

109<sup>TH</sup> CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2<sup>d</sup> Session } 109-

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UNITED STATES-OMAN FREE TRADE AGREEMENT  
IMPLEMENTATION ACT

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

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

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 5684]

[Including cost estimate of the Congressional Budget Office]

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

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COMMITTEE ON WAYS AND MEANS  
COMMITTEE REPORT  
UNITED STATES – OMAN FREE TRADE AGREEMENT

**I. INTRODUCTION**

**A. PURPOSE AND SUMMARY**

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

**B. BACKGROUND**

**I. The United States-Oman Free Trade Agreement**

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

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

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

The United States will provide immediate duty free access to 100% of Oman’s current agricultural exports to the United States. Oman has not traditionally been a large agricultural exporter to the U.S. market, and USTR reports that the United States imported \$1.7 million in agricultural products from Oman in 2005. Accordingly, the Agreement does not contain an agricultural safeguard.

*Textiles and Apparel* – The Agreement contains a yarn-forward rule of origin for textiles. Like other FTAs (including Bahrain, Morocco, Chile, Singapore, and NAFTA), the Agreement contains limited, temporary allowances for the use of yarn and fabric from a non-party under a

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

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

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

Furthermore, the Committee expects that all short supply parties will be able to participate in an open and transparent process. Specifically, Committee for the Implementation of Textile Agreements (CITA) should publish procedures that clearly explain the criteria it uses to make its determinations on whether and why a good is or is not available in commercial quantities. At the very least, when CITA determines that a good is available in commercial quantities, a sample of the good should be readily available for physical inspection by all parties as well as by evidence of some effort to market the good in the United States. Moreover, all parties should have open access to the full evidence being considered by CITA as well as the opportunity to respond to the full evidence before a determination is made.

*Services* – Under the Agreement, Oman will accord broad market access across its services industries and will provide increased market access and regulatory transparency in most industries. The Agreement utilizes the negative list approach for coverage with very few reservations, which means that all services are covered except those few specifically excluded.

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

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

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

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

The Committee believes that there have been significant misrepresentations about investment protection provisions in this and other free trade agreements. Nothing in this Agreement or any other U.S. free trade agreement or bilateral investment treaty interferes with a state or local government's right to regulate. An investor cannot enjoin regulatory action

through arbitration, nor can arbitral tribunals. Also, the Agreement makes improvements over former FTAs by incorporating standards in the expropriation provisions drawn directly from U.S. Supreme Court decisions and by taking regulatory interests fully into account. Consistent with U.S. law, for example, the Agreement's text specifies that nondiscriminatory regulatory actions designed and applied to protect the public welfare do not constitute indirect expropriations "except in rare circumstances." Moreover, the arbitration process under the Agreement is more open and transparent, and hearings and documents are public, and *amicus curiae* submissions are expressly authorized.

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

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

*Labor and Environment* – Labor and environmental obligations are part of the core text of the trade agreement, consistent with Trade Promotion Authority requirements, and are similar to provisions in prior FTAs. The Agreement states that both parties shall ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The Agreement also provides that parties shall strive to continue to improve such laws. The Agreement states that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment--that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties--is subject to dispute settlement under the Agreement. Oman and the United States will pursue a number of cooperative projects to promote environmental protection, and both governments will utilize a Memorandum of Understanding on Environmental Cooperation to prioritize environmental projects and develop plans of action. The Agreement contains a cooperative mechanism to promote respect for the principles embodied in the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor.

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

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

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

In addition, Oman has made further commitments:

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

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

- Strengthening its collective bargaining laws;
- Allowing more than one union per enterprise;
- Specifying penalties for anti-union discrimination;
- Reinforcing the right to strike;
- Removing all government involvement in union activity;
- Strengthening efforts against forced labor;

*Committee on Ways and Means*  
*Chairman Bill Thomas*  
7/13/2006 5:00pm

