

1 EXECUTIVE COMMITTEE MEETING TO REVIEW AND MAKE
2 RECOMMENDATIONS ON PROPOSED LEGISLATION IMPLEMENTING THE
3 U.S.-OMAN FREE TRADE AGREEMENT; AND TO CONSIDER FAVORABLY
4 REPORTING THE NOMINATION OF W. RALPH BASHAM, OF VIRGINIA,
5 TO BE COMMISSIONER OF CUSTOMS, DEPARTMENT OF HOMELAND
6 SECURITY

7 THURSDAY, MAY 18, 2006

8 U.S. Senate,
9 Committee on Finance,
10 Washington, DC.

11 The meeting was convened, pursuant to notice, at
12 10:38 a.m., in room SD-215, Dirksen Senate Office
13 Building, Hon. Charles E. Grassley (chairman of the
14 committee) presiding.

15 Also present: Senators Hatch, Lott, Snowe, Kyl,
16 Thomas, Santorum, Frist, Smith, Bunning, Crapo, Baucus,
17 Conrad, Jeffords, Bingaman, Kerry, Lincoln, Wyden, and
18 Schumer.

19 Also present: Kolan Davis, Republican Staff Director
20 and Chief Counsel; Russ Sullivan, Democratic Staff
21 Director; Carla Martin, Chief Clerk; and Mark Blair,
22 Deputy Clerk.

23 Also present: James Mendenhall, General Counsel,
24 Executive Office of the President, USTR; Hon. Shaun
25 Donnelly, Assistant USTR for Europe and the Middle East,

1 Executive Office of the President; David Johanson,
2 Republican Trade Counsel; and Janis Lazda, Democratic
3 Trade Staff.

4 Also present: William Moffitt, Moffitt Reporting
5 Associates.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, CHAIRMAN,
2 COMMITTEE ON FINANCE

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4 The Chairman. Normally for a mark-up like this we
5 would wait until one of the Minority party members are
6 here, but I have heard through staff that they have no
7 objection to our starting.

8 We will have opening statements. We will not be able
9 to make any decisions until at least seven members are
10 present, and we obviously will not be able to vote out
11 the FTA or the nomination unless we have 11 people here.
12 It is our usual practice that, if it looks impossible to
13 get 11 people here, then we will adjourn until a period
14 of time off the floor during a vote.

15 The committee convenes to open executive session to
16 review and make informal recommendations on proposed
17 legislation to implement the U.S.-Oman Free Trade
18 Agreement.

19 Before we begin with a technical review of the
20 proposed bill, I have this opinion about the agreement.
21 I believe the agreement is very strong. Immediately upon
22 entering into force, 100 percent of bilateral trade in
23 industrial and consumer goods will be duty-free. The
24 agreement also covers all agricultural products.

25 Oman will provide immediate duty-free access for

1 current agricultural exports in 87 percent of the
2 agricultural tariff lines. Tariffs on remaining
3 agricultural products would be phased out over a period
4 of 10 years.

5 In addition, Oman will provide substantial market
6 access across its entire services regime. I realize that
7 Oman is not a large market, but this agreement gives our
8 exporters, investors, and service providers real benefits
9 and it serves as a solid model for future trade
10 agreements that we may negotiate in the Middle East.

11 The benefits of the agreements are, thus, bigger than
12 the bilateral trade flows would suggest. This agreement
13 is an important step in building toward the President's
14 vision of a Middle East Free Trade Area by the year 2013.

15 Achieving the President's vision would result in
16 significantly improving market access for U.S. goods,
17 agricultural, industrial, and consumer goods and
18 services, in a region of the world populated by 350
19 million people, and is increasing in number very rapidly.

20 The President's vision also offers the prospect of
21 increased economic prosperity and stability throughout
22 the Arab world. The fact is, open economies that are
23 actively engaged in international commerce tend to grow
24 at much higher rates than closed economies. Thus, we
25 have strong mutual interest in achieving a more

1 encompassing Middle East Free Trade Area.

2 I know some concerns have been expressed regarding
3 labor rights in Oman, and I welcome that discussion. The
4 fact is, Oman has undertaken a number of significant
5 labor law reforms since 2003, and the government is
6 actively confronting the areas where more work needs to
7 be done.

8 These reforms include ratifying a number of
9 conventions and protocols on labor that have been put out
10 by the International Labor Organization, and also by the
11 United Nations.

12 This past March, Oman made eight commitments to the
13 United States to enact additional labor law reforms by
14 October 31 of this year. The earliest this agreement
15 could come into effect is March 1 of next year, so Oman
16 has clearly committed to complete its reform efforts well
17 before that date.

18 Just last week, Oman made 10 additional commitments
19 addressing concerns about forced labor and about child
20 labor, as well as specifying in greater detail the
21 government's intention with respect to the March
22 commitments that they made.

23 These actions, I think, demonstrate that Oman is a
24 good-faith partner in working to address legitimate
25 concerns. I wish all of our trading partners

1 demonstrated such active engagement in resolving issues
2 in dispute.

3 Some of the concerns that have been expressed appear
4 to have more to do with recent reports of labor
5 violations in Jordan than they do in Oman. Still, after
6 hearing of these concerns, I have included language in a
7 modified Chairman's mark of the proposed Statement of
8 Administrative Action. My modification adds a provision
9 for periodic reporting by the administration to Congress
10 on any coercive actions by employers in Oman to compel
11 forced labor.

12 If Senator Baucus was here, we would call on him at
13 this point. Let me ask staff if there is any objection
14 to our moving ahead to discussion.

15 [Pause]

16 The Chairman. I would turn to staff now to do
17 explanations, as is our practice.

18 Mr. Johanson?

19 Mr. Johanson. Yes. Thank you, Chairman Grassley,
20 Ranking Member Baucus, and members of the committee. I
21 am pleased to have the opportunity to summarize the
22 administration's proposed implementing bill for the U.S.-
23 Oman Free Trade Agreement.

24 I will first provide a general overview of the
25 implementing bill, and I will next highlight specific

1 provisions of the legislation.

2 First, an overview. The bill is divided into four
3 titles. Title I approves the agreement and establishes
4 proclamation authority for the President and regulatory
5 authority for the administration to implement the
6 agreement.

7 The next title contains changes to Customs law that
8 are necessary or appropriate to implement the agreement.
9 Title III implements in U.S. law the agreement's
10 bilateral safeguard and textile and apparel safeguard.
11 Title IV amends U.S. law with regard to government
12 procurement.

13 I will now turn to some specific provisions of the
14 bill. Within Title I, Section 101 provides for
15 Congressional approval of the agreement and accompanying
16 Statement of Administrative Action. Congressional
17 approval of the agreement and the Statement of
18 Administrative Action is necessary for the bill to
19 qualify under trade promotion authority procedures.

20 Section 102 of the bill establishes the relationship
21 of the agreement to Federal and State law. Section 103
22 provides the authority for new or amended regulations to
23 be issued and for the President to proclaim actions
24 implementing the provisions of the agreement as of the
25 date the agreement enters into force.

1 Section 104 sets forth consultation and layover steps
2 that must precede the President's implementation of any
3 duty modifications by proclamation.

4 I will now turn to the next title and summarize the
5 Customs provisions of the proposed bill. Section 201
6 authorizes the President to implement, by proclamation,
7 the modification or continuation of tariffs as the
8 President determines to be necessary or appropriate to
9 carry out the terms of the agreement.

10 Remaining sections of this title of the implementing
11 bill establish rules of origin for goods to qualify for
12 preferential treatment under the agreement, authorize
13 actions to be taken by the administration to enforce the
14 textile and apparel rules of origin, and authorize the
15 Secretary of the Treasury to prescribe regulations as may
16 be necessary to carry out the tariff-related provisions
17 of the bill.

18 Title III of the bill establishes the bilateral
19 safeguard and textile and apparel safeguard provisions of
20 the agreement. Subtitle A of Title III sets forth
21 procedures for the conduct of bilateral safeguard
22 investigations by the International Trade Commission,
23 exempts articles from relief if relief has previously
24 been granted under the bilateral safeguard, sets the
25 maximum period of relief under the bilateral safeguard at

1 three years, and authorizes the President to provide
2 trade compensation when the United States imposes relief
3 through bilateral safeguard action.

4 Subtitle B of Title III sets forth procedures for the
5 application of the agreement's textile and apparel
6 safeguard measures. Under the textile and apparel
7 safeguard, determinations of relief will be made by the
8 President, not the International Trade Commission.

9 Subtitle B also provides that the maximum period of
10 relief under the textile and apparel safeguard is three
11 years, exempts articles from relief if relief has
12 previously been granted under the safeguard, or if the
13 article is subject to import relief under the global
14 safeguard of Section 201 of the Trade Act of 1974, and
15 authorizes the President to provide compensation when the
16 United States imposes relief through the textile and
17 apparel safeguard.

18 Title IV of the bill amends the Trade Agreements Act
19 of 1979 to allow for the non-discriminatory procurement
20 of products and services of Oman.

21 Mr. Chairman, that concludes my summary of the
22 implementing bill. I would be pleased to answer any
23 questions that you or other members of the committee
24 might have.

25 The Chairman. All right. Before we go to other

1 questions, if Senator Baucus would make his opening
2 comments at this point.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA

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4 Senator Baucus. Thank you, Mr. Chairman. I
5 appreciate your holding this meeting.

6 Mr. Chairman, I think it is important to remember
7 that this mock mark-up is the single most important event
8 under fast track procedures. It is the only time when
9 Senators can consider amendments to the draft
10 implementing legislation and it is the only time when
11 this legislation received formal public scrutiny prior to
12 its introduction.

13 This agreement has much in its favor. On the first
14 day of enactment, 100 percent of bilateral trade in
15 industrial and consumer products will become free of
16 duties. Oman's agricultural market will also open to
17 American exports, like beef and chicken parts.

18 In this agreement, Oman will open its services market
19 beyond its WTO commitments. Oman has also pledged to
20 protect innovation through vigorous intellectual property
21 laws.

22 Those laws will include copyrights for sound and
23 audiovisual records, protection of satellite programming,
24 and control of the transmission of proprietary
25 information over the Internet.

1 Thanks to this agreement, Oman has also worked hard
2 to strengthen its labor laws. I commend Oman for its
3 work so far and I applaud its close cooperation with the
4 United States and the International Labor Organization to
5 continue its reforms.

6 I hope that the Omanis will not view labor market
7 reforms as a burden. Rather, I hope that they see these
8 reforms as an opportunity to serve as an example to the
9 neighbors, to prove their critics wrong, and to offer all
10 their workers a share in Oman's prosperity.

11 Oman still has a way to go. Given reports of
12 possible labor abuses in Jordan, another FTA partner
13 country, we will be paying especially close attention to
14 the additional reforms that Oman has pledged to make in
15 the coming months. I hope that all outstanding issues
16 will be resolved before we are asked to vote on final
17 passage of this agreement.

18 I would also like, once again, to reiterate my
19 support for Mr. Basham's nomination, Mr. Chairman, at the
20 appropriate time, to become Commissioner of Customs.
21 Thank you.

22 The Chairman. Thank you very much.

23 What I would like to do now, since we cannot take
24 action, and seven members are not here to do that, I
25 would make a short statement on the modification that I

1 have added. We cannot take action on the modification.
2 Then if Senator Conrad wants to explain his amendment, we
3 will go to Senator Conrad.

4 I mentioned in my opening statement something about
5 my modification. It adds a provision for periodic
6 reporting by the administration to Congress on any
7 coercive actions by employers in Oman to compel forced
8 labor.

9 I would ask a question of Mr. Donnelly. Would you
10 agree that it is important for Congress to be updated
11 periodically on Oman's labor commitment? Well, anybody
12 can answer it, but speaking for the Agency.

13 Mr. Mendenhall. Very good. There has been
14 extensive discussion, as you know, with Oman on improving
15 their labor situation, including through exchanges of
16 letters where they have undertaken specific commitments
17 that they would follow through on over the coming months
18 to try to improve the labor situation there, and their
19 labor regulation.

20 As part of that process, they have agreed to consult
21 with us on each of those measures, and we can, of course,
22 consult with them on a broader array of measures as well
23 to improve their labor regime. We would be more than
24 happy to update you and your staff as developments occur.

25 The Chairman. All right. I thank you.

1 Now, if there is no question on the modification,
2 because it was distributed yesterday, I will now, waiting
3 for seven people to come, turn to Senator Conrad for
4 discussion of his amendment.

5 Senator Conrad. I thank the Chair.

6 The amendment that I am offering is very simple. It
7 says that products made by factories that engage in human
8 trafficking or labor practices so egregious as to amount
9 to slave labor should not get any benefit from this
10 agreement. It is not free trade when foreign workers are
11 locked in factories and forced to work 100 hours a week
12 for pennies an hour.

13 Unfortunately, a recent study in Jordan found that is
14 exactly what is happening. Workers from Bangladesh,
15 China, and other countries of Southeast Asia were
16 promised much greater pay than they could earn in their
17 home countries.

18 They paid hundreds of dollars to recruiters to get a
19 job in a Jordanian apparel factory. When they got to
20 Jordan, their passports were taken away so they could not
21 leave. They were then forced to work 90- to 120-hour
22 work weeks. They are paid far less than the minimum wage
23 in that country. If they complained, they were beaten or
24 jailed.

25 The *New York Times* recently reported that workers

1 testified to the following. One said they started at
2 8:00 in the morning. "We would work until midnight or
3 1:00 or 2:00 a.m. seven days a week. When we were in
4 Bangladesh, they promised us that we would receive \$120 a
5 month, but in the five months I was there I only got one
6 month's salary, and that was \$50."

7 Mohammad Siful Islam, a Bangladeshi, said that
8 several times workers had to work until 4:00 a.m., then
9 sleep on the factory floor for a few hours before
10 resuming work at 8:00 a.m. "The workers got so exhausted
11 they became sick," he said.

12 Several workers said when they were sick they did not
13 receive medical care, but were instead punished and had
14 their pay docked. Hazrat Ali said he sometimes worked 48
15 hours in a row and received no pay for six months. "If
16 we asked for money, they hit us," he said.

17 Naseema Octer said, "The western factory gave its
18 workers a half a glass of tea for breakfast, and often
19 rice and some rotten chicken for lunch. In the four
20 months I was in Jordan, they did not pay us a single
21 penny," she said. "When we asked management for our
22 money and for better food, they were angry. We were put
23 in some sort of jail for four days without anything to
24 eat, and then they forced us to go back to Bangladesh."

25 I think we would all agree, these conditions are

1 appalling. We should not be asking American workers to
2 compete with these sorts of practices.

