

April 6, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Executive Office of the President
Washington, D.C. 20508

Dear Ambassador Zoellick:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Industry Sector Advisory Committee for Trade Policy Matters, Services (ISAC 13) on the U.S.-Morocco Free Trade Agreement reflecting consensus on the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Vastine", written in a cursive style.

Robert Vastine
Chairman, ISAC 13

**The U.S.-Morocco
Free Trade Agreement**

**Report of the
Industry Sector Advisory Committee on Services
for Trade Policy Matters (ISAC 13)**

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Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13)

Report to the President, the Congress and the United States Trade Representative on the U.S.-Morocco Free Trade Agreement (FTA).

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002. The report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) hereby submits the following report.

II. Executive Summary of Committee Report

The U.S.-Morocco Free Trade Agreement is supported by the Committee because it achieves services and investment liberalization far beyond that to which Morocco is committed in the WTO General Agreement on Trade in Services (GATS). It contains a solid investment chapter, very strong commitments to intellectual property protection, and good transparency provisions. Morocco's commitments are comparable to those of Chile and Singapore except in the important area of financial services. We regret that Morocco did not agree that liberalization of financial services is an essential precondition for economic modernization and growth and is thus, first and foremost, in the best interest of Morocco.

In particular, Morocco generally restricts individuals and institutions from investing outside of Morocco and these prohibitions have made it commercially infeasible for US financial institutions to enter Morocco's markets. These domestic law restrictions seriously limit the mutual fund, pension fund and securities broking and dealing services that U.S. firms can offer to Moroccan investors. They also deny financial institutions, including insurance companies, banks and broker dealers, the ability to fund and manage the risks of their Moroccan activities through investments outside of Morocco. The Agreement makes no immediate progress in removing these restrictions, although

Morocco has agreed to permit U.S. investors in Morocco (including financial services firms) to purchase financial services from U.S. providers four years following the entry into force of the Agreement and to consider the implementation of certain liberalizations with respect to mutual fund investments abroad after three years.

On the other hand, the Agreement contains good commitments in a number of sectors (discussed below), including entertainment services and cultural products, advertising services, computer and related services, construction services, distribution services, telecommunications services, and professional services like law, engineering and architecture.

An important element of the Agreement is its Chapter on Investment. Foreign direct investment is particularly important for trade in services because many services can only be “traded” by establishing a commercial presence (investing) in a foreign market. Subject, again, to the caveat described above, with respect to the financial services sector limitations imposed by Moroccan domestic law, the chapter provides new opportunities for market access for investment (as discussed in the section of the report on sectoral commitments below). It contains high standard protections for such investment, including investor-state arbitration, the free transfer of capital and protections related to expropriation and fair and equitable treatment. The Committee is disappointed, however, by the prospective only protections for breaches of certain investment agreements between an investor and the foreign government, and other shortcomings discussed more fully below.

This report is one of the last that will be filed by ISAC 13, which will be altered by the advisory committee reorganization that is now in progress. In its current configuration ISAC 13 represents virtually all U.S. services sectors. Thus it has had the ability to weigh the merits of the succession of new U.S. FTAs negotiated under the authority provided the President in the Trade Promotion Authority Act, enacted as part of the Trade Act of 2002. These FTAs are in themselves valuable because they have shown how much can be achieved in a bilateral negotiation.

On the other hand, the Committee regrets that, with the exception of Australia, larger and more significant economies were not chosen as FTA partners, because it has seen at very close range the very substantial commitment of skill and negotiating resources that has been required to conclude these agreements, and because it understands how difficult it will be to achieve Congressional approval of some Agreements, even though they unquestionably merit that approval.

The Committee notes that a broader goal of the FTA program has been to stimulate competitive liberalization that will extend to the multilateral arena of the World Trade Organization, and it hopes that the intensive U.S. bilateral and sub-regional effort will indeed generate movement in the WTO toward truly multilateral liberalization that will build on the excellent progress that has been achieved in our agreements with these smaller economies. The Committee regrets that at this time the determined U.S. bilateral and sub-regional approach has not yet spurred movement in the Doha Development

Agenda negotiations in the WTO, but earnestly hopes that this result can be achieved.

III. Brief Description of the Mandate of the ISAC 13

ISAC 13 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the services sector. To fulfill its mandate the ISAC meets at least monthly to review negotiations with U.S. trade officials and to advise as required by law.

