

Mrs. MYRICK. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Speaker, I thank my friend, the gentlewoman from North Carolina (Mrs. MYRICK), for yielding me the time, and I rise in strong support of this rule.

It pains me today to think that we are even at this place in our Nation's history when we have to debate the importance of maintaining the bedrock of our country, the American family.

As a fairly new grandfather myself, I have watched my children as new parents, and I am reminded that their children are each blessed to have a mother and father. They are uniquely suited, male and female, to invest in their lives.

The legislation and the rule before us is not about discrimination or civil rights as some might claim. This is about the bedrock of our society, our community and our future. This is a big deal.

Mr. Speaker, we need to rise in strong support across the board, both sides of the aisle, in bipartisan fashion. We support the American family.

Mr. MCGOVERN. Mr. Speaker, can I inquire of the time on both sides.

The SPEAKER pro tempore (Mr. TERRY). The gentleman from Massachusetts (Mr. MCGOVERN) has 4 minutes remaining. The gentlewoman from North Carolina (Mrs. MYRICK) has 1 minute remaining.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, this is not just about gays and lesbians. I have been here 24 years. We never do anything only once. When you have developed a particular procedure to use in defense of your views, that gets used again and again. Today, I was going to say you set a precedent if you pass this bill, but you do not set a precedent. You go back in history to the Articles of Confederation.

Passage of this bill will mean that the United States Constitution, in this particular area, will have different meanings in different States because States will then be the ultimate decider of the Constitution, and anyone who thinks that if we do it in this case that is the only time we will ever do it does not follow things closely.

I am the ranking member on the minority side in the Committee on Financial Services. There is not an area in our jurisdiction with respect to the business community of America where the financial community does not come to us and say we need one uniform law.

Do you not understand, Mr. Speaker, that if you set this precedent, it will apply in other areas? Indeed, it will become boilerplate. If you are passing legislation dealing with the second amendment and gun rights; and environmental land takings under the fifth amendment; the commerce clause, fi-

nancial regulation, it will be a matter of course to add this language that says, and by the way, we believe so strongly in what we have done, it will be none of the business of the courts.

There will be different views in different States. Forget the Uniform Commercial Code. We will have the "multiple commercial code," the multiple choice commercial code. We will have the "Multiple Choice Constitution."

I guess I am regretful, maybe I can apologize, that the sight of two lesbians falling in love and wanting to formalize that has so traumatized the majority that they are prepared to make the biggest hole in the United States Constitution that we have seen since we became one Nation. You are saying there will be no more uniformity in the Constitution, and you say it is only here.

By the way, I know a few scholars who think you will lose on full faith and credit. You make a terrible mistake to set a precedent that will be followed time and again. It will become truth that you really care about an issue that you say that the United States Constitution will no longer be a uniform document, but will be subject to dozens of separate State interpretations.

Mrs. MYRICK. Mr. Speaker, I yield 30 seconds to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, wrapping up my comments for this part of the debate, I again rise to support the rule and the underlying bill.

This bill does not favor or disfavor any particular result or any group of people. It is motivated by the desire to preserve for the States the authority to decide whether the shield Congress enacted to protect them from having to accept same-sex marriage licenses out of State will hold.

This bill does not eliminate any group from the Constitution, but instead, recognizes the 10th amendment of the Constitution which declares that all rights are reserved for the States except those which are specifically given to the Federal Government.

I would comment that the observations of the last gentleman are completely contrary to the 10th amendment of the Constitution.

Mr. MCGOVERN. Mr. Speaker, can I inquire of the gentlewoman how many more speakers she has on her side.

Mrs. MYRICK. I have no more speakers.

Mr. MCGOVERN. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, let me reiterate what this bill is all about. It is a mean-spirited, unconstitutional, dangerous distraction. No matter what Members may think about gay marriage, the issue here today is whether or not we will take away people's fundamental constitutional rights.

Gay men and women pay taxes, serve in the United States Congress and in legislatures across the country, serve

in our military, raise families that participate in the political process. The idea that they should be treated as second-class citizens and stripped of their constitutional rights is not only wrong, it is appalling.

Now, I am from Massachusetts and my colleagues will hear supporters of this bill talking today about the alleged catastrophe that has occurred in my State in the last few months; but you know what, Mr. Speaker, the world did not come to an end in Massachusetts when the State Supreme Court made its ruling. People got up and went to work and took their kids to school and paid their bills and lived their lives. The world kept spinning on its axis.

In the end, I think that is what is driving the supporters of this bill crazy. The outrage, the mass hysteria, the political momentum they expected from this issue just have not materialized. The American people are a lot smarter and a lot more tolerant and a lot more reasonable than the Republican leadership gives them credit for, which is why, Mr. Speaker, even if this bill passes today, I still have hope.

Mr. Speaker, every Member of this House took an oath that they would uphold and defend the Constitution of the United States. I hope we will do that today. I urge all my colleagues to vote "no" on this bill.

Mr. Speaker, I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### PROVIDING FOR CONSIDERATION OF H.R. 4842, UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 738 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

##### H. RES. 738

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 4842) to implement the United States-Morocco Free Trade Agreement. The bill shall be considered as read for amendment. The bill shall be debatable for two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. Pursuant to section 151(f)(2) of the Trade Act of 1974, the previous question shall be considered as ordered on the bill to final passage without intervening motion.

SEC. 2. During consideration of H.R. 4842 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

The SPEAKER pro tempore. The gentleman from Florida (Mr. LINCOLN DIAZ-BALART) is recognized for 1 hour.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the distinguished gentleman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. LINCOLN DIAZ-BALART of Florida asked and was given permission to revise and extend his remarks.)

