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GPO

Calendar No. 651

108TH CONGRESS, 2d Session | SENATE | REPORT 108–317

UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

AUGUST 25, 2004.—Ordered to be printed

Filed, under authority of the order of the Senate of July 22, 2004

Mr. GRASSLEY, from the Committee on Finance, submitted the following

R E P O R T

[To accompany S. 2677]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 2677) to implement the United States-Morocco Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. REPORT AND OTHER COMMITTEE MATERIAL

A. Report of the Committee on Finance

The Committee on Finance, to which was referred the bill (S. 2677) to implement the United States-Morocco Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

B. Summary of Congressional Consideration of the United States-Morocco Free Trade Agreement

1. Background

On April 23, 2002, President George W. Bush met with His Majesty King Mohammed VI of Morocco at the White House. In the Oval Office meeting, President Bush expressed his desire to negotiate a comprehensive free trade agreement with Morocco as soon as Congress granted him the authority, and King Mohammed likewise expressed his interest in negotiating such an agreement. On August 6, 2002, President Bush signed the Trade Act of 2002 (Pub. L. 107–210), which grants the President the authority to enter into trade agreements and provides expedited procedures for consideration of legislation implementing trade agreements that meet certain objectives provided for under the Act. On October 1, 2002, President Bush authorized and directed Ambassador Robert B. Zoellick, U.S. Trade Representative, to notify Congress of the President's intention to enter into negotiations for a free trade agreement with the Kingdom of Morocco. In letters dated October 1, 2002, to the Honorable Robert C. Byrd, President Pro Tempore, U.S. Senate, and to the Honorable J. Dennis Hastert, Speaker, U.S. House of Representatives, Ambassador Zoellick notified Congress of the President's intention to negotiate a trade agreement with Morocco. On January 21, 2003, the United States and Morocco initiated negotiations for a free trade agreement, and the negotiations were completed on March 2, 2004. On March 8, 2004, President Bush notified Congress of his intention to enter into the United States-Morocco Free Trade Agreement. U.S. Trade Representative Robert B. Zoellick and Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihiri signed the Agreement on behalf of their respective governments in Washington, DC, on June 15, 2004.

2. Trade Promotion Authority Procedures in General

The requirements for Congressional consideration of the United States-Morocco Free Trade Agreement (the Agreement) under expedited procedures (known as Trade Promotion Authority (TPA) procedures) are set forth in sections 2103 through 2106 of the Bipartisan Trade Promotion Authority Act of 2002 (the Act) (19 U.S.C.

§§ 3803–3806) and section 151 of the Trade Act of 1974 (19 U.S.C. § 2191).

Section 2103 of the Act authorizes the President, prior to June 1, 2005 (or, prior to June 1, 2007, if TPA procedures are extended under section 2103(c) of the Act), to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. The purpose of section 2103 procedures is to provide the means to achieve U.S. negotiating objectives set forth under section 2102 of the Act in international trade negotiations.

3. Notification Prior to Negotiations

Under section 2104(a)(1) of the Act, the President must provide written notice to the Congress at least 90 calendar days before initiating negotiations. In a Presidential Memorandum dated October 1, 2002, President Bush authorized and directed Ambassador Robert B. Zoellick, U.S. Trade Representative, to notify the Congress, consistent with section 2104(a)(1) of the Act, of the President's intention to enter into negotiations for a free trade agreement with Morocco. Section 2104(a)(2) requires the President, before and after submission of the notice, to consult regarding the negotiations with the relevant Committees of Congress and the Congressional Oversight Group established under section 2107 of the Act. The Administration engaged in the requisite consultations, including appearances by Ambassador Zoellick at meetings of the Congressional Oversight Group on January 7, 2003, April 11, 2003, July 24, 2003, and May 6, 2004.

4. Notification of Intent To Enter Into an Agreement

Under section 2105(a)(1)(A) of the Act, the President is required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. On March 8, 2004, President George W. Bush notified Congress of his intention to enter into the United States-Morocco Free Trade Agreement. The Agreement was signed on June 15, 2004.

Section 2105(a)(1)(B) of the Act also requires the President, within 60 days of signing an agreement, to submit to Congress a description of changes to existing laws that the President considers would be required to bring the United States into compliance with such agreement. On July 15, 2004, the President transmitted to Congress a description of changes to existing laws required to comply with the Agreement.

5. Development of the Implementing Legislation

Under TPA procedures, the Congress and the Administration work together to produce the legislation to implement a free trade agreement. Draft legislation is developed in close consultation between the Administration and the Committees with jurisdiction over the laws that must be enacted or amended to implement the agreement. The Committees then hold informal meetings to consider the draft legislation and recommend changes to the Administration, if any. The Administration then finalizes implementing legislation for formal submission to the Congress and referral to the Committees of jurisdiction. These procedures are meant to ensure

that the final legislation reflects only those provisions that are necessary or appropriate to faithfully implement the agreement.

The Senate Committee on Finance met in open executive session on July 14, 2004, to informally consider draft implementing legislation for the Agreement.

6. Formal Submission of the Agreement and Legislation

When the President formally submits a trade agreement to the Congress under section 2105 of the Act, the President must include in the submission the final legal text of the agreement, together with implementing legislation, a statement of administrative action (describing regulatory and other changes that are necessary or appropriate to implement the agreement), a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable policies, purposes, priorities, and objectives set forth in the Act, and a statement setting forth the reasons of the President regarding how the agreement serves the interests of U.S. commerce.

The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to Committees with jurisdiction over its provisions. President George W. Bush transmitted the final text of the United States-Morocco Free Trade Agreement, along with implementing legislation, a Statement of Administrative Action, and other supporting information, as required under section 2105 of the Trade Act of 2002, to the Congress on July 15, 2004. The legislation was introduced that same day in both the House and the Senate.

To qualify for TPA Procedures, the implementing bill itself must contain provisions formally approving the agreement and the statement of administrative action. Further, the implementing bill must contain only those provisions necessary or appropriate to implement the Agreement. The implementing bill reported here—which approves the United States-Morocco Free Trade Agreement and the Statement of Administrative Action and contains provisions necessary or appropriate to implement the Agreement into U.S. law—was referred to the Senate Committee on Finance.

7. Committee and Floor Consideration

When the requirements of the Act are satisfied, implementing revenue bills, such as the United States-Morocco Free Trade Agreement Implementation Act (Implementation Act), are subject to the legislative procedures of section 151 of the Trade Act of 1974. The following schedule for Congressional consideration applies under these procedures:

(i) House Committees have up to 45 days in session in which to report the bill; any Committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th day in session after the Committees report the bill or are discharged from further consideration.

(iii) Senate Committees must act within 15 days in session of receiving the implementing revenue bill from the House or within 45 days in session of Senate introduction of the imple-

menting bill, whichever is later, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 days in session and without amendment on the implementing bill.

Thus, the Congress has a maximum of 90 days in session to complete action on the bill, although the time period can be shortened.

Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either House of Congress. Floor debate in each House is limited to no more than 20 hours, to be equally divided between those favoring the bill and those opposing the bill.

C. Trade Relations With Morocco

1. United States-Morocco Trade and Investment

The World Bank ranks Morocco as a middle income developing country. Morocco's gross domestic product (GDP) is 1.1 percent of U.S. GDP, while Morocco's population is 10 percent of the population of the United States. Services account for almost one-half of Morocco's GDP, while the agriculture sector employs more than one-third of Morocco's labor force. Morocco is the leading exporter and third-largest producer of phosphates (after the United States and China). Related industries include the production of fertilizers and phosphoric acid. Morocco also has a diverse manufacturing base, with over one-third of Moroccan exports accounted for by apparel and footwear in 2002.

Relative to other trading partners, U.S. trade with Morocco is small. U.S. exports to Morocco in 2003 were valued at $462 million, ranking Morocco as the 69th largest market for U.S. exports that year. Foreign direct investment in Morocco experienced a net increase during the period 1996–2001, reflecting the Government's privatization efforts. The telecommunications sector experienced the largest share of foreign direct investment during this period, reflecting the high priority the Moroccan Government has given to developing a modern and competitive telecommunications sector. During 1996–2001, the United States was Morocco's third-largest investor, following France and Portugal. However, U.S. service firms are effectively prohibited from competing in large segments of Morocco's service economy due to Government bans on foreign participation or the imposition of onerous requirements. The Agreement will improve regulatory transparency and open Morocco's market to U.S. service suppliers.

U.S. imports from Morocco in 2003 were valued at $396 million, ranking Morocco as the 82nd largest supplier of U.S. imports that year. Approximately 5 percent of U.S. imports from Morocco entered duty-free under the Generalized System of Preferences (GSP) program. However, import/export and investment data alone fail to capture Morocco's full importance as a trading partner of the United States. In May 2003, President Bush announced the goal of working toward a Middle East Free Trade Area (MEFTA) by the year 2013. On July 22, 2004, the report of the 9/11 Commission (Final Report of the National Commission on Terrorist Attacks Upon the United States) was released; that report contains, as one of its key recommendations, that a "comprehensive U.S. strategy to counter terrorism should include economic policies that encourage

development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future." The Agreement with Morocco is an important achievement in that effort.

Moreover, Morocco is an emerging market at the crossroads of Europe, Africa, and the Middle East. The democratically-elected Moroccan government has launched a comprehensive economic reform program that is aimed at reducing inflation, developing the tourism sector and liberalizing and privatizing key sectors, such as telecommunications. The Agreement, with its emphasis on the rule of law, improved competition and trade liberalization, will enhance and solidify those reforms. The Government of Morocco has also launched an initiative to streamline investment procedures and eliminate barriers to foreign and domestic investment. New investment will reinforce Morocco's liberalization efforts and spur economic growth and job creation. The Agreement will help to accelerate these positive developments, to the benefit of both Parties.

