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House of Representatives

PRIVILEGED REPORT ON RESOLUTION DIRECTING SECRETARY OF STATE TO TRANSMIT DOCUMENTS RELATING TO TREATMENT OF PRISONERS AND DETAINEES IN IRAQ, AFGHANISTAN AND GUANTANAMO BAY

Ms. HARRIS, from the Committee on International Relations, submitted a privileged report (Rept. No. 108–631) on the resolution (H. Res. 699) directing the Secretary of State to transmit to the House of Representatives documents in the possession of the Secretary of State relating to the treatment of prisoners and detainees in Iraq, Afghanistan, and Guantanamo Bay, which was referred to the House Calendar and ordered to be printed.

PRIVILEGED REPORT ON RESOLUTION REQUESTING PRESIDENT TO TRANSMIT DOCUMENTS RELATING TO TREATMENT OF PRISONERS OR DETAINEES IN IRAQ, AFGHANISTAN OR GUANTANAMO BAY

Mr. HUNTER, from the Committee on Armed Services, submitted a privileged report (Rept. No. 108–632) on the resolution (H. Res. 689) of inquiry requesting the President and directing certain other Federal officials to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of the President and those officials relating to the treatment of prisoners or detainees in Iraq, Afghanistan, or Guantanamo Bay, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR COMMITTEE ON SCIENCE TO HAVE UNTIL 5 P.M., AUGUST 27, 2004, TO FILE REPORT ON H.R. 3551, SURFACE TRANSPORTATION RESEARCH AND DEVELOPMENT ACT OF 2004

Mr. BOEHLERT. Mr. Speaker, I ask unanimous consent that the Committee on Science may have until August 27, 2004, at 5 p.m. to file the following report: H.R. 3551, Surface Transportation Research and Development Act of 2004.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. THOMAS. Mr. Speaker, pursuant to House Resolution 738, I call up the bill (H.R. 4842) to implement the United States-Morocco Free Trade Agreement, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 4842 is as follows:

H.R. 4842

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''United States-Morocco Free Trade Agreement Implementation Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.
TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT
Sec. 101. Approval and entry into force of the Agreement.
Sec. 102. Relationship of the Agreement to United States and State law.
Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
Sec. 105. Administration of dispute settlement proceedings.
Sec. 106. Arbitration of claims.
Sec. 107. Effective dates; effect of termination.
TITLE II—CUSTOMS PROVISIONS
Sec. 201. Tariff modifications.
Sec. 202. Additional duties on certain agricultural goods.
Sec. 203. Rules of origin.
Sec. 204. Enforcement relating to trade in textile and apparel goods.
Sec. 205. Regulations.
TITLE III—RELIEF FROM IMPORTS
Sec. 301. Definitions.
Subtitle A—Relief From Imports Benefiting From the Agreement
Sec. 311. Commencing of action for relief.
Sec. 312. Commission action on petition.
Sec. 313. Provision of relief.
Sec. 314. Termination of relief authority.
Sec. 315. Compensation authority.
Sec. 316. Confidential business information.
Subtitle B—Textile and Apparel Safeguard Measures
Sec. 321. Commencement of action for relief.
Sec. 322. Determination and provision of relief.
Sec. 323. Period of relief.
Sec. 324. Articles exempt from relief.
Sec. 325. Rate after termination of import relief.
Sec. 326. Termination of relief authority.
Sec. 327. Compensation authority.
Sec. 328. Business confidential information.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Morocco entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Morocco for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

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SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the United States-Morocco Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term ''HTS'' means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term ''textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

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

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Morocco Free Trade Agreement entered into on June 15, 2004, with Morocco and submitted to Congress on July 15, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2004.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Morocco has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Morocco providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ''State law'' includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and Annex IV of the Agreement.

(2) EFFECT ON MOROCCAN GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Morocco as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Morocco regarding the staging of any duty treatment set forth in Annex IV of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Morocco provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States

to Annex IV of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL SAFEGUARD GOOD.—The term ''agricultural safeguard good'' means a good—

(A) that qualifies as an originating good under section 203;

(B) that is included in the U.S. Agricultural Safeguard List set forth in Annex 3–A of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—The term ''applicable NTR (MFN) rate of duty'' means, with respect to an agricultural safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on the date on which the additional duty is imposed under subsection (b); or

(B) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on December 31, 2004.

(3) F.O.B.—The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) SCHEDULE RATE OF DUTY.—The term ''schedule rate of duty'' means, with respect to an agricultural safeguard good, the rate of duty for that good set out in the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TRIGGER PRICE.—The ''trigger price'' for a good means the trigger price indicated for that good in the U.S. Agricultural Safeguard List set forth in Annex 3–A of the Agreement or any amendment thereto.

(6) UNIT IMPORT PRICE.—The ''unit import price'' of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the U.S. Agricultural Safeguard List set forth in Annex 3–A of the Agreement.

(b) ADDITIONAL DUTIES ON AGRICULTURAL SAFEGUARD GOODS.—

(1) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to paragraphs (3), (4), (5), and (6) of this subsection, the Secretary of the Treasury shall assess a duty on an agricultural safeguard good, in the amount determined under paragraph (2), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on an agricultural safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:.	**The additional duty is an amount equal to:**
Not more than 10 percent of the trigger price.	0.
More than 10 percent but not more than 40 percent of the trigger price.	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price.	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price.	70 percent of such excess.
More than 75 percent of the trigger price.	100 percent of such excess.

(3) EXCEPTIONS.—No additional duty shall be assessed on a good under this subsection if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(4) TERMINATION.—The assessment of an additional duty on a good under this subsection shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TARIFF-RATE QUOTAS.—If an agricultural safeguard good is subject to a tariff-rate quota under the Agreement, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under this subsection, the Secretary shall notify the Government of Morocco in writing of such action and shall provide to the Government of Morocco data supporting the assessment of additional duties.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or sub-heading, such reference shall be a reference to a heading or subheading of the HTS.

(b) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

(A) the good is imported directly—

(i) from the territory of Morocco into the territory of the United States; or

(ii) from the territory of the United States into the territory of Morocco; and

(B)(i) the good is a good wholly the growth, product, or manufacture of Morocco or the United States, or both;

(ii) the good (other than a good to which clause (iii) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both, and meets the requirements of paragraph (2); or

(iii)(I) the good is a good covered by Annex 4–A or 5–A of the Agreement;

(II)(aa) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in the territory of Morocco or the United States, or both; or

(bb) the good otherwise satisfies the requirements specified in such Annex; and

(III) the good satisfies all other applicable requirements of this section.

(2) REQUIREMENTS.—A good described in paragraph (1)(B)(ii) is an originating good only if the sum of—

(A) the value of each material produced in the territory of Morocco or the United States, or both, and

(B) the direct costs of processing operations performed in the territory of Morocco or the United States, or both,

is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) CUMULATION.—

(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good or a material produced in the territory of Morocco or the United States, or both, that is incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is grown, produced, or manufactured in the territory of Morocco or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(d) VALUE OF MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the value of a material produced in the territory of Morocco or the United States, or both, includes the following:

(A) The price actually paid or payable for the material by the producer of such good.

(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in subparagraph (A).

(C) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap.

(D) Taxes or customs duties imposed on the material by Morocco, the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Morocco or the United States, as the case may be.

(2) EXCEPTION.—If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of Morocco or the United States, or both, includes the following:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses.

(B) A reasonable amount for profit.

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

(e) PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT.—Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers have been included in meeting the requirements set forth in subsection (b)(2).

(f) INDIRECT MATERIALS.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except that the cost of such indirect materials may be included in meeting the requirements set forth in subsection (b)(2).

(g) TRANSIT AND TRANSSHIPMENT.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Morocco or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Morocco or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of the United States or Morocco.

(h) TEXTILE AND APPAREL GOODS.—

(1) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4–A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Morocco or the United States.

(C) YARN, FABRIC, OR GROUP OF FIBERS.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the yarn, fabric, or group of fibers.

(2) GOODS PUT UP IN SETS FOR RETAIL SALE.—Notwithstanding the rules set forth in Annex 4–A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(i) DEFINITIONS.—In this section:

(1) DIRECT COSTS OF PROCESSING OPERATIONS.—

(A) IN GENERAL.—The term ''direct costs of processing operations'', with respect to a good, includes, to the extent they are includable in the appraised value of the good when imported into Morocco or the United States, as the case may be, the following:

(i) All actual labor costs involved in the growth, production, or manufacture of the good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel.

(ii) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the good.

(iii) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the good.

(iv) Costs of inspecting and testing the good.

(v) Costs of packaging the good for export to the territory of the other country.

(B) EXCEPTIONS.—The term ''direct costs of processing operations'' does not include costs that are not directly attributable to a good or are not costs of growth, production, or manufacture of the good, such as—

(i) profit; and

(ii) general expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and sales staff salaries, commissions, or expenses.

(2) GOOD.—The term ''good'' means any merchandise, product, article, or material.

(3) GOOD WHOLLY THE GROWTH, PRODUCT, OR MANUFACTURE OF MOROCCO, THE UNITED STATES, OR BOTH.—The term ''good wholly the growth, product, or manufacture of Morocco, the United States, or both'' means—

(A) a mineral good extracted in the territory of Morocco or the United States, or both;

(B) a vegetable good, as such a good is provided for in the HTS, harvested in the territory of Morocco or the United States, or both;

(C) a live animal born and raised in the territory of Morocco or the United States, or both;

(D) a good obtained from live animals raised in the territory of Morocco or the United States, or both;

(E) a good obtained from hunting, trapping, or fishing in the territory of Morocco or the United States, or both;

(F) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Morocco or the United States and flying the flag of that country;

(G) a good produced from goods referred to in subparagraph (F) on board factory ships registered or recorded with Morocco or the United States and flying the flag of that country;

(H) a good taken by Morocco or the United States or a person of Morocco or the United States from the seabed or beneath the seabed outside territorial waters, if Morocco or the United States has rights to exploit such seabed;

(I) a good taken from outer space, if such good is obtained by Morocco or the United States or a person of Morocco or the United States and not processed in the territory of a country other than Morocco or the United States;

(J) waste and scrap derived from—

(i) production or manufacture in the territory of Morocco or the United States, or both; or

(ii) used goods collected in the territory of Morocco or the United States, or both, if such goods are fit only for the recovery of raw materials;

(K) a recovered good derived in the territory of Morocco or the United States from used goods and utilized in the territory of that country in the production of remanufactured goods; and

(L) a good produced in the territory of Morocco or the United States, or both, exclusively—

(i) from goods referred to in subparagraphs (A) through (J), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(4) INDIRECT MATERIAL.—The term ''indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment and buildings;

(D) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture.

(5) MATERIAL.—The term ''material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both.

(6) MATERIAL PRODUCED IN THE TERRITORY OF MOROCCO OR THE UNITED STATES, OR BOTH.—The term ''material produced in the territory of Morocco or the United States, or both'' means a good that is either wholly the growth, product, or manufacture of Morocco, the United States, or both, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of Morocco or the United States, or both.

(7) NEW OR DIFFERENT ARTICLE OF COMMERCE.—

(A) IN GENERAL.—The term ''new or different article of commerce'' means, except as provided in subparagraph (B), a good that—

(i) has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Morocco, the United States, or both; and

(ii) has a new name, character, or use distinct from the good or material from which it was transformed.

(B) EXCEPTION.—A good shall not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

(8) RECOVERED GOODS.—The term ''recovered goods'' means materials in the form of individual parts that result from—

(A) the complete disassembly of used goods into individual parts; and

(B) the cleaning, inspecting, testing, or other processing of those parts that is necessary for improvement to sound working condition.

(9) REMANUFACTURED GOOD.—The term ''remanufactured good'' means an industrial good that is assembled in the territory of Morocco or the United States and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets similar performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to that of a like good that is new.

(10) SIMPLE COMBINING OR PACKAGING OPERATIONS.—The term ''simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together.

(11) SUBSTANTIALLY TRANSFORMED.—The term ''substantially transformed'' means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that—

(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(ii) the physical properties of the good or material are changed to a significant extent; or

(iii) the operation undergone by the good or material is complex by reason of the number of processes and materials involved and the time and level of skill required to perform those processes; and

(B) the good or material loses its separate identity in the manufacturing or processing operation.

(j) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4–A and Annex 5–A of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Morocco pursuant to article 4.3.6 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

SEC. 204. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Morocco to conduct a verification pursuant to article 4.4 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in Morocco is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act, or

(ii) is a good of Morocco,

is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

SEC. 205. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (i) of section 203;

(2) amendments to existing law made by the subsections referred to in paragraph (1); and

(3) proclamations issued under section 203(j).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) MOROCCAN ARTICLE.—The term ''Moroccan article'' means an article that qualifies as an originating good under section 203(b) of this Act or receives preferential tariff treatment under paragraphs 9 through 15 of article 4.3 of the Agreement.

(2) MOROCCAN TEXTILE OR APPAREL ARTICLE.—The term ''Moroccan textile or apparel article'' means an article that—

(A) is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); and

(B) is a Moroccan article.

(3) COMMISSION.—The term ''Commission'' means the United States International Trade Commission.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Moroccan article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Moroccan article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Moroccan article if, after the date on which the Agreement enters into force, import relief has been provided with respect to that Moroccan article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930) (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required

under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex IV of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to an assessment of additional duty under section 202(b); or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle with respect to a good after the date that is 5 years after the date on which duty-free treatment must be provided by the United States to that good pursuant to Annex IV of the Agreement.

(b) PRESIDENTIAL DETERMINATION.—Import relief may be provided under this subtitle in the case of a Moroccan article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Morocco has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

Section 202(a)(8) of the Trade Act of 1974 (19 U.S.C. 2252(a)(8)) is amended in the first sentence—

(1) by striking ''and''; and

(2) by inserting before the period at the end '', and title III of the United States-Morocco Free Trade Agreement Implementation Act''.

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this

subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force; or

(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

The SPEAKER pro tempore. Pursuant to House Resolution 738, the gentleman from California (Mr. THOMAS) and the gentleman from New York (Mr. RANGEL) each will control 1 hour.

The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Speaker, it is with great pleasure that I rise today in strong support of H.R. 4842, which will implement the United States-Moroccan Free Trade Agreement. This Free Trade Agreement is comprehensive, it is solid, and it will benefit American workers across the spectrum, including farmers, consumers, businesses, and therefore the United States economy.

Morocco has been since the inception of this country and is today an important strategic partner of the United States. This agreement will enhance and in fact solidify our economic relationship. Not only will this agreement advance our relationship with Morocco, but it serves as a cornerstone to assist the President's broader initiative to create a Middle East free trade area by the year 2013.

The United States has entered into additional agreements, Morocco, Bahrain. We have entered into trade and investment framework agreements with Kuwait, Yemen, Qatar, the United Arab Emirates, Oman, and Saudi Arabia. Many of these countries have expressed interest in moving forward and negotiating a free trade agreement similar to the Moroccan agreement.

Mr. Speaker, this is a long overdue day, but it has arrived, and I am pleased to say that the Senate has already acted on this legislation, and when the House concludes its business on this bill it will be sent to the President for his signature, and this is a marvelous way to end this portion of the 108th Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. RANGEL. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. BROWN) and ask unanimous consent that he be allowed to yield time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

First, I would like the record to remain clear that in my opinion the gentleman from California stole the election in Florida, and I just want to get that out of the way.

But having said that, I think that this agreement that we reach today gives us an opportunity to see what we could be doing, especially as it relates to international treaty agreements, if we attempt to work together.

The government of Morocco has been friendly to the United States for years, and it is a developing country that has strived to have a relationship between organized labor and to work to improve the quality of life for its workers.

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We Democrats truly believe that we should have a bipartisan approach to these types of issues and that there are certain principles we think should be in all trade agreements, and that is that you protect American jobs and that you provide for basic international labor standards in these agreements, and you do no harm.

There are certain provisions here that deal with intellectual rights that we really approve of, but we also believe that we should never allow ourselves to deprive people of medicine that they may need for their health and, indeed, for their life.

The gentleman from Michigan (Mr. LEVIN) has worked very, very hard to make certain that we on the Democratic side do not unilaterally just say out of hand that if we do not find the language we want that we will not be supporting the bill. Indeed, we are more concerned with having language that all civilized and industrialized countries would want to have as a standard that can be reached with the United States on international health.

Mr. Speaker, because of that, I ask unanimous consent to yield the balance of my time to the gentleman from Michigan (Mr. LEVIN), the distinguished senior member of the Subcommittee on Trade, and that he be allowed to yield time as he sees fit.

The SPEAKER pro tempore (Mr. GILCHREST). Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield such time as he may consume to the gentleman from Illinois (Mr. CRANE), the chairman of the Subcommittee on Trade.

Mr. CRANE. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I am quite pleased that the United States and the Kingdom of Morocco have reached agreement on a bilateral free trade agreement. Morocco has long been a key ally in the Middle East. As many have noted, Morocco was the first country to recognize our sovereignty; and in 1786 we signed the U.S.-Morocco treaty of peace and friendship, which remains the longest unbroken treaty in our Nation's history.

Once implemented, this treaty agreement will be the second of its kind between the U.S. and a moderate Muslim ally, following our trade agreement with the Kingdom of Jordan.

This is an important strategic agreement. While we have had a long-standing diplomatic relationship with Morocco, the U.S.-Morocco FTA cements the economic relationship between our countries. Two-way trade between the U.S. and Morocco is significant, at nearly $1 billion per year. The United States exported over $465 million to Morocco last year, with a trade surplus of over $79 million.

This FTA will eliminate trade barriers, lower tariffs, and provide increased market access for U.S. companies. By knocking down trade barriers in Morocco and in the rest of the world, we can help support even more American jobs. In fact, the International Trade Commission estimates that trade between our countries should double once this agreement is implemented.

This is a strong agreement for all sectors of the U.S. economy. Under its terms, over 95 percent of U.S. exports of consumer and industrial goods to Morocco will become duty free immediately. This follows the high standards set by recently passed trade agreements with Singapore, Chile, and Australia. This is important for U.S. manufacturers.

This is also a strong agreement for the services sector of our economy, whether it be telecommunications, e-commerce for digital commerce, or new opportunities for U.S. financial institutions. The agreement also contains state-of-the-art intellectual property provisions, including commitments in trademarks, copyrights and patents, as well as tough penalties for piracy and counterfeiting. Taken together, these provisions continue a trade policy that best helps U.S. business compete in a global marketplace.

Mr. Speaker, the Farm Bureau strongly supports this agreement, which covers all agricultural products, because for every $1 in increased imports from Morocco, U.S. farmers can expect $10 in increased exports to Morocco. In 2003, the United States had a trade surplus in agricultural products with Morocco of about $82 million, with exports of over $152 million. The Farm Bureau estimates that this agreement could increase U.S. agricultural exports to over $450 million by 2015, tripling our current exports. Furthermore, because Morocco's agreement with the European Union does not include agriculture, this FTA should give American farmers a competitive advantage over our EU counterparts.

Some have questioned whether labor laws in Morocco are adequate. To that end, I would like to point out that the U.S.-Morocco FTA, like all of our trade agreements, requires Morocco to enforce domestic labor laws in accordance with the bipartisan guidance provided by the Congress in Trade Promotion Authority.

Furthermore, in anticipation of a U.S.-Morocco FTA, the Moroccan government, business community, and labor force, working together in a tripartite manner, found consensus in passing a comprehensive new labor law earlier this year that is consistent with ILO standards. Accordingly, the agreement language creating an obligation to effectively enforce one's laws is, in essence, the same as an enforceable ILO standard in this agreement. I, for one, applaud Morocco for its efforts in overhauling its labor laws in anticipation of completing this important trade agreement.

Some on the other side, including the Subcommittee on Trade ranking member, the gentleman from Michigan (Mr. LEVIN), and the Committee on Ways and Means ranking member, the gentleman from New York (Mr. RANGEL), have raised thoughtful questions with regard to various provisions contained in this agreement. I think we have worked well together to address these concerns, and I am pleased that we have their support. While we may continue to disagree on certain issues, there is a lot of common ground from which to work, and I look forward to continuing to work with them to pass important trade agreements.

Unfortunately, I am sure that a small group on the other side who do oppose free trade may come to the House floor today and argue that this agreement is inadequate in certain respects.

I would ask my colleagues to not be fooled by this rhetoric, which we hear every time when we contemplate trade agreements. We heard it last week during debate on our Australian Free Trade Agreement, a country with which we have a $9 billion trade surplus; we heard it during debate 1 year ago regarding Chile and Singapore; and I am sure we will hear it today with regard to Morocco, a country with which we have a trade surplus.

Please do not be fooled. This discomfort has less to do with the provisions of this agreement than it does their dislike of free trade generally.

Mr. Speaker, the vast majority of Members on both sides of the aisle think differently. The American people know that millions of American jobs are dependent upon free trade. U.S. products exported to Morocco currently face an average tariff of more than 20 percent. This FTA will give American businesses exporting to Morocco a leg up to compete as they compete with the European Union. That means better, higher-paying jobs here at home. Perhaps that is why the U.S.-Morocco FTA passed the Committee on Ways and Means by a 26 to 0 vote on Tuesday and passed the Senate by an overwhelming vote of 85 to 13 yesterday. I look forward to another strong, bipartisan vote today.

Mr. Speaker, I would like to emphasize my strong support for this agreement and my appreciation to the administration and Members on both sides of the aisle for their efforts in completing it.

Mr. THOMAS. Mr. Speaker, I yield the balance of my time to the gentleman from Illinois (Mr. CRANE) and ask unanimous consent that he control the time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, while the Jordan Free Trade Agreement passed in the last year of the Clinton administration represented a step forward in free trade policy, recent free trade agreements provide a template to purposely and purposefully circumvent labor and environmental laws.

To make matters worse, USTR and its pharmaceutical allies are now including language in each trade agreement in front of this body to ban reimportation in all agreements they negotiate. The Morocco Free Trade Agreement is the latest example of this trade, we call it, devolution.

Last week we voted on the U.S.-Australia FTA. While Australian workers, to be sure, enjoy the benefits of good labor laws and the enforcement of those laws, the precedent was the same. Labor and environmental protections were given short shrift in the core text of the agreement, while USTR focused on ensuring the gold standard for the pharmaceutical industry.

It is almost as if the U.S. Government dispatched the USTR again to protect the big drug companies in this country. It is no surprise, with the rest of the record in this body and in this administration in protecting the drug companies on every single issue possible.

But Morocco is not Australia, and I have significant concerns about labor and working conditions there. Like Singapore and Chile, the labor provisions in the Morocco FTA are intentionally unenforceable. Violations of core labor standards cannot be taken to dispute resolution. The commitment to enforce domestic labor laws is subject to remedies weaker than those available for commercial disputes. Again, the commercial part of the agreement is always better, if you will, than the labor part of the agreement, because of this body's and this administration's low regard for worker rights.

This violates the negotiating objective of Fast Track that equivalent remedies should exist for all parts of the agreement.

Further, the ''enforce your own laws'' standard allows countries the opportunity to rewrite and weaken their labor laws to attract investment and seems to be a magnet for corporate interests all over the world to lobby those legislatures and those congresses and parliaments to weaken their own labor law, because they are not international labor organization standards.

Today we will vote on the U.S.-Morocco Free Trade Agreement containing the same flawed policies on labor and on the environment and on reimportation. The same provisions in Morocco are in the Central America Free Trade Agreement. This agreement does not look much different from CAFTA. So for those of you, and I think it is pretty clear a majority of the Bush administration would have brought that agreement up this summer, those of you voting ''no'' on CAFTA, you are really voting for a pretty similar agreement on Morocco.

Every free trade template brought before this House is, as Yogi Berra used to say, like deja vu all over again.

First, the Medicare bill passed this year specifically prohibited the U.S. Government from negotiating lower drug prices for America's seniors and consumers. That was one this Congress and this Bush administration gave to the drug industry. Then the pharmaceutical industry punished American consumers by restricting the volume of drug inventories in Canada to prevent importation to the U.S. Then the U.S. Trade Representative and the administration included language in the Australia Free Trade Agreement that enables pharmaceutical companies to prevent prescription drug reimportation to the detriment of American consumers. Again, another bouquet from this Congress and the Bush administration to the drug industry.

I do not think the connection is anything but obvious when you look at the amount of money the drug industry has given to the Republican Party, given to Republican leadership, and given to President Bush.

Now similar provisions contained in last year's Singapore FTA and in the upcoming CAFTA are in the Morocco FTA bill that will be voted on. Though Morocco is not on the list of countries today covered by pending drug legislation, the importation provisions in this FTA prove this is a precedent, it was in Australia, now it is in this, that the USTR plans to extends this to all future trade agreements.

There is broad support in this House, there is even broader support among seniors and among consumers, because they are not getting campaign contributions from the drug industry, for lowering drug prices and for allowing Americans to purchase safe, affordable drugs from other developed nations.

I urge my colleagues to oppose the administration's back-door effort again to close drug reimportation through trade negotiations. It is important to overcome attempts by free trade proponents to reduce this debate to a choice between free trade and no trade, and frame the discussion around priorities affected by irresponsible trade policy, labor protections, the environment, and affordable pharmaceutical access for all nations.

This is not a debate on whether one supports trade; this is a debate on whether one supports responsible trade. I urge my colleagues to oppose this irresponsible trade agreement.

Mr. Speaker, I reserve the balance of my time.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, concerns about the consistency of any future drug reimportation provisions with this free trade agreement are hypothetical. The agreement has no force under U.S. law except to the extent that Congress passes an implementing bill to change U.S. law.

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Thus, even if Congress changes U.S. law and the new law were somehow inconsistent with the agreement, that new law would trump the agreement. The agreement cannot prevent Congress from allowing drug reimportation.

The drug reimportation debate in Congress has focused on changes to the Federal Food, Drug and Cosmetic Act that would be necessary to allow drug reimportation, such as changing its provision that only the original manufacturer may reimport a drug. There is nothing in the Morocco FTA or the implementing bill that addresses the Federal Food, Drug and Cosmetic Act for this requirement.

Mr. Speaker, I yield 2 minutes to our distinguished colleague, the gentleman from Florida (Mr. SHAW).

Mr. SHAW. Mr. Speaker, I thank the chairman for yielding me this time, and I rise in strong support of the United States-Morocco Free Trade Agreement pending before us here in this Chamber today.

This agreement will provide 95 percent of consumer and industrial products in bilateral trade become duty-free immediately upon entering into this important, historic agreement.

The chairman has already indicated that the Senate has passed this bill and it will go right from this Chamber to the President's desk for signature.

I strongly concur with Ambassador Bob Zoellick when he stated, ''Our agreement with Morocco is not just a single announcement, but a vital step in creating a mosaic of United States free trade agreements across the Middle East and North Africa.''

This agreement sends a strong message to this particular region of the world. This agreement enables fair and free trade between long-standing allies. In fact, Morocco and the United States signed a Treaty of Peace and Friendship in 1786. The Kingdom has continuously provided military and diplomatic support for United States foreign operations, and this partnership is solid and it is respected.

