



Jon Kyl, Chairman

347 Russell Senate Office Building
Washington, DC 20510
202-224-2946
<http://rpc.senate.gov>

No. 55

September 18, 2006

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

Calendar No. 565

Passed in the House on July 20, 2006, and placed on the Senate Calendar on August 1, 2006.

Noteworthy

- The United States-Oman Free Trade Agreement Implementation Act (the “Agreement”) implements the free trade agreement between the United States and Oman. The United States signed the agreement on January 19, 2006. On June 29, 2006, the Senate passed S. 3569, the United States-Oman Free Trade Agreement Implementation Act, by a vote of 60-34 (Record Vote No. 190). On July 20, 2006, the House approved H.R. 5684 by a vote of 221-205. For procedural reasons, the Senate must enact a version that originates in the House and, therefore, will take up H.R. 5684. H.R. 5684 contains legislative language identical to S. 3569.
- Under the expedited procedures known as “fast track,” the implementation language is not amendable in the committees of jurisdiction, nor on the floor of the House or Senate. Debate is limited to 20 hours, equally divided. Note that under a Unanimous Consent agreement reached last week, debate was limited to 3 hours, with all remaining time to be consumed on Monday, September 18, 2006, and a vote on passage to occur on Tuesday, September 19, 2006, following up to 30 minutes of closing remarks.
- Upon entry into force of the Agreement, nearly all U.S. exports of consumer and industrial products will enter Oman free of duty. Oman will provide immediate duty-free access for U.S. agricultural exports in 87 percent of agricultural tariff lines and will phase out tariffs on the remaining products within 10 years. The Agreement will provide substantial market access to the U.S. services sector. Tariffs on U.S. imports from Oman would be phased out over time at varying rates according to several different timetables, from immediate elimination on the date the agreement enters into force to gradual elimination over 10 years.

Highlights

- On May 9, 2003, President Bush proposed establishing a U.S.-Middle East Free Trade Area by 2013 (MEFTA). The agreement with Oman is the fifth such agreement directed at MEFTA. The U.S. has completed free trade agreements with Israel, Jordan, Morocco, and Bahrain. A free trade agreement with the United Arab Emirates is currently under negotiation.
- The 9/11 Commission concluded that the pursuit of MEFTA was an integral part of encouraging expanded trade, investment, and domestic economic reform to aid in countering terrorism (see *9/11 Commission Final Report*, pp. 378-79).
- Oman does not participate in the boycott of Israel nor does it have any law establishing the primary, secondary, or tertiary boycott of Israel. Oman is not a member of the Organization of the Petroleum Exporting Countries (“OPEC”).
- The process by which the Committee on Foreign Investment in the United States (CFIUS) reviews transactions is in no way altered when the U.S. enters into a free trade agreement. Free trade agreements, and therefore the United States-Oman Free Trade Agreement, do not hinder the ability of the U.S. to review and act on transactions with national security implications, including any potential investment in the landside aspects of port activities in the United States. Moreover, section 102 of H.R. 5684 specifies that U.S. law prevails should there arise a conflict between elements of the agreement under this Act and current U.S. law.
- The United States-Oman Free Trade Agreement establishes a bilateral free trade area that eliminates tariffs on most merchandise trade between the two countries. Bilateral trade in nearly all industrial and consumer products becomes duty-free immediately. For agricultural products, Oman will eliminate duties immediately for 87 percent of U.S. agriculture export tariff lines. Import tariffs on the remaining lines will be phased out completely within 10 years.
- H.R. 5684 provides for tariff reductions and other changes in law related to implementation of the Agreement. In addition to specified tariff modifications, the bill provides for the administration of dispute settlement proceedings and requirements for the enforcement of rules of origin. Finally, the bill specifies actions for relief from imports receiving favorable duty treatment in virtue of the Agreement.
- Concerns have been raised over Omani labor laws, and how to prohibit products that may have been made with forced labor or under other arduous conditions from benefiting from this Agreement’s protections. On July 9, 2006, Oman issued a Royal Decree reforming its labor law in several areas. The Decree made several important changes to Omani law and regulation, including: 1) directing the Minister of Labor to issue regulations permitting collective bargaining; 2) prohibiting dismissal of workers for union activity; 3) changing Omani law to permit more than one union per workplace; 4) guaranteeing the right to strike;

5) increasing penalties for child labor violations; and 6) prohibiting dismissal for union activity and establishing penalties for violation of the prohibition.

