

Plan to Implement and Enforce the U.S.-Morocco Free Trade Agreement

Prepared by the Office of Management and Budget

This report fulfills the requirements of Section 2108(a) of the Trade Act of 2002 (“the Act”).¹ This section requires that when the President submits a trade agreement to Congress under the Act, the President also must submit concurrently a plan for implementing and enforcing the agreement. Specifically, the plan must include the following:

Section 2108(a)(1)—Border Personnel Requirements: A description of the additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

Section 2108(a)(2)—Agency Staffing Requirements: A description of additional personnel required by Federal agencies responsible for monitoring and implementing the trade agreement, including personnel required by the Office of the United States Trade Representative, Department of Commerce, Department of Agriculture, Department of Treasury, and such other agencies as may be necessary.

Section 2108(a)(3)—Customs Infrastructure Requirements: A description of the additional equipment and facilities needed by the United States Customs Service.

Section 2108(a)(5)—Cost Analysis: An analysis of the costs associated with each of the above items.

The Office of Management and Budget has requested appropriate agencies to provide information on any additional staffing and equipment that will be required to implement and enforce the U.S.-Morocco Free Trade Agreement and the costs associated with these needs. The agencies have reported that most can effectively implement and enforce the Morocco FTA within their existing budgeted resources. For those few areas where agencies have identified additional staffing needs, the Administration intends to adjust existing budgeted resources and does not anticipate requesting additional funding from Congress.

Section 2108(a)(1)—Border Personnel Requirements

No additional border personnel are required.

Section 2108(a)(2)—Agency Staffing Requirements

The following agencies have identified additional staffing needs to implement and enforce the Morocco FTA. The costs associated with these needs are negligible and can be accommodated within the Administration’s 2005 request with no adverse effect on agency performance.

¹ The description of the impact of the trade agreement on State and local governments as a result of increases in trade required by Section 2108(a)(4) will be provided separately by the Office of the United States Trade Representative.

Agency	# FTE	Purpose
Department of State	.33	Technical Assistance for the Middle East Partnership Initiative
Department of Commerce	2	Import Administration: To provide two AD/CVD trainings to Moroccan citizens as part of technical assistance that accompanies the FTA Agreement.
Department of Commerce—PTO	.5	USPTO: Monitoring, advising, and consulting on intellectual property rights.
Department of Agriculture— Foreign Agricultural Service	1	Implement and monitor agreement and provide technical capacity building assistance.
Department of Labor—Bureau of International Labor Affairs (ILAB)	.75	On board staff reassigned to administer the US-Morocco Free Trade Agreement (FTA)
Department of Treasury	.5	Implementation of Financial Services Provisions of Post NAFTA FTAs

Section 2108(a)(3)—Customs Infrastructure Requirements

It is anticipated that no significant additional equipment or facilities are needed by the United States Customs Service.

United States-Morocco Free Trade Agreement-- Impact on State and Local Governments

I. Introduction

The U.S.-Morocco Free Trade Agreement (FTA or Agreement) is an historic pact that will expand opportunities for workers, manufacturers, consumers, farmers, ranchers, and service providers in the United States. The Agreement will also support the economic and political reforms of a key Arab partner, while making a vital step toward Middle East free trade. States will benefit since more than 95 percent of bilateral trade in consumer goods and industrial products will become duty-free immediately upon the entry into force of the Agreement, with all remaining tariffs on industrial products to be eliminated within nine years -- the best market access package for such goods in any U.S. free trade agreement with a developing country. Key U.S. export sectors gain immediate duty-free access to Morocco, such as information technologies, machinery, construction equipment, and chemicals. The Agreement, which covers all agricultural products, opens Morocco's market for many U.S. farm products. Morocco will also accord substantial market access across its entire services regime, including key services sectors in the states such as audiovisual, express delivery, telecommunications, construction, engineering, and computer services.

One of USTR's statutory advisory committees, the Intergovernmental Policy Advisory Committee on Trade (IGPAC), is comprised of representatives and associations representing executive, legislative, and judicial branches of sub-federal government, as well as states, counties, and cities. The National Governors Association (NGA), Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), the National League of Cities (NLC), the National Association of Counties (NACo), and the National Association of Attorneys General (NAAG) are among the organizations represented on the IGPAC. In 2003 and 2004, USTR revitalized and significantly expanded membership and geographic representation on the IGPAC to include State Points of Contact designated by the Governors' offices as well as state legislators and attorneys general nominated by NCSL and NAAG respectively. In February 2004, USTR appointed Kay Wilkie, a public official from the State of New York, as IGPAC Chair.

