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UNITED STATES-OMAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

JULY 17, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 5684]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5684) to implement the United States-Oman Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. INTRODUCTION

A. Purpose and Summary

H.R. 5684 would implement the January 19, 2006 Agreement establishing a free trade area between the United States and Oman.

B. Background

I. The United States-Oman Free Trade Agreement

The Committee believes that the Agreement meets the objectives and priorities set forth in the Bipartisan Trade Promotion Authority Act of 2002 (TPA). The Agreement covers all agricultural and industrial sectors, provides for some of the greatest market access for U.S. services of any Free Trade Agreement (FTA), contains robust protections for U.S. intellectual property rights holders, and includes strong labor and environment provisions. In addition to the new commercial opportunities it provides, the Agreement will support many of the recent governance, legal, and economic reforms in Oman.

Trade Impact.—All bilateral trade in consumer and industrial products will become duty-free immediately upon entry into force of the Agreement. According to the United States International Trade Commission (ITC), the Agreement will likely have a "small but positive effect on the U.S. economy" due to Oman's relatively small share of total U.S. trade. Many Omani goods already enjoy duty free treatment because of Oman's Generalized System of Preferences (GSP) status and Normal Trade Relations (NTR) status.

Agriculture.—All agriculture products are covered by the Agreement, which will provide immediate duty-free access for U.S. agriculture exports in 87% of agriculture tariff lines. Oman will phase out tariffs on remaining products within ten years. The United States exported $12 million in agricultural products to Oman in 2005, including sugars, sweeteners, and beverage bases.

The United States will provide immediate duty free access to 100% of Oman's current agricultural exports to the United States.

Oman has not traditionally been a large agricultural exporter to the U.S. market, and USTR reports that the United States imported $1.7 million in agricultural products from Oman in 2005. Accordingly, the Agreement does not contain an agricultural safeguard.

Textiles and Apparel.—The Agreement contains a yarn-forward rule of origin for textiles. Like other FTAs (including Bahrain, Morocco, Chile, Singapore, and NAFTA), the Agreement contains limited, temporary allowances for the use of yarn and fabric from a non-party under a Tariff Preference Level (TPL). It is set at an annual level of 50 million square meters equivalent (SMEs) for the first ten years and is equal to approximately 0.1% of total U.S. imports of textile and apparel. U.S. exporters are provided with the same TPL access to Oman's market. After the TPL expires, all trade under the Oman FTA must adhere to the yarn-forward rule of origin. While ITC estimates that the Agreement will result in an increase in Oman's textile exports to the United States, it also estimates that this increase will not have a significant impact on overall U.S. imports because it will be offset by reduced levels of imports from other nations.

In addition, the Agreement contains a special textile safeguard, which allows either party to re-impose tariffs that were in place before the agreement if imports from the other party cause or threaten to cause serious damage to the domestic industry. Furthermore, the FTA has special, state-of-art customs enforcement and cooperation provisions for textiles, allowing the customs authorities of the parties to verify production and ultimately to deny duty preferences or entry if production cannot be authenticated.

The Committee believes that maintaining a current short supply list under the FTA is integral to the effective functioning of the rule of origin for textiles and apparel. The Committee expects the President to seek to incorporate all existing and future affirmative short supply determinations from other trade agreements and trade preference programs into the textile and apparel rule of origin for this FTA. Moreover, given that prior short supply designations have already undergone public comment and consultation with domestic parties, the President should apply those designations to this FTA without further public investigation. Finally, the Committee clarifies that the short supply provision included in this FTA, as well as previous FTAs and trade preference programs enacted by Congress, contemplates items only being added to the list of short supply items, with a limited exception in the Dominican Republic-Central America FTA (DR–CAFTA). In other words, once an item is designated as being in short supply, the item is permanently designated as such unless otherwise provided for by the statute implementing the FTA or trade preference program. Indeed, the fact that Congress specifically designated procedures for removal of products from the list in DR–CAFTA signifies that the authority to do so does not exist in implementing legislation or trade preference programs where that authority is not explicitly provided, such as this FTA.

Furthermore, the Committee expects that all short supply parties will be able to participate in an open and transparent process. Specifically, Committee for the Implementation of Textile Agreements (CITA) should publish procedures that clearly explain the criteria

it uses to make its determinations on whether and why a good is or is not available in commercial quantities. At the very least, when CITA determines that a good is available in commercial quantities, a sample of the good should be readily available for physical inspection by all parties as well as by evidence of some effort to market the good in the United States. Moreover, all parties should have open access to the full evidence being considered by CITA as well as the opportunity to respond to the full evidence before a determination is made.

Services.—Under the Agreement, Oman will accord broad market access across its services industries and will provide increased market access and regulatory transparency in most industries. The Agreement utilizes the negative list approach for coverage with very few reservations, which means that all services are covered except those few specifically excluded. The few exceptions taken by Oman include areas such as employment placement, internal waterway transport, investigation and security, licensed tour guides, real estate brokerage, specialty air service, and taxi cabs. The Agreement offers new access in key sectors such as audiovisual, express delivery, telecommunications, computer and related services, distribution, healthcare, services incidental to mining, construction, architecture, and engineering. Benefits are provided for businesses that wish to supply services cross-border (for example, by electronic means over the Internet) as well as those that wish to establish a local presence in Oman. In particular, U.S. financial service providers will have the right to establish subsidiaries, branches, and joint ventures inside Oman. The Agreement provides new opportunities for U.S. managers, professionals, and specialty personnel by removing requirements that U.S. companies hire Omanis for these positions. The ITC report on the Agreement states that the Agreement will provide additional market access to U.S. services firms and that these firms and their affiliates in Oman will likely benefit from the improved transparency and market access.

The agreement does not allow any foreign entity to control, manage, or operate any U.S. port, and this function remains the responsibility of U.S. port authorities. The Agreement, like previous FTAs, simply treats Omani landside service suppliers and investors no less favorably than U.S. landside service providers. Any such service providers are still subject to a rigorous security review because the Agreement does not circumvent the Exon-Florio Act's Committee on Foreign Investment in the United States (CFIUS) process, which authorizes the President to block any proposed foreign investment in the United States that threatens U.S. national security. If the President were to block a transaction on these grounds, it would be consistent with the Agreement. Finally, the Agreement contains an explicit and self-judging exception under the Agreement's Article 21.2 allowing a country to take actions or deny benefits to protect its essential security interests.

Investment.—The Agreement contains an investor-state provision, which allows investors alleging a breach in investment obligations to seek binding arbitration with Oman directly, giving U.S. foreign investors enhanced protections. These provisions level the playing field for U.S. investors by giving them legal protections in Oman comparable to the protections that foreign investors already receive in the United States.

The investment language in the Agreement follows the guidance set forth in TPA, which states that foreign investors in the United States should not be accorded "greater substantive rights" than those afforded to U.S. investors in the United States. While the procedures for resolving disputes between a foreign investor and a government may differ from the procedures for resolving disputes between a domestic investor and a government, the Committee notes that the substantive standards in the Agreement are essentially the same as those found in the U.S. Constitution. Specifically, the Agreement's investment provisions are modeled after the Takings, Due Process and Equal Protections provisions of the U.S. Constitution, the Administrative Procedures Act, and other U.S. laws.

The Committee believes that there have been significant misrepresentations about investment protection provisions in this and other free trade agreements. Nothing in this Agreement or any other U.S. free trade agreement or bilateral investment treaty interferes with a state or local government's right to regulate. An investor cannot enjoin regulatory action through arbitration, nor can arbitral tribunals. Also, the Agreement makes improvements over former FTAs by incorporating standards in the expropriation provisions drawn directly from U.S. Supreme Court decisions and by taking regulatory interests fully into account. Consistent with U.S. law, for example, the Agreement's text specifies that nondiscriminatory regulatory actions designed and applied to protect the public welfare do not constitute indirect expropriations "except in rare circumstances." Moreover, the arbitration process under the Agreement is more open and transparent, and hearings and documents are public, and amicus curiae submissions are expressly authorized.

Building on the NAFTA experience, the Agreement's investment chapter includes checks to help ensure that investors cannot abuse the arbitration process. The Agreement includes a special provision (based on U.S. court rules) that allows tribunals to dismiss frivolous claims at an early stage of the proceedings, and it expressly authorizes awards of attorneys' fees and costs if a claim is found to be frivolous.

The Committee believes that the allegations and anti-trade rhetoric surrounding NAFTA Chapter 11 investor-state cases are exaggerated. The United States has never lost a single case under NAFTA or any other FTA or bilateral investment treaty, nor has the United States ever paid to settle such a case.

Labor and Environment.—Labor and environmental obligations are part of the core text of the trade agreement, consistent with Trade Promotion Authority requirements, and are similar to provisions in prior FTAs. The Agreement states that both parties shall ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The Agreement also provides that parties shall strive to continue to improve such laws. The Agreement states that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment—that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of ac-

tion or inaction, in a manner affecting trade between the parties—is subject to dispute settlement under the Agreement. Oman and the United States will pursue a number of cooperative projects to promote environmental protection, and both governments will utilize a Memorandum of Understanding on Environmental Cooperation to prioritize environmental projects and develop plans of action. The Agreement contains a cooperative mechanism to promote respect for the principles embodied in the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor.

Oman has undertaken significant labor and governance reforms. In 2003 Oman issued a new labor law (Royal Decree No. 35), which removes a 1973 ban on strikes and protects the rights of foreign and national workers to establish representative committees with collective bargaining powers. In the context of Congressional consideration of the Agreement, Committee Members of both parties asked that Oman look to Bahrain as a model in terms of the labor commitments needed to secure broad, bipartisan support.

By any measure, Oman has met or exceeded the example and commitments of Bahrain that helped the Bahrain FTA obtain the largest number of votes in the House of Representatives of any FTA considered under Trade Promotion Authority. During the Committee's markup of the Agreement's implementing legislation, Assistant USTR for Europe and the Middle East Shaun Donnelly stated that, compared with Bahrain, the overall Omani labor commitment is stronger and that based on his knowledge, it is fair to say that Oman has made a more dramatic commitment to labor reform than any government which has entered into such an agreement with the United States. The Committee believes that Oman has provided extensive answers, commitments, and materials to respond to and address every substantive issue raised by Committee Members. As described in the letters from the Omani government included as part of this report, Oman, like Bahrain, has committed to extensive labor reforms, including:

- Strengthening its collective bargaining laws;
- Ensuring that workers have the option of reinstatement for improper termination due to union activity;
- Allowing more than one worker representative committee per enterprise;
- Allowing more than one federation or representative group for individual worker representative committees and removing requirement that each representative committee belong to the current Main Representative Committee;
- Ensuring that penalties for anti-union discrimination are sufficient to deter such discrimination;
- Ensuring that technical standards for strikes do not exceed the requirements of the ILO;
- Providing for notice to impacted groups of changes to its labor laws and interim application of principles under existing law; and
- Ensuring that its commitments are reviewable under the FTA consultation mechanism.

In addition, Oman has made further commitments:

- Strengthening efforts against forced labor;

- Taking action to stop the withholding of foreign workers' documents;
- Strengthening efforts against child labor; and
- Removing all government involvement in representative committees' activities.

Overall, while many of Bahrain's commitments involved only submitting legislation to its parliament, Oman has pledged to enact all of these reforms by a date certain: October 31, 2006. Oman has already taken major action ahead of schedule by enacting a Royal Degree on July 8, 2006 (described in a July 12, 2006 letter from the Omani Ambassador) that addressed its commitments in the following areas:

- Strengthening its collective bargaining laws;
- Allowing more than one union per enterprise;
- Specifying penalties for anti-union discrimination;
- Reinforcing the right to strike;
- Removing all government involvement in union activity;
- Strengthening efforts against forced labor;
- Prohibiting the withholding of travel documents by employers of foreign workers; and
- Strengthening efforts against child labor.