3 Mr. Chairman and members of the committee, in the
4 case of Oman, its labor laws fall far short of the core
5 ILO standards. The Oman FTA does nothing to require Oman
6 to adopt basic labor rights. Oman, like Jordan, relies
7 heavily on guest workers who are often at serious
8 disadvantage in trying to assert their rights.

9 Oman has been cited by our own State Department for
10 human trafficking. According to the International Trade
11 Commission, the Oman FTA is expected to greatly increase
12 apparel production and exports to the United States.

13 This means there are significant reasons to be
14 concerned that the same thing could easily happen in Oman
15 that has happened in Jordan. That is why I am offering
16 my amendment. It clarifies that goods produced with
17 slave labor or de facto slave labor of the sort that
18 occurred in Jordan will not get the benefits of this
19 agreement.

20 This amendment lays out a simple proposition. Do we
21 want products manufactured in these sorts of abusive
22 conditions to get special benefits in entering the
23 country?

24 If you support slave labor and sweat shops, you
25 should oppose this amendment. If you oppose these sorts

1 of working conditions and think they should not be
2 rewarded with special benefits, I hope you will support
3 my amendment.

4 I thank my colleagues and will ask for a roll call
5 vote on my amendment at the appropriate time. I thank
6 the Chairman.

7 The Chairman. Senator Conrad, I am going to support
8 your amendment, but I want to raise some issues here that
9 maybe we will not have a chance to have a discussion of.
10 I am going to ask for the administration to give the
11 committee something in writing.

12 But first of all, as I hope you know through my
13 modification, which obviously is not as strong as your
14 amendment, I have some of the same concerns that you
15 raised. But it is the view of some lawyers that are
16 studying the current law in this area that current law
17 already provides even greater impediments to forced labor
18 than what your amendment might.

19 Now, I am not prepared to have a discussion on that
20 at this point, so I am going to ask Mr. Mendenhall if he
21 would respond to the committee in writing on that point,
22 and to do it in great detail.

23 Mr. Mendenhall. Sure. We can provide a written
24 response on that. Would you like me to provide comments
25 today or would you just simply prefer to wait?

1 The Chairman. Well, there may be a reason we are
2 asking for it in writing. Let me ask my staff. He is
3 ready to answer it right now, that point.

4 Senator Thomas. Mr. Chairman, it would be good if
5 we could get some idea.

6 The Chairman. It is perfectly legitimate right now
7 to have this discussion. It was my understanding you
8 might not have been prepared for it. Go ahead, please.

9 Mr. Mendenhall. Well, there may be points that we
10 would need to flesh out further in the written response.

11 The Chairman. All right.

12 Mr. Mendenhall. But overall, I think certainly the
13 administration shares the overall objective. There is no
14 question, some of the reports that we have heard,
15 including the report with respect to Jordan, the
16 conditions are certainly appalling and we should do all
17 we can to prevent the importation of goods produced under
18 such conditions.

19 I guess I have several comments, though, with respect
20 to the amendment as it applies to Oman and this process
21 that pertains both to the fast track process itself, as
22 well as with respect to the FTA and then the scope of
23 current U.S. law to address problems like this.

24 The first issue is with respect to the fast track
25 process. As you know, we are operating under certain

1 constraints when we work through the fast track process,
2 mainly that the implementing legislation is supposed to
3 deal with issues that are necessary or appropriate to
4 implement the trade agreement.

5 It is not clear to me that, in fact, this type of
6 amendment is necessary or appropriate to implement the
7 agreement, particularly given some of the other issues I
8 will raise in a moment with respect to the existing
9 requirements within the FTA and existing standards in
10 U.S. law.

11 On the FTA front, Oman's law, in Article 12 of the
12 basic law, already prohibits forced labor. The FTA
13 commits Oman to enforce its labor laws, and if it fails
14 to enforce those laws we are entitled to bring them to
15 dispute settlement.

16 Then there are procedures that follow should Oman
17 fail to comply, including that one of the remedies would
18 be a fine on Oman of up to \$15 million per year, and we
19 would have a say in how that is spent, but could then be
20 funneled into upholding standards and increasing
21 enforcement to ensure that these types of practices are
22 not perpetuated, if in fact they exist in Oman.

23 Oman also is a signatory to ILO Convention 29, which
24 deals with the issue of forced labor, and prohibits it.
25 So, Oman has already signed up to this commitment and has

1 agreed, as part of this implementation process of the
2 FTA, to continue to amend and refine its law in
3 conformity with the strictures of ILO Convention 29.

4 The last point I would like to make pertains to the
5 scope of existing U.S. law. I would point the members of
6 the committee particularly to 19 U.S. Code, Section 1307,
7 which prohibits the importation of goods produced with
8 convict labor, as well as enforced labor and indentured
9 labor, all three of those.

10 That prohibition has been in place now for over 70
11 years, I believe, and is already on the books and already
12 provides a mechanism to deal with trade and products
13 produced through forced and indentured labor.

14 So, it would be our view that U.S. law is sufficient
15 to address the problem and that no further amendment
16 would be necessary to deal with the issue. But
17 certainly, as I said in the beginning, the administration
18 fully shares the objective of dealing with these very
19 egregious and offensive practices in an effective manner.

20 [The information appears in the appendix.]

21 The Chairman. Before you respond, it is our hope
22 that at least one other Senator on our side will get
23 here, so we will have seven. At that point, if I could,
24 I would like to interrupt and have a vote.

25 Go ahead.

1 Senator Conrad. Mr. Chairman, let me just say, if
2 current law were working, my amendment would not be
3 necessary. Current law is not working, that is why this
4 amendment is necessary.

5 All of these abuses, which are appalling -- I mean, I
6 do not know how I could say it more diplomatically than
7 that. This is appalling, what is going on. Current law
8 has not stopped it because current law is not effective
9 in the circumstance I have described. That is why this
10 amendment is necessary.

11 The amendment that I have offered is broader than
12 current law. Current law only applies to products that
13 we produce in sufficient quantity in the U.S. to meet all
14 of U.S. demand. That would appear to exempt apparel from
15 current law.

16 In addition, current law only applies to forced labor
17 under penal sanctions. Forced labor is defined as work
18 extracted from any person under the menace of any penalty
19 for its non-performance and for the which the worker does
20 not offer himself voluntarily.

21 In the Jordan exmample, these workers voluntarily
22 agreed to take these jobs. They were falsely promised.
23 They were told they were going to make far more money
24 than they did. They were abused. When they complained
25 about these outrageous working conditions, they were

1 beaten and thrown in jail.

2 My amendment is intended to cover the broader
3 sweatshop conditions in Jordan where workers offered
4 themselves voluntarily, but then were subject to these
5 abusive working conditions.

6 So the argument that current law is sufficient is
7 clearly not the case, given what has happened in Jordan.
8 Those goods are coming into the country under current
9 law.

10 We have also heard that the amendment is unnecessary
11 because the agreement already contains labor provisions
12 that require Oman to enforce and not to weaken its labor
13 laws. Let me just say, the Sultan of Oman could bring
14 Oman's laws up to international standards today. They do
15 not want to do so or they would have done so already.

16 Second, we have learned that we cannot count on these
17 sorts of commitments. Last year when we passed the
18 Bahrain FTA, Bahrain committed to dismantling its
19 participation in the Arab League boycott of Israel,
20 remember? I remember very clearly these assertions were
21 made, these promises were made. They have not been kept.
22 So I, for one, am no longer willing to accept just
23 assertions that something is going to be done. I think
24 we have got to go further.

25 Third, the Jordan experience shows that even where

1 there are strong labor laws and enforceable labor
2 provisions, the agreement is not being enforced. The
3 simple fact is that the current approach requires long
4 consultations and sanctions but does not block these
5 goods from entering the United States.

6 So, this amendment is to give the United States a new
7 tool. I think it is a tool that, just based on the
8 factual reporting we have received, requires a response
9 from the United States.

10 Senator Baucus. Mr. Chairman?

11 The Chairman. I was going to call on Senator
12 Thomas.

13 Senator Thomas. I just wanted to comment. I think
14 everyone here is opposed to the slave labor idea. I
15 think maybe this Senator's suggestion that if you oppose
16 his amendment that you are for slave labor, that is not
17 true.

18 The fact is, this is an enforcement issue and that
19 this amendment would only impact this particular trade
20 agreement. If this is the case, we ought to be looking
21 for more enforcement of the law that is currently in
22 place.

23 I think that is really the issue. I am not sure we
24 need more legislation, but we need to take a look at all
25 of our agreements and see if the law that is in place now

1 is being enforced, and how we could better enforce it.
2 So that is my position.

3 The Chairman. Senator Baucus?

4 Senator Baucus. Yes. It seems very clear to me
5 that the proper thing to do is to adopt this amendment.
6 The current law is not working very well. But there is
7 another issue here.

8 We in the United States are losing a major value we
9 have in the world, and that is the shining beacon of
10 values and morals that are so important and the reason
11 why so many people in so many countries in the past have
12 looked up to the United States. That is in jeopardy
13 today, for a whole host of reasons. A lot of it is Iraq,
14 it is Guantanamo, it is Abu Graib.

15 I mean, is the whole host of reasons why the world
16 opinion of the United States is declining, and much of it
17 is because of the dimming moral beacon of the United
18 States of America.

19 I think we have an obligation to do all we can, not
20 only for those countries, but for us internally
21 ourselves, is to shine that beacon more bright. This
22 amendment here does that. It shows to everyone in the
23 world that we really mean what we say. For that reason,
24 I think it is imperative that this amendment be adopted.

25 The Chairman. Senator Conrad?

1 Senator Conrad. First, I want to thank Senator
2 Baucus for his comments. I think he is entirely right.

3 In response to Senator Thomas, I also think he is
4 entirely right on the underlying law. We need to go back
5 and look at that. We do not have that opportunity right
6 here, but I think the Senator is entirely right. It is
7 not being appropriately enforced. But this amendment
8 really goes beyond current law because current law is
9 inadequate.

10 We have talked to many who are involved in
11 international trade who have told us, because of the
12 requirements of what constitutes slave labor, you have
13 got to have some further definition of these abusive
14 sweatshop situations that I think come close to slave
15 labor, but are not.

16 They are not under the law because these people
17 voluntarily took these jobs. That is the difference
18 here. So, we are stuck in a situation in which the
19 current law and current agreements do not affect these
20 incredibly abusive situations.

21 The one final point I make, is the current law is not
22 before us so we cannot fix that at this moment. But I
23 agree entirely with Senator Thomas. The underlying law,
24 I think, now has to be reviewed.

25 The Chairman. We still have got Senator Baucus

1 present, but we still need one more member. I would like
2 to be able to address the modification and address your
3 amendment before we leave. If we do not get 11, then we
4 have to have the vote off the floor. If we do not get
5 the seventh member here pretty soon, there is not much
6 point in our staying around here.

7 Senator Conrad. Have we got somebody calling, Mr.
8 Chairman?

9 The Chairman. Yes, we do have. Yes.

10 Senator Thomas. Mr. Chairman?

11 The Chairman. Yes?

12 Senator Thomas. I think one of the gentlemen wanted
13 to respond to the Senator's comments.

14 The Chairman. I am sorry. Please do.

15 Mr. Mendenhall. Thank you very much. I would like
16 to respond to a couple of the comments, and then perhaps
17 ask Mr. Donnelly to respond a bit to the issues with
18 respect to Jordan and how the FTA and our relationship
19 with Jordan has provided an opportunity that we would not
20 have otherwise had to raise the issue with them to get
21 them to fix the problem.

22 First, the amendment, as proposed, would pertain to
23 Oman only. We are dealing with the Oman implementing
24 legislation, so I understand the reason why. But the
25 problems that have been identified here, the primary

1 problem is with respect to Jordan.

2 If there was a broader problem with respect to the
3 scope of the existing law or its application with respect
4 to Jordan, I am sure the administration--perhaps I am
5 speaking out of turn here, this not really being within
6 my jurisdiction--would be happy to engage in that
7 discussion so that it deals with the broader problem and
8 problems that have been identified in Jordan and
9 elsewhere.

10 The second point, Senator Conrad had referred to the
11 scope of the forced labor definition and the fact that it
12 talks about involuntarily being forced into certain types
13 of employment.

14 The statute actually pertains both to forced labor
15 and to indentured labor. Indentured labor could be by
16 virtue of contract or voluntarily submission to overly
17 burdensome and certainly egregious and offensive
18 conditions, but it does cover indentured labor as well.

19 There was a reference to Oman's law not being up to
20 snuff. There is no question that Oman's labor reform has
21 been fairly recent. They adopted, I think, the first
22 labor law in 2003.

23 They have been working with us closely to improve
24 that in the run-up to the FTA, and certainly as a part of
25 this implementation process. They have undertaken

1 commitments that they would improve and refine their
2 labor law, including bringing it into accord with ILO
3 Convention 29, which deals with forced labor.

4 Senator Conrad. Can I interrupt and ask a question
5 on that, Mr. Chairman?

6 The Chairman. Yes.

7 Senator Conrad. But the fact is, that is exactly
8 what we have seen before. In the Bahrain agreement, did
9 they not tell us, before we approved it, that they would
10 no longer pursue the boycott with Israel?

11 Mr. Mendenhall. Right.

12 Senator Conrad. And did they keep that agreement?

13 Mr. Mendenhall. I will refer to Mr. Donnelly, both
14 on the Jordan issue and on the boycott.

15 Senator Conrad. But is that not the case?

16 Mr. Mendenhall. They made the commitment. They
17 did.

18 Senator Conrad. They made that commitment. They
19 did not keep it. Now, China made a series of commitments
20 that they did not keep, and I voted for the China
21 agreement.

22 So I just say, for one, the comfort that some find in
23 commitments that are made to us, but are not part of the
24 agreement, I think leave this Senator cold. I want more
25 than verbal assurances that people are going to do

1 certain things.

2 The fact is, they have not adopted the core standards
3 of the ILO. They are well short of that. So I think if
4 we are going to have a fair, balanced presentation here,
5 we should know that Oman is not meeting the core
6 standards.

7 The Chairman. I do not want to interrupt this
8 discussion, Senator Conrad.

9 Senator Conrad. No, that would be fine. I know
10 that you have a quorum here. I am happy to vote.

11 The Chairman. Yes. But I would also like to have
12 you, if you make a commitment to stay and listen to what
13 Senator Donnelly says when we get the vote done.

14 Senator Conrad. I did not know that Mr. Donnelly
15 was a Senator. [Laughter].

16 The Chairman. Did I say "Senator Donnelly"? Mr.
17 Donnelly. All right.

18 At this point, I move to adopt the modification of my
19 amendment that has already been described. So without
20 objection, the modification is adopted.