I congratulate President Bush and his Majesty, King Mohammed VI, on this historic Free Trade Agreement.

I would like to point out to the gentleman on the other side of the aisle that was speaking about prescription drugs and associate myself with the remarks of the chairman concerning this matter, this House has passed now on two occasions a bill that said that if the Food and Drug Administration can certify that drugs from various countries, namely Canada, are what they are and they are pure and they are not counterfeit, that they can be imported. Under the Clinton administration they said they could not certify that. Under the Bush administration they said they cannot certify that. I think clearly we are going in that direction, but that has absolutely nothing to do with the bill that is before us.

Mr. LEVIN. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, this trade agreement that we are considering today contains provisions that essentially mimic the Digital Millennium Copyright Act, a law that is currently being litigated and whose scope is as yet unclear. The DMCA, while intended to protect the interests of copyright holders, may also endanger the rights and expectations of consumers.

There is substantial reason to believe that the DMCA is having an adverse impact on technological innovation. There are a lot of cases on appeal, and I think ultimately this body is going to have to sort through the DMCA so that we do not kill and stifle technological innovation.

The FCC is now based on the DMCA, asserting the right to preapprove every product that moves data in the United States. It sounds a little bit like the old Stalinist regime. I think we are going to have to revisit that, and I am concerned about the provisions in this act.

However, I have been reassured by the Trade Representative as well as the Secretary of Commerce that the insertion of this provision in these types of trade agreements will not prevent the Congress from doing what ultimately we are going to have to do, which is to stop the technological stranglehold that we have placed on that sector of the economy, such as TiVo that we read about today, which the FCC is now asserting that they get to decide what TiVo gets to innovate.

So based on those representations, I am going to certainly vote for this agreement today. Certainly, my district in the heart of the Silicon Valley needs to export, especially at a time when 35 percent of the households say someone in their home has been out of work for more than 3 months since January of 2001, when Mr. Bush became President.

At the same time, I call on Congress to show some leadership to the rest of the world by amending the DMCA to make sure that we protect the rights of copyright holders, but that we also do not stifle innovation.

Mr. Speaker, I will insert into the RECORD the letters from the Trade Representative, the Secretary of Commerce, and an article I have written on this subject.

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE,
Washington, DC, June 17, 2003.

Hon. ZOE LOFGREN,
House of Representatives,
Washington, DC.

DEAR CONGRESSWOMAN LOFGREN: Thank you for your recent letter regarding the Singapore and Chile Free Trade Agreements, specifically the provisions that reflect the U.S. Digital Millennium Copyright Act (DMCA). I am pleased that my staff had the opportunity to brief you on our FTA negotiations, including on the provisions that address copyright protection in the digital age. I would like to address your remaining concerns.

In the Trade Act of 2002, Congress mandated that we seek provisions that reflect a standard of protection similar to that found in U.S. law and that provide strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property. To that end, we have included provisions in our FTAs that reflect the historic and precedent setting standards for intellectual property protection set forth in the DMCA. We firmly believe that this legislation is evidence of Congressional leadership internationally and should be a model for how governments strike the correct balance between copyright holders and the interests of society in the digital age.

Our FTA provisions that reflect the DMCA were developed in close consultation with the same major domestic stakeholders that worked with Congress to forge the balance in the DMCA. As you may be aware, these groups have recently reiterated their support for our FTAs to Members of Congress and to me. While reflecting the balance in the DMCA, our FTA provisions merely distill the key principles of U.S. legislation; they do not replicate every detail. This is the approach we take throughout the text of the Agreement when reflecting U.S. standards. We take this approach, in part, because we recognize and support, as with all provisions of U.S. law, the Congressional prerogative to adopt further amendments as may be deemed appropriate in the future.

I fully understand that the DMCA has stimulated a vigorous debate in America as well as in Congress and that there are legislative proposals to amend the DMCA to address what may be unintended consequences arising from its implementation. Although at this time there does not appear to be widespread support in Congress, or the national community at large, for substantially revising the existing, fundamental balance struck by the DMCA, we are quite confident that our FTA provisions are sufficiently broad to encompass amendments that Congress may adopt in the future that remain within the overall balance struck in the DMCA. Moreover, the DMCA itself provides for a periodic administrative rule-making procedure to review the effect of the DMCA on users' ability to make certain non-infringing uses and to create additional exemptions to allow for such uses—a carve-out echoed in the FTA provisions.

As I believe my staff clarified during their briefing, we have not had the opportunity to examine H.R. 1066 and H.R. 107 in detail and have not opined on the extent to which these proposals are consistent with our FTAs. What my staff did indicate, which I want to reiterate here, is that the Administration has sought to reflect faithfully a standard of protection for intellectual property similar to that contained in U.S. law as instructed by Congress, but in no way to require a change in U.S. law. Legislative proposals that do not fundamentally alter the existing overall balance struck in U.S. law, and that comply with all existing international obligations regarding intellectual property, will also comply with our FTAs.

I hope this information is helpful to you.

Sincerely,

ROBERT B. ZOELLICK.

THE SECRETARY OF COMMERCE,
Washington, DC, June 5, 2003.

Hon. ZOE LOFGREN,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE LOFGREN: Thank you for your letter expressing your concerns regarding the Singapore and Chile Free Trade Agreements (FTAs). One of the important negotiating objectives of these agreements was to encourage our trading partners to provide for strong protection and enforcement of intellectual property rights, which is especially important in the modern digital trade environment.

Although many of our trading partners already belong to the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, the World Intellectual Property Organization (WIPO) Copyright Treaty, and the WIPO Performances and Phonograms Treaty, FTAs build on that foundation. The Singapore and Chile FTAs will ensure that authors and owners of copyrighted works made available in digital form receive commensurate protection, thereby strengthening trade relations with these countries. They also provide a framework of certainty around which companies can begin to build legitimate businesses for the enjoyment of creative works.

I also would like to take the opportunity to respond to specific issues raised in your letter. You expressed concern that the incorporation of provisions based on the Digital Millennium copyright Act (DMCA) in the Singapore and Chile FTAs may have an adverse impact on technological innovation. I believe, however, that strong protection and enforcement of intellectual property rights in FTAs facilitate the expansion of trade and investment in digital technologies and products, thereby advancing the interests of all parties to the FTAs.

You also expressed concern about the balance of interests reflected in both the DMCA and the Singapore and Chile FTAs. As you are aware, in enacting the DMCA, Congress worked hard to achieve a balance among the various groups with interests in the legislation, including copyright owners, users, and Internet service providers, that also met the international obligations set forth in the WIPO treaties. That balance is reflected in the Singapore and Chile FTAs. If the Congress amends the DMCA in the future, the FTAs should then be reviewed for consistency with the amended DMCA.

I believe that the U.S. free trade agreements with Singapore and Chile are milestones in progress toward strong protection and enforcement of intellectual property rights protection for the digital age. I hope that my comments have helped you to decide in favor of supporting the Singapore and Chile FTAs.

If you have any further questions, please feel free to contact me or Brenda Becker, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482–3662.

Sincerely,

DONALD L. EVANS.

[From San Jose Mercury News, Nov. 17, 2003.]

FCC RULE COULD HARM TECH INNOVATION

(By Zoe Lofgren)

The Federal Communications Commission recently gave itself unprecedented powers to keep new television sets, digital video recorders, handheld devices, third-generation cell phones and even computers out of the hands of American consumers.

How? The FCC issued new rules on the so-called ''broadcast flag,'' a proposal first put forth by the Motion Picture Association of America purportedly to encourage broadcasters to offer more digital programming.

The broadcast flag is a single bit of data added to the digital television shows beamed out across the country. By itself, the bit does nothing. Instead, the meat of the new rule requires every future device capable of playing these shows to recognize the flag and include built-in technologies that prevent them from being pirated.

But here's the kicker. Under the new rules, the FCC gets to decide if a particular technology provides sufficient protection. If you're not on the FCC's pre-approved list, you can't sell your product.

So what does this mean to you and me? It could mean that future consumer electronics and computing products will never come to market. In our digital world, the FCC is not only targeting television sets. Computers, DVRs and handheld devices can handle flagged content. Indeed, any future device capable of handling digital content could potentially be covered.

Do we want the FCC wielding veto power over a new Apple computer, Palm handheld or Motorola cell phone? Of course not. This country's technological leadership is rooted in our ability to quickly adapt and innovate, words that are not often used to describe the federal government.

The FCC's plan sounds a little like the old Soviet Union. And we know how well centralized state control worked for them. That's why Congress never gave the FCC the power to dictate the design of new computers or consumer electronics devices.

In fact, in the Digital Millennium Copyright Act, Congress specifically disavowed such mandates. Apparently, the FCC never got the message. Instead, the FCC believes that its ancillary authority over broadcasting extends to every product that brushes up against digital television. To justify their absurd conclusion, the commissioners even argue that they have the authority to regulate these industries because Congress never said they couldn't.

The main problem with this or any other government mandate is that they are rooted in the present. It is impossible to predict where American ingenuity will take us. We should do everything we can to foster this ingenuity, not put up roadblocks that will only place our inventors at a competitive disadvantage.

The FCC's attempt to become the self-anointed gatekeeper to future innovation will undoubtedly benefit the small consortium of companies with approved technologies. But it will also diminish the incentive to bring new technologies to market, hurt consumers who have bought pre-flag devices, and set a dangerous precedent for government mandates on technology.

That's not to say that the broadcast flag proposal should not be discussed. If Congress, not the FCC, decides that the broadcast flag is necessary, then it should examine ways to implement the flag without stifling innovation and competition. For example, voluntary, non-proprietary standards that preserve interoperability could be set by international non-governmental bodies.

The real goal should not be to slow down innovation, but to find ways for broadcasters to get paid when they deserve payment.

Mr. CRANE. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), who is cochair of the Morocco Caucus.

Mr. ENGLISH. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, today we are considering landmark legislation to implement the U.S.-Morocco Free Trade Agreement, and delve deeper into the bonds of friendship with the Kingdom of Morocco. Just 4 days ago, we marked exactly 217 years of official relations with Morocco, the longest unbroken diplomatic relationship in the existence of the United States. While the furthering of our positive ties with Morocco is certainly an important goal, this FTA really stands on its own as a benefit to our economy.

The U.S.-Morocco Free Trade Agreement was negotiated over a period of a year and a half and, once implemented, will be truly a win-win for both of our countries. This is, in my view, an FTA which contains the best market access package of any FTA that has been negotiated with a developing country.

I believe it has the potential to serve as a model for future free trade agreements with developing countries, particularly because of tough provisions to enforce intellectual property rights. The Morocco Free Trade Agreement contains the most advanced intellectual property chapter in any FTA negotiated thus far. It contains language that not only commits Morocco to fight piracy, but to fight piracy on products that are potentially coming through as transshipment.

Morocco is a natural market for many American companies, and a Free Trade Agreement will bring both countries closer together for mutual benefit.

The International Trade Commission has also determined that U.S. exports to Morocco are likely to increase dramatically, by $740 million, while imports from Morocco are likely to increase by nearly $200 million after full implementation of the Free Trade Agreement.

The major reason for the anticipated increase in U.S. exports is due to the fact that on day one of this agreement, 95 percent of tariffs on industrial and consumer goods will be eliminated. Morocco has demonstrated consistently its commitment to being a fair and responsible trading partner. They have taken steps to guarantee the security of foreign investment in Morocco, and have enacted sweeping labor laws to protect their workers and to improve women's rights. These negotiations were a catalyst for Morocco moving forward with a modernizing labor code.

Moreover, workers in Morocco have the right to associate, collectively bargain, and to strike. The new labor law also improved worker safety, raised the minimum wage, and created additional safeguards on child labor, all core obligations of the U.S.-Morocco Free Trade Agreement, including labor and environmental provisions, which are subject to the dispute settlement provisions of the agreement, and the agreement includes strong enforcement mechanisms, including the ability to suspend trade concessions or establish monetary assessments.

This agreement deepens America's dialogue with the Middle East and North Africa, and builds upon the free trade agreements already reached with Israel and Jordan.

The U.S.-Morocco Free Trade Agreement, in my view, is an essential part of the puzzle in moving forward to strengthen our trade relationships with our trading partners, establish stronger, more enforceable trade agreements, and establish over time a level playing field in which American companies and American workers can thrive.

Mr. Speaker, I believe the passage of this FTA will be a significant achievement in moving toward a stronger trade policy for the United States, and on the strength of that, I urge all of my colleagues to join me in supporting this FTA.

Mr. BROWN of Ohio. Mr. Speaker, I yield 4 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank my friend from Ohio for yielding me this time.

Let me begin by saying I am prepared to yield time to any proponent of this bill who can tell me what the minimum wage is in Morocco. I heard that it has gone up. What is it, 20 cents an hour, 30 cents an hour? What is the minimum wage in Morocco?

I am prepared to yield time if anyone who is supporting this bill will tell me if Morocco is a democratic society. We heard about workers' rights. My understanding is that it is an hereditary monarchy where the legislature there could be abolished at any time by the King. Does anybody want to respond to that? I am waiting. I hear no response.

A few minutes ago, Mr. Speaker, we were told that gay marriage was going to destroy the fabric of American society. Well, I will tell my colleagues what is going to destroy the fabric of American society: pieces of legislation like this that are wiping out the middle class of this country, are lowering our standard of living, are making the gap between the rich and the poor grow wider.

I would yield again to my friends who are pushing this bill if they will tell me whether they agree with Thomas Donohue, the President of the U.S. Chamber of Commerce, who several weeks ago urged, urged American companies to outsource, urged American companies to throw our workers out on the street and go to China or Morocco.

Will any proponents of this legislation tell me that they disagree with Mr. Donohue? I yield time to anybody who says they disagree with Mr. Donohue, the chairman of the Chamber of Commerce. I do not hear it.

In other words, the proponents of this bill are telling us that they think it is a good idea that Americans workers are thrown out on the street, lose decent paying jobs, and are forced to compete in a race to the bottom against desperate people all over the world who are working for pennies an hour.

Mr. Speaker, what is happening in our society today is that while productivity increases, while technology expands, the reality is that the middle class is shrinking and the average American worker is working longer hours for lower wages. There are a lot of reasons for that, but certainly one of the reasons is that our working class, our middle class is being asked to compete against desperate people in Morocco, in China, all over this world. And American corporations are saying, why should I pay an American worker $10, $15 an hour, have unions, protect the environment, when I can go to Morocco, I can go to China, and big money interests in this country, with the help of the Republican leadership, is going to make it easier for me to go abroad.

What is happening to this economy is an outrage in terms of the needs of our kids. The U.S. Department of Labor has projected that 7 out of the 10 fastest-growing jobs in the next 10 years are going to pay low wages, require a high school degree, with minimal benefits. We are losing our manufacturing base. In the last 3 years, 2.7 million good-paying manufacturing jobs gone. Now they are taking our information technology jobs to India. Gone. And what is going to be left for our kids? Well, Wal-Mart is doing very well; Burger King is doing very well. Is that what we want for our kids? Why are we selling out the middle class of this country? Why are we allowing corporate America to go abroad?

Well, I would suggest that we should look at the campaign contributions that come in to this institution from corporate America. No, let us have trade that is fair, not this trade agreement.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

The new Morocco labor law is a significant improvement over existing labor laws and regulations. The law raises the minimum employment age from 12 to 15 to combat child labor, reduces the work week from 48 to 44 hours with overtime rates payable for additional hours, and calls for a periodic review of the Moroccan minimum wage.

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Effective July 1, 2004, the minimum wage in Morocco will increase by 10 percent. Morocco did this to make itself a more attractive FTA partner.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BRADY).

Mr. BRADY of Texas. Mr. Speaker, I thank the chairman for yielding me the time and for his leadership on this issue.

I hope the American public was listening carefully to our friend and colleague from Vermont. What he said was what tears apart the fabric of America is to allow our farmers to sell more of their corn to Morocco. He made the point that our farmers who are trying to sell more corn to Morocco, because they buy a lot of it, our farmers who grow wheat and sell more of it will sell more of it to Morocco, that that is bad for America, that companies in Texas, from workers, from petro chemical plants, our computer manufacturing plants, our chemical plants, hard-working workers who are trying to build more products to sell overseas to Morocco, that this will tear apart the fabric of America.

I think it is just the opposite. The problem we have is that there are too many American-need-not-apply signs around this world. We are not able to

sell our products and our goods and our services across the world. American workers are the most productive. Our products are great. We need a chance to sell them to customers throughout the world, and what this agreement does is make sure that we are given a fair chance to sell the great products that we build.

In Texas we are the fourth largest exporting State to Morocco, $23 million of goods and services: ag products, petroleum products, chemical products, processed foods, computers and electronics. All made by Texas workers who want to sell their products overseas, but we are blocked. This agreement opens those markets for all workers, because that is their future, to sell more products to whoever can afford to do that.

And as Americans, we know that unless we open these markets, if we just agree to sell to ourselves, to allow Europe to sell to these markets, Asia to sell to these markets, South America to sell to these markets, our prosperity is in danger. This is a great agreement for American workers, and I strongly support it.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. MEEKS).

Mr. MEEKS of New York. Mr. Speaker, I thank the gentleman for yielding me this time.

Passage of this agreement stands to greatly benefit the United States of America, which enjoys a consistent yearly trade surplus with Morocco, totaling over $1.5 billion from 1992 to 2003. This agreement is a high-standard, comprehensive one that will eliminate tariff and nontariff barriers to trade.

In fact, the agreement represents the best industrial and consumer goods market access package of any U.S. FTA with a developing nation. The agreement also levels the playing field for U.S. businesses, farmers, and workers vis-a-vis European competitors, who have for far too long enjoyed a competitive advantage over the United States suppliers of goods, services, and agricultural products. The agreement will also serve as a key building block toward the establishment of a broader Middle East free trade area.

Through this FTA, Morocco also sets an important example throughout the developing world of the benefits of trade liberalization and strategic importance of high-standard rules that should govern trade. In this respect, the FTA includes the best of intellectual property rights protections negotiated to date by the United States.

In addition, the Moroccan government has used the FTA negotiating process to strengthen its own laws, particularly with respect to the status of women and labor rights, two measures which distinguish Morocco from many of its Arab neighbors.

Finally, this FTA is historic. It is a historic milestone in the United States and Morocco bilateral relationship, which began well over 200 years ago, where Morocco was the first country to recognize the newly independent United States of America. Morocco today remains one of the United States' closest political allies in the war against terror and a steadfast friend in advancing peace in the Middle East.

And it is for these reasons I urge all of my colleagues to support the U.S.-Morocco Free Trade Agreement. This is a solid agreement that promotes our commercial interests and contains important provisions on agriculture, labor, and intellectual property.

Mr. CRANE. Mr. Speaker, let me first congratulate the former speaker for his presentation and what he had to say.

Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska (Mr. BEREUTER).

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, I rise in strong support of this legislation. I thank the chairman for yielding me time.

There are a number of economic reasons why this FTA is very much in the national interest of the United States, but I want to focus a few comments on the diplomatic or foreign policy reasons. The FTA with Morocco is in our Nation's interest because it will begin to implement the President's vision for a U.S.-Middle East free trade area. I also believe it is important to support the economic reform that is going on in Morocco, a nation where Islam has deep roots and which occupies a leadership position in the Arab world.

As mentioned frequently here, American friendship in Morocco extends back to the beginning of our Republic. We have the longest-standing friendship treaty with that country of any in the world. The enactment of the FTA legislation with Morocco is a vitally important part of the process of boosting economic reform inside the Kingdom of Morocco. In addition, this FTA helps further link the Middle East into the global economic system and spur economic growth and investment. These closer commercial links with our key allies such as Morocco are critically important to the region of the world. And hear this: this legislation makes it less likely, less likely that jobs and businesses will move to Morocco, not more likely.

It is also vital to point out that Morocco has recently undertaken a diplomatic offensive designed to improve its relations with its neighbors to settle a 3-decade-old Saharan conflict. It is also stepping up its antiterrorism cooperation with the U.S. and with Algeria. And recently, it was designated as a major non-NATO ally. That should enable it to get the requisite assistance and cooperation to strengthen our regional and bilateral relationship.

Mr. Speaker, for economic or export reasons, there are three primary reasons why this is a good step for us. This FTA is in the best agriculture interest of the United States. Number two, the FTA will give us market access for businesses. And, three, it meets the labor and environmental standards set out in the Trade Promotion Act.

In the area of agriculture, it means, for example, that we are going to have an estimated triple increase in our exports to Morocco. In the area of industrial products, it is suggested that our greater market access will be very important. More than 95 percent of the bilateral trade industrial products will become duty-free immediately upon entry into force of this agreement. And in the third area, as I mentioned, it does meet the labor and environmental standards.

Moreover, Morocco recently passed a comprehensive new labor law that meets international labor organizational core labor standards, including right of workers to strike.

In conclusion, this is a very good step for the United States. It is very good for our bilateral relations, and I would say finally that the Mediterranean Group of the NATO Parliamentary Assembly, I happen to be the president, recently visited Morocco, and as a result of that visit, by unanimous action in the standing committee, we decided to upgrade Morocco from observer status to an associate member status because of the significant progress they are making in democracy in their parliament.

For all of these reasons, I urge strong support of the legislation.

Mr. BROWN of Ohio. Mr. Speaker, I yield 3½ minutes to the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Speaker, here we go again contemplating the passage of another free trade agreement before we have done the basic reforms that we need to do to protect the American company, the American workers, the American community.

The truth is we need a moratorium on any further trade agreements until we reach a political consensus in this country about what those agreements are going to be like.

For example, there is such inconsistency in the decisions we make in this body. Are people aware that we cannot go visit Cuba as free American citizens? And the administration has just recently decided that those who live in this country with relatives in Cuba can only go there every 10 years to visit their loved ones. Why? Well, because Cuba is a communist country. Fidel Castro is an authoritarian dictator. And, yet, we are encouraging free trade with China. We want our citizens to travel to China. We want our companies to invest in China.

The last time I knew or heard, China was a communist country, it was authoritarian, it was a country that routinely violates human rights, puts those of religious faith in prison. Why the inconsistency? Why the inconsistency?

Now, my friends talk about how we are going to sell all of the wheat, agricultural products to Morocco. Those who like these free trade agreements enjoy talking about all of the products we are going to export. They never talk about all the products that are being flooded, poured into this country. Every day that passes, this country has a $1.5 billion trade deficit, every day, $1.5 billion.

I have here a copy of the economic report of the President. He submitted this and transmitted it to Congress in February of this year. His signature is on this economic report. I think that makes him responsible for what is inside it.

On page 25 of that report under a section titled ''International Trade and Finance'' are these words: ''When a good or a service is produced at lower cost in another country, it makes sense to import it rather than to produce it domestically.''

I read it again for those who may have thought they were unable to believe their ears. In the President's economic report to the Nation are these words: ''When a good or a service is produced at lower cost in another country, it makes sense to import it rather than to produce it domestically.''

I ask Mr. Don Evans, Secretary of Commerce, reported to be one of the President's closest personal friends, if he would give me a list of the products that cannot be produced at lower cost in another country, a country like China where they use slave labor, where they violate human rights. We need to wake up in this country. The American people need to demand that the President and those of us who serve in this Chamber put their needs first.

Mr. CRANE. Mr. Speaker, I yield to the gentleman from Pennsylvania (Mr. PITTS) for the purpose of engaging in a colloquy.

Mr. PITTS. Mr. Speaker, I would like to thank the gentleman from California (Chairman THOMAS) as well for his leadership on the U.S.-Morocco Free Trade Agreement. I am a free trader and believe that free trade helps our Nation and the nations of the world. However, I am deeply concerned about the issue of Western Sahara, and I have had concerns that the U.S. needed to make clear that this free trade agreement covers only the internationally- and the U.S.-recognized borders of Morocco and does not include the disputed territory of Western Sahara. It is my understanding that the language in the conference report makes clear that the free trade agreement does not cover resources, goods, services, or any other entity related to trade that originates in Western Sahara.

I would ask the gentleman, does the U.S.-Morocco Free Trade Agreement cover trade with the disputed territory of Western Sahara?

□ 1700

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. PITTS. I yield to the gentleman from Illinois.

Mr. CRANE. The Committee on Ways and Means' report states the clear coverage of the free trade agreement. ''The committee notes that the FTA will cover trade with and investment in the territory of Morocco as recognized by the United States, which does not include the Western Sahara.''

Mr. PITTS. I thank the chairman for that clarification.

The following is a letter from USTR making clear that we do not support Morocco's claim over the Western Sahara and the FTA does not recognize or include the Western Sahara.

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE,

Washington, DC, July 20, 2004.

Hon. JOSEPH R. PITTS,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN PITTS: Thank you for your letter of July 19, 2004, concerning our Free Trade Agreement (FTA) with Morocco and the status of Western Sahara.

The Administration's position on Western Sahara is clear: sovereignty of Western Sahara is in dispute, and the United States fully supports the United Nations' effort to resolve this issue. The United States and many other countries do not recognize Moroccan sovereignty over Western Sahara and have consistently urged the parties to work with the United Nations to resolve the conflict by peaceful means.

The FTA will cover trade and investment in the territory of Morocco as recognized internationally, and will not include Western Sahara. As our Harmonized Tariff Schedule makes clear, for U.S. Customs purposes, the United States treats imports from Western Sahara and Morocco differently. Nothing in the FTA will require us to change this practice. The Administration will draft the proclamation authorized in the legislation implementing the FTA (H.R. 4842) to provide preferential tariff treatment for goods from the territory of Morocco. Preferential tariff treatment will not be provided to goods from Western Sahara.

I hope this letter addresses your question regarding the FTA and the status of Western Sahara. I encourage you to support the FTA. It will create economic opportunities for U.S. manufacturing and service firms, workers, and farmers, and will support economic reforms and foreign investment in Morocco.

Thank you again for your letter. Please feel free to contact me should you have further questions.

Sincerely,

ROBERT B. ZOELLICK.

Mr. CRANE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, thank you for your leadership.

While trade is a vital component to strengthening with the greater Middle East, promoting the spread of democracy is even more so. The Sahrawi are a peaceful pro-Western, pro-democracy people. They want the international community, including the U.N. Security Council and the United States, to uphold its commitment to a free and transparent referendum for self-determination, and it is unacceptable that Morocco has been allowed to prevent that vote from taking place.

During his tenure the former Secretary of State Baker proposed a plan that both parties accepted at first, and the Moroccans accepted the plan, but as soon as the people of Western Sahara accepted they withdrew their support, and I am deeply concerned that the Moroccan government, as patterned, will use this agreement with help from friends in France and others to attempt to increase its exploitation of the resources.

I just want to clarify the statement about the people of Western Sahara. Earlier today someone said that the Sahrawis are terrorists. I take exception to this remark, as the people of Western Sahara, and like many others in North Africa and the Middle East, have actually tried to peacefully solve the conflict. The State Department does not consider the people of Western Sahara to be terrorists. It is a misstatement. It is wrong. It is unproductive in our fight against terrorism to suggest that they are, and our own State Department does not believe the people of Western Sahara are terrorists.