The Agreement thus serves as a strong precedent and building block for the development of MEFTA by the year 2013. As the report of the 9/11 Commission notes, the Agreement with Morocco joins free trade agreements between the United States and Israel, Jordan, and Bahrain (concluded but not implemented by the date of this Report), to serve as models to help other nations in the Middle East become full participants in the rules-based global trading system. The Agreement is therefore an important part of a broader effort to encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future, throughout the Middle East.

2. Tariffs and Trade Agreements

In the World Trade Organization (WTO), Morocco has bound its tariffs at ad valorem rates ranging from zero to 380 percent. According to WTO estimates, Morocco's simple average bound rate is approximately 42 percent.

Morocco has negotiated regional trade agreements with: the European Free Trade Association (Iceland, Liechtenstein, Norway, and Switzerland); the European Union; and the Arab Free Trade Area (Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen). A free trade agreement with the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) is in the early stages of discussion. Morocco also has bilateral trade agreements with Turkey (signed April 2004), as well as Egypt (signed May 1998, entered into force April 1999), Jordan (signed June 1998, entered into force October 1999), and Tunisia (signed March 1999, entered into force March 1999). Geographic proximity and historical ties to Spain and France have created a longstanding trading relationship between Morocco and Europe. The United States-Morocco Free Trade Agreement will improve the competitiveness of U.S. exporters vis-a-vis their European competitors in the Moroccan market.

Under the United States-Morocco Free Trade Agreement, immediate duty-free access will be provided to more than 90 percent of

Morocco's imports of non-agricultural goods from the United States. The Agreement also enhances access to the Moroccan market for U.S. agricultural products. Significantly, Morocco will provide preferential market access on all agricultural products according to schedules negotiated on a product-specific basis. Thus, as in virtually every other bilateral trade agreement to which the United States is a party, no agricultural products are excluded from trade liberalization commitments under the Agreement. Preferential tariff phase-outs on most products will occur in equal annual installments over the following phase-out periods: immediate, 5 years, 8 years, 10 years, 12 years, 15 years, and 18 years. Tariffs on other products will be phased out using non-linear formulas applied over 6 years, 18 years, 19 years and 25 years. Additional tariff cutting formulas apply to certain items on which Morocco will establish preferential tariff-rate quotas (TRQs).

The Agreement establishes preferential TRQs for high quality and standard quality beef, whole birds (chicken and turkey), leg quarters, durum wheat, non-durum wheat, almonds, and apples. The details of the preferential TRQs vary by product, but in general, the imported product receives a preferential duty reduction for a specific quantity that expands over time. Volumes imported over the specific amounts have higher tariffs. The lower in-quota tariffs are eliminated, except for common wheat, as are the higher over-quota tariffs, except for durum wheat, non-durum wheat, and standard quality beef. In addition, the Agreement contains a provision ("preference clause") that will afford U.S. exporters of products such as wheat, beef, poultry, corn, soybeans, and corn and soybean products any better market access that Morocco gives to other trading partners, thereby ensuring that U.S. exporters will be able to continue competing with Europe and others in Morocco's market on an equal footing well into the future.

U.S. EXPORTS TO MOROCCO 1998–2003

[In millions of U.S. dollars]

	Top 15 products, by HTS chapter	1998	1999	2000	2001	2002	2003
88	Aircraft	136.2	143.0	148.4	17.0	295.1	131.3
10	Cereals	75.8	93.6	126.6	59.8	50.0	75.1
12	Oil seeds	12.7	21.3	17.8	16.1	37.1	56.8
84	Machinery	68.5	53.2	52.6	40.7	39.7	37.9
27	Fuels	10.2	4.1	35.5	24.9	10.6	26.6
85	Electrical machinery	18.8	30.9	35.3	21.5	16.5	19.3
90	Optical, medical equipment	5.0	6.4	5.7	9.3	7.7	13.8
15	Animal or vegetable fats and oils	22.4	25.9	2.2	1.2	18.9	13.7
98	Special classifications	4.2	5.6	4.9	8.3	7.9	13.2
25	Earths and stone	3.1	1.8	6.3	3.5	6.6	9.4
39	Plastics	8.4	7.2	7.3	9.3	6.5	9.1
87	Vehicles	19.0	11.6	7.3	6.2	8.6	8.4
48	Paper and paperboard	2.2	3.1	4.2	4.4	4.9	8.0
72	Iron and steel	0.1	0.4	0.2	0.6	1.6	6.4
29	Organic chemicals	2.3	1.9	5.0	6.2	2.4	3.5
	Subtotal for top 15 products	388.9	410.1	459.2	228.9	514.2	432.4
	Subtotal for all other U.S. exports	160	160.7	63.2	54.6	46.2	30.2
	Total U.S. exports to Morocco	548.9	570.8	522.4	283.5	560.4	462.6

Note: HTS is the Harmonized Tariff Schedule of the United States.

Source: U.S. International Trade Commission Dataweb.

U.S. IMPORTS FROM MOROCCO 1998–2003

[In millions of U.S. dollars]

	Top 15 products, by HTS chapter	1998	1999	2000	2001	2002	2003
85	Electrical machinery	103.2	122.5	163.1	97.8	119.1	107.4
25	Earths and stone	62.8	78.4	60.4	66.1	85.1	69.5
62	Apparel, not knitted or crocheted	67.9	69.8	79.4	73.9	52.3	49.1
8	Fruit and nuts	1.2	6.0	1.4	0.3	13.4	30.4
61	Apparel, knitted or crocheted	24.7	19.8	16.0	21.9	23.1	26.7
16	Preparations of meat	19.8	18.3	22.7	20.8	18.2	21.7
20	Preparations of vegetables	18.6	19.4	19.4	20.0	22.7	19.8
27	Fuels	6.0	7.8	30.8	54.6	8.9	18.4
7	Vegetables	3.5	8.9	7.1	6.4	7.4	7.9
13	Resins and vegetable extracts	8.2	7.1	8.1	6.7	5.2	7.2
98	Special classifications	6.2	6.5	5.0	8.2	11.0	5.5
94	Furniture	2.9	3.8	3.7	3.1	2.6	3.0
28	Inorganic chemicals	3.6	10.5	12.7	18.7	7.3	2.8
64	Footwear	1.3	2.1	2.4	4.0	2.0	2.4
33	Essential Oils	1.4	2.3	1.8	1.3	0.9	2.3
	Subtotal for top 15 products	331.4	383.2	434.2	404	379.1	374.1
	Subtotal for all other U.S. imports	20.8	30.9	22	48.5	30.5	22
	Total U.S. imports from Morocco	352.2	414.1	456.2	452.5	409.6	396.1

Note: HTS is the Harmonized Tariff Schedule of the United States.

Source: U.S. International Trade Commission Dataweb.

3. U.S. International Trade Commission Study

In June 2004, the U.S. International Trade Commission (ITC) released the results of its investigation (Investigation No. TA–2104–14) into the probable economic effects of a United States-Morocco Free Trade Agreement. The ITC concluded that when the economy-wide effects of the Agreement's tariff liberalization are fully implemented and all economic adjustments have occurred under the Agreement, the overall welfare benefit to U.S. consumers should increase in the range of $110.5 million to $131.6 million. The report projected that U.S. exports to Morocco are likely to increase by $740.0 million, and U.S. imports from Morocco are likely to increase by $198.6 million after full implementation of the Agreement. The ITC's analysis indicates the sectors showing the greatest value increase in U.S. exports to Morocco under the Agreement are: grains; processed food and tobacco; machinery and equipment; petroleum, coal, chemicals, rubber, and plastic products; and textiles and apparel. The greatest increases in the value of imports from Morocco are estimated to occur in textiles and apparel and in processed food and tobacco.

D. Overview of the United States-Morocco Free Trade Agreement

1. Overview of the Agreement

The United States-Morocco Free Trade Agreement establishes a bilateral free trade area that eliminates tariffs on most bilateral merchandise trade. The Committee notes that the Agreement will cover trade and investment in the territory of Morocco as recognized by the United States, which currently does not include the Western Sahara. The Agreement liberalizes trade in services, and contains provisions that cover investment, intellectual property, environment, labor, and government procurement. The Agreement

also contains a mechanism for settling disputes that arise under the Agreement. Throughout the Agreement there are important provisions that promote bilateral consultation and cooperation, procedural and substantive due process, administrative and judicial review, transparency, and the rule of law.

Morocco is an emerging market that imported nearly $13 billion worth of goods in 2003, of which the United States supplied over $462 million. Morocco's average bound rate of duty is 42 percent ad valorem, and its average applied rate for U.S. exports is 20 percent. By comparison, Moroccan exports to the United States are subject to an average tariff of 4 percent ad valorem because Morocco is eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP) program. The Agreement will eliminate this disparity in tariff levels. Under the Agreement, more than 90 percent of bilateral trade in consumer and industrial products will become duty-free on the day that the Agreement is implemented, with tariffs on the remaining products being eliminated in 10 years. Such significant market access results led the Office of the U.S. Trade Representative to describe the Agreement with Morocco as "the best market access package of any U.S. free trade agreement with a developing country."

Key U.S. export sectors that will gain immediate duty-free access include information technologies, machinery, construction equipment and chemicals. Also, textile and apparel articles that meet the Agreement's rule of origin will become duty-free. Tariffs on agricultural products such as sorghum, corn, soybeans and soybean products, will be cut significantly or eliminated immediately. U.S. producers of poultry and beef will benefit from new tariff-rate quotas that grow over time, and U.S. wheat farmers will benefit from new tariff-rate quotas on durum and common wheat that could lead to five-fold increases in U.S. exports. The American Farm Bureau Federation estimates that the Agreement will result in a 10-to-1 gain in U.S. agricultural exports, compared to increased imports of agricultural goods from Morocco, by the year 2015.

The Agreement also liberalizes markets for services, including financial services and telecommunications, establishes new protections for U.S. investors, strengthens penalties for piracy and counterfeiting, and provides strong protections for labor and the environment. It is noteworthy that the negotiation of an FTA with the United States prompted the Government of Morocco to complete a comprehensive reform of its labor laws that took effect on June 8, 2004.