In her letter, the Omani Ambassador reaffirmed her commitment to fulfilling all remaining commitments by the October 31 deadline. The Committee believes that Oman's pledges and concrete action demonstrate Oman's commitment to move rapidly on these issues, while abiding by its legislative process and rule of law, including through consulting with interested parties, such as Omani labor groups and the ILO, as several Committee Members have specifically requested.

In addition, United States Ambassador to Oman Gary Grappo conducted an extensive review of the labor situation on the ground in Oman and issued on June 21, 2006 a letter stating that Oman is already "complying with ILO core labor standards in practice, if not yet in law." This finding was based on an examination of the major areas raised as concerns regarding Oman's labor laws. For example, in the key area of government involvement in labor matters, the Ambassador stated that in "regards to the perceived government interference in the labor committees, let me be firm in assuring you that the Ministry of Manpower (MOM) is not intrusively overseeing labor union representative committee activities . . . and that the actual application of the law is already ILO-consistent." In contrast, Bahrain provided no such showing that the application of its laws was already ILO-consistent. In fact contrary to claims by some, Bahrain made no commitment to apply all of its laws in an ILO-consistent manner until changes were made to its laws. Finally, Oman, like Bahrain, has agreed to have all of its commitments fully verifiable under the Agreement's labor consultation mechanisms.

The Committee finds that after Oman's extensive good faith actions to address every substantive labor issue raised by the Committee and make verifiable commitments that meet or exceed the standard of Bahrain, it would be unreasonable on the basis of labor issues to fail to provide the same support for the Oman Agreement as provided for the Bahrain Agreement. Changing the standard on one of our strongest allies in the Middle East on the basis that

Congress could not trust its labor commitments would send a disturbing signal to the people of the Middle East, to allies of the United States around the world, and to Americans who rely on our responsible exercise of trade and foreign policy to strengthen the U.S. economy and protect our citizens.

Dispute Settlement.—The Agreement sets out detailed procedures for the resolution of disputes over compliance, with high standards of openness and transparency. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The Agreement's dispute settlement procedures also provide for "equivalent" remedies for commercial and labor/environmental disputes, in keeping with TPA requirements. In addition to the use of trade sanctions in commercial disputes, the Agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the Agreement, with the possibility that assessments from labor and environmental cases may be used to fund labor and environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

Access to Medicines.—The Agreement provides protections for developers and manufacturers of innovative pharmaceutical drugs consistent with U.S. law and recent trade agreements. Consistent with the WTO TRIPs Agreement, parties must provide that a drug innovator's data submitted for the purpose of obtaining marketing approval for a new drug be protected from use by competitors for five years. The Agreement expressly states that nothing in the intellectual property chapter affects the countries' ability to protect public health. Nor will the Agreement prevent effective utilization of the recent WTO consensus allowing developing countries that lack pharmaceutical manufacturing capacity to import drugs under compulsory licenses.

Stronger patent and data protection increases the willingness of companies to release innovative drugs in the markets of free trade partners, potentially increasing, rather than decreasing, the availability of medicines. For example, the U.S.-Jordan FTA, signed in 2000, contained an intellectual property chapter that covered data protection. As a result of the FTA and effective IP protection, a large number of innovative products have been registered since the FTA went into force. Between 1995–1999, only 25 new pharmaceuticals products were registered, but since 2000, at least 65 new products have been registered. Moreover, data protection for more than 50 innovative products has now expired, and these products are now being produced and exported by the local manufacturers. In fact, the Jordanian generic pharmaceutical sector is flourishing, as evidenced by a significant increase in exports. In 2004 the local industry generated at least $224 million, a 21% increase from the year 2003. In 2005, this figure increased by 25%, to $281 million. Pharmaceuticals were Jordan's second largest export in 2005. Also, since the enactment of the FTA, the Jordanian drug industry has begun to develop its own innovative medicines. The Committee emphasizes that the Jordan case is an example of how strong intellec-

tual property protection can bring substantial benefits to developing countries.

Intellectual Property Rights.—Because the WTO agreement in intellectual property contains only rudimentary intellectual property protection requirements, bilateral free trade agreements are an important means of raising international practices to the higher U.S. standards. The U.S.-Oman FTA requires no change to the already highly developed U.S. law and practice. According to the Industry Trade Advisory Committee on Intellectual Property (ITAC 15), the U.S.-Oman FTA reflects the "highest standards of protection" of any of the FTAs negotiated to date in the areas of trademarks, geographical indications, copyrights, and enforcement. U.S. authors, performers, inventors, and other producers of creative material will benefit from the higher and extended standards that the FTA requires of Oman for protecting intellectual property rights such as copyrights, patents, trademarks, and trade secrets as well as enhanced means of enforcing those rights. Each partner country must grant national treatment to nationals of the other, and all laws, regulations, procedures, and final judicial decisions must be in writing and published or made publicly available. The Agreement lengthens terms for copyright protection, covering electronic and digital media, and increases enforcement to go beyond WTO obligations. Each party is obliged to provide appropriate civil and criminal remedies for willful violators, and parties must provide legal incentives for services providers to cooperate with rights holders as well as limitations on liability.

Government Procurement.—Oman is not a party to the WTO Agreement on Government Procurement, but the U.S.-Oman FTA provides comparable benefits to U.S. interests, putting them at an advantage over other U.S. trading partners. Specifically, the Agreement grants non-discriminatory rights to bid on most contracts offered by Oman's ministries, agencies, and departments. It calls for transparent and fair procurement procedures including clear advanced notice of purchases and effective review. The parties are obliged to make bribery a criminal offense in matters affecting international trade and investment.

The 9/11 Commission Report Recommendations.—The 9/11 Commission Report specifically noted the importance of the FTAs signed with nations in the Middle East, stating that they are "models [that] are drawing the interest of their neighbors." Citing the Administration's strategy for creating a Middle East Free Trade Area (MEFTA), the 9/11 Commission specifically recommended 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."

U.S.-Oman Cooperation in the War on Terror and International Security.—Oman has long been a committed ally of the United States. The United States signed a treaty of friendship with Oman in 1833, one of the first of its kind with an Arab state. On April 21, 1980, just after the Iranian Islamic Revolution, Oman became the first Persian Gulf state to formalize defense relations with the United States, allowing U.S. forces access to Omani military facilities. That agreement was renewed in 2000 for ten years. Oman's facilities made significant contributions to recent major U.S. com-

bat operations in Afghanistan (Operation Enduring Freedom, OEF) and Iraq (Operation Iraqi Freedom, OIF). There were approximately 4,300 U.S. personnel in Oman during OEF and approximately 3,750 U.S. personnel in Oman during OIF. During these operations, Omani military facilities served as important logistical hubs and launch points for Air Force missions that helped protect U.S. servicemen and support U.S. foreign policy objectives.

After the terrorist attacks of September 11, 2001, Oman issued new laws to prevent terrorist organizations from raising or laundering money in Oman. The State Department's report on global terrorism for 2004 noted that Oman has established systems to identify unusual transactions and that Oman has demonstrated a commitment to freeze assets of suspected Al Qaeda members and other terrorists. On November 22, 2005, Oman joined the U.S. Container Security Initiative, agreeing to the prescreening of U.S.-bound cargo from the port of Salalah.

Political and Economic Reforms.—Under the government of Sultan Qaboos, Oman has been expanding political liberalization in Oman since the 1980s. In 1991, the Sultan established the Consultative Council, and in 2000 the Council held its first elections. Voting rights in the 2003 Consultative Council elections were extended to all citizens over the age of 21, increasing the number of eligible voters from the 2000 elections, during which the electorate consisted of only 25 percent of all citizens over 21. Women are allowed to run for seats in the Council, and the Sultan of Oman has appointed a number of women to cabinet positions and to the Sultan-appointed State Council. In 2004, Sultan Qaboos named five women as appointees to the office of the public prosecutor, making Oman unique in the Gulf for appointing women to the judiciary. In addition, Oman in 2005 became the first Arab state to name a female ambassador to the United States.

Among Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates), Oman has the second highest percentage of oil-based GDP (40%), yet Oman's oil reserves could be exhausted within fifteen or twenty years. Given this situation, Oman has been acting to open and expand its economy beyond oil and gas exports. The Economic Freedom of the World 2005 report published by Canada's Fraser Institute ranks Oman 17th of the 127 countries analyzed in terms of economic freedom, and as the second highest among the proposed Middle East Free Trade Area (MEFTA) countries. The Omani Center for Investment Promotion and Export Development was opened in 1997 to smooth the path for business formation and private sector project development. The permitted level of foreign ownership in privatization projects increased to 100 percent in July 2004, based on a Royal Decree providing an updated privatization framework.

Arab League Boycott of Israel.—Oman has been a leader in the Persian Gulf in establishing trade and other ties with Israel. In September 1994, Oman renounced its secondary and tertiary boycotts of Israel. The secondary boycott bans entities in the Arab League States where it applies from doing business with firms that contribute to Israel's military or economic development, while the tertiary boycott deals with the injunction on Arab countries from doing business with firms that are blacklisted because of their ties

to Israel. On December 26, 1994, Oman became the first Gulf State to host an Israeli Prime Minister. Oman has also eliminated all aspects of the primary (direct) boycott of Israel, and when Oman acceded to the WTO in 2000, it did not request an exemption for Israel that would allow it to maintain a boycott.

In the context of Congressional consideration of the U.S.-Oman FTA, Oman has reiterated its commitment to not enforce any aspect of a boycott on Israel, in letters on September 28, 2005 and June 15, 2006. In addition, in June 2006 Oman issued an official government circular to its relevant agencies reiterating this policy and commitment.

II. TPA Procedures

As noted above, this legislation is being considered by Congress under TPA procedures. As such, the Agreement has been negotiated by the President in close consultation with Congress, and it can be approved and implemented through legislation using streamlined procedures. Pursuant to TPA requirements, the President is required to provide written notice to Congress of the President's intention to enter into the negotiations. Throughout the negotiating process and prior to entering into an agreement, the President is required to consult with Congress regarding the ongoing negotiations.

The President must notify Congress of his intent to enter into a trade agreement at least 90 calendar days before the agreement is signed. Within 60 days after entering into the agreement, the President must submit to Congress a description of those changes to existing laws that the President considers would be required to bring the United States into compliance with the agreement. After entering into the agreement, the President must also submit to Congress the formal legal text of the agreement, draft implementing legislation, a statement of administrative action proposed to implement the agreement, and other related supporting information as required under section 2105(a) of TPA. Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader in each chamber. The House then has up to 60 days to consider implementing legislation for the agreement (the Senate has up to an additional 30 days). No amendments to the legislation are allowed under TPA requirements.

C. Legislative History

On November 15, 2004, the President first notified Congress of his intent to negotiate an FTA with Oman. FTA negotiations between the United States and Oman began in March 2005 and concluded in October 2005. During and after the negotiations, the President continued his consultations with Congress pursuant to the letter and spirit of the TPA requirements. On October 17, 2005, the President notified the Congress of his intent to enter into an FTA with Oman. Under TPA procedures, the President is able to sign an FTA ninety calendar days after he has notified Congress. On January 19, 2006, then-U.S. Trade Representative Rob Portman signed the U.S.-Oman FTA.

On April 5, 2006, the Committee on Ways and Means held a hearing on the United States-Oman FTA. The Committee received testimony supporting the Agreement from the Administration and

U.S. private sector entities. On May 10, 2006, the Committee on Ways and Means considered in an informal markup session draft legislation to implement the Oman FTA. The Committee approved the draft implementing legislation by a recorded vote of 23 yeas to 15 nays with 3 Members voting present, without amendment.

