

UNITED STATES-OMAN FREE TRADE AGREEMENT
IMPLEMENTATION ACT

DECEMBER 5, 2006.—Ordered to be printed

Mr. GRASSLEY, from the Committee on Finance,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 3569]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 3569) to implement the United States-Oman Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. REPORT AND OTHER MATERIALS OF THE COMMITTEE

A. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (S. 3569) to implement the United States-Oman Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

B. SUMMARY OF CONGRESSIONAL CONSIDERATION OF THE UNITED STATES-OMAN FREE TRADE AGREEMENT

1. *Background*

On November 15, 2004, United States Trade Representative Robert B. Zoellick announced the Administration's intent to negotiate a bilateral free trade agreement with Oman as one step toward achieving a Middle East Free Trade Area proposed by President George W. Bush on May 9, 2003. Ambassador Zoellick consulted with the relevant congressional committees, including the Senate Committee on Finance, with respect to the initiation of negotiations with Oman. Ambassador Zoellick also attended a meeting of the Congressional Oversight Group on September 8, 2004, to discuss the initiation of negotiations with Oman. The negotiations were launched on March 12, 2005. On October 3, 2005, United States Trade Representative Rob Portman announced that the United States and Oman had successfully concluded the negotiations. President George W. Bush notified Congress of his intent to enter into the United States-Oman Free Trade Agreement on October 17, 2005. Notice of the President's notification was published in the Federal Register on October 19, 2005. On November 15, 2005, Ambassador Portman submitted to Chairman Grassley the reports from 27 trade advisory groups commenting on the final text of the Agreement with Oman. These reports were also made publicly available on the website of the Office of the United States Trade Representative. Ambassador Portman and Minister of Commerce and Industry Maqbool bin Ali Sultan of the Sultanate of Oman signed the United States-Oman Free Trade Agreement on January 19, 2006.

2. *Trade promotion authority procedures in general*

Article I, section 8 of the Constitution of the United States vests Congress with the authority to regulate international trade. Congress has periodically delegated a portion of this authority to the President in order to advance the economic interests of the United States. This delegation represents a compact between Congress and

the Executive, by which Congress guarantees it will vote on a trade agreement entered into by the Executive without amendment and the Executive guarantees close consultation with Congress during the negotiation of the trade agreement in order to achieve objectives identified by Congress. Thorough and timely consultation by the Executive with Congress is the essential bedrock upon which Congress' delegation of constitutional authority rests. This long-standing compact, spanning decades, has resulted in the successful negotiation and implementation of numerous trade agreements that have contributed significantly to increased economic growth and prosperity in the United States.

The most recent incarnation of this compact is found in the Bipartisan Trade Promotion Authority Act of 2002 (the Act), which was included in the Trade Act of 2002 (Pub. L. 107-210). The Act includes prerequisites for congressional consideration of a trade agreement under expedited procedures (known as Trade Promotion Authority (TPA) procedures), which are found in sections 2103 through 2106 of the Act (19 U.S.C. §§3803-3806) and section 151 of the Trade Act of 1974 (19 U.S.C. §2191). Section 2103 of the Act authorizes the President to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. Section 2102 of the Act outlines the negotiating objectives the President is to achieve if the President intends to use TPA procedures to implement a trade agreement. Section 151 of the Trade Act of 1974 sets forth expedited procedures for congressional consideration of a trade agreement without amendment. The President's authority under section 2103 extends to trade agreements entered into on or before June 30, 2007.

3. Notification prior to negotiations

Under section 2104(a)(1) of the Act, the President must provide written notice to Congress at least 90 calendar days before initiating negotiations. On November 15, 2004, the United States Trade Representative sent letters to The Honorable Ted Stevens, President Pro Tempore, United States Senate, and The Honorable J. Dennis Hastert, Speaker, United States House of Representatives, to notify Congress of the President's intention to initiate negotiations with Oman. The negotiations were initiated on March 12, 2005. Section 2104(a)(2) requires the President, before and after submission of the notice, to consult regarding the negotiations with the relevant congressional committees and the Congressional Oversight Group established under section 2107 of the Act. The Administration engaged in the requisite consultations, including an appearance by the United States Trade Representative at a meeting of the Congressional Oversight Group on September 8, 2004.

4. Notification of intent to enter into an agreement

Under section 2105(a)(1)(A) of the Act, the President is required, at least 90 days before entering into an agreement, to notify Congress of his intention to enter into the agreement. On October 17, 2005, President George W. Bush notified Congress of his intention to enter into the United States-Oman Free Trade Agreement. The Agreement was signed on January 19, 2006.

5. Development of the implementing legislation

Under TPA procedures, Congress and the Administration work together to produce the legislation to implement a free trade agreement. Draft legislation is developed in close consultation between the Administration and the committees with jurisdiction over the laws that must be enacted or amended to implement the agreement. The committees may then hold informal meetings to consider the draft legislation and to make non-binding recommendations to the Administration, if any. The Administration then finalizes implementing legislation for formal submission to Congress and referral to the committees of jurisdiction. These procedures are meant to ensure close cooperation between the executive and legislative branches of government to develop legislation that faithfully implements the agreement. The final legislation should include only those provisions that are necessary or appropriate to faithfully implement the agreement.

The Senate Committee on Finance met in open executive session on May 18, 2006, to informally consider draft implementing legislation for the Agreement. Chairman Grassley introduced a chairman's modification to the proposed Statement of Administrative Action to accompany the draft legislation to implement the Agreement. The chairman's modification called for the Administration to monitor and report annually to Congress on the efforts of the Government of Oman to prohibit compulsory or indentured labor, including efforts to prohibit any coercive action by an employer to compel such labor. The chairman's modification was adopted without objection.

Two amendments were filed in committee to the draft implementing legislation. One of those amendments (Conrad-Bingaman-Kerry #1) was offered by Senator Conrad. This amendment provided that "{a}t an appropriate place, add a provision to prevent goods made with slave labor (including under sweatshop conditions so egregious as to be tantamount to slave labor), or with the benefit of human trafficking, from benefiting from the agreement."

Appearing before the Committee were James Mendenhall, General Counsel in the Office of the United States Trade Representative, and Shaun Donnelly, Assistant U.S. Trade Representative for Europe and the Middle East. Mr. Mendenhall questioned whether the offered amendment was necessary or appropriate to implement the Agreement because Omani law already prohibited forced labor and the Agreement obligates the Government of Oman to enforce that law. Mr. Mendenhall also noted that Oman is a signatory to Convention 29 of the International Labor Organization, which prohibits forced labor. Finally, Mr. Mendenhall noted that section 1307 of title 19, United States Code, prohibits the importation of goods produced with convict labor, as well as with forced labor and indentured labor. Chairman Grassley requested a detailed written response from the Office of the United States Trade Representative addressing whether existing U.S. law already provided greater impediments to forced labor than the offered amendment.

Senator Conrad requested a roll call vote and the Conrad-Bingaman-Kerry amendment was adopted by recorded vote, 18 ayes, 0 nays, a quorum being present. Ayes: Grassley, Hatch (proxy), Lott (proxy), Snowe, Thomas, Santorum, Frist, Smith, Bunning, Crapo, Baucus, Conrad, Jeffords, Bingaman, Kerry, Lincoln, Wyden, Schu-

mer. Chairman Grassley recessed the meeting and, later that day, reconvened the meeting to approve the Committee's recommendations, as amended, to implement the United States-Oman Free Trade Agreement. The Committee approved the recommendations, as amended, by recorded vote, 19 ayes, 0 nays, a quorum being present. Ayes: Grassley, Hatch, Lott, Snowe, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Crapo, Baucus, Conrad, Jeffords, Bingaman, Kerry, Lincoln, Wyden, Schumer.

Separately, on May 10, 2006, the Committee on Ways and Means in the House of Representatives informally approved draft legislation to implement the Agreement and accompanying draft Statement of Administrative Action, without amendment. The Senate Finance Committee and House Ways and Means Committee sent their respective recommendations to the President. The committees did not conduct a formal "mock conference" to reconcile the different versions of informal non-binding recommendations that had been approved by the two committees. Committee precedent does not mandate that a formal "mock conference" take place to reconcile differences in informal recommendations. For example, the two committees approved different versions of draft implementing legislation for the North American Free Trade Agreement, but there is no record of a formal mock conference taking place to reconcile the differences. In contrast, the committees did proceed with a formal mock conference to reconcile different versions of draft implementing legislation for the Uruguay Round Agreements Act. The need for a formal "mock conference" depends upon the type and degree of differences between the informal committee recommendations. In this case, the Office of the United States Trade Representative consulted with each committee, and based upon those consultations, the President subsequently reconciled the two versions by including a broader version of the Chairman's modification in the Statement of Administrative Action and by omitting the amendment relating to slave labor and human trafficking. On June 22, 2006, the General Counsel in the Office of the United States Trade Representative, James Mendenhall, transmitted to Chairman Grassley a letter explaining the Administration's view that existing U.S. law already prohibited the importation of products made with forced or indentured labor and why the Administration did not consider the amendment adopted by the Committee in its informal consideration to be necessary or appropriate to implement the Agreement. As a result, the Administration did not include the adopted amendment in the formal implementing legislation subsequently submitted to Congress. Mr. Mendenhall's letter is reprinted below:

JUNE 22, 2006.

Hon. CHARLES GRASSLEY,
Chairman, Senate Finance Committee, Dirksen Senate Office Building, Room 219, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GRASSLEY: During the Finance Committee hearing on May 18, Senator Conrad introduced an addition to the draft implementing legislation for the United States-Oman Free Trade Agreement (FTA) to "add a provision to prevent goods made with slave labor (including conditions of de facto indentured servitude), or with the benefit of human trafficking, from benefiting from the

agreement.” At the hearing, I promised to provide you with a letter detailing our views on this proposal.

The proposed addition is neither necessary nor appropriate because the FTA already deals effectively with products of forced or indentured labor. In addition, U.S. law prohibits the importation of products produced with convict, forced, or indentured labor under penal sanctions. Moreover, we are aware of no evidence suggesting that goods are produced in Oman using slave labor or with the benefit of human trafficking.

First, Oman already prohibits forced labor and Oman has promised to take steps to clarify and strengthen its laws further. Article 12 of Oman’s Basic Law provides that “Every citizen has the right to engage in the work of his choice within the limits of the law. It is not permitted to impose any compulsory work on anyone except in accordance with the Law and for the performance of public service, for a fair wage.” Oman has further committed in writing to “issue a Royal Decree, no later than October 31, 2006, specifying the forms of public service that could be required in the event the Government were ever to exercise its power under Article 12, consistent with ILO Convention 29.” Oman is, in fact, already a signatory to ILO Conventions 29 and 105, which prohibit forced labor. At your request, the Administration has committed to update the Congress periodically on the progress that Oman achieves in realizing all its commitments made to labor law reform.