Finally, Morocco has begun implementing an association agreement with the European Union (EU). The association agreement, which covers only industrial products, gives EU companies a competitive advantage in the Moroccan market. Importantly, the United States-Morocco Free Trade Agreement will give U.S. exporters of industrial products a chance to compete in the Moroccan market on equal terms with European competitors. Moreover, the Agreement gives U.S. agricultural producers significant tariff advantages over competitors in the EU and elsewhere.

2. Chapter Summaries

Establishment of a Free Trade Area and Definitions. Chapter 1 provides a number of general definitions that apply throughout the Agreement, unless otherwise specified. Chapter 1 also provides that the Agreement establishes a free trade area in accordance with the provisions of the Agreement, and consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article V of the General Agreement on Trade in Services (GATS).

Under Chapter 1, the Parties generally affirm their rights and obligations under existing bilateral and multilateral agreements, including the Marrakesh Agreement Establishing the World Trade Organization (WTO). However, upon the entry into force of the Agreement, Article VI (Investor-State dispute settlement) and Article VII (State-State dispute settlement) of the Treaty Between the United States of America and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments, with Protocol (signed July 22, 1985), are suspended. Nevertheless, Articles VI and VII of the bilateral investment treaty with Morocco will continue to apply, for a period of 10 years from the date of entry into force of the Agreement, with respect to investments covered by the Treaty and with respect to disputes that arose prior to the date of entry into force of the Agreement.

National Treatment and Market Access for Goods. Chapter 2 sets forth the core obligations under the Agreement with respect to two-way trade in goods. Article 2.2 provides that each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994. Article 2.3 provides that each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its schedule provided for in Annex IV (Tariff Elimination) of the Agreement. The term "originating good" is defined in Article 5.1 of the Agreement.

Article 2.5 provides that each Party shall grant duty-free temporary admission for certain types of goods, regardless of origin. Such types of goods include goods intended for display or demonstration, commercial samples and advertising films and recordings, and goods imported for sports purposes. Article 2.6 provides duty-free treatment for goods that are imported after having been exported temporarily to the other Party for repair or alteration, and for goods that are imported temporarily for repair or alteration.

Annex IV of the Agreement contains the general staging categories for tariff elimination, and a specific, item-by-item schedule of tariff elimination for each Party. Under the general staging categories, originating goods will either: (1) remain duty-free, if they are currently duty-free; (2) become duty-free on the date that the Agreement enters into force; (3) become duty-free after equal annual reductions over 2 to 15 years; or, (4) become duty-free after non-linear reductions over 6, 10, or 18 years. In addition, there are some special staging categories for certain products that are set forth in the general notes that accompany each Party's Schedule to Annex IV. Finally, Morocco agreed that, for certain specified agricultural products, if Morocco should ever provide market access to another trading partner on better terms compared to the market access granted to the United States under the Agreement, then Mo-

rocco would immediately grant such better market access to the United States.

A number of product-specific preferential tariff-rate quotas (TRQs) for certain sensitive products are included in an annex to the general notes accompanying the Schedule of the United States in Annex IV. Products covered by preferential TRQs include beef, cotton, dairy, dried garlic, dried onions, peanuts, sugar, tobacco, tomato products, and wine.

Separately, in Annex 2–A of the Agreement, each Party exempts certain measures from the national treatment obligation of the Agreement and the prohibition on import or export restrictions. The United States exempts its controls on the export of U.S. logs and certain measures under the Merchant Marine Act of 1920 and the Passenger Vessel Act.

Agriculture. Chapter 3 sets out rules for the administration and implementation of the Parties' tariff rate quotas (TRQs). Among these rules, each Party shall ensure: that its procedures for administering its TRQs are transparent and are minimally burdensome to trade; that solely government authorities administer its TRQs; and that in-quota quantities are allocated in commercially viable shipping quantities. Chapter 3 also provides that neither Party may condition application for, or use of, an import license or an allocation under a TRQ on the re-export of an agricultural good. Further, neither Party may count food aid in determining whether an in-quota quantity under a TRQ has been filled.

The Parties agree to work together in WTO negotiations to seek an agreement in the WTO to eliminate export subsidies for agricultural goods. Except as noted immediately below, the Parties agree not to introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any export subsidy to exports of such good to the territory of the importing Party. The Parties are also committed to work together in WTO negotiations to bring new disciplines to state trading enterprises (STEs).

Under the Agreement, the Parties may apply safeguard measures on certain agricultural products listed in each Party's Schedule to Annex 3–A. The United States may apply a price-based safeguard on certain horticultural products—including canned olives, dried garlic, and orange juice—if the relevant good enters the United States at a unit import price below a specified trigger price. Morocco may apply quantity-based safeguard measures to certain agricultural products if, in a calendar year, the volume of imports of a relevant good exceeds the specified volume of the good (specified volumes are set out in the Agreement). The products to which Morocco may apply these safeguards are: whole birds (chicken and turkey); leg quarters and wings (chicken); chickpeas; lentils; dried prunes; and certain bitter almonds. A side letter delineates the particular bitter almonds to which the safeguard may be applied. Mo-

rocco may maintain an agricultural safeguard measure on any of the above-listed products until the end of the calendar year in which the measure is first applied.

The Agreement sets maximum rates for the application of such a safeguard, i.e., the sum of such additional duty and any other customs duty shall not exceed the lesser of the prevailing normal trade relation/most-favored-nation (NTR/MFN) applied rate of duty or the NTR/MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of the Agreement. The Agreement stipulates that neither Party may apply or maintain an agricultural safeguard measure under the Agreement and at the same time apply or maintain, with respect to the same good, a safeguard measure under Chapter 8 (Safeguards) of the Agreement or a measure under both Article XIX of GATT 1994 and the Safeguards Agreement. Neither Party may impose an agricultural safeguard measure on a good once the good is subject to duty-free treatment under the Agreement.

The Parties affirm their desire to provide a forum, through the Joint Committee established under Article 19.2 or a subcommittee established thereunder, to address agricultural trade matters under the Agreement, including sanitary and phytosanitary matters.

The United States and Morocco affirm their existing rights and obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures of the WTO. The Parties also agree that neither Party may have recourse under the Agreement for any disputes between them involving sanitary or phytosanitary measures.

The Agreement states that Morocco may establish an import licensing program for imports of high-quality beef from the United States, to provide that the beef is sold to, or imported by, hotels or restaurants designated on lists agreed to by the Parties. The Agreement provides, inter alia, that Morocco shall implement and administer any such import licensing program in accordance with Article VIII of GATT 1994 and the WTO Agreement on Import Licensing Procedures, and that Morocco shall limit the amount of any fees charged in connection with an import license to the cost of services rendered in processing the license application. Further, the Parties shall review and update the lists of eligible hotels and restaurants at least once a year.

Morocco may implement and administer an auction system for in-quota quantities of the TRQs on U.S. durum and non-durum wheat provided for in the Agreement. Morocco's auction policies and procedures shall be, inter alia, transparent and implemented in a manner that minimizes the cost of participation in the auction. Morocco shall ensure that solely government authorities administer its auctions and that its auctions are held on a regular basis. Moreover, Morocco shall award licenses under the auction system in commercially viable shipping quantities and in a manner that encourages competition. Morocco also shall not condition application for, or use of, an auction license on the re-exportation of the auctioned good.

The Agreement's Side Letter on Certification Accompanying U.S. Beef and Poultry states that beef and poultry imports must be accompanied by an export certificate to be allowed entry into Mo-

rocco. The letter provides that Morocco's veterinary services, in cooperation with the Food Safety and Inspection Service of the U.S. Department of Agriculture, will work together in good faith to define the content of the certificates that will accompany U.S. beef and poultry imports. The Parties also agree upon certain acceptable language for inclusion in the certificates.

Textiles and Apparel. Chapter 4 establishes the rules that govern bilateral trade in textile and apparel goods under the Agreement. Article 4.1 provides that each Party shall eliminate its customs duties on originating textile and apparel goods in accordance with its schedule in Annex IV of the Agreement. Tariffs on originating goods will be phased out over 10 years or less, though some originating apparel will be eligible for immediate duty-free treatment under a TRQ.

The Agreement contains a specific safeguard mechanism for textiles and apparel, and specific rules of origin for textile and apparel goods. The rules of origin for textiles and apparel include a "fiber forward" rule of origin for yarns and knit fabrics, and a "yarn forward" rule of origin for woven fabrics and apparel. Under a "fiber forward" rule, the fiber must come from one of the Parties in order for the finished product to qualify for preferential treatment under the Agreement. Under a "yarn forward" rule, the fiber may be imported but the yarn must be produced in one of the Parties in order for the finished product to qualify for preferential treatment under the Agreement—as long as all processes subsequent to the yarn manufacturing stage occur within a Party to the Agreement. For apparel, the rule of origin applies only to the component that determines the tariff classification of the apparel (i.e., the component that determines the "essential character" of the apparel). Visible lining fabrics are subject to a "yarn forward" rule.

The Agreement provides for consultations, and the possibility of modifying the rules of origin, to address the availability of fibers, yarns or fabrics, and whether any given input is produced in sufficient commercial quantities in a timely manner. The Agreement contains a "de minimis" rule, which provides that a good that does not satisfy the rule of origin because certain fibers or yarns used in the production of the component that determines the tariff classification of the good do not undergo an applicable change in tariff classification, may nonetheless qualify for preferential treatment under the Agreement as long as the total weight of such fibers or yarns in that component is not more than 7 percent of the total weight of the component. Article 4.1.7 provides so-called tariff preference levels (TPLs) for certain fabric goods that are made with third-country fiber or yarn, and certain apparel goods that are made with third-country yarn or fabric, as provided in Annex 4–B. The Agreement preserves the Berry Amendment for U.S. military procurement, which provides that textiles and apparel for the military must be made in the United States from U.S. inputs.