During the Finance's Committee's non-markup of the Oman FTA implementing legislation, the Finance Committee voted to recommend that the bill included language, known as the Conrad Amendment, to ban under the Agreement products made from forced labor. No Member of the Ways and Means Committee proposed similar language during the Committee's informal markup, and appropriately the Committee recommended that the version of the bill voted on by the Ways and Means Committee be used by USTR. As was done when the Finance and Ways and Means Committees recommended different language for the implementing legislation or Statements of Administrative Actions for the U.S.-Australia FTA, the U.S.-Dominican Republic Central America FTA, and the U.S.-Bahrain FTA, USTR received the views of the two Committees and made a determination. Using the standard adopted by the Way and Means committee under TPA, USTR properly determined that the Conrad Amendment was not "necessary or appropriate" to implement the bill and could not be included in the bill it submitted to Congress. In making this determination, USTR noted that the Conrad Amendment duplicates existing law which already imposes a ban on goods made from forced labor. Instead of including the Conrad Amendment language, USTR agreed to specific language in the Statement of Administrative Action stating that the Administration would "update the Congress periodically on the progress that Oman achieves in realizing all commitments made to labor law reform," citing the May 8, 2006 letter from the Minister of Commerce and Industry of Oman to then-USTR Portman.

In accordance with TPA requirements, President Bush submitted to Congress on February 28, 2006, a description of the changes to existing U.S. laws that would be required to bring the United States into compliance with the Agreement.

On June 26, 2006, President Bush formally transmitted to Congress the formal legal text of the United States-Oman FTA, implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of TPA. Following this transmittal, on June 26, 2006, Majority Leader John Boehner introduced, by request, H.R. 5684 to implement the United States-Oman FTA. The bill was referred to the Committee on Ways and Means.

On June 29, 2006, the Committee on Ways and Means formally met to consider H.R. 5684. The Committee ordered H.R. 5684 favorably reported to the House of Representatives by a recorded vote of 23 yeas to 15 nays; under the requirements of TPA, amendments were not permitted.

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

SECTION 101: APPROVAL AND ENTRY INTO FORCE

Current law

No provision.

Explanation of provision

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action and provides that the Agreement enters into force when the President determines that Oman is in compliance and has exchanged notes, on or after January 1, 2007.

Reason for change

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of the Bipartisan Trade Promotion Authority Act of 2002. The remainder of section 101 provides for entry into force of the Agreement.

SECTION 102: RELATIONSHIP OF THE AGREEMENT TO U.S. AND STATE LAW

Current law

No provision.

EXPLANATION OF PROVISION

Section 102 provides that U.S. law is to prevail in a conflict and states that the Agreement does not preempt state rules that do not comply with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

Reason for change

Section 102 is necessary to make clear the relationship between the Agreement and federal and state law, respectively.

SECTION 103: IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS

Current law

No provision.

Explanation of provision

Section 103(a) provides that after the date of enactment, the President may proclaim actions and issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement is entered into force is appropriately implemented, but not before the date the Agreement enters into force.

Section 103(b) establishes that regulations necessary or appropriate to carrying out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force or the effective date of the provision.

Reason for change

Section 103 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a timely manner to provide maximum clarity to parties claiming benefits under the Agreement. As noted in the Statement of Administrative Action, the regulation-issuing agency will provide a report to Congress not later than thirty days before one year elapses on any regulation that is going to be issued later than one year.

SECTION 104: CONSULTATION AND LAYOVER FOR PROCLAIMED ACTIONS

Current law

No provision.

Explanation of provision

Section 104 provides that if the President implements proclamation authority subject to consultation and layover, the President may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the Ways and Means and Finance Committees concerning the reasons for the action; and consulted with the Committees. The action takes effect after 60 days have elapsed.

Reason for change

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough manner.

SECTION 105: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Current law

No provision.

Explanation of provision

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any panels that may be established under chapter 20 of the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses.

Reason for change

The Committee believes that the Department of Commerce is the appropriate agency to provide administrative assistance to panels.

SECTION 106: ARBITRATION OF CLAIMS

Current law

No provision.

Explanation of provision

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Agreement.

Reason for change

This provision is necessary to meet U.S. obligations under section B of chapter 10 of the Agreement.

SECTION 107: EFFECTIVE DATES; EFFECT OF TERMINATION

Current law

No provision.

Explanation of provision

The effective date of the Act is the date the Agreement enters into force with respect to the United States, except sections 1 through 3 and Title I take effect upon the date of enactment. The provisions of the Act terminate on the date on which the Agreement terminates.

Reason for change

Section 107 implements U.S. obligations under the Agreement.

TITLE II: CUSTOMS PROVISIONS

SECTION 201: TARIFF MODIFICATIONS

Current law

No provision.

Explanation of provision

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement and requires the President to terminate Oman's designation as a beneficiary developing country for the purposes of the Generalized System of Preferences program.

Section 201(b) gives the President the authority to proclaim further tariff modifications, subject to consultation and layover, 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) allows the President, for any goods for which the base rate is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate to carry out the tariff modifications in subsections (a) and (b).

Reason for change

Section 201(a) is necessary to put the United States in compliance with the market access provisions of the Agreement. Section 201(b) gives the President flexibility to maintain the trade liberalizing nature of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out this subsection. Section 201(c) allows the President to convert tariffs to ad valorem rates to carry out the tariff modifications in the Agreement.

SECTION 202: RULES OF ORIGIN

Current law

No provision.

Explanation of provision

Section 202 codifies the rules of origin set out in chapter 4 of the Agreement. Under the general rules, there are four basic ways for a good of Oman to qualify as an "originating good" and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if it is imported directly from the territory of Oman into the territory of the United States and: (1) it is "wholly the growth, product, or manufacture of Oman or the United States, or both"; (2) it is a new or different good that has been "grown, produced, or manufactured in Oman or the United States, or both" and the value of the materials produced and the direct cost of processing operations performed in Oman or the United States, or both is not less than 35% of the appraised value of the good; (3) it satisfies certain rules of origin for textile or apparel goods specified in Annex 3–A of the Agreement; or (4) it satisfies certain product-specific rules of origin specified in Annex 4–A of the Agreement.

Under the rules in chapter 3 and Annex 3–A of the Agreement, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Oman, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Oman from yarn, or fabric made from yarn, that originates in Oman or the United States, or both. However, Article 3.2.9 provides an exception to this general rule allowing access for 50 million square meter equivalents of apparel that does not meet the yarn forward rule of origin for each of the first ten years of the Agreement. Section 202 also includes a de minimis exemption providing that in most cases a textile or apparel good will be considered originating if the total weight of all nonoriginating fibers or yarns is not more than 7 percent of the total weight of the good.

The remainder of section 202 addresses valuation of materials and special definitions.

Reason for change

Rules of origin are needed to confine Agreement benefits, such as tariff cuts, to Omani goods and to prevent third-country goods from being transshipped through Oman and claiming benefits under the Agreement. Section 202 puts the United States in compliance with the rules of origin provisions of the agreement. The Committee notes that the limited exception to the textile and apparel yarn forward rule of origin is phased down over ten years and covers approximately 0.1 percent of U.S. textile and apparel imports by volume.

SECTION 203: CUSTOMS USER FEES

Current law

Section 58c of the title 19 of the U.S. Code lays out various user fees applied by customs officials to imports, including the Merchandise Processing Fee (MPF), which is applied on an ad valorem basis subject to a cap.

Explanation of provision

Section 203 of the bill implements U.S. commitments under article 2.9 of the Agreement, regarding the exemption of the merchandise processing fee on originating goods. This provision is similar to those included in the implementing legislation for the North American Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the U.S-Chile Free Trade Agreement, the U.S.-Australia Free Trade Agreement, the U.S-Dominican Republic-Central America-Free Trade Agreement, and the U.S.-Bahrain Free Trade Agreement. The provision also prohibits the use of funds in the Customs User Fee Account to provide services related to the entry of originating goods, in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Reason for change

As with other Free Trade Agreements, the Agreement eliminates the merchandise processing fee on qualifying goods from Oman. Other customs user fees remain in place. Section 203 is necessary to put the United States in compliance with the user fee elimination provisions of the Agreement. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Agreement given that MPF funds will not be available.

SECTION 204: ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS

Current law

No provision.

Explanation of provision

Section 204 implements the verification provisions of the Agreement at Article 3.3 and authorizes the President to take appropriate action while the verification is being conducted. Such appropriate action includes suspending liquidation of the textile or apparel good for which a claim of origin has been made or, in a case where the request for verification was based on a reasonable suspicion of unlawful activity related to such goods, for textile or apparel goods exported or produced by the person subject to a verification. If the Secretary of the Treasury determines that the information obtained from verification is insufficient to make a determination, the President may take appropriate action described in section 204(d), including publishing the name and address of the person subject to the verification and denial of preferential treatment and denial of entry to certain textile and apparel goods produced or exported by the person subject to the verification.

Reason for change

In order to ensure that only qualifying textile and apparel goods receive preferential treatment under the Agreement, special textile enforcement provisions are included in the Agreement. Section 204 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

SECTION 205: RELIQUIDATION OF ENTRIES

Current law

No provision.

Explanation of provision

Section 205 implements article 4.11.4 of the Agreement and provides authority for the Customs Service to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

Reason for change

Article 4.11.4 of the Agreement anticipates that private parties may err in claiming preferential benefits under the Agreement and provides a one-year period for parties to make such claims for preferential tariff treatment even if the entry of the goods at issue has already been liquidated, i.e., legally finalized by customs officials. Section 205 is necessary to put the United States into compliance with article 4.11.4 of the Agreement.

SECTION 206: REGULATIONS

Current law

No provision.

Explanation of provision

Section 206 provides that the Secretary of the Treasury shall issue regulations to carry out provisions of this bill related to rules of origin and customs user fees.

Reason for change

Because the implementing bill involves lengthy and complex implementation procedures by customs officials, section 206 is necessary in order to authorize the Secretary of the Treasury to carry out provisions of the implementing bill through regulations.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief from imports benefiting from the agreement (sections 311–316)

Current law

No provision.

Explanation of provision

Sections 311–316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission (ITC) or a determination that the President may consider to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, an Omani product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

Section 311(c) defines "substantial cause" and applies factors in making determinations in the same manner as section 202 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Omani articles for which import relief has been provided under this safeguard since the Agreement entered into force.

Under sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President shall provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC 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 relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force. Section 313(c)(2) states that if the President provides relief for greater than one year, it must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not, in the aggregate, exceed three years.

Section 314 provides that no relief may be provided under this subtitle after ten years from the date on which the Agreement enters into force, unless the President determines under section 314(b) that Oman has consented to such relief.

Section 315 authorizes the President to provide compensation to Oman consistent with article 8.3 of the Agreement.

Section 316 provides for the treatment of confidential business information.

Reason for change

The Committee believes that it is important to have in place a temporary, extraordinary mechanism if a U.S. industry experiences injury by reason of increased import competition from Oman in the future, with the understanding that the President is not required

to provide relief if the relief will not provide greater economic or social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under chapter 8 (Safeguards) of the Agreement.

Subtitle B: Textile and apparel safeguard (sections 321–328)

Current law

No provision.

Explanation of provision

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he is to publish a notice commencing consideration and seeking comments. The notice is to include a summary of the request.

Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, 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(b) identifies the relief that the President may provide, which is the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force.

Section 323 of the bill provides that the period of relief shall be no longer than three years. The President may extend the relief if the initial period for relief was less than three years, but the aggregate period of relief, including extensions, may not exceed three years.

Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard, or the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

Under section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect but for the safeguard action.

Section 326 states that the authority to provide safeguard relief under this subtitle expires ten years after the date on which duties on the article are eliminated pursuant to the Agreement.

Section 327 of the Act gives authority to the President to provide compensation to Oman if he orders relief.

Section 328 provides for the treatment of confidential business information.

Reason for change

The Committee intends that the provisions of subtitle B be administered in a manner that is in compliance with U.S. obligations under Article 3.1 of the Agreement. In particular, the Committee expects that the President will implement a transparent process

that will serve as an example to our trading partners. For example, in addition to publishing a summary of the request for safeguard relief, the Committee notes that the President plans to make available the full text of the request, subject to the protection of business confidential data, on the Department of Commerce, International Trade Administration's website. In addition, the Committee encourages the President to issue regulations on procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b).