Second, Article 16.2.1(a) of the FTA requires Oman to enforce its labor laws. If it fails to do so, then the United States is entitled to resort to the FTA’s dispute settlement procedures, and if the United States prevails, Oman may be required to pay up to \$15 million per year in fines that can be used for appropriate labor initiatives in Oman, including enforcement.

Third, U.S. law already prohibits the importation of products produced with convict labor, forced labor, and indentured labor under penal sanctions. Specifically, 19 U.S.C. § 1307 states as follows:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

“Forced labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.

Notably, the statute is not limited to prison labor, but extends to products manufactured with forced or indentured labor. In fact, the statute was specifically amended in 1930 to add forced and indentured labor.

The statute is also not limited to involuntary labor. The term “indentured labor” is understood to mean labor undertaken pursuant to a “contract entered into by an employee the enforcement of which can be accompanied by process or penalties.” *China Diesel Imports, Inc. v. United States*, 855 F. Supp. 380, 384 (CIT 1994) (citing 71 Cong. Rec. 4489 (1929) (statement of Senator Blaine)).

While the statute provides for an exception in the case of goods that are not produced in the United States, we cannot envision a situation where this exception would be applied in practice. Given the broad economic base of the United States, we do not anticipate a situation where the United States would be obliged to import an otherwise banned product from Oman to satisfy domestic demand because it cannot be obtained in the United States.

In determining whether importation of a product should be prohibited, Customs will look closely at the circumstances of the case. For example, the Forced Child Labor Advisory issued by the Department of Treasury and U.S. Customs Service in December 2000 lists several “red flag” factors indicating the existence of forced or indentured child labor. These red flags may alone provide evidence of forced/indentured labor, and include, e.g., slave labor conditions, employment to discharge a debt, financial penalties that eliminate wages, etc. The Advisory also lists several “yellow flag” factors that may indicate the need for further investigation. These yellow flag factors include, for example, employment in violation of local laws and regulations, or employment in hazardous industries or under extreme conditions.

Other agencies have interpreted the statute in a similar way. Pursuant to Executive Order 13126, the Department of Labor applies the Section 1307 standard in developing a list of products produced by child labor that are not eligible for federal government procurement. According to the Department of Labor, “The essential elements of the definition [of forced or indentured child labor] are either the presence of coercion or the existence of a contract enforceable by penalties.” The Department has listed illustrative factors it will look at in making this determination, including, e.g., confinement, little or no pay, deprivation of basic needs, etc. Bureau of International Labor Affairs; Notice of Preliminary List of Products Requiring Federal Contractor Certification as to Forced or Indentured Labor Under Executive Order No. 13126; Request for Comments, 65 Fed. Reg. 54108 (Sept. 6, 2000).

Fourth, Congress recently affirmed that goods made with forced or child labor in violation of international standards cannot be imported into the United States. On February 17, 2005, the President signed into law the Trafficking Victims Protection Reauthorization Act of 2005 (P. L. 109–164). Specifically, section 105(b) of that Act requires United States Government departments and agencies to “consult with other departments and agencies of the United States Government to reduce forced and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.”

For these reasons, the Administration does not consider the proposed addition to be “necessary or appropriate to implement” the Oman trade agreement under the terms of 19 U.S.C. § 3803(b)(3)(B)(ii) and the Administration will not include the proposed addition in the text of the legislation implementing the United States-Oman Free Trade Agreement.

Sincerely,

JAMES E. MENDENHALL,
General Counsel.

On July 9, 2006, His Majesty, Sultan Qaboos bin Said, issued a Royal Decree amending Oman’s labor law to address many of the issues raised during the course of congressional consideration of the United States-Oman Free Trade Agreement. That action followed through on commitments made by the Government of Oman in letters to Chairman Thomas of the House Ways and Means Committee (March 2006) and Ambassador Portman (May 2006).

6. Formal submission of the agreement and implementing legislation

When the President formally submits a trade agreement to Congress under section 2105 of the Act, the President must include in the submission the final legal text of the agreement, together with implementing legislation, a Statement of Administrative Action (describing regulatory and other changes that are necessary or appropriate to implement the agreement), a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable policies, purposes, priorities, and objectives set forth in the Act, and a statement setting forth the reasons of the President regarding how the agreement serves the interests of U.S. commerce.

The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to committees with jurisdiction over its provisions. President George W. Bush transmitted the final text of the United States-Oman Free Trade Agreement, along with implementing legislation, a Statement of Administrative Action, and other supporting information, as required under section 2105 of the Trade Act of 2002, to Congress on June 26, 2006. The legislation was introduced that same day in both the House (H.R. 5684) and the Senate (S. 3569). In lieu of the Chairman’s modification to the draft Statement of Administrative Action adopted by the Committee during its informal consideration, the President included in the final Statement of Administrative Action a broader commitment to update Congress periodically with respect to the progress that Oman achieves in realizing all commitments made to labor law reform, and not just with respect to Oman’s efforts to prohibit compulsory or indentured labor. The legislation did not include the amendment adopted by the Committee during its informal consideration.

To qualify for TPA procedures, the implementing bill itself must contain provisions formally approving the agreement and the Statement of Administrative Action. Further, the implementing bill must contain only those provisions necessary or appropriate to implement the Agreement. The implementing bill reported here—which approves the United States-Oman Free Trade Agreement

(Agreement) and the accompanying Statement of Administrative Action and contains provisions necessary or appropriate to implement the Agreement into U.S. law—was referred to the Senate Committee on Finance.

7. Committee and floor consideration

When the requirements of the Act are satisfied, implementing revenue bills, such as the United States-Oman Free Trade Agreement Implementation Act (Implementation Act), are subject to the legislative procedures of section 151 of the Trade Act of 1974. The following schedule for congressional consideration applies under these procedures:

(i) House committees have up to 45 calendar days in session in which to report the bill; any committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th calendar day in session after the committees report the bill or are discharged from further consideration.

(iii) Senate committees must act within 15 calendar days in session of receiving the implementing revenue bill from the House or within 45 calendar days in session of Senate introduction of the implementing bill, whichever is later, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 calendar days in session on the implementing bill.

Thus, Congress has a maximum of 90 calendar days in session to complete action on the bill. Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either House of Congress. Floor debate in each House is limited to no more than 20 hours, to be equally divided between those favoring the bill and those opposing the bill.

The Committee on Finance met in open executive session on June 28, 2006, to consider favorably reporting S. 3569. The agenda for that session did not provide for amendments to be filed with respect to S. 3569 because, pursuant to section 151(d) of the Trade Act of 1974, no amendment to an implementing bill is in order under TPA procedures. Nevertheless, Senator Conrad again filed the amendment that was adopted by the Committee during its informal consideration. Senator Conrad discussed, but did not offer, his amendment, which would have been subject to a non-germaneness ruling by the Chairman. In addition to Senator Conrad, several Members also expressed frustration because the amendment adopted by the Committee during its informal consideration was omitted from the final implementing legislation. One Member expressed the view that the subject matter of the amendment adopted by the Committee during its informal consideration was already addressed in U.S. and Omani law. Chairman Grassley pledged to take steps to improve communication between Committee Members and the Office of the United States Trade Representative in an ef-

fort to defuse concerns before the Administration notifies Congress of the President's intent to enter into a trade agreement.¹

Chairman Grassley called for a roll call vote to favorably report S. 3569, without amendment. The Committee favorably reported S. 3569 by a recorded vote of those present and voting, 10 ayes, 3 nays, a quorum being present. Ayes: Grassley, Hatch, Lott (proxy), Kyl, Thomas, Santorum (proxy), Frist, Smith, Bunning, Crapo, Baucus, Jeffords (proxy), Kerry (proxy), Schumer. Nays: Snowe, Rockefeller (proxy), Conrad (proxy), Bingaman (proxy), Lincoln, Wyden.

The Senate passed S. 3569 on June 29, 2006, by a roll call vote of 60 ayes, 34 nays. The House of Representatives passed H.R. 5684 on July 20, 2006, by a recorded vote of 221 ayes, 205 nays. The Senate passed H.R. 5684 on September 19, 2006, by a roll call vote of 62 ayes, 32 nays. President George W. Bush signed H.R. 5684 into law on September 26, 2006 (Pub. L. 109–283).

C. TRADE RELATIONS WITH OMAN

1. *United States-Oman trade*

Oman is a small country, with a gross domestic product (GDP) that is less than 1 percent of U.S. GDP, and a population that is less than 1 percent of U.S. population. U.S. trade with Oman accounted for less than 0.5 percent of total U.S. goods trade in 2004. Trade between the United States and Oman is currently concentrated in a few products. In 2004, imports of petroleum and energy-related products accounted for 50 percent of total U.S. imports from Oman, while imports of apparel accounted for 30 percent of total U.S. imports from Oman. Similarly, 2004 exports of machinery and parts accounted for 46 percent of total U.S. exports to Oman, while 2004 exports of vehicles and parts accounted for 16 percent of total U.S. exports to Oman. About 11 percent of U.S. imports from Oman entered duty free under the U.S. Generalized System of Preferences in 2004. Apparel accounted for 98 percent of all duties collected on U.S. imports from Oman in 2004. The United States accounted for 4.3 percent of Oman's exports and 6.8 percent of Oman's imports in 2004.

The following tables summarize the top U.S. merchandise exports to Oman and the top U.S. merchandise imports from Oman during the past 6 years.

U.S. EXPORTS TO OMAN, 2000–2005

[In thousands of U.S. dollars]

Top 15 product descriptions, by HTS chapter	2000	2001	2002	2003	2004	2005
88 Aircraft, spacecraft, and parts thereof	4,853	66,699	148,140	69,374	6,428	170,195
87 Vehicles, other than railway or tramway rolling stock, and parts and accessories thereof	22,259	35,393	27,384	23,792	51,254	134,385
84 Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	71,548	87,944	74,181	103,491	126,929	115,580
85 Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television recorders and reproducers, parts and accessories ...	14,329	19,418	14,138	14,990	18,428	24,232

¹As an initial step, Chairman Grassley convened a closed-door Members meeting with United States Trade Representative Susan C. Schwab on July 19, 2006, to address, inter alia, Member concerns over implementation of the United States-Oman Free Trade Agreement.