ISAC 13 advises the Secretary of Commerce and the U.S. Trade Representative (USTR) concerning the trade matters referred to in Sections 101, 102, and 124 of the Trade Act of 1974, as amended; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the development, implementation, and administration of the services trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions there under.

In particular, ISAC 13 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the services sector, and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of the ISAC 13

ISAC 13's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy and, by extension, the economies of its trading partners.

U.S. services industries provide about 87 million jobs, or 80% of total private sector employment. Most new jobs are services jobs. Between 1993 and 2003 services added 20.3 million new U.S. jobs.

According to the U.S. Bureau of Labor Statistics, 90% of all the 21.3 million new jobs to be created over the next 8 years will be services jobs.

ISAC 13's objective for this and other trade agreements is to achieve substantial additional market access for U.S. service industries. This means commitments to greater access to foreign markets for U.S. cross border trade, to investment abroad, and to the temporary movement of Americans who provide services.

With respect to the protection of U.S. investment abroad, ISAC 13's objective is to ensure high levels of protections for U.S. investors abroad, including protections related

to national treatment and most-favored nation treatment, expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, investment agreements and investor-state dispute settlement.

ISAC 13 also sees an opportunity to advance U.S. policy objectives to liberalize foreign markets by focusing U.S. agencies' and private entities' efforts to provide technical assistance and trade-related capacity-building abroad, especially in developing countries and transitional economies. ISAC 13 believes that intensive technical assistance is imperative in many parts of the world if mutual trade liberalization goals are to be attained.

Finally, ISAC 13 appreciates the decision of the U.S. Government to pursue a *negative list* (or "top-down") approach and hopes this template is used when negotiating future bilateral and regional trade agreements.

V. Advisory Committee Opinion on Agreement

Overall, the Committee believes that the U.S.-Morocco Free Trade Agreement meets the Committee's objective of achieving new and expanded trade and investment opportunities.

A. Crosscutting Provisions. The Committee's opinions on investment, temporary entry, and transparency follow:

Investment

The Agreement will help promote a secure and predictable legal framework for U.S. investors in Morocco. Such provisions are of particular interest to service providers, whose services often require a local presence. The Committee notes that the United States already has a Bilateral Investment Treaty (BIT) in force with Morocco that will be suspended while the Agreement is in force.

With respect to ensuring access to U.S. investment, the Agreement makes substantial progress in reducing the barriers to such investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in Morocco, except where a specific reservation was taken, as discussed below in each of the sectoral areas. Such investors are to be accorded equal treatment with local investors and may not be subjected to special or discriminatory requirements for the use of local inputs or export obligations or be required to extend licenses to local companies. Rights to manage and direct such investments with personnel other than from the host country are also provided.

With respect to the protection of U.S. investment, the investment chapter of the Agreement generally contains the primary protections sought by the Committee and included in the Trade Promotion Authority legislation, enacted as part of the Trade Act of

2002. These include a broad definition of investment, the guarantee of prompt, adequate and effective compensation for expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, as well as national treatment and most-favored nation provisions. Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford U.S. investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions.

Nevertheless, the Committee is disappointed by several limitations in this agreement. First, the Agreement fails to provide protection for existing investment agreements, defined as agreements relating to natural resources or other assets controlled by the foreign government. Such investment agreements are related to many key sectors of U.S. investment activity abroad, including natural resources, construction, infrastructure development, and computer and telecommunications networks. On several occasions, the Committee has expressed its views that breaches of such investment agreements should be covered in FTAs, as well as new BITs, given the important economic and security benefits such agreements provide to the United States. Given the lack of any concrete concerns expressed by U.S. negotiators with respect to any existing investment agreements between the United States and Morocco, and the fact that this commitment is already contained in the U.S.-Morocco BIT, the Committee fails to understand why this important protection was limited to prospective agreements only.

Second, the Agreement allows governmental restrictions on financial services activities, including the transfer of capital, through the operation of a broad prudential carve-out for financial services measures taken by the host government. The procedure developed to review whether a measure correctly falls within the prudential carve-out is extremely lengthy and onerous, allowing not only a government-to-government review, but also a separate dispute settlement proceeding if the two governments cannot agree that the measure taken properly fits within the prudential carve-out.