TITLE IV: GOVERNMENT PROCUREMENT

Section 401: Eligible products

Current law

U.S. procurement law (the Buy American Act of 1933 and the Buy American Act of 1988) discriminates against foreign suppliers of goods and services in favor of U.S. providers of goods and services. Most discriminatory purchasing provisions are waived if the United States is party to a bilateral or multilateral procurement agreement, such as the WTO Agreement on Government Procurement and the North American Free Trade Agreement.

Explanation of provision

Section 401 implements chapter 9 of the Agreement and amends the definition of "eligible product" in section 308 of the Trade Agreements Act of 1979. As amended, section 308(4)(A) will provide that, for a party to United States-Oman Free Trade Agreement, an "eligible product" means "a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States."

Reason for change

This provision implements U.S. obligations under chapter 9 of the Agreement.

III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 5684.

MOTION TO REPORT THE BILL

The bill, H.R. 5684, was ordered favorably reported by a rollcall vote of 23–15 (with a quorum being present).

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Shaw	X			Mr. Stark		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Herger	X			Mr. Cardin		X	
Mr. McCrery	X			Mr. McDermott		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad	X			Mr. Neal		X	
Mr. Nussle	X			Mr. McNulty		X	

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Johnson				Mr. Tanner		X	
Mr. English	X			Mr. Becerra			
Mr. Hayworth	X			Mr. Doggett		X	
Mr. Weller	X			Mr. Pomeroy		X	
Mr. Hulshof	X			Ms. Tubbs Jones		X	
Mr. Lewis (KY)	X			Mr. Thompson		X	
Mr. Foley	X			Mr. Larson		X	
Mr. Brady	X			Mr. Emanuel		X	
Mr. Reynolds	X						
Mr. Ryan	X						
Mr. Cantor	X						
Mr. Linder	X						
Mr. Beauprez	X						
Ms. Hart	X						
Mr. Chocola	X						
Mr. Nunes	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 5684, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO) which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 5684 would reduce customs duty receipts due to lower tariffs imposed on goods from Oman.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following report prepared by the CBO is provided.

H.R. 5684—United States-Oman Free Trade Agreement Implementation Act

Summary: H.R. 5684 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 H.R. 5684 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 H.R. 5684 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 H.R. 5684 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 or $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 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.

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 increse 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 H.R. 5684 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.

Previous CBO estimate: On June 28, 2006, CBO transmitted a cost estimate of S. 3569, an identically titled bill ordered reported by the Senate Committee on Finance on June 28, 2006. The two bills are identical, as are CBO's estimates.

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: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the bill as reported. In addition, the legislation is governed by procedures of the Bipartisan Trade Promotion Authority Act of 2002.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill H.R. 5684 makes de minimis authorization of funding, and the Administration has in place program goals and objectives, which have been reviewed by the Committee.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ('The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.')

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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.

* * * * * * *

VII. CORRESPONDENCE RELATED TO LABOR REFORMS

بسم الله الرحمن الرحيم

Embassy of
The Sultanate of Oman
Washington, D.C.

سفارة سلطنة عمان
"واشنطن"

The Honorable Susan Schwab
United States Trade Representative
600 17th St., n.w.
Washington, D.C. 20508

July 12, 2006

Dear Ambassador Schwab:

I am pleased to advise you that His Majesty, Sultan Qaboos bin Said, signed Royal Decree 74/2006 effective on July 8 , 2006 in order to affect changes to the Omani Labour Law based on discussions that the Omani Government has held with Members of the U.S. Congress.

Royal decree 74/2006 was signed by his Majesty as a demonstration of Oman's good faith and continuing efforts to improve working conditions and rights for all workers in the Sultanate. His Majesty believes that his Royal Decree demonstrates Oman's intention to begin to take immediate action to address U.S. Congressional concerns and addresses general labor issues raised during consultations with the U.S. Congress with respect to the U.S.-Oman Free Trade Agreement.

The Royal Decree sets the legal foundation upon which fulfillment of the wide range of changes in Omani labor laws and practice now have been or, in some minor areas, will be accomplished. Specifically, the Decree:

1. Prohibits forced labor by employers (which includes methods by which to coerce labor through, for example, the withholding of travel documents by employers of foreign workers);

2. Specifically endorses collective bargaining and acknowledges the use of strikes as a collective bargaining technique;

3. Provides specific enforcement tools for the prohibition against forced or coerced labor by providing for imprisonment and/or fines of up to $1,300 per violation, with a doubling of the penalty for repeat offenders.

4. Acknowledges that workers may form labor "syndicates" (unions) to serve their interests and to represent workers in all matters of concern to the workers at the local, regional and international levels. There is no limit for how many such unions may be formed for each enterprise.

بسم الله الرحمن الرحيم

Embassy of
The Sultanate of Oman
Washington, D.C.

سفارة سلطنة عمان
واشنطن

5. Ensures that unions shall have the right to conduct their affairs with full freedom and without interference or influence from any other party. Among other things, this effectively terminates - immediately - Omani Government involvement in union activities including previously legislated criteria for membership and participation in a union or its leadership.

6. Specifically prohibits termination of employment or any other form of employer retribution for representatives performing their union duties.

7. Specifically provides penalties including possible imprisonment and fines for an employer that might deprive a worker of his or her right to form or participate in a union or perform union activities.

8. Increases fines five-fold for violating Oman's prohibition on the use of child labor or improper use of female labor. For recidivists, imprisonment is also a potential penalty.

The effect of the Decree is to provide for new rights for workers in Oman and to cancel all provisions of law that contravene or contradict the Decree. Based on the Royal Decree, Ministerial Decisions are now being prepared that will implement, where necessary, specific provisions of the Decree as well as to formalize government action to educate workers regarding the legal changes and new rights that the Decree has engendered. In doing so, the Government of Oman has illustrated its commitment not only to the U.S. Congress but to ensuring that the benefits of the Free Trade Agreement are enjoyed by workers, farmers and businesses.

It is the intent of the Government of Oman to issue follow-on Ministerial Decisions, primarily from the Ministry of Manpower, which will provide more detailed terms, where necessary, to effectively enforce or implement the commitments made to the U.S. Government. These follow-on decisions and regulations will address the procedures for collective bargaining, for lawful strikes, for reinstatement of employees dismissed due to lawful activity and increase enforcement and education on forced labor to ensure that employers understand that the holding of passports or other documents is not allowed and to make them aware of the new penalties for failure to abide by the new labor laws. In addition the Government of Oman, pursuant to the May 8, 2006 letter from Minister of Commerce and Industry Maqbool Ali Sultan to Ambassador Portman, is committed to enacting further reforms including specifying the types of essential services consistent with ILO Convention 29 and allowing more than one national federation. Of course, Oman shall remain committed to adopting these further reforms by no later than October 31, 2006.

بسم الله الرحمن الرحيم

Embassy of
The Sultanate of Oman
Washington, D.C.

سفارة سلطنة عمان
واشنطن

We believe that the action taken by the Sultan affirms Oman's commitment to undertake the labor law changes as quickly as possible, consistent with Oman's representations throughout the consultative process.

Sincerely,

Humaina Al-Mughairy
Ambassador

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

JUN 26 2006

The Honorable William M. Thomas
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Thomas:

Thank you for your support for the U.S.-Oman Free Trade Agreement. I have enclosed a detailed assessment and supporting documents from our Ambassador in Muscat, Gary Grappo, regarding Oman's labor laws. I hope this letter will answer your questions as to the great progress being made on labor rights in Oman.

As you will see from the attached letter, the Government of Oman takes the issue of meeting international labor standards very seriously. Since Oman enacted its first major labor rights legislation in 2003, the Government of Oman government has been working hard to support the labor committees, apprise them of their rights, and ensure that they are strong, independent entities capable of representing the interests of workers in Oman.

In addition, in response to concerns raised by Congress, the Omani Ministry of Manpower is making progress on keeping the historic commitments made by Omani Commerce Minister Maqbool Sultan in his letters of March 26 to Chairman Thomas and May 8 to Ambassador Portman to enact certain labor law reforms by October 31, 2006.

Congressional passage of the U.S.-Oman Free Trade Agreement will not only bring important economic benefits to U.S. farmers and businesses, it will also encourage a good environment for labor rights in Oman. Equally important, passage of this Agreement will send a positive message to our friends and allies in the Gulf region that the United States is a good friend and a reliable partner.

Sincerely,

Susan C. Schwab

Embassy of the United States of America

Muscat, Sultanate of Oman
June 21, 2006

THE AMBASSADOR

The Honorable
Susan C. Schwab
United States Trade Representative
Office of the United States Trade Representative

Dear Madam Ambassador:

I have the honor to refer to the U.S.-Oman Free Trade Agreement currently pending approval in the U.S. Congress and a number of questions regarding labor rights in Oman that have been raised by Members during the course of their deliberations. With the following information, I hope to address those Congressional concerns and, in the process, validate the fact that Oman's protections of labor rights are sufficient to merit approval of this historic trade agreement with one of our country's most stalwart and strategically critical allies.

The Minister of Manpower (MOM) confirmed to me personally on May 13 that his Ministry is actively researching and preparing ILO-consistent legislation to meet the historic labor reform commitments Minister of Commerce Maqbool Sultan made in his March 26 letter to Ways and Means Committee Chairman Thomas and his May 8 letter to Ambassador Portman. Moreover, in talks with contacts throughout Oman, labor committee members and government officials have repeatedly assured my staff that, in practice, the government neither interferes with nor unduly involves itself in committee activities, but continues actively to support establishment of labor committees through private sector outreach and educational awareness. Moreover, while some committees and members continue to face their own organizational challenges, a few are already achieving significant success in negotiating better working conditions for their members.

The Omani government has acted energetically to address Congressional concerns on labor in order to win a successful outcome to the U.S.-Oman FTA vote in Congress. Senior government officials have assured me that Oman is

well on its way to fulfilling its labor reform commitments by the promised date of October 31. I believe they are sincere in this endeavor and that they are already complying with ILO core labor standards in practice, if not yet in law. I hope the information contained in this letter will serve to further illuminate these points. With regards to perceived government interference in the labor committees, let me be firm in assuring you that the Ministry of Manpower (MOM) is not intrusively overseeing labor union representative committee (RC) activities as permitted in Ministerial Decision 135/2004, and that the actual application of the labor law is already ILO-consistent.

In practice, committees do not give notice to the MOM prior to general assembly meetings; nor do they provide the MOM a copy of their agendas or meeting minutes. According to sources at the MOM and within the committees, no MOM official has ever attended a committee meeting; nor has the MOM banned any RC from meeting without prior approval. The MOM has never enforced restrictions in the labor law that require an RC to notify the MOM prior to joining any international organizations. In fact, several committee members recently participated in a regional workshop March 24-27 hosted by the Solidarity Center without having requested prior permission. Many committees have also hosted visiting delegations from the ILO and the Solidarity Center without notifying the MOM. To date, the MOM has never banned any of the committees from holding public festivals or presenting lectures without prior approval. To the contrary, committee members have expressed their displeasure at the MOM'S non-attendance at, and lack of involvement in, committee organizing events and activities.

Although permitted in Ministerial Decision 135/2004, MOM dismissal of committee leaders for "committing acts that cause material or moral harm" has never occurred, and MOM has never rejected an elected RC leader for failure to meet restrictions set out in previous ministerial decrees. One committee member recounted to my staff that an MOM representative told him "not to worry about restrictions in the law" with regards to establishing a committee because the MOM is more interested in encouraging their growth rather than in details of membership. As there are no official MOM application forms for establishing committees, employees wishing to establish a committee simply notify

the MOM with a letter of intent and a list of elected officials comprising their leadership board. To the Embassy's knowledge, no one has ever sought to establish more than one representative committee within a single enterprise.

