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Joan Claybrook, President

Please Vote No on the U.S.-Morocco Free Trade Agreement: Its Provisions Are Nearly Identical to CAFTA, Extending the Failed NAFTA Model to Yet Another Country

July 20, 2004

Dear Member of Congress:

On behalf of Public Citizen's 200,000 members nationwide, I am writing to request that you vote no on the pending U.S.-Morocco Free Trade Agreement (FTA). We urge you to oppose this agreement because it includes an array of the worst labor, environmental, investment, health, drug access, procurement and service sector failures of NAFTA. This FTA, which has a text almost identical to the highly controversial CAFTA, can only be understood as an extension of the NAFTA model.

Access to medicine and other patent issues

The U.S.-Morocco FTA requires that Morocco and the U.S. adopt domestic law providing extra protection for pharmaceutical companies. One set of provisions would forbid reimportation of cheaper medicines into the U.S. or Morocco from third countries unless pharmaceutical companies give their approval. (Article.15.9.4) This could make it harder for Congress to pass legislation allowing "parallel imports" of cheaper prescription drugs into the U.S., as well as undermine access to affordable medicines for Moroccan consumers. Another provision regarding data exclusivity forbids drug safety and efficacy test data collected by the patent holder to be used for five years to obtain marketing approvals for competing generic drugs. This provision will make it very difficult for cheaper generic medicines to ready to market as soon as a drug's patent expires. (Article 15.10)

As well, the U.S.-Morocco FTA text explicitly requires countries to issue patents on life forms, such as animals and plants. In addition to raising an array of moral and environmental concerns, this requirement is deemed by development and anti-hunger groups to be a significant threat to food security in poor countries. These terms allow "bio-prospectors" to seek out locally-derived, specially-adapted varieties of food plants, obtain patents on them after slight modification and then forbid local farmers to save and replant such seed absent payment of royalties. Under similar NAFTA seed patent rules, Mexico has spent a small fortune trying to have revoked a U.S. patent on a common yellow bean long grown throughout Mexico after the U.S. seed company that patented the plant in the U.S. as the "enola bean" started insisting that Mexican farmers pay royalties.

Labor and Environmental Standards

The U.S.-Morocco FTA fails to provide the strong and enforceable labor and environmental standards that are necessary to provide American workers and businesses with a level playing field and to bring up standards of living worldwide. Indeed, this FTA rolls back even the incremental progress provided by the provisions of the widely-supported 2000 U.S.-Jordan Free Trade Agreement. In addition, a side letter, prepared by Deputy USTR Catherine Novelli, explains to the Moroccan government that the "discretion" provided in Article 16(2)(b) of the Labor Chapter permits a country to repeatedly fail to enforce their existing labor laws and not violate the agreement. "Where, for example, there is a reasonable exercise of discretion regarding the entities a party investigates, prosecutes, or regulates, or a bona fide decision regarding the allocation of resources among domestic labor or environmental enforcement priorities

[which results in a pattern of non-enforcement], a party would be in compliance with its obligation to effectively enforce its labor or environmental laws," reads the USTR letter

Offshoring, Tax Dodger Corporations and Government Procurement

Currently the Congress and some 30 state legislatures are considering legislation to hold accountable corporations that dodge U.S. taxes by reincorporating overseas or who are major offshorers of work paid by U.S. tax dollars. The U.S.-Morocco FTA's procurement rules require that U.S. domestic procurement policy be limited by the FTA's rules. These rules explicitly forbid preferences for government contracts to be performed by companies employing U.S. workers, as well as forbid requiring government-funded work be done by U.S. workers. As well, this FTA only allows the specifications listing what goods and services a government agency is seeking to purchase to cover technical performance requirements. This means many longstanding government purchasing policies, such as requiring a certain amount of recycled content in paper or renewable source in energy procurement, would be forbidden. The FTA similarly forbids consideration of any factors except a potential bidder's ability to perform the contract in question. This means that requirements that government contractors pay prevailing or living wages or the disqualification of bidders based on past tax, labor or environmental violations are forbidden.