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, House Resolution 738 is a standard, closed resolution for consideration of the underlying trade legislation that provides for fair and extensive debate on H.R. 4842, the United States-Morocco Free Trade Agreement Implementation Act.

The rule provides 2 hours of general debate evenly divided and controlled by the chairman and the ranking minority member of the Committee on Ways and Means.

Mr. Speaker, the relationship between the Kingdom of Morocco and the United States of America has existed throughout the history of the United States. In December of 1777, when war raged between the American colonies and Britain, Sultan Sidi Mohammed boldly recognized our young, and not yet free, Republic. That magnanimous act of recognition was cemented in a Treaty of Peace and Friendship between our countries, ratified in July of 1878. That enduring document remains the oldest unbroken treaty in the history of the foreign relations of the United States. Quite simply, the Kingdom of Morocco is our most permanent and enduring friend.

The gentleman from Pennsylvania (Mr. ENGLISH), the gentleman from Tennessee (Mr. TANNER), the gentleman from Louisiana (Mr. JOHN), and I came together to form the Morocco Caucus in Congress to highlight and to further deepen the truly magnificent and critically important relationship between the United States and the Kingdom of Morocco. The United States has no better friend and ally in the Maghreb, in North Africa and in the Arab world than Morocco.

We are cognizant of, and grateful for, the help Morocco provided during the reign of the great statesman King Hassan II in the dangerous and prolonged struggle known as the Cold War and in the initial and ultimately delicate stages of the peace process between Israel and her neighbors.

We are cognizant of, and grateful for, the unequivocal and decisive help Morocco has provided during the reign of another great statesman, King Mohammed VI, in our common war against the forces of international terrorism. Both our peoples have been victims of the scourge of cowardly attacks upon unarmed civilians, and both nations have answered the challenge of this dif-

ficult time with strong leadership and decisive action.

The United States must be cognizant and supportive of the wisdom and experience of Morocco, that great influence for stability in North Africa, in the Middle East, regarding issues related to international terrorism. We must understand that Morocco's insistence upon its territorial integrity and its refusal to accept a terrorist state in the Western Sahara is critically important, not only for the national security of Morocco, but also for the security of the United States and of our European allies.

Today, Mr. Speaker, we celebrate another milestone in the wonderful relationship between the United States and Morocco as we prepare to consider H.R. 4842, legislation to implement the United States-Morocco Free Trade Agreement. This agreement will benefit both our peoples as it facilitates and encourages ever-growing commerce between our countries and the creation of many new jobs in Morocco and in the United States. This agreement will help turn an already solid relationship into an even greater friendship.

Mr. Speaker, I would like to take this opportunity to publicly thank a few distinguished leaders for making this important free trade agreement a reality.

□ 1145

Understanding the importance of this agreement and with the August recess quickly approaching, the gentleman from California (Mr. THOMAS) made great efforts to expedite the consideration of this agreement in the House. The gentleman from Illinois (Speaker HASTERT) has been especially solid in his leadership on this critical issue, as has been the gentleman from Texas (Mr. DELAY), the majority leader, and the gentleman from California (Mr. DREIER), chairman of the Committee on Rules. Ambassador Bob Zoellick has been and continues to be a stalwart, strong advocate on behalf of the economic interests of the United States and especially job creation in America, and President Bush's leadership has truly been the linchpin for great accomplishments such as this.

While we fight terror across the globe, the United States, under this President, has deepened economic and security-based relationships with our friends for the benefit of our protection and our freedom.

Mr. Speaker, I urge my colleagues to support both the rule and the underlying legislation that we bring before the House today.

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

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

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Florida (Mr.

LINCOLN DIAZ-BALART) for yielding me the customary 30 minutes.

Mr. Speaker, an important part of our job is to encourage the purchase of U.S. goods and services by others in the international community, especially now when the economy is limping along and failing to replace the 1.1 million jobs lost since the Bush administration took office. Hopefully opening up foreign markets for American products will lead to the creation of good, high-paying jobs here in the United States. However, we must be mindful of the consequences of free trade agreements such as the U.S.-Morocco Free Trade Agreement.

Last week this body considered the free trade agreement, FTA, between the United States and our ally Australia. Serious questions were raised about the impact patent protection language might have on the ability of the United States to reimport lower cost drugs from other countries and the impact on the Australian government's low-cost pharmaceutical drug program.

According to the Wall Street Journal, urged by the drug industry, the U.S. Trade Representative is seeking to strengthen protections for costlier brand-name drugs, defending the U.S. companies from foreign competition of foreign producers of generic drugs. So far the USTR has successfully added this safeguard to the trade agreements with Jordan, Chile, Singapore, Australia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic, and Morocco.

The U.S.-Morocco agreement contains patent protection language which restricts Morocco for 5 years from approving generic-drug applications if the application is based on the data of the original manufacturer. What impact will this 5-year ban have when enforced? Will this interfere with a developing African nation's ability to get affordable, generic pharmaceuticals to fight public health crises like the HIV infection?

In response to these serious concerns, the USTR points to a letter of understanding between the United States and Morocco. In the letter, both countries agree that the patent provisions "do not affect the ability of either country to take necessary measures to protect public health by promoting access to medicine for all, and in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency."

This mutual understanding is promising. However, it is not directly part of the free trade agreement or the implementing legislation. According to Robert Weissman of Essential Action, "This statement of understanding expresses noble sentiments, but is unlikely to make much, if any, material difference in the implementation of the agreement." I hope Mr. Weissman is wrong.