21 We will now turn to the vote on Senator Conrad's
22 amendment. Those in favor, say aye.

23 Senator Conrad. Mr. Chairman, I would like a roll
24 call.

25 The Chairman. You can have a roll call vote. The

1 Clerk will call the roll.

2 The Clerk. Mr. Hatch?

3 The Chairman. Aye by proxy.

4 The Clerk. Mr. Lott?

5 The Chairman. Aye by proxy.

6 The Clerk. Ms. Snowe?

7 Senator Snowe. Aye.

8 The Clerk. Mr. Kyl?

9 The Chairman. He passes.

10 The Clerk. Mr. Thomas?

11 Senator Thomas. Aye.

12 The Clerk. Mr. Santorum?

13 The Chairman. Aye by proxy.

14 The Clerk. Mr. Frist?

15 The Chairman. Frist, aye by proxy.

16 The Clerk. Mr. Smith?

17 Senator Smith. Aye.

18 The Clerk. Mr. Bunning?

19 Senator Bunning. Aye.

20 The Clerk. Mr. Crapo?

21 Senator Crapo. Aye.

22 The Clerk. Mr. Baucus?

23 Senator Baucus. Aye.

24 The Clerk. Mr. Rockefeller?

25 Senator Baucus. Pass.

1 The Clerk. Mr. Conrad?

2 Senator Conrad. Aye.

3 The Clerk. Mr. Jeffords?

4 Senator Jeffords. Aye.

5 The Clerk. Mr. Bingaman?

6 Senator Baucus. Aye by proxy.

7 The Clerk. Mr. Kerry?

8 Senator Baucus. Aye by proxy.

9 The Clerk. Mrs. Lincoln?

10 Senator Baucus. Aye by proxy.

11 The Clerk. Mr. Wyden?

12 Senator Baucus. Aye by proxy.

13 The Clerk. Mr. Schumer?

14 Senator Baucus. Aye by proxy.

15 The Clerk. Mr. Chairman?

16 The Chairman. I vote aye. Would you tally it for

17 us?

18 The Clerk. Mr. Chairman, the tally is 20 ayes, zero

19 nays.

20 The Chairman. All right. The amendment is adopted.

21 Now, we do not have 11 here to vote this out or to do

22 the nomination, so we will do that off the floor.

23 But before everybody goes, I would like to honor a

24 person who is retiring that has served this committee

25 well. This is Bill Moffitt, our court reporter. He is

1 retiring after today's mark-up. He has provided us with
2 excellent support for over 26 years, serving eight
3 different Chairmen.

4 Bill Moffitt has always been dependable and dedicated
5 to the committee--and would you believe this--he has
6 never been late or missed a hearing in all of these 26
7 years. We will all miss you, Bill, and we wish you the
8 best. We hope you enjoy a long and happy retirement.

9 Before Senator Baucus speaks, I think we ought to
10 give you --

11 Senator Baucus. No, no. Let me speak first, then
12 we can give him applause. [Laughter]. Thank you, Mr.
13 Chairman.

14 You know, life is interesting. The book of Proverbs
15 says, "All hard work brings a profit, but mere talk leads
16 only to poverty."

17 I say "interesting," because Bill has heard a lot of
18 talk in this committee, but he has been working all the
19 time while we have been doing all the talking. As you
20 say, Mr. Chairman, it is just incredible. We have never
21 had to delay a hearing because of Bill not being on time.
22 He is always here before others. There has never been a
23 technical malfunction that sometimes we experience with
24 recorders. There is a technical malfunction while they
25 get paper, or this or that, and what all has to happen.

1 Never, ever has that happened. It has just been perfect.
2 The record is on time. It is used regularly by so many
3 people.

4 So, we all, Bill, thank you very much. I know that
5 you and your wife, Joan, are going to have a very happy
6 retirement in The Villages in Florida. I know that is
7 where you are headed. I am going to resist asking you
8 which of all the eight Chairman you have served your
9 favor.

10 Mr. Moffitt. No comment. [Laughter].

11 Senator Baucus. No comment. I might say, that is
12 the first word we have ever heard out of Bill.

13 [Laughter]. But you undoubtedly are somebody who has
14 listened to everything.

15 I can say this without qualification, that you are
16 the only person on the face of this earth who has
17 listened to everything this committee has ever said, from
18 January of 1979, I believe, to date. [Laughter]. I am
19 not going to ask you which of the two of us came first,
20 because you will know, I do not. But, anyway, Bill,
21 thank you so much for your service.

22 The Chairman. Bill, stand, please.

23 [Applause].

24 The Chairman. Now we would continue the discussion.
25 If Mr. Mendenhall was done, because Senator Conrad asked

1 for the floor before you were done, but whichever one of
2 you want to continue, we will do that right now.

3 Mr. Donnelly. Thank you, Mr. Chairman. To respond
4 to a couple of issues that Senator Conrad raised that are
5 not directly Oman issues, but have come up.

6 First, on the question of Jordan, clearly the report
7 you cite and the National Labor Committee's 160-page
8 report on Jordan is appalling to all of us, some of the
9 things that are laid out there. The allegations are very
10 serious.

11 We have said that, the USTR has said it, and other
12 parts of the administration have said it, the Jordanian
13 government have said it. There have been some very
14 strong statements, and also some, I think, early actions
15 in terms of the Jordanian government and their statement
16 saying they intend to do everything they can to address
17 this.

18 They have created special inspection teams. They are
19 seeking additional resources. They intend to do
20 everything possible to ensure that any back wages,
21 including to workers who have left Jordan and who have
22 returned to their countries of origin. The Jordanian
23 government invited the National Labor Center, the authors
24 of the report, back into Jordan this week.

25 We at USTR, and I believe other government agencies,

1 met with the National Labor Center authors of the report
2 shortly after this report came out. We intend to meet
3 with them again when they are back from this visit.

4 The Jordanians have invited the ILO in. They are
5 there this week as well. We need to get to the bottom of
6 this, and the Jordanians do as well. They have made some
7 good starts, but there remains much to do.

8 Senator Conrad. Mr. Chairman? Just on that point,
9 Mr. Donnelly.

10 Mr. Donnelly. Yes, sir.

11 Senator Conrad. Might I ask, when the report comes
12 back to you, would you share that with my office and with
13 the committee, if I could ask that, so we know how this
14 was followed up on? I would very much appreciate it if
15 you would not mind sharing it.

16 Mr. Donnelly. We will certainly share everything we
17 have. The authors of the report, the National Labor
18 Center, presumably will want to share it with you as
19 well. They ought to have the right to decide how, and in
20 what channel they do it. But we very much want to have
21 this dialogue.

22 I mean, clearly, I think if the more serious
23 allegations in the report are confirmed, it would seem
24 that there are issues related to the Government of
25 Jordan's enforcement of their labor law. As you know,

1 under our existing FTA, we have some options and we would
2 have to work to see what that would do.

3 We are trying to arrange our annual U.S.-Jordan
4 consultation under the free trade agreement, the joint
5 committee meeting, trying to arrange it in June. In
6 fact, the dates we have settled on, it now appears that
7 the Minister of Trade from Jordan will be coming to
8 Washington, and he is also going to New York.

9 But are trying to find the earliest possible date,
10 and I assure you that labor will be a focus of those
11 discussions. My colleague, the Assistant USTR for Labor,
12 will go with me and we will press very aggressively on
13 this issue.

14 If I could address the question of Bahrain that you
15 raised. Senator, the Government of Bahrain has made some
16 strong commitments to us in the context of the FTA, as
17 you said, and we believe they are living up to them.

18 Bahrain, since 1995, as been a member of the Gulf
19 Cooperation Council, eliminated the secondary and
20 tertiary aspects of the boycott.

21 When Bahrain became a member of the World Trade
22 Organization, they did not invoke the so-called non-
23 application provision, so they took on an MFN, most
24 favored nation, commitment to treat goods from Israel.
25 That is something that could be pursued through the WTO

1 by Israel, also a member, obviously.

2 There have been some reports which we take seriously,
3 and we have raised immediately with the Bahraini
4 authorities, that somehow, I think the most recent one
5 was that the Foreign Minister of Bahrain had said that
6 they were not eliminating the boycott. That is not the
7 case.

8 The Foreign Minister has said that he was misquoted.
9 He was talking about, in the context of a Bahraini
10 Parliament discussion, establishing diplomatic relations,
11 which Bahrain has not done with Israel.

12 But he has issued a clarification. It has been in
13 the original English and Arabic press in Bahrain where
14 this story had originated, that Bahrain is not reversing
15 its policy related to the boycott.

16 There was a letter to Ambassador Portman from the
17 Bahraini ambassador only this week that confirmed that
18 Bahrain is doing this. There is, in fact, an Arab League
19 Boycott Committee meeting going on this week in Damascus;
20 Bahrain is not attending, nor is Oman, I might add.

21 So, we continue to take this issue of the boycott
22 very seriously as it relates to Oman, or as it relates to
23 Bahrain, or anyone else. But I think there have been
24 some reports that we have tried to follow to ground, and
25 we have not seen any issue.

1 There do appear to be apparently some residual web
2 pages on various Government of Bahrain sites. They have
3 tried to go in and remove all of them, but there are some
4 pages in there.

5 I am not a technical person, but they are not easily
6 accessible. But when we point those out to the Bahraini
7 authorities, they go in and remove them. But I can
8 assure you, this will remain a serious issue in our
9 dialogue with the Bahrainis, but we believe they are
10 living up to their commitments to us.

11 Senator Conrad. All right.

12 Mr. Chairman, if I might, let me just say that my
13 staff informs me that we understand the Foreign Minister
14 says he was misquoted, but that we have been informed
15 that there are still references to the boycott on the
16 official Bahrain government web site. This is, I think,
17 your follow-up comment.

18 Mr. Donnelly. Right.

19 Senator Conrad. That was the reason for our
20 conclusion. Let me just say that I hope you are right.
21 I hope they do keep their commitment.

22 The larger point I was making, is this member has
23 become very doubtful about verbal assurances, commitments
24 that are not enshrined in the actual agreements. Having
25 been deeply involved in the matter with China, I went to

1 China with a delegation and I was asked to make the
2 presentation on agriculture. It is a bitter experience
3 when representations are made and then not kept.

4 So, I do think good fences make good neighbors, and
5 in this situation a clear signal is a good course for
6 this country. I hope this signal is received in the way
7 it is intended.

8 I must say, reading the reports on Jordan, it is
9 absolutely appalling. It is absolutely appalling, the
10 way people are being treated. They are from multiple
11 sources, as you know.

12 I do not question the good intentions of the
13 Jordanian government. I have high regard for the
14 Jordanian government. But the fact is, we are left with
15 these truly appalling conditions. I am delighted if the
16 Jordanian government takes action. That is why I would
17 very much like to be informed as we learn of what they
18 do.

19 Senator Conrad. I thank the Chairman for this
20 additional time.

21 The Chairman. And I thank you folks in the
22 administration for taking time out of your schedule to
23 have this discussion with us, because these issues of
24 labor, and to some extent environment, come up on every
25 agreement. The sooner we can get standard enforcement,

1 it would be easier to get these agreements through the
2 Congress.

3 We have a correction on the last vote. It still
4 carried, but by a different number.

5 The Clerk. Mr. Chairman, there was a clarification
6 on the vote of Conrad Amendment Number 1. The vote is 18
7 ayes, zero nays.

8 The Chairman. All right. The amendment is still
9 adopted, but by a vote of 18 to zero instead of 20 to
10 zero. All right.

11 It is my intention to recess this committee meeting
12 to the floor to, as soon as we can, vote off the floor on
13 both the Oman FTA and on the nomination.

14 The meeting is in recess for now.

15 [Whereupon, at 11:27 a.m. the meeting was recessed.]

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1 AFTER RECESS

2 [12:52 p.m. , Room 216, The Capitol]

3 The Chairman. I now reconvene this meeting of
4 today's executive session.

5 A quorum being present, I ask the Clerk to call the
6 roll on approving the committee's recommendations, as
7 modified, to implement the U.S.-Oman Free Trade
8 Agreement.

9 The Clerk. Mr. Hatch?

10 Senator Hatch. Aye.

11 The Clerk. Mr. Lott?

12 Senator Lott. Aye.

13 The Clerk. Ms. Snowe?

14 Senator Snowe. Aye.

15 The Clerk. Mr. Kyl?

16 Senator Kyl. Aye.

17 The Clerk. Mr. Thomas?

18 Senator Thomas. Aye.

19 The Clerk. Mr. Santorum?

20 Senator Santorum. Aye.

21 The Clerk. Mr. Frist?

22 Senator Frist. Aye.

23 The Clerk. Mr. Smith?

24 Senator Smith. Aye.

25 The Clerk. Mr. Bunning?

1 Senator Bunning. Aye.
2 The Clerk. Mr. Crapo?
3 Senator Crapo. Aye.
4 The Clerk. Mr. Baucus?
5 Senator Baucus. Aye.
6 The Clerk. Mr. Rockefeller?
7 The Clerk. Mr. Conrad?
8 Senator Conrad. Aye.
9 The Clerk. Mr. Jeffords?
10 Senator Jeffords. Aye.
11 The Clerk. Mr. Bingaman?
12 Senator Bingaman. Aye.
13 The Clerk. Mr. Kerry?
14 Senator Kerry. Aye.
15 The Clerk. Mrs. Lincoln?
16 Senator Lincoln. Aye.
17 The Clerk. Mr. Wyden?
18 Senator Wyden. Aye.
19 The Clerk. Mr. Schumer?
20 Senator Schumer. Aye.
21 The Clerk. Mr. Chairman?
22 The Chairman. Aye. The Clerk will report the vote
23 tally.
24 The Clerk. Mr. Chairman, the tally is 19 ayes, zero
25 nays.

1 The Chairman. The committee's recommendations with
2 respect to the U.S.-Oman Free Trade Agreement, as
3 modified, are approved.

4 I ask for the Clerk to call the roll to favorably
5 report the nomination of W. Ralph Basham to be
6 Commissioner of Customs.

7 The Clerk. Mr. Hatch?

8 Senator Hatch. Aye.

9 The Clerk. Mr. Lott?

10 Senator Lott. Aye.

11 The Clerk. Ms. Snowe?

12 Senator Snowe. Aye.

13 The Clerk. Mr. Kyl?

14 Senator Kyl. Aye.

15 The Clerk. Mr. Thomas?

16 Senator Thomas. Aye.

17 The Clerk. Mr. Santorum?

18 Senator Santorum. Aye.

19 The Clerk. Mr. Frist?

20 Senator Frist. Aye.

21 The Clerk. Mr. Smith?

22 Senator Smith. Aye.

23 The Clerk. Mr. Bunning?

24 Senator Bunning. Aye.

25 The Clerk. Mr. Crapo?

1 Senator Crapo. Aye.

2 The Clerk. Mr. Baucus?

3 Senator Baucus. Aye.

4 The Clerk. Mr. Rockefeller?

5 The Clerk. Mr. Conrad?

6 Senator Conrad. Aye.

7 The Clerk. Mr. Jeffords?

8 Senator Jeffords. Aye.

9 The Clerk. Mr. Bingaman?

10 Senator Bingaman. Aye.

11 The Clerk. Mr. Kerry?

12 Senator Kerry. Aye.

13 The Clerk. Mrs. Lincoln?

14 Senator Lincoln. Aye.

15 The Clerk. Mr. Wyden?

16 Senator Wyden. Aye.

17 The Clerk. Mr. Schumer?

18 Senator Schumer. Aye.

19 The Clerk. Mr. Chairman?

20 The Chairman. Aye. The Clerk will report the

21 tally.

