UNITED STATES – MOROCCO FREE TRADE AGREEMENT

The Government of the United States of America and the Government of the Kingdom of Morocco (the "Parties"):

Recognizing the longstanding friendship between them, and wishing to strengthen their partnership and promote mutually advantageous economic relations;

Recognizing Morocco's commitment to reform to improve the lives of its people;

Desiring to raise living standards, promote economic growth and stability, create new employment opportunities, and improve the general welfare in their territories by liberalizing and expanding trade and investment between them;

Seeking to enhance the competitiveness of their enterprises in global markets;

Committed to foster bilateral cooperation while recognizing the differences in their level of development and the size of their economies;

Affirming their commitment to facilitate trade between them by eliminating barriers to bilateral trade;

Building on their rights and obligations under the WTO Agreement and other agreements to which they are both parties;

Desiring to liberalize and expand bilateral agricultural trade and investment and thereby make their agricultural sectors more competitive, foster rural development, and increase prosperity in their territories;

Desiring to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, and provide a forum to address sanitary and phytosanitary matters between the Parties, thereby expanding trade opportunities;

Affirming their commitment to transparency and their desire to eliminate corruption in international trade and investment;

Seeking to foster creativity and innovation and to promote trade in goods and services that are the subject of intellectual property rights;

Desiring to strengthen the development and enforcement of labor and environmental laws and policies, promote basic workers' rights and sustainable development, and implement this Agreement in a manner consistent with environmental protection and conservation;

Affirming their desire to establish a free trade area of the United States, Middle East, and

North Africa and thereby contribute to regional integration and economic development;

Have agreed as follows:

Section CHAPTER TEN. Investment

Article 10.1. Scope and Coverage

This Chapter applies to measures adopted or maintained by a Party relating to:
(a) investors of the other Party;
(b) covered investments; and
(c) with respect to Articles 10.8 and 10.10, all investments in the territory of the Party.

Article 10.2. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent

of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

Article 10.3. National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the 10-1 establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.4. Most-favored-nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 10.5. Minimum Standard of Treatment (1)

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is 1 Article 10.5 shall be interpreted in accordance with Annex 10-A. 10-2 required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
4. Notwithstanding Article 10.12.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in paragraph 4, suffers a loss in the territory of the other Party resulting from:
(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.6.2 through 10.6.4, mutatis mutandis.
6. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.12.5(b).

1 Article 10.5 shall be interpreted in accordance with Annex 10-A.

Article 10.6. Expropriation and Compensation (2)

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:
(a) for a public purpose;
(b) in a non-discriminatory manner;
(c) on payment of prompt, adequate, and effective compensation; and (d) in accordance with due process of law and Article 10.5.1 through 10.5.3.
2. The compensation referred to in paragraph 1(c) shall:
(a) be paid without delay;
(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");
(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and (d) be fully realizable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange3 prevailing on that date, plus
(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Fifteen (Intellectual Property Rights). (4)

2 Article 10.6 shall be interpreted in accordance with Annexes 10-A and 10-B.
3 For purposes of this paragraph and Article 10.7.2, Morocco’s foreign exchange system in effect on the date of signature of this Agreement yields an exchange rate comparable to a “market rate of exchange.”
4 For greater certainty, the reference to the TRIPS Agreement in paragraph 5 includes any waiver in force between the Parties of any provision of that agreement granted by WTO Members in accordance with the WTO Agreement.

Article 10.7. Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
(a) contributions to capital;
(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
(c) interest, royalty payments, management fees, and technical assistance and other fees;
(d) payments made under a contract, including a loan agreement;
(e) payments made pursuant to Article 10.5.4 and 10.5.5 and Article 10.6; and
(f) payments arising out of a dispute. 3 For purposes of this paragraph and Article 10.7.2, Morocco's foreign exchange system in effect on the date of signature of this Agreement yields an exchange rate comparable to a "market rate of exchange."4 For greater certainty, the reference to the TRIPS Agreement in paragraph 5 includes any waiver in force between the Parties of any provision of that agreement granted by WTO Members in accordance with the WTO Agreement. 10-5 2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.
4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and

