

**Statement of Robert Vastine
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on the U.S. Morocco Free Trade Agreement
before the Trade Policy Staff Committee
Office of the United States Trade Representative**

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Introduction

Thank you for this opportunity to testify on behalf of the Coalition of Service Industries on the US Free Trade Agreement with Morocco. CSI is comprised of US service companies and trade associations seeking to achieve market access in all modes of supply in all negotiating forums. We have prepared a guidebook of services priorities for the FTA as a ready reference to the trade liberalization priorities of most of the sectors represented in CSI's membership.

These negotiating priorities reflect the tremendous economic importance of services in the US. Services are essential inputs into the production of virtually all products. The price and quality of services influence cost and productivity of all other sectors in an economy including manufacturing and agriculture. Thus when liberalized and made more efficient, services have a strong effect in the competitiveness of an entire economy, and could be of enormous value to Morocco.

Services represent 54% of Morocco's gross domestic product with the bulk derived from tourism. In the last two decades, export of commercial services from Morocco has tripled.¹ Morocco has undertaken structural reform in service industries through privatization and a more progressive investment regime. Morocco has begun the process of privatizing its monopoly telecommunications provider Maroc Telecom with the establishment of an independent regulator and market openings to foreign providers. The government has also approved privatization of three state banks. Morocco has liberalized foreign exchange transactions and simplified administrative procedures, although, obtaining routine permits remains a problem. A trade agreement with Morocco should encourage it to complete these and other reforms, and accelerate their implementation.

In the GATS, Morocco has made limited commitments in the establishment of professional, business, basic and value added telecommunications, environmental, financial and tourism services. Almost all of its bindings are in

¹ World Bank

mode 3. Morocco has committed to under 7% of all possible WTO GATS services commitments, which is consistent with the average developing country index of 6.9%. To determine this measure, the number of Morocco's GATS commitments on market access and national treatment are divided by the possible number of market access and national treatment commitments for all sectors in all modes of supply.²

In the GATS, Morocco has maintained limitations on the movement of personnel except for those employed by a firm established in the country. Morocco maintains restrictions on personal capital transfers, caps on foreign capital participation in accounting and banking, and authorization requirements on the purchase of foreign securities. Morocco also maintains significant reservations on reinsurance. Morocco has made very few commitments in cross border trade in services and movement of personnel or modes 1,2, & 4. Furthermore, Morocco has not made commitments in the GATS in audiovisual, distribution, health or education services.

An FTA with Morocco will require substantial market openings in all sectors in all modes of supply. One of CSI's main priorities in this and all other FTA's is a commitment to far-reaching rules providing transparency, like those we described in CSI's "Framework for Transparency in Services". These focus on improving the processes for developing domestic regulation. In my testimony I will identify priorities for transparency, electronic commerce, temporary entry of natural persons, and acquired rights. The written testimony also highlights priorities for advertising, audiovisual, computer and related, education, express delivery, energy, financial, legal, maritime, multimedia information technology, telecommunications, and tourism services.

Framework for Transparency in Services

CSI very strongly believes that the trade agreement with Morocco must contain cross-cutting disciplines to promote greater regulatory transparency for services. A transparent and fair regulatory system is a precondition for the liberalization of services. The trade agreement with Morocco should contain strong disciplines to promote greater transparency across the board for all services. Crosscutting transparency commitments should be sought in three areas: (A) Standard-setting; (B) the Regulatory Application Process; and (C) Judicial, Arbitral, or Administrative Tribunals. In particular service sectors, sectoral agreements or scheduling can be used to lay out additional transparency requirements for that sector, including broader regulatory reform as necessary and appropriate. Some sectors may need little supplementation, while other sectors may need many special rules tailored to that sector. For

² Hoekman, Bernard. 1996. "An Assessment of the General Agreement on Trade in Services," in Will Martin and L. Alan Winters (eds.), *The Uruguay Round and the Developing Economies*.

example, in the insurance industry we recommend best practices on solvency and prudential issues, regulation of monopolies, and independent regulatory authority. This approach allows negotiators to respond flexibly to the particular needs of each sector while at the same time building on the transparency disciplines that apply across all sectors.