The Agreement contains a provision on customs cooperation. Article 4.4 provides that the Parties shall cooperate: (1) to enforce measures affecting trade in textile and apparel goods; (2) to verify the accuracy of claims of origin; (3) to enforce measures implementing international agreements affecting trade in textile and apparel goods; and (4) to prevent circumvention of such international agreements. Article 4.4 provides for facility inspections, examina-

tions of records, and other forms of verification, to determine the accuracy of claims of origin for textile and apparel goods and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile and apparel goods.

Under Articles 4.4.2 and 4.4.3, the United States may request that Morocco: conduct a verification; allow the United States to conduct a verification; or, collaborate with the United States in conducting a verification, with respect to a Moroccan exporter or producer. The object of a verification under Article 4.4.2 is to determine that a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 4.4.3 is to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures, and that claims of origin for textile or apparel goods exported or produced by that person are accurate.

Under Article 4.4.6 of the Agreement, the United States may take appropriate action during a verification, including suspending the application of preferential tariff treatment to textile or apparel goods that are subject to verification or that are exported or produced by a person subject to verification. Under Article 4.4.8, if within 12 months after requesting a verification, the United States is unable to make a determination, or the United States makes a negative determination, the United States may then deny preferential tariff treatment to the textile or apparel good that is subject to verification or is produced or exported by the person subject to verification.

Rules of Origin. Rules of origin are used to determine whether a good is an originating good for purposes of the Agreement. A good must be an originating good in order to qualify for preferential treatment under the Agreement. Chapter 5 provides the general rules of origin for goods under the Agreement. Under Article 5.1, a good is an originating good if: (1) it is wholly the growth, product, or manufacture of one or both Parties; (2) for a good other than goods covered by either Annex 4–A or Annex 5–A of the Agreement, it is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both Parties and the good satisfies a 35 percent local value requirement; or (3) it is a good covered by Annex 4–A or Annex 5–A of the Agreement. The second of these rules of origin is akin to the substantial transformation rules of origin included in the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, and the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, entered into on October 24, 2000. Chapter 5 rules of origin apply to textile and apparel goods unless otherwise provided in Chapter 4 of the Agreement (Textiles and Apparel).

The term "wholly the growth, product or manufacture" is defined in Article 5.14, and includes, for example, minerals extracted in the territory of either Party, vegetables harvested in the territory of either Party, and live animals born and raised in the territory of either Party. A new or different article of commerce is a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both Par-

ties and that has a new name, character, or use distinct from the good or material from which it was so transformed. A side letter to the Agreement provides that, in determining whether a good is a new or different article of commerce for purposes of the Agreement, the Parties should be guided by the specific rules of origin set forth in section 102.20 of the U.S. Customs Regulations (19 CFR § 102.20). Additional rules of origin for textile and apparel articles are provided for in Annex 4–A of the Agreement.

An importer claiming preferential treatment under the Agreement shall be deemed to certify that the subject good qualifies for such treatment, but must be prepared to submit a declaration with all relevant information—including a description of the good, the production operations, the direct costs of processing, and the foreign materials used. If preferential treatment under the Agreement is denied, a written determination must be issued that contains findings of fact and the legal basis for the denial. The Parties shall consult and cooperate to ensure the effective and uniform application of the rules of origin.

Customs Administration. Chapter 6 contains standard customs provisions that provide for transparency, due process, and the rule of law. These provisions concern: the prompt publication of customs laws, regulations, guidelines, procedures, and administrative rulings on the Internet and in print form; the designation of one or more official contacts for information requests; a notice and comment process prior to any regulatory changes; the opportunity to obtain advance written rulings regarding tariff classification, valuation, origin, and whether a product qualifies for preferential treatment under the Agreement; and, an opportunity for administrative and judicial review of administrative decisions. The Agreement provides for mutual cooperation in implementing the Agreement and prior notice of any significant modification of administrative policy. The Agreement includes provisions calling for the release of goods within 48 hours of arrival (to the extent possible), risk assessment procedures to focus inspection activities on high-risk goods, and expedited procedures for express shipments (i.e., under normal circumstances, release of an express shipment no later than six hours after the required information has been submitted).

Sanitary and Phytosanitary Measures. In a Joint Statement that is part of the Agreement, the Parties affirm their support for the full implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and pledge to enhance bilateral SPS cooperation. The Parties agree to establish a Working Group on SPS Cooperation and to engage in activities that promote full implementation of the SPS Agreement, facilitate bilateral trade, and support Moroccan agricultural reform.

Technical Barriers to Trade. Chapter 7 applies to all standards, technical regulations and conformity assessment procedures of the central level of government that may, directly or indirectly, affect trade in goods between the Parties. The Agreement provides for enhanced cooperation and consultation with respect to technical barriers to trade. In Article 7.2, the Parties affirm their existing rights and obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement). The Parties commit to intensify their joint work in the field of standards, technical regulations, and con-

formity assessment procedures, with a view to facilitating access to each other's markets.

Article 7.5 provides that the Parties shall intensify their exchange of information on a broad range of mechanisms that may be used to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. Article 7.6 provides that each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures, on terms no less favorable than those accorded to its own persons.

Safeguards. Chapter 8 provides for a transitional bilateral safeguard mechanism. If, as a result of the reduction or elimination of a customs duty according to the terms of the Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, that Party may: (1) suspend the further reduction of any rate of customs duty on the good provided for under the Agreement; (2) increase the rate of customs duty on the good, to a level not to exceed the lesser of the NTR/MFN rate of duty on the good in effect at the time the action is taken and the NTR/MFN rate of duty on the good in effect on the day before the Agreement enters into force; or (3) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of customs duty on the good to a level not to exceed the lesser of the NTR/MFN rate of duty on the good in effect for the immediately preceding corresponding season and the NTR/MFN rate of duty on the good in effect on the day before the Agreement enters into force.

A Party may impose a bilateral safeguard measure only after conducting an investigation in accordance with Articles 3 and 4.2(a) and (c) of the WTO Agreement on Safeguards, which are incorporated by reference into the Agreement. A bilateral safeguard measure can be imposed for an initial period no longer than 3 years, and for safeguards applied for more than 1 year the Party must progressively liberalize the safeguard measure at regular intervals. A bilateral safeguard measure may be extended for up to 2 additional years if the Party determines that the measure continues to be necessary to remedy or prevent serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting to import competition. A bilateral safeguard measure may not be imposed on the same good more than once.

A Party may impose a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as a result of the reduction or elimination of a customs duty under the Agreement, and that such imports constitute a substantial cause of serious injury, or threat thereof, to a domestic industry. The duration of any provisional measure shall not exceed 200 days. If a final determination is made that such imports are not a substantial cause of serious injury, or threat thereof, the Party shall promptly refund any tariff increases imposed on

a provisional basis. If a final determination is made that such imports are a substantial cause of serious injury, or threat thereof, the duration of any provisional measure shall be counted toward the 3-year limitation on the initial period of relief for a bilateral safeguard measure.

Upon termination of a safeguard measure, the rate of duty on the good shall be the rate that would have been in effect, but for the safeguard measure, according to the Party's Schedule to Annex IV (Tariff Elimination) to the Agreement.

The Party imposing a bilateral safeguard measure shall endeavor to provide mutually agreed-upon trade liberalizing compensation in the form of concessions having substantially equivalent trade effects, or equivalent value, compared to the value of additional duties resulting from the safeguard measure. If the Parties are unable to reach an agreement on compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the safeguard measure. A Party may not impose a bilateral safeguard measure after 5 years from the date on which the Party must eliminate customs duties on the good according to that Party's Schedule to Annex IV to the Agreement, unless the other Party consents.

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. The Agreement does not confer any additional rights or obligations on the Parties with respect to actions taken in accordance with Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

Government Procurement. Morocco is not a party to the WTO Agreement on Government Procurement. Thus, by including strong provisions on government procurement, the Agreement significantly opens Morocco's government procurement market to U.S. suppliers of goods and services. Chapter 9 applies to "covered procurement," which is defined as the procurement of goods and services by any contractual means, above a specified threshold in value, by a specified procuring entity, and not otherwise excluded. Each Party and its procuring entities shall accord national treatment to the goods and services of the other Party and to the suppliers of the other Party offering goods and services. A procuring entity may not discriminate against a locally established supplier based upon that supplier's degree of foreign ownership or based upon the fact that goods or services offered by that supplier are goods or services of the other Party. The Agreement prohibits the use of offsets in any stage of a covered procurement. Offsets are defined as any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts.

The Agreement requires each Party to promptly publish all laws, regulations, procedures and policy guidelines, as well as judicial decisions and administrative rulings of general application, related to covered procurement. Each Party shall ensure that suppliers may challenge and appeal procurement decisions before an impartial body. Under the Agreement, each Party shall also ensure that it is a criminal offense under its law, in matters affecting international trade or investment, to engage in or abet, or conspire to engage in, bribery, and each Party shall have procedures to declare a supplier

ineligible for participation in the Party's procurements, either indefinitely or for a specified time, if the Party has determined that the supplier engaged in fraudulent or illegal action in relation to procurement.

Investment. Chapter 10 applies to measures adopted or maintained by a Party relating to investors of the other Party and covered investments. Investment is defined to mean every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include, inter alia: an enterprise; shares, stock, and other forms of equity participation in an enterprise; bonds, debentures, other debt instruments, and loans; futures, options, and other derivatives; intellectual property rights; licenses, permits, and similar rights conferred pursuant to domestic law; and other tangible or intangible property and related property rights, such as leases, mortgages, liens, and pledges.

Each Party shall accord national treatment most-favored-nation treatment to investors of the other Party, and to covered investments, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Each party shall permit all transfers relating to a covered investment to be made freely and without delay into or out of its territory. Such transfers include, inter alia: contributions to capital; profits, dividends, capital gains, and proceeds from the sale or liquidation of some or all of the covered investment; interest, royalty payments, management fees, and technical assistance and other fees; payments made under a contract, including a loan agreement; and payments arising out of a dispute. Neither Party may impose or enforce any performance requirement in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor, including, inter alia: requiring an investment to export a given level or percentage of goods or services; requiring an investment to achieve a given level or percentage of domestic content; or, requiring an investment to transfer a particular technology or other proprietary knowledge to a person in the Party's territory.