The MOM has visited over 400 companies to educate the private sector and encourage establishment of representative committees. The MOM holds regular awareness sessions throughout the year to discuss labor rights and establishment of RCs, including one in February 2006 attended by the Minister himself that specifically discussed procedures for organizing a committee. Another session held in May addressed the role of the representative committees in developing regulations.

As a result, I believe that the government of Oman continues to make a good faith effort to ensure its compliance with ILO Conventions 87 and 98 until its reconstructed legislation is ready in October.

With regard to ensuring the right to organize and the development of committee leadership, the MOM has made significant strides in preparing implementing legislation for striking procedures, as well as ensuring the successful transition to a new and fully elected Main Representative Committee leadership in 2007.

As of May 13, thirty representative committees have been established, representing roughly 49,000 employees (Attachment 1). RCs have been established primarily in the construction, hotel service, transportation, oil and gas, telecommunications, and engineering sectors. There are no committees in the public sector, which is covered by Civil Service Law, but the labor law does not prohibit any category of worker from establishing worker committees. (Note: The Civil Service Law neither requires nor prohibits the formation of representative committees.) Of the committees established, company management holds officer positions in the Saud Bahwan Group, Omantel, Port Services, and Suhail Bahwan Group committees. The Embassy is unaware of senior company officers in any committees other than these. Candidates interested in leadership positions submit their name to their company's organizing committee and are chosen by secret ballot elections. General assembly members may also write in names, including

those of company management officers, who are also eligible for elected leadership positions.

Although Ministerial Decree 135/2004 delineates qualifications for leadership, such as the ability to speak and write Arabic, employment of at least one year, and having no felony convictions, the MOM has not denied candidacy to anyone failing to meet these regulations, and, in fact, has encouraged people to participate regardless of legal proscriptions. RCs currently represent the entire workforce of a company, including those who have been employed less than one year (Attachment I), since committees do not yet require applications for membership and do not have established procedures to collect dues. All workers are welcome to, and do, complain to the RC of the company.

Neither the Embassy nor the MOM has a statistical means to determine an employee's length of service with a particular company to determine if any have been employed for less than one year. However, sources within committees have reiterated on numerous occasions that "all" employees seeking representation, are represented; including those employed less than one year. As an example, Oman LNG, one of Oman's fastest-growing companies, employs about 350 expatriate employees, has a leadership member who is a non-Arabic speaker, and conducts its general assembly meetings in English. The Embassy has heard numerous credible statements from workers regarding the Ministry's encouragement of committees, regardless of requirements in language and length of employment. Committees are expected to maintain their own finances and are not regulated by the MOM.

The most active committee established thus far is the representative committee of the Grand Hyatt Hotel. A copy of their charter with accompanying by-laws is attached at the end of this letter (Attachment 2).

A February statistical bulletin confirmed that the current private workforce of Oman includes 102,455 Omanis and 438,531 expatriates. The public sector employs 22,898 expatriates and 104,223 Omanis. The total workforce of Oman is approximately 668,107 people, of whom roughly 708 are foreign workers. According to these figures, approximately

nine percent of the workforce is now represented by a union.

All established committees may participate in the national federation of unions, referred to as the Main Representative Committee (MRC). The law does not stipulate that RCs must join the MRC; however, all committees established to date have done so. Although the MRC is currently the only umbrella organization to represent Omani unions internally and abroad, additional legislation permitting the establishment of more than one federation is expected in summer 2006. All members of the MRC are chosen through secret ballot elections and there are no restrictions that would prohibit a manager from being elected. No candidates have been denied membership or terminated from the MRC.

Citing time constraints and the need to ensure attendance at the 2005 ILO General Assembly, the first MRC was appointed by the MOM from among elected members of the enterprise-level committees. The first full round of elections for the MRC is scheduled for May 2007. The MRC today comprises of the following individuals:

Abd al-Azim bin Abbas al-Bahrani
Director of Human Resources, Omantel

Sa'ud bin Ali Abdulla al-Jabri
Engineer, Petroleum Development Oman Co.

Muhammad bin Abdulla Rashid al-Rasbi
Engineer, Oman Air

Anwar bin Abd al-Rahman al-Khinjari
Director of Human Resources. Muscat Intercontinental Hotel

Nabhan bin Ahmad Muhammad al-Battashi
General Affairs Officer, Grand Hyatt Muscat

Sa'ud bin Ahmed Abd al-Karim al-Nahari
Executive President of Port Services Corporation, Port Sultan Qaboos

Muhammad Hamad Salim al-Ruzaiqi (withdrawing from the MRC)
General Manager of Human Resources, Galfar Engineering

Aida al-Hashmy
General Officer, Muscat Intercontinental

Muhammad bin Khamis bin Ghaloum al-Khabouri
Assistant Human Resources Manager, Al Hasan Group of Companies

Rashid bin Sa'id Abdulla al-Hashmi
Personnel Manager, Sa'ud Bahwan Group of Companies

Issam al-Sheiban
Quality Assurance Officer, Oman Oil Refinery

Abd al-Mahdi bin Abd al-Baqi al-Lawati
Personnel Manager, Al Zubair Group of Companies

Abdulla bin Salim Sa'id al-Araimi
Manager of Human Resources, Suhail Bahwan Group of Companies

The growing number of unions and increasing participation in committees are due to the significant outreach and awareness performed by the MOM. Although the MOM recognizes the potentially problematic participation of senior officers in some of the committees, a move away from this tendency will take some time, given deeply ingrained cultural traditions that still place importance on tribal affiliations and highly value an individual's personal influence with decision-makers (termed "wasta"). Historically speaking, workers with issues have generally approached human resource representatives or committee members with problems because of these individuals' known connections and ability to get things done. The MOM, as well as the committees, believes that it is more important now to raise awareness about the MRC and RC's roles and promote membership rather than focus on technical limitations of the law.

The representative committees are experiencing growing pains in terms of organization and management. The MRC has not yet moved into a permanent office space or established a bank account to manage its finances. In spite of logistical issues, however, MRC members continue to meet regularly with the International Labor Organization (ILO) and the Ministry of Manpower to discuss technical assistance and other needs to support a fully functioning

MRC. Moreover, the MRC continues to mediate disputes and is informed of complaints with the MOM. The figures in Attachment 1 are a breakdown of total employees at each company with an elected union.

As part of its outreach and organization, the MRC recently established four sub-committees to focus on specific areas of concern:

1) External Relations - manages conferences and is headed by mid-level officer Saud al-Jabri of Petroleum Development Oman;
2) Rights and Duties - headed by Oman's busiest labor advocate, Nabhan al-Battashi, of the Grand Hyatt Hotel Muscat;
3) Articles of Association and Membership - serves as a resource for newly established committees and is headed by Abdullah al-Araimi; and
4) Women's Issues - is led by new MRC member Aida al-Hashmy of the Al-Bustan Palace Hotel and promotes women in the workforce.

Several members of the MRC were in Geneva for the ILO General Assembly that just concluded on June 16. The Omani delegation consisted of 26 elected committee representatives, government officials, and private sector employers. In addition to more experienced members Saud al-Nahari and Abduladheem Abbas, junior MRC members Saud al-Jabri, Aida al-Hashmy, and Nabhan al-Battashi are attending the ILO for the first time. The government fully funded the participation at the ILO's annual meeting for a tripartite delegation of one employer, government official and one labor representative. The MOM has further supported the attendance of the other MRC members by officially requesting that companies allow designated representatives the necessary time off and pay for their travel.

The ongoing changes at the MOM and within the representative committees have had a significant impact on all union members. The MRC has been active in mediating disputes and performing outreach. Nabhan al-Battashi, head of the Rights and Duties subcommittee, makes frequent trips throughout the country to promote the establishment of committees and liaise with private sector management to educate companies on the labor law and the important role of the committees. Two recent trips included visits to al-

Jazeera Tube Mills in Sohar and Oman Flour Mills in Salalah. Although both companies were initially skeptical of the idea of a representative committee, company managers not only agreed to allow company time to hold meetings, but also provided space for the new committees as well.

At the enterprise level, the RC of the Grand Hyatt has made the most significant progress in negotiating better working conditions and advocating on behalf of its committee members. In recent months, the Re's president negotiated a new vendor contract for employee meals, reached an agreement to prohibit smoking in the staff cafeteria, secured an annual bonus for all staff, ensured payment of overtime, and negotiated for four percent of the hotel's service charge to be paid directly to employees, a monthly increase of $209 for every employee. As a result of the committee's significant achievements, the Grand Hyatt dramatically reduced resignations from 166 in 2005 to zero for the calendar year to date.

Although the law does not yet explicitly permit workers the right to strike (an omission to be corrected by October 31), the 1972 ban on strikes no longer exists. However, the absence of a clear legal authority to strike has not prevented employees from exercising that right. In 2004, there were 33 strikes involving 6,000 workers and four strikes involving 1,083 workers in 2005. There are no restrictions on the right to strike and no activities associated with striking are grounds for dismissal; nor have any strikes been declared illegal. Most strike demands revolve around back payment of wages and improving living and working conditions. The MOM'S mediation and dispute resolution bureau is the preferred vehicle for resolving disputes. In the event that a case proceeds to the courts, judges have overwhelmingly ruled in favor of the workers.

In 2005, there was one reported collective complaint that occurred during one of Oman's most widely publicized strikes. As described in Attachment 3, workers at Salalah Port closed Oman's largest seaport for two days while the MRC and the MOM negotiated the reinstatement of a committee representative who had been fired. Although the worker was briefly reinstated at the government's insistence, his case is now pending the decision of the labor courts. He was a

member of the leadership board of the company's RC, but not its president.

In addition to the strike, workers took the opportunity to successfully renegotiate working hours and split-shift schedules. Although there are no penalties yet for anti-union discrimination (still under discussion), as evident by the Salalah example, the MOM and Oman's labor courts do not tolerate wrongful dismissal. Moreover, there have been no reported cases of an employer refusing a worker's organization's request to negotiate collectively. Nevertheless, an individual labor contract is the basis of every employer-employee relationship, regardless of nationality or employment status.

To date, the case above has been the only one of an individual terminated who was also a member of a representative committee. That worker was terminated for poor work. Management kept detailed records of his inadequacies on the job and poor performance. Since he was a member of the company's union, RC leaders attempted to negotiate his reinstatement. Although he was briefly reinstated after government and MRC intervention, his case is now with the courts.

Neither employers nor managers have challenged the right of workers to form a representative committee; moreover, labor organizing is not grounds for dismissal or arrest. While the MOM keeps a variety of labor statistics, such as complaints, investigations, labor clearances, and labor force statistics, there have been no reported cases of workers suffering retaliation for participation in RC activities. As with any labor dispute, workers are encouraged to submit complaints to the MOM and may sue employers for wrongful dismissal. Labor courts favor the worker in the majority of cases, regardless of the reason for termination. Current protections against wrongful dismissal are covered in Article 106 of the Omani Labor Law. There have been no reported cases of wrongful termination or retaliation either through the MOM hotline or from the MRC. For an example of cases where court action was taken against employers, please see Attachment 4.

Regarding the protection of foreign workers and child labor, the government is making significant strides in enhancing awareness and protection for its expatriate

workforce. Foreign workers in Oman make up roughly 70 percent of the total labor force. Those foreign laborers tend to concentrate in just a few sectors, and are distributed in the following manner:

Construction	28.2%
Wholesale/Retail	20.1%
Domestic Servants	13.4%
Manufacturing	11.8%
Agriculture	10.7%
Hotels/Restaurants	5.9%
Health/Education/ Community/Real Estate	10.0%

According to the 2003 Census, the nationality of expatriate workers with valid labor cards in the private sector is divided as follows:

Nationality	Percent	Total Number
Indians	60.8	247,590
Bangladeshis	17.1	69,569
Pakistanis	11.6	47,207
Sri Lankans	1.9	7,560
Other Arabs	1.4	5,809
Egyptians	1.2	4,785
Filipinos	1.0	4,135
Other Nationalities	5.0	20,531
2003 Gross Labor Force	100.0	407,186

Additional information on expatriate labor statistics can be found in Attachment 5.