Secondly, I visited there. I visited the refugee camps. I know the people. They are not terrorists. Members of this House should go to the refugee camps. They should see the terrible malnutrition of the people, the lack of health care, the refugee camps. If they would visit the refugee camps they would know that the information fed to them by supporters is inaccurate.

Mr. Chairman, I am voting for the FTA because there is protection for the people and resources of Western Sahara and because I believe the free trade will help the people of Morocco and those of surrounding countries.

The following is a series of items that would make clear that this agreement should not be abused by Morocco to profit off of land that it has no legitimate claim to.

WESTERN SAHARA—ADVISORY OPINION OF 16 OCTOBER 1975

INTERNATIONAL COURT OF JUSTICE

In its Advisory Opinion which the General Assembly of the United Nations had requested on two questions concerning Western Sahara, the Court,

With regard to Question I, ''Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)?'',

—decided by 13 votes to 3 to comply with the request for an advisory opinion;

—was unanimously of opinion that Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain was not a territory belonging to no one (terra nullius).

With regard to Question II, ''What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?'', the Court

—decided by 14 votes to 2 to comply with the request for an advisory opinion;

—was of opinion, by 14 votes to 2, that there were legal ties between this territory and the Kingdom of Morocco of the kinds indicated in the penultimate paragraph of the Advisory Opinion;

—was of opinion, by 15 votes to 1, that there were legal ties between this territory

and the Mauritanian entity of the kinds indicated in the penultimate paragraph of the Advisory Opinion.

The penultimate paragraph of the Advisory Opinion was to the effect that:

The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.

For these proceedings the Court was composed as follows: President Lachs; Vice-President Ammoun; Judges Forster, Gros, Bengzon, Petrén, Onyeama, Dillard, Ignacio-Pinto, de Castro, Morozov, Jiménez de Aréchaga, Sir Humphrey Waldock, Nagendra Singh and Ruda; Judge ad hoc Boni.

Judges Gros, Ignacio-Pinto and Nagendra Singh appended declarations to the Advisory Opinion; Vice-President Ammoun and Judges Forster, Petrén, Dillard, de Castro and Boni appended separate opinions, and Judge Ruda a dissenting opinion.

In these declarations and opinions the judges concerned make clear and explain their positions.

Course of the Proceedings
(paras. 1–13 of Advisory Opinion)

The Court first recalls that the General Assembly of the United Nations decided to submit two questions for the Court's advisory opinion by resolution 3292 (XXIX) adopted on 13 December 1974 and received in the Registry on 21 December. It retraces the subsequent steps in the proceedings, including the transmission of a dossier of documents by the Secretary-General of the United Nations (Statute, Art. 65, para. 2) and the presentation of written statements or letters and/or oral statements by 14 States, including Algeria, Mauritania, Morocco, Spain and Zaire (Statute, Art. 66).

Mauritania and Morocco each asked to be authorized to choose a judge ad hoc to sit in the proceedings. By an Order of 22 May 1975 (1.C.J. Reports 1975, p. 6), the Court found that Morocco was entitled under Articles 31 and 68 of the Statute and Article 89 of the Rules of Court to choose a person to sit as judge ad hoc, but that, in the case of Mauritania, the conditions for the application of those Articles had not been satisfied. At the same time the Court stated that those conclusions in no way prejudged its views with regard to the questions referred to it or any other question which might fall to be decided, including those of its competence to give an advisory opinion and the propriety of exercising that competence.

Competence of the Court
(paras. 14–22 of Advisory Opinion)

Under Article 65, paragraph 1, of the Statute, the Court may give an advisory opinion on any legal question at the request of any duly authorized body. The Court notes that the General Assembly of the United Nations is suitably authorized by Article 96, paragraph 1, of the Charter and that the two questions submitted are framed in terms of law and raise problems of international law. They are in principle questions of a legal character, even if they also embody questions of fact, and even if they do not call upon the Court to pronounce on existing rights and obligations. The Court is accordingly competent to entertain the request.

Propriety of Giving an Advisory Opinion
(paras. 23–74 of Advisory Opinion)

Spain put forward objections which in its view would render the giving of an opinion incompatible with the Court's judicial character. It referred in the first place to the fact that it had not given its consent to the Court's adjudicating upon the questions submitted. It maintained (a) that the subject of the questions was substantially identical to that of a dispute concerning Western Sahara which Morocco, in September 1974, had invited it to submit jointly to the Court, a proposal which it had refused: the advisory jurisdiction was therefore being used to circumvent the principle that the Court has no jurisdiction to settle a dispute without the consent of the parties; (b) that the case involved a dispute concerning the attribution of territorial sovereignty over Western Sahara and that the consent of States was always necessary for the adjudication of such disputes; (c) that in the circumstances of the case the Court could not fulfill the requirements of good administration of justice with regard to the determination of the facts. The Court considers (a) that the General Assembly, while noting that a legal controversy over the status of Western Sahara had arisen during its discussions, did not have the object of bringing before the Court a dispute or legal controversy with a view to its subsequent peaceful settlement, but sought an advisory opinion which would be of assistance in the exercise of its functions concerning the decolonization of the territory, hence the legal position of Spain could not be compromised by the Court's answers to the questions submitted; (b) that those questions do not call upon the Court to adjudicate on existing territorial rights; (c) that it has been placed in possession of sufficient information and evidence.

Spain suggested in the second place that the questions submitted to the Court were academic and devoid of purpose or practical effect, in that the United Nations had already settled the method to be followed for the decolonization of Western Sahara, namely a consultation of the indigenous population by means of a referendum to be conducted by Spain under United Nations auspices. The Court examines the resolutions adopted by the General Assembly on the subject, from resolution 1514 (XV) of 14 December 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples, to resolution 3292 (XXIX) on Western Sahara, embodying the request for advisory opinion. It concludes that the decolonization process envisaged by the General Assembly is one which will respect the right of the population of Western Sahara to determine their future political status by their own freely expressed will. This right to self-determination, which is not affected by the request for advisory opinion and constitutes a basic assumption of the questions put to the Court, leaves the General Assembly a measure of discretion with respect to the forms and procedures by which it is to be realized. The Advisory Opinion will thus furnish the Assembly with elements of a legal character relevant to that further discussion of the problem to which resolution 3292 (XXIX) alludes.

Consequently the Court finds no compelling reason for refusing to give a reply to the two questions submitted to it in the request for advisory opinion.

Question I: ''Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the Time of Colonization by Spain a Territory Belonging to No One (terra nullius)?''
(paras. 75–83 of Advisory Opinion)

For the purposes of the Advisory Opinion, the ''time of colonization by Spain'' may be considered as the period beginning in 1884, when Spain proclaimed its protectorate over the Rio de Oro. It is therefore by reference to the law in force at that period that the legal concept of terra nullius must be interpreted. In law, ''occupation'' was a means of peaceably acquiring sovereignty over territory otherwise than by cession or succession; it was a cardinal condition of a valid ''occupation'' that the territory should be terra nullius. According to the State practice of that period, territories inhabited by tribes or peoples having a social and political organization were not regarded as terrae nullius: in their case sovereignty was not generally considered as effected through occupation, but through agreements concluded with local rulers. The information furnished to the Court shows (a) that at the time of colonization Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them; (b) that Spain did not proceed upon the basis that it was establishing its sovereignty over terrae nullius: thus in his Order of 26 December 1884 the King of Spain proclaimed that he was taking the Rio de Oro under his protection on the basis of agreements entered into with the chiefs of local tribes.

The Court therefore gives a negative answer to Question I. In accordance with the terms of the request for advisory opinion, ''if the answer to the first question is in the negative'', the Court is to reply to Question II.

Question II: ''What Were the Legal Ties of This Territory with the Kingdom of Morocco and the Mauritanian Entity?''
(paras. 84–161 of Advisory Opinion)

The meaning of the words ''legal ties'' has to be sought in the object and purpose of resolution 3292 (XXIX) of the United Nations General Assembly. It appears to the Court that they must be understood as referring to such legal ties as may affect the policy to be followed in the decolonization of Western Sahara. The Court cannot accept the view that the ties in question could be limited to ties established directly with the territory and without reference to the people who may be found in it. At the time of its colonization the territory had a sparse population that for the most part consisted of nomadic tribes the members of which traversed the desert on more or less regular routes, sometimes reaching as far as southern Morocco or regions of present-day Mauritania Algeria or other States. These tribes were of the Islamic faith.

Morocco (paragraphs 90–129 of the Advisory Opinion) presented its claim to legal ties with Western Sahara as a claim to ties of sovereignty on the ground of an alleged immemorial possession of the territory and an uninterrupted exercise of authority. In the view of the Court, however, what must be of decisive importance in determining its answer to Question II must be evidence directly relating to effective display of authority in Western Sahara at the time of its colonization by Spain and in the period immediately preceding. Morocco requests that the Court should take account of the special structure of the Moroccan State. That State was founded on the common religious bond of Islam and on the allegiance of various tribes to the Sultan, through their caids or sheiks, rather than on the notion of territory. It consisted partly of what was called the Bled Makhzen, areas actually subject to the Sultan, and partly of what was called the Bled

Siba, areas in which the tribes were not submissive to him; at the relevant period, the areas immediately to the north of Western Sahara lay within the Bled Siba.

As evidence of its display of sovereignty in Western Sahara, Morocco invoked alleged acts of internal display of Moroccan authority, consisting principally of evidence said to show the allegiance of Saharan caids to the Sultan, including dahirs and other documents concerning the appointment of caids, the alleged imposition of Koranic and other taxes, and acts of military resistance to foreign penetration of the territory. Morocco also relied on certain international acts said to constitute recognition by other States of its sovereignty over the whole or part of Western Sahara, including (a) certain treaties concluded with Spain, the United States and Great Britain and Spain between 1767 and 1861, provisions of which dealt inter alia with the safety of persons shipwrecked on the coast of Wad Noun or its vicinity, (b) certain bilateral treaties of the late nineteenth and early twentieth centuries whereby Great Britain, Spain, France and Germany were said to have recognized that Moroccan sovereignty extended as far south as Cape Bojador or the boundary of the Rio de Oro.

Having considered this evidence and the observations of the other States which took part in the proceedings, the Court finds that neither the internal nor the international acts relied upon by Morocco indicate the existence at the relevant period of either the existence or the international recognition of legal ties of territorial sovereignty between Western Sahara and the Moroccan State. Even taking account of the specific structure of that State, they do not show that Morocco displayed any effective and exclusive State activity in Western Sahara. They do, however, provide indications that a legal tie of allegiance existed at the relevant period between the Sultan and some, but only some, of the nomadic peoples of the territory, through Tekna caids of the Noun region, and they show that the Sultan displayed, and was recognized by other States to possess, some authority or influence with respect to those tribes.

The term ''Mauritanian entity'' (paragraphs 139–152 of the Advisory Opinion) was first employed during the session of the General Assembly in 1974 at which resolution 3292 (XXIX), requesting an advisory opinion of the Court, was adopted. It denotes the cultural, geographical and social entity within which the Islamic Republic of Mauritania was to be created. According to Mauritania, that entity, at the relevant period, was the Bilad Shinguitti or Shinguitti country, a distinct human unit, characterized by a common language, way of life, religion and system of laws, featuring two types of political authority: emirates and tribal groups.

Expressly recognizing that these emirates and tribes did not constitute a State, Mauritania suggested that the concepts of ''nation'' and of ''people'' would be the most appropriate to explain the position of the Shinguitti people at the time of colonization. At that period, according to Mauritania, the Mauritanian entity extended from the Senegal river to the Wad Sakiet El Hamra. The territory at present under Spanish administration and the present territory of the Islamic Republic of Mauritania thus together constituted indissociable parts of a single entity and had legal ties with one another.

The information before the Court discloses that, while there existed among them many ties of a racial, linguistic, religious, cultural and economic nature, the emirates and many of the tribes in the entity were independent in relation to one another; they had no common institutions or organs. The Mauritanian entity therefore did not have the character of a personality or corporate entity distinct from the several emirates or tribes which comprised it. The Court concludes that at the time of colonization by Spain there did not exist between the territory of Western Sahara and the Mauritanian entity any tie of sovereignty, or of allegiance of tribes, or of simple inclusion in the same legal entity. Nevertheless, the General Assembly does not appear to have so framed Question II as to confine the question exclusively to those legal ties which imply territorial sovereignty, which would be to disregard the possible relevance of other legal ties to the decolonization process. The Court considers that, in the relevant period, the nomadic peoples of the Shinguitti country possessed rights, including some rights relating to the lands through which they migrated. These rights constituted legal ties between Western Sahara and the Mauritanian entity. They were ties which knew no frontier between the territories and were vital to the very maintenance of life in the region.

Morocco and Mauritania both laid stress on the overlapping character of the respective legal ties which they claimed Western Sahara to have had with them at the time of colonization (paragraphs 153–160 of the Advisory Opinion). Although their views appeared to have evolved considerably in that respect, the two States both stated at the end of the proceedings that there was a north appertaining to Morocco and a south appertaining to Mauritania without any geographical void in between, but with some overlapping as a result of the intersection of nomadic routes. The Court confines itself to noting that this geographical overlapping indicates the difficulty of disentangling the various relationships existing in the Western Sahara region at the time of colonization.

For these reasons, the Court (paragraphs 162 and 163 of the Advisory Opinion) gives the replies indicated on pages 1 and 2 above.

[From Reuters News Service, Jan. 13, 2004]

SARDINES AND SOVEREIGNTY IN WESTERN SAHARA

(By Eileen Byrne)

LAAYOUNE, WESTERN SAHARA.—On trawlers at the quayside near Laayoune, the main city in Moroccan-controlled Western Sahara, the crew unload sardines in wicker baskets thrown from hand to hand.

The traditional baskets are misleading, because the yield of sardines, octopus and squid from the Western Saharan ports of Laayoune, Boujdour and Dakhla has come to represent more than 60 percent of Morocco's total annual fisheries yield of almost one million tons. With sovereignty over the Western Sahara still in dispute, this is a politically significant catch.

The uncertainty about the future of this vast, mainly desert territory in the northwest corner of Africa puts a dampener, for now, on investment in tourism for winter sun-seekers, officials in Laayoune admit.

But against the backdrop of diplomatic stalemate, as the United Nations strives for a solution to the dispute between Morocco and the Polisario separatist movement, Morocco is keen to show that the regional economy is developing apace.

The fishing sector is one area where the authorities can point to significant growth, always under the firm guiding hand of the central government.

SOUTHERN-MOST SUBJECTS

Claiming Western Sahara as its historic ''southern provinces,'' Morocco controls most of the territory.

The Polisario movement, based across the border in Algeria, sees the future of the area as an independent state, governed by its Saharan Arab inhabitants, known as Sahrawis.

Since a 1991 cease-fire, successive U.N. initiatives aimed at ending a dispute which dates from 1975, and asserting the Sahrawis' right to ''self-determination,'' have failed.

Advocates of independence for Western Sahara stress the territory's mineral wealth, with the phosphate mine at Boukra near Laayoune, and possible offshore oil reserves.

But the Boukra mine is loss-making and subsidized by the Office Cherifien des Phosphates' more important phosphate production near Khouribga, according to officials. It is fishing that generates new jobs and export earnings. Western Sahara fish products now account for up to seven percent of Morocco's total export earnings of 85.6 billion dirhams ($9.80 billion).

Morocco declined to renew a fishing accord with the European Union which until the late 1990s had allowed foreign boats into Moroccan waters. It has instead spent heavily since then on port infrastructure in Western Sahara, as though consolidating its hold on the territory.

Like all other businesses in Western Sahara, the sardine canning businesses, and plants processing octopus for Japanese dinner tables, pay no taxes except for payroll contributions.

They also benefit from the subsidies in the prices of fuel, power and water with which Morocco woos its southern-most subjects, who account for less than two percent of the kingdom's 29.6 million population.

Local investors are often Sahrawi notables who see the territory's future with Rabat rather than the Polisario and who play a prominent role in the local economy. A little over a generation ago, the Sahrawis' lifestyle revolved around camel and goat rearing. Fish did not figure at all in the Sahrawi diet and even today few Sahrawis work directly with fish.

But among new investors, the favorable conditions for businesses can sometimes encourage over-hasty decisions.

OCTOPUS FOR THE JAPANESE

Lining the walls of the conference room in the Laayoune governor's headquarters, photos showed a visit to Western Sahara by Morocco's King Mohammed.

Some 40 men, and one woman wrapped in the colored veil worn in Western Sahara, listened to Morocco's Fisheries Minister Taieb Rhafes. He had flown down from Rabat to explain why he was extending a ban on octopus fishing.

With him were representatives of Moroccan banks whose loans to local investors had encouraged a proliferation of octopus-freezing plants around Dakhla, from a handful in 1997 to 90 in 2003. The octopuses have been almost wiped out by over-fishing, the minister explained. It takes only three months to have an octopus-freezing plant up and running, said an official.

At Laayoune port, the fishermen are not Sahrawis, but come from Moroccan ports further north—Agadir, Essaouira and Safi. A spontaneous movement of sardines southwards, traced by Morocco's fisheries research institute, the INRH, coincided with the development of infrastructure in the Western Sahara. The fishermen followed the fish southwards, bringing their expertise with them.

Moroccan officials have no separate figures for employment among Sahrawis and non-Sahrawis. ''There are no two communities here,'' only Moroccan citizens, Laayoune Governor Mohamed Rharrabi told Reuters.

With the sea-faring culture far-removed from the traditional Sahrawi lifestyle, it seems fishing will provide only some of the jobs needed in the Laayoune region, where unemployment at the last census was 40 percent among 20 to 24 year-olds.

DENMARK DOES NOT RECOGNISE MOROCCAN SOVEREIGNTY ON WESTERN SAHARA

[From Sahara Press Service (SPS), June 22, 2004]

COPENHAGEN—Danish Government, does not ''recognise Moroccan sovereignty on Western Sahara'', declared Danish Minister for Foreign Affairs, Mr. Per Stig Møller, in response to a question he answered before of his Parliament, according to close sources to the Saharawi representation to Denmark.

Answering a question asked by Danish Member of the Parliamentary group Enhedslisten (Union list, in English), Mr. Soern Soendergaard, the Minister for Foreign Affairs asserted that his Government ''does not recognise Moroccan sovereignty on Western Sahara'', considering Moroccan presence on the territory as illegal and unacceptable.

Regarding the peace plan, elaborated by UN Secretary General's former Personal Envoy, James Baker, Mr. Møller affirmed that this plan remains applicable, recalling that it ''is accepted by Polisario Front and the neighbouring countries and is unanimously adopted by Security Council in its resolution 1495''.

Finally, the Head of Danish diplomacy reiterated ''the support of Denmark of the efforts paid by UN's Secretary General and his former Personal Envoy aimed at reaching a just and lasting solution to the conflict'', in Western Sahara conforming to international legality and by implementing UN's resolutions.

[From Sahara Press Service (SPS), June 24, 2004]

GERMAN PDC/CSU CALLS TO IMMEDIATE SETTLEMENT OF WESTERN SAHARA CONFLICT

BERLIN.—The parliamentary group of German Christian Democrat Party (PDC/CSU) in Bundestag (Parliament), called on Thursday to an immediate settlement of Western Sahara's conflict, exhorting international community to pay more efforts in defending Saharawi people's ''right to self-determination''.

In a communiqué publicised on Thursday, of which SPS received a copy, PDC/CSU parliamentary Group's spokesperson, Dr. Christian Ruck, asserted that ''Western Sahara conflict's settlement tolerates no more delays'', calling international community to pay more efforts in defending Saharawi people's ''right to self-determination''.

UN Secretary General's former Personal Envoy, James Baker's resignation ''may push to failure'' the peace plan for self-determination of Saharawi people, though this plan constitutes ''a reasonable compromise to realise peace in this region'', deplored the spokesperson.

Thus, the international community is called to ''prove to the people of this region, who is still suffering this old aging conflict, that its right to self-determination remains a priority for the international community'', which should also defend UN's principles and international law, so as to reach a peaceful settlement to this problem, concluded the communiqué.

[From Upstream Online & Hardcopy, July 2, 2004]

SVITZER FEELS HEAT IN WESTERN SAHARA

(By Barry Morgan)

Fugro affiliate Svitzer has just completed a marine survey on Kerr-McGee's Boujdour acreage off the disputed territory of Western Sahara.

Based in Norfolk in the UK, Svitzer is the latest company to attract brickbats from activists determined to persuade industry players not to sign deals with Morocco, which occupies the territory and claims its resources.

Following a one-year extension, KMG's reconnaissance permit will expire on 29 October. However, its tenure is contested by the Sahrawi independence militia, which has long fought for sovereign control, stirring international controversy over the licencing regime imposed by Rabat.

Fellow UK consultancy Robertson Research International (RRI) is also poised to complete survey work in Western Sahara, despite question marks over the legitimacy of UK corporate involvement in what the UK government calls a ''non-self governing territory'' where it says sovereignty remains to be determined under UN auspices. For its part, RRI said it is not directly contracted to Rabat.

Confirmation of RRI's involvement comes hard on the heels of a campaign launched by Western Sahara support groups across Europe against exploration and production companies doing business at the behest of Rabat.

Kerr-McGee, Total and TGS-Nopec were blasted for jumping the gun on a fragile peace process in which the UN has sought diplomatic consensus ahead of a referendum on self-determination for the Sahrawi people.

Activists' primary target of late has been UK-registered Wessex Exploration, which was recently invited to Rabat to finalise a preliminary but open-ended deal to analyse onshore data ahead of an exploration push outlined by Moroccan state oil company managing director Amina Benkhadra.

Wessex has been warned that ''its reputation would suffer'' if it did not back off or negotiate with the Sahrawi authorities.

In the meantime, several UK parliamentarians have moved to seek clarification of the UK government's position on British companies doing business in Western Sahara. Concerned MPs led by the Labour Party's David Drew, want to pin down Whitehall on its attitude.

Drew will shortly table a parliamentary question seeking greater clarity. Drew now speaks for the Western Sahara Support Group and two Conservative MPs are expected to join existing members before they resurface as a parliamentary force.

The UK Foreign Office insists sovereignty in Western Sahara remains undetermined as long as UN calls to resolve the crisis via the so-called Baker Peace Plan remain unheeded. ''We want to push the UK to promote the Plan so that Morocco withdraws. It should also tell British companies that they should not get involved in Western Sahara at this time while the UN mandate remains unimplemented,'' said Drew.

The Foreign Office currently has no problem with companies winning reconnaissance or E&P licences from Rabat, so long as the practical effect complies with constraints laid down by the UN Legal Office on ''disregarding the rights'' of the Sahrawi people.

This means Kerr-McGee and Total can use TGS-Nopec and Fugro to shoot seismic as long as rigs are not deployed to confirm or produce oil finds.

Meanwhile, the acquisition of strategically important seismic data for Rabat as the licensor remains legal under the ''look but don't touch'' interpretation of both UK and US governments. However, a UK official said that ''we'd have to revisit this opinion if activity got this far. There is no official endorsement''.

''Right now, our view is that UK companies going into Western Sahara are on their own and we cannot link them to the Department of Trade & Industry or offer the support of any other government mechanisms,'' the source added.

Two UK-registered companies presently stand on both sides of the fence. Sterling Resources has inherited an exclusive offshore PSC from AIM-listed Fusion Oil & Gas following a recent take-over, while Wessex is under increasing pressure after retaining its exclusive study licence from Rabat.

After expending $600 million on peacekeeping efforts, the UN system is tiring of the Western Sahara crisis, with UN Special Envoy James Baker resigning in frustration last month.

The UN's new representative, Alvaro de Soto, said this week that he would pursue the same policy as Baker, suggesting no new ideas to break the deadlock were on the table.

[From afrol News, July 12, 2004]

NORWEGIAN INDUSTRY TO EXPLOIT SAHRAWI FISH RESOURCES

Norwegian officials are in the process of promoting Norwegian investments in the booming fisheries industry in Moroccan-occupied Western Sahara, despite protests by Sahrawi officials. The fisheries industry is the dominant economic sector in the territory, promoting new Moroccan settlements here. Norwegian capital and knowledge is to help this development.

According to information made available to afrol News, the Norwegian Ambassador in Morocco, Arne Aasheim last week was on a three-day visit to El Aaiun, the capital of the Western Sahara territory. Here, he had meetings with the Moroccan authorities governing the occupied territory and representatives of the fisheries sector.

Sources wanting to remain anonymous told afrol News that the primary focus in these meetings was on how Norwegian companies could strengthen their foothold in the booming Moroccan fisheries industry, which mainly is based in the occupied territory. Morocco has been singled out as a golden opportunity for Norway's many companies operating in the fisheries sector.

Norway is one of Europe's leading fisheries nations, also regarding the larger definition of the industry, including the construction of fisheries vessels, fishing technology and fish processing and distribution technology.

Morocco, on the other hand, during the last years has singled out the fisheries industry as one of its most promising sectors for economic development. After refusing to renew a fisheries agreement with the European Union in 1999, Moroccan authorities are now promoting the establishment of a large national fleet of fishing vessels, fish processing plants and an export infrastructure. Since 2001, approximately euro 150 million have been invested into the sector annually.

The controversial bit of Morocco's booming fisheries industry is that it is mostly based on the rich fisheries resources off the cost of occupied Western Sahara. According to international law, an occupying state is obliged to manage the renewable resources of the territory it occupies. However, revenues from these resources are to be channelled into the development of the people of the territory.

In the case of Western Sahara, the revenues of the exploitation of the territory's resources however do not go to the internationally recognised representatives of the Sahrawis—the exiled Polisario government—but instead to the strengthening of Morocco's occupation of the territory. Almost the entire work force of the fisheries sector in Western Sahara is of Moroccan origin and the sector's growth is promoting more Moroccan settlements in the occupied territory.

While the Norwegian government generally has defended the case of the Sahrawis in their conflict with Morocco, this has not been the case in the important fisheries sector. Mr Aasheim's predecessor at Norway's

Rabat Embassy, Ole Kristian Holthe, since 2000 has been an active and passionate promoter of Norwegian investments in Morocco's booming fisheries sector, non-regarding the location of these investments.

In February 2002, Ambassador Holthe met with the society for Norwegian Maritime Exporters (NME) in Haugesund, informing about that access to ''the Moroccan market is something that is happening now.'' He especially emphasised on the large number of fishing vessels that Moroccan authorities were ordering in an international tender.

Explaining that Morocco is ''the most stable Arab country oriented towards the West,'' Mr Holthe added that the problems surrounding Western Sahara should not endanger Norwegian investments. ''Norwegian authorities may consider that [official] Norwegian trade promotion devices should not be involved in investments [in Western Sahara], but my opinion is that, as long as one enters as a partner in the fisheries industry—and looks at this geographically—then it should be safe.''

According to research done by the Norway-based international fisheries media 'IntraFish', Norwegian authorities already in 2002 were financially aiding exporters to get a foothold in Morocco; including the occupied territories. This included aid by the Norwegian government's agency guaranteeing export financing and the Scandinavian Investment Bank. At least kroner 30 million (euro 4 million) were available to finance Norwegian exports to Morocco's fisheries sector.

