

Washington, D.C.

June 15, 2004

The Honorable Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation
Kingdom of Morocco

Dear Minister Fassi Fihri:

As we discussed during the negotiation of the Free Trade Agreement between our Governments, I am pleased to set out my understanding regarding certain provisions in the Agreement related to environmental and labor law enforcement.

One provision of the Agreement's labor chapter (Article 16.2.1), and the corresponding provision of the environment chapter (Article 17.2.1), address the enforcement of domestic labor and environmental laws. These provisions apply to situations in which there is a sustained or recurring failure to effectively enforce domestic law *and* the failure affects trade between the United States and Morocco.

These provisions are subject to two clarifications related to each party's right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to allocate enforcement resources to labor or environmental matters of higher priority. 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, a party would be in compliance with its obligation to effectively enforce its labor or environmental laws.

If a party initiates a dispute regarding Article 16.2.1 or 17.2.1, consultations fail to resolve the issue, and a dispute settlement panel determines that the other party has not complied with the article, the two sides must first seek to agree on a resolution of the dispute. If they cannot, or if the complaining party considers that the other party has failed to observe the terms of an agreement on resolution, the complaining party may ask the panel to impose an annual monetary assessment. In setting the level of the assessment, the panel must take into account a variety of factors, including the bilateral trade effects of the failure to effectively enforce, the pervasiveness and duration of the failure to effectively enforce, the reasons for the failure to effectively enforce, the level of enforcement that could be reasonably expected given the defending party's resource constraints, and the efforts made by the party to begin remedying the non-enforcement.

If the defending party does not pay the monetary assessment, the complaining party may take other appropriate steps to collect the assessment or otherwise secure compliance, bearing in mind the Agreement's objective of eliminating barriers to trade and seeking to avoid unduly affecting parties or interests not party to the dispute. If the defending party pays the assessment, it will be used -- as jointly directed by the parties -- for appropriate labor or environment initiatives, including efforts to improve or enhance enforcement in that party's territory.

I hope that the above explanation is helpful.

Sincerely,

Catherine A. Novelli
Assistant U.S. Trade Representative
for Europe and the Mediterranean