Movement of Personnel

Unlike trade agreements with Singapore and Chile, the U.S.-Morocco Free Trade Agreement does not include a provision for the temporary entry of key businesspersons. ISAC 13 is disappointed by the absence of such an important provision.

Skilled personnel are essential to world trade and investment. They are the means by which U.S. service companies provide services to their customers. Without the ability to move their personnel with speed and agility, American services businesses simply cannot fulfill their obligations to clients around the world. Thus, for a trade agreement to be commercially viable it should contain meaningful personnel mobility provisions.

As ISAC 13 has previously commented, U.S. service providers face complex, cumbersome and time-consuming requirements to obtain work permits and visas for their workers on short-term secondments and/or transfer to company facilities, projects or assignments in other countries. Increasingly, visa and other entry permit barriers face foreign employees and U.S. employers seeking temporary entry into this country for their

employees and contract workers. It can take often take months to obtain the necessary entry authorizations, thus seriously hampering a company's ability to perform the necessary work or internal training/orientation in a timely fashion. Situations such as these undermine the spirit and purpose of bilateral and multilateral trade agreements.

The Committee well understands that temporary entry provisions are not included in this Agreement because of Congressional concerns that the negotiations of temporary entry provisions in the Chile and Singapore Agreements had not been explicitly authorized in advance. It would seem appropriate, therefore, that the responsible committees of Congress develop guidelines for future bilateral and multilateral trade agreement so that USTR has the flexibility to negotiate temporary entry provisions for highly skilled individuals, senior corporate executives, professional personnel (accountants, architects, educators, lawyers, health care personnel, as examples) and others with unique skills and experience, such as oil well drilling equipment or uniquely qualified personnel required to produce films. Not only will temporary entry provisions benefit U.S. service providers, they will also help increase the employment of Americans working overseas and, in many instances, will help create employment for U.S.-based workers who support those working abroad.

As the global marketplace becomes increasingly interdependent and as modern economies become more dependent on services for their growth and prosperity, the need for American service enterprises to move their people across national borders grows. Seconding staff to establish and operate an overseas branch, subsidiary or affiliate may be necessary, even on a short-term basis, as sufficient local qualified workers with the necessary skills, experience, and corporate knowledge are often not readily available.

At a minimum, a bilateral trade agreement should include, in the case of business visitors, a binding for access to the most common short-term business activities and a prohibition of prior approval procedures, petitions, labor certification tests or numerical limitations. For intra-company transferees, neither party to the agreement should be subject to employment tests, labor certification or numerical limits. Particular attention should be given to the temporary entry of professionals.

The absence of a movement of personnel provision in this Agreement is a serious shortcoming. While the absence of such a provision is not sufficient to withhold approval of this Agreement, ISAC 13 and USTR should be mindful of temporary entry provisions as future agreements are negotiated. ISAC 13 looks forward to working with USTR and other agencies to fashion commercially meaningful and politically feasible temporary entry/personnel movement proposals.

Transparency

The provisions of the Agreement providing for transparency taken together guarantee a high standard of transparency in administrative, licensing, and adjudicatory proceedings. In sum they are very valuable commitments that are consistent with current U.S. law and practice. Considering that Morocco has no tradition of regulatory transparency, its commitments here signal an important shift in regulatory practice.

Transparency in regulatory processes is absolutely essential for services industries, because they generally are highly regulated. A government's regulations governing financial services, energy services, or professional services, for example, can vitiate or nullify trade agreements that would otherwise provide full market access and national treatment.

The Agreement's transparency provisions are laid out in four parts of the Agreement: The initial chapter on transparency applies to all trade under the Agreement. In the services chapter are additional provisions applying to all cross border services trade. The financial services chapter contains further provisions, as does the investment chapter.

The overarching provisions in the chapter on transparency contain the following essential elements: the designation of a contact point for inquiries, prompt publication; the requirement that "to the extent possible" measures that each Party proposes to adopt are published in advance, and that persons of both Parties have a reasonable opportunity to comment. Further the chapter provides that parties at interest to proceedings receive reasonable notice of such proceedings, and that they are allowed to present their case prior to final administrative actions. Each Party must establish independent tribunals or procedures for prompt review of administrative actions, and has the right to a decision based on evidence.

The provisions in the cross border services chapter also provides for the Parties to reach agreements mutually recognizing their qualifications and standards for professional practice.