good faith application of its laws relating to:
(a) bankruptcy, insolvency, or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities, futures, options, or derivatives;
(c) criminal or penal offenses;
(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.8. Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (5)
(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.
2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:
(a) to achieve a given level or percentage of domestic content;
(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, 10-7 train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
(b) Paragraph 1(f) does not apply:
(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; (6) or
(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws. (7)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
(ii) necessary to protect human, animal, or plant life or health; or
(iii) related to the conservation of living or non-living exhaustible natural resources.
(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs. 6 For greater certainty, the references to the TRIPS Agreement in paragraph 3(b)(i) include any waiver in force between the Parties of any provision of that agreement granted by WTO Members in accordance with the WTO Agreement. 7 The Parties recognize that a patent does not necessarily confer market power. 10-8
(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.
(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods

necessary to qualify for preferential tariffs or preferential quotas.
4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

5 For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.
6 For greater certainty, the references to the TRIPS Agreement in paragraph 3(b)(i) include any waiver in force between the Parties of any provision of that agreement granted by WTO Members in accordance with the WTO Agreement.
7 The Parties recognize that a patent does not necessarily confer market power.

Article 10.9. Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.10. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.11. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:
(a) does not maintain diplomatic relations with the non-Party; or
(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.12. Non-conforming Measures

1. Articles 10.3, 10.4, 10.8, and 10.9 do not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex I,
(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
(iii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the 10-10 measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.8, or 10.9. 2. Articles 10.3, 10.4, 10.8, and 10.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 15.1.5 (General Provisions) as specifically provided in that Article.
5. Articles 10.3, 10.4, and 10.9 do not apply to:
(a) procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 10.13. Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to 10-11 prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.14. Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 10.15. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:
(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim
(i) that the respondent has breached
(A) an obligation under Section A,
(B) an investment authorization, or
(C) an investment agreement; and
(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim
(i) that the respondent has breached
(A) an obligation under Section A,
(B) an investment authorization, or
(C) an investment agreement; and
(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. 10-12
2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:
(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
(c) the legal and factual basis for each claim; and
(d) the relief sought and the approximate amount of damages claimed.
3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1: 10-13
(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;
(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;
(c) under the UNCITRAL Arbitration Rules; or (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.
4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):
(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any other arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent. A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.
5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.
6. The claimant shall provide with the notice of arbitration:
(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 10.16. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:
(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
(b) Article II of the New York Convention for an "agreement in writing."

Article 10.17. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.15.1 and knowledge that the claimant (for claims brought under Article 10.15.1(a)) or the enterprise (for claims brought under Article 10.15.1(b)) has incurred loss or damage.
2. No claim may be submitted to arbitration under this Section unless:
(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
(b) the notice of arbitration is accompanied,
(i) for claims submitted to arbitration under Article 10.15.1(a), by the claimant's written waiver, and
(ii) for claims submitted to arbitration under Article 10.15.1(b), by the claimant's and the enterprise's written waivers 10-15 of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.15.
3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.15.1(a)) and the claimant or the enterprise (for claims brought under Article 10.15.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration. In no case should such relief, if granted, be dispositive of the issues in dispute before the tribunal or suspend the proceedings before the tribunal.

Article 10.18. Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
(b) a claimant referred to in Article 10.15.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
(c) a claimant referred to in Article 10.15.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal. 10-16

Article 10.19. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.15.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.
4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.25.
(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).
(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.
5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.
6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the 10-17 10-18 respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.
7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.
8. The tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. The tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.15. For purposes of this paragraph, an order includes a recommendation.
9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.
(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-D. 10. If a separate regional or multilateral agreement concerning investment enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.25 in arbitrations commenced after the regional or multilateral agreement enters into force between the Parties.