In short, the procurement rules of the FTA implement through the back door restraints on Congress' ability to counter the offshoring trend. The Bush administration might counter this point by noting that, given this is an FTA with Morocco, it is unlikely that a great number of Moroccan companies will actually seek procurement opportunities in the U.S. However this argument obscures the core issue: what is at stake is the extension, country-by-country, of limits on Congress' ability to determine how our tax dollars should be spent. Even as the offshoring trend escalates, each FTA containing these procurement terms adds yet another set of foreign companies – or foreign subsidiaries of U.S. companies - who can challenge basic government procurement requirements as violating U.S. trade obligations.

The Environment, Health and Safety

The U.S.-Morocco FTA contains investment rules that empower foreign corporations to attack our basic environmental, health and safety laws in closed FTA tribunals demanding compensation from our taxpayer dollars for any policy that undermines their future expected profits. These FTA provisions are a somewhat broader version of the controversial NAFTA Chapter 11 foreign investor protections. The U.S.-Morocco FTA includes that foreign investors will be provided with a guarantee of minimum treatment that remains ill-defined, despite the string of NAFTA cases in which tribunals have interpreted this right to include special treatment for foreign investors. This FTA also guarantees foreign investors the right to be compensated by the governments involved for regulatory takings, which is defined as any government "measures equivalent to expropriation or nationalization" (Article 10-6). These rules provide greater rights to foreign investors than our own Constitution, interpreted by the U.S. Supreme Court, gives to U.S. citizens and businesses. In addition to this violating the negotiating objective of the 2002 Fast Track, it means that health and safety is threatened while our domestic companies are put at a disadvantage. The definition of a covered investment (ie: what investments obtain these new rights and privileges) in the FTA is extremely broad, going beyond the NAFTA or even the ill-fated 1997 Multilateral Agreement on Investment (MAI). In this FTA, investment is defined to include" every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the ***assumption of risk***." (emphasis added) (Article 10-27).) This FTA also bans countries from using even short term emergency currency controls, which the International Monetary Fund recognizes as a possible useful counter measure during a financial crisis. (Article 10-7)

Access to Essential Services

Ensuring that all Americans have access to quality essential services, such as health care and education, has been the subject of passionate congressional debate. As well, a string of failed privatizations (for

instance Atlanta's water system) and disastrous deregulation policies (such the California electricity debacle) have resulted in major reversals in state and local privatization and deregulation policies. Yet, the U.S.-Morocco FTA contains several provisions that would limit the ability of Congress and state legislatures to regulate essential services and would promote the privatization of public services. The services agreement of the FTA is a "top-down" agreement, which means that it covers all service sectors unless a country takes an exception to carve out a sector. (This is much broader coverage than, for instance the "bottom up" approach in the WTO where countries choose which service sector they which to liberalize and deregulate.) For all services covered by the FTA, strict limits apply regarding policies Congress or state and local officials can implement. For instance, no means tests, limits on the size or on the number of an included service are allowed. As well, even regulatory standards that treat domestic and foreign service providers the same are subject to review by trade tribunals to ensure they are "not more burdensome than necessary… " (Article 11-7-2(b)) which is a legal standard that has been interpreted in the past to require a regulating country to demonstrate that its domestic standard is least trade restrictive – a hard test to meet given it involves proving a negative.

The analysis above touches on only some of the provisions in the U.S.-Morocco FTA which lead us to oppose it, as we have opposed other FTAs based on this same model. Public Citizen celebrates the benefits trade can provide when trade occurs under good rules. Unfortunately, the terms of the U.S.-Morocco FTA – an all-but-replica of the CAFTA text - threaten to undermine an array of existing U.S. domestic policies on which consumers rely while imposing policy requirements on Morocco that pose a threat to many of the kingdom's residents.

This agreement may be called a Free Trade Agreement, but trade is the least of it. At issue with this FTA is an array of retrograde policies limiting access to affordable medicine and essential services, the undermining of Congress' ability to implement prudent domestic environmental and service sector regulations, and the exposure of U.S. domestic procurement, health, safety and environmental laws to challenge as trade violations. At issue with this agreement is extending a failed model of weak labor and environmental standards. This agreement will not benefit most people in the U.S. and Morocco. Please vote no.

Sincerely,

Lori Wallach
Director, Global Trade Watch