Article 10.12 excludes specified non-conforming measures and any measure that a Party adopts or maintains with respect to specified sectors, sub-sectors, or activities, from certain of the obligations in Chapter 10. Existing non-conforming measures that are excluded from coverage are listed for each Party in their respective Schedule to Annex I of the Agreement. Non-conforming measures adopted or maintained with respect to specified sectors, sub-sectors or activities that are excluded from coverage are listed for each Party in their respective Schedule to Annex II of the Agreement. Any existing non-conforming measure maintained by a Party at a local level of government is similarly excluded from coverage under Article 10.12.

The Committee is pleased to note that the Agreement also includes provisions that govern the settlement of investment disputes

between investors of a Party and the other Party. The Committee expects future trade agreements to contain similar provisions. Article 10.14 provides that, in the event of an investment dispute, the claimant and respondent should initially seek to resolve the dispute through consultation and negotiation. If the dispute cannot be settled through consultation and negotiation, a claimant may then submit the dispute to arbitration. Section B of Chapter 10 contains a number of specific obligations relating to investor-state dispute settlement procedures and the arbitration of investment disputes.

Cross-Border Trade in Services. Chapter 11 of the Agreement applies to measures that affect cross-border trade in services by service suppliers of the other Party, including, inter alia, measures that affect the production, distribution, marketing, sale and delivery of a service, and the purchase or use of, or payment for, a service. The measures covered by the Agreement include measures adopted by central, regional, or local governments and authorities, and non-governmental authorities exercising governmental powers by delegation. Chapter 10 does not apply to several service sectors, including: financial services (which are covered in Chapter 12 of the Agreement) other than financial services relating to the supply of a service by a covered investment (as defined in Chapter 1 of the Agreement); government procurement (which is covered in Chapter 9 of the Agreement); air services other than aircraft repair and maintenance and specialty air services; subsidies or grants provided by a Party; and, services supplied in the exercise of governmental authority. While telecommunications services are not excluded from the application of Chapter 11, additional specific commitments relating to telecommunications services are contained in Chapter 13 of the Agreement.

Chapter 11 further provides that each Party shall accord national treatment and most-favored-nation treatment to all service suppliers of the other Party. Article 11.6 excludes specified non-conforming measures and any measure that a Party adopts or maintains with respect to specified sectors, sub-sectors, or activities, from certain of the obligations in Chapter 11. Existing non-conforming measures that are excluded from coverage are listed for each Party in their respective Schedule to Annex I of the Agreement. Non-conforming measures adopted or maintained with respect to specified sectors, sub-sectors or activities that are excluded from coverage are listed for each Party in their respective Schedule to Annex II of the Agreement. Any existing non-conforming measure maintained by a Party at a local level of government is similarly excluded from coverage under Article 11.6.

Except for measures, sectors, sub-sectors, and activities listed on a Party's Schedules to Annex I or Annex II of the Agreement, neither Party may impose limitations on: the number of service suppliers; the total value of service transactions or assets; the total number of service operations or the total quantity of services output; or, the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ; nor may either Party restrict or require a specific type of legal entity or joint venture through which a service supplier may supply a service. Similarly, unless a measure is listed on a Party's Schedules to Annex I or Annex II of the Agreement, "neither Party may require a service supplier of the other Party to establish or maintain

a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service."

The Agreement provides for services liberalization beyond Morocco's current commitments under the WTO General Agreement on Trade in Services (GATS). Morocco, like the United States, has a large service sector accounting for a significant share of GDP in 2002. However, Morocco's total services exports are equivalent to approximately 1.5 percent of U.S. service exports. The Agreement will provide increased market access for U.S. service providers in areas such as audio-visual, express delivery, computer and related services, construction and engineering.

Financial Services. Chapter 12 of the Agreement applies to measures adopted or maintained by a Party relating to: financial institutions of the other Party; investors and investments of such investors in financial institutions within the Party's territory; and, to cross-border trade in financial services. Financial services are defined to include any service of a financial nature, including insurance and insurance-related services, banking and other financial services, as well as services incidental or auxiliary to a service of a financial nature. The provisions of Chapter 10 (Investment) and Chapter 11 (Cross-Border Trade in Services) apply to financial services only to the extent that such provisions are incorporated into Chapter 12.

The Agreement provides that each Party shall accord national treatment to investors, financial institutions, and cross-border financial service suppliers of the other Party, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions. It also provides that each Party shall accord most-favored-nation treatment to investors, financial institutions and cross-border financial services suppliers.

Article 12.9 excludes specified non-conforming measures and any measure that a Party adopts or maintains with respect to specified sectors, sub-sectors, or activities, from certain of the obligations in Chapter 12. Existing non-conforming measures that are excluded from coverage are listed for each Party in Section A of their respective Schedule to Annex III of the Agreement. Non-conforming measures approved or maintained with respect to specified sectors, sub-sectors or activities that are excluded from coverage are listed for each Party in Section B of their respective Schedule to Annex III of the Agreement. Any existing non-conforming measure maintained by a Party at a local level of government is similarly excluded from coverage under Article 12.9. To the extent any non-conforming measure listed on a Party's Schedules to Annex I or Annex II of the Agreement is also covered by Chapter 12, such measure is also excluded from coverage under Article 12.9.

Except for measures, sectors, sub-sectors, and activities listed in Section A or Section B of a Party's Schedule to Annex III of the Agreement, a Party shall not impose limitations on, inter alia: the number of financial institutions; the total value of financial service transactions or assets; the total number of financial service operations or the total quantity of financial services output; or, the total number of natural persons that may be employed in a particular financial service sector. Similarly, a Party shall not restrict or re-

quire specific types of legal entity or joint venture through which a financial institution may supply a service.

Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 12–A of the Agreement. With respect to the cross-border supply of insurance and insurance-related services, Morocco listed a number of sectors under Annex 12–A, including, inter alia: maritime shipping and commercial aviation; goods in international transit; and, reinsurance. Morocco's obligations with respect to maritime shipping and commercial aviation take effect no later than two years after the Agreement enters into force, whereas Morocco's obligation with respect to reinsurance takes effect immediately upon the Agreement's entry into force. With respect to the cross-border supply of banking and other financial services (excluding insurance), Morocco listed a number of sectors under Annex 12–A, including, inter alia: the provision and transfer of financial information and financial data processing.

Telecommunications. Chapter 13 of the Agreement applies to: measures relating to access to and use of public telecommunication services; measures relating to obligations of suppliers of public telecommunications services, including major suppliers; other measures relating to public telecommunications networks or services; and, measures relating to the provision of value-added services.

In general, Chapter 13 does not apply to any measure relating to broadcast or cable distribution of radio or television programming. Article 13.17 defines the term "public telecommunications service" as any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Public telecommunications services within the United States do not include value-added services.

Article 13.2 stipulates that each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions. Each Party shall also ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party. Appropriate measures shall be maintained by each Party to prevent suppliers that, alone or together, are a major supplier, from engaging in anti-competitive practices.

Article 13.4 details the additional obligations relating to major suppliers of public telecommunication services. A major supplier is defined as being a supplier of public telecommunications services that has the ability to materially affect the terms of participation in the relevant market (with respect to price and supply) as a result of control over essential facilities or use of its position in the market. Major suppliers must accord suppliers of public telecommunications services of the other Party treatment no less favorable than such major suppliers accord to their subsidiaries, their

affiliates, or non-affiliated suppliers, regarding the availability, provisioning, rates, or quality of like public telecommunications services, as well as the availability of technical interfaces necessary for interconnection. Additional provisions call for major suppliers to provide, on a reasonable and non-discriminatory basis: interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party; provisioning and pricing of leased circuits services for enterprises of the other Party; physical co-location of equipment necessary for interconnection for suppliers of the other Party; access to rights-of-way for suppliers of the other Party; and, access to submarine cable systems and satellite services for suppliers of the other Party. These provisions ensure U.S. access to former monopoly networks in Morocco at non-discriminatory, cost-based rates. Due to the existing level of openness of the U.S. market, Morocco already has market access on the terms outlined above. Morocco has made development of a competitive telecommunications sector a priority. Morocco fully opened its market to foreign competition at the end of 2002, as required under its commitments under the WTO Basic Telecommunications Agreement. The United States was Morocco's third-largest investor as a result of government privatization efforts.

Significantly, neither Party may prevent suppliers of public telecommunications services from choosing the technologies that they use to supply their services, including commercial mobile wireless services, except that a Party shall be free to establish and apply spectrum and frequency management policies and other measures necessary to satisfy legitimate public policy interests.

Electronic Commerce. In Chapter 14 the Parties acknowledge the value of electronic commerce, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce. Neither Party may impose customs duties, fees, or other charges on, or in connection with, the importation or exportation of digital products by electronic transmission. Digital products are defined as computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically. The customs value of an imported carrier medium bearing a digital product of the other Party shall be based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium. Digital products must receive national treatment and most-favored-nation treatment under the Agreement, except with respect to a Party's non-conforming measures that are identified in accordance with Articles 10.12, 11.6, and 12.9.

Intellectual Property Rights. Chapter 15 governs the protection of intellectual property rights, including, inter alia, patents, copyrights, and trademarks. The Agreement builds on the common standards that are already codified in numerous international agreements, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Importantly, the provisions in the Agreement reflect the significant technological and commercial developments that have occurred since TRIPS was negotiated, particularly with respect to the new and rapidly-evolving digital environment in which music, videos, software and text can be readily copied and transmitted over the Internet.