Approximately 16,000 Moroccans are infected with HIV, and the pandemic of HIV and AIDS is devastating the nations of Africa. Will Morocco be able to purchase or produce less expensive, generic anti-viral and other medications needed to fight HIV infection? Of the 40 million people with HIV or AIDS globally, less than 10 percent have access to drugs that have transformed many cases of HIV infection to a chronic illness, from a death sentence. In most of the developing world, drugs to fight HIV infection and AIDS are far too expensive for most. Any barrier to access to more affordable generic medicine denies essential health care to the poor.

Women are nearly half of the 40 million infected with HIV, and the infection rate of women is climbing faster than the infection rate of men in many regions. Irene Khan, Secretary-General of Amnesty International, told last week's World AIDS Conference that "gender inequality is driving new infections among women and girls like never before."

Mr. Speaker, more free trade agreements are in the works. The U.S. Trade Representative has negotiated with six Central American countries and has just initiated negotiations with Thailand. The consequences of trade agreements go far beyond merely eliminating trade barriers, such as tariffs. These agreements enforce significant public policy decisions made not by Congress, but by the Trade Representative. Congress has a narrow role in trade agreements, so I urge my colleagues to carefully consider the language in this and all future agreements. Free trade must be fair trade.

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

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield myself such time as he may consume to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules.

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

Mr. DREIER. Mr. Speaker, I rise in strong support of the U.S.-Morocco Free Trade Agreement. Let me begin by responding to some of the comments my very good friend, the gentlewoman from Rochester, New York (Ms. SLAUGHTER), offered. Those have to do with HIV/AIDS and with gender inequality. We are all very concerned about dealing with those very serious crises that are out there. Most of us have come to the conclusion that one of the best tools that we can utilize to deal with those challenges is to encourage greater economic growth. Improving the standard of living for people will dramatically enhance the chance to deal with gender inequality, to deal with the challenge of having the resources to tackle greater education when it comes to the proliferation of HIV/AIDS.

So let me say that this agreement is itself a very, very comprehensive,

unique and cutting-edge agreement which will create opportunities on both sides of the Atlantic.

Last week this body overwhelmingly passed the U.S.-Australia Free Trade Agreement. There is certainly a great deal of differences between Australia and Morocco. Australia has an economy which is very much like ours. They are a developed, industrialized nation with stringent labor and environmental standards. And like the United States, they have an economy that is increasingly based on services.

Morocco, by contrast, is a developing country facing many of the challenges that confront nations throughout the developing world. They are working very hard in Morocco to modernize their infrastructure and develop new sectors even as they strengthen the traditional industries like agriculture and textiles. They are aggressively pursuing labor and environmental reforms as well as combating piracy and counterfeiting. In short, Morocco is working diligently to climb higher and higher up that proverbial economic ladder.

The very remarkable thing about trade liberalization is these two trade agreements, with vastly different economies, can both be unequivocally good for all parties involved, making it a win/win. Trade is not only beneficial for big economies like the United States or wealthy economies like Australia, but it is very, very important for small, developing economies like Morocco, and I would argue in many ways because of the contrast that exists, trade agreements like this for developing nations create a potential for an even more dramatic improvement in the quality of life and the standard of living in those countries.

Unfortunately, economic isolationists often hide behind the guise of fair trade, an argument that was just put forth by my colleague from New York. They use fair trade to argue that because some countries lack the resources to pay American wages or enforce identical labor standards that we have in America, the most developed nation in the world, that we should somehow not trade with these countries. This is a tragically misguided argument.

It is precisely because these countries have further to go up that economic ladder that we should and must pursue open trade. Trade liberalization provides the tools for economic growth by opening up new markets, by building the legal framework necessary for a healthy business and investment environment by creating the resources to set high labor and environmental standards. Morocco is a perfect example of just such a country.

Mr. Speaker, for many years Morocco has been working to bring its economy into this new and vibrant 21st century. It has been working to increase its standard of living, and it has been striving to raise its labor and environmental standards. In fact, Morocco's

aggressive efforts to reform its labor laws since the start of the free trade agreement process began, culminated in a groundbreaking new labor law that was passed just a few weeks ago.

These reforms address issues ranging from child labor to the minimum wage to nondiscrimination of women and the disabled, leading again to deal with the challenge that the gentlewoman from Rochester, New York (Ms. SLAUGHTER) raised. This new labor code makes Morocco a leader in the developing world, and it is a testament both to Morocco's commitment to high standards and the effectiveness and the importance and the dynamism of economic engagement.

Morocco is living up to its commitments even before implementation of this free trade agreement, but I want to make it very clear, while the FTA is critical to helping Morocco stay on its current path of economic development, it is by no means a mere gift from the United States of America. American businesses, American consumers, American workers and investors will all benefit from this agreement. Mr. Speaker, 95 percent of all trade in consumer and industrial goods will immediately become duty free. American farmers will have a huge advantage as they gain greater access than even Morocco's traditional European trading partners currently enjoy. U.S. service providers will benefit from broad-based liberalization across all service sectors, and American producers will benefit from the highest intellectual property protections ever negotiated in a free trade agreement, and that is particularly of concern to those Members from areas like southern California where our entertainment industry is so important. Setting an example and dealing with this issue of intellectual property is key.

The FTA also grants us an opportunity to strengthen our relationship. I want to say that relationship has been dramatically strengthened from the work that the gentleman from Florida (Mr. LINCOLN DIAZ-BALART) has done in developing this important relationship we have. He and the gentleman from Pennsylvania (Mr. ENGLISH) and others he mentioned have been very critical to building this U.S.-Morocco Caucus, and I congratulate them for their hard work in doing what we can to build that relationship which I believe has played a big role in leading us to this point where we, by an overwhelming margin, are going to pass this.