The MOM, the MRC and embassies perform regular outreach to educate workers on their rights. Moreover, human resources (HR) officers of most companies provide relevant employment information as a matter of standard HR practice and as part of their labor contract. The Labor Law is also available on the internet (http://directoryoman.com/labourlaw.htm) and the MOM operates a 24-hour hotline for questions and complaints. Regular featured articles in some local newspapers discuss the labor law and implementing regulations. While some employers have reportedly held passports of foreign workers, the MOM asserts that this practice is not permissible and that legislation to that

effect will be forthcoming. There are no statistics on employers withholding passports, although the Embassy understands there have been cases in which the MOM or the Labor Courts have interceded to get employers to return passports or other legal documents. Forced labor is prohibited by Oman's Basic Law and persons convicted of the crime can be sentenced to five to fifteen years in prison. Oman has ratified ILO Convention 29 on Forced Labor and ILO Convention 105 on the Abolition of Forced Labor.

Child labor is also prohibited by Oman's Basic Law and existing labor law (Article 12 of Oman's Basic Law and Articles 75-79 of the Labor Law). Oman ratified ILO Convention 138 on the Minimum Age for Admission to Employment and ILO Convention 182 on the Worst Forms of Child Labor. The minimum age for employment is 15 years and minors (aged 15-18) are permitted to work only between the hours of 6 a.m. and 6 p.m. Minors are prohibited from working in hazardous occupations, may not work on weekends or holidays, may not work for more than six hours in a day, and are prohibited from working overtime. Workplaces that employ minors are required to post certain items for display, including: a copy of the rules regulating the employment of children; an updated log with the names of minors employed in the workplace and their ages and dates of employment; and a work schedule showing work hours, rest periods, and weekly holidays. For further information, please refer to the U.S. Department of State's 2005 Human Rights Report - Oman.

Forced or compulsory labor by children is specifically prohibited by law. Employers who violate the child labor provisions of the Oman Labor Law are subject to a fine of $260. A second violation within a year can result in imprisonment for one week. In practice, most employers will ask prospective employees for a certificate indicating that he or she has completed basic education. Considering that most children usually begin their basic education at age 6, this means that workers, in most cases, will be at least 16 years old when they begin work. It is prohibited for a foreign worker under the age of 21 to receive a visa to work in Oman. There have been no substantiated incidents of illegal child labor.

Labor inspections are a key component of ensuring employer compliance with the labor law. The Labor Care Directorate

of the MOM is responsible for enforcement of, and compliance with, workplace laws and regulations. Its responsibilities include: occupational safety and health, labor inspections, dispute settlement, female employment, liaising with the Main Representative Committee, issues related to child labor and forced labor, and resolution of individual and collective labor disputes. In 2005, the MOM employed approximately 82 labor inspectors who conducted 4,541 workplace inspections (representing 99,897 workers, the equivalent of 19 percent of the workforce), including an unknown number of random inspections. Labor inspectors are spread throughout the Sultanate.

The Labor Care Directorate of the MOM also maintains the Ministry's 24-hour hotline (English and Arabic) for workers throughout Oman to report complaints, offer suggestions or seek responses to questions about the labor law. The hotline is in both English and Arabic, though there are personnel available for local dialects not featured in the hotline. The MOM estimates that while it takes thousands of general inquiries a year on the hotline, it only receives about 150 complaints that require formal processing and action. Of the approximately 50 calls received every day on average, 146 formal actions have been filed since January 1, 2006. Detailed information on the Ministry's budget is not published or available.

Although committee members, businesses, and workers continue to work to understand the new labor climate and their labor rights under the 2003 Labor Law, all expect significant changes in the coming months as a result of Minister of Commerce and Industry Maqbool Sultan's commitments to Congress, and the hoped-for ratification of the US-Oman Free Trade Agreement. Committee members and MOM officials both assert that as far as the practice of the law goes, committees are already working within an ILO consistent framework.

Madam Ambassador, I hope you find this letter helpful in responding to the inquiries of Congress as it considers ratification of this important trade agreement. The U.S. and Oman have enjoyed a long and prosperous history together, pre-dating even our first Treaty of Amity and Commerce of 1833. In more recent times, Oman has been a critical partner in the Global War on Terror and such military operations as Desert Shield, Desert Storm,

Enduring Freedom, and Iraqi Freedom. Since 1980, the Sultanate has been our key partner in the protection of vital American security interests in the Strait of Hormuz, which separates Oman from Iran by just 35 miles, and through which is transported over 40% of the world's petroleum supplies. Oman is a bastion of stability in a turbulent region, and has benefited from one of the most responsible, tolerant and law-based governing systems and societies in the Middle East. The U.S.-Oman Free Trade Agreement will be yet another proud landmark in a vital relationship stretching back over 200 years, and deserves the wholehearted support of our Congress.

Sincerely,

Gary A. Grappo

Attachments:
1. Representative Committees
2. Charter of the Grand Hyatt
3. Salalah Strike
4. Labor Dispute Court Case
5. Labor Statistics

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

JUN 22 2006

The Honorable Charles Grassley
Chairman
Senate Finance Committee
Dirksen Senate Office Building, Room 219
United States Senate
Washington, D.C. 20510

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 USC § 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

Sultanate of Oman
Ministry of Commerce and Industry
Muscat

سلطنة عمان
وزارة التجارة والصناعة
مسقط

مكتب معالي الوزير
Minister's Office

Ref: MCI\MO\ 369

Date: 5 May 2006

The Honorable Robert J. Portman
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508
United States of America

Dear Ambassador Portman:

I am pleased to provide this letter addressing labor laws and other labor measures in the Sultanate of Oman. The information and commitments set out in this letter reflect the results of consultations that representatives of my Government have held over the past several months with you, your staff, and certain Members of Congress and their staff in connection with the labor provisions of the Oman-United States Free Trade Agreement.

As you know, Oman adopted new labor legislation in 2003 (Royal Decree 35/2003) ("Labor Law") that provides a broad range of rights and protections for workers. My Government took this step following a comprehensive internal consultation process ("Shura Consultations") pursuant to the Basic Law of the Sultanate (Articles 9 and 10), as well as after in-depth consultations with the International Labor Organization ("ILO"). My Government has also ratified several of the core ILO conventions and is consulting closely with the ILO in order to improve further on the labor rights protections provided under Omani law, consistent with core labor standards.

Consistent with Oman's policy of pursuing improvements in the area of labor rights, we welcome the interest of your Government in our labor laws and practices and the opportunity to clarify how they apply, as well as to affirm our commitment to adopting laws and practices that are consistent with core labor standards.

Regarding the right of workers in Oman to organize and bargain collectively, Oman reaffirms that workers have the right, as provided in the Labor Law and consistent with ILO Convention 98, to form representative committees in the establishments in which they work and to bargain collectively. My Government is currently considering ways to improve the Labor Law in order

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Sultanate of Oman
Ministry of Commerce and Industry
Muscat

سلطنة عمان
وزارة التجارة والصناعة
مسقط

Minister's Office
مكتب الوزير

to enhance its consistency with ILO Convention 98 and is consulting with the ILO on this topic. After completing Shura Consultation with interested parties (*i.e.*, the Council of Oman, Council of Ministers, Chamber of Commerce and Industry, representative committees, and other interested parties), and consistent with ILO Convention 98, Oman will:

- Issue a Royal Decree no later than October 31, 2006, that will require employers to engage in collective bargaining over terms and conditions of employment, including wages and hours of work.
- Issue a Ministerial Decision no later than October 31, 2006, ensuring that penalties for anti-union discrimination are adequate to deter acts of discrimination.
- Undertake efforts to increase employer and employee awareness of the protection that Omani law provides for engaging in union activity.
- Issue a Ministerial Decision no later than October 31, 2006, clarifying Article 106 of the Labor Law, which pertains to wrongful termination. The Ministerial Decision will make explicit that wrongful termination includes termination for engaging in lawful union activity. Moreover, the Government of Oman reaffirms that an employee wrongfully terminated due to lawful union activity may be reinstated at his or her option and receives back pay.
- Issue a Royal Decree no later than October 31, 2006, amending Labor Law Articles 108-110 to reflect that workers in Oman may form more than one representative committee to represent them in their relations with a single enterprise. They have the right to have more than one main representative committee and that each establishment-level representative committee may decide which, if any, of the main representative committees to join.

Regarding the right to strike, Omani law was amended in 2003 to remove the prohibition on strikes. Recent experience confirms that:

- Workers are aware that strikes are now legal, as evidenced for example, by the fact that 33 strikes were undertaken in 2004, involving almost 6000 workers; and
- The Government has not prosecuted any worker or their representative committees for participating in lawful strikes.

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Nonetheless, in order to clarify Oman's law on this topic, following Shura Consultations, my Government will issue a Royal Decree no later than October 31, 2006, that will make explicit that workers have the right to strike and ensure that procedural requirements, including mediation and conciliation requirements do not restrict or impede the lawful exercise of that right, consistent with ILO Convention 87.

With respect to freedom of association for workers and concerns regarding government interference in representative committee activities, Oman will immediately begin Shura Consultations for the purpose of amending Ministerial Decisions 135/2004 and 136/2004 by no later than October 31, 2006, in order to remove all government involvement in representative committee activities, consistent with ILO Conventions 87 and 98.

During consultations with your Government, questions were raised about a reference to compulsory labor in Article 12 of Oman's Basic Law. In fact, Article 12 generally *prohibits* forced ("compulsory") labor, and Oman is a party to ILO Conventions 29 on forced labor and 105 on abolition of forced labor. While Article 12 does contemplate the extraordinary possibility of requiring public service for a fair wage, that power has never been exercised. In order to clarify Omani law, policy, and practice with respect to compulsory labor, following Shura Consultations my Government will issue a Royal Decree, no later than October 31, 2006, specifying 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.

In addition, concerns have been expressed regarding the extent to which my Government has enforced an Omani law that prohibits employers from withholding documents of foreign workers. To address those concerns, Oman will immediately enhance its enforcement of the law in question and will issue, no later than October 31, 2006, regulations that will further improve that enforcement, consistent with ILO Convention 29. Such regulations will explicitly prohibit employers from withholding of passports and other documents that release workers from employment contracts.

With respect to fines that may be imposed on persons that violate Omani restrictions on child labor, Oman has initiated consultations with the ILO and will, following Shura Consultations, adopt a Royal Decree no later than October 31, 2006. The Royal Decree will enhance the effective enforcement of the relevant provisions of Omani law that prohibit the worst forms of child labor, including by establishing dissuasive penalties, consistent with ILO Convention 182.

Consistent with our ongoing efforts to educate workers, employers, and government officials about their rights and responsibilities under Oman's labor law, my Government will undertake

ص.ب : ٥٣٠ ، الرمز البريدي : ١١٣ مسقط - ت : ٢٤٨١٧٢٧٩ - ٢٤٨١٩٦٠٣ ، فاكس : ٢٤٨١٧٠٢٩ - ٢٤٨١٧٠٢٩
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appropriate outreach efforts about changes in the law that I have described above in order to ensure that working people in Oman are aware of an understand their rights consistent with basic ILO principles.

Finally, I wish to offer three points of clarification in response to questions your Government has raised about the operation of Omani law. First, I wish to make clear that if Omani law does not prohibit a particular activity, such as engaging in labor strikes, that activity is legal (*see, e.g.*, Article 29 of the Basic Law).

Second, I wish to clarify the status of Ministerial Decisions under our domestic law. Under our system, a Ministerial Decision has the force and effect of law in implementing Omani statutes (which we refer to as Royal Decrees). When Ministerial Decisions are in conflict with one another, the provisions of the more recent Decision prevail to the extent of the conflict. All proposed Ministerial Decisions are fully consistent with and enforceable under existing Royal Decrees.