Article 10.20. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:
(a) the notice of intent;
(b) the notice of arbitration;
(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.19.2 and 10.19.3 and Article 10.24;
(d) minutes or transcripts of hearings of the tribunal, where available; and
(e) orders, awards, and decisions of the tribunal.
2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.5 (Disclosure of Information). 10-20 4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:
(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;
(c) A disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1; and
(d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may
(i) withdraw all or part of its submission containing such information, or
(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under
(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under
(ii) of the disputing party that first submitted the information.
5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.21. Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.15.1(a)(i)(A) or Article 10.15.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with 10-21 this Agreement and applicable rules of international law.
2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.15.1(a)(i)(B) or (C), or Article 10.15.1(b)(i)(B) or (C), the tribunal shall apply:
(a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may agree otherwise; or
(b) if the rules of law have not been specified or agreed otherwise:
(i) the law of the respondent, including its rules on the conflict of laws; (8) and
(ii) such rules of international law as may be applicable.
3. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 19.2 (Joint Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

(8) The law of the respondent means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Article 10.22. Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 19.2 (Joint

Committee) to the tribunal within 60 days of delivery of the request.
2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue. 8 The law of the respondent means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Article 10.23. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.24. Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.15.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:
(a) the names and addresses of all the disputing parties sought to be covered by the order;
(b) the nature of the order sought; and
(c) the grounds on which the order is sought.
3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.
4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:
(a) one arbitrator appointed by agreement of the claimants;
(b) one arbitrator appointed by the respondent; and
(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.
5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.
6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.15.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
(a) assume jurisdiction over, and hear and determine together, all or part of the claims;
(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
(c) instruct a tribunal previously established under Article 10.18 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
(ii) that tribunal shall decide whether any prior hearing shall be repeated.
7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.15.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:
(a) the name and address of the claimant;
(b) the nature of the order sought; and 10-23 10-24
(c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.
8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.18 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.18 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.25. Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:
(a) monetary damages and interest, as appropriate; and
(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and interest, as appropriate, in lieu of restitution. 10-25 A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.15.1(b):
(a) an award of restitution of property shall provide that restitution be made to the enterprise;
(b) an award of monetary damages and interest, as appropriate, shall provide that the sum be paid to the enterprise; and
(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
3. A tribunal may not award punitive damages. 4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
6. A disputing party may not seek enforcement of a final award until:
(a) in the case of a final award made under the ICSID Convention
(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
(ii) revision or annulment proceedings have been completed; and
(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.15.3(d)
(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.
7. Each Party shall provide for the enforcement of an award in its territory.
8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 20.7 (Establishment of Panel). The requesting Party may seek in such proceedings:
(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
(b) in accordance with Article 20.9.2 (Panel Report), a recommendation that the respondent abide by or comply with the final award.
9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 8.
10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 10.26. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-C.

Article 10.27. Definitions

For purposes of this Chapter:
Centre means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;
claimant means an investor of a Party that is a party to an investment dispute with the other Party;
disputing parties means the claimant and the respondent; disputing party means either the claimant or the respondent;
enterprise means an enterprise as defined in Article 1.3 (Definitions), and a branch of an enterprise; enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;
freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;
ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;
investment means 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:
(a) an enterprise;
(b) shares, stock, and other forms of equity participation in an enterprise;
(c) bonds, debentures, other debt instruments, and loans; (9)
(d) futures, options, and other derivatives;
(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
(f) intellectual property rights;
(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (10)(11) and
(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;
investment agreement means a written agreement (12) that takes effect on or after the date of entry into force of this Agreement between a national authority (13) of a Party and a covered investment or an investor of the other Party that grants the covered investment or investor rights:
(a) with respect to natural resources or other assets that a national authority controls; and
(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself;
investment authorization (14) means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;
investor of a non-Party means, with respect to a Party, an investor that concretely attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;
investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that concretely attempts to make, is making, or has made an investment in the territory of the other Party;
provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality; New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;
non-disputing Party means the Party that is not a party to an investment dispute; protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;
respondent means the Party that is a party to an investment dispute;
13 For purposes of this definition, "national authority" means an authority at the central level of government. 14 For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition. 10-30 Secretary-General means the Secretary-General of ICSID; and
UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