These government efforts have already produced several Norwegian investments in Western Sahara. In October 2002, the Norwegian company Finsam announced it was constructing an ice producing plant in ''Laayoune, Morocco''—which translates into El Aaiun in Western Sahara. This ice plant is mainly producing ice for fish landed in El Aaiun.

Other Norwegian investments in the occupied territory's fishery sector include the company Selfa Arctic, which is ''constructing modern coastal fisheries in Morocco;'' Simrad, which delivers marine electronics to Morocco, including to its ''Moroccan retailer in Laayoune;'' Astia Holdings, which exports fishing vessels and equipment to Morocco; and Furuno, which sells electronic navigation equipment in Morocco.

Ambassador Holthe's indiscrete promotion of Norwegian export opportunities in Western Sahara however became too much for Norwegian authorities. Already in November 2002, Foreign Minister Jan Petersen instructed his Rabat Ambassador to write an official letter to companies investing in Western Sahara and inform them about the political risk and ethical problems.

According to information given to afrol News, however, Ambassador Holthe smoothened the wording in the letter he sent out to Norwegian companies, saying that the Embassy could see no limits in international law regarding investments in Western Sahara. In 2003, Mr Holthe was replaced and sent to the Norwegian Embassy in Iran for reasons unknown to afrol News.

Since that, Ambassador Aasheim has inherited the complex question of Norwegian investments in Western Sahara. As far as afrol News has been able to establish, the Norwegian Embassy in Rabat has not lowered its profile regarding this promotion since Mr Aasheim's appointment. Last week's official promotion trip by the Ambassador to El Aaiun is probably the first ever investment promotion trip to the occupied territories by any Norwegian government official.

It therefore came as a shock to the Polisario exile government. Mouloud Said, the Polisario Representative in Washington told afrol News today that his government considers ''any transaction between the occupying power with any other entity or government as completely illegal at the eyes of international law, and we do condemn any attempt to strengthen the Moroccan occupation.''

We are disappointed because traditionally, the Norwegians government has been in support of the peoples' right to self-determination all over Africa and in particular in Western Sahara, added Mr Said. ''This is uncharacteristic coming from the representative from a government known for its defence of human rights and the right of self-determination.''

Mr Said further said that the Polisario considered a UN legal opinion issued in 2001, regarding oil exploration in Western Sahara to be of relevance in this case. The legal opinion concluded that Morocco had no right to act on behalf of Western Sahara and market its resources, according to Mr Said.

Unfortunately, afrol News was not able to gather reactions from Norwegian authorities. The Norwegian Embassy in Rabat did not answer phone calls from afrol News neither on Friday nor today, while spokesperson Cathrine Andersen at the Norwegian Ministry of Foreign Affairs refused to supply afrol News with a direct phone number to Ambassador Aasheim, claiming the Ministry had ''no other information'' on how to get in contact with its Rabat Embassy.

FRAMEWORK AGREEMENT ON THE STATUS OF WESTERN SAHARA (BAKER PLAN I)

ANNEX I OF SG REPORT S/2001/613 OF 20 JUN 01

The authority in Western Sahara shall be as follows:

1. The population of Western Sahara, through their executive, legislative and judicial bodies shall have exclusive competence over local governmental administration, territorial budget and taxation, law enforcement, internal security, social welfare, culture, education, commerce, transportation, agriculture, mining, fisheries and industry, environmental policy, housing and urban development, water and electricity, roads and other basic infrastructure.

2. The Kingdom of Morocco will have exclusive competence over foreign relations (including international agreements and conventions) national security and external defence (including determination of borders, maritime, aerial or terrestrial and their protection by all appropriate means) all matters relating to the production, sale, ownership or use of weapons or explosives and the preservation of the territorial integrity against secessionist attempts whether from within or without the territory. In addition, the flag, currency, customs, postal and telecommunication systems of the Kingdom shall be the same for Western Sahara. With respect to all functions described in this paragraph (2) the Kingdom may appoint representatives to serve it in Western Sahara.

3. In Western Sahara the executive authority shall be vested in an Executive, who shall be elected by a vote of those individuals who have been identified as qualified to vote by the Identification Commission of the United Nations Mission for the Referendum in Western Sahara, and whose names are on the United Nations provisional voter lists (completed as of 30 December 1999) without giving effect to any appeals or other objections. To qualify as a candidate for Executive, one must be an individual who has been identified as qualified to vote as aforesaid and whose name is on said provisional voter lists. The Executive shall be elected for a term of four years. Thereafter, the Executive shall be elected by majority vote of the Assembly. The Executive shall appoint administrators in charge of executive departments for terms of four years. The legislative authority shall be vested in an Assembly, the members of which shall be directly elected by voters for terms of four years. The judicial authority shall be vested in such courts as may be necessary, the judges of which shall be selected from the National Institute for Judicial Studies but shall be from Western Sahara. Such courts shall be the authority on territorial law. To be qualified to vote for members of the Assembly, a person must be 18 years or older and either (i) a continuous resident of the territory since 31 October 1998, or (ii) a person listed on the repatriation list as of 31 October 2000.

4. All laws passed by the Assembly and all decisions of the courts referred to in paragraph 3 above must respect and comply with the constitution of the Kingdom of Morocco, particularly with respect to the protection of public liberties. All elections or referenda referred to in this agreement shall be conducted with all appropriate guarantees and in keeping with the Code of Conduct agreed to by the parties in 1997, except where to do so would be inconsistent with the terms hereof.

5. Neither the Kingdom nor the executive, legislative, or judicial bodies of the Authority of Western Sahara referred to above may unilaterally change or abolish the status of Western Sahara. Any changes or modifications of this agreement has to be approved by the Executive and the Assembly of Western Sahara. The status of Western Sahara will be submitted to a referendum of qualified voters on such date as the parties hereto shall agree, within the five year period following the initial actions to implement this agreement. To be qualified to vote in such a referendum a voter must have been a full time resident of Western Sahara for the preceding one year.

6. The Secretary-General of the United Nations will offer his mediation and good offices to assist the two parties hereto in the implementation or interpretation of this agreement.

7. The parties agree to implement this agreement promptly and request the assistance of the United Nations to this end.

[From the Christian Science Monitor, Mar. 26, 2004]

SAHARA REFUGEES FORM A PROGRESSIVE SOCIETY

LITERACY AND DEMOCRACY ARE THRIVING IN AN UNLIKELY PLACE

(By John Thorne)

TINDOUF, ALGERIA.—A dozen women recline on the steps of the main girls' school in the Saharawi refugee camps, their pastel robes like blots of water-color on the whitewashed cement. When the door opens and the headmistress emerges, the women suddenly leap up and crowd around her, clamoring. They are mothers seeking places for their daughters in the already-crowded school.

The Saharawi women are among the most liberated of the Muslim world, and their status is characteristic of the well-organized, egalitarian society that has developed in the refugee camps over the past three decades. For all their bleakness, the Saharawi camps boast a representative government, a 95 percent literacy rate, and a constitution that enshrines religious tolerance and gender equality.

The Saharawis are the Arab nomads of Western Sahara, bound together by their Yemeni ancestry and their dialect, Hassaniya, which remains close to classical Arabic. For centuries, they roamed the territory with their camels and goats, sometimes trading with Spanish colonizers, and became known as ''blue men'' for the indigo robes they wear.

When Spain abandoned Western Sahara in 1975, Morocco invaded and drove the Saharawis into neighboring Algeria. Trading their camels for Land Rovers, they fought a guerrilla war under the leadership of the Polisario Front, an independence movement, until the UN brokered a ceasefire in 1991. Since then, the promised vote on independence has been stalled by disagreement over who should be allowed to participate.

EQUALITY

Meanwhile the Saharawi refugees, numbering some 160,000, have clung on in camps amid the flat, stony wastes near the town of Tindouf, in southwest Algeria. Subsisting on foreign aid—chiefly rice, bread, and a few root vegetables—most suffer from chronic malnutrition. Their settlements consist almost wholly of adobe huts and dusty canvas tents, appearing from afar as brown smudges on the slightly lighter brown desert.

''Women built these camps,'' says Menana Mohammed, deputy secretary-general of the Union of Saharawi Women. When the Saharawis arrived at Tindouf, most of the men had stayed behind as soldiers. ''You'll still find women doing all kinds of work, including leading,'' Ms. Mohammed adds.

While most of the top brass are men, the minister of culture is a woman. Women hold one fourth of the seats in the Saharawi parliament, and they make up most of the civil service, including teachers, nurses, and doctors.

''These days our chief concern is education,'' says Mohammed. All young Saharawis learn Spanish as well as Arabic, and some attend universities in Spain, Cuba, and Algeria through the sponsorship of those countries' governments.

''In the camps, we had to be both sexes, because the men were all away fighting,'' says Mohammed. There is an old Saharawi saying, she says, that rings especially true today: ''A tent is raised on two poles: a man and a woman.'' The Saharawis' traditionally tough, wandering lifestyle has always made them regard husband and wife as equal leaders of the household.

INDIVIDUALISM

It has also begotten an individualistic approach to Islam. While most Muslims tend to stress the importance of the Islamic community, ''the Saharawis believe that religion is a very personal issue,'' says Mouloud Said, the Polisario's representative in the United States. ''It's a personal relationship between the human being and his Creator. This is the mentality of the nomadic society.''

Mosques are conspicuously absent from the camps, in large part because the Saharawis ''don't believe that to speak to God, you need a fancy place,'' explains Mr. Said.

Saharawis seldom pray in groups save on important Muslim holidays, and view even these ceremonies as purely optional. For some, this is a welcome escape-hatch from the religion's bloodier rituals.

''Each person has his own Islam,'' says Zorgan Laroussi, a translator in the camps who chose not to attend the mass slaughter of camels for the feast of al-Eid al-Fitr, which marks the end of Ramadan. His brother-in-law Salek did go, and relishes explaining the ritual's finer points while the two men and their families share a dish of grilled hindquarters.

Saharawis are equally welcoming of other religions. ''There is an almost continuous presence of church groups from all over the world—in particular the U.S.—in the camps,'' says Said. ''Every year for the last four years, there has been a joint prayer at Easter.''

''Tolerance is not something new, but it's something [Saharawi leaders] encourage,'' he says. ''In a tolerant society, the center prevails, not the extremes. That means respect for others, whether for the faith or their ideas.''

This credo finds ample use in the Saharawis' recent conversion to a united democratic government. Following their flight from Western Sahara, they quickly saw that overcoming the desert and the Moroccan Army meant forsaking old tribal loyalties. ''What's most important is that we Saharawis hang together, so we highlight stories that promote unity among us,'' says Minister of Culture Miriam Salek, who works with the Ministry of Education and the Saharawi Youth Organization to keep alive Saharawi folklore and history.

DEMOCRACY

In 1976, the Polisario proclaimed, and more or less became, the Saharawi Arab Democratic Republic. Although a government-in-exile, it is recognized by 75 countries, and the UN formally considers Western Sahara an occupied territory.

Tier upon tier of elected officials make up the camp government, from the national parliament down to neighborhood councils. Saharawis are avid voters, and many participate in local civil service—even if it's merely taking a twice-weekly shift on the trash detail, or helping dole out rations.

This could be the blueprint for an independent Western Sahara, and there is a general sense of pride and excitement among the Saharawis for their new society. ''This has worked so far, what we have here,'' says one young daira (district) councilman, ''and it should still work in Western Sahara. We built this on the hope of the people, and I don't think they'll want to change.''

But as the years drag on, many fear they will never have the chance to find out. Their smoothly running camps and refusal to resort to terrorism keep them out of the public consciousness, relieving pressure on the UN to push for a quick settlement to the 29-year-old conflict. ''We have been landless for so long,'' laments Tellib Helli Embarik, an old tribal leader. ''I don't know if the UN is just waiting for us to disappear or what!''

[From the Hill, July 13, 2004]

DESERTING THE BAKER PLAN

(By David Keene)

President Bush likes to talk about nurturing democracy within the Muslim world, but he's doing little for the pro-Western Muslims of the Western Sahara whose future rests in his hands.

If you don't know much about the plight of these people, you aren't alone. They have been languishing in refugee camps in western Algeria for nearly 30 years and will remain there until the United States stops playing chief enabler to Moroccan government that invaded and seized their country when it was freed from colonial rule by Spain in the '70s. I've visited the camps, and to suggest that the people who inhabit them live under harsh conditions is to speak euphemistically.

The Western Saharan or Saharawi peoples tried to resist the Moroccans, but hundreds of thousands of them were forced to flee to Algeria before a U.S.-equipped Moroccan army determined to seize their land. Today more than 300,000 of them survive as best they can, unable to see their relatives or visit their homeland.

Realizing they didn't have the capability to defeat Morocco on the battlefield, the Saharawi faced a choice. They could fall on the asymmetric warfare of the terrorist, surrender or turn to the international community. They perhaps rather naively chose the latter course and went to the United Nations and the World Court seeking justice.

Meanwhile, they've built a functioning democracy that guarantees equal rights to men and women alike, educated their children and let it be known that all they want to do is live in peace with those around them. Their congressional friends in the United States include people such as Sens. Jim Inhofe (R-Okla.) and Edward Kennedy (D-Mass.) and Reps Joe Pitts (R-Pa.), Mark Green (R-Wis.) and Donald Payne (D-N.J.), but so far few of their colleagues and virtually no one in the Bush administration or the media seem to share their concerns.

This is in spite of the fact that virtually everyone agrees the Saharawi are right. The International Court of Justice in 1975 ruled Morocco had no right to the land seized, but the king of Morocco ignored the ruling and the United Nations sought a referendum in which the people of the region could vote on whether they wanted to be ruled by their colonial masters or by leaders of their own choosing.

Meanwhile, the United States stood by silent as our Moroccan ally consolidated control over the region to become the last colonial power on the African continent.

Publicly, of course, the Moroccans declared that they too believed in self-determination, but marched hundreds of thousands of Moroccans into the region and declared that if there was to be a vote, these folks should be allowed to vote too. The Saharawi and the United Nations balked at this baldfaced attempt to stuff the ballot boxes, but finally appointed former U.S. Secretary of State James Baker as a special envoy to work something out. Baker eventually came up with a ''compromise'' plan that would grant the vote to enough Moroccans to give them a majority if they stuck together and suggested a period of autonomy within Morocco followed by a vote to decide whether the region would go its own way.

To everyone's surprise, the Sahrawi accepted the ''Baker Plan.'' They know they can't survive in the camps forever and suspect that more than a few of the Moroccans who will vote might welcome the chance to escape the tender mercies of their king. The Moroccans immediately rejected the plan announcing that they will never accept any scheme that includes the possible loss of the territory they have grabbed.

The United Nations doesn't know what to do, and Baker has thrown up his arms and resigned. The king's only real ally in the United Nations is France, but it's our silent acceptance of whatever he wants do to that has allowed him to thumb his nose at the world. Everyone knows that as long as King Mohammed VI can keep the United States in line, he will remain intransigent.

During the king's visit to Washington last week, President Bush supposedly brought up the Baker Plan, but one wonders if he pressed very hard. He has, after all, said nothing about the Saharawi in public and done everything from declaring Morocco a ''major non-NATO ally'' to leading the charge for a U.S.-Moroccan Free Trade Agreement to give the King the impression that we aren't about to do anything at all about the way he acts in his own neighborhood.

Meanwhile, the Saharawi hang on, praying for the day when an American president who talks about democracy and justice will come to their aid.

[From the Washington Times, July 9, 2004]

BEYOND DIPLOMATIC NICETIES

(By Joseph Pitts and Donald Payne)

This week, His Majesty, King Mohammed of Morocco is in Washington to tout the newly signed US.-Morocco Free Trade Agreement and to bask in his nation's newly christened status as a ''major non-NATO ally''.

While we do not oppose free trade or establishing stronger allies, we would do well to

look past the diplomatic niceties that surround such trips. His Majesty's country illegally occupies a swath of land in West Africa known as Western Sahara. His government has promised the people of Western Sahara, the Sahrawi, a vote to determine their own future. More than a decade later, that vote has yet to occur.

Powerful friends in Europe and here in Washington have helped His Majesty's government postpone this vote and consolidate control over the country The Moroccan government says its colonial rule over Western Sahara ensures its ''territorial integrity'' and preserves stability in the region. But this idea is simply divorced from reality on the ground.

During trips to the country, we have learned the Sahrawis are peaceful, pro-Western and pro-democracy. In short, despite living under an illegitimate colonial power, they have established a deep-rooted culture of democracy, capable of supporting a viable state. They have their own elected leaders, many of them women. They have provided education and equal rights to all their citizens—men and women.

The only stability a sovereign, democratic Western Sahara disrupts is a status quo defined by tyranny. The King will deny this. Official Washington will ignore it. But it is the truth.

From 1884 until 1975, Western Sahara was a Spanish colony. Upon Spain's withdrawal, Morocco invaded. The Sahrawis have fought a lonely battle for liberation ever since, many suffering in the refugee camps that dot Algerian sand dunes. The U.N. International Court of Justice ruled Morocco's claim to Western Sahara was illegitimate. Morocco ignored the ruling.

In 1991, Morocco accepted the U.N.-brokered cease-fire promising the Sahrawis a referendum for national self-determination. Moroccan officials moved tens of thousands of their own citizens to Western Sahara, attempting to stack the vote in its favor. In 1997, the United Nations asked former U.S. Secretary of State James Baker to help implement the referendum. Morocco continued to balk.

The U.N.'s voter identification commission, using agreed-upon criteria, set out to identify the eligible voters. After years of interviews with each, the U.N. in January 2000 published the provisional list of voters, rejecting the majority of Moroccan applicants. Morocco—fearing it would lose the upper hand—reneged on its commitment to the referendum.

To break the impasse, Mr. Baker submitted a compromise plan to the Security Council in July 2003. The plan included a referendum for the Sahrawis and gave Moroccans who settled in Western Sahara through 1999 the right to vote, making them the majority of the electorate. Convinced a peaceful solution was possible, the leading Sahrawi political group—the POLISARIO Front—reluctantly accepted the terms of Mr. Baker's plan. Its gesture was never reciprocated. Morocco, supported by France, rejected the Baker Plan from the outset.

As this battle rages, Sahrawis suffer. The Moroccan government continues to imprison Sahrawi activists, exploit the natural resources of Western Sahara, and prohibit foreign journalists from transmitting the truth to the outside world, as evidenced by the recent expulsion of several Danish reporters.

The U.N. has spent more than $600 million to maintain this dreadful status quo. Successive U.S. administrations, Republican and Democrat, have walked a fine line on this issue. Morocco is a longstanding ally. However, alliance with powerful nations should not provide the cover to ignore international commitments and deny the basic human right of self-determination to a peaceful, democratic people.

When the president meets with King Mohammed this week, he should not ignore His Majesty's opposition to democracy in the Western Sahara. The spread of freedom is central to our mission as a nation. This is ever more important as the administration works to spread democracy in Islamic nations.

Unlike many others in the Middle East and North Africa, the Sahrawis have chosen a peaceful path to democracy. We owe the democratic people of Western Sahara no less than the support we have given others in their fight for independence—the right to have a say in their own future.

When Congress considers the US.-Morocco free trade agreement, it should seriously consider how it will aid His Majesty's attempt to exploit an area to which he has no legitimate claim. Ignoring Western Sahara will put a vote for Sahrawis further out of reach.

The time has come to abandon empty promises and hollow rhetoric in favor of a free, fair, and transparent referendum for the Sahrawis. This is the only way to build a peaceful, democratic future for Western Sahara and the entire region.

LETTER DATED 29 JANUARY 2002 FROM THE UNDER-SECRETARY-GENERAL FOR LEGAL AFFAIRS, THE LEGAL COUNSEL, ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. In a letter addressed to me on 13 November 2001, the President of the Security Council requested, on behalf of the members of the Security Council, my opinion on ''the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara''.

2. At my request, the Government of Morocco provided information with respect to two contracts, concluded in October 2001, for oil-reconnaissance and evaluation activities in areas off-shore Western Sahara, one between the Moroccan ''Office National de Recherches et d'Exploitations Petrolieres'' (ONAREP) and the United States oil-company Kerr Mc-Gee du Maroc Ltd., and the other between ONAREP and the French oil company TotalFinaElf E&P Maroc. Concluded for an initial period of 12 months, both contracts contain standard options for the relinquishment of the rights under the contract or its continuation, including an option for future oil contracts in the respective areas or parts thereof.

3. The question of the legality of the contracts concluded by Morocco off-shore Western Sahara requires an analysis of the status of the territory of Western Sahara, and the status of Morocco in relation to the Territory. As will be seen, it also requires an analysis of the principles of international law governing mineral resource activities in Non-Self-Governing Territories.

4. The law applicable to the determination of these questions is contained in the United Nations Charter, in General Assembly resolutions, pertaining to decolonization, in general, and economic activities in Non-Self-Governing Territories, in particular, and in agreements concerning the status of Western Sahara. The analysis of the applicable law must also reflect the changes and developments which have occurred as international law has been progressively codified and developed, as well as the jurisprudence of the International Court of Justice and the practice of States in matters of natural resource activities in Non-Self-Governing Territories.

A. THE STATUS OF WESTERN SAHARA UNDER MOROCCAN ADMINISTRATION

5. A Spanish protectorate since 1884, Spanish Sahara was included in 1963 in the list of NonSelf-Governing Territories under Chapter XI of the Charter (A/5514, Annex III). Beginning in 1962, Spain as administering Power transmitted technical and statistical information on the territory under Article 73 (e) of the Charter of the United Nations. This information was examined by the Special Committee with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (''Special Committee''). In a series of General Assembly resolutions on the Question of Spanish/Western Sahara, the applicability to the territory of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV), was reaffirmed.

6. On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania (the Madrid Agreement), whereby the powers and responsibilities of Spain, as the administering Power of the territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power—a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the territory to Morocco and Mauritania in 1975, did not affect the international status of Western Sahara as Non-Self-Governing Territory.

7. On 26 February 1976, Spain informed the Secretary-General that as of that it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory, thus leaving it in fact under the administration of both Morocco and Mauritania in their respective controlled areas. following the withdrawal of Mauritania from the Territory in 1979, upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13504, Annex I), Morocco has administrated the territory of Western Sahara alone. Morocco however, is not listed as the administering Power of the territory in the United Nations list of Non-Self-Governing Territories, and has, therefore, not transmitted information on the territory in accordance with Articles 73 (e) of the United Nations Charter.

8. Notwithstanding the foregoing, and given the status of Western Sahara as a Non-Self-Governing Territory, it would be appropriate for purposes of the present analysis to have regard to the principles applicable to the powers and responsibilities of an administering Power in matters of mineral resource activities in such a Territory.

B. THE LAW APPLICABLE TO MINERAL RESOURCE ACTIVITIES IN NON-SELF-GOVERNING TERRITORIES

9. Article 73 of the United Nations Charter lays down the fundamental principles applicable to Non-Self-Governing Territories. Members of the United Nations who assumed responsibilities for the administration of these territories have whereby recognized the principle that the interest of the inhabitants of these territories are paramount, and have accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these territories. Under Article 73 (e) of the Charter, they are required to transmit regularly to the Secretary-General for information purposes statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories under their administration.

10. The legal regime applicable to Non-Self-Governing Territories was further developed in the practice of the United Nations

and, more specifically, in the Special Committee and the General Assembly. Resolutions of the General Assembly adopted under the agenda item ''implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples'', called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration do not adversely affect the interests of the peoples of such territories, but are instead directed to assist them in the exercise of their right to self-determination. The Assembly also consistently urged the administering Powers to safeguard and guarantee the inalienable rights of the peoples of these territories to their natural resources, and to establish and maintain control over the future development of those resources (GA res 35/118 of 11 December 1980; 52/78 of 10 December 1997; 54/91 of 6 December 1999; 55/147 of 8 December 2000; and 56/74 of 10 December 2001).

11. In the resolutions adopted under the item ''Activities of foreign economic and other interests which impede the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in territories under Colonial Domination'', the General Assembly reiterated that ''the exploitation and plundering of the marine and other natural resources of colonial and Non-Self-Governing Territories by foreign economic interests, in violation of the relevant resolutions of the United Nations, is a threat to the integrity and prosperity of these Territories'' and that ''any administering Power that deprives the colonial people of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources . . . violates the solemn obligations it has assumed under the Charter of the United Nations'' (GA res. 48/46 of 10 December 1992 and 49/40 of 9 December 1994).

12. In an important evolution of this doctrine, the General Assembly in resolution 50/33 of 6 December 1995, drew a distinction between economic activities that are detrimental to the peoples of these territories and those directed to benefit them. In paragraph 2 of that resolution, the General Assembly affirmed ''the value of foreign economic investment undertaken in collaboration with the peoples of Non-Self-Governing Territories and in accordance with their wishes in order to make a valid contribution to the socio-economic development of the Territories''. This position has been affirmed by the General Assembly in later resolutions (GA res. 52/72 of 10 December 1997; 53/61 of 3 December 1998; 54/84 of 5 December 1999; 55/38 of 8 December 2000; and 56/66 of 10 December 2001).

13. The question of Western Sahara has been dealt with by both the General Assembly, as a question of decolonization, and by the Security Council as a question of peace and security. The Council was first seized of the matter in 1975, and in resolutions 377 (1975) of 22 October 1975 and 379 (1975) of 2 November 1975 it requested the Secretary-General to enter into consultations with the parties. Since 1988, in particular, when Morocco and the Frente Polisaro agreed, in principle, to the settlement proposals of the Secretary-General and the Chairman of the OAU, the political process aiming at a peaceful settlement of the question of Western Sahara has been under the purview of the Council. For the purposes of the present analysis, however, the body of Security Council resolutions pertaining to the political process is not relevant to the legal regime applicable to mineral resource activities in Non-Self-Governing Territories and for this reason is not dealt with in detail in the present letter.

14. The principle of ''permanent sovereignty over natural resources'' as the right of peoples and nations to use and dispose of the natural resources in their territories in the interest of their national development and well-being, was established in General Assembly resolution 1803 (XVII) of 14 December 1962. It has since been reaffirmed in the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, as well as in subsequent General Assembly resolutions, most notably, resolution 3201 (S–VI) of 1 May 1974, ''Declaration on the Establishment of a New International Economic Order'', and Resolution 3281 (XXIX) containing the Charter of Economic Rights and Duties of States. While the legal nature of the core principle of ''permanent sovereignty over natural resources'', as a corollary to the principle of territorial sovereignty or the right of self-determination, is indisputably part of customary international law, its exact legal scope and implications are still debatable. In the present context, the question is whether the principle of ''permanent sovereignty'' prohibits any activities related to natural resources undertaken by an administering Power (cf. para. 8 above) in a Non-Self-Governing Territory, or only those which are undertaken in disregard of the needs, interests and benefits of the people of that territory.

C. THE CASE LAW OF THE INTERNATIONAL COURT OF JUSTICE

15. The question of natural resource exploitation by administering Powers in Non-Self-Governing Territories was brought before the International Court of Justice in the Case of East Timor (Portugal v. Australia) and the Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia). In neither case, however, was the question of the legality of resource exploitation activities in Non-Self-Governing Territories conclusively determined.