U.S. EXPORTS TO OMAN, 2000–2005—Continued

[In thousands of U.S. dollars]

Top 15 product descriptions, by HTS chapter	2000	2001	2002	2003	2004	2005
90 Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	9,544	13,859	13,552	15,798	17,806	21,579
98 Special classification provisions, not elsewhere specified or otherwise included	12,131	13,642	10,241	17,478	15,282	18,216
38 Miscellaneous chemical products	2,231	2,096	3,699	3,632	2,546	10,768
93 Arms and ammunition; parts and accessories thereof	899	1,237	179	2,682	5,187	6,074
39 Plastics and articles thereof	12,233	10,920	5,745	11,505	11,898	5,759
29 Organic chemicals	2,166	1,369	2,809	1,071	2,678	5,205
73 Articles of iron or steel	2,480	1,397	2,945	2,061	3,386	4,950
21 Miscellaneous edible preparations	6,810	7,017	7,162	6,188	6,241	3,620
24 Tobacco and manufactured tobacco substitutes ..	8,380	6,867	4,336	4,191	4,298	3,537
82 Tools, implements, cutlery, spoons and forks, of base metal; parts thereof	212	577	606	731	2,238	2,421
25 Salt; sulfur; earths and stone; plastering materials, lime and cement	2,753	411	4,731	10,113	3,624	2,226
Subtotal for top 15 products	172,827	268,846	319,849	287,095	278,221	528,749
Subtotal for all other U.S. exports	21,105	30,211	30,844	30,075	36,097	33,024
Total U.S. exports to Oman	193,932	299,057	350,694	317,170	314,318	561,772

Note.—HTS is the Harmonized Tariff Schedule of the United States.

Source.—U.S. International Trade Commission Dataweb from official statistics of the U.S. Department of Commerce.

U.S. Imports from Oman, 2000–2005

[In thousands of U.S. dollars]

Top 15 product descriptions, by HTS chapter	2000	2001	2002	2003	2004	2005
27 Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes ..	37,796	216,517	115,492	338,869	211,838	341,225
71 Natural or cultured pearls, precious or semiprecious stones, precious metals; precious metal clad metals, articles thereof; imitation jewelry; coin	48,563	35,742	28,566	39,268	45,725	57,212
62 Articles of apparel and clothing accessories, not knitted or crocheted	125,581	110,489	94,109	106,655	90,107	35,372
61 Articles of apparel and clothing accessories, knitted or crocheted	27,828	35,526	30,884	25,196	35,194	17,773
73 Articles of iron or steel	1,455	3,016	4,152	5,802	18,066	10,145
28 Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	0	0	130	30	23	7,368
03 Fish and crustaceans, molluscs and other aquatic invertebrates	7,244	9,411	12,189	13,779	7,316	4,012
98 Special classification provisions, not elsewhere specified or otherwise included	3,463	4,984	91,963	67,778	6,250	2,776
25 Salt; sulfur; earths and stone; plastering materials, lime and cement	0	1,970	3,162	289	1,512	1,625
68 Articles of stone, plaster, cement, asbestos, mica or similar materials	1,442	2,785	1,272	710	1,182	1,470
99 Special import reporting provisions, not elsewhere specified or otherwise included	383	858	794	1,685	888	1,185
29 Organic chemicals	0	1,300	179	348	16	853
19 Preparations of cereals, flour, starch or milk; bakers' wares	0	231	287	486	529	782
20 Preparations of vegetables, fruit, nuts, or other parts of plants	558	544	926	1,324	1,560	754
39 Plastics and articles thereof	652	1,571	1,223	642	386	391

U.S. Imports from Oman, 2000–2005—Continued

[In thousands of U.S. dollars]

Top 15 product descriptions, by HTS chapter	2000	2001	2002	2003	2004	2005
Subtotal for top 15 products	254,962	424,944	385,328	602,862	420,593	482,945
Subtotal for all other U.S. imports	1,941	6,178	4,267	3,695	1,870	1,219
Total U.S. imports from Oman	256,903	431,122	389,595	606,557	422,463	484,164

Note.—HTS is the Harmonized Tariff Schedule of the United States.

Source.—U.S. International Trade Commission Dataweb from official statistics of the U.S. Department of Commerce.

2. Tariffs and trade agreements

Oman acceded to the World Trade Organization (WTO) on November 9, 2000, with an average bound tariff rate of 13.8 percent for all goods (28.0 percent for agricultural goods and 11.6 percent for nonagricultural goods), and an average applied tariff rate of 5.7 percent for all goods (10.2 percent for agricultural goods and 5.0 percent for nonagricultural goods). Oman's petroleum reserves are projected to be depleted in less than 20 years. As a result, the Government of Oman plans to continue to diversify the economy, increase private-sector employment, privatize state-owned enterprises, and liberalize the services sector. Other sectors targeted for expansion include manufacturing, information technology, tourism, and fisheries. Textile and apparel production is a major source of manufacturing activity in Oman, accounting for an estimated 3.4 percent of GDP and 14 percent of manufacturing jobs in 2003, as well as 16 percent of non-energy exports in 2004.

In addition to the United States-Oman Free Trade Agreement, the Government of Oman has signed bilateral investment treaties with 24 countries, i.e. Algeria, Austria, Belarus, Brunei, China, Croatia, Egypt, Finland, France, Germany, India, Iran, Italy, Korea, Morocco, the Netherlands, Pakistan, Sudan, Sweden, Switzerland, Tunisia, Ukraine, the United Kingdom, and Yemen. In addition, Oman is a member of the Arab free trade area (in force since 1998), which also includes Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, the Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. Oman is also a member of the Gulf Cooperation Council (founded in 1981), which in addition to Oman includes Bahrain, Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates. The Gulf Cooperation Council launched a customs union in 2003, with additional plans to establish a monetary union, a common market, and a single currency. In addition, the Gulf Cooperation Council is engaged in ongoing negotiations with the European Union to conclude a free trade agreement.

By letter dated September 28, 2005, Oman's Minister of Commerce and Industry Maqbool bin Ali Sultan assured United States Trade Representative Rob Portman that Oman does not apply any aspect of the Arab League boycott of Israel, whether primary, secondary or tertiary, nor does Oman have any laws to that effect.

Bilateral trade data alone fail to capture the full importance of Oman as a trading partner of the United States. In May 2003, President Bush proposed a plan of graduated steps for Middle Eastern nations to increase trade and investment with the United States and others in the world economy, culminating with the es-

establishment of a Middle East Free Trade Area by the year 2013. On July 22, 2004, the report of the 9/11 Commission (Final Report of the National Commission on Terrorist Attacks Upon the United States) was released; that report contains, as one of its key recommendations, that a “comprehensive U.S. strategy to counter terrorism should include economic policies that encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children’s future.” The Agreement with Oman is an important achievement in that effort, and joins previously concluded bilateral trade agreements between the United States and Israel, Jordan, Morocco, and Bahrain, as a sound model for other nations in the Middle East to become full participants in the rules-based system of global trade. The Agreement with Oman is therefore an important part of a broader effort to encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children’s future, throughout the Middle East.

3. U.S. International Trade Commission Study

In February 2006, the U.S. International Trade Commission (ITC) released the results of its investigation (Investigation No. TA-2104-19) into the probable economic effect of a United States-Oman Free Trade Agreement (USITC Pub. 3837). In some of its prior investigations, the ITC utilized a general equilibrium model to estimate the effects of a particular trade agreement on the overall U.S. economy. In this case, because the apparel sector accounted for almost all (98 percent) of the duties paid on U.S. goods imported from Oman in 2004, and because the Omani economy is relatively small compared to the U.S. economy, the ITC utilized a partial equilibrium model to estimate the probable economic effect of tariff elimination under the Agreement. This is the same methodology that the ITC utilized in its prior investigation of the probable economic effects of the United States-Bahrain Free Trade Agreement. The ITC did not utilize a partial equilibrium model to estimate the effects of the Agreement on U.S. exports to Oman because of a lack of information on Oman’s domestic market; instead, the ITC estimated such effects based on assumptions about the responsiveness of Omani demand to changes in export prices.

The ITC concluded that elimination of U.S. apparel tariffs under the Agreement will likely increase U.S. net welfare by \$302,000 as a result of an \$8.9 million increase in U.S. consumer surplus, a \$1.6 million decrease in U.S. producer surplus, and a \$7.0 million decline in U.S. tariff revenue. The ITC also concluded that U.S. exports of machinery, transportation equipment, and measuring instruments, including parts for boring or sinking machinery, heat exchange units, passenger vehicles, and parts of gas turbines, would likely increase by between 5 percent and 14 percent under the Agreement.

More generally, the ITC found that the expected growth in U.S. trade with Oman would likely have a small but positive impact on the U.S. economy, with the benefits moderated by the relatively small size of Oman’s economy and Oman’s share of total U.S. trade. The majority of U.S. imports from Oman already enter duty-free or at low tariffs, while most U.S. exports to Oman face a tariff of 5

percent ad valorem. The expected increase in U.S. apparel imports from Oman would likely be small in absolute value and quantity terms, and the resulting increased annual level of U.S. apparel imports from Oman would likely remain below the 2004 level of U.S. apparel imports from Oman. Most of the expected increase in apparel imports from Oman would displace U.S. apparel imports from other countries rather than domestic production, and thus have almost no effect on U.S. industry. Under the Agreement, Oman will eliminate tariffs immediately on U.S. products that accounted for 91 percent of U.S. exports to Oman in 2004, including 87 percent of all agricultural tariff lines. All tariffs on the remaining eligible goods will be phased out over 10 years.

With respect to services, the ITC concluded that U.S.-based service firms are likely to benefit from improved market access and greater regulatory transparency, though these benefits will be moderated by the relatively small size of Oman's economy. On January 18, 2006, Oman's Minister of Commerce and Industry Maqbool bin Ali Sultan remarked that the Agreement will provide new opportunities for U.S. service providers in areas such as banking, insurance, telecommunications, express delivery services, and construction.

D. OVERVIEW OF THE UNITED STATES-OMAN FREE TRADE AGREEMENT

1. Overview of the agreement

The United States-Oman Free Trade Agreement establishes a bilateral free trade area that eliminates tariffs on merchandise trade in originating goods between the United States and Oman. The Agreement eliminates non-tariff barriers, liberalizes trade in services, and contains provisions that cover telecommunications, electronic commerce, intellectual property rights, labor, environment, government procurement, and investment. The Agreement also contains a mechanism for settling disputes that arise under the Agreement. Throughout the Agreement there are important provisions that promote bilateral consultation and cooperation, procedural and substantive due process, administrative and judicial review, transparency, and the rule of law. The Agreement is intended to strengthen economic relations between the United States and Oman, create employment and raise the standard of living, enhance the competitiveness of firms, set a structure of clear and mutually advantageous rules for bilateral trade, build on commitments in the WTO, and promote creativity and innovation. In addition, commitments to transparency, worker rights, eliminating corruption and bribery, and strengthening environmental protection are cited as important goals under the Agreement.