Pursuant to the Trade Act of 1974, each of the advisory committees including the IGPAC was required to produce a report on the impact of the U.S.-Morocco FTA. In the IGPAC report on the U.S.-Morocco FTA (available in full at www.ustr.gov), the Committee recognizes that:

“This Agreement with Morocco, a long-standing ally of the US, would foster trade ties and deepen economic integration throughout Northern Africa, Europe and the Middle East...IGPAC members understand that bipartisan efforts in Congress...indicate active federal support for economic reform and trade

liberalization in the greater Middle East. Expanding global market access and broadening economic opportunity throughout this region are essential tools to address the potential socio-economic impact of demographic trends and to counteract the risk of terrorism.”

The committee further states that:

“ In principle, IGPAC members support the U.S.-Morocco Free Trade Agreement’s strategically essential goals of trade liberalization and reduction of regional barriers to trade and investment, and take this opportunity to also suggest some clarifications to certain provisions. The laudable US- Morocco FTA objectives of economic growth, employment creation, sustainable development, geo-strategic market reforms and improvements to living standards and market opportunities should be pursued in a manner consistent with constitutional and public policy obligations to state and local constituents.”

Based upon IGPAC’s report and other comments received regarding the potential impact of the FTAs on sub-federal governments, this Report addresses three main areas of interest to states and localities in the U.S.-Morocco FTA: government procurement, services, and investment. Additionally, USTR has also taken into account states’ and localities’ overall interest in preserving sub-federal regulatory abilities and prerogatives.

II. Government Procurement

During the Uruguay Round negotiations, 37 states agreed to comply with the Agreement on Government Procurement (GPA), an agreement under the auspices of the World Trade Organization (WTO). These commitments are limited to the procurement of the entities that each state specified in Annex 2 to the GPA and are subject to thresholds and conditions for such procurement set out in the GPA. These states volunteered to cover some of their procurement because they understood that having states agree to nondiscriminatory procurement significantly improves the United States’ ability to persuade our trading partners to open their state or other sub-central procurement markets to U.S. suppliers, thus creating new opportunities for U.S.-based companies and workers.

Last September, USTR asked if those 37 states would be willing to extend to new FTA partners the same opportunities that they currently extend to GPA signatory countries. USTR also asked the 13 states that are not covered by the WTO GPA whether they would be willing to have their procurement covered under the WTO GPA, as well as under the free trade agreements under negotiation. States that are already covered by the WTO GPA do not need to change their existing government procurement procedures or practices to implement the government procurement provisions in an FTA. Even a state that has not yet covered any procurement under a trade agreement would generally not require any changes in its procedures or practices to comply with GPA or FTA requirements for covered procurements. As of the date of this report, 23 states have

agreed to cover some of their procurement under the U.S.-Morocco FTA. A list of the states is included as Attachment 1.

In response to state inquiries, USTR also prepared for states a Trade Fact Sheet with the following points of clarification, to ensure that the states are fully informed:

- state commitments in government procurement are voluntary;
- a state decides the extent to which it will cover its procurement under the new agreements;
- states may exclude sensitive goods, services, and local development programs;
- the agreements also exclude preference programs for small business, distressed areas, minorities, and women;
- states are explicitly permitted to maintain their own environmental policies for “green” procurement;
- county and city procurement is not covered by any of the agreements; and
- the thresholds for the application of the FTAs are high: \$477,000 for purchases of goods and services and \$ 6.7 million for construction contracts.

The IGPAC report states that regarding procurement provisions in Chapter Nine of the FTA, IGPAC members support the basic intent of expanding market access through increasingly fair and open bidding processes. IGPAC members also note that coverage of state procurement in the FTA only pertains to those sub-central entities that have affirmatively offered to include their procurement in the FTA. IGPAC further comments that state governments reserve the right to condition their agreement not only on the terms of the final agreement and implementing legislation, but also on the inclusion of various terms and conditions in their acceptance.

Morocco’s nearly \$5 billion government procurement market accounts for approximately 17 percent of the country’s GDP. Morocco’s public companies and state-owned enterprises purchase roughly \$2.9 billion in goods and services annually; the federal government and local governments purchase another \$1.4 billion and \$400 million respectively.

Under the Agreement, Moroccan government agencies must provide the same treatment to U.S. firms as Moroccan firms receive, when purchasing more than \$175,000 in goods or services or \$6.725 million in construction services. Morocco has covered 30 central government entities in its government procurement commitments. The Agreement covers all of Morocco’s provinces and prefectures—the U.S. equivalent of states. The provinces and prefectures have relatively modest budgets; however, they provide U.S. vehicle manufacturers, waste management providers, and engineering services providers with expanded export opportunities.