16. In the Case of East Timor, Portugal argued that in negotiating with Indonesia an agreement on the exploration and exploitation of the continental shelf area of the Timor Gap, Australia had failed to respect the right of the people of East Timor to permanent sovereignty over its natural wealth and resources, and the powers and rights of Portugal as administering Power of East Timor. In the absence of Indonesia's participation in the proceedings, the International Court of Justice concluded that it lacked jurisdiction.

17. In the Nauru Phosphate Case, Nauru claimed the rehabilitation of certain phosphate lands worked out before independence in the period of the Trusteeship administration by Australia, New Zealand and the United Kingdom. Nauru argued that the principle of permanent sovereignty over natural resources was breached in circumstances in which a major resource was depleted on grossly inequitable terms and its extraction involved the physical reduction of the land. Following the Judgment on the Preliminary Objections, the parties reached a settlement and a Judgment on the merits was no longer required.

D. THE PRACTICE OF STATES

18. In the recent practice of States, cases of resource exploitation in Non-Self-Governing Territories have, for obvious reasons, been few and far apart. In 1975, the United Nations Visiting Mission to Spanish Sahara reported that at the time of the visit, four companies held prospecting concessions in off-shore Spanish Sahara. In discussing the exploitation of phosphate deposits in the region of Bu Craa with Spanish officials, the Mission was told that the revenues expected to accrue would be used for the benefit of the Territory, that Spain recognized the sovereignty of the Saharan population over the Territory's natural resources and that, apart from the return of its investment, Spain laid no claim to benefit from the proceeds (A/10023/Rev.1, p. 52)

19. The exploitation of uranium and other natural resources in Namibia by South Africa and a number of Western multinational corporations was considered illegal under Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted in 1974 by the United Nations Council for Namibia, and was condemned by the General Assembly (GA res. 36/51 of 24 November 1981, and 39/42 of 5 December 1984). The case of Namibia, however, must be seen in the light of Security Council resolution 276 (1979) of 30 January 1970, which declared that the continued presence of South Africa in Namibia was illegal and that consequently all acts taken by the Government of South Africa were illegal and invalid.

20. The case of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) is unique in that, while UNTAET is not an administering Power within the meaning of Article 73 of the United Nations Charter, East Timor is still technically listed as a Non-Self-Governing Territory. By the time UNTAET was established in October 1999, the Timor Gap Treaty was fully operational and concessions had been granted in the Zone of Cooperation by Indonesia and Australia, respectively. In order to ensure the continuity of the practical arrangements under the Timor Gap Treaty, UNTAET, acting on behalf of East Timor, concluded on 10 February 2000, an Exchange of Letters with Australia for the continued operation of the terms of the Treaty. Two years later, in anticipation of independence, UNTAET, acting on behalf of East Timor, negotiated with Australia a draft ''Timor Sea Arrangement'' which will replace the Timor Gap Treaty upon the independence of East Timor. In concluding the agreement for the exploration and exploitation of oil and natural gas deposits in the continental shelf of East Timor, UNTAET, on both occasions, consulted fully with representatives of the East Timorese people, who participated actively in the negotiations.

E. CONCLUSIONS

21. The question addressed to me by the Security Council namely, ''the legality . . . of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara,'' has been analysed by analogy as part of the more general question of whether mineral resource activities in a Non-Self-Governing Territory by an administering Power is illegal, as such, or only if conducted in disregard of the needs and interests of the people of that territory. An analysis of the relevant provisions of the United Nations Charter, General Assembly resolutions, the case law of the International Court of Justice and the practice of States, supports the latter conclusion.

22. The principle that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development is the ''sacred trust'' of their respective administering Powers, was established in the Charter of the United Nations and further developed in General Assembly by resolutions on the question of decolonization and economic activities in Non-Self-Governing Territories. In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of these territories and deprive them of

their legitimate rights over their natural resource. It recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those territories, and their contribution to the development of such territories.

23. In the Cases of East Timor and Nauru, the International Court of Justice did not pronounce itself on the question of the legality of economic activities in Non-Self-Governing Territories. It should be noted, however, that in neither case was it alleged that mineral resource exploitation in such territories was illegal per se. In the Case of East Timor, the conclusion of an oil exploitation agreement was allegedly illegal because it was not concluded with the administering Power (Portugal); in the Nauru Case, the illegality allegedly arose because the mineral resource exploitation depleted unnecessarily or inequitably the overlaying lands.

24. The recent State practice, though limited, is illustrative of an opinio juris on the part of both administering Powers and third States: where resource exploitation activities are concluded in Non-Self-Governing Territories for the benefit of the peoples of these territories, on their behalf, or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power, and in conformity with the General Assembly resolutions and the principle of ''permanent sovereignty over natural resources'' enshrined therein.

25. The foregoing legal principles established in the practice of States and the United Nations pertain to economic activities in Non-Self-Governing Territories, in general, and mineral resource exploitation, in particular. It must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories.

HANS CORELL,
Under-Secretary for legal Affairs,
The Legal Counsel.

KINGDOM OF MOROCCO,
MINISTRY OF INTERIOR, SECRETARIATE,
Rabat, January 22, 1998.

From: The Minister of State for the Interior.
To: All Walis and Governors of the Kingdom's Prefectures and Provinces.
Object: Training workshops for applicants for identification for the referendum to confirm the Moroccanness of the Sahara.

This circular results from examination of the daily activity reports on the ethnic workshops, forwarded by yourselves, and from remarks, suggestions and proposals made by the Moroccan party's Observers in the light of seven weeks of identification, some twenty weeks from the end of this operation.

The results of identification having so far fallen short of the necessary level, owing in part, certainly, to evidence from the Chyoukh representing the other party which is often negative, but also owing to the manifestly insufficient preparation of our applicants, you are invited to pay the closest attention to this briefing and supervise personally, in accordance with my earlier instructions, the strict application of the following measures:

1. Exhaustive pre-identification of the applicants and their sub-fractions:

It emerges from the daily activity reports from the ethnic workshops forwarded by yourself that, unfortunately, only a small number of Walis and Governors (see list attached to this circular) have an exact knowledge of the tribes and sub-fractions relevant to their respective commands, and have consequently been able to provide the Ministry of the Interior with statistical data on the applicants that conforms to the information in the central index.

The others are invited immediately to produce their data on the tribes and sub-fractions and on the number of applicants present in their respective commands and held ready to be summoned at any time to MINURSO's Identification Centres.

It goes without saying that an incomplete knowledge of the sub-fractions and their numbers in a prefecture or province results in underestimation of the real population of applicants, so that an insufficient number of these is being trained and taken to the Identification Centres, contrary to the objective of my earlier instructions.

The Walis and Governors concerned will therefore, on receipt of this circular, require their information technology units to contact the central information technology service to arrange immediate presentation of the province's or prefecture's data on the sub-fractions and their numbers.

2. Preparation of applicants for identification:

As specified in my previous circulars, the basis for the summoning and identification of applicants by MINURSO is the form filled out by them in 1994, on which the computerised data-banks used by this mission and by the Ministry of the Interior itself are both based.

Each applicant is registered and can be sought through his form number. The form contains the applicant's main details and those of his father and mother, in addition to all the elements that specify which identification criterion, out of the five criteria defined by the United Nations Peace Plan, is likely to be fulfilled by the applicant.

The applicant must also have perfect knowledge at least of the contents of the said form. However, when this document does not reflect the applicant's real situation, he should not be imprisoned by it but should seek to make it easy for the Identification Commission to recognise key elements, such as:

the birthplaces of the applicant and his immediate family (father, mother, children).

the seasonal pasture zones frequented in the Sahara by the applicant or his family.

landmark dates in relation to the birth of the applicant and his immediate family (father, mother, children) in the Sahara.

the lineage of the applicant and his immediate family and kinship with a known Sahrawi family.

the history of the applicant's tribe and family.

geography of the region in which they lived and travelled.

Lastly, there is a need to inculcate the applicant with a psychological stance enabling him to:

demystify the identification operation and the MINURSO commission.

be motivated and aware of the stakes in the referendum.

have confidence in himself and be self-assured.

overcome shyness and diffidence and speak loudly and clearly.

learn in advance, from applicants already identified as belonging to the same subfraction, what questions the Identification Commission is asking.

be able to cite one or more family members already counted or identified, and give their numbers.

convince the Moroccan Cheikh who will then convince the Identification Commission.

Full mastery of these elements implies preliminary training of the applicant in his prefecture or province of origin and 2 or 3 days of fine tuning with the Moroccan Cheikh before the identification session.

3. Responsibilities of the Cheikh and the Observer:

As specified in the document attached to this circular, concerning ''verification of eligibility'' of applicants, the Cheikh's main mission with MINURSO is to testify that the applicant fulfils one of the five identification criteria defined by the United Nations Peace Plan.

To this end, it is necessary for the Cheikh to meet at least once with the Observer and the applicants from each sub-fraction to become amply acquainted with the latter in preparation for the identification session. A list, in Arabic, of the applicants from his sub-fraction should be supplied to the Cheikh.

To facilitate contact between the applicants and the Cheikh of their fraction, the Observer teams will be tripled to enable them to follow the identification operation at the same time as preparing the applicants.

In the identification session the Cheikh should appear credible and convincing and should not restrict himself to recognizing the applicant, but seek to support and defend him as well. He should listen closely to the applicant's declaration and give active, reasoned and coherent testimony in support of the applicant's answers.

He should have perfect knowledge of the applicant, his lineage and his links with the sub-fraction and region.

He should relate this in a clear and convincing manner to the Identification Commission to elicit a positive verdict from it.

4. Role of the Instructors

Close contact between the Instructor, the Cheikh and the Observer is essential to train the Cheikh, teach him the identification process and the five eligibility criteria, raise his awareness, motivate him and remove any complexes he may have about the MINURSO Commission.

At least one full-day session involving the Observer, the Instructor, the Cheikh and the applicants from the sub-fraction is necessary to coordinate, evaluate and plan their common action.

For each ethnic sub-fraction, it is proposed that a group of applicants from the Southern Provinces who have already been identified, along with qualified cadres from these provinces, should be formed to help with the training programme of applicants from the Northern Provinces.

These applicants should identify the best-known and most widely distributed parts of their lineage and make them known to the Identification Commission.

In the same context, applicants from the Northern Provinces who are of Sahrawi origin should be integrated with their respective tribes to familiarize themselves with certain details that may help facilitate their identification.

Nevertheless, in cases where applicants in this category are certain of their Sahrawi origin but have acquired the culture of Northern Morocco, those concerned should defend their Moroccan personality while providing convincing proofs of their Sahrawi origin.

Lastly, agents of the authorities, notables, young people and women should be mobilized in support of this operation.

A special unit is to be established for preparing the Chyoukh, and a system set up to

train the Instructors and the Chyoukh in, for example:

the identification process.
the five criteria.
the role of the Chyoukh.
the technical arrangements.

Finally, deserving Chyoukh are to be encouraged and treated with respect.

In conclusion, the next twenty weeks are of determining importance for the outcome of the referendum to confirm the Moroccanness of the Sahara, whose result depends on your immediate action to apply integrally all the instructions you have been given on this subject, which I invite you once again to execute rigorously in liaison with the central Governors concerned, who are required to keep me regularly informed.

DRISS BASRI,
The Minister of State for the Interior.

Mr. LEVIN. Mr. Speaker, I yield 4 minutes to the gentleman from Washington (Mr. MCDERMOTT), a colleague and friend from the Committee on Ways and Means.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, the President and his Trade Representative say that the U.S.-Morocco free trade agreement is a good idea because it will strengthen our economic ties with moderate, I emphasize moderate, Muslim countries.

Well, first of all, two-way trade flow between the United States and Morocco is around a billion dollars a year. Morocco is a tiny economy with little economic significance. The U.S. Commerce Department indicated the trade agreement will have a negligible impact on trade and negligible impact on our economies.

Furthermore, while I recognize that King Mohammed VI has made great strides recently, particularly with regard to the rights of women, we should not forget two very important issues. One, Morocco is a monarchy and the king is deemed the country's religious leader. This FTA is really about strengthening ties with moderate monarchies; Jordan, Bahrain and others have preceded it.

There are dozens of Muslim countries that are vibrant democracies, Egypt, that we should have chosen to pursue trade agreements before we chose Morocco.

But, two, the way in which Morocco has handled the Western Sahara is really a stain on their nation. In 1975, when the Western Sahara went free from Spain, the Moroccans moved in immediately and said this is our country. It is a very, very wealthy country in natural resources. Both oil is being drilled for by Kerr McGee and other American and British companies, and the fishing industry off the coast is very proficient.

So before signing an agreement with them, with a nation that has been occupying a territory to which it has no legal claim for 25 years, a nation that has erected a 2,000-kilometer wall to keep the inhabitants of Western Sahara from fleeing, with a country that has no respect for the right of self-determination, we should have ensured that the area of Western Sahara was justly and peacefully resolved. It would have been a lever we could have used to get them to resolve this.

The U.N. has said you should have an election and they just never quite get around to having it for 25 years.

I am really pleased, however, that the chairman of the House Committee on Ways and Means and the ranking member, the gentleman from New York (Mr. RANGEL), have worked with me to insert language into the official committee documents to indicate that in no way does the free trade agreement cover trade investment in the Western Sahara.

The issue is this: If you drill oil in the Western Sahara and the Moroccans take it into Morocco, is it then eligible for tariff-free dealings with the United States? And the answer should be no, and there should really never have been a trade agreement until that legal claim was relinquished or we had some sort of agreement on all of this.

What we do have is a letter which the gentleman from Pennsylvania (Mr. PITTS) inserted in the RECORD. I suspect I have one very similar to his but he will insert it also in the RECORD. I will include a letter from the Trade Representatives saying that in dealing with Morocco we are dealing with Morocco as understood by the United Nations and the United States, and we are not using this as a kind of end-around to go out and get more oil.

One wonders why did we go to Morocco? What is it about Morocco? It is a little tiny country, very little trade with us. What is being done here that really needs to be done?

I think we need to protect the indigenous people of the Sahrawi who live in Western Sahara. They need to have the protection from this United States reaching in and taking their resources by the back door. I thank the chairman for bringing this issue to the floor.

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE
Washington, DC, July 20, 2004.

Hon. JIM MCDERMOTT,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN MCDERMOTT: Thank you for your letter of July 19, 2004, concerning our Free Trade Agreement (FTA) with Morocco and the status of Western Sahara.

The Administration's position on Western Sahara is clear: sovereignty of Western Sahara is in dispute, and the United States fully supports the United Nations' efforts to resolve this issue. The United States and many other countries do not recognize Moroccan sovereignty over Western Sahara and have consistently urged the parties to work with the United Nations to resolve the conflict by peaceful means.

The FTA will cover trade and investment in the territory of Morocco as recognized internationally, and will not include Western Sahara. As our Harmonized Tariff Schedule makes clear, for U.S. Customs purposes, the United States treats imports from Western Sahara and Morocco differently. Nothing in the FTA will require us to change this practice. The Administration will draft the proclamation authorized in the legislation implementing the FTA (H.R. 4842) to provide preferential tariff treatment for goods from the territory of Morocco. Preferential tariff treatment will not be provided to goods from Western Sahara.

I hope this letter addresses your question regarding the FTA and the status of Western Sahara. I encourage you to support the FTA. It will create economic opportunities for U.S. manufacturing and service firms, workers, and farmers, and will support economic reforms and foreign investment in Morocco.

Thank you again for your letter. Please feel free to contact me should you have further questions.

Sincerely,

ROBERT B. ZOELLICK.

Mr. CRANE. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the gentleman for yielding me time.

One of the earlier speakers called for a moratorium on trade agreements. There is nothing that we could do that would hurt American workers more than a moratorium.

Over the last few years Europe has consummated about 36 bilateral trade agreements in this part of the world, and we have consummated about three. Now, when they create a trade agreement with a bilateral agreement with one of these countries, what they are doing is socking in product standards that advantage their products and disadvantage our products.

When we write a free trade agreement with one of these countries it is entirely different. That is why countries like to work with us. It is comprehensive. It includes all products and it is fair, transparent and modern, and I commend Morocco for not only its commitment to develop its economy in a way in which everyone benefits and everyone prospers, but to have evidenced that commitment by changing their labor law in preparation for this free trade agreement. I think that is very commendable.

They changed their labor law to raise the minimum employment age, to reduce the number of hours in a workweek, to call for periodic review of the Moroccan minimum wage, to improve health and safety regulations, and I am skipping over a lot of details, to guarantee the right of association and collective bargaining. They looked at the world standards of how you should treat your workforce and they changed their laws to make those standards their standards.

They are moving. They are developing. Europe is trading with them twice as many dollars worth of product as we are in America. This free trade agreement will change that and ensure American jobs, creating new ones as well.

Mr. BROWN of Ohio. Mr. Speaker, I yield 4 minutes to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. Mr. Speaker, I rise in opposition to this Moroccan so-called free trade agreement and ask the question, why has the United States as a result of these free trade agreements

over the last 20 years amassed the largest trade deficit in the United States history? They have told us when NAFTA was passed we would have a trade balance. We would in fact have hundreds of thousands of new jobs in this country.

What have we got? We have got the largest trade deficit with Mexico we have ever had, the largest trade deficit with Canada we have ever had, and an outwash of jobs from the United States to Mexico, over 900,000 jobs and counting, nearly a million jobs. NAFTA did not work.

Then they said, well, let us sign the China Free Trade Agreement. Boy, that will really be great. We will bring democracy to China. What have we got? We have got the largest growing trade deficit in the history of the United States with China. Every day companies are closing in this country, moving more production to China where wages are what? Ten cents an hour, 20 cents an hour.

The gentleman from Vermont (Mr. SANDERS) asked the opposition here, what is the minimum wage in Morocco? Nobody stood up. Do you know what it is? Eighty cents, 80 cents an hour in Morocco.

What makes you think if we pass another NAFTA-like trade agreement, this time with Morocco, are we going to make it any better? This is no different than what we have had. In fact, it is more of the same and even worse.

Our trade balance with Morocco is going down. Now, I think this agreement with Morocco has nothing to do with trade. It has everything to do with the Sahara and with oil relationships along the western side, and that is a whole other story not for this debate. But why would we want to sign a free trade agreement with a kingdom? Why would we want to empower a monarchy which this will do? You cannot have free trade with a country that is not free. Look at Saudi Arabia, where the majority of terrorists came from. That is a kingdom. Why would we want to empower those who hold assets in undemocratic countries? That is exactly what this agreement will do with Morocco.

This agreement is worse than NAFTA. NAFTA's labor and environmental provisions are a joke anyway. They are just side agreements with no teeth. This agreement has nothing, let me repeat, this has nothing to do with labor or environment. It does not have anything like the Jordanian trade agreement which made a step toward labor and the environment. Further, this agreement blocks the reimportation of prescription drugs as the Australian agreement did.

This agreement provides for the privatization of public services, more outsourcing of our service jobs in this country. There are no adjustment provisions in this agreement for workers who lose their jobs. In fact, in the old NAFTA agreement, they now do not even want to count how many American workers are losing jobs in this country so we can provide them with transitional assistance here at home. This agreement has no adjustment provisions.

One of the interesting provisions in this bill deals with Chapter 11. It guarantees that if investors get in trouble in Morocco—such as, what if terrorists do some things over there we do not like—this agreement protects their private risk through government. Even our own constitution does not do that on investment. Investors get a good deal in this agreement, workers do not.

Let me address one of the other unusual aspects of this agreement. It changes the wording of the provisions that deal with agriculture and food safety from being ''equal to'' to what is called ''equivalency''. Who is going to define equivalency on food safety and how it is different from ''equal to''? Or who is going to define equivalency on prescription drugs? What it does is it puts us on a downward path compared to the high standards we have set in this country for our own food and drug safety.

This is a bad deal. It is a bad deal economically. It is a bad deal politically. In view of our standing in the Muslim and Arab world, this is a bad deal. It does not promote democracy.

I encourage my colleagues in this body to vote no on this NAFTA-like expansion that now aims to include Morocco.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I appreciate the gentlewoman's comments, but we are discussing the U.S.-Morocco FTA, which passed the Committee on Ways and Means by a vote of 26 to nothing. In addition, we have a trade surplus with Morocco. Trade with Morocco creates jobs. The projections are right now that over the next decade our exports will triple in the agricultural sector alone, and the Trade Adjustment Assistance Program already provides benefits to anyone adversely effected by trade, and there is no need for a new program.

Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. KOLBE).

Mr. KOLBE. Mr. Speaker, just to correct the record, and I am sure the gentlewoman misspoke, the United States does not have a free trade agreement with China. We have normal trade relations but no free trade agreement with China.

□ 1715

Mr. Speaker, I do rise in support of this U.S.-Morocco free trade agreement and thank the gentleman from Illinois for his leadership on this.

Today, I am not going to talk about the merits of the agreement. I think there are plenty of them; but instead, I want to point out what I think this agreement means in the context of U.S. policy for the broader Middle East.

This agreement would be the second free trade agreement that we would have with a country in the Middle East, and it would be another cornerstone of U.S. free trade efforts in this region. Achieving free trade and integrating this region into the global economy is of critical concern to the United States.

Economically, socially, this region faces enormous problems, enormous dilemmas. Inequality in many Middle Eastern countries has grown. It has not diminished in recent decades.

Political, economic, and social systems are intertwined and appear closed to those in the outside world. For those who are not already a part of the system, improvement in their lives is only a distant dream.

In July 2002, the United Nations Development Program released a report with some discouraging statistics. Middle Eastern regional growth over the last 2 decades has been the lowest in the world except for sub-Saharan Africa. Labor productivity has been on the decline since 1960. 65 million people are illiterate. One of every two women can neither read nor write. Ten million children are not in school. Unemployment has reached 15 percent with many areas experiencing much higher rates.

The Middle East cannot be healthy socially or politically so long as its economies are in crisis. The United States has a strong interest in helping to stimulate the economies and promote stability in the region.

Now, the U.S.-Morocco free trade agreement cannot by itself solve the deep and widespread economic and social inequalities which permeate this region, but the U.S.-Morocco free trade agreement is a step in helping one country in this region deepen its integration into the world trading system and reach its aspirations for development.

Passing this agreement will help this North African country develop and practice a system of the rule of law that will have implications far beyond trade and the commercial sector.

I urge my colleagues to support this agreement. It is more than just an agreement. It symbolizes our efforts, the efforts of the United States, to integrate this country and this region in partnership with shared aspirations and expectations.

I thank the gentleman for yielding me time.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. NEAL), another distinguished member of the Committee on Ways and Means.

(Mr. NEAL of Massachusetts asked and was given permission to revise and extend his remarks.)

Mr. NEAL of Massachusetts. Mr. Speaker, I want to commend the gentleman from Michigan (Mr. LEVIN). He does a terrific job with the gentleman from Illinois (Mr. CRANE) on a bipartisan basis to ensure that every opinion is heard on the Subcommittee on Trade over at the Committee on Ways and Means. I think oftentimes that is

why we have the final product that we do.

Let me use this opportunity, Mr. Speaker, to explain why I will be voting in favor of this bilateral free trade agreement between the United States and Morocco, even though there are several aspects of the agreement that trouble me.

My chief disappointment with the agreement is that, once again, the administration refused to specifically require our trading partner to abide by the five most basic internationally recognized labor standards.

The International Labor Organization has identified those principles as the right to associate and bargain collectively, and prohibitions on forced labor, discrimination and child labor.

Instead of assuring these minimal protections for foreign workers, our recent trade agreements have imposed a different standard. They require our partners to enforce whatever labor laws exist in that particular country, regardless of how lax those laws might be.

While I strongly believe that this is the wrong negotiating tack as a general matter, in the specific case of Morocco, the country's labor laws more than surpass international minimum standards; and by all accounts, it appears that the government is making a genuine and conscientious effort to work with unions, workers, and employers to bolster its worker protections even further, including the right to strike. The labor provisions of this agreement are not perfect, but they represent a workable starting point.

Although this agreement is not what I would ideally like to see, it represents an important first step. Fundamentally, I believe that the U.S. can improve its international standing and its national security by expanding trade and strengthening its relationships with moderate Muslim countries. Unfortunately, more and more Muslim voices are calling for boycotts of the United States and its products. That makes it all the more critical for us to reach out to those who are eager to form a partnership with us.

Over the long term, I believe that agreements with nations such as Morocco are mutually beneficial from an economic standpoint. They also represent an opportunity to help mend international relations that have endured a great deal of strain over the last several years.

Mr. Speaker, this agreement could be better. Certainly I would have negotiated it differently, but it will pave the way for progress in a region that is critically important to the United States, and so it does have my support.

Mr. CRANE. Mr. Speaker, can the Chair tell me how much time we have remaining.

The SPEAKER pro tempore (Mr. OSE). The gentleman from Illinois (Mr. CRANE) has 29 minutes remaining. The gentleman from Michigan (Mr. LEVIN) has 16 minutes remaining. The gentleman from Ohio (Mr. BROWN) has 14½ minutes remaining.

Mr. CRANE. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Washington (Ms. DUNN), a member of the Committee on Ways and Means.

Ms. DUNN. Mr. Speaker, I want to thank the gentleman from Illinois (Chairman CRANE) and the gentleman from California (Chairman THOMAS) and our ranking members of the Committee on Ways and Means for moving this free trade agreement so effectively through the committee process and onto the floor so that before we break for August recess we can express our support for this agreement.

I do rise in support of the U.S.-Morocco free trade agreement, Mr. Speaker. This is our second trade agreement with an Arab country. With our trade agreement with Morocco, along with those of Israel, Jordan, and Bahrain, we are working to improve economic opportunities in North Africa and in the Middle East.

While the Moroccan economy is much smaller than ours, it remains a key export market for the United States and for my home State. In a State where approximately one in three jobs is now related to trade, it is not surprising that Washington State was the top exporter to Morocco with over $112 million in 2003.

By eliminating 95 percent of the tariffs immediately on United States manufactured goods, we are improving the competitiveness of our businesses in Morocco. Of the $465 million total United States exported from Morocco last year, nearly 29 percent, or $134 million, was due to aerospace products. It is very important to the Northwest, where so many jobs are directly or indirectly affected by our aerospace industry. In fact, Boeing aircraft dominate Royal Air Morac's fleet with a potential of 17 more planes on order.

This agreement will also strengthen intellectual property rights standards for patents, for trademarks and for copyrights so that our high-tech industries are protected in our digital economy. Higher standards, however, are not enough unless there is a commitment for better enforcement of these standards.

For this reason, I am very pleased with Morocco's commitment to better enforcement of intellectual property rights, such as increasing criminal penalties for piracy and for counterfeiting.

This is a very good agreement for our agricultural community. It eliminates duties on our products, and it liberalizes quotas on critical commodities. It also ensures that United States commodities will have equivalent access to any other trade agreements that Morocco negotiates with any other country. If Morocco gives another country better market access on agricultural products, our farmers get the same benefits.