2. USTR summary of the agreement

The Office of the United States Trade Representative (USTR) prepared a summary of the United States-Oman Free Trade Agreement which was included among the documents transmitted to Congress on June 26, 2006. This summary was distributed to Members of the Committee to aid in their consideration of the implementing legislation, and is reprinted below:

UNITED STATES-OMAN FREE TRADE AGREEMENT

SUMMARY OF THE AGREEMENT

This summary briefly describes key provisions of the United States-Oman Free Trade Agreement (“FTA” or “Agreement”).

PREAMBLE

The Preamble to the Agreement provides the Parties’ underlying objectives in entering into the Agreement and provides context to the provisions that follow.

CHAPTER ONE: ESTABLISHMENT OF A FREE TRADE AREA AND DEFINITIONS

Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (“WTO”) and other agreements to which both the United States and Oman are party. Chapter One also includes definitions of certain terms that recur in various Chapters of the Agreement.

CHAPTER TWO: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Chapter Two sets out the Agreement’s principal rules governing trade in goods. It requires each Party to treat goods from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on “originating goods” (as defined in Chapter Four (Rules of Origin)) traded between the two Parties, and requires the elimination of a wide variety of non-tariff barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties no later than 10 years after the Agreement enters into force. The Agreement is comprehensive, containing U.S. and Omani elimination commitments on all tariffs. For example, 100 percent of bilateral trade in consumer and industrial goods will become duty-free immediately upon the Agreement’s entry into force, with the exception of certain textile products subject to a longer phase-out period. In addition, Oman will provide immediate duty-free access for U.S. agricultural exports in 87 percent of its agricultural tariff lines. Certain sensitive agricultural goods in Oman and the United States will have longer periods for duty elimination (up to 10 years) or will be subject to other provisions, including, in some cases, the application of transitional preferential tariff-rate quotas (“TRQs”) by the United States. Annex 2-B of the Agreement includes detailed provisions on staging of tariff reductions and application of TRQs for certain textile and apparel and agricultural goods. Chapter Two also provides that the Parties may agree to speed up tariff phase-outs on a product- by-product basis after the Agreement takes effect.

Temporary Admission. Chapter Two requires the Parties to provide duty-free temporary admission for certain goods without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. The Agreement incorporates the prohibition on import and export restrictions set out in Article XI of the General Agreement on Tariffs and Trade (“GATT”) 1994 and specifies that these include: (1) export and import price requirements (except under antidumping and countervailing duty orders); (2) import licensing conditioned on the fulfillment of a performance requirement; and (3) voluntary export restraints inconsistent with Article VI of GATT 1994. In addition, a Party must limit fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered, in accordance with Article VIII of GATT 1994. Finally, the United States also has agreed not to apply its merchandise processing fee on imports of originating goods from Oman.

Agricultural Export Subsidies. Chapter Two provides that the Parties will work together in WTO agriculture negotiations to eliminate all forms of agricultural export subsidies. The Chapter further provides that each Party will eliminate export subsidies on agricultural goods destined for the other country. According to Article 2.11, neither Party may introduce or maintain a subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to the other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

CHAPTER THREE: TEXTILES AND APPAREL

Chapter Three sets out provisions addressing trade in textile and apparel goods, including an “emergency action” provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Emergency Actions. To deal with emergency conditions resulting from the elimination or reduction of customs duties, the Agreement includes an “emergency action” provision that permits the importing country temporarily to re-impose normal trade relations (most-favored-nation) (“NTR (MFN)”) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Emergency measures may be applied for a maximum aggregate period of three years, and a Party may not apply an emergency measure on a good beyond 10 years after the Party must eliminate duties on that good under the Agreement.

A Party applying an emergency action must provide the other Party with mutually agreed compensation in the form of trade concessions that are substantially equivalent to the increased duties. If the Parties cannot agree on compensation, the exporting Party may raise duties up to NTR (MFN) levels on any goods from the importing Party to achieve trade effects substantially equivalent to the emergency action.

Rules of Origin and Related Matters. Chapter Three includes special rules for determining whether a textile or apparel good is an “originating good,” including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to goods that ordi-

narly would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines the tariff classification. This special rule does not apply to elastomeric yarns.

Chapter Three also calls for the United States and Oman to provide tariff preference levels (“TPLs”) for a limited quantity of specific non-originating apparel goods. TPL goods will be accorded preferential tariff treatment as if they were originating goods. For the specified cotton and man-made fiber apparel goods, TPL status will apply to a maximum of 50 million square meter equivalents for each of the first 10 years after the Agreement’s entry into force. After 10 years, TPL status will not be available for such goods.

The Annex to Chapter Three includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an “originating good” only if all processing after fiber formation (i.e., yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 3-A.

Customs Cooperation. Chapter Three also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement’s rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. An importing Party may respond to circumvention and actions that impede it from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the Chapter’s customs cooperation article.

Committee on Textiles and Apparel Trade Matters. In Chapter Three, the Parties establish a Committee on Textiles and Apparel Trade Matters that will meet upon the request of either party or the Joint Committee provided for in Article 19.2, to consider matters arising under Chapter Three.

CHAPTER FOUR: RULES OF ORIGIN

To benefit from various trade preferences provided under the Agreement, including reduced duties or duty-free treatment, a good must qualify as an “originating good” under the rules of origin set out in Chapters Three (Textiles and Apparel) and Four and Annexes 3-A and 4-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms that produce or manufacture goods in the two Parties’ territories. They are similar in approach to those included in the United States-Bahrain, United States-Morocco, United States-Jordan, and United States-Israel free trade agreements.

Key Concepts. Chapter Four provides general criteria under which a good that has been imported directly from one Party into the other Party may qualify as an “originating good”:

- When the good is wholly grown, produced, or manufactured in one or both of the Parties (e.g., crops grown or minerals extracted in the United States);
- When the good: (1) is not covered by the rules in Annex 3–A or Annex 4–A; (2) is a “new or different article of commerce” that has been grown, produced, or manufactured in the territory of one or both of the Parties; and (3) the sum of (a) the value of materials produced in the territory of one or both of the Parties and (b) the “direct costs of processing operations” performed in the territory of one or both of the Parties is at least 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or
- When the good is covered by the rules in Annex 3–A or Annex 4–A and meets the requirements of the applicable Annex. (Annex 3–A contains specific rules of origin for certain textile and apparel goods. Annex 4–A contains specific rules of origin on goods such as citrus juices; dairy products; sugar; and sweetened cocoa powder.)

Chapter Four defines “new or different article of commerce” as “a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed.” It defines “direct costs of processing operations” as “those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good.” Such costs typically include labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others. They typically do not include profit and general business expenses, such as salaries, insurance, and advertising.

Chapter Four clarifies that a good will not be considered a “new or different article of commerce” merely by virtue of simple combining or packaging operations or mere dilution with water or another substance that does not change the characteristics of the good.

Importer Requirements. Under the Chapter, importers who wish to claim preferential tariff treatment for goods must submit, on the request of the importing Party’s customs authorities, a “declaration” providing all pertinent information concerning the production of the good. The Agreement provides that a Party should request a declaration only when it has reason to question the accuracy of a claim for preferential tariff treatment or when the Party is conducting a random verification. A Party may only deny preferential treatment in writing and must provide legal and factual findings. The Chapter also includes requirements for a procedure for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid.

Consultations. Chapter Four calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Chapter permits the creation of ad hoc working groups or a subcommittee of the Joint Committee to discuss necessary

amendments or revisions. In addition, Article 4.13 provides that, within six months of the date of entry into force of the Agreement, the United States and Oman “shall endeavor to develop to the extent practicable . . . a regional cumulation regime covering the United States and Middle Eastern countries that have free trade agreements with the United States.”

CHAPTER FIVE: CUSTOMS ADMINISTRATION

Chapter Five establishes specific commitments intended to facilitate trade through increased transparency, predictability, and efficiency in each Party’s customs procedures. It also provides for cooperation between the Parties on a variety of customs matters.

General Principles. The United States and Oman agree to implement certain transparency requirements. For example, the Parties must promptly publish their customs measures, including on the Internet and, where possible, solicit public comments before introducing or amending their customs regulations. The agreement requires the Parties to release goods from customs promptly and establishes separate, expedited customs procedures for the clearance of express shipments. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party regarding whether a good qualifies as an “originating good” under the Agreement, as well as on other customs matters. The Agreement allows Oman up to two years to comply with the provisions relating to advance rulings. In addition, each Party must guarantee importers access to both independent administrative and judicial review of customs determinations.

Cooperation. Chapter Five also contains provisions designed to enhance customs cooperation between the Parties. It encourages the Parties to give each other advance notice of changes to customs laws and regulations that are likely to affect the operation of the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other’s customs measures related to the Agreement and to import and export restrictions. It also includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

CHAPTER SIX: SANITARY AND PHYTOSANITARY MEASURES

Chapter Six defines the Parties’ obligations to one another regarding sanitary and phytosanitary (“SPS”) measures. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Under Chapter Six, the Parties affirm their rights and obligations with respect to each other under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. They also affirm their desire to create a forum through the Joint Committee on SPS matters. However, neither Party may invoke the FTA’s dispute settlement procedures for a matter arising under the Chapter. Instead, any SPS dispute between the Parties must be resolved under the applicable WTO agreement(s) and rules.

CHAPTER SEVEN: TECHNICAL BARRIERS TO TRADE

Under Chapter Seven, the Parties will build on WTO rules to promote transparency, accountability, and cooperation between the Parties on standards issues.

Key Concepts. The term “technical barriers to trade” (“TBT”) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards (“technical regulations”), and procedures used to determine whether a particular good meets such standards (“conformity assessment” procedures).

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Chapter Seven requires the Parties to apply these principles.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access. The Chapter specifies that the Office of the United States Trade Representative and Oman’s Ministry of Commerce and Industry will serve as TBT Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment (i.e., testing to determine whether a product or service meets applicable standards) results. Chapter Seven further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Seven contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; and (4) accept and respond in writing to comments on regulatory proposals. These provisions become effective no later than five years after the Agreement enters into force.

CHAPTER EIGHT: SAFEGUARDS

Chapter Eight establishes a bilateral safeguard mechanism that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect either government’s rights or obligations under the WTO’s safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or

threat of serious injury, to a domestic industry producing a “like” or “directly competitive” good.