Temporary Entry of Key Business Personnel

The objective of this proposal is to provide for the entry of persons at professional or highly skilled levels through expeditious issuance of visas that allow for multiple entry and the performance of temporary work assignments. There is no US visa category that covers both intracorporate movement and work for clients or customers in another country where there is no affiliate office of the parent company.

Phase in Commitments

We fully recognizes that the liberalization we seek would require wrenching, dramatic changes in an economy like Morocco's. Rather than lower our objectives for agreements with Morocco and similar economies, we should encourage strong commitments with sufficient phase in periods to assure a minimum of disruption as change takes place. At the same time, these phase in periods should not be excessively long.

Electronic Commerce

The trade agreement with Morocco should include the groundbreaking provisions on digital products contained in the US Singapore FTA, which prevents discriminatory treatment on the basis of origin. The agreement should provide trade-liberalizing provisions that address electronic commerce issues affecting goods, services, and intellectual property as well as binding principles that support the maintenance of open markets for electronic commerce.

The agreement should ensure maximum liberalization in those services that:

- constitute the infrastructure of the Internet: basic telecommunications, value added services (on a technology neutral basis, including wireline, wireless, cable and satellite), computer and related services, and electronic naming and authentication services;
- facilitate e-commerce, e.g. financial (including online payments), distribution, advertising, and express delivery services;
- are traded electronically, e.g. accounting and educational services.

The agreement should provide binding principles with commitments to:

- avoid the creation of any unnecessary barriers to e-commerce;
- ensure where regulations are necessary, they are as least trade-restrictive as possible; and
- ensure that firms are not restricted from using advanced technologies (hardware, software, technical data or know-how) in the conduct of their business.

With respect to intellectual property, the agreement should:

- provide maximum liberalization of the distribution of intellectual property based content including software and audiovisual products;
- adopt and ensure full compliance with existing international intellectual property accords, including the WIPO digital treaties, and
- provide effective and timely implementation and enforcement of TRIPS;
- provide copyright term extension,
- provide TRIPS plus levels of commitments for IP with limitations on liability for Internet service providers as regards copyright protection;
- provide additional higher level commitments consistent with the WIPO digital treaties including anticircumvention measures.

The agreement should ensure that customs valuation for digitized products delivered on a physical medium is based solely upon the valuation of the carrier medium.

The agreement should also require stronger participation in the Information Technology Agreement (ITA), which lowers the tariffs on inputs used to build networks and devices required to access these networks for electronic commerce.

Acquired Rights

An acquired rights provision should be included in the trade agreement with Morocco. Service providers already established in the market should not suffer a loss of rights due to insufficient, or graduated commitments in the final outcome of the agreement. To ensure a commercially meaningful agreement, USTR should require inclusion of an acquired rights provision, which stipulates "that the conditions of ownership, management, operation, juridical form and scope of activities as set out in a license or other form of approval establishing or authorizing operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they exist as of the date of Morocco's signing of the FTA." Such a provision, as used in the US accession agreement with Oman, should prevent a loss of rights.

Telecommunications Services

In telecommunications, Morocco should improve on its current GATS commitments. It should provide full market access and national treatment for services supplied cross border and through commercial presence for basic telecom services, value-added network services, and computer and related services.

Morocco should ensure pro-competitive, cost based interconnection and non-discriminatory access to unbundled elements of basic telecommunications networks and services. They should also provide non-discriminatory, cost based access to all communications platforms for value added services. Morocco should also grant licenses in mobile telecommunications and liberalize the fixed line sector more quickly.

Morocco should commit to ensuring rights of way, requiring number portability, and allowing resale.

Morocco should commit to a fair, transparent, and pro-competitive regulatory process and independence and impartiality of the regulator.

Morocco should provide a specific timeframe for eliminating cross-subsidies and other types of anti-competitive behavior.

In addition, Morocco should ensure that ANRT has sufficient sanctioning power to prevent the abuse by telecommunication monopolies.

Morocco should allow new entrants and new technologies the freedom to respond innovatively without burdening them with traditional telecommunications regulation.