Lastly, I wish to clarify our understanding of the relationship between the commitments set forth in this letter and those set forth in our bilateral Free Trade Agreement. Oman will consider the actions I have described in this letter as matters arising under Chapter 16 of the Agreement and subject to consultations pursuant to Article 16.6 of that Agreement.

I trust that you will view this letter as a good faith effort to clarify Omani law, policy, and practice with respect to labor rights and to respond to questions and concerns on that subject in a constructive manner. Oman has been and hopes to remain a strong and reliable ally of the United States in a challenging region of the world. We firmly believe that the Free Trade Agreement between our two countries, achieved in a spirit of respect for our distinct sovereign rights and obligations, will be a matter of historic significance for the future interests of our two nations.

Yours Sincerely,

(MAQBOOL ALI SULTAN)
MINISTER OF COMMERCE & INDUSTRY

ص.ب : ٥٥٠ ، الرمز البريدي : ١١٣ مسقط – السلطنة ، هاتف : ٢٤٨١٤٢٠١ – ٢٤٨١٤٢٠٩ ، فاكس : ٢٤٨١٧٢٣٩ – ٢٤٨١٦٤٠٣
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Minister's Office

Ref: MCI/MO/ 226

Date: 26 March 2006

The Honorable William Thomas
Chairman, Ways and Means Committee
United States House of Representatives
2208 Rayburn HOB
Washington, DC 20515

Dear Chairman Thomas,

I sincerely appreciate the opportunity to work with you on the passage of the US-Oman Free Trade Agreement and I welcome your interest in our labor laws. Over the last few years Oman has made significant progress in reforming our laws to comply with the International Labor Organization ("ILO") core labor standards. We are currently consulting with the ILO to further modernize our laws and practices, taking into account the ILO standards. Therefore, Oman makes the following commitments:

1. Oman is hosting an ILO delegation in April of this year in order to determine how to incorporate ILO Convention 98 into our labor laws. Oman will then seek the views of the Council of Oman, the Council of Ministers, the Chamber of Commerce & Industry, representative committees and other interested parties (hereinafter, "Interested Parties"). Thus, Oman will be able to issue a Ministerial Decision, after consultation with Interested Parties, no later than October 31, 2006 that incorporates the standards of ILO Convention 98 into Omani labor laws.

2. The Ministerial Decision referenced in number 1 above will clarify that Article (106) of the Omani Labour Law allows workers, at their option, to be reinstated for any termination that resulted from lawful union activity.

3. After consultation with Interested Parties, Oman will issue a Royal Decree amending Royal Decree 35/2003 (the Omani Labor Law) by no later than October 31, 2006 that states that more than one representative committee may be formed in order to represent workers in their relations with a single enterprise.

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4. After consultation with Interested Parties, Oman will issue a Royal Decree amending Royal decree 35/2003, as noted in point 3 above to amend Articles (108-110) of the Labour Law to reflect that each representative committee may belong to the Main Representative Committee and that other main representative bodies may be formed. This action will be taken no later than October 31, 2006.

5. After consultations with Interested Parties, Oman will issue a Ministerial Decision by no later than October 31, 2006 ensuring that penalties for anti-union discrimination are adequate to deter acts of discrimination.

6. After consultations with the ILO and with Interested Parties, Oman will issue a Ministerial Decision by no later than October 31, 2006 that will ensure that technical standards for strikes do not exceed the standards of the ILO.

7. As provided by the Basic Law of Oman, Oman does seek the views of Interested Parties, before making any changes in the legislation and will commit to continue this practice in the future.

8. After consultations with Interested Parties, Oman will amend Ministerial Decisions 135/2004 & 136/2004 by no later than October 31, 2006 in order to remove all government involvement in representative committees' activities.

Yours sincerely,

(MAQBOOL ALI SULTAN)
MINISTER OF COMMERCE & INDUSTRY

ص.ب : ٥٥٠ ، الرمز البريدي : ١١٣ مسقط – فاكس : ٢٤٨١٧٢٣٩ – ٢٤٨١٦٤٠٣ ، هاتف : ٢٤٨١٤٢٠١ – ٢٤٨١٠٢٠٩
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Embassy of
The Sultanate of Oman
Washington, D.C.

March 3, 2006

The Honorable William M. Thomas
Chairman, House Ways and Means Committee
2208 Rayburn House Office Building
Washington, DC 20515-2105

Dear Chairman Thomas:

This will provide a reply to your request regarding Oman's ability to adapt its labor rights regime in a manner similar to that which the Kingdom of Bahrain had committed in seeking Congressional approval of the U.S. - Bahrain Free Trade Agreement.

We have reviewed the correspondence between the Kingdom of Bahrain and Ambassador Portman regarding issues and commitments of the Kingdom with respect to its labor right regime. I have discussed these issues with the Minister of Industry and Commerce, H.E. Maqbool Ali Sultan, who has also conferred with the Minister of Manpower, H.E. Juma Al Juma. The Sultanate of Oman will:

1. Clarify its law that more than one Representative Committee may be formed in order to represent workers in their relations with a single enterprise.

2. Oman shall consult with the International Labor Organization and shall clarify that Representative Committees may belong to more than one federation.

3. The Ministry of Manpower will review remedies available to workers for unlawful termination of a worker for participating in a strike. In the event a legal preference for remedies is advisable and in compliance with I.L.O. standards, Oman will consider requiring reinstatement as the preferred remedy in such cases.

4. Oman shall continue to participate in consultations with the International Labor Organization to address and improve Oman's evolving labor rights regime, including further clarification of collective bargaining rules.

5. Oman will take steps to reduce government involvement in Representative Committee operations in order to conform to I.L.O. Convention 87.

Our review of the Bahrain commitments indicate that other representations made by Bahrain are not readily comparable with Oman's laws and practices. Nevertheless, if you believe otherwise, we will be pleased to further discuss these issues with you.

Sincerely,

Hunaina Al-Mughairy
Ambassador

CC: Angela Ellard; Majority Staff Director, Trade Subcommittee, House Ways and Means Committee

AIPAC
THE AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE
America's Pro-Israel Lobby

June 28, 2006

Dear Representative Shaw and Representative Cardin,

As Congress takes up legislation implementing the U.S.-Oman Free Trade Agreement (FTA), we want to thank you for your respective roles in addressing the issue of the Arab League Boycott of Israel.

Because of your efforts, as well as other members of the House Ways and Means Committee and the Senate Finance Committee, the Administration has agreed to a reporting mechanism to monitor Oman's compliance with its anti-boycott pledge.

Oman made an important declaration to the U.S. Trade Representative that it does not apply the boycott of Israel in any of its aspects—primary, secondary or tertiary. We hope and expect the Administration and Congress to use the reporting mechanism in the current legislation to ensure that Oman implements its commitments. The breakdown of these kinds of economic barriers can, hopefully, help lead to the development of important political relationships between Israel and the Arab world. In Oman's case, we hope that it will reopen its trade office in Israel.

We appreciate the efforts of Congress to eliminate all remaining vestiges of the Arab League boycott of Israel.

Sincerely,

Howard Kohr
Executive Director

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Midwest
312-236-8550
Mountain West
406-542-2595
New England
617-457-8710
Northeast
212-750-4110
Pacific Northwest
415-989-4140
Southeast
770-541-7610
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323-937-1184
Southwest
713-871-1891
Israel
011-972-2-561-8010

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بسم الله الرحمن الرحيم

Embassy of
The Sultanate of Oman
Washington, D.C.

سفارة سلطنة عمان
"واشنطن"

Unofficial Translation

Administrative Memo

To: Directors of Administrations & Heads of Customs Divisions

Re: End of First Class Boycott of Israeli Goods

Based on the letter of H.E. Lieutenant General, the Inspector General of Police and Customs number 1/20/5/23/1996, dated June 22, 1996,

And following up on the confidential circular of the General Directorate of Customs issued on the 26th of June, 1996 concerning the above subject,

I would like to confirm to you the importance of following the contents of the above two letters to end the boycott of all goods of Israeli origin imported to the Sultanate of Oman.

With regard to the forbidden and restricted goods, they should be treated according to the unified customs law of the Countries of the Gulf Cooperation Council.

Any questions in this regard should be addressed to the Directorate General of Customs.

Signed by the Director General of Customs
Mahmoud bin Amer Al-Kiyoumi

H.E. Hamada

بسم الله الرحمن الرحيم

شرطة عمان السلطانية
الإدارة العامة للجمارك

الرقم : ١/٧/١/٣/١
التاريخ : ١٥ جمادى الأول ١٤٢٧هـ
الموافق : ١٢ يونيو ٢٠٠٦م

مذكرة إدارية

مديري الإدارات ورؤساء الأقسام الجمركية المحترمين.

الموضوع/ رفع المقاطعة من الدرجة الأولى على البضائع الإسرائيلية.

إستناداً إلى خطاب معالي الفريق المفتش العام للشرطة والجمارك رقم :١/٢٠/٥/٢٣/١٩٩٦م المؤرخ في ٢٢ يونيو ١٩٩٦م وإلحاقاً إلى تعميم الإدارة العامة للجمارك رقم : أ.ع.ج/سري/١٢٣/١١٣ الصادر بتاريخ ٢٦ يونيو ١٩٩٦م بشأن الموضوع أعلاه.

أود بأن أؤكد لكم بأهمية العمل بمضمون ما ورد في الكتابين أعلاه بوجوب إلغاء المقاطعة المفروضة على كافة البضائع الواردة إلى السلطنة ذات المنشأ الإسرائيلي.

أما بالنسبة للبضائع الممنوعة والمقيدة فيتم معاملتها وفقاً لقانون الجمارك الموحد بدول مجلس التعاون الخليجي.

وفي حال ورود أي استفسارات بهذا الشأن من أي جهة كانت يرجى إبلاغ الجهة المستفسرة بوجوب مراجعة الإدارة العامة للجمارك.

العميد/ محمود بن سالم البكيوني
مدير عام الجمارك

HOUSE OF REPRESENTATIVES
19TH DISTRICT, FLORIDA

COMMITTEE ON
INTERNATIONAL RELATIONS

COMMITTEE ON
THE JUDICIARY

ROBERT WEXLER
CONGRESS OF THE UNITED STATES

His Excellency Qaboos bin Said
Sultan of Oman
Muscat, Oman

June 9, 2006

Dear Sultan bin Said:

I am writing to affirm my support for the growing ties between the United States and Oman and to express my concern about Oman's trade relations with Israel.

Since initiating the U.S.-Oman Bilateral Trade and Investment Framework Agreement in July 2004, our two nations have worked in concert to eliminate tariffs and other economic barriers and to promote greater bilateral trade. We have successfully negotiated a comprehensive Free Trade Agreement (FTA) which, if approved by Congress, will provide Oman access to U.S. markets and dramatically increase U.S. investment in Oman. The FTA is just one of many indicators of the robust and growing relationship between the United States and Oman, which has extended into the political, military and economic fields.

There is no question that Oman represents a cornerstone of stability in the Middle East and a model of moderation in the Arab world. This was best exemplified by the opening of reciprocal trade missions between Oman and Israel in 1996. Unfortunately, Oman closed these missions in 2000, and this decision has not yet been reversed by your government. In light of the recent Israeli disengagement from Gaza and positive signals of a potential Israeli disengagement from the West Bank, I urge you to re-open the Omani trade mission in Tel Aviv and, in addition, enable the Israeli mission to re-open in Oman.

Oman has much to gain from deepened ties with Israel, and I was encouraged by reports that your government affirmed its lifting of the economic boycott of Israel during the FTA negotiations with the Bush Administration. In a letter dated September 28, 2006 to the United States Trade Representative Rob Portman, the Omani Minister of Commerce and Industry, Maqbool Bin Sultan, stated that, "Oman does not apply any aspect of the boycott, whether primary, secondary or tertiary or have any laws to that effect." In addition, I strongly support your government's decision – along with that of Egypt, Jordan, Mauritania and Bahrain – not to attend the Arab League Committee meeting on the boycott of Israel in Damascus on May 15, 2006. These positive developments created a strong impression that Oman is committed to embarking on a new chapter in its relationship with Israel.