Mr. Speaker, I ask my colleagues to support this trade agreement so that we can build an economic bridge with Morocco and the Middle East.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I am a little puzzled by this debate. I heard my friend from Texas talk about all the great promises of free trade and how these trade agreements are going to mean so much to our farmers and to our workers and to our businesses. I have heard the gentleman from Illinois (Mr. CRANE) say some of the same kinds of things, but I guess I am puzzled because I have heard that throughout my entire 12 years in Congress.

I have heard every trade agreement that comes to the floor, so many speakers say over and over and over again that if we pass these trade agreements, we are going to have more jobs, we are going to do more exports, we are going to have our balance in trade; and look what has happened in the last 12 years.

Our trade deficit when I came to this Congress was about one-fourth of what it is today. We import $1.5 billion more every day than we export. George Bush, Senior, said for every $1 billion of trade, either export or import, it was equivalent to somewhere in the vicinity of 14 or 15 or 16,000 jobs. Well, we have almost a $500 billion trade deficit. Do the math. That is an awful lot of lost jobs.

When we pass these trade agreements, we continue to hemorrhage jobs. We continue to have job loss. We continue to lose manufacturing jobs. One out of six manufacturing jobs in my State has been lost since George Bush took office. We have lost 165 jobs every day of the Bush administration.

So the answer to that is let us do more of what we have already been doing, let us do more tax cuts for the wealthiest people in society, hoping that maybe some of it will trickle down to more jobs, and let us do more trade agreements which ship jobs overseas? People in our communities say these trade agreements are not working.

China, entry of China in WTO; NAFTA; Singapore, Chile, Australia, Morocco, these trade agreements are not translating into more jobs, and people at home know that. In spite of what people in this institution say, in spite of how people in this institution vote, the fact is we continue to lose manufacturing jobs in this country. We have lost millions of jobs in this Bush administration, and then we turn around and do the same thing over and over and over. We make the same promises over and over and over and the results are the same. When we will ever learn?

Mr. Speaker, I reserve the balance of my time.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

I think it is important for everyone to understand that we have a trade surplus at the current time with Morocco. The projections are, though, that with

this free trade agreement we will have a very dramatic increase in our exports, especially our exports in the agricultural community with that dramatic drop in tariff barriers that have struck our access there, but we are making progress, dramatic progress.

Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. RYAN), our distinguished colleague on the committee.

Mr. RYAN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me time. I will just briefly pause and say, having a surplus with Morocco actually helps us with our trade deficit surplus figure because it adds to the surplus side of it.

Mr. Speaker, I would like to pause for a moment and thank those who made this possible. I would like to thank those negotiators at the U.S. Trade Representative who worked long and hard hours with the Moroccans to make this agreement possible. I would like to thank our committee chairman, the gentleman from California (Mr. THOMAS); our subcommittee chairman, the gentleman from Illinois (Mr. CRANE); and also I would like to thank the gentlewoman from Washington (Ms. DUNN), who spearheaded this through committee and here in Congress. This is a great product. This is a great thing.

Now, specifically, why is this beneficial to our constituents? Why is this good for America?

Well, number one, manufacturing, a very important sector to our economy especially in my home State of Wisconsin. This is a great deal for manufacturing. This gets rid of the tariffs on our manufacturing goods going to Morocco.

Number two, and even more important, agriculture. For every $1 of imports we take from Morocco in imports, we export $10. This is a great agreement for agriculture, especially since the Europeans, who enjoy a 50 percent higher trade flow advantage with Morocco than we have at the present time, do not have an agreement with Morocco on agriculture. Let me say it another way. Morocco and Europe trade a lot with each other, 50 percent more than we do with Morocco. That is going to change with this agreement, thankfully; but the Europeans do not have an agriculture agreement with Morocco. We will, and that means we will sell even more agricultural products to Morocco. That is a great thing.

We have a trade surplus with Morocco. They are a great trading partner. This is good for jobs. It is good for manufacturing. It is good for agriculture; but Mr. Speaker, there is a broader vision here. There is a broader purpose for all of this.

This is part of the President's MEFTI plan. This is part of the Middle Eastern Free Trade Initiative. What is that initiative? That initiative is to recognize we need to play a constructive role in the Middle East; that in the war on terror, the most important aspect, long-term vision of that war on terror is improving our understanding and our relations with moderate Muslim countries, with the Arab world. This accomplishes this.

We have 10 TIFAs in place, 10 trade and investment framework agreements in place, throughout the Gulf, throughout Northern Africa, to engage in discussion and dialogue with those countries to help bring them up to the rules of democracy, rules of free enterprise, enforceable contracts, the rule of law, women's right to vote, open societies.

□ 1730

This is what these trade agreements produce. So not only do we produce trade agreements like this Moroccan agreement, which is good for jobs in America, we produce political reforms by engaging in a partnership with those in the Middle East who want democracy and want openness. Because of these agreements and because of the role we play in the world, we serve as a catalyst to getting these countries to open their societies.

Here is one example with the Moroccan agreement. Because of this trade agreement, Morocco passed a great piece of legislation in their constitution and their law for labor standards. They have been trying to do this for 20 years. For 20 years labor groups in Morocco have been trying to get the right to collectively bargain, a shorter workweek, better laws to protect against child labor. Those things are the law of the land in Morocco because of this agreement.

So what we are doing with this broad initiative, through trade investment framework agreements, which lead to these free trade agreements like we have with Jordan and Bahrain and now Morocco, what this accomplishes is bringing these nations into a partnership of democracy, of freedom, of openness and prosperity. That is how we end up improving the lives of people in the Middle East, and that at the end of the day, and I am going to make this connection, is how we make sure that young men and women who are susceptible to the likes of al-Qaeda, who grow up in tyrannical countries with lives where they have no hope and no place to put their creative energies and turn to the likes of al-Qaeda, now have hope in the countries where they did not have them before.

Now young people in these countries who are opening up their systems, bringing democracy, bringing open societies, they have hope. They have a place to channel their energies. This will be one if we improve our relationship, our cultural understanding, our dialogue, and, yes, our trade with these countries.

The Moroccan trade agreement is a perfect example of this vision. I urge Members to pass this trade agreement. It is good for jobs, it is good for Americans, it is good for Moroccans, and it is good for our foreign policy in the Middle East. That is a very, very important goal.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in support of this free trade agreement between the United States and Morocco. It has been a pleasure for me to work not only with the gentleman from Michigan (Mr. LEVIN), the gentleman from New York (Mr. RANGEL), the gentleman from New York (Mr. MEEKS), the gentleman from Washington (Mr. SMITH), the gentleman from California (Mr. DOOLEY) and others from our side, but also with Members from the other side of the aisle, the gentleman from Pennsylvania (Mr. ENGLISH), the gentleman from Missouri (Mr. BLUNT), the gentleman from Virginia (Mr. CANTOR), and the gentleman from California (Chairman THOMAS) in making this bill a reality today on the floor.

As a Member who supports free trade and fair trade, and as a member of the Subcommittee on the Middle East and Central Asia on the Committee on International Relations, I was happy to work with Members to develop this legislation, which goes beyond being just a trade bill and morphing into a foreign policy tool.

Morocco has been a strong ally and friend of the United States since we declared our independence, and this agreement will continue to strengthen our long-standing relationship. This free trade agreement with Morocco will immediately eliminate duties on 95 percent of nontextile industrial imports, which will be the best market access the U.S. enjoys with a developing nation.

Besides the economic benefits from the implementation of this free trade agreement, it also has spurred our friends in Morocco to create a comprehensive new labor law which just went into effect this past June. The Moroccan new labor law raises the minimum employment age, reduces the workweek with overtime rates, improves worker health and safety regulations, addresses gender equity, and promotes employment of the disabled. This labor law also guarantees rights of association and collective bargaining. I believe we can credit this movement in terms of improvement of labor standards in Morocco to hopes by Morocco of agreement on this trade agreement.

Morocco has been a stabilizing force in the Middle East, and this agreement will help Morocco to continue on the path of moderation. In fact, Morocco has been a good friend to one of our strongest allies, Israel. Morocco has the largest population of Jews outside of Israel in the Middle East and has played an important role in trying to stabilize the current situation by continuing to play a role as a critical back channel for communications among

Israel, the Arab world, and the United States.

At the core of this trade initiative is the belief that through economic opportunity and partnership with the United States and Israel the goal of peace in this region can be furthered. I support this free trade agreement between the United States and Morocco, and I urge Members to vote for final passage.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I commend the gentleman from New York (Mr. CROWLEY) for his outstanding commitment in this effort to advance our free trade relations and to advance the civilized values that free trade causes. He has done outstanding work in that effort, and I commend him. I thank his colleagues on his side of the aisle for their strong bipartisan support on this important bill.

Mr. Speaker, the administration strongly supports H.R. 4842, which will approve and implement the U.S.-Morocco Free Trade Agreement, as signed by the United States and Morocco on June 15, 2004.

The U.S.-Morocco FTA advances U.S. economic interests and meets the negotiating principles and objectives set out by the Congress in the Trade Act of 2002. The FTA will benefit the people of the United States and Morocco and illustrate to other developing countries the advantages of more open markets for trade and investment.

The FTA provides for increased access for American farmers, workers and businesses to Morocco's markets. Pursuant to the agreement, Morocco will provide strong protection for intellectual property, ensure that rules on electronic commerce are nondiscriminatory, and provide U.S. firms access to covered government procurement opportunities on the same basis that Moroccan firms enjoy.

The U.S.-Morocco FTA provides a significant opportunity to encourage economic reform and development in a moderate Muslim nation and is an important step in implementing the President's plan for a broader U.S.-Middle East Free Trade Area. It also sets a strong example of the benefits of open trade and democracy. Opening markets is part of the President's six-point plan for continuing to strengthen America's economy and to create more opportunities for American farmers, workers and businesses.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. RYAN).

Mr. RYAN of Ohio. Mr. Speaker, I thank the gentleman for yielding me this time.

A couple of points I would like to make as we are having this debate. One, we hear that there currently is a trade surplus with Morocco, but we have to look back just a few years and remember that we had a trade surplus with Mexico before we signed NAFTA. I think when we get ourselves into these trade agreements the argument is we have a trade surplus but things are going to change, and we need to look at that here.

What I cannot understand today, not only with this agreement but the legislation that passed out of this House earlier, is what are the priorities? We are trying to strip the Supreme Court of their power that was given to them by the Constitution. We are going off on another trade agreement here. In Ohio, we just lost 14,000 more jobs just in the month of June. The unemployment rate in Ohio went from 5.6 percent to 5.8 percent. What are the priorities of this Congress?

In every single trade agreement that has been passed by this Congress, there has been a promise that has been made along with it. We say we are going to open up markets, we are going to export, and we are going to trade. And as we get rid of those low-paying jobs, we are going to invest in education, we are going to make sure our country is competitive, and we are not living up to that part of the bargain.

We have 59,000 engineers which graduated from this country in 2001, and over 200,000 that graduated from China. If we do not fix the problem we have with our Pell Grants, our student loans, No Child Left Behind in the State of Ohio alone is underfunded for $1.5 billion for one school year, we cannot keep trading and not educating. That is the problem with these trade agreements. If we are going to compete in a global economy, we have to invest in our students or we are going to lose the middle class in the United States of America.

Mr. CRANE. Mr. Speaker, I reserve the balance of my time.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from Michigan for yielding me this time.

Mr. Speaker, I listened to the debate and I fully agree with Members from States like Ohio that have been devastatingly impacted by trade bills that have not worked.

It is unusual for me to extend myself on trade bills and provide my support, but as I have looked at this particular trade bill let me congratulate the negotiators. They have gone more than the extra mile. I have always said that where we can help developing nations, and particularly those in Africa that I have worked with over the time of my years in Congress, this is an important step we are making.

I cite in this trade bill some very interesting factors. First of all, I am gratified there are no immigration aspects to this bill because I oppose definitively any immigration issues on this bill because the immigration system in this Nation is broken and we must fix it in a way that is fair and balanced to all those who come to this country to seek opportunity.

This bill, however, speaks to the issue of labor concerns. I am delighted in 2003 Morocco undertook a major social dialogue involving the government of Morocco and talked about adopting and did adopt in fact major labor law reforms in July 2003 which reflected a common agreement and was endorsed by all groups. Standards of labor treatment and the elimination of child labor laws has been the result of these negotiations, as well as the recognition of the right to associate and participate in labor unions. Morocco made anti-union and other forms of discrimination illegal, providing strong penalties against such conduct, creating a legal obligation to engage in collective bargaining.

And yes, Mr. Speaker, let me also say that this particular treaty also recognizes in the fight against HIV/AIDS that we have the ability for the government of Morocco to buy generic drugs. I would hope as we look at treaties, as we look at labor agreements that deal in trade, as we look at formulating trade agreements in the future, Morocco as a developing nation is a very good standard by which to answer the Members' questions about the sizable loss of manufacturing jobs and other jobs around America. I too believe that we need job creation, the creation of manufacturing jobs, and we need to invest in the workforce of America.

I believe that this strong trade agreement will allow us to show the people of Morocco how to develop their economic infrastructure, to be the consumers of our products here in the United States as we improve our trade to balance with them. We want to decrease the trade imbalance and increase the amount of exports to Morocco and help it to become an economic engine that will receive our products from the United States. When that occurs, I am prepared to support a trade agreement such as this, and I rise to support the Morocco trade agreement.

Mr. Speaker, I rise today to support H.R. 4842, the "United States-Morocco Free Trade Agreement Implementation Act." Mr. Speaker, having traveled to Africa, I have seen the value when U.S. trade markets are opened to this part of the world. Morocco is an important ally in a region that needs our support. I support the long-term goal of increasing free trade with Africa and its surrounding neighbors. This legislation will build stronger and more effective commercial relationships in a region of the world where economic hope is unfortunately non-existent, developing nations like Morocco need our partnership.

Mr. Speaker, one of my strong issues is the worldwide fight against the deadly pandemic: the HIV/AIDS virus. In August of 2003, the U.S. led the work towards a WTO consensus that allows poor countries without domestic drug production capacity to issue compulsory licenses to import drugs needed to combat diseases such as HIV/AIDS, malaria, tuberculosis and other infectious epidemics. The Morocco FTA will not affect that country's ability to take measures necessary to protect public health or to use the WTO solution to import

drugs. This agreement ensures that government marketing-approval agencies will not grant approval to patent-infringing pharmaceuticals.

As far as the agreement is concerned, Morocco has agreed to establish tariff-rate quotas for beef that grow over time, providing significantly increased access to the important market in high-quality beef. In this respect, the U.S. will have superior access over the European Union, and virtually every one else, as well. This legislation levels the playing field between U.S. wheat producers and the EU, though the transition to parity is longer than I prefer.

We should welcome Morocco into the larger network of U.S. free trade partners. The Agreement provides benefits for businesses wishing to supply services cross-border (for instance, by electronic means) as well as businesses wishing to establish a presence locally in the other country. Strong and detailed disciplines on regulatory transparency supplement the Agreement's cross-cutting transparency provisions.

In this agreement, Morocco will allow U.S.-based firms to supply insurance on a cross-border basis (through electronic means) for key markets including reinsurance, reinsurance brokerage, and, subject to a two-year phase-in, marine, aviation and transport (MAT) insurance and brokerage. Morocco also will allow U.S.-based firms to offer services cross-border to Moroccans in areas such as financial information and data processing, and financial advisory services.

Of further benefit to U.S. insurance suppliers, Morocco will phase-out certain mandatory reinsurance cessions and expedite the introduction of insurance products. Each government commits that users of the telecom network will have reasonable and nondiscriminatory access to the network, thereby preventing local firms from having preferential or ''first right'' of access to telecom networks.

U.S. phone companies will have the right to interconnect will former monopoly networks in Morocco at non-discriminatory, cost-based rates. U.S. firms seeking to build a physical network in Morocco will have non-discriminatory access to key facilities, such as telephone switches and submarine cable landing stations.

This agreement is important because Morocco is an emerging market at the crossroads of Europe, Africa, and the Middle East. It imports $11 billion in products each year. Currently, U.S. products entering Morocco face an average tariff of more than 20 percent, while Moroccan products are only subject to an average 4 percent duty in the United States.

Each government will prohibit bribery, including bribery of foreign United States officials, and establish appropriate criminal penalties to punish violators. This Agreement establishes a secure, predictable legal framework for U.S. investors operating in Morocco.

All forms of investment will be protected under the Agreement, such as enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Morocco on an equal footing with Moroccan investors, and with investors of other countries.

Pursuant to the Trade Promotion Authority Act of 2002 (TPA), the Agreement draws from U.S. Legal principles and practices to provide U.S. investors in Morocco a basic set of substantive protections that Moroccan investors in the United States currently enjoy under the U.S. legal system.

This agreement fully meets the labor objectives set out by the Congress in TPA. Labor obligations are part of the core text of the Agreement. Each government reaffirms its obligations as members of the International Labor Organization (ILO), and commits to strive to ensure that its domestic laws provide for labor standards consistent with internationally recognized labor principles. The Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.

Each government will be required to effectively enforce its own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

Procedural guarantees in the Agreement require each government to provide access for workers and employers to fair, equitable and transparent labor tribunals or courts.

The Agreement includes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor.

In closing, I support the Moroccan Free Trade Agreement.

□ 1745

Mr. BROWN of Ohio. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, one of the things I have noticed in these debates on these trade issues is there is one common thread. There are many, but there is one really thick common thread that is woven through all these trade agreements, in not just these trade agreements but that is perhaps woven through much of what this Congress has done in the last 3 years, during the Bush years, and that is whatever the drug industry wants, whatever the pharmaceutical companies want.

We know the drug industry is the most profitable industry in America by a factor of three or four times in profitability over other Fortune 500 industries. We also know the drug industry has 600-plus lobbyists, more than one per Member. We also know the drug industry has given more money to President Bush, tens of millions of dollars, and to Republican leadership than any other industry. And we know they have gotten their way.

They wrote the Medicare bill, we know that, with the insurance industry. We know they have begun to try to dry up drug supplies in Canada, prescription drugs, so that Americans have more difficulty going to Canada to get drugs. We know that the FDA, once one of the best agencies in the Federal Government, has been co-opted by the drug industry so that on issue after issue they take the drug industry's side rather than the public safety or the consumers' side. And most importantly, I do not know that Members on the other side of the aisle are quite aware of this, but certainly the public is aware at how high drug prices, how much they have skyrocketed in the 3 years since President Bush has, I was going to say turned a blind eye to drug industry abuses but really actually fronted for and assisted in drug industry abuses.

One more example of that is all of these trade agreements, what happened with the Australia Free Trade Agreement, how it would for all intents and purposes block reimportation, that is, our ability, American consumers' ability to buy prescription drugs from another country, to get drugs at half or a third or a fourth of their price. We are now seeing the same in the Morocco bill.

But let us kind of scratch the surface a little and what you will find, Mr. Speaker, is in April, United States Trade Rep, Ambassador Zoellick, gave Assistant U.S. Trade Representative for Southeast Asian public affairs, Ralph Ives, additional responsibilities as the Assistant U.S. Trade Rep for pharmaceutical policy. He was the chief negotiator in the Australia FTA, which included these provisions we talked about which, of course, benefit the pharmaceutical industry.

Now, Mr. Speaker, we hear that this same Mr. Ives, who I said was the chief Australia FTA negotiator on pharmaceutical interests on behalf of the Bush administration, we find out next month he will leave USTR to become vice president of AdvaMed, a medical supply company. We have also learned that Claude Burke, another negotiator for U.S. taxpayers, paid by our government, a Bush appointee for intellectual property rights, has already left and now is working for another drug company, working for Abbott Labs.

So this revolving door of the drug industry where the drug industry gives money to President Bush, President Bush then helps the drug industry, then these people who are working for taxpayers negotiate a good deal for the drug company, then leave and come back and work for the drug industry. Is there no shame with this crowd, with my Republican friends who have fronted for this drug industry that is fleecing the American public and with the administration? That is one issue.

The other, Mr. Speaker, is why do we pass a trade agreement when we see the same story repeated over and over and over? We just turn the calendar back, rewind the clock, and we see it over and over again. We see speaker after speaker come to this floor and make all kinds of promises. We have a trade surplus in Morocco, so we ought to pass a trade agreement. Just like we had a trade surplus with Mexico, we passed NAFTA; and now we have a $25 billion a year, plus-plus-plus, trade deficit.

They promise more agricultural exports. They promise more American jobs. They promise more business for American companies. They promise more exports of American products. But look what happens. In my State in the last 3 years, we have lost one out of

six manufacturing jobs. Does that mean these trade agreements with Mexico, with WTO in China, with Morocco, with Australia, with Chile, with Singapore, does that mean these trade agreements are working? There is no evidence that they are working. We continue to hemorrhage jobs. We now have a $450 billion trade deficit, $1.5 billion trade deficit every day. So our answer is, boy, let's do more of the same because that must be working.

It is clearly not working. We have lost jobs during the Bush administration, the first President since Herbert Hoover to have a net loss of jobs. So what are we going to do? We are going to keep pursuing the same economic policy we have had the last 3 years, more tax cuts for the most privileged people in society, maybe some of it will trickle down into economic growth. Clearly that has not worked. More trade agreements, like Morocco, like Australia, like NAFTA, like China, more trade agreements. That has not worked because we continue to hemorrhage jobs. We continue to ship jobs overseas.

Maybe, just maybe, Mr. Speaker, since none of that seems to have worked, maybe we ought to try something different. Maybe we ought to have a trade agreement that does not sell out to the drug industry. Maybe we ought to have a trade agreement with enforceable labor and environmental standards, international labor organization standards. Maybe we ought to have a trade agreement that puts American workers first, that puts the environment first, that puts food safety first, that puts American consumers of prescription drugs first. Maybe, just maybe, we ought to put a hold on these trade agreements that continue to ship jobs overseas and, instead, pass something that works for American consumers, that works for American workers, that works for our communities, and that works for the United States of America.

Mr. Speaker, I yield back the balance of my time.

Mr. LEVIN. Mr. Speaker, I yield myself the balance of my time.

When we discussed the rule, I went over some of the benefits of this agreement, those relating to manufacturing goods, and we have been deeply hurt in the manufacturing area in the United States these last 3 years. This agreement should open up Morocco to more goods made in America. I referred to the agricultural area. This agreement does open up the Moroccan market to agricultural goods produced in the United States of America. It will also liberalize the service areas that are important for our development. And there is reference to intellectual property safeguards.

I want to spend a few minutes now talking about the broader perspective here, the perspective, I think, with which we must look at trade agreements and expanded trade.

First, there has been some reference here to bipartisanship, and it is true that this will pass with bipartisan support. Not complete. But I want it clear that there has been these last 3 years no basic bipartisan consensus on trade. That has been true of the big issues. We fought out TPA here, and it passed narrowly. CAFTA was negotiated on a narrow basis without adequate bipartisan participation. The same has been true today of the FTAA.

The failure of this administration to build a bipartisan consensus, a strong bipartisan foundation, to renew that foundation that once existed here, I think, has handicapped discussions within the WTO. We cannot make the tough decisions relating to negotiations in the WTO that affect American workers, businesses, farmers and others except on the basis of a strong bipartisan foundation. We do not have it.

Secondly, we on the Democratic side together, all of us, reject the use of one agreement as a model for others. For example, we have discussed core labor standards. Where labor laws in a country are essentially adequate, as was true of Jordan, the standard enforce-your-own-laws, which was the basic standard in Jordan, can work; but it will not work in cases where laws are very inadequate. So that is why we Dems essentially in unison reject the CAFTA that was negotiated. We support a Central American Free Trade Agreement, but one that is different than was negotiated.

So the basic issue, therefore, is not, as some in the majority have stated, whether one is for or against free trade, for or against expanded trade. It is whether the terms of expanded trade will be shaped to benefit all and not just a few. We do not assume that expanded trade is automatically positive all around.

That is why when this agreement came up, we raised two issues. One of them related to core labor standards. There was reform. We wanted to know the facts about those reforms. We wanted to know the realities within Morocco. We wanted to know whether it was more or less like Jordan and not more or less like Central America.

And so we dug into the facts. We made it clear to the Moroccan government that we cared, and I must say I think it is because Democrats have been raising these issues perhaps more than any other factor that the Moroccan government undertook some reforms, and we received back a communication from the government of Morocco. I submit for printing in the RECORD the letter that was sent to us and the three other letters referred to during the debate on the rule.

The material referred to is as follows:

EMBASSY OF THE
KINGDOM OF MOROCCO,
Washington, DC, July 19, 2004.

HON. SANDY LEVIN,
Rayburn House Office Building,
House of Representatives.

DEAR REPRESENTATIVE LEVIN: I deeply appreciate the opportunity to work with you on the U.S.-Morocco Free Trade Agreement. In particular, I appreciate the opportunity to talk to you about the pharmaceutical provisions in the Free Trade Agreement, and about how the Government of Morocco is meeting the health needs of its citizens.

The Government of Morocco has a well-developed health system, including a comprehensive public health program. For example, free medical care, including medicines, is available through our hospitals. Morocco's health care policy includes a strong emphasis on generic drugs.

Morocco has not needed to engage in emergency measures such as compulsory licensing or parallel imports. In fact, there is a well-developed domestic pharmaceutical industry in Morocco, producing also generics, and in 2000, well in advance of the Free Trade Agreement and completely independent of it, Morocco decided to bar parallel imports.

In addition, as a separate, but quite important matter, the Government of Morocco is strongly committed to and has agreed to the highest-standard intellectual property rights provisions in the Free Trade Agreement. The Government of Morocco believes that effective intellectual property right protection will play a vital role in the continued economic development of our country.

The pharmaceutical provisions in the Free Trade Agreement were carefully considered in Morocco. They were discussed in detail with all parties. All sectors of our health system were involved, including the pharmaceutical industry. The discussions also included the members of the civil society in Morocco.

The Government of Morocco achieved in this agreement full flexibility to meet our nation's health concerns. In particular, the Government of Morocco believes the agreement fully preserves its right to issue a compulsory license in the event that this should prove necessary.

The Agreement does bar ''parallel imports'' in 1.5.9.4. However, as described above, the Government of Morocco already bans ''parallel imports.'' In addition, the Government of Morocco believes that in the event that it faced a situation where extraordinary action was required, it could meet the needs of its people through a compulsory license.

The Government of Morocco considered carefully the data exclusivity provisions in the agreement. We do not believe that they present any risk to our ability to meet the health needs of our citizens.

Under the Agreement, a compulsory license does not override obligations to provide data exclusivity under 15.10.1 and 2. The Government of Morocco believes it is unlikely that a situation would ever arise where data exclusivity would be a barrier to the issuance of a compulsory license. If such an event did occur, the Government of Morocco believes that an accommodation could be reached with the owner of the data.

The Government of Morocco supports the Paragraph 6 solution of the Doha Declaration. The Free Trade Agreement does not restrict our ability to export under the Paragraph 6 solution of the Doha Declaration. To the specific, 15.9.6 does not create a barrier to exports under the Paragraph 6 solution of the Doha Declaration.

The June 15, 2004 side letter between our two countries addresses the ability to amend the Free Trade Agreement, responsive to amendments to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Under the Agreement, the Government of Morocco believes it can consult immediately to amend the Agreement responsive to any WTO amendments. Under the Agreement, it is not required to wait for there to be an application in dispute of the Agreement.