22 The Clerk. Mr. Chairman, the tally is 19 ayes, zero

23 nays.

24 The Chairman. The nomination of W. Ralph Basham to

25 be Commissioner of Customs is ordered favorably reported.

1 The meeting is adjourned.

2 [Whereupon, at 1:14 p.m. the meeting was concluded.]

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I N D E X

PAGE

STATEMENT OF:

THE HONORABLE CHARLES E. GRASSLEY
A United States Senator
from the State of Iowa 2

THE HONORABLE MAX BAUCUS
A United States Senator
from the State of Montana 11

Gilmour
5-18-06
46 pp.

5

**UNITED STATES SENATE
COMMITTEE ON FINANCE**

Charles E. Grassley, Chairman

Thursday, May 18, 2006

215 Dirksen Senate Office Building

Agenda for Business Meeting

1. To review and make recommendations on proposed legislation implementing the U.S.-Oman Free Trade Agreement
2. To consider favorably reporting the nomination of W. Ralph Basham, of Virginia, to be Commissioner of Customs, Department of Homeland Security

Conrad-Bingaman-Kerry Amendment #1 (as modified)

At an appropriate place, add a provision to prevent goods made with slave labor (including under sweatshop conditions so egregious as to be tantamount to slave labor), or with the benefit of human trafficking, from benefiting from the agreement.

109TH CONGRESS
2D SESSION

S. _____

To implement the United States-Oman Free Trade Agreement.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

To implement the United States-Oman Free Trade
Agreement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “United States-Oman Free Trade Agreement Implemen-
6 tation Act”

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.

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

- Sec. 101. Approval and entry into force of the Agreement.
- Sec. 102. Relationship of the Agreement to United States and State law.
- Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 105. Administration of Dispute Settlement proceedings.
- Sec. 106. Arbitration of claims.
- Sec. 107. Effective dates; effect of termination.

TITLE I—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Rules of origin.
- Sec. 203. Customs user fees.
- Sec. 204. Enforcement relating to trade in textile and apparel goods.
- Sec. 205. Reliquidation of entries.
- Sec. 206. Regulations.

TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.
- Sec. 322. Determination and provision of relief.
- Sec. 323. Period of relief.
- Sec. 324. Articles exempt from relief.
- Sec. 325. Rate after termination of import relief.
- Sec. 326. Termination of relief authority.
- Sec. 327. Compensation authority.
- Sec. 328. Confidential business information.

TITLE IV—PROCUREMENT

- Sec. 401. Eligible products.

1 SEC. 2. PURPOSES.

2 The purposes of this Act are—

- 3 (1) to approve and implement the Free Trade
4 Agreement between the United States and Oman en-
5 tered into under the authority of section 2103(b) of

1 the Bipartisan Trade Promotion Authority Act of
2 2002 (19 U.S.C. 3803(b));

3 (2) to strengthen and develop economic rela-
4 tions between the United States and Oman for their
5 mutual benefit;

6 (3) to establish free trade between the 2 nations
7 through the reduction and elimination of barriers to
8 trade in goods and services and to investment; and

9 (4) to lay the foundation for further coopera-
10 tion to expand and enhance the benefits of such
11 Agreement.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **AGREEMENT.**—The term “Agreement”
15 means the United States-Oman Free Trade Agree-
16 ment approved by Congress under section 101(a)(1).

17 (2) **HTS.**—The term “HTS” means the Har-
18 monized Tariff Schedule of the United States.

19 (3) **TEXTILE OR APPAREL GOOD.**—The term
20 “textile or apparel good” means a good listed in the
21 Annex to the Agreement on Textiles and Clothing
22 referred to in section 101(d)(4) of the Uruguay
23 Round Agreements Act (19 U.S.C. 3511(d)(4)).

1 **TITLE I—APPROVAL OF, AND**
2 **GENERAL PROVISIONS RE-**
3 **LATING TO, THE AGREEMENT**

4 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**
5 **AGREEMENT.**

6 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
7 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
8 the Bipartisan Trade Promotion Authority Act of 2002
9 (19 U.S.C. 3805) and section 151 of the Trade Act of
10 1974 (19 U.S.C. 2191), Congress approves—

11 (1) the United States-Oman Free Trade Agree-
12 ment entered into on January 19, 2006, with Oman
13 and submitted to Congress on [_____, 2006];
14 and

15 (2) the statement of administrative action pro-
16 posed to implement the Agreement that was sub-
17 mitted to Congress on [_____, 2006].

18 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE
19 AGREEMENT.—At such time as the President determines
20 that Oman has taken measures necessary to bring it into
21 compliance with those provisions of the Agreement that
22 are to take effect on the date on which the Agreement
23 enters into force, the President is authorized to exchange
24 notes with the Government of Oman providing for the

1 entry into force, on or after January 1, 2007, of the
2 Agreement with respect to the United States.

3 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**
4 **STATES AND STATE LAW.**

5 (a) **RELATIONSHIP OF AGREEMENT TO UNITED**
6 **STATES LAW.—**

7 (1) **UNITED STATES LAW TO PREVAIL IN CON-**
8 **FLICT.—**No provision of the Agreement, nor the ap-
9 plication of any such provision to any person or cir-
10 cumstance, which is inconsistent with any law of the
11 United States shall have effect.

12 (2) **CONSTRUCTION.—**Nothing in this Act shall
13 be construed—

14 (A) to amend or modify any law of the
15 United States, or

16 (B) to limit any authority conferred under
17 any law of the United States, unless specifically
18 provided for in this Act.

19 (b) **RELATIONSHIP OF AGREEMENT TO STATE**
20 **LAW.—**

21 (1) **LEGAL CHALLENGE.—**No State law, or the
22 application thereof, may be declared invalid as to
23 any person or circumstance on the ground that the
24 provision or application is inconsistent with the
25 Agreement, except in an action brought by the

1 United States for the purpose of declaring such law
2 or application invalid.

3 (2) DEFINITION OF STATE LAW.—For purposes
4 of this subsection, the term “State law” includes—

5 (A) any law of a political subdivision of a
6 State; and

7 (B) any State law regulating or taxing the
8 business of insurance.

9 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
10 VATE REMEDIES.—No person other than the United
11 States—

12 (1) shall have any cause of action or defense
13 under the Agreement or by virtue of congressional
14 approval thereof; or

15 (2) may challenge, in any action brought under
16 any provision of law, any action or inaction by any
17 department, agency, or other instrumentality of the
18 United States, any State, or any political subdivision
19 of a State, on the ground that such action or inac-
20 tion is inconsistent with the Agreement.

21 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
22 **ENTRY INTO FORCE AND INITIAL REGULA-**
23 **TIONS.**

24 (a) IMPLEMENTING ACTIONS.—

1 (1) PROCLAMATION AUTHORITY.—After the
2 date of the enactment of this Act—

3 (A) the President may proclaim such ac-
4 tions; and

5 (B) other appropriate officers of the
6 United States Government may issue such reg-
7 ulations, as may be necessary to ensure that
8 any provision of this Act, or amendment made
9 by this Act, that takes effect on the date on
10 which the Agreement enters into force is appro-
11 priately implemented on such date, but no such
12 proclamation or regulation may have an effec-
13 tive date earlier than the date on which the
14 Agreement enters into force.

15 (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED
16 ACTIONS.—Any action proclaimed by the President
17 under the authority of this Act that is not subject
18 to the consultation and layover provisions under sec-
19 tion 104 may not take effect before the 15th day
20 after the date on which the text of the proclamation
21 is published in the Federal Register.

22 (3) WAIVER OF 15-DAY RESTRICTION.—The 15-
23 day restriction in paragraph (2) on the taking effect
24 of proclaimed actions is waived to the extent that
25 the application of such restriction would prevent the

1 taking effect on the date on which the Agreement
2 enters into force of any action proclaimed under this
3 section.

4 (b) INITIAL REGULATIONS.—Initial regulations nec-
5 essary or appropriate to carry out the actions required by
6 or authorized under this Act or proposed in the statement
7 of administrative action submitted under section
8 101(a)(2) to implement the Agreement shall, to the max-
9 imum extent feasible, be issued within 1 year after the
10 date on which the Agreement enters into force. In the case
11 of any implementing action that takes effect on a date
12 after the date on which the Agreement enters into force,
13 initial regulations to carry out that action shall, to the
14 maximum extent feasible, be issued within 1 year after
15 such effective date.

16 **SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR,**
17 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**
18 **TIONS.**

19 If a provision of this Act provides that the implemen-
20 tation of an action by the President by proclamation is
21 subject to the consultation and layover requirements of
22 this section, such action may be proclaimed only if—

23 (1) the President has obtained advice regarding
24 the proposed action from—

1 (A) the appropriate advisory committees
2 established under section 135 of the Trade Act
3 of 1974 (19 U.S.C. 2155); and

4 (B) the United States International Trade
5 Commission;

6 (2) the President has submitted to the Com-
7 mittee on Finance of the Senate and the Committee
8 on Ways and Means of the House of Representatives
9 a report that sets forth—

10 (A) the action proposed to be proclaimed
11 and the reasons therefor; and

12 (B) the advice obtained under paragraph
13 (1);

14 (3) a period of 60 calendar days, beginning on
15 the first day on which the requirements set forth in
16 paragraphs (1) and (2) have been met has expired;
17 and

18 (4) the President has consulted with the Com-
19 mittees referred to in paragraph (2) regarding the
20 proposed action during the period referred to in
21 paragraph (3).

22 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
23 **CEEDINGS.**

24 (a) **ESTABLISHMENT OR DESIGNATION OF OFFICE.—**

25 The President is authorized to establish or designate with-

1 in the Department of Commerce an office that shall be
2 responsible for providing administrative assistance to pan-
3 els established under chapter 20 of the Agreement. The
4 office may not be considered to be an agency for purposes
5 of section 552 of title 5, United States Code.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated for each fiscal year after
8 fiscal year 2006 to the Department of Commerce such
9 sums as may be necessary for the establishment and oper-
10 ations of the office established or designated under sub-
11 section (a) and for the payment of the United States share
12 of the expenses of panels established under chapter 20 of
13 the Agreement.

14 **SEC. 106. ARBITRATION OF CLAIMS.**

15 The United States is authorized to resolve any claim
16 against the United States covered by article
17 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agree-
18 ment, pursuant to the Investor-State Dispute Settlement
19 procedures set forth in section B of chapter 10 of the
20 Agreement.

21 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

22 (a) EFFECTIVE DATES.—Except as provided in sub-
23 section (b), the provisions of this Act and the amendments
24 made by this Act take effect on the date on which the
25 Agreement enters into force.

1 (b) EXCEPTIONS.—Sections 1 through 3 and this
2 title take effect on the date of the enactment of this Act.

3 (c) TERMINATION OF THE AGREEMENT.—On the
4 date on which the Agreement terminates, the provisions
5 of this Act (other than this subsection) and the amend-
6 ments made by this Act shall cease to be effective.

7 **TITLE I—CUSTOMS PROVISIONS**

8 **SEC. 201. TARIFF MODIFICATIONS.**

9 (a) TARIFF MODIFICATIONS PROVIDED FOR IN THE
10 AGREEMENT.—

11 (1) PROCLAMATION AUTHORITY.—The Presi-
12 dent may proclaim—

13 (A) such modifications or continuation of
14 any duty;

15 (B) such continuation of duty-free or ex-
16 cise treatment; or

17 (C) such additional duties, as the Presi-
18 dent determines to be necessary or appropriate
19 to carry out or apply articles 2.3, 2.5, 2.6,
20 3.2.8, and 3.2.9, and Annex 2-B of the Agree-
21 ment.

22 (2) EFFECT ON OMANI GSP STATUS.—Notwith-
23 standing section 502(a)(1) of the Trade Act of 1974
24 (19 U.S.C. 2462(a)(1)), the President shall, on the
25 date on which the Agreement enters into force, ter-

1 minate the designation of Oman as a beneficiary de-
2 veloping country for purposes of title V of the Trade
3 Act of 1974 (19 U.S.C. 2461 et seq.).

4 (b) OTHER TARIFF MODIFICATIONS.—Subject to the
5 consultation and layover provisions of section 104, the
6 President may proclaim—

7 (1) such modifications or continuation of any
8 duty,

9 (2) such modifications as the United States
10 may agree to with Oman regarding the staging of
11 any duty treatment set forth in Annex 2-B of the
12 Agreement,

13 (3) such continuation of duty-free or excise
14 treatment, or

15 (4) such additional duties, as the President de-
16 termines to be necessary or appropriate to maintain
17 the general level of reciprocal and mutually advan-
18 tageous concessions with respect to Oman provided
19 for by the Agreement.

20 (c) CONVERSION TO AD VALOREM RATES.—For pur-
21 poses of subsections (a) and (b), with respect to any good
22 for which the base rate in the Tariff Schedule of the
23 United States to Annex 2-B of the Agreement is a specific
24 or compound rate of duty, the President may substitute

1 for the base rate an ad valorem rate that the President
2 determines to be equivalent to the base rate.

3 **SEC. 202. RULES OF ORIGIN.**

4 (a) APPLICATION AND INTERPRETATION.—In this
5 section:

6 (1) TARIFF CLASSIFICATION.—The basis for
7 any tariff classification is the HTS.

8 (2) REFERENCE TO HTS.—Whenever in this
9 section there is a reference to a heading or sub-
10 heading, such reference shall be a reference to a
11 heading or subheading of the HTS.

12 (b) ORIGINATING GOODS.—

13 (1) IN GENERAL.—For purposes of this Act
14 and for purposes of implementing the preferential
15 tariff treatment provided for under the Agreement,
16 a good is an originating good if—

17 (A) the good is imported directly—

18 (i) from the territory of Oman into
19 the territory of the United States; or

20 (ii) from the territory of the United
21 States into the territory of Oman; and

22 (B)(i) the good is a good wholly the
23 growth, product, or manufacture of Oman or
24 the United States, or both;

1 (ii) the good (other than a good to which
2 clause (iii) applies) is a new or different article
3 of commerce that has been grown, produced, or
4 manufactured in Oman or the United States, or
5 both, and meets the requirements of paragraph
6 (2); or

7 (iii)(I) the good is a good covered by
8 Annex 3-A or 4-A of the Agreement;

9 (II)(aa) each of the non-originating mate-
10 rials used in the production of the good under-
11 goes an applicable change in tariff classification
12 specified in such Annex as a result of produc-
13 tion occurring entirely in the territory of Oman
14 or the United States, or both; or

15 (bb) the good otherwise satisfies the re-
16 quirements specified in such Annex; and

17 (III) the good satisfies all other applicable
18 requirements of this section.

