Morocco's Ministry of Employment, Social Development, and Solidarity 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 both trade in 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 and investment 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 Morocco. 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 Morocco 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 states that, in 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 Investment, Cross-Border Trade in Services and Financial Services Chapters of the United States-Morocco FTA 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 that 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 consider whether countries manipulate the rate of exchange between their currency and the U.S. 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 described in Section 2102(c)(12) are examined in its analyses 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 Morocco’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 Morocco, 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 Morocco'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.