- U.S. law prohibits the importation of products of forced labor. Specifically, 19 U.S.C. § 1307 prohibits the importation of goods and merchandise produced by convict labor, forced labor, and indentured labor under penal sanctions.

Background

On November 15, 2004, President Bush notified Congress of his intent to enter into negotiations with Oman in pursuit of a free trade agreement. The Administration successfully concluded negotiations on October 13, 2005, and U.S. Trade Representative (USTR) Rob Portman and Omani Minister of Commerce and Industry Maqbool bin Ali Sultan signed the United States-Oman Free Trade Agreement on January 19, 2006.

As required under the Bipartisan Trade Promotion Authority Act of 2002, the Administration submitted to Congress draft language implementing the Agreement, and followed with final implementing language in the form of a bill introduced as H.R. 5684 in the House and S. 3569 in the Senate. The House Ways and Means Committee held two “mock” markups, first approving the Administration’s draft implementing language on May 10, 2006, and second passing H.R. 5684 on June 29, 2006, by a vote of 23-15. The Senate Finance Committee likewise held two “mock” markups, approving first the draft implementing language on May 18, 2006, and second, S. 3569 on June 28, 2006, by a vote of 10-3.¹

Two-way goods trade between the United States and Oman totaled \$748 million in 2004, with U.S. goods exports to Oman reaching \$330 million. Total bilateral trade grew to approximately \$1 billion in 2005. Oman ranks as the 88th largest market for U.S. exports, and accounts for less than 1 percent of all U.S. trade. U.S. imports of Omani oil, natural gas, and apparel account for about 85 percent of total imports. Export of U.S. machinery and transport equipment account for about 81 percent of total U.S. export volume. The stock of U.S. foreign direct investment in Oman in 2003 was \$358 million, up from \$193 million in 2002.

Under the Agreement, Oman provides substantial market access in its services market area. U.S. financial services providers, for example, are permitted to offer a full range of services, including cross-border electronic provision of insurance services, financial information, and data processing. Oman will also permit the establishment and operation of subsidiaries and joint ventures in support of these commercial services.

The Agreement also contains important protections for copyrights, patents, and trademarks. Oman commits to the protection of copyrighted works consistent with U.S. and international treatment. Patent applications in Oman would receive general treatment, including protection

¹ For additional background, see Congressional Research Service (CRS), “Proposed U.S.-Oman Free Trade Agreement,” CRS Report for Congress RL33328, August 1, 2006.

against arbitrary revocation, consistent with U.S. practice. The Agreement applies the “first-in-time, first-in-right” principle to both trademarks and geographical indications.

Finally, the Agreement contains enhanced intellectual property protections. Oman and the U.S. commit to the criminalization of piracy, including the exercise of seizure and forfeiture of counterfeit and pirated goods. The Agreement also mandates statutory and actual damages under Omani law for such violations.

Bill Provisions

United States-Oman Free Trade Agreement Implementation Act

Sec. 1: Short Title; Table of Contents

This section provides that the short title of the Act is the “United States-Oman Free Trade Agreement Implementation Act.”

Sec. 2: Purposes

This section establishes the purposes of the Act: to approve and implement the United States – Oman Free Trade Agreement Implementation Act.

Sec. 3: Definitions

This section defines the terms used in the Act.

Title I: Approval of, and General Provisions Relating To, the Agreement

Sec. 101: Approval and Entry into Force of the Agreement

This section provides Congressional approval for the Agreement and its Statement of Administrative Action both submitted to Congress on June 26, 2006. It also authorizes the President to exchange notes with the Government of Oman providing for the entry into force of the Agreement, on or after January 1, 2007.

Sec. 102: Relationship of the Agreement to United States and United States Law

This section establishes the relationship between the Agreement and U.S. law. It clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law.

In addition, this section establishes the relationship between the Agreement and state law and 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.

Sec. 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

This section authorizes the President and other appropriate officers to proclaim actions to issue regulations necessary to ensure that any provision of this Act that takes effect on the date the Agreement enters into force is appropriately implemented.

Sec. 104: Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions

This section defines required consultation and layover procedures that must precede the President's implementation of any tariff modifications by proclamation. Under the requirements, the President must have obtained advice from the appropriate advisory committees and the U.S. International Trade Commission (ITC). The President must also have specified to the House Committee on Ways and Means and the Senate Committee on Finance the action proposed, the reasons for the action, as well as the advice of both the advisory committees and the ITC. The Act provides that following the submission of the report, the President and the Committees are given a 60-day period for consultation on the proposed action.