I believe this trade agreement is going to have a chance to deal with one of the challenges that exists in Morocco, and that is dealing with a challenge which has been going on for a long period of time with the Western Sahara. It is my hope that as we strengthen further this relationship between our two countries, we will be able to see a resolution to that.

Mr. Speaker, we know this has been a very important relationship between our two countries. Since 1777, when our

friendship formally began, Morocco has proven to be an important and strategic partner. This friendship has never been more apparent than throughout our recent global efforts to combat terrorism. We all know Morocco has been a critically important ally to us in that effort, and as a Muslim-Arab country, they have been an ardent U.S. supporter in a part of the world where our list of very good friends is not as strong as we would have liked.

Mr. Speaker, on both economic and political fronts, Morocco is making tremendous efforts. Today we are able to strengthen this important relationship while tearing down barriers, creating new opportunities for, as I said, American workers, American investors, American business people, and Moroccans alike. I urge my colleagues to demonstrate their support for our pro-economic growth agenda by voting for this rule and for the underlying measure.

Ms. SLAUGHTER. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. LEVIN), a valued member of the Committee on Ways and Means.

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

Mr. LEVIN. Mr. Speaker, I support this rule. However, I want to make it clear that we do not want this as a precedent that on trade agreements only 2 hours of debate always are allowed. In this case I think 2 hours will be satisfactory. That will not always be true.

□ 1200

There are good reasons to support this FTA, and I do so. There is the historical relationship between our two countries, as mentioned. There are the present realities in our relationship, Morocco's important role in its area and beyond that. Also, there are some important provisions in this agreement; for example, relating to manufacturing goods outside of the textile area. Ninety-five percent of them will become duty-free. There are strong services commitments, strong IPR commitments. So there are good reasons to be supportive of this.

I do want to put in perspective, though, several issues that have come up in our discussion, and these issues really were raised by us on the minority side. The gentleman from California (Mr. DREIER) likes to talk about raising issues as if it is a reflection of economic isolationism. That is the rubric, the mantra, the propaganda of the majority. They try to pin it on Democrats, including JOHN KERRY. It is absurd. We raised several issues because they were legitimate ones, not because we opposed expanded trade, but because we want expanded trade to work for everybody. We want expanded trade to be shaped. We do not think it is some magic bullet that we simply have to shoot and everything will work out. We do not think trade policy should be

on automatic pilot. We do not think that what is necessarily appropriate in one trade agreement is appropriate in another. These cookie cutter approaches of this administration are wrong, and surely we do not support this agreement because we think that the economic record of this administration is worthy of support by anybody in this country.

So we raised a couple of issues. And the gentlewoman from New York (Ms. SLAUGHTER) referred to the prescription medicine provision, and I want to talk about it. Before I do that, a brief word and we will have more discussion during the 2 hours about the core labor standard provisions. The gentleman from California said we should not impose U.S. wages, identical laws on other countries. That is not what we are talking about. That again is propaganda from the majority side. What we are talking about are basic core international standards, and countries, including ours, have signed on to a declaration that says that people should have the right to associate, to bargain, to be free from discrimination, there should be no child or forced labor. That is what we are talking about when we say they should be incorporated into free trade agreements.

We asked the question, an important one, where is Morocco? Where is Morocco today in terms of their laws and their enforcement of these core labor standards? And the majority, because of their view that trade always works out for the best, it is always win-win, did not raise any questions about that. In fact, as to the reforms of 2003 in Morocco, there was not even within our government an English translation of these laws. And we asked for one and we looked at them. We talked to the Moroccan government about these laws, and I am pleased to say that we had a very useful discussion, which we initiated and the Moroccan government responded to, regarding the status of these core labor standards in Moroccan law and in Moroccan practice.

The reforms that were inaugurated last year were a major step forward. The Moroccan society has some history of some freedom for workers, and the independent union in Morocco supports this agreement, I think, as a result. But there were issues raised as to the ability of people to associate, to bargain, and to strike, and so we asked the Moroccan government to give us in writing the status, and I want to quote from their letter and I will place that letter in the RECORD. The letter read this way:

"The government of Morocco is committed to protecting the right to strike in conformance with ILO, International Labor Organization's core principles. In particular, the government will not use Article 288 of our penal code against lawful strikers."

So I very much disagree with the administration's approach in general. They have in the agreements enforce their own laws. They put these in the

agreements regardless of whether the laws incorporate the standards and whether there is implementation of them. And when we have a chance, when we take over, that will change. But in the meanwhile, the question is, is there conformance, is there conformance basically in Morocco with the core labor standards? And I think the realities as we were able to dig them out indicate that they are basically in conformance with the core labor standards.

Now a few words about prescription medicines. Why did we inquire? First of all, there is the same provision here as there is in the previous agreement, including Australia, the general patent provision that could be applied to reimportation of prescription medicines. It turns out in the case of Morocco that that provision is not going to have any potential effect. All of the legislation that has been introduced regarding reimportation does not include Morocco. They have a very small pharmaceutical industry. So I do not think, though I do not like this provision as a general rule, that we should vote against Morocco because of it, but we should make clear that we do not believe these provisions or this provision should be in trade agreements.

Now what about the impact of these provisions not on our important health needs but the important health needs of the people of Morocco? And we were concerned about that. The gentleman from California (Mr. DREIER) talked about AIDS. Look, if we are really concerned, and I think we all are, we need to look at these agreements to see what is the potential impact on the availability of medicines to people in Morocco who are suffering from AIDS and where there is in other cases as well some kind of a health emergency? And there were several provisions in this agreement that raised questions about the accessibility of the people of Morocco in these cases to necessary pharmaceuticals and the ability of the government of Morocco to take the steps necessary to make these drugs available. And these are fairly technical provisions, but they relate to the lives of hundreds of thousands of people. One relates to so-called parallel imports and the other to test data protections.