I look forward to keep working with you.

Sincerely,

AZIZ MEKOUAR,
Ambassador.

EMBASSY OF THE
KINGDOM OF MOROCCO,
Washington, DC, July 14, 2004.

Hon. SANDY LEVIN,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN LEVIN: I have deeply appreciated the continuing opportunity to work with you on the U.S. Morocco Free Trade Agreement. In particular, I welcome your interest in our nation's labor law, specifically the comprehensive reforms, passed last year.

I want to address through this letter some of the issues that have been highlighted in conversations with you and your staff. Under Moroccan law, it is illegal to fire an individual because they are a member of a labor organization or have engaged in labor organizing. To fire someone on these grounds would be arbitrary under the 2003 law and would make available the full remedies provided under that law.

Under Moroccan law, it is illegal to refuse to hire an individual because they are a member of a labor organization or have engaged in labor organizing. It is also illegal to refuse to rehire or extend the contract of an individual for these reasons.

Section 473 is a provision in the 2003 Labor Law and the provision's intent is to ensure that labor representatives do not undermine the traditional labor organizations. The government intends to implement this provision to achieve that goal, consistent with the core provisions of the ILO.

The right to strike is protected in the Moroccan constitution. Further clarification of these rights is underway. The government of Morocco is committed to protecting the right to strike in conformance with the International Labor Organization's core principles. In particular, the government of Morocco will not use Article 288 of our penal code against lawful strikers.

Concerning the questions regarding Labor Representatives, employers have the obligation to organize the elections for the labor representatives. Employers cannot vote in these elections and are not able to choose labor representatives. Only employees can vote and elect freely the labor representatives.

Employees can join freely the Union of their own choice. Unions designate their representatives within the companies.

On the ILO involvement, Morocco has always worked with ILO. For instance, ILO assisted Morocco to write the Labor Code of 2003 and the new law on child labor. Morocco, as in the past, will continue to ask the support of ILO and work with this organization in all labor issues such as new laws and will ask its help in providing assistance for the implementation of the current rules.

I look forward to continuing to work with you on these issues and any others of potential concern. Nevertheless, I wanted to get back to you in a timely manner on the key issues addressed in this letter.

Sincerely,

AZIZ MEKOUAR,
Ambassador.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 15, 2004.

Hon. ROBERT B. ZOELLICK,
U.S. Trade Representative,
Washington, DC.

DEAR AMBASSADOR ZOELLICK: We are writing to express our ongoing concern about sections of recently negotiated U.S. free trade agreements (FTAs) that could affect the availability of affordable drugs in developing countries. In particular, we are concerned about the impact of restrictions on parallel imports and about marketing exclusivity requirements for pharmaceuticals included in the Morocco FTA. Our concern relates to two points.

First, it appears that some of the provisions contradict, both explicitly and in spirit, commitments made by the United States in the World Trade Organization in both the November 2001 Declaration on the TRIPS Agreement and Public Health (the Doha Declaration) and the September 2003 Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (the Paragraph 6 Decision). Section 2101(b)(4)(C) of the Trade Act of 2002 (Trade Promotion Authority or TPA) directs the Administration to respect the Doha Declaration, necessarily including subsequent agreements related to that Declaration.

Second, we are concerned that the FTA's restrictions on obtaining regulatory approval for drugs, including drugs that are already off-patent, are likely to increase prices in the Moroccan market. These restrictions, described below, could undermine the availability of generic versions of drugs to treat serious health problems, including HIV/ADS, that are widespread in many, if not most, developing countries. Moreover, any increase in the price of drugs in a developing country like Morocco will be borne by consumers because most developing countries have large rural, uninsured, and poor populations who pay out-of-pocket for drugs.

In discussions with your staff and in recent testimony before the Committee on Ways and Means, we understand that your office is of the view that the FTA does not interfere with a country's efforts to ensure broader access to medicines. We request that you explain that view to us in writing, and in particular, by responding to the questions outlined below. We have focused on Chapter 15 of the U.S.-Morocco FTA, because it may be considered by Congress in the coming weeks.

RESTRICTIONS ON PARALLEL IMPORTATION

Article 15.9.4 of the U.S.-Morocco FTA requires both countries to recognize the exclusive right of a patent holder to import a patented product, at least where the patent holder has restricted the right to import by contractual means. In practical terms, this provision means that neither Morocco, nor for that matter, the United States, may allow parallel imports of patented pharmaceutical products from the other country, or where a national of the other country owns the patent.

With respect to Morocco, which is a developing country, this provision appears to limit one of the flexibilities identified in the Doha Declaration for increasing access to medicines, and accordingly, it appears to contradict the direction in section 2102(b)(4)(c) of TPA. Specifically, the Doha Declaration reaffirmed that the TRIPS Agreement provides flexibility for WTO Members to take measures to protect public health, including ''promot[ing] access to medicines for all.'' One of the key flexibilities identified in the Doha Declaration is the right of each country to determine for itself whether to allow parallel imports.

Does Article 15.9.4 of the Morocco FTA prevent Morocco from allowing parallel imports of a patented pharmaceutical product?

Given that the Doha Declaration explicitly confirms the right of each country to retain flexibility in allowing parallel imports of drugs as one way of meeting the public health needs of its citizens, please explain why the provision was included given that TPA directs the Administration to respect the Doha Declaration?

Which country sought inclusion of this provision?

If Morocco or the United States eliminated the exclusive right of a patent holder to import a patented product, would either be in violation of Article 15.9.4?

MARKET EXCLUSIVITY AND RELATED PROVISIONS

Article 15.10.1 of the U.S.-Morocco FTA requires that both countries prevent the use of data submitted to support an application for marketing approval (e.g., approval from the Food and Drug Administration (FDA)) for a new pharmaceutical chemical product without the consent of the person submitting such data, for a period of five years from the date of approval. In layman's terms, this means that if a company submits data to meet FDA-type safety and efficacy standards, and obtains marketing approval based on that data, other companies cannot obtain regulatory approval based on those data for five years. Given the cost of generating such data, this provision operates effectively as a grant of market exclusivity in virtually all cases, including in cases where the drug is off patent. Article 15.10.2 appears to allow an additional three years of marketing exclusivity for new uses of an already-approved pharmaceutical product. Article 15.10.3 requires both countries to extend patents where there is a delay in the marketing approval process.

The provisions described above appear to be based on 1984 amendments to U.S. law known as the Hatch-Waxman Act. The objectives of the Hatch-Waxman Act were to accelerate and increase the availability of generic drugs in the United States while balancing the need for continued investment in new drugs. As you are aware, the Hatch-Waxman Act was necessary because prior to 1984, U.S. law made it extremely difficult and expensive to bring a generic version of a pharmaceutical product to market, even after a patent expired. This was because prior to the 1984 changes, a company seeking marketing approval for a copy of an already-approved drug had to generate its own data to support its FDA application. The cost of generating those data effectively precluded second entrants from entering the market. (First entrants were able to offset the cost for generation of the data because they enjoyed patent protection.) The Hatch-Waxman Act allowed second entrants to rely on data submitted by first entrants, thereby reducing costs and speeding introduction of generic versions of drugs to the U.S. market. In exchange for allowing second entrants to ''piggy-back'' off first entrants, first entrants were given a period of market exclusivity, even for drugs that are off-patent.

The Hatch-Waxman Act's provisions on market exclusivity were part of a compromise necessary to ensure that the U.S. regulatory structure was updated to facilitate the entry of generic drugs into the U.S. market. Most developing countries already have robust generic markets, in large part because they already allow producers of generic versions of drugs to obtain regulatory approval based on data submitted by first applicants or based on prior approval. In light of that fact, and given that innovative drug companies largely develop drugs for developed country markets and conduct the necessary tests to get marketing approval in those markets regardless of whether they are given market exclusivity in low-income developing countries, what is the rationale for including these provisions?

Please describe the circumstances under which the three additional years of marketing exclusivity described in Article 15.10.2 would apply.

Neither Article 15.10.1 or 15.10.2 on marketing exclusivity appear to allow for reliance on previously submitted data or prior

approval during the period of market exclusivity absent consent of the first applicant. The Doha Declaration reaffirmed the right of countries to use flexibilities under the TRIPS Agreement, such as compulsory licenses. A compulsory license allows someone other than the patent holder to produce and sell a drug under patent. It is not clear to us why the grant of a compulsory license would override a grant of market exclusivity, as provided in Articles 15.10.1 and 15.10.02. (We note that there is no exception to protect the public.) Please describe how the market exclusivity provisions in Article 15.10.1 and Article 15.10.2 relate to Morocco's ability to issue a compulsory license.

Where a compulsory license has been issued, may a Party automatically deem that the first applicant has consented to reliance on the data or prior approval for the drug produced under the compulsory license?

If the patent and test-data were owned by different entities, does a compulsory license result in legal ''consent'' by both the patent holder and the data owner for use of the patented material and the test data?

When the drug is off patent, and a Party wishes to permit marketing for a second entrant, what mechanism exists in the FTA to allow for an exception to the provisions on market exclusivity?

Is a grant of market exclusivity pursuant to Articles 15.10.1 and 15.10.2 considered an ''investment'' with respect to Chapter 10 of the agreement? If so, would an abridgement of the period of market exclusivity constitute a compensable expropriation under Chapter 10?

Article 10.6.5 of the FTA appears to clarify that any act of patent infringement carried out by a Party in the issuance of a compulsory license in accordance with the TRIPS does not constitute a compensable expropriation. Issuance of a compulsory license, however, is only one aspect of the process of getting a drug to market. Does the clarification in Article 10.6.5 also ensure that other measures taken by a government to ensure that a drug on which a compulsory license has been issued can be lawfully marketed (e.g., a grant of marketing approval to a generic or second producer before the period of marketing exclusivity has expired) will not constitute compensable expropriations? If not, is there another provision in the agreement that would ensure that such measures do not constitute expropriations?

Article 15.10.3 requires that a patent term be extended where there is a delay in the regulatory approval process. The provision does not state whether delays attributable to the applicant (e.g., failure to provide adequate data) mitigate against extension. Article 15.9.8, the comparable provision for extension of a patent term because of a delay in the patent approval process, makes clear that delays attributable to the patent applicant should not be considered in determining whether there is a delay that gives rise to the need for an extension. Why was similar language not included in Article 15.10.3?

Is Morocco, or for that matter the United States, required by the FTA to extend a patent term where there is a delay in the regulatory approval that is attributable to the applicant?

BOLAR-TYPE PROVISIONS THAT LIMIT EXPORT

Article 15.9.6 of the U.S.-Morocco FTA appears to allow a person other than a patent holder to make use of a patent in order to generate data in support of an application for marketing approval of a pharmaceutical product (e.g., approval from the FDA). However, Article 15.9.6 also states that if exportation of the product using the patent is allowed, exportation must be limited to ''purposes of meeting marketing approval requirements.'' This provision appears to preclude Morocco from exporting generic versions of patented pharmaceutical products for any reason other than use in obtaining marketing approval because that is the only exception noted.

If that is the case, the provision would seem to curtail Morocco's ability to act as an exporter of pharmaceutical products to least-developed and other countries under the Paragraph 6 Decision. Specifically, the Paragraph 6 Decision allows countries to export drugs produced under a compulsory license to least-developed countries or to countries that lack pharmaceutical manufacturing capabilities. Were the provisions to constrain Morocco's ability to export under the Paragraph 6 Decision, the United States could be accused of backtracking on commitments that have been made.

Please explain whether this Article prohibits Morocco from allowing the export of generic versions of patented pharmaceutical products for purposes other than ''meeting market approval requirements.'' If it does not, please explain in detail how you came to that conclusion.

If this provision does in fact limit Morocco's ability to allow the export of generic versions of patented pharmaceutical products, please explain how Morocco could serve as an exporting country to help least-developed and other countries address public health needs under the Paragraph 6 Decision. (Exporters under the Paragraph 6 Decision are exporting to meet the health needs of an importing country, not merely to obtain marketing approval.)

Does Article 15.9.6 allow export of a generic version of a patented drug to get marketing approval in a third country (i.e., other than the United States or Morocco)? (Article 15.9.6 states that ''the Party shall provide that the product shall only be exported outside its territory for purposes of meeting marketing approval requirements of that Party.'')

SIDE LETTER TO THE AGREEMENT

The Morocco FTA includes an exchange of letters dated June 15, 2004, between the Governments of Morocco and the United States. The letters appear intended to clarify the relationship between the intellectual property provisions of the FTA and the ability of Morocco and the United States to take measures to protect the public health.

The letters address two issues. First, the letters state that the intellectual property provisions in the FTA ''do not prevent the effective utilization'' of the Paragraph 6 Decision. Second, the letters state that if the TRIPS Agreement is amended on issues related to promotion of access to medicines, and that either the United States or Morocco takes action in conformity with such amendments, both countries will ''immediately consult in order to adapt [the intellectual property provisions of the FTA] as appropriate in light of the amendment.''

On the Paragraph 6 Decision, please explain how the statement that the FTA does not ''prevent the effective utilization'' is not merely rhetorical. Please be specific as to why you believe the provisions in the FTA do not preclude Morocco from acting as an importer or exporter of drugs under the Paragraph 6 Decision, including how the FTA's provisions related to market exclusivity can be waived if Morocco acts in either capacity.

On the issue of consultation, do the letters mean that both Parties agree to amend the FTA as soon as possible to reflect access to medicines amendments to the TRIPS Agreement? Will the United States refrain from enforcing provisions of the FTA that contravene the TRIPS Agreement amendments while the FTA is being amended? Is USTR willing to engage in an exchange of letters with the Government of Morocco memorializing such an understanding?

We appreciate your prompt response to these questions.

Sincerely,

CHARLES B. RANGEL,
Ranking Democrat, Committee on Ways and Means.
JIM MCDERMOTT,
Member, Committee on Ways and Means.
SANDER LEVIN
Ranking Democrat, Subcommittee on Trade, Committee on Ways and Means.
HENRY A. WAXMAN,
Ranking Democrat, Committee on Government Reform.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE,
Washington, DC, July 19, 2004.

Hon. SANDER M. LEVIN,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN LEVIN: Thank you for your letter of July 15, 2004, regarding certain provisions of the intellectual property chapter of the U.S.-Morocco Free Trade Agreement (FTA).

I have addressed each of your specific questions below. As a general matter, for the reasons also set forth below, the FTA does not conflict with the Doha Declaration on the TRIPS Agreement and Public Health or otherwise adversely, affect access to medicines in Morocco. The FTA does not require Morocco to change its policies with respect to any of the flexibilities noted in the Doha Declaration. Furthermore, we believe that this FTA can advance Morocco's ability to address public health problems, both by putting in place incentives to develop and bring new medicines to market quickly and by raising standards of living more broadly.

The experience of Jordan under the U.S.-Jordan FTA is illuminating. The United States and Jordan signed the FTA in 2000, during the prior Administration, and we worked with Congress to enact that agreement in 2001. The U.S.-Jordan FTA contains a strong intellectual property chapter that covers, for example, data protection, one of the issues highlighted in your letter. Jordan has witnessed a substantial increase in pharmaceutical investment, creating new jobs and opportunities. In addition, Jordan has approved 32 new innovative medicines since 2000—a substantial increase in the rate of approval of innovative drugs, helping facilitate Jordanian consumers' access to medicines. The Jordanian drug industry has even begun to develop its own innovative medicines. This is an example of how strong intellectual property protection can bring substantial benefits to developing and developed countries together.

Your specific questions with respect to the U.S.-Morocco FTA are addressed below.

PARALLEL IMPORTATION

1. Does Article 15.9.4 of the Morocco FTA prevent Morocco from allowing parallel imports of a patented pharmaceutical product?

Article 15.9.4 of the FTA reflects current Moroccan law and therefore does not require Morocco to do anything it does not already do. The FTA also reflects existing U.S. law. Both Morocco and the United States already provide patent owners with an exclusive right to import patented products, including pharmaceuticals but also all other types of patented products. Many innovative industries and their employees in the United

States—from the high tech and pharmaceuticals sectors to sectors covering chemicals and agricultural inputs, and on to engineering and manufacturing—benefit from this long-standing protection in U.S. patent law.

2. Given that the Doha Declaration explicitly confirms the right of each country to retain flexibility in allowing parallel imports of drugs as one way of meeting the public health needs of its citizens, please explain why the provision was included given that TPA directs the Administration to respect the Doha Declaration?

Providing patent owners with an exclusive import right is consistent with Article 28.1 of the TRIPS Agreement, which states that patent owners have the exclusive right to make, use, sell, offer for sale, and import products covered by their patents. U.S. law, developed through a long line of Supreme Court and lower court cases, has recognized this right for over a hundred years. The TRIPS Agreement more precisely articulated the exclusive import right, and, when implementing TRIPS in the Uruguay Round Agreements Act, Congress amended the patent law by providing for such a right expressly in the statute.

At the same time, however, the TRIPS Agreement also allows countries to choose to permit ''international exhaustion'' without challenge under WTO dispute settlement. International exhaustion would allow parallel imports. The Doha Declaration affirms this approach, and states that ''[t]he effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.''

Importantly, neither the TRIPS Agreement nor the Doha Declaration require WTO members to adopt an international exhaustion rule; they merely recognize that countries may do so without challenge. WTO members are free to exercise their sovereign right to choose an alternative policy. As noted, the United States does not permit parallel imports. Morocco also decided in 2000, well before the FTA negotiations, not to permit parallel imports. The fact that the FTA reflects principles already present in both Parties' laws does not in any way lessen our commitment to the Doha Declaration. In fact, in previous FTA negotiations with developing countries that do not have parallel import restrictions in their domestic law (e.g., Central America, Chile, and Bahrain), the final negotiated texts do not contain provisions on parallel importation.

3. Which country sought inclusion of this provision?

This provision is a standard component of the U.S. draft text, which USTR staff has presented to Congress for review and comment on numerous occasions. Morocco readily accepted the proposal, without objection, and noted during the negotiations that Moroccan patent law, like U.S. law, already provided patentees with an exclusive importation right.

4. If Morocco or the United States eliminated the exclusive right of a patent holder to import a patented product, would either be in violation of Article 15.9.4?

It would depend on the details of the particular legislation. A change in U.S. law would, however, affect many other innovative sectors that rely on patents besides the pharmaceutical sector. Many U.S. technology, manufacturing, and other innovative businesses—as well as Members of Congress—urge us regularly to vigorously safeguard U.S. patents and the jobs they help create.

MARKET EXCLUSIVITY

5. The Hatch-Waxman Act's provisions on market exclusivity were part of a compromise necessary to ensure that the U.S. regulatory structure was updated to facilitate the entry of generic drugs into the U.S. market. Most developing countries already have robust generic markets, in large part because they already allow producers of generic versions of drugs to obtain regulatory approval based on data submitted by first applicants or based on prior approval. In light of that fact, and given that innovative drug companies largely develop drugs for developed country markets and conduct the necessary tests to get marketing approval in those markets regardless of whether they are given market exclusivity in low-income developing countries, what is the rationale for including these provisions?

In negotiating the U.S.-Morocco FTA and other recent FTAs, USTR has been mindful of the guidance provided in the Trade Act of 2002, which directs USTR to seek to ''ensur[e] that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect[s] a standard of protection similar to that found in United States law.'' We understand the rationale of this guidance is to help protect and create high-paying jobs in leading American businesses. As a developed economy, it is understandable that U.S. workers will be increasingly employed in higher value (and better paid) innovative and productive jobs. On the basis of Congress' direction, the United States sought to include provisions that reflect U.S. law, including with respect to the protection of data.

The protection of clinical test data has long been a component of trade agreements negotiated by U.S. Administrations with both developed and developing countries. Data protection provisions were included, for example, in many past trade agreements, including the U.S.-Jordan FTA and the U.S.-Vietnam Bilateral Trade Agreement—both negotiated by the prior Administration after the passage of the law to which you refer. Such provisions were included in NAFTA, too. They are in all recent FTAs, including the U.S.-Singapore FTA and the U.S.-Chile FTA. Data protection provisions have also been included in many bilateral intellectual property agreements.

The TRIPS Agreement itself requires protection of clinical test data against unfair commercial use. While the United States protects data to obtain approval for new chemical entities for five years, other countries provide different terms. The EU, for example, protects such data for 6–10 years.

Implicit in the question, however, appears to be an assumption that data protection is disadvantageous for developing countries like Morocco. Yet, protection of data actually has the potential of facilitating and accelerating access to medicines. As recognized in Chapter 15 of the FTA (footnotes 12 and 13), Morocco does not currently approve generic versions of medicines based on approvals granted in other countries. As a result, today a generic producer wishing to sell pharmaceuticals in Morocco may obtain approval only if an innovative producer first obtains approval in Morocco or if the generic producer invests the significant money and time necessary to recreate the data itself. After an innovative producer obtains approval in Morocco, a generic producer may rely on such data to obtain approval for its generic product.

Therefore, under existing Moroccan law, generic manufacturers in Morocco cannot obtain marketing approval for a generic drug until an innovator has first obtained approval for the drug in Morocco. Without data protection, innovative producers will be less likely to enter the Moroccan market in the first place because, once they obtain approval, generic producers may capture most of the market. The data exclusivity provisions of the FTA can thus provide an important incentive for innovators to enter the market, which may in turn expand the potential universe of generic drugs in Morocco. As noted above, this is the development we are seeing in Jordan, to the benefit of Jordan consumers.

6. Please describe the circumstances under which the three additional years of marketing exclusivity described in Article 15.10.2 would apply.

The question seems to imply that the basic five year term of protection for data submitted to obtain approval of new chemical entities may be extended to eight years. This is not correct. There is no circumstance in which the FTA requires that an innovator receive a data protection period longer than five years for new chemical entities.

The three year period of protection reflects a provision in U.S. law, which relates to new information that is submitted after a product is already on the market (for example, because the innovator is seeking approval for a new use of an existing product). In that situation, at least in cases where the origination of this new data involves considerable effort, the FTA requires that the person providing the new data gets three years of protection for that new data relating to that new use. This three year period only applies to the new data for the new use; it is not added to the exclusivity period for any data previously submitted.

For example, if a new chemical entity is given marketing approval, the data supporting that approval is protected for five years. After that time, generic producers may rely on the data to obtain approval for a generic version of the drug for the use supported by the original data. If a new use is subsequently discovered for the chemical entity, and the health authority approves the new use based on new data, then the originator of the new data is entitled to three years of protection for that data. During that time, however, generics can continue to produce and market the drug for the original use.

7. Neither Article 15.10.1 or 15.10.2 on marketing exclusivity appear to allow for reliance on previously submitted data or prior approval during the period of market exclusivity absent consent of the first applicant. The Doha Declaration reaffirmed the right of countries to use flexibilities under the TRIPS agreement, such as compulsory licenses. A compulsory license allows someone other than the patent holder to produce and sell a drug under patent. It is not clear to us why the grant of a compulsory license would override a grant of market exclusivity, as provided in Articles 15.10.1 and 15.10.2. (We note that there is no exception to protect the public.) Please describe how the market exclusivity provisions in Article 15.10.1 and Article 15.10.2 relate to Morocco's ability to issue a compulsory license.

The Doha Declaration recognizes that the TRIPS Agreement allows countries to issue compulsory licenses to address public health problems. The U.S.-Morocco FTA is fully consistent with this principle. It contains no provisions with respect to compulsory licensing, leaving the flexibilities available under WTO rules unchanged.

In the negotiation of the U.S.-Morocco FTA, both parties recognized the importance of protecting public health. Your questions pertain to whether provisions of Chapter 15 (which is the Intellectual Property Rights chapter) might affect this common interest.

To address this type of concern, the United States and Morocco agreed to a side letter on public health in which both Parties stated their understanding that ''[t]he obligations of Chapter Fifteen of the Agreement do not affect the ability of either Party to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.'' The Parties also stated that ''Chapter Fifteen does not prevent the effective utilization of the TRIPS/health solution'' reached in the WTO last year to ensure that developing countries that lack pharmaceutical manufacturing capacity may import drugs. Therefore, if circumstances ever arise in which a drug is produced under a compulsory license, and it is necessary to approve that drug to protect public health or effectively utilize the TRIPS/health solution, the data protection provisions in the FTA would not stand in the way.

8. Where a compulsory license has been issued, may a Party automatically deem that the first applicant has consented to reliance on the data or prior approval for the drug produced under the compulsory license?

As explained above, if the measure described in the question is necessary to protect public health, then, as explained in the side letter, the FTA would not stand in the way.

9. If the patent and test-data were owned by different entities, does a compulsory license result in legal ''consent'' by both the patent holder and the data owner for use of the patented material and the test data?

See previous response.

10. When the drug is off patent, and a Party wishes to permit marketing for a second entrant, what mechanism exists in the FTA to allow for an exception to the provisions on market exclusivity?

A patent is designed to protect one type of intellectual property work, i.e., an invention. Protection of data is intended to protect a different type of work, i.e., undisclosed test data that required significant time and effort to compile. The fact that one type of intellectual property protection for a product has expired, should not lead as a matter of course to the conclusion that all other intellectual property rights attached to the same product should also expire. The same is true in other areas of intellectual property. For example, a single CD may encompass several intellectual property rights related to the music, the performer and the record company. These rights may expire at different times. The fact that the copyright attached to the sound recording has expired, should not mean that the composer or performer loses the copyright it has. As you know, this principle is important to a broad range of U.S. creative and innovative industries, including the entertainment sector, America's second largest export business.

However, as indicated in the side letter, if a circumstance arose, such as an epidemic or national emergency, that could only be addressed by granting a second entrant marketing approval notwithstanding the data protection rights of the originator of the data, the FTA would not stand in the way.

11. Is a grant of market exclusivity pursuant to Articles 15.10.1 and 15.10.2 considered an ''investment'' with respect to Chapter 10 of the Agreement? If so, would an abridgement of the period of market exclusivity constitute a compensable expropriation under Chapter 10?

The definition of an ''investment'' in the FTA includes, inter alia, ''intellectual property rights.'' Whether an abridgement of the data protection obligation gives rise to a compensable expropriation of an ''investment'' under Chapter Ten is a fact-specific issue that would have to be resolved on the merits of a particular case. It is worth noting, however, that Article 10.6.5 provides that the expropriation provision of Chapter Ten does not apply to the issuance of compulsory licenses or to the limitation of intellectual property rights to the extent that such action is consistent with the intellectual property chapter (Chapter Fifteen). A determination concerning the consistency of an action with Chapter Fifteen would be informed by the side letter.

12. Article 10.6.5 of the FTA appears to clarify that any act of patent infringement carried out by a Party in the issuance of a compulsory license in accordance with the TRIPS does not constitute a compensable expropriation. Issuance of a compulsory license, however, is only one aspect of the process of getting a drug to market. Does the clarification in Article 10.6.5 also ensure that other measures taken by a government to ensure that a drug on which a compulsory license has been issued can be lawfully marketed (e.g., a grant of marketing approval to a generic or second producer before the period of marketing exclusivity has expired) will not constitute compensable expropriations? If not, is there another provision in the agreement that would ensure that such measures do not constitute expropriations?