Banking, Securities and Related Financial Services

Stability of domestic financial markets is reinforced by the healthy, nondiscriminatory participation of local and international firms who are equally encouraged to invest capital, talent and technology in environments marked by regulatory strength and transparency. To achieve this in Morocco the government must enforce antitrust regulations and commit itself to transparency³. In order to take advantage of the significant contribution financial services can make to all sectors in the Moroccan economy, negotiators

³ IMF Working Paper 97/81, Abdelali Jbili, Klaus Enders, Volker Treichel.

should achieve substantive commitments for cross-border trade and local presence consistent with the following goals:

- Remove barriers to establishment by foreign investors in the financial sector and allow competitive operations through wholly owned subsidiaries, branches or other forms of presence.
- Remove "economic needs tests" and other geographic or product-specific restrictions. Commit to grandfather existing investment in operations and activities.
- Schedule commitments to support financial services provided cross-border without local establishment and by consumption abroad.
- Schedule commitments to facilitate the temporary entry of key financial services personnel required for managerial, technological, systems or risk managements purposes.
- Schedule commitments to support the provision and transfer of financial information, financial data processing and the provision of advisory and software related services.

In addition, Morocco should take into account the following forward-looking factors which should be reflected increasingly in the formulation of commitments:

- Provide market access and national treatment for asset management and pension fund services provided by the full range of financial services firms.
- Remove discriminatory treatment of capital requirements applied to foreign bank branches including capital restrictions on foreign ownership.
- Eliminate mandatory lending requirements.
- Seek commercially meaningful access commitments consistent with both the 1997 Financial Services Agreement and the goals set forth above.

Insurance

The insurance sector advocates a "Proposed Model Schedule for Future Insurance Commitments by WTO Members." It is suggested for use in negotiations with Morocco in scheduling commitments in services.

The Model Schedule identifies insurance commitments for market access in the four GATS modes of supply and national treatment, together with commitments on regulatory transparency and other areas of regulatory best practice. The Model Schedule provides a basis for seeking a structured pattern of minimum commitments on insurance and a template for assessing whether countries have offered an acceptable set of commitments. The purpose of the Model Schedule is to give greater specificity and predictability to those commitments that are important to the industry. Negotiators should secure agreement to include the Insurance Model Schedule and Best Practices as part of Moroccan commitments.

The first part of the document identifies commitments to market access and national treatment. Its purpose is to give greater specificity and predictability to commitments important to the industry. The text builds on existing commitments and incorporates certain specific obligations to remove any ambiguity and to ensure that those commitments are built into the more general obligations. It sets forth obligations not addressed clearly in current schedules, including the obligation to fully stage a commitment within a specified timeframe, and to ensure a standstill to protect acquired rights.

The second part of the document entitled “Best Practices in Insurance” takes the form of “additional commitments” under GATS Article XVIII. It covers aspects of domestic regulation that are not addressed by the market access or national treatment provisions, like transparency, solvency and prudential issues, regulation of monopolies, and independent regulatory authority.

Negotiators should use the proposed model schedule for future insurance commitments and pay particular attention to eliminating foreign capital limitations and non-discriminatory treatment of foreign service providers by the state owned provider of postal services that is also active in the insurance sector⁴.

Examples of current barriers inconsistent with the model schedule for insurance include:

I. Market Access and National Treatment

A. Acquired Rights:

- Whether a country protects acquired rights will be evident as offers are made and should be addressed according to the Model Schedule.

B. Market Access – Cross Border Trade:

- Restrictions on cross-border supply of insurance. Mandatory cession requirement on reinsurance.

⁴ Article 72, Law no. 24-96 Relative to the Post Office and Telecommunications.

- Economic needs test.

C. Market Access – Commercial Presence:

- 100% foreign equity ownership not permitted (proposed legislation would restrict foreign equity to 49 or 50%).
- Restrictions on form of establishment.
- Economic needs test.

D. Market Access – Temporary Entry of Natural Persons:

- No specific barriers identified at this time.

E. National Treatment:

- No specific barriers identified at this time.

II. Best Practices in Insurance

A. Transparency:

- No specific barriers identified at this time.

B. Solvency and Prudential Focus:

- No specific barriers identified at this time.