The transparency provisions set out in the financial services chapter are consistent with the other transparency provisions in the Agreement but are tailored to the needs of this sector.

In addition the Transparency Chapter commits each country to treat as criminal the acceptance or offerance of bribes to influence public decisions.

B. Sectoral Issues. The Committee's opinions on specific service sectors follow.

Accounting Services

The international accounting networks have been able to operate in Morocco in a reasonably satisfactory manner under contractual and other arrangements with local firms and practitioners. The FTA permits foreign investment and ownership in local Moroccan accounting firms, provided that statutory services (such as certification of accounts) are performed by members of the Order of Chartered Accountants (OCA). This is common practice in most countries – those providing statutory services must hold local qualifications – and generally does not pose a significant obstacle for the international networks. However, Morocco retains rather stringent controls on the ability of non-nationals to obtain the OCA qualification. Likewise, the professional designation of

Qualified Accountant is only available to Moroccan nationals. These restrictions are particularly onerous for small and medium sized firms or individual practitioners who may wish to participate in the Moroccan market.

Advertising

Morocco has provided access for the full range of advertising services and lists no restrictions in this area in its commitments. Morocco's trade commitments in this area are meaningful.

Architecture

The general provisions for professional services in Annex 11-B provide for equity and reciprocity in this sector. Although non-Moroccan nationals are allowed to provide architectural services only in a joint venture or under a "practice in a host nation" protocol, this restriction still allows acceptable market access to U.S. architects, while promoting professional capacity building and collaborative services.

Asset Management Services

The restrictions Morocco places on investment outside Morocco by individuals, mutual funds and pension funds have served as significant barriers to entry for US firms seeking to provide mutual fund or pension fund management services in Morocco. It is thus disappointing that the FTA achieved no firm, specific commitments by Morocco in asset management.

While the FTA itself contains no liberalizations with respect to mutual funds, pension funds or other types of asset management, the FTA states Morocco will address within three years either the prohibition on foreign investment by Moroccan mutual funds or the capital dotation rules for bank branching. It is unfortunate that this future concession is cast as a choice between two quite desirable alternatives and it is unclear on what criteria the choice will be made or whether the United States will be consulted. Moreover, should Morocco choose to liberalize its mutual fund foreign investment rules, rather than its bank capital rules, it is unclear whether the liberalization would be meaningful. The FTA states that Morocco considers that a first step might be to permit investment of up to five percent of a mutual fund's assets outside of Morocco. The U.S. industry believes that an appropriate first step in liberalization should permit at least 25 percent of a mutual fund's assets to be invested outside Morocco.

Audiovisual Services

The FTA ensures that all U.S. audiovisual services will enjoy national treatment and MFN status, with only a few limited reservations. While Morocco did take a few reservations with respect to this sector, the reservations are narrow, specific, and unlikely to disrupt existing commercial trade in audiovisual services.

For example, Morocco requires the companies that do film production or film and video distribution in Morocco set up a corporate entity. This requirement is not onerous for U.S. business and is consistent with the way the industry typically conducts business in these areas. Morocco requires government approval for news agency operations but

helpfully clarifies that this reservation does not apply to foreign news agency services outside of Morocco serving Moroccan customers. Similarly, while Morocco undertakes no commitments for investment in the facilities for transmission of radio and TV broadcasting, the Moroccan government clarified that this reservation does not apply to suppliers of programming where U.S. industry has commercial interests.

Morocco also undertakes no commitments with respect to subsidies - which industry was not seeking to cover under this free trade agreement. Morocco's MFN exemption for cultural related industries is not commercially problematic as Morocco agrees to provide national treatment in this area and we do not expect that Morocco will provide better terms to third parties than it provides to its own producers very often.

Most importantly, the Morocco FTA avoids the "cultural exceptions" approach that some countries in the multilateral trading system have advanced, and it demonstrates that a trade agreement has sufficient flexibility to take into account countries' cultural promotion interests. Finally, the high standard IP commitments included in a separate chapter of the agreement are a valuable complement to Morocco's market access commitments.

Computer and Related Services

The Agreement ensures full market access and national treatment for computer and related services by taking no reservations in this important sector for the U.S. information technology industry. Between the Services Chapter and the Investment Chapter, the Agreement covers all modes of delivery, including electronic delivery, such as via the Internet. The negative list approach also ensures that rapidly evolving new computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The commitments for computer and related services are complemented by the commitments contained in the Electronic Commerce Chapter.