Article 15.1 provides that each Party shall ratify or accede to a number of international agreements, including the World Intellectual Property Organization (WIPO) Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996), which provide the essential legal framework for digital products, e-commerce, and the transmission of protected material over the Internet. Article 15.1.3 provides that each Party shall make all reasonable efforts to ratify or accede to the Patent Law Treaty (2000) and the Hague Agreement Concerning the International Registration of Industrial Designs (1999). The United States has already ratified or acceded to each of the agreements identified in Article 15.1.2 and implemented them in domestic law, while Morocco has not. With respect to Article 15.1.3, the United States has not yet completed its process for ratifying the specified agreements. While Morocco is a party to the Hague Agreement on Industrial Designs, it is not a party to the most recent act (1999), nor is Morocco a party to the Patent Law Treaty (2000). Specific provisions of additional international intellectual property agreements are incorporated by reference in other Articles of Chapter 15.

The Agreement provides that each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right, and that judicial authorities shall have the authority to order, inter alia, the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement. The Agreement further provides that judicial authorities shall have the authority to order the seizure of suspected infringing goods and any related materials and implements.

Each Party shall provide that in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances. In addition, judicial authorities shall have the authority to order that materials and implements that were used to manufacture the pirated or counterfeit goods be destroyed without compensation. Judicial authorities shall also have the authority to order the infringer to disclose information about other persons involved in any aspect of the infringement and regarding the means of production or distribution. Each Party shall further provide that its judicial authorities have the authority to fine or imprison a party to a litigation who fails to abide by valid orders issued by such authorities, and to impose sanctions on parties to a litigation, their counsel, experts, or other persons who violate a judicial order for the protection of confidential business information produced or exchanged in a judicial proceeding.

In addition to civil proceedings, the Agreement provides that each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In such cases, each Party shall provide remedies that include imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the monetary incentive to the infringer. Judicial authorities shall have the authority to order the seizure, forfeiture, and destruction of counterfeit goods and the materials and equipment used to produce counterfeit goods. Each Party shall provide that its authorities may self-

initiate criminal legal action without the need for a formal complaint from a private party or right holder. Similarly, each Party shall provide that its customs authorities may self-initiate border measures against imported merchandise suspected of infringing an intellectual property right, without the need for a formal complaint from a private party or right holder.

Labor. In Chapter 16 of the Agreement, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) (ILO Declaration). Under the Agreement, each Party must strive to ensure that such labor principles and the internationally recognized labor rights set forth in article 16.7 of the Agreement are recognized and protected by its domestic law. Article 16.7 provides that internationally recognized labor rights include: "the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." The Agreement recognizes the right of each Party to adopt or modify its domestic labor laws and standards.

Under the Agreement, "neither Party shall fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties." The Agreement recognizes that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters. Also, "{e}ach Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws." Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or derogate from, such laws in a manner that weakens or reduces adherence to internationally recognized labor rights. Each Party shall provide for appropriate access by interested persons to impartial and independent administrative, quasi-judicial, or judicial tribunals for the enforcement of its domestic labor laws, and that such proceedings be fair, equitable, and transparent.

Article 16.4 provides that each Party shall designate an office to serve as the contact point for the other Party and the public for purposes of implementing this Chapter, and may convene a national labor advisory committee to advise it on the implementation of the Chapter. The Agreement also establishes a Labor Cooperation Mechanism, as set forth in Annex 16–A, whereby the Parties may cooperate to improve labor standards and to further advance common commitments with respect to labor matters, including the ILO Declaration and ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999). In addition, the Agreement provides for consultations on any matter arising under Chapter 16 of the Agreement. If bilateral consultations do not resolve the matter, then a Subcommittee on Labor Affairs shall be convened under Article 19.2 to endeavor to resolve the matter. If a Party considers that the

other Party is not effectively enforcing its domestic labor laws, through a sustained or recurring course of action or inaction, in a manner that affects trade between the Parties, then that Party may initiate dispute settlement procedures under Chapter 20 of the Agreement.

If, pursuant to the dispute settlement procedures of Chapter 20, a panel determines that a Party has not conformed with its obligations to effectively enforce its domestic labor laws, and the Parties are unable to agree on a resolution, or there is an agreed resolution but the complaining Party considers that the other Party has failed to observe the terms of that agreement, then the complaining Party may suspend the application to the other Party of benefits of equivalent effect. The Party complained against may choose to pay an annual monetary assessment in lieu of the suspension of benefits. If the Party complained against fails to pay the monetary assessment, the complaining Party may then suspend the application to the other Party of benefits of equivalent effect.

Finally, the Committee finds noteworthy that the negotiation of this free trade agreement with the United States prompted the Government of Morocco to complete a comprehensive reform of its labor laws that took effect on June 8, 2004.

Environment. Chapter 17 of the Agreement provides that each Party shall ensure that its domestic laws and policies provide for and encourage high levels of environmental protection, while recognizing the right of each Party to establish its own levels of environmental protection and to adopt or modify its domestic environmental laws and policies accordingly. Article 17.9 defines "environmental law" to mean any statute or regulation of a Party, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through: the prevention, abatement, or control of the release of pollutants or environmental contaminants; the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes; or, the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially-protected natural areas.

Under the Agreement, "neither Party shall fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties." The Agreement recognizes that "each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters." Also, each Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party. Each Party shall ensure that interested persons have access to judicial, quasi-judicial, or administrative proceedings for the enforcement of its domestic environmental laws, and that such proceedings are fair, equitable, and transparent.

The Agreement recognizes the importance of strengthening capacity to protect the environment and to promote sustainable de-

velopment in concert with strengthening bilateral trade and investment relations. Pursuant to a Joint Statement on Environmental Cooperation, the Parties commit themselves to undertaking cooperative environmental activities. Such activities shall be coordinated by the Working Group on Environmental Cooperation, in accordance with the Joint Statement.

The Agreement provides for consultations on any matter arising under Chapter 17 of the Agreement. If bilateral consultations do not resolve the matter, then a Subcommittee on Environmental Affairs shall be convened under Article 19.2 to endeavor to resolve the matter. If a Party considers that the other Party is not effectively enforcing its domestic environmental laws, through a sustained or recurring course of action or inaction, in a manner that affects trade between the Parties, then that Party may initiate dispute settlement procedures under Chapter 20 of the Agreement.

If, pursuant to the dispute settlement procedures of Chapter 20, a panel determines that a Party has not conformed with its obligations to effectively enforce its domestic environmental laws, and the Parties are unable to agree on a resolution, or there is an agreed resolution but the complaining Party considers that the other Party has failed to observe the terms of that agreement, then the complaining Party may suspend the application to the other Party of benefits of equivalent effect. The Party complained against may choose to pay an annual monetary assessment in lieu of the suspension of benefits. If the Party complained against fails to pay the monetary assessment, the complaining Party may then suspend the application to the other Party of benefits of equivalent effect.

Transparency. Chapter 18 provides that each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application regarding any matter covered by the Agreement are promptly published or otherwise made available so as to enable interested persons and the other Party to become acquainted with them. The Agreement provides that, to the extent possible, each Party shall publish in advance any such measures that it proposes to adopt, and provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures. With respect to Morocco, the advance publication obligation shall apply 1 year after the Agreement enters into force. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that might materially affect the operation of the Agreement, and on request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the other Party considers might affect the operation of the Agreement. Wherever possible, each Party shall ensure that persons of the other Party directly affected by a proceeding are provided reasonable notice when a proceeding is initiated, and afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action. Moreover, each Party shall establish or maintain impartial and independent judicial, quasi-judicial, or administrative tribunals or procedures to promptly review and, where warranted, correct final administrative actions regarding matters covered by the Agreement. Chapter 18 also contains a provision in which the Parties reaffirm their continuing resolve to eliminate bribery and corruption in international

trade and investment, and each Party shall adopt or maintain the necessary measures to establish that it is a criminal offense for a public official to solicit or accept bribes, or for a person to offer a bribe to a public official of the Party or to a foreign official, or for a person to abet or conspire in any of the foregoing actions.

Administration of the Agreement. Chapter 19 provides that each Party shall designate a contact point to facilitate communication between the Parties on any matter covered by the Agreement. Chapter 19 also establishes a Joint Committee to supervise the implementation of the Agreement. The responsibilities of the Joint Committee include, inter alia: to review the general functioning of the Agreement; to facilitate the avoidance and settlement of disputes arising under the Agreement; to consider and adopt any amendment to the Agreement, subject to the completion of necessary domestic legal procedures; to issue interpretations of the Agreement; and to take such other action as the Parties may agree. The Joint Committee is empowered to establish subcommittees and working groups, and a side letter to the Agreement provides for the establishment of subcommittees on agricultural trade, environmental affairs, financial services, labor affairs, sanitary and phytosanitary matters, trade in goods, and cross-border trade in services (excluding financial services).

Dispute Settlement. Chapter 20 contains the general provisions that govern the settlement of disputes between the Parties. Article 20.1 provides that the Parties shall endeavor to agree on the interpretation and application of the Agreement, through cooperation and consultation, to arrive at a mutually satisfactory solution. The dispute settlement provisions apply with respect to the avoidance or settlement of all disputes over the consistency of a measure with the Agreement or the fulfillment of a Party's obligation under the Agreement, unless otherwise provided in the Agreement. Article 20.5 provides that either Party may request consultations with respect to any matter under the Agreement. If consultations fail to resolve the matter within 60 days (or 20 days if the matter concerns perishable goods), then either Party may refer the matter to the Joint Committee for resolution. If the Joint Committee is unable to resolve the matter within 60 days (or 30 days if the matter concerns perishable goods), then the complaining Party may refer the matter to a dispute settlement panel. If a dispute settlement panel issues a report finding that a Party has not conformed with its obligations or has nullified or impaired a benefit to the other Party under the Agreement, the Parties shall try to agree on a resolution of the dispute. Whenever possible, the resolution shall be to eliminate the non-conformity or the nullification or impairment; however, if the parties are unable to agree on such elimination, resolution of the dispute may include mutually acceptable compensation, the suspension of benefits of equivalent effect, or an annual monetary assessment.