C. Insurance Monopolies:

- No specific barriers identified at this time.

D. Independent Regulatory Authority:

- No barrier: there is an Independent Regulatory Authority.

Significant fields in which Morocco has not yet made any commitments also include (but are not confined to) insurance intermediation and services auxiliary to insurance (Modes 1,2,3,4).

Financial Information

The agreement should contain language ensuring the ability to provide financial information to all end-users, including cross-border provision.

Advertising Services

Morocco should make commitments in advertising services to provide full market access and national treatment, as well as commit to the adoption of the least trade restrictive measures for advertising.

Advertising commitments should be interpreted as technology neutral. The type of technology or distribution platform used should not affect the coverage of a commitment.

Audiovisual Services

With regard to audiovisual services, the agreement should include:

- Full market access and national treatment for production, distribution, and projection services (including cinema theater ownership and management) for motion pictures and sound recordings.
- Full market access and national treatment for radio and television services and transmission services.
- Customs valuation on the basis of the carrier medium for goods needed in the conduct of AV services.
- Tariff reductions on AV line items, including production equipment and final products, and zero duties on DVDs and other digital products.

Computer and Related Services

The trade agreement with Morocco should ensure that the following priorities are achieved in computer and related services:

- Trade negotiations for the information technology services sector should achieve full market access and national treatment commitments for all services relating to information technology in the on-line and off-line services.
- Liberalization commitments in all services, including computer and related services should be taken at the highest level possible.
- Existing GATS commitments for all services should apply when these services are made available over the Internet.
- Software and other digitized products made available online, whether classified as a good or a service, should receive market access, MFN and national treatment no less favorable than the products would receive if it were traded as a good through physical delivery.

- Both general management consulting and information technology consulting should be fully liberalized.
- As part of negotiations on information technology services, Morocco should ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade in computer and related services.
- Morocco countries should reduce or remove, where appropriate, measures that impede or restrict the temporary movement of key business personnel.
- Morocco should commit to market access and national treatment in government procurement while ensuring a transparent procurement process.
- Services that are needed to create the infrastructure for electronic commerce and services that can be delivered electronically should be liberalized.

Education Services

The trade agreement with Morocco should create conditions favorable to suppliers of higher education, adult education, and training services (including testing services) by removing and reducing obstacles to the transmission of such services across national borders through electronic or physical means. Agreements should also remove or reduce barriers in Mode 3 (commercial presence) and Mode 2 (consumption abroad). Examples of barriers are included in the guidebook.

Energy Services

Both market access and regulatory issues must be addressed in the trade agreement negotiations. The agreement on energy services should ensure the broadest possible market access commitments. Energy services providers should have the opportunity to distribute their services through all four modes of supply: cross border supply, purchase and consumption abroad, establishment of a commercial presence, and through the temporary movement of natural persons. Classifications for energy services should be flexible and cover the full array of commercial activities to encompass new energy activities and technologies.

To ensure that energy services providers can use the best available technology, market access should be allowed without regard for the technology used to

provide the energy services. Energy services providers should also be allowed to import, on a temporary duty-free basis, tools of the trade and equipment essential to the provision of those services.

Energy services companies should also have the right to the temporary entry of essential personnel with highly specialized skills necessary to provide a covered service.

Morocco must adopt regulatory systems that provide:

- Transparency in the formulation, promulgation and implementation of rules, regulations, licenses, technical standards, and arbitration and judicial review;
- Non-discriminatory third-party access to and interconnection with energy networks and grids.
- An independent regulatory authority separate from and not accountable to any supplier of energy services.
- Transparent, objective and timely procedures for the allocation of scarce network resources, such as transmission capacity and rights of way.

Environmental Services

Negotiators should seek commitments that include services for environmental clean-up, remediation, prevention and monitoring. With this broad scope of services, negotiators should seek deep and broad commitments across all modes of supply. Environmental services providers should also be allowed to import, on a temporary duty-free basis, tools of the trade and equipment essential to the provision of those services.

Express Delivery Services

The agreement should include:

- Language that appropriately defines express delivery services to include the full scope of services provided.
- Narrowly drawn reservations on services related to express delivery services, such as ground transportation or warehousing. Such reservations should specify that they do not apply to express delivery services.
- A narrowly tailored reservation on postal services. This reservation should make clear that it does not apply to express delivery services.