Sec. 105: Administration of Dispute Settlement Proceedings

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

Sec. 106: Arbitration of Claims

This section authorizes the United States to utilize binding arbitration to resolve investment claims covered by the Agreement that involve government contracts.

Sec. 107: Effective Dates; Effect of Termination

This section provides effective dates for the Act and establishes that the provisions of this Act will no longer be in effect should the Agreement cease to be in force.

Title II: Customs Provisions

Sec. 201: Tariff Modifications

This authorizes the President to issue by proclamation the continuation, modification, or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the Agreement. Pursuant to Section 201, Oman's designation as a beneficiary developing country under the Generalized System of Preferences program shall be terminated once the Agreement enters into force.

This section also permits the President to substitute for the base rate an ad valorem rate deemed equivalent to the base rate with respect to any good for which such rate in the Agreement is a specific or compound rate of duty.

Sec. 202: Rules of Origin

This section provides the rules of origin under the Agreement and authorizes the President to modify some of the Agreement's rules of origin by proclamation, subject to the consultation and layover provisions of Section 104 of the Act. This section also includes definitions for terms used in determining the origin of goods under the Agreement.

A good qualifies for preferential treatment under the terms of the Agreement if it is imported directly from Oman into the United States or directly from the United States into Oman and it is either: 1) "wholly the growth, product, or manufacture of Oman or the United States or both"; or 2) "a new or different article of commerce that has been grown, produced, or manufactured in Oman or the United States, or both" and the value of the materials produced and the direct cost of processing operations performed in Oman or the United States, or both, is not less than 35 percent of the appraised value of the good, or the good is a good covered by Annex 3-A or 4-A of the Agreement.

Sec. 203: Customs User Fees

This section amends the Consolidated Omnibus Budget Reconciliation Act of 1985 to prohibit the charge of a fee for certain customs services with respect to goods imported from, and originating in, Oman. In addition, this section prohibits any service exempted from such fees from being funded with money from the Customs User Fee Account.

Sec. 204: Enforcement Relating to Trade in Textile and Apparel Goods

This section authorizes the President to direct the Secretary of the Treasury to take appropriate action where the Secretary has asked the Oman government to conduct a verification procedure to determine: (1) the compliance of an exporter or producer in Oman with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or (2) the accuracy of a claim that a good exported or produced by the exporter or producer qualifies as an originating good, or is a good of Oman,.

"Appropriate action" is defined as suspension of liquidation of the entry of any textile or apparel good that is: (1) subject to compliance verification if the verification was based on a reasonable suspicion of unlawful activity related to the good; or (2) for which an accuracy claim has been made about its origin. If the information obtained with respect to the good in question is insufficient for a verification determination, the Secretary of the Treasury may also: (1) publish the name and address of the person that is the subject of the verification; (2) deny preferential tariff treatment under the Agreement to any textile or apparel good exported or produced by such person or that is the subject of a claim for verification of origin; and (3) deny entry of such goods into the United States.

Sec. 205: Reliquidation of Entries

This section amends the Tariff Act of 1930 to authorize the Customs Service to reliquidate an entry and refund any excess duties (including merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential treatment was made at the time of importation if the importer takes certain actions within one year after such importation.

Sec. 206: Regulations

This section requires the Secretary of the Treasury to prescribe regulations necessary to implement the rules-of-origin provisions of the Agreement.

Title III: Relief From Imports - Subtitle A: Relief From Imports Benefiting From the Agreement

Sec. 301: Definitions

This section contains definitions of terms used in this title.

Subtitle A-Relief From Imports Benefiting From the Agreement

Sec. 311: Commencing of Action for Relief

This section authorizes an entity (including a trade association, firm, certified or recognized union, or group of workers) to petition the ITC for an adjustment to U.S. obligations under the Agreement. Under language in this section, the International Trade Commission (ITC), upon the filing of a petition, shall investigate promptly whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an Omani article is being imported into the United States in such increased quantities as to be a substantial cause or threat of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article. If an Omani article is already subject to import relief under the Agreement, no investigation may be initiated with respect to that Omani article.