So I will make a long story short, and, if necessary, we can talk more about this when we have the debate of 2 hours. We entered into discussions with USTR. We on the Democratic side sent a letter to USTR, and they responded. And I include those two letters in the RECORD. And we said, in a few words, would the provisions in these two cases prevent accessibility to necessary drugs in a real case of emergency or necessity? And essentially what USTR has said: The agreement in the side letters, when read together, would not prohibit action by the Moroccan government to provide access to these drugs. And these side letters do have effect. The USTR has told us the

following, and I want to read them so there is clarity. This is from page 8 of the mentioned letter to me:

"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." And they also then earlier have said: "Therefore, if circumstances ever arise in which a drug is produced under compulsory license," meaning the government of Morocco has given that license to make these drugs available, "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." And they say the same as to the parallel import issue.

So I just finish by saying this to make it very clear: We were concerned. There is an AIDS epidemic. There are other health issues of serious import for the lives of children and other citizens of Morocco, and we took the initiative to be sure that this agreement would not prevent the availability of medicines in these circumstances. The Declaration, the language that was worked out in Doha, made it clear as to WTO that countries could protect themselves and their citizens when there was an overriding health need, and we wanted to make sure that nothing in this FTA would override that ability. And I am satisfied because of the exchange of letters. I am satisfied because of what was written to us by USTR. I am now satisfied by their categorical statement at our hearing just a few days ago that there would be nothing that would prevent access to these medicines in the circumstances I mentioned because of the FTA.

For all of those reasons, I believe that the issue for Morocco has been addressed. But I want to make it very clear that when we negotiate these agreements in the first place, as is true for core labor standards, as is true for health needs, as is true for anything else, we should be sensitive to what the possible impact would be. We should not be using cookie cutter approaches when the lives and the livelihoods of people in our country and in other countries are involved.

So I support this agreement. I urge passage of the rule. But I think this has been a healthy process, and I think we have both clarified the meaning of this agreement, and also I think what we have done is to serve notice as to how these agreements should be negotiated in the future.

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.

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 15.9.4. 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.

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/AIDS, 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 im-

port 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 Gov-  
ernment 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 chemi-

cals 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.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I thank the gentlewoman from Rochester, New York for yielding me this time.

I rise today in support of the Moroccan Free Trade Agreement because it is an important agreement with a moderate Muslim country and it represents a vital step towards establishing broader free trade in the Middle East.

Former Clinton administration U.S. Trade Representative Mickey Kantor said, "Closer and mutually beneficial ties between Morocco and the United States will bolster a country that has for several centuries earned a reputation for moderation, tolerance, and stability. The Moroccans have democratized their political structures. They recently made historic reforms to improve women's rights, and codified new labor rights and protections based upon key International Labor Organization conventions.

Mr. Speaker, the Moroccan Free Trade Agreement is the first trade pact to be negotiated with an Arab and Muslim country since September 11, and it

would permit Morocco to join Jordan in the ranks of countries that have entered into an enhanced partnership with the United States.

□ 1215

This agreement will enhance our foreign policy and diplomatic efforts to bridge greater understanding and cooperation with moderate Arab nations.

This FTA is going to ensure that U.S. businesses and workers have greater access to the Moroccan market by further eliminating trade barriers. It will deepen and expand bilateral commercial ties beyond the average level of \$1 billion in current annual two-way trade flows. In fact, the United States enjoyed a surplus of \$2 billion between 1999 and 2003. So they are buying more from us than we are buying from them. This is creating more jobs in the United States.

More than 95 percent of bilateral trade in consumer and industrial products will become duty free immediately upon entry into this agreement, with all remaining tariffs to be eliminated within 9 years. It is the best markets access package of any U.S. free trade agreement with a developing country.

It is going to create new opportunities for U.S. banks, insurance, securities and related services and telecommunications. Key U.S. export sectors gain immediate duty-free access to Morocco, such as information technology, machinery, construction equipment, and chemicals. Morocco is going to accord substantial market access across its entire services regime and adhere to strong and detailed disciplines on regulatory transparency, a key factor.

Additionally, Morocco has agreed to strengthen its intellectual property laws, and the agreement is going to help Morocco to further expand its economic and labor reform efforts.

Mr. Speaker, this FTA will expand trade and bring greater economic opportunities for U.S. workers, farmers and businesses, and is going to promote economic development in other nations.

Through this type of economic engagement, we can forge stronger ties with our allies around the world and promote democracy, free markets, and improved labor standards. That is why I support this agreement. I urge my very good friends, particularly on this side of the aisle, to vote in favor of this implementing legislation.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think the gentleman from Virginia brought up some very important points, and I think they are important to emphasize and not only take note of. This agreement, in addition to the many, many important aspects that it contains for the economy,

obviously, of Morocco, and the United States, is a very important agreement politically; and it encourages the extraordinary progress that Morocco has made in the area of labor rights, in the area of a free press, and in the area of democratization.

Morocco has multiple political parties, espousing all conceivable viewpoints. It has an elected parliament and an elected prime minister. It has made commendable progress. It is a great friend and ally of the United States.

For so many reasons, Mr. Speaker, it is important and appropriate for this Congress to be moving forward today passing this implementing legislation for the United States-Morocco Free Trade Agreement.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. BOOZMAN). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. 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.

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on adopting House Resolution 738 will be followed by 5-minute votes, as ordered, on suspending the rules and passing H.R. 4175; and suspending the rules and adopting H. Res. 728.