Electronic Commerce

The U.S.- Morocco Free Trade Agreement, as with other FTAs, includes important language on electronic commerce. The chapter maintains and slightly expands the standards for trade in electronic commerce established under previous agreements. As with previous Agreements, the Morocco FTA includes the concept of "digital products"; prevents the application of customs duties on electronically delivered digital products; assures the non-discriminatory treatment of digital products delivered physically or electronically; addresses the valuation of physically delivered digital products; and provides commitments to cooperate on electronic commerce policy. The Agreement provides a broad national treatment and a broad MFN provision. These provisions are broadened in the Morocco FTA through a footnote clarifying coverage in additional instances. In short, the Morocco Agreement contains long standing electronic commerce principles identified by U.S. industry. There are no reservations taken specifically in the area of e-commerce.

Energy Services

The Morocco FTA, in particular sections on domestic regulation, transparency and government procurement, provides a framework that can increase opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and Morocco.

The side letter on investment and cross border trade in services offers Morocco important technical assistance opportunities that have the potential to improve Morocco's awareness of and ability to target and provide services to the United States. US energy services firms provide a wide range of technical assistance around the world and support the kinds of support proposed in the side letter.

As noted earlier in this report, the FTA does not include provisions to facilitate the temporary entry of expert, professional and managerial personnel. We regret this omission, since certain energy services providers rely heavily on the ability to move highly skilled workers from job site to job site with ease.

Engineering and Environmental Services

In summary, the Agreement appears to be positive for Engineering Services and Environmental Services. Several aspects of the Agreement can be specifically called out in that regard.

The Agreement does not provide for the temporary movement of personnel. Insofar as this provision is lacking, this Agreement is significantly flawed as engineering and environmental services rely upon cross-border movement of personnel to accomplish a significant volume of international trade in these services.

Other concerns appear to have been favorably addressed for both Engineering and Environmental Services, including Temporary Admission of Goods, Technical Barriers to Trade, Government Procurement, and Transparency. These are discussed in more detail below.

Market Access – Chapter 2

The provisions of the Agreement providing for temporary admission of goods remove some of the barriers to importation of specialized equipment. The Agreement further provides for different entry and exit ports for these goods.

Government Procurement – Chapter 9

Many of the engineering and environmental services tenders are for government contracts. This Agreement enhances the transparency goals through a well-defined open procurement process that we believe will provide substantial opportunities in the Engineering and Environmental Sectors.

Services – Chapter 11

This chapter provides for cross-border trade in engineering and environmental services. Subsection 11.5 specifically limits requirements for maintenance or establishment of

representative offices or domiciles as a prerequisite to conduct business. Engineering and environmental services are heavily regulated. This subsection provides a very progressive mechanism permitting applicants to stay informed of the status of their applications for provision of those services. Subsection 11.9 in conjunction with Annex 11-B provides a vehicle to recognize education and certification. This is a valuable aspect of this agreement that will allow highly trained professionals in the Engineering and Environmental Service Sectors to practice with minimal delays in entry.

Environment

The environmental agreement provides a fair and equitable approach to growth in this sector. This section further enhances the overarching transparency objectives of this agreement, providing standards for establishing standing to bring claims for noncompliance, standards for public involvement, and a mechanism for mediation of compliance challenges. This tone is further enhanced by the Joint Statement that establishes a policy for cooperation, growth enforcement and information exchange. The collaborative theme captured in this section provides a very real and firm basis upon which cross border trade in both environmental and engineering services can grow.

Annex II – Non-Conforming Measures

We regret that Morocco reserves to itself the collection, treatment and elimination of hazardous waste, thus limiting virtually any U.S. engineering or environmental services entry in this field.

Express Delivery Services

The express delivery industry believes the FTA with Morocco includes important provisions for the sector, including an appropriate definition of express delivery services. The Agreement seeks to ensure that the sector is subject to the provisions of the FTA. The Agreement also contains important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. With that said, where the industry has mentioned specific customs barriers in the context of a FTA, we request that the U.S. government negotiate away those barriers to the greatest extent possible.