9 Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

10 Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

11 The term “investment” does not include an order or judgment entered in a judicial or administrative action.

12 “Written agreement” refers to an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.21.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

13 For purposes of this definition, “national authority” means an authority at the central level of government.

14 For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

Annex 10-A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 and Annex 10-B results from a general and consistent practice of States that they follow from a sense of legal obligation.
With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-B. EXPROPRIATION

The Parties confirm their shared understanding that:

1. Article 10.6.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

3. Article 10.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 10.6.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a

specific fact situation, constitutes an indirect expropriation, requires a caseby-

case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that

an action or series of actions by a Party has an adverse effect on the

economic value of an investment, standing alone, does not establish

that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct,

reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Annex 10-C. SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

Morocco

Notices and other documents in disputes under Section B shall be served on Morocco by delivery to:

Directorate for Legal Affairs and Treaties

Ministry of Foreign Affairs and Cooperation

Rabat

Kingdom of Morocco

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX)

Office of the Legal Adviser

Department of State

Washington, D.C. 20520 United States of America

Annex 10-D. POSSIBILITY OF A BILATERAL APPELLATE MECHANISM

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 10.25 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 10-E. SUBMISSION OF A CLAIM TO ARBITRATION

Morocco

If an investor of the United States, or an enterprise of Morocco that is a juridical person that the investor owns or controls directly or indirectly, initiates proceedings before a court

of Morocco alleging a breach by Morocco of an obligation under Section A, an investment

authorization, or an investment agreement, the investor may not submit that alleged breach

to arbitration under Section B either:

(a) on its own behalf under Article 10.15.1(a), or

(b) on behalf of the enterprise under Article 10.15.1(b),

unless at least one year has elapsed from the date the court proceedings were initiated.

COURTESY TRANSLATION

Washington, D.C.

June 15, 2004

The Honorable Robert B. Zoellick United States Trade Representative

Dear Ambassador Zoellick:

During negotiation of Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Morocco-United States Free Trade Agreement, the United States expressed an interest in Morocco allowing any person, including a person who is not a physician, to establish private clinics and comparable medical facilities. The United

States also expressed an interest in Morocco allowing any person, including a person who is not a pharmacist, to establish enterprises engaged in the manufacture or wholesale distribution of pharmaceutical products.

I have the honor to confirm that Morocco has taken note of the interests expressed by the

United States and will take them into account as it reforms its laws governing the activities in question.

Sincerely,

Taïb Fassi Fihri

Minister Delegate for Foreign Affairs and Cooperation

Washington, D.C.

June 15, 2004

The Honorable Taïb Fassi Fihri

Minister Delegate for Foreign Affairs and Cooperation Kingdom of Morocco

Dear Minister Fassi Fihri:

In connection with the signing on this date of the United States-Morocco Free Trade Agreement, I

am pleased to set out areas of cooperation between our Governments with respect t o U.S. state

measures affecting investment and cross-border trade in services, including areas in which the

United States intends to provide technical assistance to Morocco.

The objectives of this cooperation and technical assistance are to:

(1) facilitate implementation of Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Agreement;

(2) provide support for the private sector in Morocco in understanding business opportunities regarding investment and cross-border trade in services in the United States; and

(3) assist the private sector in Morocco in understanding how U.S. state measures may affect these opportunities.

The Governments of the United States and Morocco will cooperate in the future, subject to their

respective funding procedures, in:

(1) identifying specific investment and cross-border services sectors in the United States

of interest to the private sector in Morocco;

(2) identifying specific states in the United States of interest to the private sector in Morocco;

(3) educating Moroccan enterprises about business opportunities in the United States in the identified sectors and states; and

(4) educating Moroccan enterprises about U.S. state measures in the identified sectors and states that affect investment and cross-border trade in services.

I share your desire and expectation that the cooperation and technical assistance outlined in this

letter will help ensure that the United States and Morocco reap the full benefits of trade liberalization under the Agreement.

Sincerely,

Robert B. Zoellick