19 (2) REQUIREMENTS.—A good described in
20 paragraph (1)(B)(ii) is an originating good only if
21 the sum of—

22 (A) the value of each material produced in
23 the territory of Oman or the United States, or
24 both, and

1 (B) the direct costs of processing oper-
2 ations performed in the territory of Oman or
3 the United States, or both, is not less than 35
4 percent of the appraised value of the good at
5 the time the good is entered into the territory
6 of the United States.

7 (c) CUMULATION.—

8 (1) ORIGINATING GOOD OR MATERIAL INCOR-
9 PORATED INTO GOODS OF OTHER COUNTRY.—An
10 originating good, or a material produced in the terri-
11 tory of Oman or the United States, or both, that is
12 incorporated into a good in the territory of the other
13 country shall be considered to originate in the terri-
14 tory of the other country.

15 (2) MULTIPLE PRODUCERS.—A good that is
16 grown, produced, or manufactured in the territory of
17 Oman or the United States, or both, by 1 or more
18 producers, is an originating good if the good satis-
19 fies the requirements of subsection (b) and all other
20 applicable requirements of this section.

21 (d) VALUE OF MATERIALS.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the value of a material produced in the
24 territory of Oman or the United States, or both, in-
25 cludes the following:

1 (A) The price actually paid or payable for
2 the material by the producer of the good.

3 (B) The freight, insurance, packing, and
4 all other costs incurred in transporting the ma-
5 terial to the producer's plant, if such costs are
6 not included in the price referred to in subpara-
7 graph (A).

8 (C) The cost of waste or spoilage resulting
9 from the use of the material in the growth, pro-
10 duction, or manufacture of the good, less the
11 value of recoverable scrap.

12 (D) Taxes or customs duties imposed on
13 the material by Oman or the United States, or
14 both, if the taxes or customs duties are not re-
15 mitted upon exportation from the territory of
16 Oman or the United States, as the case may be.

17 (2) EXCEPTION.—If the relationship between
18 the producer of a good and the seller of a material
19 influenced the price actually paid or payable for the
20 material, or if there is no price actually paid or pay-
21 able by the producer for the material, the value of
22 the material produced in the territory of Oman or
23 the United States, or both, includes the following:

1 (A) All expenses incurred in the growth,
2 production, or manufacture of the material, in-
3 cluding general expenses.

4 (B) A reasonable amount for profit.

5 (C) Freight, insurance, packing, and all
6 other costs incurred in transporting the mate-
7 rial to the producer's plant.

8 (e) PACKAGING AND PACKING MATERIALS AND CON-
9 TAINERS FOR RETAIL SALE AND FOR SHIPMENT.—Pack-
10 aging and packing materials and containers for retail sale
11 and shipment shall be disregarded in determining whether
12 a good qualifies as an originating good, except to the ex-
13 tent that the value of such packaging and packing mate-
14 rials and containers has been included in meeting the re-
15 quirements set forth in subsection (b)(2).

16 (f) INDIRECT MATERIALS.—Indirect materials shall
17 be disregarded in determining whether a good qualifies as
18 an originating good, except that the cost of such indirect
19 materials may be included in meeting the requirements set
20 forth in subsection (b)(2).

21 (g) TRANSIT AND TRANSSHIPMENT.—A good shall
22 not be considered to meet the requirement of subsection
23 (b)(1)(A) if, after exportation from the territory of Oman
24 or the United States, the good undergoes production, man-
25 ufacturing, or any other operation outside the territory of

1 Oman or the United States, other than unloading, reload-
2 ing, or any other operation necessary to preserve the good
3 in good condition or to transport the good to the territory
4 of Oman or the United States.

5 (h) TEXTILE AND APPAREL GOODS.—

6 (1) DE MINIMIS AMOUNTS OF NONORIGINATING
7 MATERIALS.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), a textile or apparel good
10 that is not an originating good because certain
11 fibers or yarns used in the production of the
12 component of the good that determines the tar-
13 iff classification of the good do not undergo an
14 applicable change in tariff classification set out
15 in Annex 3-A of the Agreement shall be consid-
16 ered to be an originating good if the total
17 weight of all such fibers or yarns in that com-
18 ponent is not more than 7 percent of the total
19 weight of that component.

20 (B) CERTAIN TEXTILE OR APPAREL
21 GOODS.—A textile or apparel good containing
22 elastomeric yarns in the component of the good
23 that determines the tariff classification of the
24 good shall be considered to be an originating

1 good only if such yarns are wholly formed in
2 the territory of Oman or the United States.

3 (C) YARN, FABRIC, OR GROUP OF FI-
4 BERS.—For purposes of this paragraph, in the
5 case of a textile or apparel good that is a yarn,
6 fabric, or group of fibers, the term “component
7 of the good that determines the tariff classifica-
8 tion of the good” means all of the fibers in the
9 yarn, fabric, or group of fibers.

10 (2) GOODS PUT UP IN SETS FOR RETAIL
11 SALE.—Notwithstanding the rules set forth in Annex
12 3-A of the Agreement, textile or apparel goods clas-
13 sifiable as goods put up in sets for retail sale as pro-
14 vided for in General Rule of Interpretation 3 of the
15 HTS shall not be considered to be originating goods
16 unless each of the goods in the set is an originating
17 good or the total value of the nonoriginating goods
18 in the set does not exceed 10 percent of the value
19 of the set determined for purposes of assessing cus-
20 toms duties.

21 (i) DEFINITIONS.—In this section:

22 (1) DIRECT COSTS OF PROCESSING OPER-
23 ATIONS.—

24 (A) IN GENERAL.—The term “direct costs
25 of processing operations”, with respect to a

1 good, includes, to the extent they are includable
2 in the appraised value of the good when im-
3 ported into Oman or the United States, as the
4 case may be, the following:

5 (i) All actual labor costs involved in
6 the growth, production, or manufacture of
7 the good, including fringe benefits, on-the-
8 job training, and the cost of engineering,
9 supervisory, quality control, and similar
10 personnel.

11 (ii) Tools, dies, molds, and other indi-
12 rect materials, and depreciation on ma-
13 chinery and equipment that are allocable
14 to the good.

15 (iii) Research, development, design,
16 engineering, and blueprint costs, to the ex-
17 tent that they are allocable to the good.

18 (iv) Costs of inspecting and testing
19 the good.

20 (v) Costs of packaging the good for
21 export to the territory of the other country.

22 (B) EXCEPTIONS.—The term “direct costs
23 of processing operations” does not include costs
24 that are not directly attributable to a good or

1 are not costs of growth, production, or manu-
2 facture of the good, such as—

3 (i) profit; and

4 (ii) general expenses of doing business
5 that are either not allocable to the good or
6 are not related to the growth, production,
7 or manufacture of the good, such as ad-
8 ministrative salaries, casualty and liability
9 insurance, advertising, and sales staff sala-
10 ries, commissions, or expenses.

11 (2) GOOD.—The term “good” means any mer-
12 chandise, product, article, or material.

13 (3) GOOD WHOLLY THE GROWTH, PRODUCT, OR
14 MANUFACTURE OF OMAN OR THE UNITED STATES,
15 OR BOTH.—The term “good wholly the growth,
16 product, or manufacture of Oman or the United
17 States, or both” means—

18 (A) a mineral good extracted in the terri-
19 tory of Oman or the United States, or both;

20 (B) a vegetable good, as such a good is
21 provided for in the HTS, harvested in the terri-
22 tory of Oman or the United States, or both;

23 (C) a live animal born and raised in the
24 territory of Oman or the United States, or
25 both;

1 (D) a good obtained from live animals
2 raised in the territory of Oman or the United
3 States, or both;

4 (E) a good obtained from hunting, trap-
5 ping, or fishing in the territory of Oman or the
6 United States, or both;

7 (F) a good (fish, shellfish, and other ma-
8 rine life) taken from the sea by vessels reg-
9 istered or recorded with Oman or the United
10 States and flying the flag of that country;

11 (G) a good produced from goods referred
12 to in subparagraph (F) on board factory ships
13 registered or recorded with Oman or the United
14 States and flying the flag of that country;

15 (H) a good taken by Oman or the United
16 States or a person of Oman or the United
17 States from the seabed or beneath the seabed
18 outside territorial waters, if Oman or the
19 United States, as the case may be, has rights
20 to exploit such seabed;

21 (I) a good taken from outer space, if such
22 good is obtained by Oman or the United States
23 or a person of Oman or the United States and
24 not processed in the territory of a country other
25 than Oman or the United States;

1 (J) waste and scrap derived from—

2 (i) production or manufacture in the
3 territory of Oman or the United States, or
4 both; or

5 (ii) used goods collected in the terri-
6 tory of Oman or the United States, or
7 both, if such goods are fit only for the re-
8 covery of raw materials;

9 (K) a recovered good derived in the terri-
10 tory of Oman or the United States from used
11 goods and utilized in the territory of that coun-
12 try in the production of remanufactured goods;
13 and

14 (L) a good produced in the territory of
15 Oman or the United States, or both, exclu-
16 sively—

17 (i) from goods referred to in subpara-
18 graphs (A) through (J); or

19 (ii) from the derivatives of goods re-
20 ferred to in clause (i); at any stage of pro-
21 duction.

22 (4) INDIRECT MATERIAL.—The term “indirect
23 material” means a good used in the growth, produc-
24 tion, manufacture, testing, or inspection of a good
25 but not physically incorporated into the good, or a

1 good used in the maintenance of buildings or the op-
2 eration of equipment associated with the growth,
3 production, or manufacture of a good, including—

4 (A) fuel and energy;

5 (B) tools, dies, and molds;

6 (C) spare parts and materials used in the
7 maintenance of equipment and buildings;

8 (D) lubricants, greases, compounding ma-
9 terials, and other materials used in the growth,
10 production, or manufacture of a good or used
11 to operate equipment and buildings;

12 (E) gloves, glasses, footwear, clothing,
13 safety equipment, and supplies;

14 (F) equipment, devices, and supplies used
15 for testing or inspecting the good;

16 (G) catalysts and solvents; and

17 (H) any other goods that are not incor-
18 porated into the good but the use of which in
19 the growth, production, or manufacture of the
20 good can reasonably be demonstrated to be a
21 part of that growth, production, or manufac-
22 ture.

23 (5) MATERIAL.—The term “material” means a
24 good, including a part or ingredient, that is used in
25 the growth, production, or manufacture of another

1 good that is a new or different article of commerce
2 that has been grown, produced, or manufactured in
3 Oman or the United States, or both.

4 (6) MATERIAL PRODUCED IN THE TERRITORY
5 OF OMAN OR THE UNITED STATES, OR BOTH.—The
6 term “material produced in the territory of Oman or
7 the United States, or both” means a good that is ei-
8 ther wholly the growth, product, or manufacture of
9 Oman or the United States, or both, or a new or dif-
10 ferent article of commerce that has been grown, pro-
11 duced, or manufactured in the territory of Oman or
12 the United States, or both;

13 (7) NEW OR DIFFERENT ARTICLE OF COM-
14 MERCE.—

15 (A) IN GENERAL.—The term “new or dif-
16 ferent article of commerce” means, except as
17 provided in subparagraph (B), a good that—

18 (i) has been substantially transformed
19 from a good or material that is not wholly
20 the growth, product, or manufacture of
21 Oman or the United States, or both; and

22 (ii) has a new name, character, or use
23 distinct from the good or material from
24 which it was transformed.

1 (B) EXCEPTION.—A good shall not be con-
2 sidered a new or different article of commerce
3 by virtue of having undergone simple combining
4 or packaging operations, or mere dilution with
5 water or another substance that does not mate-
6 rially alter the characteristics of the good.

7 (8) RECOVERED GOODS.—The term “recovered
8 goods” means materials in the form of individual
9 parts that result from—

10 (A) the disassembly of used goods into in-
11 dividual parts; and

12 (B) the cleaning, inspecting, testing, or
13 other processing of those parts as necessary for
14 improvement to sound working condition.

15 (9) REMANUFACTURED GOOD.—The term “re-
16 manufactured good” means an industrial good that
17 is assembled in the territory of Oman or the United
18 States and that—(A) is entirely or partially com-
19 prised of recovered goods;(B) has a similar life ex-
20 pectancy to a like good that is new; and(C) enjoys
21 a factory warranty similar to that of a like good that
22 is new.

23 (10) SIMPLE COMBINING OR PACKAGING OPER-
24 ATIONS.—The term “simple combining or packaging
25 operations” means operations such as adding bat-

1 teries to devices, fitting together a small number of
2 components by bolting, gluing, or soldering, and re-
3 packing or packaging components together.

4 (11) SUBSTANTIALLY TRANSFORMED.—The
5 term “substantially transformed” means, with re-
6 spect to a good or material, changed as the result
7 of a manufacturing or processing operation so
8 that—

9 (A)(i) the good or material is converted
10 from a good that has multiple uses into a good
11 or material that has limited uses;

12 (ii) the physical properties of the good or
13 material are changed to a significant extent; or

14 (iii) the operation undergone by the good
15 or material is complex by reason of the number
16 of different processes and materials involved
17 and the time and level of skill required to per-
18 form those processes; and

19 (B) the good or material loses its separate
20 identity in the manufacturing or processing op-
21 eration.

22 (j) PRESIDENTIAL PROCLAMATION AUTHORITY.—

23 (1) IN GENERAL.—The President is authorized
24 to proclaim, as part of the HTS—

1 (A) the provisions set forth in Annex 3-A
2 and Annex 4-A of the Agreement; and

3 (B) any additional subordinate category
4 that is necessary to carry out this title, con-
5 sistent with the Agreement.

6 (2) MODIFICATIONS.—

7 (A) IN GENERAL.—Subject to the consulta-
8 tion and layover provisions of section 104, the
9 President may proclaim modifications to the
10 provisions proclaimed under the authority of
11 paragraph (1)(A), other than provisions of
12 chapters 50 through 63 of the HTS (as in-
13 cluded in Annex 3-A of the Agreement).