Absent agreement by the other Party, a Party may only apply a safeguard measure to a good during the first 10 years that the FTA is in force. A safeguard measure may take one of two forms—a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A safeguard measure may last for a maximum aggregate period of three years. If a measure lasts more than one year, the Party must liberalize it at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may suspend “substantially equivalent” trade concessions that it has made to the other Party. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. Special safeguard provisions are set out for textile and apparel goods in Chapter Three (Textiles and Apparel).

Global Safeguards. Chapter Eight maintains each Party’s right to take action under Article XIX of GATT 1994 and the WTO Agreement on Safeguards against imports from all sources.

CHAPTER NINE: GOVERNMENT PROCUREMENT

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. The rules of Chapter Nine are broadly based on WTO procurement rules. (Oman is not a party to the WTO Agreement on Government Procurement.)

General Principles. Chapter Nine establishes a basic rule of “national treatment,” meaning that each Party’s procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is “no less favorable” than the treatment their domestic counterparts receive. The Chapter similarly bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain monetary thresholds by those government departments, agencies, and enterprises listed in each Party’s schedule. Specifically, the Chapter applies to procurements by listed “central” (i.e., Omani or U.S. federal) government agencies of goods and services valued at \$193,000 or more and construction services valued at \$8,422,165 or more.¹ The equivalent thresholds for purchases by “other entities”

¹ These thresholds are subject to adjustment every two years according to a “Threshold Adjustment Formula” set out in the Annex to Chapter Nine. In addition, as stated in that Annex, there are specific required threshold amounts during the first two years of the Agreement’s effectiveness.

are \$250,000 for goods and services (\$593,000 for the U.S. Rural Utilities Service) and \$10,366,227 for construction services. All thresholds, except the \$250,000 threshold, are subject to adjustment for inflation.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures, and must, upon request, provide an explanation regarding any such measure to the other Party. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (i.e., detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out rules that procuring entities must follow when they use limited tendering, i.e., when they limit the set of suppliers that may bid on a contract.

Award Rules. Chapter Nine requires all tenders for a contract must be considered, unless submitted by an otherwise disqualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine is designed to promote integrity in each Party’s procurement practices, including by requiring the Parties to adopt and maintain procedures that disqualify suppliers that a Party has determined to have engaged in fraudulent or illegal action in relation to procurement. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to procurement of goods or services of handicapped persons, philanthropic institutions, or prison labor.

CHAPTER TEN: INVESTMENT

Chapter Ten includes rules to protect investors from one Party against discriminatory and certain other restrictive government actions when they make or attempt to make investments in the other Party’s territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in

the North American Free Trade Agreement (NAFTA) and U.S. bilateral investment treaties) and in customary international law. It also contains several innovations that were incorporated in the free trade agreements the United States has negotiated with the countries of the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR), Morocco, Chile, and Singapore.

Key Concepts. Under Chapter Ten, the term “investment” covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term “investor of a Party” encompasses both U.S. and Omani nationals as well as firms (including branches) established in one of the Parties.

General Principles. Chapter Ten provides six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties (including where a Party takes measures to deal with armed conflict or civil strife in its territory); (2) the “minimum standard of treatment of aliens” in conformity with customary international law; (3) protection from expropriation other than in conformity with customary international law; (4) free transfer of funds related to an investment; (5) freedom from “performance requirements”; and (6) the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority or less of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter’s rules relating to national treatment, MFN treatment, performance requirements, or senior management and boards of directors. All current U.S. state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides for a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Section A of Chapter Ten or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on Chapter Ten investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter Ten requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept amicus submissions from the public. The Chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

CHAPTER ELEVEN: CROSS-BORDER TRADE IN SERVICES

Chapter Eleven governs measures affecting cross-border trade in services between the United States and Oman. Chapter provisions are drawn in part from the services provisions of the NAFTA and

the WTO General Agreement on Trade in Services (“GATS”), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers the supply of a service:

- from the territory of one Party into the territory of the other (e.g., electronic delivery of services from the United States to Oman);
- in the territory of a Party by a person of that Party to a person of the other Party (e.g., an Omani company provides services to U.S. visitors in Oman); and
- by a national of a Party in the territory of the other Party (e.g., a U.S. lawyer provides legal services in Oman).

General Principles. Among Chapter Eleven’s core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter’s provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (e.g., rules that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter’s market access rules apply both to services supplied on a cross-border basis and through local investments.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The Chapter excludes most financial services and air transportation, although it does apply to specialty air services and aircraft repair and maintenance. Each Party has listed in Annexes those measures in particular sectors for which it negotiated particular exemptions from the Chapter’s core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these core obligations. A Party may liberalize a measure that it has exempted, but in most cases it may not make such measures more restrictive (though certain market access commitments are exempted from this obligation).

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter’s rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter’s market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Eleven excludes any service supplied “in the exercise of governmental authority,” that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, al-

though the Parties have undertaken a commitment relating to cross-subsidization of express delivery services. The Parties have also negotiated an Annex regarding the regulation of professional services. Under Annex 11.9, the Parties will endeavor to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. Such standards and criteria may be developed with regard, among other things, to: (1) accreditation of schools or academic programs; (2) qualifying examinations for licensing; (3) standards of professional conduct and the nature of disciplinary action for non-conformity with those standards; (4) requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and (5) consumer protection. Under Annex 11.12, Oman will permit U.S. companies established in Oman to employ U.S. professionals and specialty personnel, and to hire personnel of any nationality for any position for which no Omani national is qualified.

Side Letter. Finally in a side letter, the Parties agree that no provision of the Agreement imposes obligations on the Parties with respect to immigration.

CHAPTER TWELVE: FINANCIAL SERVICES

Chapter Twelve provides rules governing each Party's treatment of financial institutions of the other Party and cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other enterprise authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations are similar to those in Chapter Ten (Investment) and Chapter Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. These rules apply to measures affecting financial institutions, including preestablishment, and to financial service suppliers that are currently supplying or seek to supply financial services on a cross-border basis.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an Annex to Chapter Twelve particular financial services measures for which it has negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive (though certain market access commitments are exempted from this obligation).

Other Provisions. Chapter Twelve includes provisions on transparency, as well as rules regarding "new" financial services, self-regulatory organizations, payment and clearing systems and the expedited availability of insurance products. The Agreement allows

Oman up to three years to comply with certain provisions on transparency in this Chapter.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of another Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, certain obligations of Chapter Ten, including the expropriation and transfers articles, apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven.

CHAPTER THIRTEEN: TELECOMMUNICATIONS

Chapter Thirteen includes disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment. Chapter Thirteen is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications services in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Thirteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "value-added services" (e.g., services that enable users to create, store, or process information over a network).

Competition. Chapter Thirteen establishes rules that reflect the common elements of the Parties' laws promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications service in the Party's territory can do so on reasonable and non-discriminatory terms (e.g., Oman must ensure that its public phone companies do not provide preferential access to Omani banks or Internet service providers, to the detriment of U.S. competitors);
- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in its territory at reasonable rates;
- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities of dominant carriers, such as buildings, where they can install equipment, thus facilitating cost-effective investment;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications serv-

ices from dominant domestic suppliers and resell them in order to build a customer base; and

Regulation. The Chapter also addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- ensure that they will maintain open and transparent telecommunications regulatory regimes, including requirements to publish licensing requirements and criteria and other government measures relating to public telecommunications services;
- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;
- may elect to deregulate telecommunications services when competition exists and certain standards are met; and
- may not prevent telecommunications service suppliers from choosing the technologies they consider appropriate for supplying their services, subject to legitimate public policy requirements.

CHAPTER FOURTEEN: ELECTRONIC COMMERCE

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The Chapter contains state-of-the-art provisions on electronic commerce, similar to those in recent U.S. free trade agreements with Chile, Singapore, Australia, Morocco, and Bahrain.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. The Chapter does not preclude a Party from imposing duties on digital products of the other Party that are fixed on a carrier medium, provided that the duty is based on the cost or value of that medium alone, rather than the cost or value of the digital content stored on that medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products. In particular, a Party may not treat digital products less favorably because such digital products: (1) have undergone certain specific activities (*e.g.*, creation, production, first sale) in the territory of the other Party; or (2) are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party treat digital products that have such a nexus to the other Party less favorably than it treats like digital products with such a nexus to a non-Party. These non-discrimination rules do not apply to actions taken in accordance with the non-conforming measures specifically exempted from the rules set out in Chapter Eleven (Cross-Border Trade in Services) or Chapter Twelve (Financial Services).

CHAPTER FIFTEEN: INTELLECTUAL PROPERTY RIGHTS

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Chapter Fifteen calls for the Parties to ratify or accede to certain agreements on intellectual property rights, in-

cluding the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (the “Brussels Convention”), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms (the “Budapest Treaty”), the Patent Cooperation Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. The United States is already a party to these agreements.

Chapter Fifteen also requires broad application of the principle of national treatment, with only limited exceptions. The general provisions further clarify the coverage of existing subject matter and requirements for publication of all laws, regulations, and procedures relating to the protection and enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Fifteen establishes rules concerning the protection of trademarks and geographical indications. For example, Parties must provide the owner of a registered trademark the exclusive right to prevent its use in the course of trade for related goods and services by any Party not having the owner’s consent. The Chapter also sets out rules with respect to the registration of trademarks. Each Party must provide protection for trademarks, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of trademarks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides for broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person’s life), or 95 to 120 years (for corporate works, depending on whether they were published within 25 years of their creation). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically requires protection for the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Fifteen the Parties agree to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite sig-

nals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties may only exclude inventions from patentability to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment. The Parties also may exclude from patentability animals and diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals. The Parties also confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires the Parties to provide for patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as for unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, specifically pharmaceuticals and agricultural chemicals. Among other things, the Parties must protect test information regarding safety and efficacy submitted in seeking marketing approval for such products by precluding other firms from relying on the information. It provides specific periods for such protection—for example, five years for new pharmaceuticals and 10 years for new agricultural chemicals. It also requires the Parties to adopt measures to prevent the marketing of a pharmaceutical product during the term of a patent covering that product.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits.

The Chapter also provides for award of damages based on a fixed range (i.e., "statutory damages"), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

Chapter Fifteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Side Letters. Finally, two side letters to Chapter Fifteen that are part of the Agreement contain additional obligations on the part of Oman with respect to intellectual property rights. In particular, Oman will adopt further measures: (1) requiring effective written notice to Internet service providers with respect to materials that are claimed to be infringing a copyright; and (2) regarding the

manufacture of optical discs, including provisions concerning licensure, registration, record keeping, and inspections, among others.

