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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.