The vote was taken by electronic device, and there were—yeas 345, nays 76, not voting 13, as follows:

[Roll No. 407]

YEAS—345

Abercrombie  
Ackerman  
Aderholt  
Akin  
Allen  
Andrews  
Bachus  
Baird  
Baker  
Ballenger  
Barrett (SC)  
Bartlett (MD)  
Barton (TX)  
Beauprez  
Bell  
Bereuter  
Berkley  
Berman  
Biggert  
Bilirakis  
Bishop (GA)  
Bishop (NY)  
Bishop (UT)  
Blackburn  
Blumenauer  
Blunt  
Boehlert  
Boehner  
Bonilla  
Bonner  
Bono  
Boozman

Boswell  
Boyd  
Bradley (NH)  
Brady (TX)  
Brown (SC)  
Brown, Corrine  
Brown-Waite,  
Ginny  
Burgess  
Burns  
Burr  
Burton (IN)  
Butterfield  
Buyer  
Calvert  
Camp  
Cannon  
Cantor  
Capito  
Capps  
Cardin  
Cardoza  
Carson (OK)  
Carter  
Case  
Castle  
Chabot  
Chandler  
Chocoma  
Clay  
Clyburn  
Coble

Cole  
Cooper  
Cox  
Crane  
Crenshaw  
Crowley  
Cubin  
Culberson  
Cunningham  
Davis (AL)  
Davis (CA)  
Davis (FL)  
Davis (IL)  
Davis (TN)  
Davis, Jo Ann  
Davis, Tom  
Deal (GA)  
DeGette  
DeLay  
DeMint  
Deutsch  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dicks  
Dingell  
Doggett  
Dooley (CA)  
Doolittle  
Dreier  
Duncan  
Dunn  
Edwards

Ehlers  
Emanuel  
Emerson  
Engel  
English  
Eshoo  
Etheridge  
Everett  
Farr  
Fattah  
Feeney  
Ferguson  
Flake  
Foley  
Forbes  
Ford  
Fossella  
Frank (MA)  
Franks (AZ)  
Frelinghuysen  
Frost  
Gallely  
Garrett (NJ)  
Gerlach  
Gibbons  
Gilchrest  
Gillmor  
Gingrey  
Gonzalez  
Goode  
Goodlatte  
Gordon  
Goss  
Granger  
Graves  
Green (WI)  
Gutierrez  
Gutknecht  
Hall  
Harman  
Harris  
Hart  
Hastings (WA)  
Hayes  
Hayworth  
Hefley  
Hensarling  
Herger  
Herseth  
Hill  
Hinojosa  
Hobson  
Hoeffel  
Hoekstra  
Holt  
Honda  
Hooley (OR)  
Hostettler  
Houghton  
Hoyer  
Hulshof  
Hunter  
Hyde  
Inslee  
Isakson  
Israel  
Issa  
Istook  
Jackson-Lee  
(TX)  
Jefferson  
Jenkins  
John  
Johnson (CT)  
Johnson (IL)  
Johnson, E. B.  
Johnson, Sam  
Jones (NC)  
Jones (OH)  
Kaptur  
Keller  
Kelly  
Kennedy (MN)  
Kennedy (RI)

Kilpatrick  
Kind  
King (IA)  
King (NY)  
Kingston  
Kline  
Knollenberg  
Kolbe  
LaHood  
Lampson  
Langevin  
Lantos  
Larsen (WA)  
Latham  
LaTourette  
Leach  
Levin  
Lewis (CA)  
Lewis (GA)  
Lewis (KY)  
Linder  
LoBiondo  
Lucas (KY)  
Lucas (OK)  
Lynch  
Maloney  
Manzullo  
Matheson  
Matsui  
McCarthy (MO)  
McCarthy (NY)  
McCollum  
McCotter  
McCrery  
McDermott  
McHugh  
McInnis  
McKeon  
Meehan  
Meek (FL)  
Meeks (NY)  
Menendez  
Mica  
Millender-  
McDonald  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Miller, George  
Moore  
Moran (KS)  
Moran (VA)  
Murphy  
Musgrave  
Myrick  
Neal (MA)  
Nethercutt  
Neugebauer  
Ney  
Northup  
Norwood  
Nunes  
Nussle  
Ortiz  
Osborne  
Ose  
Otter  
Oxley  
Pearce  
Pelosi  
Pence  
Peterson (PA)  
Petri  
Pickering  
Pitts  
Platts  
Pombo  
Pomeroy  
Porter  
Portman  
Price (NC)  
Pryce (OH)  
Putnam  
Radanovich

Ramstad  
Rangel  
Regula  
Rehberg  
Renzi  
Reyes  
Reynolds  
Rodriguez  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Ros-Lehtinen  
Ross  
Roybal-Allard  
Royce  
Ruppersberger  
Rush  
Ryan (WI)  
Ryun (KS)  
Sanchez, Loretta  
Sandin  
Saxton  
Schiff  
Schrock  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Shadegg  
Shaw  
Shays  
Sherwood  
Shimkus  
Shuster  
Simpson  
Skelton  
Smith (MI)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Stearns  
Stenholm  
Sweeney  
Tancredo  
Tanner  
Tauscher  
Tauzin  
Taylor (NC)  
Terry  
Thomas  
Thompson (CA)  
Thompson (MS)  
Thornberry  
Tiahrt  
Tiberi  
Toomey  
Towns  
Turner (OH)  
Turner (TX)  
Upton  
Van Hollen  
Vitter  
Walden (OR)  
Walsh  
Wamp  
Watson  
Waxman  
Weiner  
Weldon (FL)  
Weldon (PA)  
Weller  
Wexler  
Whitfield  
Wicker  
Wilson (NM)  
Wilson (SC)  
Wolf  
Wynn  
Young (AK)  
Young (FL)