Exceptions. Chapter 21 contains general exceptions to the Agreement. With respect to Chapters 2 through 7 (i.e., National Treatment and Market Access for Goods, Agriculture, Textiles and Apparel, Rules of Origin, Customs Administration, and Technical Barriers to Trade), the Agreement incorporates by reference the general exceptions contained in Article XX of GATT 1994 and its interpretive notes.

With respect to Chapters 11, 13, and 14 (i.e., Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), the Agreement incorporates by reference the general exceptions contained in GATS Article XIV, including its footnotes. The Agreement also includes exceptions regarding: essential security interests; taxation; disclosure of information; and balance of payments measures on trade in goods.

Final Provisions. The Agreement provides for the accession of third countries to the Agreement, an amendment process, and entry into force and termination of the Agreement. Article 22.6 provides that the Agreement will enter into force on the first day of the third month after the date on which the United States and Morocco exchange written notifications certifying that they have completed their respective legal procedures (or on such other date as the Parties may agree). The exchange of notifications is a necessary precondition for the Agreement's entry into force. The Agreement's entry into force is thus conditioned on a determination by the President that Morocco has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force. Either Party may terminate the Agreement on 180–days written notice to the other Party.

E. General Description of the Bill To Implement the United States-Morocco Free Trade Agreement

Sec. 1. Short Title; Table of Contents

This section provides that the short title of the legislation implementing the United States-Morocco Free Trade Agreement (the Agreement) is the "United States-Morocco Free Trade Agreement Implementation Act." Section 1 also provides the table of contents for the implementing legislation.

Sec. 2. Purposes

This section provides that the purposes of the implementing legislation are: to approve and implement the Agreement; to strengthen and develop economic relations between the United States and Morocco; to establish free trade between the United States and Morocco through the reduction and elimination of barriers to trade in goods and services and to investment; and, to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

Sec. 3. Definitions

This section defines the terms "Agreement," "HTS," and "Textile or Apparel Good," for purposes of the implementing legislation.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

Sec. 101. Approval and Entry Into Force of the Agreement

This section provides Congressional approval for the Agreement and its accompanying Statement of Administrative Action. Section 101 also authorizes the President to exchange notes with the Government of Morocco to provide for entry into force of the Agreement on or after January 1, 2005. The exchange of notes is conditioned

on a determination by the President that Morocco has taken measures necessary to comply with those of its obligations that take effect at the time the Agreement enters into force.

Sec. 102. Relationship of the Agreement to United States and State Law

This section establishes the relationship between the Agreement and U.S. law. It clarifies that no provision of the Agreement will be given effect under domestic law if inconsistent with Federal law; this would include provisions of Federal law enacted or amended by the Act.

Section 102 also provides that no State law may be declared invalid on the ground that the law is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law invalid. This section precludes any private right of action or remedy against the Federal Government, or a State government, based on the provisions of the Agreement.

Sec. 103. Implementing Actions in Anticipation of Entry Into Force and Initial Regulations

This section authorizes the President to proclaim such actions, and other appropriate officers of the U.S. Government to issue such regulations, as may be necessary to ensure that provisions of the implementing legislation are appropriately implemented by the date the Agreement enters into force if such provisions are required to be implemented by that date. Section 103 also provides that, with respect to any action proclaimed by the President that is not subject to the consultation and layover provisions contained in section 104, such action may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register. The 15-day restriction is waived, however, to the extent it would prevent an action from taking effect on the date the Agreement enters into force. Section 103 also specifies that initial regulations necessary or appropriate to carry out the provisions of the implementing legislation shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force.

Sec. 104. Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions

This section sets forth consultation and layover steps that must precede the President's implementation of any tariff modification, continuation, or additional duty, by proclamation. Under the consultation and layover provisions, the President must obtain the advice of the relevant private sector advisory committees and the U.S. International Trade Commission (ITC) on a proposed action. The President must submit a report to the Senate Committee on Finance and the House Committee on Ways and Means setting forth the action proposed to be proclaimed, the reasons therefore, and the advice of the private sector advisors and the ITC. The Act sets aside a 60-day period following the date of transmittal of the report for the Committees to consult with the President on the proposed action.

Sec. 105. Administration of Dispute Settlement Proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 20 of the Agreement. This section also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of Claims

This section authorizes the United States to use binding arbitration to resolve claims against the United States covered by Art. 10.15.1 of the Agreement (addressing investment disputes). The United States is authorized to arbitrate investment disputes pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

Sec. 107. Effective Dates; Effect of Termination

This section provides the dates that certain provisions of the implementing legislation will go into effect. This section also provides that the provisions of the implementing legislation (other than section 107) will cease to be in effect on the date on which the Agreement terminates.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff Modifications

Section 201(a)(1) authorizes the President to implement by proclamation the continuation, modification, or addition of tariffs, or the continuation of duty-free or excise treatment, as the President determines to be necessary or appropriate, to carry out Articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, 4.3.15, and Annex IV, of the Agreement. Section 201(a)(2) requires the President to terminate the designation of Morocco as a beneficiary developing country under the Generalized System of Preferences (GSP) program on the date of entry into force of the Agreement.

Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to proclaim any continuation, modification, or addition of tariffs, or the continuation of duty-free or excise treatment, as the President determines to be necessary or appropriate, to maintain the general level of reciprocal and mutually advantageous concessions with respect to Morocco provided by the Agreement.

Sec. 202. Additional Duties on Certain Agricultural Goods

This section implements a safeguard mechanism for agricultural goods under the Agreement. Section 202(a) provides applicable definitions for the safeguard mechanism, including definitions for the terms "agricultural safeguard good," "trigger price," and "unit import price."

Section 202(b) provides that if the unit import price of an agricultural safeguard good is less than the trigger price for that good when the good is entered into the United States, an additional duty shall be assessed on the imported good based upon the schedule provided in section 202(b)(2). The amount of additional duty under section 202(b)(2) increases as the difference increases between the unit import price and the trigger price. Annex 3–A specifies trigger

prices for the agricultural safeguard goods that are covered by the safeguard mechanism. The assessment of additional duty under this provision terminates on the date on which duty-free treatment must be provided to that good under the Tariff Schedule of the United States to Annex IV of the Agreement. No additional duty may be assessed on an agricultural safeguard good if that good is already subject to a bilateral safeguard measure under the Agreement, or if that good is subject to a global safeguard measure under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.). Agricultural safeguard goods listed in Annex 3–A of the Agreement include: dried onions and garlic; processed tomato products; asparagus; olives; pears; apricots; nectarines; peaches; fruit mixtures; and orange juice.

Sec. 203. Rules of Origin

This section implements the general rules of origin set forth in Chapter 5 of the Agreement. These rules define the circumstances under which a good imported from Morocco qualifies as an originating good and is therefore eligible for preferential tariff treatment, according to the terms of the Agreement.

A good is an originating good if it is imported directly from Morocco, and the good is wholly the growth, product, or manufacture, of Morocco or the United States, or both.

A good imported directly from Morocco that does not satisfy the foregoing criteria may still be an originating good if: the good derives from a nonoriginating good or material that has undergone a substantial transformation in Morocco (*i.e.* to become a new or different article of commerce) and not less than 35 percent of the appraised value of the good, at the time the good enters the United States, is attributable to the sum of the value of materials produced in Morocco or the United States, or both, plus the direct costs of processing operations performed in Morocco or the United States, or both. This "substantial transformation" rule of origin is akin to rules of origin provided for in the United States-Israel Free Trade Area Implementation Act of 1985 and the United States-Jordan Free Trade Area Implementation Act.

In addition, a good imported directly from Morocco is an originating good if: the good is covered by Annex 4–A or Annex 5–A of the Agreement; each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in Morocco or the United States, or both (or the good otherwise satisfies the requirements specified in such Annex); and the good satisfies all other applicable requirements of section 203.

Section 203(c) provides a rule of cumulation for an originating good or material produced in Morocco or the United States, or both, that is then incorporated into a good in either Morocco or the United States and then exported directly to the other Party. Section 203(d) provides rules for valuing a material produced in Morocco or the United States, or both. Section 203(e) addresses the treatment of packaging materials and containers for retail sale and for shipment. Section 203(f) addresses indirect materials, while section 203(g) addresses transit and transshipment of goods. Section 203(h) provides specific rules of origin for textile and apparel goods,

while section 203(i) provides definitions of terms applicable to the rules of origin. Section 203(j) authorizes the President to proclaim, as part of the Harmonized Tariff Schedule of the United States, the provisions set forth in Annex 4–A and Annex 5–A of the Agreement, and to modify certain of the Agreement's specific rules of origin by proclamation subject to the consultation and layover provisions of section 104 of the implementing legislation.

Sec. 204. Enforcement Relating to Trade in Textile and Apparel Goods

This section authorizes the President to apply anti-circumvention provisions concerning trade in textile and apparel goods. The Secretary of the Treasury may request that the Government of Morocco conduct a verification to determine that an exporter or producer in Morocco is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods, or to determine that a claim for preferential treatment of textile or apparel goods is consistent with the terms of the Agreement. Section 204 authorizes the President to order the suspension of liquidation of entries from exporters or producers in Morocco that are subject to a verification, and the suspension of liquidation of any entry that is subject to verification. If the Secretary of the Treasury determines that information obtained within 12 months of a request for verification is insufficient to make a determination, section 204 authorizes the President to direct the Secretary to: publish the name and address of the person subject to verification; deny preferential tariff treatment under the Agreement to any textile or apparel good exported or produced by the person subject to verification; deny preferential tariff treatment under the Agreement to the entry subject to verification; deny entry into the United States of any textile or apparel good exported or produced by the person subject to verification; or, deny entry into the United States of the entry subject to verification.

Sec. 205. Regulations

This section requires the Secretary of the Treasury to prescribe such regulations as may be necessary to carry out the provisions of section 203 (rules of origin).