CHAPTER SIXTEEN: LABOR

Chapter Sixteen sets out the Parties' commitments regarding core labor rights. As with other recent free trade agreements, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the U.S. free trade agreements in force with, for example, Australia, Chile, Singapore, and Jordan.

General Principles. Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the 1998 ILO.

Declaration on Fundamental Principles and Rights at Work and its Follow-Up. Each Party must strive to ensure that its law recognizes and protects such labor principles and the internationally recognized labor rights listed in the Chapter. Each Party also must strive to ensure it does not waive or otherwise derogate from its labor laws to encourage bilateral trade or investment. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures for the enforcement of labor laws.

Effective Enforcement. Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. While committing each Party to effective labor law enforcement, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The Chapter defines labor laws to mean those directly related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of any form of forced or compulsory labor; (4) labor protections for children and young people, including a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to minimum wages, hours, and occupational safety and health and, for the United States, that are enforceable by actions of the federal government. The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Institutional Arrangements. Each Party may convene a national labor advisory committee, made up of members of its public, including representatives of labor and business organizations, to advise it on the implementation of the Chapter. Each Party also will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. In addition, the Joint Committee (see Article 19.2) may establish a Subcommittee on Labor Affairs comprising officials from each Party's labor ministry and other appropriate agencies to discuss the operation of Chapter Sixteen. Meetings of the Subcommittee will, unless the Parties otherwise agree, include a public session.

Cooperation. The Parties will establish a Labor Cooperation Mechanism to address labor matters of common interest, such as: (1) fundamental rights and their effective application; (2) improving

working conditions; (3) labor statistics; and (4) human resources development and lifelong learning.

Consultations and Dispute Settlement. If a Party considers that the other Party is not complying with its obligations, Chapter Sixteen provides for consultations regarding any matter arising under the Chapter, including the opportunity to refer a matter to the Subcommittee on Labor Affairs. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Sixteen or Chapter Twenty (Dispute Settlement). If a Party chooses to request consultations under Chapter Twenty, consultations under Chapter Sixteen on the same matter cease. In addition, after 60 days of consultations under Chapter Sixteen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Twenty.

CHAPTER SEVENTEEN: ENVIRONMENT

Chapter Seventeen sets out the Parties' commitments regarding environmental protection.

Chapter Seventeen draws on, but does not replicate, the North American Agreement on Environmental Cooperation (the supplemental NAFTA environmental agreement) and the environmental provisions included in U.S. free trade agreements in force with, for example,

Australia, Chile, Singapore, and Jordan.

General Principles. Each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or an investment in its territory. The Chapter also includes commitments to ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. In addition, the Chapter calls on the Parties to encourage the development of voluntary measures and market-based mechanisms for achieving and maintaining high levels of environmental protection. The Parties also must ensure that opportunities exist for the public to provide input concerning the implementation of the Chapter.

Cooperation. Chapter Seventeen includes commitments to enhance bilateral cooperation in environmental matters. In particular, the Parties agree to undertake activities pursuant to a United States-Oman Memorandum of Understanding on Environmental Cooperation. The Parties also commit to continue to seek means to enhance the mutual supportiveness of the multilateral environmental agreements to which they are both party and the international trade agreements to which they are both party.

Institutional Arrangements. At the request of either Party, a Subcommittee on Environmental Affairs ("Subcommittee") will be established to discuss the operation of Chapter Seventeen. The Subcommittee will include government officials from each Party. Unless the Parties otherwise agree, Subcommittee meetings will include an open session, and Subcommittee decisions will be made public. In addition, the Subcommittee may prepare reports con-

cerning implementation of Chapter Seventeen and such reports will be made public. Each Party may convene a national environment advisory committee, made up of members of its public to advise it on the implementation of the Chapter.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by action of the federal government, but it does not cover state or local environmental laws. The Chapter also recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Consultations and Dispute Settlement. If a Party considers that the other Party is not complying with its obligations under the Chapter, it may convene bilateral consultations and then may refer the matter to the Subcommittee on Environmental Affairs. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Seventeen or Chapter Twenty (Dispute Settlement). If a Party chooses to request consultations under Chapter Twenty, consultations under Chapter Seventeen on the same matter cease. In addition, after 60 days of consultations under Chapter Seventeen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Twenty.

CHAPTER EIGHTEEN: TRANSPARENCY

Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all measures concerning subjects covered by the Agreement and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an administrative proceeding applying measures to particular persons, goods, or services. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action when time, the nature of the process, and the public interest permit. Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In addition, Chapter Eighteen contains innovative provisions on combating bribery and corruption. Each Party must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, both governments will adopt or maintain appropriate measures to protect those who, in good faith, report acts of bribery and will work jointly to encourage and support appropriate regional and multilateral initiatives.

CHAPTER NINETEEN: ADMINISTRATION OF THE AGREEMENT

Chapter Nineteen requires that each Party designate a contact point to facilitate communication between the Parties on any matter relating to the Agreement. The Chapter also creates a Joint Committee to supervise the implementation and operation of the Agreement and to review the trade relationship between the Parties. Among others, its tasks will be to: (1) facilitate the prevention and settlement of disputes arising under the Agreement; (2) consider and adopt any amendment or other modification to the Agreement; and (3) consider ways to further enhance trade relations between the Parties. The Joint Committee will convene at least once a year.

CHAPTER TWENTY: DISPUTE SETTLEMENT

Chapter Twenty sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (e.g., the WTO Agreement), the complaining Party may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which will attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. In disputes related to a Party's enforcement of its labor or environmental laws, panelists must have expertise or experience relevant to the subject matter that is under dispute. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (i.e., obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits of equivalent effect.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or if the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place, and the defending Party will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within

six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever occurs first.

CHAPTER TWENTY-ONE: EXCEPTIONS

Chapter Twenty-One sets out exceptions that apply to the entire Agreement. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-One allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services and investment; (3) prohibition on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter also provides that a Party may withhold confidential information from the other Party where such disclosure would impede domestic law enforcement or otherwise be contrary to the public interest, or would prejudice legitimate commercial interests.

CHAPTER TWENTY-TWO: FINAL PROVISIONS

Chapter Twenty-Two provides that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two establishes that any other country or group of countries may become a party to the Agreement on terms and conditions that are agreed upon between the country or countries and the Parties and that are approved according to each country's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. It also provides for the entry into force of the Agreement and for its termination 180 days after a Party provides written notice that it intends to withdraw.

E. GENERAL DESCRIPTION OF THE BILL TO IMPLEMENT THE UNITED STATES-OMAN FREE TRADE AGREEMENT

Sec. 1. Short title; table of contents

This section provides that the short title of the act implementing the United States-Oman Free Trade Agreement (the Agreement) is the "United States-Oman Free Trade Agreement Implementation

Act” (Implementation Act). Section 1 also provides the table of contents for the Implementation Act.

Sec. 2. Purposes

This section provides that the purposes of the Implementation Act are to approve and implement the Agreement, to strengthen and develop economic relations between the United States and Oman, to establish free trade between the United States and Oman through the reduction and elimination of barriers to trade in goods and services and to investment, and to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

Sec. 3. Definitions

This section defines the terms “Agreement,” “HTS,” and “Textile or apparel good,” for purposes of the Implementation Act.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS
RELATING TO, THE AGREEMENT

Sec. 101. Approval and entry into force of the agreement

This section provides congressional approval for the Agreement and its accompanying Statement of Administration Action. Section 101 also provides that, if the President determines that Oman has taken measures necessary to come into compliance with obligations that take effect at the time the Agreement enters into force, the President is authorized to exchange notes with Oman to provide for the entry into force of the Agreement with respect to the United States on or after January 1, 2007.

Sec. 102. Relationship of the agreement to United States and state law

This section establishes the relationship between the Agreement and U.S. law. Section 102 clearly states that no provision of the Agreement will be given effect under U.S. law if it is inconsistent with any federal law.

Section 102 provides that only the United States may bring an action in court if there is an unresolved conflict between a state law and the Agreement. This section also precludes any private right of action against the federal government, state or local governments, or against a private party, based on the provisions of the Agreement.

Sec. 103. Implementing actions in anticipation of entry into force and initial regulations

This section provides that, following the enactment of the Implementation Act, the President may proclaim such actions, and other appropriate officers of the federal government may issue such regulations, as may be necessary to ensure that provisions of the legislation that take effect on the date the Agreement enters into force are appropriately implemented on such date. Section 103 provides that, with respect to any action proclaimed by the President that is not subject to the consultation and layover provisions contained in section 104, such action may not take effect before the 15th day after the date on which the text of the proclamation is published

in the Federal Register. The 15-day restriction is waived, however, to the extent that it would prevent an action from taking effect on the date the Agreement enters into force. Section 103 also provides that, to the maximum extent feasible, initial regulations necessary or appropriate to carry out the actions required by the Implementation Act or proposed in the Statement of Administrative Action shall be issued within 1 year of the date on which the Agreement enters into force. In accordance with the accompanying Statement of Administrative Action, any agency unable to issue a regulation within one year must report to the Committee, at least 30 days prior to the end of the 1-year period, the reasons for the delay and the expected date for issuance of the regulation.

Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions

This section sets forth consultation and layover steps that must precede the President's implementation of any action by proclamation that is subject to the requirements of this section. Under the consultation and layover provisions, the President is required to obtain advice regarding a proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. §2155) and the U.S. International Trade Commission.

The President must also submit to the Senate Committee on Finance and the House Committee on Ways and Means a report setting forth the action proposed, the reasons for the proposed action, and the advice of the appropriate advisory committees and the U.S. International Trade Commission. Section 104 sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Senate Committee on Finance and the House Committee on Ways and Means on the proposed action.

Sec. 105. Administration of dispute settlement proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 20 of the Agreement. Section 105 also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of claims

This section authorizes the United States to resolve certain claims pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

Sec. 107. Effective dates; effect of termination

This section provides that the provisions of the Implementation Act and the amendments made by it take effect on the date on which the Agreement enters into force, except for sections 1 through 3 and Title I, which take effect on the date of enactment of the Implementation Act. Under section 107, the provisions of the Implementation Act and the amendments to other statutes made by it will cease to have effect on the date on which the Agreement terminates.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications

Section 201(a) authorizes the President to implement by proclamation the modification of any duty, continuation of any duty, or imposition of additional duties, or the continuation of duty-free or excise treatment, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and Annex 2–B of the Agreement. In addition, section 201(a) requires the President to terminate the designation of Oman as a beneficiary developing country for purposes of the U.S. Generalized System of Preferences on the date on which the Agreement enters into force.

Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 104, to proclaim the modification of any duty or modification to the staging of any duty elimination, the continuation of any duty, the imposition of additional duties, or the continuation of duty-free or excise treatment, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Oman provided for by the Agreement.

Section 201(c) authorizes the President, with respect to any good for which the base rate of duty in the Tariff Schedule of the United States to Annex 2–B of the Agreement is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

Sec. 202. Rules of origin

Section 202 implements the general rules of origin set forth in Chapter 4 of the Agreement. These rules define the circumstances under which a good imported from Oman qualifies as an originating good and is thus eligible for preferential tariff treatment according to the terms of the Agreement.

Under section 202(b), for a good entering the United States to qualify as an originating good, it must be imported directly from the territory of Oman. Further, section 202(b) provides that the good must be covered by one of three specified categories. First, a good is an originating good if it is wholly the growth, product, or manufacture of Oman or the United States, or both.

Second, a good is an originating good if it is a new or different article of commerce that has been grown, produced, or manufactured in Oman or the United States, or both, from a good or material that is not wholly the growth, product, or manufacture of Oman or the United States, or both (i.e. the good has undergone a “substantial transformation”). Additionally, the sum of the value of each material produced in Oman or the United States, or both, and the direct costs of processing operations performed in Oman or the United States, or both, must be at least 35 percent of the appraised value of the good at the time the good is entered into the United States. This “substantial transformation” rule of origin is akin to rules of origin provided for in the United States-Israel Free Trade Area Implementation Act, the United States-Jordan Free Trade Area Implementation Act, the United States-Morocco Free Trade Agreement Implementation Act, and the United States-Bahrain Free Trade Agreement Implementation Act.

Third, a good is an originating good if it meets the product-specific rules set out in Annex 3–A (Rules of Origin for Textile or Apparel Goods for Chapters 42, 50 Through 63, 70, and 94) or Annex 4–A (Certain Product-Specific Rules of Origin) of the Agreement and satisfies all other applicable requirements of section 202. Moreover, each of the non-originating materials used in the production of the good must have undergone an applicable change in tariff classification specified in Annex 3–A or Annex 4–A as a result of production occurring entirely in the territory of Oman or the United States, or both, or the good must otherwise satisfy the requirements specified in Annex 3–A or Annex 4–A.

Section 202(c) provides a rule of cumulation for an originating good or material produced in the territory of Oman or the United States, or both, that is incorporated into a good in the territory of the other country. Section 202(d) provides rules for valuing a material produced in the territory of Oman or the United States, or both. Section 202(e) addresses the treatment of packaging and packing materials and containers for retail sale and for shipment in determining whether a good qualifies as an originating good. Section 202(f) addresses the treatment of indirect materials in determining whether a good qualifies as an originating good. Section 202(g) addresses the issue of transit and transshipment in determining the origin of a good.

Section 202(h) provides certain specific rules of origin for textile and apparel goods, including a *de minimis* rule. Section 202(h)(1)(A) provides that a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3–A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component. An exception to section 202(h)(1)(A) is provided, however, at section 202(h)(1)(B), which states that a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Oman or the United States.

Section 202(i) provides definitions of the following terms applicable to the rules of origin: (1) “direct costs of processing operations,” (2) “good,” (3) “good wholly the growth, product, or manufacture of Oman or the United States, or both,” (4) “indirect material,” (5) “material,” (6) “material produced in the territory of Oman or the United States, or both,” (7) “new or different article of commerce,” (8) “recovered goods,” (9) “remanufactured good,” (10) “simple combining or packaging operations,” and (11) “substantially transformed.”

Section 202(j) authorizes the President to proclaim, as part of the Harmonized Tariff Schedule of the United States, the provisions set forth in Annex 3–A (Rules of Origin for Textile or Apparel Goods for Chapters 42, 50 Through 63, 70, and 94) and Annex 4–A (Certain Product-Specific Rules of Origin) of the Agreement, and to modify certain of the Agreement’s rules of origin by proclamation subject to the consultation and layover provisions of section 104.

Sec. 203. Customs user fees

This section provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under the Agreement. Processing of goods qualifying as originating goods will be financed from the General Fund of the Treasury.

Sec. 204. Enforcement relating to trade in textile and apparel goods

This section authorizes the President to apply anti-circumvention provisions concerning trade in textile and apparel goods. Pursuant to article 3.3 of the Agreement, the Secretary of the Treasury may request that the Government of Oman conduct a verification to determine the compliance of exporters and producers with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods, and to determine the accuracy of a claim of origin for a textile or apparel good. Section 204(a) provides that the President may direct the Secretary of the Treasury to take “appropriate action” while such a verification is being conducted. Under section 204(b), such appropriate action includes the suspension of liquidation of the entry of any textile or apparel good exported or produced by the person subject to a verification, and the suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification.

Section 204(c) provides that, if the Secretary of the Treasury is unable to confirm within 12 months of making a verification request that an Omani exporter or producer is complying with applicable customs laws, regulations, procedures, requirements, or practices regarding trade in textile or apparel goods, or that a claim of origin for a textile or apparel good is accurate, the President may determine what additional “appropriate action” to take. Under section 204(d), such additional appropriate action includes: the publication of the name and address of the person subject to the verification; the denial of preferential tariff treatment under the Agreement to (1) any textile or apparel good exported or produced by the person subject to the verification or (2) a textile or apparel good for which a claim has been made that is the subject of the verification; and, the denial of entry into the United States of (1) any textile or apparel good exported or produced by the person subject to the verification or (2) a textile or apparel good for which a claim has been made that is the subject of the verification. Section 204(c) also provides that such additional appropriate action may remain in effect until such time as the Secretary of the Treasury receives information sufficient to make a determination that an exporter or producer in Oman is complying with applicable customs laws, regulations, procedures, requirements, and practices affecting trade in textile or apparel goods, or a determination that a claim of origin for a textile or apparel good under the Agreement is accurate. Section 204(c) further provides that such additional appropriate action may remain in effect until such earlier date as the President may direct.

Sec. 205. Reliquidation of entries

Section 205 amends section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to authorize the reliquidation of an entry of a good qualifying under the rules of origin specified in the Agreement and

for which no claim for preferential treatment was made at the time of importation, notwithstanding the fact that a valid protest was not filed. However, the importer must file a claim for such reliquidation within 1 year after the date of importation.

Sec. 206. Regulations

Section 206 authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the rules of origin and customs user fee provisions in the Implementation Act, as well as with respect to the President's proclamation authority under section 202(j).

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms “Omani article,” “Omani textile or apparel article,” and “Commission,” for purposes of the general bilateral safeguard provision contained in Chapter 8 of the Agreement and the textile and apparel bilateral safeguard provision contained in Chapter 3 of the Agreement. The term “Omani article” is defined as an article that qualifies as an originating good under section 202(b) of the Implementation Act or receives preferential tariff treatment under paragraphs 8 through 11 of article 3.2 of the Agreement. The term “Omani textile or apparel article” is defined as an Omani article that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)). The term “Commission” is defined as the United States International Trade Commission.

SUBTITLE A. RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

Sec. 311. Commencing of action for relief

This section requires the filing of a petition with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry, in order to commence a bilateral safeguard investigation.

Section 311(b) provides that, upon the filing of a petition, the Commission shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an Omani article is being imported into the United States in such increased quantities and under such conditions that imports of the Omani article constitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 311(c) extends certain provisions (both substantive and procedural) contained in subsections (b), (c), and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. § 2252(b), (c), and (i)) that apply to global safeguard investigations, to any bilateral safeguard initiated under the Agreement. These provisions include, inter alia, the requirement that the Commission publish notice of the commencement of an investigation; the requirement that the Commission hold a public hearing at which interested parties and consumers

have the right to be present and to present evidence; the factors to be taken into account by the Commission in making its determinations; and, authorization for the Commission to promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties in an investigation.

Section 311(d) precludes the initiation of a bilateral safeguard investigation with respect to any Omani article for which import relief has already been provided under this bilateral safeguard provision.

Sec. 312. Commission action on petition

This section establishes deadlines for Commission action following the initiation of a bilateral safeguard investigation. Section 312(b) applies certain statutory provisions that address an equally divided vote by the Commission in a global safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) to Commission determinations and findings under this section. If the Commission renders an affirmative injury determination, or a determination that the President may consider to be an affirmative determination in the event of an equally divided vote by the Commission, section 312(c) requires that the Commission also find and recommend to the President the amount of import relief that is necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) specifies the information to be included by the Commission in a report to the President regarding its determination. Upon submitting the requisite report to the President, section 312(e) requires the Commission to promptly make public such report, except for any confidential information contained in the report, and to publish in the Federal Register a summary of such report.

Sec. 313. Provision of relief

This section directs the President, not later than 30 days after receiving the report from the Commission, to provide relief from imports of the article subject to an affirmative determination by the Commission, or a determination that the President considers to be an affirmative determination in the event of an equally divided vote by the Commission, to the extent that the President determines necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

Section 313(c) specifies the nature of the import relief that the President may impose, to include: the suspension of any further reduction in duty provided for under Annex 2-B of the Agreement; and, an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of: (1) the normal trade relations (most-favored-nation) (NTR (MFN)) duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR (MFN) duty rate imposed on like articles on the day before the date on which the Agreement enters into force. Section 313(c) also re-

quires that, if the period for which import relief is provided exceeds one year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period of its application.

Section 313(d) provides that any import relief that the President imposes in a bilateral safeguard action may not, in the aggregate, be in effect for more than 3 years. If the initial period of import relief is less than 3 years, the President may extend the effective period of such import relief to a total of no more than 3 years; however, the Commission must first report an affirmative determination to the President that import relief continues to be necessary to remedy or prevent serious injury and that there is evidence that the domestic industry is making a positive adjustment to import competition (or a determination that the President considers to be an affirmative determination in the event of an equally divided vote by the Commission). The President may then extend the effective period of import relief to a total of no more than 3 years if the President determines that import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition.

Section 313(e) provides that upon termination of import relief with respect to an article under the bilateral safeguard provision, the rate of duty to be applied to imports of that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

Section 313(f) precludes the application of import relief pursuant to the bilateral safeguard provision with respect to any Omani article for which import relief has already been provided under the bilateral safeguard provision after the date on which the Agreement enters into force.

Sec. 314. Termination of relief authority

This section provides that the President's authority to impose import relief under the bilateral safeguard provision ends after the date that is 10 years after the date on which the Agreement enters into force; however, import relief may continue to be provided beyond such date with respect to an article subject to such import relief pursuant to the bilateral safeguard provision if the President determines that Oman consents to the application of such relief.