NAYS—76

Alexander  
Baca  
Baldwin  
Becerra  
Berry  
Boucher  
Brady (PA)  
Brown (OH)  
Capuano  
Conyers  
Costello  
Cramer  
Cummings

DeFazio  
DeLaHunt  
DeLauro  
Doyle  
Evans  
Filner  
Green (TX)  
Grijalva  
Hastings (FL)  
Hinchey  
Holden  
Jackson (IL)  
Kanjorski

Kildee  
Klecza  
Larson (CT)  
Lee  
Lipinski  
Lofgren  
Markey  
Marshall  
McGovern  
McIntyre  
McNulty  
Michaud  
Miller (NC)

Mollohan	Rahall	Strickland
Murtha	Rothman	Stupak
Nadler	Ryan (OH)	Taylor (MS)
Napolitano	Sabo	Tierney
Oberstar	Sánchez, Linda	Udall (CO)
Obey	T.	Udall (NM)
Oliver	Sanders	Velázquez
Owens	Schakowsky	Visclosky
Pallone	Sherman	Waters
Pascarell	Slaughter	Watt
Pastor	Solis	Woolsey
Payne	Spratt	Wu
Peterson (MN)	Stark	

## NOT VOTING—13

Bass	Kirk	Quinn
Carson (IN)	Kucinich	Simmons
Collins	Lowey	Sullivan
Gephardt	Majette	
Greenwood	Paul	

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BOOZMAN) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1244

Mrs. NAPOLITANO, Mr. BECERRA, Ms. BALDWIN, and Mr. MCGOVERN changed their vote from “yea” to “nay.”

Mr. GUTIERREZ and Mr. WELDON of Florida changed their vote from “nay” to “yea.”

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4175, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 4175, 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 421, nays 0, not voting 13, as follows:

[Roll No. 408]  
YEAS—421

Abercrombie	Bishop (GA)	Burns
Ackerman	Bishop (NY)	Burr
Aderholt	Bishop (UT)	Burton (IN)
Akin	Blackburn	Butterfield
Alexander	Blumenauer	Buyer
Allen	Blunt	Calvert
Andrews	Boehlt	Camp
Baca	Boehner	Cannon
Bachus	Bonilla	Cantor
Baird	Bonner	Capito
Baker	Bono	Capps
Baldwin	Boozman	Capuano
Ballenger	Boswell	Cardin
Barrett (SC)	Boucher	Cardoza
Bartlett (MD)	Boyd	Carson (OK)
Barton (TX)	Bradley (NH)	Carter
Beauprez	Brady (PA)	Case
Becerra	Brady (TX)	Castle
Bell	Brown (OH)	Chabot
Bereuter	Brown (SC)	Chandler
Berkley	Brown, Corrine	Chocola
Berry	Brown-Waite,	Clay
Biggert	Ginny	Clyburn
Bilirakis	Burgess	Coble