- A prohibition on cross-subsidies of revenues derived from a postal service's monopoly operations into competitive express delivery service operations.
- Trade facilitation provisions that expedite treatment of express delivery shipments.

The agreement should provide full national treatment and market access in the express delivery services sector. Barriers in the areas of customs, postal, ground transportation, operational control, radio frequency, licensing and ownership should be eliminated. Commitments in electronic commerce are also sought.

Legal Services

The agreement on legal services should ensure that individual lawyers and law firms are permitted to create and maintain their professional establishments in Morocco to supply legal services under the name used in the US. Lawyers or law firms should be permitted to establish a presence in Morocco in any form available to suppliers of legal services in the US, including as a branch.

Morocco should require lawyers or law firms from the US to register with its competent authority. The competent authority should make administrative criteria and procedures, including procedures for applying for registration, publicly, available in writing, and ensure that they are administered in an objective and impartial manner, within a reasonable period of time. As a condition to registration of an establishment, the competent authority should require a registration by one or more lawyers who are responsible for the establishment, and the giving of an undertaking by the law firm.

The competent authority should require lawyers to abide by Moroccan rules in regards to the legal profession, and to subject them to the disciplinary rules of the host country. Disciplinary actions should be administered in a reasonable, objective and impartial manner.

The establishment should be permitted to supply legal services which the lawyers or law firms are authorized to render in their home country. Authorized lawyers should be allowed to supply services relating to the law of Morocco even if they are not members of the professional staff. Lawyers should be given a reasonable opportunity to qualify as legal professionals in Morocco. Rules applicable to lawyers from the US should be no more restrictive than rules for the Moroccan lawyers.

An establishment should be permitted to include members of Morocco's legal profession on its professional staff, either as employees, or as partners or

shareholders or the equivalent. A lawyer should be allowed to use a professional title authorized by Morocco or the US with an appropriate reference.

Lawyers should be permitted to participate in any capacity in arbitration proceedings in Morocco without subjecting the lawyers to any registration or other requirements applicable to establishments.

Maritime Transportation

Maritime matters should be excluded from the current negotiations. However, the trade agreement with Morocco should ensure elimination of the 50 per cent *ad valorem* duty on ship repairs to US flag vessels outside of the US⁵.

The position on elimination of the 50% *ad valorem* duty is shared by major US flag maritime companies and associations.

Multimedia Information Technology

The ability of multimedia information technology firms to advance international business objectives depends on the creation of a global, regional and country-specific environment that enables the investment, production, distribution and sale of content, technology and services around the world. Trade negotiations are an important means of creating this environment. This trade agenda is also a tangible way to increase revenues and decrease costs for multimedia operations globally.

The specific priorities to be pursued multilaterally, regionally and bilaterally include eliminating restrictions on the ability to invest or acquire overseas media and communications assets and engage in those lines of business. Governments should lower the costs for producing and moving both physical and digital products and network inputs and access devices. They should ensure fair and non-discriminatory access to all communications platforms. Governments should eliminate the barriers to digital delivery of multimedia information technology products and e-commerce and strengthen IPR protection.

⁵ The 50% *ad valorem* duty is imposed on ship repairs to U.S. flag vessels outside of the U.S. It is clearly in the interest of U.S. shipping companies that this burdensome duty be eliminated for repairs to U.S. flag vessels outside of the United States. The *ad valorem* duty has been in place to encourage job creation in U.S. shipyards, but has been a policy failure that is nothing more than an unnecessary tax on U.S. flag ship owners.

Tourism Services

The agreement should strive to generate investment for tourism by removing obstacles to the establishment and operation of hotels and other lodging places; by making it easier for travelers to visit and make purchases in Morocco; and by reducing the problems faced by organizers of international conferences and conventions.

Conclusion

A US-Morocco FTA that provides meaningful liberalization will serve as an important example for other developing countries. It could demonstrate that commitments to trade liberalization and internal economic reform are necessary for economic development, higher standards of living, and global competitiveness.