14 (B) ADDITIONAL PROCLAMATIONS.—Not-
15 withstanding subparagraph (A), and subject to
16 the consultation and layover provisions of sec-
17 tion 104, the President may proclaim—

18 (i) modifications to the provisions pro-
19 claimed under the authority of paragraph
20 (1)(A) as are necessary to implement an
21 agreement with Oman pursuant to article
22 3.2.5 of the Agreement; and

23 (ii) before the end of the 1-year period
24 beginning on the date of the enactment of
25 this Act, modifications to correct any typo-

1 graphical, clerical, or other nonsubstantive
2 technical error regarding the provisions of
3 chapters 50 through 63 of the HTS (as in-
4 cluded in Annex 3-A of the Agreement).

5 **SEC. 203. CUSTOMS USER FEES.**

6 Section 13031(b) of the Consolidated Omnibus Budg-
7 et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is
8 amended by adding after paragraph (16) the following:

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

17 **SEC. 204. ENFORCEMENT RELATING TO TRADE IN TEXTILE
18 AND APPAREL GOODS.**

19 (a) **ACTION DURING VERIFICATION.—**

20 (1) **IN GENERAL.—**If the Secretary of the
21 Treasury requests the Government of Oman to con-
22 duct a verification pursuant to article 3.3 of the
23 Agreement for purposes of making a determination
24 under paragraph (2), the President may direct the
25 Secretary to take appropriate action described in

1 subsection (b) while the verification is being con-
2 ducted.

3 (2) DETERMINATION.—A determination under
4 this paragraph is a determination—

5 (A) that an exporter or producer in Oman
6 is complying with applicable customs laws, reg-
7 ulations, procedures, requirements, or practices
8 affecting trade in textile or apparel goods; or

9 (B) that a claim that a textile or apparel
10 good exported or produced by such exporter or
11 producer—

12 (i) qualifies as an originating good
13 under section 202, or

14 (ii) is a good of Oman, is accurate.

15 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate
16 action under subsection (a)(1) includes—

17 (1) suspension of liquidation of the entry of any
18 textile or apparel good exported or produced by the
19 person that is the subject of a verification referred
20 to in subsection (a)(1) regarding compliance de-
21 scribed in subsection (a)(2)(A), in a case in which
22 the request for verification was based on a reason-
23 able suspicion of unlawful activity related to such
24 good; and

1 (2) suspension of liquidation of the entry of a
2 textile or apparel good for which a claim has been
3 made that is the subject of a verification referred to
4 in subsection (a)(1) regarding a claim described in
5 subsection (a)(2)(B).

6 (c) ACTION WHEN INFORMATION IS INSUFFI-
7 CIENT.—If the Secretary of the Treasury determines that
8 the information obtained within 12 months after making
9 a request for a verification under subsection (a)(1) is in-
10 sufficient to make a determination under subsection
11 (a)(2), the President may direct the Secretary to take ap-
12 propriate action described in subsection (d) until such
13 time as the Secretary receives information sufficient to
14 make a determination under subsection (a)(2) or until
15 such earlier date as the President may direct.

16 (d) APPROPRIATE ACTION DESCRIBED.—Appro-
17 priate action referred to in subsection (c) includes—

18 (1) publication of the name and address of the
19 person that is the subject of the verification;

20 (2) denial of preferential tariff treatment under
21 the Agreement to—

22 (A) any textile or apparel good exported or
23 produced by the person that is the subject of a
24 verification referred to in subsection (a)(1) re-

1 garding compliance described in subsection
2 (a)(2)(A); or

3 (B) a textile or apparel good for which a
4 claim has been made that is the subject of a
5 verification referred to in subsection (a)(1) re-
6 garding a claim described in subsection
7 (a)(2)(B); and

8 (3) denial of entry into the United States of—

9 (A) any textile or apparel good exported or
10 produced by the person that is the subject of a
11 verification referred to in subsection (a)(1) re-
12 garding compliance described in subsection
13 (a)(2)(A); or

14 (B) a textile or apparel good for which a
15 claim has been made that is the subject of a
16 verification referred to in subsection (a)(1) re-
17 garding a claim described in subsection
18 (a)(2)(B).

19 **SEC. 205. RELIQUIDATION OF ENTRIES.**

20 Subsection (d) of section 520 of the Tariff Act of
21 1930 (19 U.S.C. 1520(d)) is amended—

22 (1) in the matter preceding paragraph (1), by
23 striking “or” and inserting a comma before the
24 phrase “section 203 of the Dominican Republic-Cen-
25 tral America-United States Free Trade Agreement

1 Implementation Act,” and by striking the period
2 after that phrase and inserting “, or section 202 of
3 the United States-Oman Free Trade Agreement Im-
4 plementation Act.”; and

5 (2) in paragraph (3), by inserting “and infor-
6 mation” after “documentation”.

7 **SEC. 206. REGULATIONS.**

8 The Secretary of the Treasury shall prescribe such
9 regulations as may be necessary to carry out—

10 (1) subsections (a) through (i) of section 202;

11 (2) the amendment made by section 203; and

12 (3) proclamations issued under section 202(j).

13 **TITLE III—RELIEF FROM**
14 **IMPORTS**

15 **SEC. 301. DEFINITIONS.**

16 In this title:

17 (1) **OMANI ARTICLE.**—The term “Omani arti-
18 cle” means an article that—

19 (A) qualifies as an originating good under
20 section 202(b); or

21 (B) receives preferential tariff treatment
22 under paragraphs 8 through 11 of article 3.2 of
23 the Agreement.

1 (2) OMANI TEXTILE OR APPAREL ARTICLE.—

2 The term “Omani textile or apparel article” means
3 an article that—

4 (A) is listed in the Annex to the Agree-
5 ment on Textiles and Clothing referred to in
6 section 101(d)(4) of the Uruguay Round Agree-
7 ments Act (19 U.S.C. 3511(d)(4)); and

8 (B) is an Omani article.

9 (3) COMMISSION.—The term “Commission”
10 means the United States International Trade Com-
11 mission.

12 **Subtitle A—Relief From Imports**
13 **Benefiting From the Agreement**

14 **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

15 (a) FILING OF PETITION.—A petition requesting ac-
16 tion under this subtitle for the purpose of adjusting to
17 the obligations of the United States under the Agreement
18 may be filed with the Commission by an entity, including
19 a trade association, firm, certified or recognized union, or
20 group of workers, that is representative of an industry.
21 The Commission shall transmit a copy of any petition filed
22 under this subsection to the United States Trade Rep-
23 resentative.

24 (b) INVESTIGATION AND DETERMINATION.—Upon
25 the filing of a petition under subsection (a), the Commis-

1 sion, unless subsection (d) applies, shall promptly initiate
2 an investigation to determine whether, as a result of the
3 reduction or elimination of a duty provided for under the
4 Agreement, an Omani article is being imported into the
5 United States in such increased quantities, in absolute
6 terms or relative to domestic production, and under such
7 conditions that imports of the Omani article constitute a
8 substantial cause of serious injury or threat thereof to the
9 domestic industry producing an article that is like, or di-
10 rectly competitive with, the imported article.

11 (c) **APPLICABLE PROVISIONS.**—The following provi-
12 sions of section 202 of the Trade Act of 1974 (19 U.S.C.
13 2252) apply with respect to any investigation initiated
14 under subsection (b):

15 (1) Paragraphs (1)(B) and (3) of subsection
16 (b).

17 (2) Subsection (c).

18 (3) Subsection (i).

19 (d) **ARTICLES EXEMPT FROM INVESTIGATION.**—No
20 investigation may be initiated under this section with re-
21 spect to any Omani article if, after the date on which the
22 Agreement enters into force with respect to the United
23 States, import relief has been provided with respect to that
24 Omani article under this subtitle.

1 **SEC. 312. COMMISSION ACTION ON PETITION.**

2 (a) **DETERMINATION.**—Not later than 120 days after
3 the date on which an investigation is initiated under sec-
4 tion 311(b) with respect to a petition, the Commission
5 shall make the determination required under that section.

6 (b) **APPLICABLE PROVISIONS.**—For purposes of this
7 subtitle, the provisions of paragraphs (1), (2), and (3) of
8 section 330(d) of the Tariff Act of 1930 (19 U.S.C.
9 1330(d) (1), (2), and (3)) shall be applied with respect
10 to determinations and findings made under this section
11 as if such determinations and findings were made under
12 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

13 (c) **ADDITIONAL FINDING AND RECOMMENDATION IF**
14 **DETERMINATION AFFIRMATIVE.**—

15 (1) **IN GENERAL.**—If the determination made
16 by the Commission under subsection (a) with respect
17 to imports of an article is affirmative, or if the
18 President may consider a determination of the Com-
19 mission to be an affirmative determination as pro-
20 vided for under paragraph (1) of section 330(d) of
21 the Tariff Act of 1930) (19 U.S.C. 1330(d)), the
22 Commission shall find, and recommend to the Presi-
23 dent in the report required under subsection (d), the
24 amount of import relief that is necessary to remedy
25 or prevent the injury found by the Commission in
26 the determination and to facilitate the efforts of the

1 domestic industry to make a positive adjustment to
2 import competition.

3 (2) LIMITATION ON RELIEF.—The import relief
4 recommended by the Commission under this sub-
5 section shall be limited to that described in section
6 313(c).

7 (3) VOTING; SEPARATE VIEWS.—Only those
8 members of the Commission who voted in the af-
9 firmative under subsection (a) are eligible to vote on
10 the proposed action to remedy or prevent the injury
11 found by the Commission. Members of the Commis-
12 sion who did not vote in the affirmative may submit,
13 in the report required under subsection (d), separate
14 views regarding what action, if any, should be taken
15 to remedy or prevent the injury.

16 (d) REPORT TO PRESIDENT.—Not later than the
17 date that is 30 days after the date on which a determina-
18 tion is made under subsection (a) with respect to an inves-
19 tigation, the Commission shall submit to the President a
20 report that includes—

21 (1) the determination made under subsection
22 (a) and an explanation of the basis for the deter-
23 mination;

24 (2) if the determination under subsection (a) is
25 affirmative, any findings and recommendations for

1 import relief made under subsection (c) and an ex-
2 planation of the basis for each recommendation; and
3 (3) any dissenting or separate views by mem-
4 bers of the Commission regarding the determination
5 and recommendation referred to in paragraphs (1)
6 and (2).

7 (e) PUBLIC NOTICE.—Upon submitting a report to
8 the President under subsection (d), the Commission shall
9 promptly make public such report (with the exception of
10 information which the Commission determines to be con-
11 fidential) and shall cause a summary thereof to be pub-
12 lished in the Federal Register.

13 **SEC. 313. PROVISION OF RELIEF.**

14 (a) IN GENERAL.—Not later than the date that is
15 30 days after the date on which the President receives the
16 report of the Commission in which the Commission's de-
17 termination under section 312(a) is affirmative, or which
18 contains a determination under section 312(a) that the
19 President considers to be affirmative under paragraph (1)
20 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
21 1330(d)(1)), the President, subject to subsection (b), shall
22 provide relief from imports of the article that is the subject
23 of such determination to the extent that the President de-
24 termines necessary to remedy or prevent the injury found
25 by the Commission and to facilitate the efforts of the do-

1 mestic industry to make a positive adjustment to import
2 competition.

3 (b) **EXCEPTION.**—The President is not required to
4 provide import relief under this section if the President
5 determines that the provision of the import relief will not
6 provide greater economic and social benefits than costs.

7 (c) **NATURE OF RELIEF.**—

8 (1) **IN GENERAL.**—The import relief that the
9 President is authorized to provide under this section
10 with respect to imports of an article is as follows:

11 (A) The suspension of any further reduc-
12 tion provided for under Annex 2-B of the
13 Agreement in the duty imposed on such article.

14 (B) An increase in the rate of duty im-
15 posed on such article to a level that does not
16 exceed the lesser of—

17 (i) the column 1 general rate of duty
18 imposed under the HTS on like articles at
19 the time the import relief is provided; or

20 (ii) the column 1 general rate of duty
21 imposed under the HTS on like articles on
22 the day before the date on which the
23 Agreement enters into force.

24 (2) **PROGRESSIVE LIBERALIZATION.**—If the pe-
25 riod for which import relief is provided under this

1 section is greater than 1 year, the President shall
2 provide for the progressive liberalization of such re-
3 lief at regular intervals during the period in which
4 the relief is in effect.

5 (d) PERIOD OF RELIEF.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 any import relief that the President provides under
8 this section may not, in the aggregate, be in effect
9 for more than 3 years.

10 (2) EXTENSION.—

11 (A) IN GENERAL.—If the initial period for
12 any import relief provided under this section is
13 less than 3 years, the President, after receiving
14 a determination from the Commission under
15 subparagraph (B) that is affirmative, or which
16 the President considers to be affirmative under
17 paragraph (1) of section 330(d) of the Tariff
18 Act of 1930 (19 U.S.C. 1330(d)(1)), may ex-
19 tend the effective period of any import relief
20 provided under this section, subject to the limi-
21 tation under paragraph (1), if the President de-
22 termines that—

23 (i) the import relief continues to be
24 necessary to remedy or prevent serious in-

1 jury and to facilitate adjustment by the do-
2 mestic industry to import competition; and

3 (ii) there is evidence that the industry
4 is making a positive adjustment to import
5 competition.

6 (B) ACTION BY COMMISSION.—

7 (i) INVESTIGATION.—Upon a petition
8 on behalf of the industry concerned that is
9 filed with the Commission not earlier than
10 the date which is 9 months, and not later
11 than the date which is 6 months, before
12 the date any action taken under subsection
13 (a) is to terminate, the Commission shall
14 conduct an investigation to determine
15 whether action under this section continues
16 to be necessary to remedy or prevent seri-
17 ous injury and to facilitate adjustment by
18 the domestic industry to import competi-
19 tion and whether there is evidence that the
20 industry is making a positive adjustment
21 to import competition.

22 (ii) NOTICE AND HEARING.—The
23 Commission shall publish notice of the
24 commencement of any proceeding under
25 this subparagraph in the Federal Register

1 and shall, within a reasonable time there-
2 after, hold a public hearing at which the
3 Commission shall afford interested parties
4 and consumers an opportunity to be
5 present, to present evidence, and to re-
6 spond to the presentations of other parties
7 and consumers, and otherwise to be heard.

8 (iii) REPORT.—The Commission shall
9 transmit to the President a report on its
10 investigation and determination under this
11 subparagraph not later than 60 days be-
12 fore the action under subsection (a) is to
13 terminate, unless the President specifies a
14 different date.

15 (e) RATE AFTER TERMINATION OF IMPORT RE-
16 LIEF.—When import relief under this section is termi-
17 nated with respect to an article, the rate of duty on that
18 article shall be the rate that would have been in effect,
19 but for the provision of such relief, on the date on which
20 the relief terminates.