The Agreement falls short in addressing another key element for our industry - cross subsidization of EDS operations by postal authorities that use revenues and other privileges they derive from their government-granted monopoly rights to secure advantages in competitive EDS operations. The Morocco FTA cross-subsidization statement is unilateral, applying only to Morocco. In addition, it is limited to stating that Morocco has "no intention" of using "revenues" from postal services to benefit express delivery. Therefore, we are concerned that Morocco has made no actionable commitment and that the intention expressed does not fully cover the scope of cross subsidization that could occur. Notwithstanding this shortcoming, the U.S. express delivery industry believes the text of the Agreement provides important benefits to the express industry.

Financial Services (other than insurance and asset management)

Morocco's very limited financial services sector commitments in the FTA unfortunately reflect the significantly underdeveloped state of the financial services sector in

Morocco's economy. Nevertheless, ISAC 13 is gratified that Morocco has used the opportunity of the negotiation of the Free Trade Agreement carefully to examine a number of limitations contained in its domestic law and that it has agreed in some instances to relax or remove those limitations even if with transition periods which are, in some cases, as long as four years or subject to other conditions.

In particular, ISAC 13 notes that Morocco will continue to be commercially less than attractive to foreign investors for as long as its domestic law prohibits persons in Morocco – including foreign investors – from investing, or maintaining accounts of any type, outside Morocco. For that reason we are pleased that Morocco has agreed to lift those restrictions on U.S. investors and U.S. investments four years following the entry into force of the FTA. Indeed, it is only with the lifting of those prohibitions that Morocco's other major commitments in the financial services sector -- i.e., national treatment, permission for banks and securities firms to establish at 100% ownership in the form of their choice (including branches in the case of banks) and investment rights (as described elsewhere)—will become meaningful.

We are also pleased that Morocco has agreed to far-reaching provisions in financial sector regulatory transparency – though we note that this agreement with respect to regulatory transparency is subject to a two-year transition period. It is our hope that steady progress towards a transparent regulatory process will be made during that two-year period.

In the banking sector, while we are pleased with Morocco's general market access commitment (subject to the caveat described above concerning the discouraging effect of the country's overall outbound foreign exchange controls), we regret that Morocco has chosen to retain its capital dotation rules for bank branching. That said, on the positive side we note Morocco's agreement in the FTA to begin to liberalize within three years its rules in either this area (i.e., the application of capital requirements to foreign banks or branches) or the holding of non-Moroccan securities by Moroccan mutual funds or by foreign mutual funds located in Morocco. We appreciate this future concession, although we believe it is unfortunate that this commitment to liberalize will require a choice between two alternatives, both of them desirable and both in Morocco's interest

We also regret that under Moroccan domestic law foreign banks or financing companies operating through branches in Morocco are not permitted to issue negotiable debt securities, including certificates of deposit or bonds, in Morocco. Finally, we are disappointed that Morocco has reserved the right to limit foreign acquisition of a controlling interest in the shares of any “major bank, or of a bank holding company having a majority interest in a major bank” based on the domestic market share of the local bank to be acquired. ISAC 13 is of the view that such domestic market share tests should not be perpetuated in the modern global trading system.

Healthcare Services

The Moroccan Free Trade Agreement, should the Moroccan side implement reforms implied in its side letter on health, may improve investment opportunities for American

health care organizations in the Kingdom. The Side Letter for Morocco states that the Kingdom agrees to take into account, as it reforms its laws, U.S. desires to allow any person, including non-physicians, to establish private clinics and comparable medical facilities. This marks a significant change in that many American healthcare organizations are led by non-physicians.

The agreement also encourages relevant bodies to develop procedures for temporary licensing, although it falls short of allowing for temporary licensing at this time. Also, Morocco maintains substantial licensing barriers for American physicians to be recognized and/or practice in the country. One significant exception is that the agreement allows for a one-month temporary license for specialists in fields that do not exist in Morocco. This exception opens the door for visiting physician exchanges of highly skilled medical personnel, and is an encouraging development.

Insurance

On insurance, Morocco's market has been problematic for American insurers and has been dominated by local and French companies. The agreement addresses some of these problems. It commits to wholly owned U.S. subsidiaries, and contains certain branching rights, including permitting legal domicile outside Morocco. Cross-border commitments are an improvement over Morocco's current multilateral obligations in the GATS. In addition, the provisions providing for the expedited availability of new insurance products could be helpful. Unfortunately the agreement fails to address a regional reinsurance obligation under Africa Re, and allows Morocco an excessive amount of time to eliminate its own mandatory reinsurance requirement under Morocco Re.