Sec. 312: Commission Action on Petition

This section establishes deadlines for U.S. ITC determinations following the initiation of an investigation under 311(b). This section provides also that, if the ITC makes an affirmative determination or a determination the President may consider to be an affirmative determination, the ITC must find and recommend to the President the amount of import relief necessary to remedy or prevent the injury found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Upon completion of the harm and relief determination, ITC is to submit a report to the President detailing its activities in this regard, and publish in the Federal Register a summary of its actions.

Sec. 313: Provision of Relief

This section requires the President, after receiving an affirmative injury determination from the ITC, to provide certain three-year import relief to remedy or prevent such injury, and to facilitate efforts of the domestic industry to make a positive adjustment to import competition. The President's provision of relief may include measures that: (1) suspend further reduction provided by the Agreement in the duty imposed on such article, and (2) increase the rate of such duty to a level that does not exceed an amount determined according to a specified formula. Relief may not be provided for any article that has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

Sec. 314: Termination of Relief Authority

This section prohibits the provision of any import relief later than 10 years after the Agreement enters into force, except for articles about which Oman has consented to such relief.

Sec. 315: Compensation Authority

This section applies certain compensation authority of the Trade Act of 1974 to the three-year import relief provided by the President under section 313. Under this language, the President may grant Oman new concessions as compensation for the imposition of import relief in a bilateral safeguard investigation in order to maintain the general level of reciprocal concessions under the Agreement.

Sec. 316 Confidential Business Information

This section amends the Trade Act of 1974 such that it applies to ITC investigations conducted under this Act the same procedural requirements specified by the Tariff Act of 1930 concerning release of confidential business information.

Subtitle B: Textile and Apparel Safeguard Measures

Sec. 321: Commencement of Action for Relief

This section authorizes an interested party to request the President to adjust U.S. obligations under the Agreement. Pursuant to this request, the President is required to determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities as to constitute a substantial cause or threat of serious damage to a domestic industry producing an article like, or directly competitive with, the imported article.

Sec. 322: Determination and Provision of Relief

This section authorizes the President, if an affirmative serious damage determination is made, to provide certain import relief to remedy or prevent the damage, and to facilitate adjustment by the domestic industry to import competition, including increasing the rate of duty to a level that does not exceed an amount determined according to a specified formula.

Sec. 323: Period of Relief

This section limits relief provided under section 322 to no more than three years except under circumstances when the President determines that the relief continues to be necessary or the industry is making a positive adjustment to import competition.

Sec. 324: Articles Exempt from Relief

This section specifies that the President may not provide import relief if the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force, or if the article is subject to import relief under chapter 1 of Title II of the Trade Act of 1974.

Sec. 325: Rate After Termination of Import Relief

This section provides that when relief is terminated, the rate of duty on that article shall be the rate that would have been in effect had relief not been granted.

Sec. 326: Termination of Relief Authority

This section prohibits any import relief under this subtitle greater than 10 years after the Agreement enters into force.

Sec. 327: Compensation Authority

This section authorizes the President to provide trade compensation to Oman when the United States imposes relief pursuant to the Agreement's textile and apparel safeguard provisions such that the general level of reciprocal concessions under the Agreement is maintained.

Sec. 328: Confidential Business Information

This prohibits the President from releasing confidential business information received in connection with a review under this subtitle unless the submitting party had notice, at the time of submission, that such information would be released, or the party subsequently consents to such release.

This section requires any party submitting such confidential business information to provide a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

Title IV: Procurement

Sec. 401: Eligible Products

This section amends the Trade Agreements Act of 1979 to make products or services of a foreign country or instrumentality that is a party to the Agreement eligible for U.S. government procurement.

Administration Position

On July 20, 2006, the Administration issued a Statement of Administration Policy (SAP) regarding H.R. 5684, noting that it “strongly supports H.R. 5684, which will approve and implement the United States-Oman Free Trade Agreement.”²

² For a copy of the SAP, see: <http://www.whitehouse.gov/omb/legislative/sap/109-2/hr5684sap-h.pdf>.

Cost

The Congressional Budget Office CBO estimates the bill would reduce revenue by \$15 million in 2007, \$111 million in years 2007-2011, and \$217 million in years 2007-2016. Direct spending would increase by \$1 million in 2007, \$6 million in years 2007-2011, and \$10 million in total for years 2007-2016.³

Possible Amendments

Under trade promotion authority established by the Trade Act of 2002, no amendments are permitted.

³ For a copy of the estimate, see: <http://www.cbo.gov/ftpdocs/73xx/doc7363/hr5684.pdf>.