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms "Moroccan article" and "Moroccan textile or apparel article" for purposes of the general bilateral safeguard provision contained in Chapter 8 of the Agreement and the textile and apparel bilateral safeguard provision contained in Chapter 4 of the Agreement. The term "Moroccan article" is defined as an article that qualifies as an originating good under section 203(b) of the implementing legislation or receives preferential tariff treatment under paragraphs 9 through 15 of Art. 4.3 of the Agreement. The term "Moroccan textile or apparel article" is defined as a Moroccan article that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)). Section 301

also defines the term "Commission" as the U.S. International Trade Commission.

Subtitle A. Relief From Imports Benefiting From the Agreement

Sec. 311. Commencing of Action for Relief

This section requires the filing of a petition with the Commission by an entity that is representative of an industry in order to commence a bilateral safeguard investigation. Section 311(a) permits a petitioning entity to request provisional relief as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. § 2252(a)). Any request for provisional relief shall include an allegation of "critical circumstances" in the petition.

Section 311(b) provides that, upon the filing of a petition, the Commission shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Moroccan article is being imported into the United States in such increased quantities, and under such conditions, that imports of the Moroccan article constitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 311(c) applies to any bilateral safeguard initiated under the Agreement certain provisions, both substantive and procedural, contained in subsections (b), (c), (d), and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. § 2252(b), (c), (d), and (i)) that apply to global safeguard investigations. These provisions include, *inter alia*, the requirement that the Commission publish notice of the commencement of an investigation; the requirement that the Commission hold a public hearing at which interested parties and consumers have the right to be present, to present evidence, and to respond to the presentations of other parties and consumers; the factors to be taken into account by the Commission in making its determinations; and, authorization for the Commission to promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties in an investigation.

Section 311(d) precludes the initiation of an investigation with respect to any Moroccan article for which import relief has already been provided under this bilateral safeguard provision.

Sec. 312. Commission Action on Petition

This section establishes deadlines for Commission determinations following the initiation of a bilateral safeguard investigation. Section 312(b) applies certain statutory provisions that address an equally divided vote by the Commission in a global safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252), to Commission determinations under this section. If the Commission renders an affirmative injury determination, or a determination that the President may consider to be an affirmative determination in the event of a divided vote by the Commission, section 312(c) requires that the Commission also find and recommend to the President the amount of import relief that is necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a posi-

tive adjustment to import competition. Section 312(d) specifies the information to be included by the Commission in a report to the President regarding its determination. Upon submitting the requisite report to the President, section 312(e) requires the Commission to promptly make public such report, except for confidential information contained in the report.

Sec. 313. Provision of Relief

This section directs the President, not later than 30 days after receiving the report from the Commission, to provide relief from imports of the article subject to an affirmative determination by the Commission, or a determination that the President considers to be an affirmative determination in the event of a divided vote by the Commission, to the extent that the President determines necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

Section 313(c) specifies the nature of the import relief that the President may impose, to include: the suspension of any further reduction in duty provided for under Annex IV of the Agreement; and, an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the NTR/MFN duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the Agreement enters into force. In the case of a duty applied on a seasonal basis to an article, the President may increase the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the NTR/MFN duty rate imposed on like articles for the immediately preceding corresponding season, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the Agreement enters into force. Section 313(c) also requires that, if the period for which import relief is provided exceeds 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period of its application.

Section 313(d) provides that the initial period for import relief in a bilateral safeguard action shall not exceed 3 years. The President is authorized to extend the effective period of such relief under section 313(d) if the President determines that import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Before the President can extend the period of import relief, the President must first receive a report from the Commission under section 313(d)(2)(B) containing an affirmative determination, or a determination that the President may consider to be an affirmative determination in the event of a divided vote by the Commission, that import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that the domestic industry is making a positive adjustment to import competition. Section 313(d) also provides that the total period for import relief in a bilateral safeguard action, in-

cluding any extension of such import relief, shall not exceed 5 years.

Section 313(e) provides that upon termination of import relief under the bilateral safeguard provision, the rate of duty to be applied is the rate of duty that would have been in effect on that date with respect to the article, but for the provision of such import relief.

Section 313(f) provides that no import relief may be provided under the bilateral safeguard mechanism on any article that previously has been subject to import relief under the bilateral safeguard, or is subject to an assessment of additional duty under the safeguard mechanism for agricultural goods set forth in section 202 of the implementing legislation.

Sec. 314. Termination of Relief Authority

This section provides that the President's authority to impose import relief with respect to a good under the bilateral safeguard mechanism ends after the date that is 5 years after the date on which duty-free treatment must be provided by the United States to that good pursuant to Annex IV of the Agreement. Section 314(b) provides that the President may provide import relief under the bilateral safeguard mechanism after the foregoing termination date if the President determines that Morocco has consented to the imposition of such import relief.

Sec. 315. Compensation Authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. §2133), to grant Morocco new concessions as compensation for the imposition of import relief in a bilateral safeguard investigation, in order to maintain the general level of reciprocal concessions.

Sec. 316. Confidential Business Information

This section applies the same procedures for the treatment and release of confidential business information by the Commission in a global safeguard investigation under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*) to bilateral safeguard investigations under subtitle A of title III of the implementing legislation.

Subtitle B. Textile and Apparel Safeguard Measures

Sec. 321. Commencement of Action for Relief

This section requires the filing of a request with the President by an interested party in order to commence action for relief under the textile and apparel safeguard provision. Upon the filing of a request, the President shall review the request to determine, from the information presented in the request, whether to commence consideration of the request. Section 321(b) provides that, if the President determines that the request provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a sum-

mary of the request and the dates by which comments and rebuttals must be received.

The Committee notes that our regulatory process should be administered in an open and transparent manner that can serve as a model for our trading partners. For example, in addition to publishing a summary of a request for safeguard relief, the Committee notes that the President plans to make available the full text of the request on the website of the International Trade Administration of the U.S. Department of Commerce, subject to the protection of business confidential information. The Committee encourages this and similar efforts to enhance government transparency. In particular, the Committee encourages the President to issue regulations on procedures for: requesting a textile and apparel safeguard measure; making a determination under section 322(a) of the implementing legislation; providing safeguard relief under section 322(b) of the implementing legislation; and extending safeguard relief under section 323(b) of the implementing legislation.

Sec. 322. Determination and Provision of Relief

This section provides that following the President's commencement of consideration of a request, the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(a)(2) identifies certain economic factors that the President shall examine in making a determination, including changes in the domestic industry's output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive. Section 322(a)(2) also provides that the President shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

Section 322(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition. Section 322(b) also specifies the nature of the import relief that the President may impose, to consist of an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of: (1) the NTR/MFN duty rate imposed on like articles at the time the import relief is provided; or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the Agreement enters into force.

Sec. 323. Period of Relief

This section provides that the initial period for import relief in a textile and apparel safeguard action, including any provisional relief, shall not exceed 3 years. The President is authorized to extend the effective period of such relief by not more than 2 years if the President determines that import relief continues to be nec-

essary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Section 323(b) provides that the total period for import relief in a textile and apparel safeguard action, including any extension of such import relief, may not exceed 5 years.

Sec. 324. Articles Exempt From Relief

This section precludes the President from providing import relief under the textile and apparel safeguard mechanism with respect to any article to which import relief has already been provided under the textile and apparel safeguard, or any article that is subject to import relief under the global safeguard mechanism set forth in chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*).

Sec. 325. Rate After Termination of Import Relief

This section provides that the duty rate applicable to a textile or apparel article after termination of the import relief shall be the duty rate that would have been in effect, but for the provision of such import relief, on the date on which the relief terminates.

Sec. 326. Termination of Relief Authority

This section provides that the President's authority to provide import relief under the textile and apparel safeguard mechanism terminates after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

Sec. 327. Compensation Authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant Morocco new concessions as compensation for the imposition of import relief in a textile and apparel safeguard proceeding, in order to maintain the general level of reciprocal concessions.

Sec. 328. Business Confidential Information

This section precludes the President from releasing information that the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. This section also provides that, to the extent business confidential information is provided, a nonconfidential version of the information shall also be provided in which the business confidential information is summarized or, if necessary, deleted.

F. Vote of the Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on July 20, 2004, S. 2677 was ordered favorably reported, without amendment, by a unanimous vote of 21 ayes and 0 nays, a quorum being present.

II. BUDGETARY IMPACT OF THE BILL

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2004.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2677, a bill to implement the United States-Morocco Free Trade Agreement.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Annabelle Bartsch.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 2677.—A bill to implement the United States-Morocco Free Trade Agreement

Summary: S. 2677 would approve the free trade agreement between the government of the United States and the government of Morocco that was entered into on June 15, 2004. It would provide for tariff reductions and other changes in law related to implementation of the agreement.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by $5 million in 2005, by $52 million over the 2005–2009 period, and by $144 million over the 2005–2014 period, net of income and payroll tax offsets. The bill would not affect federal spending.

CBO has determined that S. 2677 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2677 over the 2005–2014 period is shown in the following table.

	By fiscal year, in millions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Changes in receipts	−5	−9	−11	−13	−15	−16	−18	−19	−19	−20

Basis of estimate: Under the United States-Morocco agreement, tariffs on U.S. imports from Morocco would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination on January 1, 2005, to gradual elimination over 18 years. According to the U.S. International Trade Commission, the United States collected $15 million in customs duties in 2003 on $396 million of imports from Morocco. Those imports consist mostly of various types of apparel articles and produce. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Morocco agreement would re-

duce revenues by $5 million in 2005, by $52 million over the 2005–2009 period, and by $144 million over the 2005–2014 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Morocco that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Morocco would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Morocco would displace imports from other countries.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Melissa Merrell; and Impact on the Private Sector: Crystal Taylor.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. No. 104–04). The Committee has reviewed the provisions of S. 2677 as approved by the Committee on July 20, 2004. In accordance with the requirement of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of State, local, or tribal governments.

IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

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SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

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(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, [and] title III of the United States-Singapore Free Trade Agreement Implementation Act*, and title III of the United States-Morocco Free Trade Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

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