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United States and Morocco Reach New Trade Agreements on International Investment and Information and Communication Technology

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Two new trade agreements with Morocco establish key principles that the United States may seek to promote in future trade negotiations, including agreements on how to treat state-owned enterprises (SOEs) and how to govern the global provision of Internet and telecommunication services.

On December 7, 2012, the U.S. Trade Representative (USTR) announced new agreements reached between the United States and Morocco, intended to stimulate trade and investment between the two countries. [1] The agreements constitute strong steps forward on the issues of trade facilitation, international investment and international global information and communication technology, all of which the United States is also seeking to promote through the ongoing Trans-Pacific Partnership (TPP) negotiations.

Trade Facilitation

The United States and Morocco, which have been parties to a Free Trade Agreement (FTA) since January 2006, entered into a trade facilitation agreement, expanding on the principles embodied in the countries' FTA. Trade between the United States and Morocco has increased by 300 percent since the FTA entered into force, and the trade facilitation agreement intends to further accelerate trade between the two nations. The agreement includes new commitments to enhance trade between the United States and Morocco, including provisions on transparency and electronic payment of duties, taxes and fees.

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Practice Areas

International Trade
Trade Policy and Trade Negotiations

Joint Principles for International Investment

The two countries endorsed a set of Joint Principles for International Investment, [2] meant to further foster an open and stable investment climate between the United States and Morocco. Through these joint principles, the United States and Morocco agreed that governments should commit to provide broad market access to foreign investors, while observing national treatment and most favored nation standards, and that governments should ensure transparency and public participation in the development of laws relating to investment.

Importantly, the Joint Principles for International Investment stress the importance of maintaining a level playing field for investors, including those who compete with SOEs. In particular, the principles acknowledge that “governments should seek to enhance their understanding of the concrete challenges posed by state influence in relation to commercial enterprises.” The two governments also expressed support for the work done by the Organization for Economic Cooperation and Development (OECD) in the area of “competitive neutrality,” *i.e.*, ensuring a level playing field between public and private providers of goods and services. [3]

This agreement with Morocco occurs in conjunction with the United States’ ongoing work through the TPP negotiations to include new disciplines on SOEs. The United States has proposed that SOE investment and operations take place in accordance with commercial considerations. The 15th round of TPP negotiations are currently taking place in Auckland, New Zealand, with negotiations on the SOE provisions reportedly taking place the week of December 10. [4]

Joint Principles for Information and Communication Technology Services

The United States and Morocco also reached agreement on a group of Joint Principles for Information and Communication Technology (ICT) Services. [5] These principles stress the importance of transparency, open network access and use and the free flow of information across borders to the development of the global ICT services sector.

The ICT principles address some controversial issues, including by stating that “governments, wherever possible, should not require service suppliers providing ICT services through the Internet to use local infrastructure, or establish a local presence, as a condition of supplying services.” The United States and Morocco also agreed that governments should allow full foreign participation in ICT services sectors, and that governments should ensure that the use of spectrum is managed effectively and efficiently. The ICT principles also include provisions on authorizations/licenses and interconnection.

The U.S.-Morocco ICT principles are timely, as the United States is also currently negotiating the TPP’s telecommunications chapter in Auckland. [6] Such disciplines may also be a subject of negotiation during the new plurilateral services agreement that a group of World Trade Organization members is set to pursue in the next year. [7]

[1] See Press Release, U.S. Trade Representative, *United States and Morocco Reach Agreement on Trade Facilitation, Joint Investment Principles and Joint Information and Communication Technology (ICT) Principles* (Dec. 7, 2012), available at <http://www.ustr.gov/about-us/press-office/press-releases/2012/december/us-morocco-reach-agreement>.

[2] The Joint Principles for International Investment are available at <http://www.ustr.gov/sites/default/files/United%20States%20Morocco%20Investment%20Principles.pdf>.

[3] See, e.g., Organization for Economic Cooperation and Development, *Achieving competitive neutrality*, <http://www.oecd.org/daf/corporateaffairs/achievingcompetitiveneutrality.htm>.

[4] See *Auckland Update: TPP Round Enters Second Phase Focused On Sensitive Topics*, Inside U.S. Trade (Dec. 8, 2012), available at www.insidetrade.com.

[5] The Joint Principles for Information and Communication Technology (ICT) Services are available at <http://www.ustr.gov/sites/default/files/United%20States%20Morocco%20ICT%20Principles.pdf>.

[6] See *Negotiators To Cover Full Range Of Issues During TPP Auckland Round*, Inside U.S. Trade (Nov. 15, 2012), available at www.insidetrade.com.

[7] See Mike Godfrey, *US Pushes New International Services Agreement*, Tax-News (Sept. 26, 2012), available at http://www.tax-news.com/news/US_Pushes_New_International_Services_Agreement____57434.html.