III. Chapter Eleven : Cross-Border Trade in Services

This Chapter covers the supply of services on a cross-border basis which includes services supplied from the United States into Morocco or vice versa, for example, supply via electronic means; by a national of a Party in the territory of the other Party; as well as the consumption of services in the other Party. Services supplied by an investment are generally covered under the Investment Chapter but also enjoy the protection of certain provisions in the Cross-Border Services Chapter. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations which may be inconsistent with core obligations such as market access, national treatment, and most-favored-nation treatment. In its market access commitments, the U.S. includes a reservation for existing state level non-conforming measures (“a grandfather clause”); existing local level non-conforming measures are given the same protection through the text itself.

Nothing in Chapter Eleven or any other provision of the U.S.-Morocco FTA requires the privatization or deregulation of any government services, including water supply or distribution services, education services, or health services. The Chapter also excludes services supplied in the exercise of governmental authority.

The implementation of the Cross-Border Services Chapter should not require an additional commitment of resources by state and local governments.

The IGPAC report comments that “State and local governments generally support objectives to liberalize trade in services industries as a means of increasing market access for U.S. firms and for reaching trade development objectives. IGPAC members equally assert that the independent exercise of state and local legislative and regulatory power is critical to protecting citizens’ interests and safeguarding the federal system.” The IGPAC further notes that a general exemption for existing state and local measures could leave open the possibility of disputes about future changes, highlighting the need for USTR to educate and consult with state and local entities so that they are aware of such constraints upon future actions.

IV. Chapter Twelve: Financial Services

This Chapter covers measures relating to investment in regulated U.S. and Moroccan financial institutions and cross-border trade in financial services via electronic means, consumption abroad, or nationals who travel abroad to supply financial services. The Chapter does not apply to measures relating to public retirement plans or social security systems. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations which may be inconsistent with core obligations such as national treatment and most-favored-nation treatment. In its market access commitments, the U.S. includes a reservation for existing state level non-conforming measures (“a grandfather clause”); existing local level non-conforming measures are given the same protection through the text itself.

The implementation of the Financial Services Chapter should not require an additional commitment of resources by state and local governments.

V. Chapter Ten: Investment

The investment chapter of the FTA draws upon and clarifies investment protections that have been included in U.S. treaties and free trade agreements for decades. In accordance with the directives provided by Congress in granting Trade Promotion Authority, the provisions of the FTA on investment are designed to ensure that foreign investors do not receive greater substantive rights than U.S. investors. We have also taken additional steps to protect States' regulatory authority.

First, while state and local measures are covered, all existing inconsistent measures are excluded from the obligations in the investment chapter pertaining to most-favored nation treatment, national treatment, performance requirements, and senior management and boards of directors. Only future State measures will be covered by these provisions.

Second, the investment Chapter draws directly upon U.S. legal principles and practices. For example, consistent with U.S. takings and due process protections, the FTA clarifies that only property rights or property interests in an investment are entitled to expropriation protection. The expropriation provision also incorporates standards defined by the U.S. Supreme Court for determining when a government measure rises to the level of an expropriation.

Third, we have taken measures to ensure that arbitration panels interpret the FTA in accordance with its intent. For example, governments that are party to the FTA have the authority to issue interpretations of the investment provisions that are binding on arbitration panels. Furthermore, both governments that are party to the FTA will be engaged at every step of the litigation process. Even FTA partners who are not litigants in the dispute may make submissions during litigation commenting on the interpretation of the investment provisions. An interim review procedure will allow review of draft decisions by litigants, and by the other FTA partner not directly involved in the dispute. Litigants, including the defending government, will be given an opportunity for comment at this stage.

Fourth, we have refined the investor-state dispute resolution process to help expedite the process and weed out frivolous claims. For example, we have developed procedures to expedite the selection of arbitrators. Furthermore, the FTA includes an expedited procedure to dismiss frivolous claims (based on Rule 12(b)(6) of the Federal Rules of Civil Procedure) and handle jurisdictional objections. To further deter frivolous claims, the FTAs expressly authorize awards for attorneys' fees and costs after deciding whether a claimant has raised a frivolous claim.

Finally, we have taken steps to enhance transparency and public involvement in the investor-state arbitration process. Amicus submissions are expressly authorized and open hearings are required. The Administration will provide an opportunity for public input into U.S. Government positions in matters related to investment disputes. In the past, we have provided briefings and shared proposed positions with a variety of stakeholders on a regular basis. We will continue to do so as a general matter and upon request.