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WWW.WEXLER.HOUSE.GOV

I was surprised and disappointed, therefore, to see quotes published in the *Jerusalem Post* on June 8, 2006, by Mohammad Nasser of Oman's Directorate General of Customs regarding Oman's continued boycott of Israel, initiated by the Arab League. As stated in the *Jerusalem Post*, Mr. Nasser affirmed that "If someone brings products from Israel, they will be confiscated. You might put yourself into problems if you do that." The article goes on to explain that the Customs Department in Oman continues to follow rules and regulations set by the Arab League's boycott of Israel, established in 1951.

The aforementioned comments reported in the *Jerusalem Post* appear to be in stark violation of commitments made by your government to Representative Portman, in addition to Oman's obligations as a member of the World Trade Organization (WTO). As you know, the WTO requires Member States to refrain from engaging in discriminatory trade practices against fellow Member States.

Sultan bin Said, I do not wish to reach any premature decisions regarding Oman based solely on newspaper reports. As such, I would greatly appreciate a response so that this issue may be clarified, and the correct information may be disseminated to Congress in advance of the upcoming vote on the U.S.-Oman FTA.

Thank you for your courtesy and cooperation.

Warm regards,

Robert Wexler

Cc: Omani Ambassador to the United States, Hunaina Sultan al-Mughairy
Cc: U.S. Ambassador to Oman, Gary A. Grappo

Sultanate of Oman
Ministry of Commerce and Industry
Muscat

سلطنة عمان
وزارة التجارة والصناعة
مسقط

مكتب معالي الوزير
Minister's Office

mocl/505

28 September 2005

The Honorable Robert Portman,
US Trade Representative
600 17th Street, NW
Washington DC 20508,
United States of America

Dear Ambassador Portman,

Please accept my congratulations on your recent appointment to serve as the US Trade Representative.

It has come to my attention that questions have arisen regarding Oman's participation in the Arab Boycott of Israel. I would like to assure you that Oman does not apply any aspect of the boycott, whether primary , secondary or tertiary or have any laws to that effect. Oman has no restriction whatsoever on U.S. companies trading with Oman or doing business with Oman , regardless of its ownership or relations with Israeli companies, and the Government is taking steps to ensure that all Ministries are aware of the situation and remove any boycott language that may unintentionally remain in their contracts .

As a Member of the World Trade Organization (WTO), Oman did not invoke the non-application provisions of the WTO Agreement toward any other Member, and therefore has all WTO rights and obligations with respect to all Members .

Your sincerely,

Maqbool Bin Ali Sultan
Minister of Commerce and Industry

IX. VIEWS

ADDITIONAL VIEWS

Democratic Members of the Committee believe that international trade agreements, properly structured, can be an important tool for promoting broad-based economic growth in the United States and around the world, and can enhance bilateral relationships between the United States and its trading partners.

However, the consideration of trade agreements in Congress has become more partisan with every agreement negotiated since the Trade Act of 2002. The lack of constructive dialogue between Republicans and Democrats on the Committee, and between Committee Members from both parties and the Administration, has exacerbated differences in views among the Members of the Committee.

The manner in which the U.S.-Oman Free Trade Agreement was handled is a perfect example of how not to treat our trade relationships with foreign countries. Rather than dealing solely with the U.S. Trade Representative, Oman also was forced to negotiate separately with Republican trade leadership and Democratic trade leadership. This is inappropriate, as the differences between Republicans and Democrats in Congress should not be the direct concern of foreign countries.

We hope that the concerns we have raised in relation to the U.S.-Oman Free Trade Agreement still can be addressed. We also stand ready to engage with Republican Members of the Committee in an honest dialogue to determine how to resolve the areas where Members have differences so that the Committee's support for future trade agreements will be truly bipartisan.

CHARLES B. RANGEL.
SANDER M. LEVIN.
JOHN LEWIS.
LLOYD DOGGETT.
PETE STARK.
MIKE THOMPSON.
JOHN B. LARSON.
JIM MCDERMOTT.
XAVIER BECERRA.
STEPHANIE TUBBS JONES.
EARL POMEROY.
RAHM EMANUEL.
RICHARD E. NEAL.
MICHAEL R. MCNULTY.
BEN CARDIN.
JOHN TANNER.

DISSENTING VIEWS

The United States-Oman Free Trade Agreement (FTA) represents another missed opportunity for U.S. trade policy. As with previous agreements, the Administration had an opportunity to negotiate and submit to Congress for approval an agreement that would have ensured that the benefits of trade flow broadly throughout society—to working people; farmers, large and small; and businesses, large and small. The Administration had an opportunity to craft a lasting, bipartisan approach to U.S. trade policy. Instead, the Administration negotiated a free trade agreement with Oman and submitted a bill to Congress that does little to ensure that our trade policy raises living standards in the United States and abroad, and that once again exacerbates, rather than bridges, differences in views among the Members of this Committee.

The United States and Oman have enjoyed good relations for more than 170 years. The two countries signed a treaty of friendship in 1833. Today, Oman is a key friend and ally of the United States in the Middle East. A correctly drafted trade agreement with Oman would solidify this already strong relationship. However, the agreement negotiated by the Administration fails to adequately address several important issues.

I. INADEQUATE LABOR PROVISIONS

As in all other FTAs negotiated by the Bush Administration, the single enforceable labor provision in the text of the U.S.-Oman FTA requires only that each Party "effectively enforce its labor laws." Further, that labor provision is subject to a weaker enforcement mechanism than that applicable to other provisions in the agreement.

This structure is inadequate in this case, particularly because Oman's labor laws and practices fail to comply with basic international labor standards, as reported by the International Labor Organization, U.S. Department of State, and U.S. Department of Labor. In view of these shortcomings, a correctly drafted agreement would require that the Parties to the agreement meet basic international labor standards so as to ensure that workers have the ability to organize and collectively bargain for better working conditions and wages. A correctly drafted agreement would ensure that U.S. firms and workers are not asked to compete against companies that gain a competitive advantage by suppressing their workers. A correctly drafted agreement would not promote a race to the bottom.

A correctly drafted agreement, particularly an agreement with a country whose labor laws and practices do not comply with basic ILO standards, would require each party to the agreement to commit to: (1) bring its labor laws into compliance with the basic standards of the International Labor Organization (ILO) within 3

years; (2) subject this commitment to meet basic ILO labor standards and other obligations set forth in the Chapter on Labor to the regular dispute settlement mechanisms that apply to all other commercial provisions in the agreement; and (3) engage in an intensive process—in which the United States and international institutions provide amply technical and other assistance—such as the government is able to meet ILO standards in its laws, practices and enforcement activities as rapidly as possible and on a sustained basis.

In the case of Oman, Committee Democrats sought to overcome the lack of enforceable commitments in the U.S.-Oman FTA regarding compliance with basic labor standards. Ways and Means Democrats identified to the Government of Oman in November 2005 and February 2006, the changes to Oman's laws that need to be made for Oman to comply with ILO standards. The changes were limited to those changes necessary to bring Oman's law into compliance with basic ILO standards: the right to associated; the right to bargain collectively; and bans on exploitative child labor and forced labor.

Despite eight months of discussions, the Government of Oman's laws and practices remain far short of basic ILO standards and the Government of Oman has not yet brought its laws into compliance with ILO standards. Instead, the Government of Oman has promised to amend its laws by October 31, 2006. Further, Oman has not committed to apply its labor standards in a manner consistent with basic international standards, pending formal changes to its laws.

Oman's failure to ensure that working people on the ground today enjoy basic internationally-recognized rights stands in sharp contrast to the clear and binding commitments made by the Government of Bahrain regarding the continued application of its labor laws when Congress considered the U.S.-Bahrain FTA in December 2005. In that case, Bahrain made a binding commitment prior to the House vote to (1) continued applying its existing labor laws in a manner consistent with ILO standards; as well as (2) promptly present to its Parliament formal amendments to its laws to ensure they were fully ILO-compliant.

Had Oman made the same demonstration and undertook the same commitments—no more and no less—prior to the Committee markup as did the Government of Bahrain in November 2005, there would have been a basis in Committee for a broad majority of Democratic Committee Members to support the FTA and implementing legislation as related to basic labor standards.

II. ADMINISTRATION DISREGARDED ACTION BY FINANCE COMMITTEE

We also have strong concerns about the fact that the President submitted the formal Oman implementing legislation to Congress on June 26, 2006, without including an amendment that was approved unanimously by the Senate Finance Committee during its mock markup on May 18. The amendment would have prohibited products manufactured by companies that engage in human trafficking or indentured labor from receiving preferential treatment under the FTA.

At the least, the Members of the Ways and Means Committee and Finance Committee should have convened a "mock" conference to discuss how to handle this amendment. (This was the procedure

used for NAFTA and the Uruguay Round in the 1990s.) The fact that the Administration went ahead and submitted the implementing bill to Congress without such a conference makes a mockery of the procedures that were established under the fast track procedures in the Trade Act of 2002.

III. REPORTS RE: OMAN'S PARTICIPATION IN ARAB LEAGUE BOYCOTT

In many ways, Oman has been a leader in the Middle East with regard to its ties to Israel. Unfortunately, recent reports, including press reports, indicate that Oman has not taken a key step to advancing its relationship with Israel, eliminating the Arab League boycott against Israel.

In a letter sent by the Omani Minister of Commerce and Industry to U.S. Trade Representative Portman in September 2005, "Oman does not apply any aspect of the [Arab League boycott], whether primary, secondary or tertiary or have any laws to that effect." However, despite the statement of the Government of Oman that it does not participate in the Arab League boycott, independent evidence suggests that the boycott may be still be enforced on the ground in Oman. A June 8, 2006 article in the Jerusalem Post quotes the Chief of Customs Officers at Seeb International Airport outside Muscat, the Omani capital, as stating:

> No products from Israel are allowed. If it is a personal item or two, they will probably not check. But if it is for marketing or to sell, then it is not allowed.

The article further quotes an official with Oman's Directorate General of Customs as stating, "Products from Israel are not permitted because of the boycott."

In response to the Jerusalem Post article, the Government of Oman issued a circular to its relevant agencies reiterating its policy of not enforcing the boycott. We urge the Government of Oman to continue its efforts to ensure the enforcement of the boycott is terminated permanently on the ground in Oman.

IV. OTHER CONTINUING CONCERNS

We also continue to have reservations about sections of the U.S.-Oman FTA that, like other recently negotiated U.S. FTAs, could affect the availability of affordable drugs. In particular, we are concerned about test data requirements in the U.S.-Oman FTA, which could affect a country's ability to address public health problems and delay the introduction of generic pharmaceuticals. Further, we are concerned that the U.S.-Oman FTA, like other recent FTAs, fails to balance appropriately the promotion of access to affordable medicines through a streamlined process for generic competition with the protection of intellectual property of pharmaceuticals.

Similarly, we object to the FTA's Chapter on the Environment, which like other recently negotiated FTAs, includes only minimal commitments. The Chapter includes no benchmarks for the Parties to meet in improving their environmental laws and practices, and instead requires only that the countries enforce their existing laws. Further, this requirement is subject to a weaker enforcement mechanism than other provisions in the agreement.

Another area of concern is the so-called "investor-state" dispute settlement mechanism provided for in the U.S.-Oman FTA's Chapter on Investment. The investor-state mechanism can be a useful tool to ensure that U.S. investors overseas are protected against unfair treatment. However, if not properly crafted to reflect current U.S. laws, the investor-state mechanism can provide foreign investors greater rights than U.S. investors in the U.S. market.

Unfortunately, the U.S.-Oman FTA still leaves out key elements of U.S. law, notwithstanding that it arguably is an improvement over the standard contained at Chapter 11 of the NAFTA. The result is to empower panels to issue decisions that could go well beyond U.S. law—allowing foreign investors to receive greater rights than U.S. investors in the U.S. market.

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