Cole	Conyers	Hoekstra	Moran (VA)
Conyers	Cooper	Holden	Murphy
Cooper	Costello	Holt	Murtha
Costello	Cox	Honda	Musgrave
Cox	Cramer	Hooley (OR)	Myrick
Cramer	Crane	Hostettler	Nadler
Crane	Crenshaw	Houghton	Napolitano
Crenshaw	Crowley	Hoyer	Neal (MA)
Crowley	Cubin	Hulshof	Nethercutt
Cubin	Culberson	Hunter	Neugebauer
Culberson	Cummings	Hyde	Ney
Cummings	Cunningham	Inslee	Northup
Cunningham	Davis (AL)	Isakson	Norwood
Davis (AL)	Davis (CA)	Israel	Nunes
Davis (CA)	Davis (FL)	Issa	Nussle
Davis (FL)	Davis (IL)	Istook	Oberstar
Davis (IL)	Davis (TN)	Jackson (IL)	Obey
Davis (TN)	Davis, Jo Ann	Jackson-Lee	Oliver
Davis, Jo Ann	Deal (GA)	(TX)	Ortiz
Deal (GA)	DeFazio	Jefferson	Osborne
DeFazio	DeGette	Jenkins	Ose
DeGette	Delahunt	John	Otter
Delahunt	DeLauro	Johnson (CT)	Owens
DeLauro	DeLay	Johnson (IL)	Oxley
DeLay	DeMint	Johnson, E. B.	Pallone
DeMint	Deutsch	Johnson, Sam	Pascarell
Deutsch	Diaz-Balart, L.	Jones (NC)	Pastor
Diaz-Balart, L.	Diaz-Balart, M.	Jones (OH)	Payne
Diaz-Balart, M.	Dicks	Kanjorski	Pearce
Dicks	Dingell	Kaptur	Pelosi
Dingell	Doggett	Keller	Pence
Doggett	Dooley (CA)	Kelly	Peterson (MN)
Dooley (CA)	Doolittle	Kennedy (MN)	Peterson (PA)
Doolittle	Doyle	Kennedy (RI)	Petri
Doyle	Dreier	Kildee	Pickering
Dreier	Duncan	Kilpatrick	Pitts
Duncan	Dunn	Kind	Platts
Dunn	Edwards	King (IA)	Pombo
Edwards	Ehlers	King (NY)	Pomeroy
Ehlers	Emanuel	Kingston	Porter
Emanuel	Emerson	Klecza	Portman
Emerson	Engel	Kline	Price (NC)
Engel	English	Knollenberg	Pryce (OH)
English	Eshoo	Kolbe	Putnam
Eshoo	Etheridge	LaHood	Radanovich
Etheridge	Evans	Lampson	Rahall
Evans	Everett	Langevin	Ramstad
Everett	Farr	Lantos	Rangel
Farr	Fattah	Larsen (WA)	Regula
Fattah	Feeney	Larson (CT)	Rehberg
Feeney	Ferguson	Latham	Renzi
Ferguson	Filner	LaTourette	Reyes
Filner	Flake	Leach	Reynolds
Flake	Foley	Lee	Rodriguez
Foley	Forbes	Levin	Rogers (AL)
Forbes	Ford	Lewis (CA)	Rogers (KY)
Ford	Fossella	Lewis (GA)	Rogers (MI)
Fossella	Frank (MA)	Lewis (KY)	Rohrabacher
Frank (MA)	Franks (AZ)	Linder	Ros-Lehtinen
Franks (AZ)	Frelinghuysen	Lipinski	Ross
Frelinghuysen	Frost	LoBiondo	Rothman
Frost	Gallegly	Lofgren	Roybal-Allard
Gallegly	Garrett (NJ)	Lucas (KY)	Royce
Garrett (NJ)	Gerlach	Lucas (OK)	Ruppersberger
Gerlach	Gibbons	Lynch	Rush
Gibbons	Gilchrist	Maloney	Ryan (OH)
Gilchrist	Gillmor	Manzullo	Ryan (WI)
Gillmor	Gingrey	Markey	Ryun (KS)
Gingrey	Gonzalez	Marshall	Sabo
Gonzalez	Goode	Matheson	Sánchez, Linda
Goode	Goodlatte	Matsui	T.
Goodlatte	Gordon	McCarthy (MO)	Sanchez, Loretta
Gordon	Goss	McCarthy (NY)	Sanders
Goss	Granger	McCollum	Sandlin
Granger	Graves	McCotter	Saxton
Graves	Green (TX)	McCrery	Schakowsky
Green (TX)	Green (WI)	McDermott	Schiff
Green (WI)	Grijalva	McGovern	Schrock
Grijalva	Gutierrez	McHugh	Scott (GA)
Gutierrez	Gutknecht	McInnis	Scott (VA)
Gutknecht	Hall	McIntyre	Sensenbrenner
Hall	Harman	McKeon	Serrano
Harman	Harris	McNulty	Sessions
Harris	Hart	Meehan	Shadegg
Hart	Hastings (FL)	Meek (FL)	Shaw
Hastings (FL)	Hastings (WA)	Meeks (NY)	Shays
Hastings (WA)	Hayes	Menendez	Sherman
Hayes	Hayworth	Mica	Sherwood
Hayworth	Hefley	Michaud	Shimkus
Hefley	Hensarling	Miller (FL)	Shuster
Hensarling	Herger	McDonald	Simmons
Herger	Herse	Miller (FL)	Simpson
Herse	Hill	Miller (MI)	Skelton
Hill	Hinchey	Miller (NC)	Slaughter
Hinchey	Hinojosa	Miller, Gary	Smith (MI)
Hinojosa	Hobson	Miller, George	Smith (NJ)
Hobson	Hoeffel	Mollohan	Smith (TX)
Hoeffel		Moore	Smith (WA)
		Moran (KS)	Snyder

Solis	Thompson (MS)	Waters
Souder	Thornberry	Watson
Spratt	Tiahrt	Waxman
Stark	Tiberi	Weiner
Stearns	Tierney	Weldon (FL)
Stenholm	Toomey	Weldon (PA)
Strickland	Towns	Weller
Stupak	Turner (OH)	Wexler
Sullivan	Turner (TX)	Whitfield
Sweeney	Udall (CO)	Udall (CO)
Tancred	Udall (NM)	Wicker
Tanner	Upton	Wilson (NM)
Tauscher	Van Hollen	Wilson (SC)
Tauzin	Velázquez	Wolf
Taylor (MS)	Visclosky	Woolsey
Taylor (NC)	Vitter	Wu
Terry	Walsh	Wynn
Thomas	Walsh	Young (AK)
Thompson (CA)	Wamp	Young (FL)

## NOT VOTING—13

Bass	Greenwood	Paul
Berman	Kirk	Quinn
Carson (IN)	Kucinich	Watt
Collins	Lowey	
Gephardt	Majette	

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BOOZMAN) (during the vote). Members are advised 2 minutes are left in this vote.

□ 1253

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## SENSE OF THE HOUSE REGARDING POSTPONEMENT OF A PRESIDENTIAL ELECTION

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 728.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. NEY) that the House suspend the rules and agree to the resolution, H. Res. 728 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 419, nays 2, not voting 13, as follows:

[Roll No. 409]  
YEAS—419

Abercrombie	Bishop (GA)	Burns
Ackerman	Bishop (NY)	Burr
Aderholt	Bishop (UT)	Burton (IN)
Akin	Blackburn	Butterfield
Alexander	Blumenauer	Buyer
Allen	Blunt	Calvert
Andrews	Boehlt	Camp
Baca	Boehner	Cannon
Baker	Bonilla	Cantor
Baldwin	Bonner	Capito
Ballenger	Bono	Capps
Barrett (SC)	Boozman	Capuano
Bartlett (MD)	Boswell	Cardin
Barton (TX)	Boucher	Cardoza
Bass	Boyd	Carson (OK)
Beauprez	Bradley (NH)	Carter
Becerra	Brady (PA)	Case
Bell	Brady (TX)	Castle
Bereuter	Brown (OH)	Chabot
Berkley	Brown (SC)	Chandler
Berman	Brown, Corrine	Chocola
Berry	Brown-Waite,	Clay
Biggert	Ginny	Clyburn
Bilirakis	Burgess	Coble