Sec. 315. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant Oman new concessions as compensation for the imposition of import relief pursuant to the bilateral safeguard provision, in order to maintain the general level of reciprocal concessions under the Agreement.

Sec. 316. Confidential business information

This section applies the same procedures for the treatment and release of confidential business information by the Commission in a global safeguard investigation under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.) to bilateral safeguard investigations under title III of the Implementation Act.

SUBTITLE B. TEXTILE AND APPAREL SAFEGUARD MEASURES

Sec. 321. Commencement of action for relief

This section requires the filing of a request with the President by an interested party in order to commence action for relief under the textile and apparel safeguard provision. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request. Section 321(b) provides that, if the President determines that the request provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

The Committee notes that our regulatory processes should be administered in an open and transparent manner that can serve as a model for our trading partners. For example, in addition to publishing a summary of a request for safeguard relief, the Committee notes that the President plans to make available the full text of the request on the website of the International Trade Administration of the U.S. Department of Commerce, subject to the protection of business confidential information, if any. The Committee encourages this and similar efforts to enhance government transparency. In particular, the Committee encourages the President to issue regulations on procedures for: requesting a textile and apparel safeguard action under section 321(a) of the Implementation Act; making a determination under section 322(a) of the Implementation Act; providing safeguard relief under section 322(b) of the Implementation Act; and, extending safeguard relief under section 323(b) of the Implementation Act.

Sec. 322. Determination and provision of relief

This section provides that following the President's commencement of consideration of a request, the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 322(a) provides that in making such a determination the President shall examine the effect of increased imports on the domestic industry's output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive. Section 322(a) also provides that the President shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

Section 322(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition. Section 322(b) also specifies the nature of the import relief that the Presi-

dent may impose, to consist of an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of: (1) the NTR (MFN) duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR (MFN) duty rate imposed on like articles on the day before the date on which the Agreement enters into force.

Sec. 323. Period of relief

Section 323(a) provides that any import relief that the President imposes under the textile and apparel safeguard provision may not, in the aggregate, be in effect for more than 3 years. If the initial period of import relief is less than 3 years, then under section 323(b) the President may extend the effective period of such import relief to a total of no more than 3 years if the President determines that the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition.

Sec. 324. Articles exempt from relief

This section precludes the President from providing import relief under the textile and apparel safeguard provision with respect to any article for which import relief has already been provided under the textile and apparel safeguard provision after the date on which the Agreement enters into force. Section 324 also precludes the President from providing import relief under the textile and apparel safeguard provision with respect to any article that is already subject to import relief pursuant to the global safeguard provision set forth in chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.).

Sec. 325. Rate after termination of import relief

This section provides that the duty rate applicable to a textile or apparel article after termination of the import relief shall be the duty rate that would have been in effect, but for the provision of such import relief, on the date on which the relief terminates.

Sec. 326. Termination of relief authority

This section provides that the President's authority to provide import relief with respect to an article under the textile and apparel safeguard provision terminates after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

Sec. 327. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant Oman new concessions as compensation for the imposition of import relief pursuant to the textile and apparel safeguard provision, in order to maintain the general level of reciprocal concessions under the Agreement.

Sec. 328. Confidential business information

This section precludes the President from releasing information received in a textile and apparel safeguard proceeding that the

President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. This section also provides that, to the extent a party submits confidential business information to the President, the party shall also submit a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products

This section amends section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. §2518(4)(A)) to implement the government procurement provisions of the Agreement.

F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on June 28, 2006, S. 3569 was ordered favorably reported, without amendment, by a recorded vote of those present and voting, 10 ayes, 3 nays, a quorum being present.

II. BUDGETARY IMPACT OF THE BILL

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 28, 2006.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3569, a bill to implement the United States-Oman Free Trade Agreement.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Emily Schlect, who may be reached at 226-2680.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 3569—United States-Oman Free Trade Agreement Implementation Act

Summary: S. 3569 would approve the free trade agreement between the government of the United States and the government of Oman that was entered into on January 19, 2006. It would provide for tariff reductions and other changes in law related to implementation of the agreement.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by \$15 million in 2007, by \$111 million over the 2007–2011 period, and by \$271 million over the 2007–2016 period, net of income and payroll tax offsets. CBO estimates that enacting S. 3569 also would increase direct spending by \$1 million in

2007, \$6 million over the 2007–2011 period, and \$10 million over the 2007–2016 period. Further, CBO estimates that implementing the legislation would incur new discretionary spending of less than \$1 million per year, assuming the availability of appropriated funds.

CBO has determined that S. 3569 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not directly affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 3569 over the 2007–2016 period is shown in the following table. The cost for spending under this legislation falls within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
CHANGES IN REVENUES										
Changes in Revenues	-15	-21	-23	-25	-26	-28	-30	-32	-34	-37
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	1	1	1	1	1	1	1	1	0	0
Estimated Outlays	1	1	1	1	1	1	1	1	0	0

Note: Negative changes in revenues and positive changes in direct spending correspond to increases in budget deficits.

Basis of Estimate

Revenues

Under the United States-Oman agreement, tariffs on U.S. imports from Oman would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination on the date the agreement enters into force to gradual elimination over 10 years. According to the U.S. International Trade Commission, the United States collected about \$20 million in customs duties in 2004 on \$422 million of imports from Oman. Those imports consist largely of various types of apparel articles and oils. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Oman agreement reduce revenues by \$15 million in 2007, by \$111 million over the 2007–2011 period, and by \$271 million over the 2007–2016 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Oman that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Oman would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Oman would displace imports from other countries.

Direct Spending

This legislation would exempt certain goods imported from Oman from merchandise processing fees collected by the Department of Homeland Security. Such fees are recorded as offsetting receipts (a credit against direct spending). Based on the value of goods imported from Oman in 2005, CBO estimates that implementing this

provision would reduce fee collections by about \$1 million in fiscal year 2007 and in each year through 2014, for a total of \$10 million over the 2007–2014 period. There would be no effects in later years because the authority to collect merchandise processing fees expires at the end of 2014.

Spending Subject to Appropriation

Title I of S. 3569 would authorize the appropriation of necessary funds for the Department of Commerce to pay the United States' share of the costs of the dispute settlement procedures established by the agreement. Based on information from the agency, CBO estimates that implementing this provision would cost less than \$1 million per year, subject to the availability of appropriated funds.

Intergovernmental and Private-Sector Impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Emily Schlect; Federal Spending: Mark Grabowicz and Kim Cawley. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Roberton C. Williams, Deputy Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. No. 104–04). The Committee has reviewed the provisions of S. 3569 as approved by the Committee on June 28, 2006. In accordance with the requirements of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of State, local, or tribal governments.

IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * *

(17) *No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Oman Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.*

* * * * *

SECTION 520 OF THE TARIFF ACT OF 1930

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * *

(d) **GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.**—Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, section 202 of the United States-Chile Free Trade Agreement Implementation Act, [or] section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act [for which], or section 202 of the United States-Oman Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) * * *

* * * * *

(3) such other documentation *and information* relating to the importation of the goods as the Customs Service may require.

SECTION 202 OF THE TRADE ACT OF 1974

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) **PETITIONS AND ADJUSTMENT PLANS.**—

(1) * * *

* * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United

States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, [and] title III of the United States-Bahrain Free Trade Agreement Implementation Act, *and title III of the United States-Oman Free Trade Agreement Implementation Act.* The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * *

SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term “eligible product” means, with respect to any foreign country or instrumentality that is—

(i) * * *

* * * * *

(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States; [or]

(v) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States[.]; or

(vi) a party to the *United States-Oman Free Trade Agreement*, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States.

* * * * *

V. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATOR MAX BAUCUS

Regarding the development of the implementing legislation, Senator Conrad's amendment (Conrad-Bingaman-Kerry #1) was introduced and discussed with a view toward recent events and apparent failures to enforce measures to prevent the importation of goods produced with slave labor. Specifically, the sponsors of the amendment cited recent examples of U.S. imports of goods from Jordan produced under conditions tantamount to slave labor and involving human trafficking. The existence of these imports, which benefited from the U.S.-Jordan Free Trade Agreement, called into question the adequacy of existing measures that prohibit the importation of such goods. The sponsors of the amendment also noted that while United States law prohibits the importation of goods produced with convict labor, as well as with forced labor and indentured labor, the law does not expressly address the use of human trafficking in the production of these goods.

In terms of the process by which the United States-Oman Free Trade Agreement was considered, the Trade Promotion Authority Act of 2002 stipulates the procedures under which this Agreement was considered and builds on a history of Congressional-Executive consultation procedures. These procedures were designed to facilitate the negotiation, conclusion, and consideration of international trade agreements. This process was designed to be a Congressional-Executive partnership. The "mock" consideration of the draft implementing bill is both symbolic of and integral to this partnership. Congress and the President first used these procedures adopted in the Trade Act of 1974 to implement the GATT Tokyo Round agreements in 1979. Congress and the Administration have since used these procedures to implement the WTO Uruguay Round Agreements, as well as subsequent free trade agreements.

Throughout the history of these procedures, the Committee has on many occasions considered and adopted amendments to implementing legislation. When the Committee considered the United States-Israel Free Trade Agreement in 1984, Committee Members offered 13 amendments, and the Committee adopted 3. In 1988, when the Committee considered the Canada-United States Free Trade Agreement, Members offered 9 amendments, all of which were adopted. When the Finance Committee considered draft implementing legislation for the North American Free Trade Agreement in 1993, members offered at least 15 amendments, of which 14 were adopted. These amendments added in the mock markup led to differences between the versions of the draft bill approved by the Finance Committee and the bill approved by the Ways and Means Committee.

Consistent with normal legislative practice since 1974, the two Committees resolved these differences in informal or “mock” conferences. Although these informal procedures are not statutory, they are critical to Congress’s Constitutional oversight authority over trade policy, and to the smooth operation of the Congressional-Executive partnership on trade. These informal procedures included consultation on the Member as well as the staff levels, both formally and informally.

In the case of the United States-Oman Free Trade Agreement implementing legislation, the Committee unanimously adopted the Conrad-Bingaman-Kerry amendment, while the Ways and Means Committee adopted no amendments. The Democratic staff of the Finance Committee and the Ways and Means Committee both requested a mock conference in line with historical precedent. The request was denied and no conference was convened, despite the differences in the legislation.

The Trade Promotion Authority Act of 2002 was intended to build on and enhance Congressional oversight of United States trade policy. The consultative process by which the United States-Oman Free Trade Agreement was handled was a departure from the longstanding Congressional-Executive partnership on trade.