The IGPAC report states that:

“Where agreements are reached with countries such as Morocco, with less fully developed legal systems, inclusion of a wholly separate litigation process, applicable only to foreign commerce and investment, may be viewed as necessary at the moment for creating the secure, predictable legal conditions in such countries that are conducive to attracting and retaining international investment...IGPAC members do welcome those Chapter 10-Section B provisions in the FTA that bring about greater transparency, inclusion of non-disputing party and amicus curiae submissions, and consideration of whether claims or objections may be frivolous. IGPAC also appreciates that the Agreement does not include an appellate mechanism in the investor-state provisions. It is hoped that efforts to strengthen and reform the administration of justice in Morocco and the Middle East region may ameliorate legitimate concerns in the future about these legal systems.

VI. Regulatory Interests

The U.S.-Morocco FTA does not affect the right of the United States and sub-federal governments to establish, maintain, and fully enforce domestic laws protecting consumers, health, safety, and the environment.

VII. Conclusion

States and localities are poised to take advantage of the U.S.-Morocco FTA. At the same time that the U.S.-Morocco FTA can build bridges of free trade with economic and social reformers in the Middle East, it will also open new markets for American goods and services. Because the U.S.-Morocco FTA will immediately eliminate tariffs on 95 percent of bilateral trade in consumer and industrial products, with all remaining tariffs to be eliminated within nine years, America’s companies and workers will receive immediate benefits. The Agreement also significantly reduces barriers to U.S. agricultural products and services. We do not believe that state and local governments will need additional resources to deal with the effects of increased trade under the U.S.-Morocco FTA.

Attachment 1

SCHEDULE OF THE UNITED STATES

Arkansas

Executive branch agencies, including universities

This Chapter does not cover procurement by the Office of Fish and Game or procurement by executive branch agencies of construction services.

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services

Department of Transportation

Department of Public Works

Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)

State universities

State colleges

Florida*

Executive branch agencies

Hawaii

Department of Accounting and General Services

This Chapter does not cover procurement by the Department of Accounting and General Services of software or construction services.

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Kansas

Executive branch agencies

This Chapter does not cover procurement by executive branch agencies of construction services, automobiles, or aircraft.

Kentucky
Division of Purchases, Finance and Administration Cabinet

This Chapter does not cover procurement by the Division of Purchases, Finance and Administration Cabinet for construction projects.

Louisiana
Executive branch agencies

Maryland*
Office of the Treasury
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Human Resources
Department of Licensing and Regulation
Department of Natural Resources
Department of Personnel
Department of Public Safety and Correctional Services
Department of Transportation

Mississippi
Department of Finance and Administration

This Chapter does not cover procurement of services by the Department of Finance and Administration.

Nebraska
Central Procurement Agency

New Hampshire*
Central Procurement Agency

New York*
State agencies
State university system

This Chapter covers public authorities and public benefit corporations, with the exception of those entities with multi-state mandates.

This Chapter does not cover the procurement of transit cars, buses, and related equipment.

Oregon
Department of Administrative Services

Rhode Island

Executive branch agencies

This Chapter does not cover the procurement by executive branch agencies of boats, automobiles, buses, or related equipment.

South Dakota

Central Procuring Agency (including universities and penal institutions)

This Chapter does not cover procurement by the Central Procuring Agency of beef.

Texas

Texas Building and Procurement Commission

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Executive branch agencies, including:

- General Administration
- Department of Transportation

State Universities

This Chapter does not cover procurement by executive branch agencies of fuel, paper products, boats, ships, or vessels.

Wyoming*

Procurement Services Division

Department of Transportation

University of Wyoming

Notes to Schedule of the United States

In addition to the conditions specified in the General Notes in Annex 9-F, the following conditions apply:

1. For the states marked by an asterisk (*), the Chapter does not cover the procurement of construction-grade steel (including requirements on subcontracts), motor vehicles, or coal.
2. With respect to procurement by entities listed in this Schedule, this Chapter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas, or businesses owned by minorities, disabled veterans, or women.
3. Nothing in this Annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. This Chapter does not cover procurement by an entity listed in this Schedule on behalf of non-covered entities at a different level of government.
5. With respect to procurement by entities listed in this Schedule, this Chapter does not apply to restrictions attached to Federal funds for mass transit and highway projects.
6. This Chapter does not cover the procurement of printing services by the entities listed in this Schedule.