21 (f) ARTICLES EXEMPT FROM RELIEF.—No import
22 relief may be provided under this section on any article
23 that has been subject to import relief under this subtitle
24 after the date on which the Agreement enters into force.

1 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

2 (a) GENERAL RULE.—Subject to subsection (b), no
3 import relief may be provided under this subtitle after the
4 date that is 10 years after the date on which the Agree-
5 ment enters into force.

6 (b) PRESIDENTIAL DETERMINATION.—Import relief
7 may be provided under this subtitle in the case of an
8 Omani article after the date on which such relief would,
9 but for this subsection, terminate under subsection (a),
10 if the President determines that Oman has consented to
11 such relief.

12 **SEC. 315. COMPENSATION AUTHORITY.**

13 For purposes of section 123 of the Trade Act of 1974
14 (19 U.S.C. 2133), any import relief provided by the Presi-
15 dent under section 313 shall be treated as action taken
16 under chapter 1 of title II of such Act (19 U.S.C. 2251
17 et seq.).

18 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

19 Section 202(a)(8) of the Trade Act of 1974 (19
20 U.S.C. 2252(a)(8)) is amended in the first sentence—

21 (1) by striking “and”; and

22 (2) by inserting before the period at the end “,
23 and title III of the United States-Oman Free Trade
24 Agreement Implementation Act”.

1 **Subtitle B—Textile and Apparel**
2 **Safeguard Measures**

3 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

4 (a) **IN GENERAL.**—A request under this subtitle for
5 the purpose of adjusting to the obligations of the United
6 States under the Agreement may be filed with the Presi-
7 dent by an interested party. Upon the filing of a request,
8 the President shall review the request to determine, from
9 information presented in the request, whether to com-
10 mence consideration of the request.

11 (b) **PUBLICATION OF REQUEST.**—If the President de-
12 termines that the request under subsection (a) provides
13 the information necessary for the request to be considered,
14 the President shall cause to be published in the Federal
15 Register a notice of commencement of consideration of the
16 request, and notice seeking public comments regarding the
17 request. The notice shall include a summary of the request
18 and the dates by which comments and rebuttals must be
19 received.

20 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

21 (a) **DETERMINATION.**—

22 (1) **IN GENERAL.**—If a positive determination is
23 made under section 321(b), the President shall de-
24 termine whether, as a result of the reduction or
25 elimination of a duty under the Agreement, an

1 Omani textile or apparel article is being imported
2 into the United States in such increased quantities,
3 in absolute terms or relative to the domestic market
4 for that article, and under such conditions as to
5 cause serious damage, or actual threat thereof, to a
6 domestic industry producing an article that is like,
7 or directly competitive with, the imported article.

8 (2) SERIOUS DAMAGE.—In making a deter-
9 mination under paragraph (1), the President—

10 (A) shall examine the effect of increased
11 imports on the domestic industry, as reflected
12 in changes in such relevant economic factors as
13 output, productivity, utilization of capacity, in-
14 ventories, market share, exports, wages, em-
15 ployment, domestic prices, profits, and invest-
16 ment, none of which is necessarily decisive; and

17 (B) shall not consider changes in tech-
18 nology or consumer preference as factors sup-
19 porting a determination of serious damage or
20 actual threat thereof.

21 (b) PROVISION OF RELIEF.—

22 (1) IN GENERAL.—If a determination under
23 subsection (a) is affirmative, the President may pro-
24 vide relief from imports of the article that is the
25 subject of such determination, as described in para-

1 graph (2), to the extent that the President deter-
2 mines necessary to remedy or prevent the serious
3 damage and to facilitate adjustment by the domestic
4 industry to import competition.

5 (2) NATURE OF RELIEF.—The relief that the
6 President is authorized to provide under this sub-
7 section with respect to imports of an article is an in-
8 crease in the rate of duty imposed on the article to
9 a level that does not exceed the lesser of—

10 (A) the column 1 general rate of duty im-
11 posed under the HTS on like articles at the
12 time the import relief is provided; or

13 (B) the column 1 general rate of duty im-
14 posed under the HTS on like articles on the
15 day before the date on which the Agreement en-
16 ters into force.

17 **SEC. 323. PERIOD OF RELIEF.**

18 (a) IN GENERAL.—Subject to subsection (b), any im-
19 port relief that the President provides under subsection
20 (b) of section 322 may not, in the aggregate, be in effect
21 for more than 3 years.

22 (b) EXTENSION.—If the initial period for any import
23 relief provided under section 322 is less than 3 years, the
24 President may extend the effective period of any import
25 relief provided under that section, subject to the limitation

1 set forth in subsection (a), if the President determines
2 that—

3 (1) the import relief continues to be necessary
4 to remedy or prevent serious damage and to facili-
5 tate adjustment by the domestic industry to import
6 competition; and

7 (2) there is evidence that the industry is mak-
8 ing a positive adjustment to import competition.

9 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

10 The President may not provide import relief under
11 this subtitle with respect to any article if—

12 (1) the article has been subject to import relief
13 under this subtitle after the date on which the
14 Agreement enters into force; or

15 (2) the article is subject to import relief under
16 chapter 1 of title II of the Trade Act of 1974 (19
17 U.S.C. 2251 et seq.).

18 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

19 When import relief under this subtitle is terminated
20 with respect to an article, the rate of duty on that article
21 shall be the rate that would have been in effect, but for
22 the provision of such relief, on the date on which the relief
23 terminates.

1 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

2 No import relief may be provided under this subtitle
3 with respect to any article after the date that is 10 years
4 after the date on which duties on the article are eliminated
5 pursuant to the Agreement.

6 **SEC. 327. COMPENSATION AUTHORITY.**

7 For purposes of section 123 of the Trade Act of 1974
8 (19 U.S.C. 2133), any import relief provided by the Presi-
9 dent under this subtitle shall be treated as action taken
10 under chapter 1 of title II of such Act.

11 **SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.**

12 The President may not release information that is
13 submitted in a proceeding under this subtitle and that the
14 President considers to be confidential business informa-
15 tion unless the party submitting the confidential business
16 information had notice, at the time of submission, that
17 such information would be released, or such party subse-
18 quently consents to the release of the information. To the
19 extent a party submits confidential business information
20 to the President in a proceeding under this subtitle, the
21 party shall also submit a nonconfidential version of the
22 information, in which the confidential business informa-
23 tion is summarized or, if necessary, deleted.

THE UNITED STATES-OMAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action ("Statement") is submitted to the Congress consistent with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act") and accompanies the implementing bill for the United States-Oman Free Trade Agreement ("Agreement"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on January 19, 2006.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with Oman.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One and Eighteen through Twenty-Two) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
One (Initial Provisions and Definitions)
Eighteen (Transparency)
Nineteen (Administration of the Agreement)
Twenty (Dispute Settlement)
Twenty-One (Exceptions)
Twenty-Two (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

b. Entry into Force

Article 22.5 of the Agreement requires the United States and Oman to exchange written notifications that their respective internal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Oman to provide for entry into force of the Agreement with respect to the United States on or after January 1, 2007. The exchange of notes is conditioned on a determination by the President that Oman has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force.

Certain provisions of the Agreement become effective after the Agreement enters into force. For example, certain provisions relating to customs administration become effective with respect to Oman no later than two years after the Agreement enters into force. Likewise, certain provisions regarding financial services become effective with respect to Oman no later than three years after the Agreement enters into force. Finally, the transparency provisions of Chapter Seven (Technical Barriers to Trade) become effective with respect to both countries no later than five years after the Agreement enters into force.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal levels. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a last resort, in the unlikely event that efforts to achieve consistency through consultations do not succeed.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing bill must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature might interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations

under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty of the Agreement. This provision enables the United States to implement its obligations under Article 20.3 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under the United States-Bahrain Free Trade Agreement, the United States-CAFTA-DR Free Trade Agreement, the United States-Morocco Free Trade Agreement, the United States-Australia Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, the North American Free Trade Agreement ("NAFTA"), and the United States-Canada Free Trade Agreement. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Because they are international bodies, panels established under Chapter Twenty are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 107(c) provides that the provisions of the bill and the amendments to other statutes made by the bill will cease to be effective on the date on which the Agreement terminates.

2. Administrative Action

No administrative changes will be necessary to implement Chapters One, Eighteen, Twenty, Twenty-One, and Twenty-Two.

Article 19.1.1 of the Agreement requires each government to designate a contact point to

facilitate bilateral communications regarding the Agreement. The Office of the United States Trade Representative (“USTR”) will serve as the U.S. contact point for this purpose. In addition, Article 19.2 establishes a Joint Committee to oversee the implementation of the Agreement and consider necessary amendments, among other tasks. The United States Trade Representative will represent the United States on the Joint Committee.

Chapter Two (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Two of the Agreement through the application or elimination of customs duties and tariff-rate quotas (“TRQs”). Section 201(a) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and Annex 2-B of the Agreement.

The proclamation authority with respect to Article 2.3 authorizes the President to provide for the continuation, phase-out, or elimination, according to the Tariff Schedule of the United States to Annex 2-B of the Agreement, of customs duties on imports from Oman that meet the Agreement’s rules of origin. This proclamation authority also authorizes the President to provide for the implementation and administration of TRQs according to the U.S. Schedule to Annex 2-B of the Agreement.

The proclamation authority with respect to Articles 2.5 and 2.6 authorizes the President to provide for the elimination of duties on particular categories of imports from Oman. Article 2.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 2.6 pertains to the importation of goods: (1) returned to the United States after undergoing repair or alteration in Oman; or (2) sent from Oman for repair or alteration in the United States.

The proclamation authority with respect to Articles 3.2.8 and 3.2.9 authorizes the President to provide preferential tariff treatment to certain textile and apparel goods that do not qualify as “originating goods” (*i.e.*, goods that satisfy the Agreement’s rules of origin).

However, this treatment may be applied only up to annual quantitative limits set forth in those Articles for such goods. While goods subject to this provision may receive preferential tariff treatment, they will remain subject to the U.S. merchandise processing fee when they are imported. (See item (b) in this section.)

Section 201(a)(2) of the implementing bill requires the President to withdraw beneficiary status under the Generalized System of Preferences program from Oman once the Agreement enters into force.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill (described below), to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement with Oman under Annex 2-B (*e.g.*, to accelerate the elimination of tariffs under the Agreement);
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Oman provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the U.S. International Trade Commission ("ITC") on the proposed action. The President must submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with Oman under Article 3.2.3

of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

b. Customs User Fees

Section 203 of the bill implements U.S. commitments under Article 2.9.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Four of the Agreement. Customs processing for goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on non-originating imports will not be used to finance customs processing for originating imports.

2. Administrative Action

As discussed above, section 201(a) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. The Secretary of the Treasury will issue regulations to implement the proclamation.

The Administration welcomes the commitment made by the Minister of Finance of Oman, in a letter to Ambassador Portman dated September 5, 2005, in which the Minister states that "Oman does not apply any aspect of the boycott [of Israel], whether primary, secondary or tertiary or have any laws to that effect." As part of its annual National Trade Estimates Report, the Administration intends to monitor and report on this issue.

Chapter Three (Textiles and Apparel)

1. Implementing Bill

a. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to bilateral trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of

origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.3 of the Agreement provides for facility inspections, examinations of records, and other forms of verification to determine the accuracy of claims of origin for textile and apparel goods and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile and apparel goods.

Under Articles 3.3.4 and 3.3.5, the United States may request that Oman conduct a verification, allow the United States to conduct a verification, or collaborate with the United States in conducting a verification with respect to an Omani exporter or producer. The object of a verification under Article 3.3.4 is to determine that a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.3.5 is to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures and that claims of origin for textile or apparel goods exported or produced by that person are accurate.

Under Article 3.3.9 of the Agreement, the United States may take appropriate action during a verification, including suspending the application of preferential tariff treatment to textile or apparel goods exported or produced by the person subject to the verification. Under Article 3.3.11, the United States also may take appropriate action if, after 12 months, it is unable to make the requisite determination. In general, there are two situations in which the United States would be unable to make the required determination. One would involve a lack of cooperation on the part of the exporter or producer. The second would occur when the United States has sufficient information, and based on that information determines that: (1) a claim of origin is not accurate; or (2) an exporter or producer is not complying with applicable customs laws, regulations, and procedures, and therefore that claims of origin for textile and apparel goods produced by that person are not accurate.

Under current law, the Secretary of the Treasury may request that Omani authorities conduct a verification, allow the United States to conduct a verification, or collaborate with the United States in conducting a verification under Article 3.3 of the Agreement. Section 204(a) authorizes the President to direct the Secretary of the Treasury to take "appropriate action" while a verification requested by the Secretary is being conducted. The purpose of such verification is to determine compliance with applicable customs law or to determine the accuracy of a claim that a particular good is an originating good or a "good of Oman." Under section 204(b), such action may include, but is not limited to, suspension of liquidation of entries of textile and apparel goods exported or produced by the person that is the subject of the verification.

Under section 204(c), if the Secretary is unable to confirm within 12 months of making a verification request that a claim of origin for a good is accurate or, more generally, that an Omani exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, the President may determine what further "appropriate action" to take. Under section 204(d), such further action may include publishing the name and address of the person subject to the verification and, in the case of a verification under Article 3.3.5 of the Agreement, denying preferential tariff treatment under the Agreement to any textile and apparel goods exported or produced by the person subject to the verification, and denying entry of such goods into the United States. In the case of a verification under

Article 3.3.4 of the Agreement, the further action referred to in section 204(d) of the bill may include denying preferential tariff treatment to a textile or apparel good for which a claim has been made that is the subject of the verification and denying entry of such a good into the United States. Such further appropriate action may remain in effect until the Secretary receives information sufficient to make a determination under section 204(a) or until such earlier date as the President may direct.

b. Textile and Apparel Safeguard

Article 3.1 of the Agreement establishes a special procedure and makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods that receive preferential tariff treatment under the Agreement. The Administration does not anticipate that the Agreement will result in damaging increases in textile or apparel imports from Oman. Nevertheless, the Agreement's textile and apparel safeguard procedure will ensure that relief is available, if needed.

The safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, textile or apparel goods from Oman that receive preferential tariff treatment are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.1 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (most-favored-nation) ("NTR (MFN)") duty rate for the good or the U.S. NTR (MFN) duty rate in effect on the day before the Agreement entered into force.

Section 301(2) of the bill defines the term "Omani textile or apparel article" as an article listed in the Annex to the WTO Agreement on Textiles and Clothing that is also a Omani article, as defined in section 301(1).

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile and apparel safeguard provisions.

Section 321(a) of the bill provides that an interested party may file with the President a request for a textile or apparel safeguard measure. The President is to review a request initially to determine whether to commence consideration of the request on its merits.

Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

If the President determines under section 321 that a request contains the information necessary for it to be considered, then section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the elimination of a duty provided for 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 that imports of the article are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. This determination corresponds to the determination required under Article 3.1.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.1.2 of the Agreement.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in duties to the lower of: (1) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR (MFN) duty rate for that article on the day before the Agreement enters into force.

Section 323 of the bill provides that the maximum period of relief under the textile and apparel safeguard is three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum aggregate period of three years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile and apparel safeguard if: (1) relief previously has been granted to that article under the textile and apparel safeguard; or (2) the article is subject, or becomes subject, to a safeguard measure under chapter 1 of title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date of termination of import relief, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile and apparel safeguard with respect to any Omani article will expire 10 years after duties on the article are eliminated.

Under Article 3.1.6 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Oman "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action." If the United States and Oman are unable to agree on trade liberalizing compensation, Oman may increase customs duties equivalently on U.S. goods. The obligation to provide compensation terminates upon termination of the safeguard relief.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile and apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

2. Administrative Action

a. Enforcement of Textile and Apparel Rules of Origin

Section 204 of the bill governs situations in which U.S. customs officials request that Oman initiate verifications regarding enforcement of textile and apparel rules of origin. Following a U.S. request for a verification, the Committee for the Implementation of Textile Agreements ("CITA"), an interagency entity created by Executive Order 11651 that carries out certain textile trade policies for the United States by delegation of authority from the President, may direct U.S. officials to take appropriate action described in section 204(b) of the bill while the verification is being conducted. U.S. customs officials will determine whether the exporter or producer that is subject to the verification is complying with applicable customs rules, and whether statements regarding the origin of textile or apparel goods exported or produced by that firm are accurate. If U.S. customs officials determine that an exporter or producer is not complying with applicable customs rules or that it is making false statements regarding the origin of textile or apparel goods, they will report their findings to CITA. Similarly, if U.S. customs officials are unable to make the necessary determination (e.g., due to lack of cooperation by the exporter or producer), they will report that fact to CITA. CITA may direct U.S. officials to take appropriate action described in section 204(d) in the case of an adverse determination or a report that customs officials are unable to make the necessary determination. If the appropriate action includes denial of preferential tariff treatment or denial of entry, CITA will issue an appropriate directive.

Section 204 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.3 of the Agreement.

b. Textile and Apparel Safeguard

The function of receiving requests for textile and apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b) will be performed by CITA, pursuant to a delegation of the President's authority under the bill. CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b).

Chapter Four (Rules of Origin)

1. Implementing Bill

a. General

Section 202 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good of Oman for the purposes of this bill would not necessarily be a good of, or import from, Oman for the purposes of other U.S. laws or regulations.

For a good entering the United States to qualify as an originating good, it must be imported directly from Oman. Additionally, it must be covered by one of three specified categories. First, a good is an originating good if it is "wholly the growth, product, or manufacture of Oman or the United States, or both." The term "good wholly the growth, product, or manufacture of Oman or the United States, or both" is defined in section 202(i)(3) of the bill and includes, for example, minerals extracted in either country, animals born and raised in either country, and waste and scrap derived from production of goods that takes place in the territory of either or both countries.

The term "good wholly the growth, product, or manufacture of Oman or the United States, or both" includes "recovered goods." These are parts resulting from the disassembly of used goods, which are brought into good working condition, in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term "remanufactured good" is separately defined in section 202(i)(9) to mean an industrial good assembled in the territory of Oman or the United States that: (1) is entirely or partially comprised of recovered goods; (2) has a similar life expectancy to a like good that is new; and (3) enjoys a factory warranty similar to that of a like good that is new.

Second, a good is an "originating good" if it is a "new or different article of commerce" that has been grown, produced, or manufactured in Oman or the United States, or both. Under this category, the sum of: (1) the value of the materials produced in Oman or the United States, or both; and (2) the "direct costs of processing operations" performed in Oman or the United States, or both, must be at least 35 percent of the appraised value of the good at the time it is entered into the territory of either country. This category does not apply to goods specified in Annex 3-A or Annex 4-A of the Agreement.

This second category incorporates two defined terms. The term "new or different article of commerce" is defined under section 202(i)(7) of the bill as "a good [] that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Oman or the United States, or both; and [that] has a new name, character, or use distinct from the good or material from which it was transformed." The term "direct costs of

processing operations,” defined in section 202(i)(1) of the bill, refers to costs directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of a good. It includes a variety of types of costs, such as labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others.

Third, a good is an “originating good” if it meets the product-specific rules set out in Annex 3-A or Annex 4-A of the Agreement and satisfies all other applicable requirements of section 202. In general, Annex 3-A and Annex 4-A of the Agreement require that non-originating materials used in the production of a good undergo a change in tariff classification, as specified in each Annex, as a result of production occurring entirely in the territory of Oman or the United States, or both.

The remainder of section 202 of the implementing bill sets forth specific rules that supplement the rules for qualifying under the second and third categories just described. For example, section 202(e) provides that “[p]ackaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers has been included in meeting the requirements set forth in subsection (b)(2).” Other provisions in section 202 address valuation of materials and rules regarding indirect materials, transit and transshipment, and a variety of other matters.

b. Proclamation Authority

Section 202(j)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 3-A and Annex 4-A of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 202(j)(2) gives authority to the President to modify certain of the Agreement’s specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See discussion under item 1.a of Chapter Two, above.)

Various provisions of the Agreement expressly contemplate modifications to the rules of origin. For example, Article 3.2.3 calls for the United States and Oman to consult at either country’s request to consider whether rules of origin for particular textile or apparel goods should be revised in light of the availability of fibers, yarns, or fabrics in their respective territories. In addition, Article 4.13 provides that, within six months of the date of entry into force of the Agreement, the United States and Oman will endeavor to develop to the extent practicable a regional cumulation regime covering the United States and Middle Eastern countries that have free trade agreements with the United States.

Section 202(j)(2) of the bill expressly limits the President’s authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 3-A of the Agreement). Those rules of origin may be modified by proclamation in only two circumstances: (1) to implement an agreement with Oman pursuant to Article 3.2.5 of the Agreement to address the commercial availability of particular fibers, yarns, or fabrics; and (2) to correct typographical, clerical, or other non-

substantive technical errors within one year of enactment of the implementing bill.

c. Claims for Preferential Tariff Treatment

Article 4.11.4 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 205 of the bill implements U.S. obligations under Article 4.11.4 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

2. Administrative Action

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Oman and the United States. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it: (1) is wholly grown, produced, or manufactured in one or both countries; (2) has been substantially transformed from a good or material that is not wholly grown, produced, or manufactured in one or both countries; or (3) meets specific "tariff shift" rules identified for particular products.

a. Claims for Preferential Tariff Treatment

Section 206 of the bill authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rule of origin provisions. The Department of the Treasury will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential tariff treatment. Under Article 4.10(a) of the Agreement, an importer claiming preferential tariff treatment is deemed to have certified that the good qualifies for such treatment. Under Article 4.10(b), an importer may be requested to explain in a detailed declaration the basis for such a claim. Article 4.11.1 requires that a claim for preferential tariff treatment be granted unless customs officials have information indicating that the importer's claim fails to comply with the Agreement's rules of origin. Article 4.11.3 requires a Party to provide a written determination, with factual and legal findings, if it denies a claim.

b. Verification

Under Article 4.11.2, a Party may verify claims that goods imported from Oman satisfy the Agreement's rules of origin. Article 3.3 sets out special procedures for verifying claims that textile or apparel goods imported from Oman meet the Agreement's origin rules. U.S. officials will carry out verifications under Articles 4.11.2 and 3.3 of the Agreement pursuant to authorities

under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter Five (Customs Administration)

1. Implementing Bill

No statutory changes will be required to implement Chapter Five.

2. Administrative Action

a. Inquiry Point

Article 5.1.2 of the Agreement requires each country to designate an inquiry point for inquiries from interested persons on customs matters. The U.S. Bureau of Customs and Border Protection ("BCBP") will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, the BCBP will post information on the Internet at "www.cbp.gov" concerning how interested persons can make customs-related inquiries.

b. Advance Rulings

Treasury regulations for advance rulings under Article 5.10 of the Agreement (on classification, valuation, duty drawback, qualification as an "originating good," and duty-free treatment of goods returned to the United States after repair or alteration in Oman) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. Consistent with Article 5.10.2 of the Agreement, advance rulings will be required to be issued within 150 days of receipt by customs officials of all information reasonably required to process the application for the ruling.

Chapter Six (Sanitary and Phytosanitary Measures)

No statutory or administrative changes will be required to implement Chapter Six.

Chapter Seven (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seven.

2. Administrative Action

Article 7.7 of the Agreement calls for each government to designate an official to coordinate with interested parties in its territory on bilateral issues and initiatives regarding technical barriers to trade ("TBT"), and to communicate with the other government on such matters. A USTR official responsible for TBT matters or trade relations with Oman will serve as the U.S. TBT Chapter Coordinator.

Chapter Eight (Safeguards)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the bilateral safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three (Textiles and Apparel), above, Subtitle B of Title III of the bill implements the textile and apparel safeguard provisions of the Agreement.)

Sections 311 through 316 of the bill authorize the President to suspend duty reductions or impose duties temporarily at NTR (MFN) rates on an "Omani article" when, after an investigation, the ITC determines that as a result of the reduction or elimination of a duty under the Agreement, the article 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 a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set out in sections 201 through 204 of the Trade Act of 1974.

Section 301(1) defines the term "Omani article" for purposes of the safeguard provisions to mean a good qualifying as an "originating good" under section 202(b) of the bill or a textile or apparel good containing non-originating fabric or yarn that receives preferential tariff treatment under Articles 3.2.8 and 3.2.9 of the Agreement.

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct bilateral safeguard investigations. Section 311(a) provides that a petition requesting a bilateral safeguard action may be filed by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" includes a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in bilateral safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section an Omani article that has been subject to a safeguard measure under Subtitle A of Title III of the bill after the Agreement's entry into force. In other words, a safeguard measure under Subtitle A of Title III of the bill may be applied only once for a particular good.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative injury determination, or a determination that the President may consider to be an affirmative determination under section 312(b), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that may be recommended by the ITC is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (1) the ITC's determination under section 312(a) and the reasons supporting it; (2) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (3) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Under section 313(a) of the bill, the President is directed, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must 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)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or
- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) of the bill provides that the maximum period of import relief under the bilateral safeguard is three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum aggregate period of three years) if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination by the ITC to the same effect, or a determination that the President may consider to be an affirmative determination.

Section 313(e) specifies the duty rate to be applied to Omani articles after termination of a bilateral safeguard action. On the termination of relief, the rate of duty on that article is the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

Section 313(f) exempts from relief an Omani article that already has been subject to a safeguard measure under Subtitle A of Title III of the bill. In other words, a safeguard measure under Subtitle A may be applied only once for a particular good.

Section 314 provides that the President's authority to take action under the bilateral safeguard provision expires 10 years after the date on which the Agreement enters into force. The President may take action under the bilateral safeguard provision after that period, but only if the President determines that the Government of Oman consents.

Section 315 allows the President to provide trade compensation to Oman, as required under Article 8.3 of the Agreement, when the United States imposes relief through a bilateral safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to bilateral safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958, as amended.

2. **Administrative Action**

No administrative changes will be required to implement Chapter Eight.

Chapter Nine (Government Procurement)

1. **Implementing Bill**

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain laws, regulations, procedures, and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. The President has delegated this authority to the United States Trade Representative. Section 401 of the implementing bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for a party to the United States-Oman Free Trade Agreement, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States." This amended definition, coupled with the President's exercise of authority under section 301(a) of the Trade Agreements Act as delegated to the United States Trade Representative, will allow for non-discriminatory procurement of products and services of Oman.

2. **Administrative Action**

Annex 9-A of the Agreement establishes dollar thresholds for procurements above which U.S. government procuring entities must allow Omani suppliers to bid in accordance with the rules set forth in Chapter Nine. USTR will notify the Federal Acquisition Regulatory ("FAR") Council of the thresholds that pertain to Oman under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulations.

Chapter Ten (Investment)

1. **Implementing Bill**

Section 106 of the bill authorizes the United States to use binding arbitration to resolve

claims by Omani investors or by their covered investments in the United States under Article 10.15.1(a)(i)(C) or Article 10.15.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.15. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Morocco, Chile, and Singapore.

2. **Administrative Action**

No administrative changes will be required to implement Chapter Ten.

Chapter Eleven (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter Eleven.

Chapter Twelve (Financial Services)

No statutory or administrative changes will be required to implement Chapter Twelve.

Chapter Thirteen (Telecommunications)

No statutory or administrative changes will be required to implement Chapter Thirteen.

Chapter Fourteen (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter Fourteen.

Chapter Fifteen (Intellectual Property Rights)

No statutory or administrative changes will be required to implement Chapter Fifteen.

Chapter Sixteen (Labor)

1. **Implementing Bill**

No statutory changes will be required to implement Chapter Sixteen.

2. **Administrative Action**

Article 16.4.2 of the Agreement calls for each country to designate an office to serve as the contact point for implementing the Agreement's labor provisions. The Department of Labor's Bureau of International Labor Affairs will serve as the U.S. contact point for this purpose.

Chapter Seventeen (Environment)

1. **Implementing Bill**

No statutory changes will be required to implement Chapter Seventeen.

2. **Administrative Action**

Article 17.8.1 of the Agreement provides that either Party may request consultations with the other concerning any matter arising under the Chapter and contemplates that each Party will designate a contact point to receive such requests. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.

**DESCRIPTION OF THE CHAIRMAN'S MODIFICATION
TO THE PROVISIONS OF THE DRAFT
"STATEMENT OF ADMINISTRATIVE ACTION"
ACCOMPANYING DRAFT LEGISLATION TO IMPLEMENT
THE U.S.-OMAN FREE TRADE AGREEMENT**

Scheduled for Consultative Consideration
By the
SENATE COMMITTEE ON FINANCE
on May 18, 2006

Prepared by the
International Trade Staff (Majority)
of the
SENATE COMMITTEE ON FINANCE

May 18, 2006

ADDITIONAL PROVISION

Description of Change

At an appropriate place in the draft Statement of Administrative Action, insert the following:

“The Administration welcomes the clarification provided by the Minister of Commerce & Industry of Oman, in a letter to Ambassador Portman dated May 8, 2006, regarding Article 12 of Oman’s Basic Law and the prohibition of forced (“compulsory”) labor, as well as the enforcement of the Omani law that prohibits employers from withholding documents of foreign workers. As part of its annual National Trade Estimates Report, the Administration intends to monitor and report on the efforts of the Government of Oman to prohibit compulsory or indentured labor, including efforts to prohibit any coercive action by an employer to compel such labor such as by withholding documents of foreign workers.”