Legal Services

The Agreement provides substantial opportunity for American lawyers and law firms to establish offices in Morocco as foreign legal consultants. While not defined, foreign legal consultant services are specifically permitted. Establishments providing such services may take any form of legal entity. No residency requirement is imposed.

The Agreement does impose certain restrictions on admission to practice in Moroccan courts as a member of the Moroccan bar, but the restrictions should not significantly inhibit trade in legal services.

As noted, the Agreement lacks temporary entry provisions. To date the absence of such provisions does not appear to have inhibited the delivery of legal services in either country.

Telecommunications

The telecommunications chapter is very similar to previous strong chapters in Singapore and Australia. It covers access to and use of the public telecommunications network for the provision of services. It includes all providers of public telecommunications services, with a focus on the major suppliers of those services. The chapter includes several important "WTO-plus" obligations for major suppliers, including resale, provisioning of leased circuits and co-location. The chapter also fosters independence of regulatory

bodies by disallowing a financial interest in any supplier of public telecommunications services by the regulator. In general, the chapter provides some further specificity and strengthening of Morocco's existing WTO regulatory commitments.

While some past agreements have "carved out" mobile service providers from inclusion in the definition of major suppliers, the Morocco agreement only removes these obligations from the U.S. mobile market. While this type of carve out should be avoided, the U.S. has importantly preserved its ability to enforce these major supplier obligations on Morocco's mobile market, and thereby put pressure on Morocco's above-cost mobile termination rates that are ultimately paid by U.S. consumers.

VI. Membership of ISAC 13

A membership roster for the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) is attached.

**Industry Sector Advisory Committee
For
Trade Policy Matters
Services (ISAC 13)
Member Roster**

Chairman

Mr. Robert Vastine
President
U.S. Coalition of Service Industries

Vice-Chairman

Ms. Elizabeth Benson
President
Energy Associates

Mr. Thomas Allegretti
President
American Waterways Operators

Ms. Emily Altman
Executive Director
Morgan Stanley

Fredric S. Berger, P.E.
Senior Vice President
The Louis Berger Group, Inc.

Mr. Stuart Brahs
Vice President, Federal Government Affairs
Principal Financial Group

Mr. Gordon Cloney
Chairman
Institute for International Insurance Development

Mr. Ken Crerar
President
The Council of Insurance Agents and Brokers

Ms. Ellen Delage
Director, International Relations
The American Institute of Architects

Mr. Donald Deline
Director, Government Affairs
Halliburton Company

Linda Menghetti Dempsey, Esq.
Vice President
Emergency Committee for American Trade

Paul Dickerson, Esq.
Haynes and Boone, LLP

Peter Ehrenhaft, Esq.
Member, Miller & Chevalier, Chartered
Representing the American Bar Association

Dr. Richard Feigel
Vice President Engineering
The Hartford Steam Boiler Inspection and Insurance Company

Mr. Peter Finnerty
President
American Ocean Enterprises, Inc.

Ms. Orit Frenkel
Senior Manager for International Trade and Investment
General Electric Company

Mr. Charles Heeter
Principal, International Government Relations
Deloitte and Touche LLP

Ms. Selina Jackson
Public Affairs Manager for International Trade
United Parcel Service

Mr. Leonard Karp
Executive Vice President and Chief Operating Officer
Philadelphia International Medicine

Ms. Laura Lane
Vice President, International Public Policy
Time Warner, Inc.

Dr. Marjorie Lenn
Executive Director
Center for Quality Assurance in International Education

Donald Morgan, Esq.
Cleary, Gottlieb, Steen and Hamilton

Mr. Kevin Mulvey
Assistant Vice President, Corporate and International Affairs
American International Group, Inc.

Mr. Richard O'Brien
Executive Vice President
And Director of Government Relations
American Association of Advertising Agencies

Mary Podesta, Esq.
Senior Counsel
Investment Company Institute

Ms. Bonnie Richardson
Vice President, Trade and Federal Affairs
Motion Picture Association of America, Inc.

Geralyn Ritter, Esq.
Assistant General Counsel
Pharmaceutical Research and Manufacturers Association

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