See response to Question 11.

13. Article 15.10.3 requires that a patent term be extended where there is a delay in the regulatory approval process. The provision does not state whether delays attributable to the applicant (e.g., failure to provide adequate data) mitigate against extension. Article 15.9., the comparable provision for extension of a patent term because of a delay in the patent approval process, makes clear that delays attributable to the patent applicant should not be considered in determining whether there is a delay that gives rise to the need for an extension. Why was similar language not included in Article 15.10.3?

The Parties did not find it necessary to specifically address the issue of how to handle delays attributable to an applicant for marketing approval in the context of data protection. As with numerous other provisions, the Parties retain the flexibility to address such details in their implementation of the FTA, provided that they comply with the basic obligation.

14. Is Morocco, or for that matter the United States, required by the FTA to extend a patent term where there is a delay in the regulatory approval that is attributable to the applicant?

The FTA preserves flexibility for the Parties to address the issue of delays attributable to an applicant for marketing approval through their domestic laws and regulations.

BOLAR PROVISIONS

15. Please explain whether this Article prohibits Morocco from allowing the export of generic versions of patented pharmaceutical products for purposes other than ''meeting marketing approval requirements.'' If it does not, please explain in detail how you came to that conclusion.

No, it does not. The Article dealing with the ''Bolar'' exception to patent rights only deals with one specific exception. It does not occupy the field of possible exceptions, and thus does not prevent Morocco from allowing the export of generic versions of patented pharmaceutical products for purposes other than ''meeting marketing approval requirements'' when permitted by other exceptions. For example, Morocco has the right to allow exports where consistent with TRIPS Article 30 and WTO rules on compulsory licensing. Morocco may, for example, allow export of generic versions of patented drugs by issuing a compulsory license in accordance with the TRIPS/health solution agreed last August in the WTO.

16. If this provision does in fact limit Morocco's ability to allow the export of generic versions of patented pharmaceutical products, please explain how Morocco could serve as an exporting country to help least-developed and other countries address public health needs under the Paragraph 6 Decision. (Exporters under the Paragraph 6 Decision are exporting to meet the health needs of an importing country, not merely to obtain marketing approval).

As noted in the response to Question 15, the FTA does not limit Morocco's ability to make use of the TRIPS/health solution agreed last August to export drugs under a compulsory license to developing countries that cannot produce drugs for themselves.

17. Does Article 15.9.6 allow export of a generic version of a patented drug to get marketing approval in a third country (i.e., other than the United States or Morocco)? (Article 15.9.6 states that ''the Party shall provide that the product shall only be exported outside its territory for purposes of meeting marketing approval requirements of that Party.'')

Morocco can get marketing approval in a third country to allow export of a generic version through the issuance of a compulsory license for export, consistent with WTO rules. Article 15.9.6 does not interfere with that result.

SIDE LETTER

18. On the Paragraph 6 Decision, please explain how the statement that the FTA does not ''prevent the effective utilization'' is not merely rhetorical. Please be specific as to why you believe the provisions in the FTA do not preclude Morocco from acting as an importer or exporter of drugs under the Paragraph 6 Decision, including how the FTA's provisions related to market exclusivity can be waived if Morocco acts in either capacity.

There are no provisions in the FTA related to compulsory licensing, which means that it does not limit in any way Morocco's ability to issue compulsory licenses in accordance with WTO rules, including TRIPS Article 31 and the TRIPS/health solution. With respect to other rules included in Chapter 15, including data protection, the side letter states that the FTA does not ''prevent the effective utilization of the TRIPS/health solution.'' As stated in the side letter, the letter constitutes a formal agreement between the Parties. It is, thus, a significant part of the interpretive context for this agreement and not merely rhetorical. According to Article 31 of the Vienna Convention on the Law of Treaties, which reflects customary rules of treaty interpretation in international law, the terms of a treaty must be interpreted ''in their context,'' and that ''context'' includes ''any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty.''

19. On the issue of consultation, do the letters mean that both Parties agree to amend the FTA as soon as possible to reflect access to medicines amendments to the TRIPS Agreement? Will the United States refrain from enforcing provisions of the FTA that contravene the TRIPS Agreement amendments while the FTA is being amended? Is USTR willing to engage in an exchange of letter with the Government of Morocco memorializing such an understanding?

The United States would, of course, work with Morocco to ensure that the FTA is adapted as appropriate if an amendment to

the TRIPS Agreement were adopted to ensure access to medicines. The only amendment currently being contemplated with respect to TRIPS involves translating the TRIPS/health solution from last August into a formal amendment. The United States has no intention of using dispute settlement to challenge any country's actions that are in accordance with that solution. In fact, Canada passed legislation recently that would allow it to export drugs in accordance with the TRIPS/health solution. The United States reached an agreement with Canada just last Friday, July 16, to suspend parts of NAFTA to ensure that Canada could implement the solution without running afoul of NAFTA rules.

In closing, let me emphasize that we appreciate the importance of the U.S. commitment to the Doha Declaration on the TRIPS Agreement and Public Health and the global effort to ensure access to medicines in developing countries to address acute public health problems, such as AIDS, malaria and tuberculosis. The United States played a leading role in developing these provisions, including enabling poor countries without domestic production capacity to import drugs under compulsory licenses. We also successfully called for giving Least Developed Countries an additional ten years, from 2006 until 2016, to implement TRIPS rules related to pharmaceuticals. These accomplishments offer a significant solution to the conflicts we encountered on taking office in 2001.

At the same time, as Congress has directed us, the Administration has worked on multiple fronts to strengthen the value internationally of America's innovation economy. These efforts have included stronger intellectual property protection rules and enforcement so as to assist U.S. businesses and workers, and encourage ongoing innovation that benefits U.S. consumers.

Our FTAs are but one component of the Administration's broader efforts to achieve these objectives, and complement efforts undertaken in other fora. Our FTAs not only do not conflict with the objectives expressed in the Doha Declaration but reinforce those objectives and facilitate efforts to address public health problems.

Sincerely,

JOHN K. VERONEAU,
General Counsel.

This is what was said in this letter: ''The government of Morocco is committed to protecting the right to strike in conformance with the International Labor Organization's core principles. In particular, the government will not use 288 of our penal code against lawful strikers.''

I do think that our inquiry, I do think the responsible discussions that were held with the Moroccan government and their officials indicated that, in practice, the labor standards within Morocco essentially meet the ILO standards.

We next raised the issue of prescription medicines. We did not assume more trade would automatically benefit everybody, including our citizens and also the citizens of Morocco. On reimportation, we do not like the language the way it was inserted there, the general language on patent protection. However, reimportation from Morocco has never been suggested in any of the legislation introduced; and so I think for this purpose, for this bill, it is not an issue.

But there were two provisions that could restrict the access of citizens of Morocco to prescription medicines. We are talking about people whose health is at stake. We are talking about the spread of AIDS. We are talking about the spread of other ailments and other diseases. And the question became whether anything in this FTA would restrict the government of Morocco from having access for their citizens to these prescription medicines. That access was assured in the Doha Declaration. And so there followed a letter from us on the Democratic side to USTR; and here is what was said, their understanding of the provisions including the side letters:

''If circumstances ever arise in which a drug is produced under a compulsory license and it is necessary to approve the drug to protect public health or effectively utilize the TRIPS/health solution, the date of protection provisions in the FTA would not stand in the way.''

They also said, USTR, in interpreting what was in this FTA: ''If the measure described in the question is necessary to protect public health, then, as explained in the side letter, the FTA would not stand in the way.''

They also said: ''This side letter constitutes a formal agreement between the parties. It is thus a significant part of the interpretive context for this agreement and not merely rhetorical.''

In a word, the government of Morocco has the flexibility to assure the health of its citizens under the Doha Declaration.

□ 1800

Because of our efforts to clarify what was going on in terms of core labor standards and conditions in Morocco and because of our efforts in the response of USTR on prescription medicines, we feel that this agreement should be approved.

However, our questions serve notice that we should be very sensitive in the future in how we shape trade agreements. We should not assume there is no need to shape expanded trade. We have made it clear it is essential that we do so, and it is under that kind of structure, it is within that perspective, that I suggest that we approve this agreement between our two nations, with whom there are very significant relationships.

Mr. Speaker, I yield back the balance of my time.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

I want to first commend our colleagues on the other side of the aisle on the Committee on Ways and Means for guaranteeing unanimous commitment to passage of our Free Trade Agreement with Morocco and look forward to working with them in the future.

Mr. Speaker, I yield the balance of my time to the distinguished gentleman from California (Chairman THOMAS).

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Speaker, my assumption is that the closing remarks on the part of the ranking member of the Trade Subcommittee was an endorsement. It sounded as though we began with an extremely flawed product and, through their efforts, they were successful in righting the ship so that we could actually have a minimally decent document. I wonder where they were when President Clinton wanted fast track, their President, and three quarters of them voted against providing the President.

So when we listen to the remarks, we really have to put it, one, in context and then appreciate that intensity or outlandishness does not equal votes. And when I close shortly, take a look at the votes in terms of who is for and who is against.

But I do want to spend just 1 minute analyzing the level of the content and the direction of the debate. The ranking member from New York began this discussion by indicating that I stole the election in Florida. That certainly was an appropriate beginning on a debate on a Free Trade Agreement with Morocco. I would probably classify it as silly, but that is the level of debate that we often engage in. And it is just a pleasure to allow the rest of the country to understand the level at which exchanges are made not only in committee but on the floor when we try to engage in a serious discussion.

I heard an indication that people were interested in jobs, and, of course, I will talk about the gentleman from Ohio and his diatribe in a minute.

You missed the boat on the jobs issue. That was the jobs growth tax bill. It has had a major positive effect on jobs. You were ''no'' on that one as well. We have got 46 of the 50 States expanding. Unemployment is down in all regions of the country. This is the fastest growth in the last 20 years. And based upon your debating style, at that point I would pause and parenthetically say even including the Clinton years so that we can understand that the mention of Bush in every other sentence and in a negative way was clearly focused on the Free Trade Agreement and had nothing to do with attempting to influence an election. We have got 1.5 million jobs, continuing to grow, and they will continue to grow right through the election.

But I want to especially focus on the other gentleman from Ohio (Mr. RYAN) because at some point we cannot allow statements made on the floor of the House to stand when they are so outrageously false. The statement referred to legislation that we were considering earlier, and the statement was that what we did denied what the Constitution provides. I would urge everyone at some time, and especially certain Members, to look at the Constitution and turn to Article III, the judicial article, and look at Section 2. And I will just read it briefly, referring to the judicial branch: ''In all cases affecting Ambassadors, other public ministers

and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.''

The Congress was exercising its constitutional function in indicating that areas of appellate jurisdiction were not to be examined by the court, and it absolutely floors me, well, I guess it does not based upon the other statements made by those on the other side of the aisle, that not only apparently they do not know the Constitution, but they actually invoke it in a totally false way on the floor of the House of Representatives.

So what I would really urge Members to do is not pay any attention to what was said necessarily on the other side of the aisle but take a look at the vote for this particular measure. H.R. 4842 certainly deserves the overwhelming majority support of this House. I believe it will be bipartisan. And, please, we will take away from this particular bill on the floor the fact that the vote was bipartisan even if the rhetoric is not and at times not just silly but downright, flat-out wrong.

Mr. KUCINICH. Mr. Speaker, the U.S.-Morocco free trade agreement is bad for America.

The agreement prohibits the importation of lower cost pharmaceuticals, and delays the availability of lower cost generic drugs by creating new patent-like protections for drug regulatory data. Together, these measures will maintain high prescription drug prices in the U.S.

The agreement contains a side letter permitting Morocco to ignore enforcement of its labor laws with no penalty whatsoever. Under this loophole, American employers and workers under U.S. labor law could be at a disadvantage if actual conditions in Morocco are so lax as to create a much cheaper business environment.

The agreement prohibits the preferences for government contracts to be given for: employing U.S. workers, using recycled materials, paying prevailing or living wages. Furthermore, no criminal record of tax evasion, endangering the lives of workers, or pollution can disqualify a company for a government contract.

These flaws are not necessary for trade between nations. They are, however, elements in an anti-consumer, anti-worker, anti-environment and anti-democratic agenda. For these reasons, I oppose the U.S.-Morocco free trade agreement.

Mr. TOWNS. Mr. Speaker, while I intend to vote for the Morocco Free Trade Agreement, I want to stress to the administration how important it is to respect the report language on ''Western Sahara'' which was included in this bill by my colleague, the gentleman from Washington, Mr. MCDERMOTT. This language reflects the sentiment voiced in a recent bipartisan letter to the U.S. Trade Representative, Robert Zoellick.

Under no circumstances should the U.S. proceed with the implementation of a free trade agreement that does not categorically exclude the terrority known as the Western Sahara. The U.S., as well as the international community, does not recognize Morocco's sovereignty over Spain's former colony. Morocco has steadfastly refused any efforts by the United Nations to permit a free and fair referendum on self-determination for the Sahrawi people of Western Sahara. We should not permit Morocco to use the agreement to further its illegal occupation of Western Sahara.

I urge the administration to take these concerns seriously and to implement a free trade agreement that does not violate the sovereignty and rights of the people of Western Sahara.

Mr. CARDIN. Mr. Speaker, I rise today to voice a significant concern with regard to the proposed Free Trade Agreement between the United States and Morocco. While this is a concern specific to Morocco, it highlights a broader issue that I and many of my colleagues share in regard to the pace and ''individuality'' of the many bilateral FTAs being negotiated by the USTR.

Reviewing the February 25, 2004 State Department Country Report on Human Rights for Morocco, I came across several issues. The report highlights a series of human rights abuses in Morocco and I believe these unacceptable practices need to be a priority of the United States as it builds and strengthens its long-standing ties with Morocco.

I was greatly concerned with an issue that comes up several times in the report. To quote one sentence: ''The judiciary lacked independence and was subject to government influence and corruption.'' As I assume we can all agree, the lack of an independent judiciary and corruption are significant, fundamental barriers to the development of a sound, growing trade relationship.

As the Ways and Means Committee considered this agreement I asked representatives of the USTR about this fundamental issue. They had no comment and promised to follow-up with me. I want to thank Chairman THOMAS for for seconding my concerns at the markup and also seeking a response. The USTR has made available to me the American Bar Association report on the state of Morocco's judicial system, citing some hope for reform.

My impression is that the state of the judiciary in the Kingdom of Morocco and corruption in commerce are issues that received little attention as the USTR negotiated this agreement. That should not be the case. Bilateral FTAs are a means to address issues such as these with key trade partners and strengthen the basis for trade relations. An independent judiciary is essential to sound, long-term trade relations. As well, corruption in many foreign nations has long been a concern of the United States; one where we have long set a high standard and required our businesspeople to operate on an ethical basis.

I understand the USTR's current interest in pursuing a large number of bilateral agreements to advance trade around the world—particularly as our more broad based talks and negotiations on global agreements have stalled. That being said, quantity should not supplant quality in agreements. Our goals in each of our trade agreements should remain high and be targeted to the situation in each nation. I am concerned in this agreement we have not met our highest goals and lost an opportunity.

Reluctantly, I intend to support this FTA because I believe the government of Morocco has demonstrated its commitment to working with us and raising its own standards; the new labor rights laws enacted last year are a good example. But I want to strongly urge the USTR to show more care and attention to the individuality of nations as we move forward, particularly as it relates to institutional reforms and the protection of human rights.

Mr. STARK. Mr. Speaker, time sure flies when you're having fun. Just last week I expressed serious misgivings about the U.S.-Australian Free Trade Agreement (FTA), noting, among other problems, that it set a bad precedent for future trade bills. Those concerns are confirmed today by this bill. The U.S.-Morocco FTA is a bad agreement that protects U.S. pharmaceutical manufacturers while ignoring labor standards and the healthcare needs of Moroccan citizens.

I warned you last week that a vote for the Australian FTA was a vote against prescription drug reimportation, and it's true again today. We cannot continue to allow USTR to include intellectual property provisions in FTAs that undermine Congress's ability to provide affordable prescription drugs through reimportation. True, we aren't going to be importing drugs from Morocco any time soon, but what happens in the next FTA, and the one after that? It should be clear by now that the USTR is merely a shill for the pharmaceutical industry, engaged in nothing more than closing the door to drug reimportation at the request of the Administration.

Unfortunately, the Morocco agreement doesn't stop at undermining the debate over reimportation. In fact, it goes much further by limiting access to potentially life saving drugs in Morocco. Because the agreement limits parallel importation, if a pubic health emergency breaks out, Morocco cannot import affordable drugs from neighboring countries if a U.S. country manufacturers the drug.

Once again, the pharmaceutical industry has used the administration and a free trade agreement to protect its profits, without any concern for global health. If Morocco has a public health crisis, it would be forced to purchase drugs from U.S. manufacturers instead of getting immediate access to the same drugs from nearby countries. The U.S. pharmaceutical industry has been gouging prices here in America for years; just think what they can do to prices when a developing country is in crisis.

You would think one provision limiting access to drugs in Morocco would be victory enough for the pharmaceutical manufacturers, but this industry just does not stop. Also included in the FTA are limits on the use of test data and market exclusivity provisions that could raise the price of drugs in Morocco and further limit access.

Because the FTA limits test data usage and creates 5 years of market exclusivity, the introduction of generic drugs in the Moroccan market will be substantially delayed. When generics are not available, prices increase—along with manufacturers' profits—and poorer citizens have less purchasing power to obtain life saving drugs.

There is also the strong possibility that these data and exclusivity provisions will further tie the hands of the Moroccan government during a public health emergency. The FTA and side letter are amazingly vague on whether Morocco can engage in compulsory licensing of otherwise patented drugs during a

health crisis. Here again, the pharmaceutical manufacturers will do anything to make sure they are the monopoly power, even when lives are at stake.

Today we vote on nothing less than the future course of domestic and international pharmaceutical policies. USTR will continue to use trade agreements to limit our ability to import affordable pharmaceuticals from other countries. It is also clear that future negotiations are going to limit drug access in other countries so that U.S. pharmaceutical manufacturers can make even more money abroad. These are bad policies, and we should not let the Administration continue to implement them by slipping them into free trade agreements.

I am also concerned that USTR has once again failed to include core labor standard requirements in a free trade agreement. USTR should not continue to use the ''enforce your own laws'' standard in FTAs without developing countries. I understand Morocco is moving in the right direction in terms of labor rights, but there is no reason this FTA should not have held them to the core labor standards developed by the International Labour Organization (ILO). The ILO standards ensure workers' human rights and their right to organize and strike. We cannot have acceptable free trade without a level playing field, and these standards are the key to ensuring trade between the U.S. and other countries is both free and fair.

This is a bad free trade agreement that sets a bad precedent for all future trade negotiations. We cannot continue to let the administration make health policy without Congressional input, and we surely would not let the pharmaceutical industry have their way just because of their large campaign donor status. We also cannot ignore workers' rights by allowing trade partners to enforce their own laws when those laws do not meet international labor standards.

I urge my colleagues to vote against the U.S.-Morocco Free Trade Agreement.

Mr. JEFFERSON. Mr. Speaker, I strongly support the Morocco Free Trade Agreement and believe it will promote domestic growth in manufacturing and exports. I look forward to seeing this agreement enacted into law. I also support, thank and congratulate the United States Trade Representative and staff in negotiating the inclusion of full duty drawback and duty deferral rights for U.S. manufacturers, exporters and workers in this FTA. Free trade agreements should include no language that eliminates or otherwise restricts the application of duty drawback and duty deferral programs to U.S. manufacturers and exporters. The language in the Singapore, Australia, Israel and Jordan FTAs and in the CAFTA, for example, have no such restrictive language and we should continue to model future agreements after these FTAs. This issue is of significant importance to many U.S. manufacturers and exporters, including those in my home State of Louisiana.

Duty drawback and duty deferral programs reduce production and operating costs by allowing our manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported either whole or as a component part of a finished product. Duty drawback positively affects nearly $16 billion of U.S. exports each year. Additionally, nearly 300,000 U.S. jobs are directly related to exported goods that benefit from drawback, and these high quality jobs could be adversely affected by eliminating or restricting drawback. In my own home State of Louisiana, drawback and duty deferral programs provide substantial benefits to local industries, allowing them to compete on a level playing field in the global market. Drawback and deferral prevents outsourcing and saves U.S. manufacturing and jobs. As long as the programs provide a competitive advantage in production and sales for U.S. manufacturers and exporters, they will assist in preventing U.S. jobs from moving offshore.

Drawback makes a significant difference to U.S. companies at the margin when exporting to our FTA partners where they compete against foreign producers that either have substantially lower costs of production or enjoy low or zero import duty rates. This export promotion program is one of the last WTO-sanctioned programs that provide a substantial advantage to U.S. companies participating in the export market. The application of these programs to U.S. manufacturers and exporters should not be restricted in future free trade agreements that we negotiate with our trading partners.

We need to work hard to complete free trade agreements that provide as many competitive advantages as we can to U.S. manufacturers competing in the global market, encourage growth in U.S. exports, and create U.S. jobs.

Mr. ETHERIDGE. Mr. Speaker, I rise today to announce my support for H.R. 4842, legislation implementing a free trade agreement with the nation of Morocco.

For more than two centuries, Morocco has been a steadfast friend to the United States. Few Americans would guess that Morocco was the first nation to extend recognition to the new American nation on December 20, 1777. Morocco is also one of only six Muslim nations to be designated as a ''major non-NATO ally.'' So it is only fitting that we establish a free trade agreement with such a long-time friend and supporter.

Under this FTA, more than 95 percent of bilateral trade between our countries will be duty-free from the first day of implementation. North Carolina exports to Morocco are generally small, valued at just more than 8 million dollars. Morocco is my state's 80th biggest export market with tobacco products, chemical manufacturing, and transportation equipment being our top three exports.

However, North Carolina stands to gain much from increased access to this new market, especially in the field of agriculture. Tariffs on key North Carolina products like soybeans and processed poultry products will be cut significantly. One significant provision in this agreement is that Morocco has agreed to accept U.S. inspection standards for poultry. Phony sanitary and phytosanitary restrictions on U.S. exports have long been a hallmark of international trade. Having Morocco accept our inspection regime will go along way to improving access to that market.

According to an analysis by the American Farm Bureau Federation, this agreement is expected to result in a 10 to 1 gain for the U.S. agricultural sector. Within the next 10–11 years, the U.S. should expect to increase agricultural exports to Morocco by $225 million. What's more, the FTA includes a provision giving U.S. agriculture an ''automatic upgrade.'' Should Morocco negotiate another trade agreement providing another nation with more favorable market access for agriculture, our FTA automatically obtains the same level of access as the other nation. This will ensure America's competitiveness against other nations seeking to enter the Moroccan market.

I believe the geopolitical reasons for establishing this free trade agreement with another Muslim nation in a volatile region overcomes the few deficiencies inherent in the agreement, particularly with regard to textiles. Because of the small amount of trade between our two countries, any potential adverse impact should be minimized. However, this administration cannot continue to count on this Member's support for other trade agreements if it is not willing to stand up for even stronger labor and environmental standards and better protections for America's fragile textile industry.

I ask my colleagues to support this agreement.

The SPEAKER pro tempore (Mr. OSE). All time for debate has expired.

Pursuant to House Resolution 738, the bill is considered read for amendment, and the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CRANE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on the passage of H.R. 4842 will be followed by 5-minute votes, as ordered, on suspending the rules and adopting House Concurrent Resolution 436; and House Concurrent Resolution 418.

The vote was taken by electronic device, and there were—yeas 323, nays 99, not voting 12, as follows:

[Roll No. 413]

YEAS—323

Abercrombie	Boehlert	Chabot
Ackerman	Boehner	Chandler
Akin	Bonilla	Chocola
Allen	Bonner	Clay
Bachus	Bono	Clyburn
Baird	Boozman	Cole
Baker	Boswell	Cooper
Ballenger	Boyd	Cox
Bartlett (MD)	Bradley (NH)	Cramer
Barton (TX)	Brady (TX)	Crane
Bass	Brown (SC)	Crenshaw
Beauprez	Brown-Waite, Ginny	Crowley
Becerra	Burgess	Cubin
Bell	Buyer	Culberson
Bereuter	Calvert	Cummings
Berkley	Camp	Cunningham
Berman	Cantor	Davis (AL)
Biggert	Capito	Davis (CA)
Bilirakis	Capps	Davis (FL)
Bishop (GA)	Cardin	Davis (TN)
Bishop (NY)	Carson (OK)	Davis, Jo Ann
Bishop (UT)	Carter	Davis, Tom
Blackburn	Case	Deal (GA)
Blumenauer	Castle	DeGette
Blunt		DeLay

DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Engel
English
Eshoo
Etheridge
Everett
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinojosa
Hobson
Hoeffel
Hoekstra
Honda
Hooley (OR)
Houghton
Hoyer
Hulshof
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (OH)
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Larsen (WA)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McHugh
McInnis
McKeon
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Obey
Ortiz
Osborne
Ose
Otter
Oxley
Pearce
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Stearns
Stenholm
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Vitter
Walden (OR)
Walsh
Watson
Watt
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wolf
Wynn
Young (AK)
Young (FL)

NAYS—99

Aderholt
Alexander
Andrews
Baca
Baldwin
Barrett (SC)
Berry
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Burns
Burr
Burton (IN)
Butterfield
Capuano
Cardoza
Coble
Conyers
Costello
Davis (IL)
DeFazio
Delahunt
DeLauro
Doggett
Doyle
Emerson
Evans
Farr
Filner
Frank (MA)
Goode
Green (TX)
Grijalva
Gutierrez
Hastings (FL)
Hayes
Hinchey
Holden
Holt
Hostettler
Hunter
Jackson (IL)
Jones (NC)
Kanjorski
Kaptur
Kildee
Lantos
Larson (CT)
Lee
Lipinski
Markey
Marshall
McGovern
McIntyre
McNulty
Michaud
Miller (NC)
Miller, George
Mollohan
Murtha
Myrick
Nadler
Napolitano
Oberstar
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Peterson (MN)
Pombo
Rogers (AL)
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanders
Schakowsky
Serrano
Sherman
Slaughter
Solis
Spratt
Stark
Strickland
Taylor (MS)
Taylor (NC)
Thompson (MS)
Tierney
Velázquez
Visclosky
Wamp
Waters
Waxman
Wilson (SC)
Woolsey
Wu

NOT VOTING—12

Cannon
Carson (IN)
Collins
Gephardt
Greenwood
Kirk
Kleczka
Kucinich
Lowey
Meehan
Paul
Quinn

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BASS) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1832

Ms. CORRINE BROWN of Florida, and Messrs. BARRETT of South Carolina, RUSH, BURTON of Indiana and BUTTERFIELD changed their vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

CELEBRATING 10 YEARS OF MAJORITY RULE IN REPUBLIC OF SOUTH AFRICA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 436, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 436, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 422, nays 0, not voting 12, as follows:

[Roll No. 414]

YEAS—422

Abercrombie
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus