STATEMENT OF WHY THE UNITED STATES – OMAN FREE TRADE AGREEMENT IS IN THE INTEREST OF U.S. COMMERCE

INTRODUCTION

The United States-Oman Free Trade Agreement ("FTA" or "the Agreement") provides for equitable and reciprocal trade liberalization between the United States and the Sultanate of Oman. This comprehensive agreement furthers U.S. commercial interests, provides increased opportunities for U.S. exports, and is clearly in the interests of U.S. commerce. It is a high-quality agreement that sets the standard for other bilateral negotiations, and builds on existing U.S. agreements with Israel, Jordan, Morocco, and Bahrain.

Negotiations with Oman began in March 2005, and were completed in September 2005. Oman is the fifth country in the Middle East and North Africa to negotiate a free trade agreement with the United States, and is an integral component of the President's Middle East Free Trade Area (MEFTA) initiative, an ambitious plan for regional integration that would transform the individual countries of the area into a cohesive market for the United States.

WHY OMAN?

The Oman FTA is a comprehensive agreement that will eliminate tariffs, promote investment and strip away other barriers to trade. By promoting economic liberalization and market access in Oman, this cutting edge agreement will expand U.S. opportunities in important regional markets.

This agreement not only reduces barriers to U.S. trade, but also requires important reforms of Oman's legal and business environment that are key to encouraging business development and investment. Such reforms include increasing the transparency of government actions and rule making, strengthening the rule of law, and improving protection and enforcement of intellectual property rights. While Oman is a relatively small market for U.S. goods and services due to its small population, it is ideally located to serve as platform from which to enter other markets in the region.

Leveling the Playing Field

The Agreement would level the playing field for U.S. businesses that sell to Oman. As a member of the Gulf Cooperation Council (GCC), and a part of the GCC Customs Union that was implemented on January 1, 2003,[i] Oman provides Customs Union members preferential, duty-free tariff treatment, while non-GCC countries are subjected to an average tariff of 5 percent. The United States is currently the fifth largest source of Omani imports behind the United Arab Emirates (UAE), Japan, the United Kingdom, and Germany. The tariff reductions and enhanced market access the Agreement provides have the potential to make U.S. goods more competitive with those from the UAE and other GCC countries as well as goods from Europe and Asia.

Additionally, Oman currently gives GCC countries preferential treatment in establishing services firms, including financial institutions. The Agreement provides for national treatment in this area, granting U.S. firms the right to establish services operations and financial institutions as if they were Omani firms, thus providing enhanced access as compared to other non-GCC countries.

Advancing the U.S. Trade Agenda

The Oman FTA is a key part of America's regional and global efforts to open markets around the world to enable U.S. businesses to sell our goods and services. It will lend momentum to complete the MEFTA, which President Bush announced in May 2003. MEFTA reflects the Administration's long-term commitment to promoting economic growth, expanding opportunities, and ensuring stability in the region. The region-wide free trade agreement, to be completed by 2013, will provide new export opportunities to U.S. farmers, ranchers, and manufacturers. Jordan, Morocco, Bahrain, and Israel are already FTA partners, and an FTA with the UAE is currently being negotiated.

The common disciplines and trade objectives developed through all bilateral trade agreements will enhance the ability of all parties to forge consensus in the World Trade Organization (WTO). America's free trade partners form the vanguard of a global coalition for open markets.

Supporting Economic Reform, Regional Integration, and Democracy

Oman is a regional leader in economic reform. In 2005, the International Research Foundation, in association with the Frasier Institute, presented its first overall Arab Economic Freedom Award to both Oman and Lebanon for their efforts in enabling individuals to create wealth with minimal government interference. In the 2003 *Economic Freedom of the World Annual Report*, published in July by the Cato Institute, Oman placed second in the Middle East. In October 2000, Oman became the 139th country to join the WTO. Oman's emphasis on economic diversification has opened the country to foreign participation in the economy, particularly in the form of joint ventures. This FTA is the most recent and important step in Oman's efforts to reform its economy, create jobs, and move away from dependence on revenues generated from oil exports.

This Agreement also helps the advancement of economic and political freedom in the region. For decades, Oman and the United States have shared a desire for peace, stability and economic opportunity in the Middle East. Free trade agreements in the Middle East carry out the recommendation in the 'The 9/11 Commission Report' urging the United States to "encourage development, more open societies and opportunities for people to improve the lives of their families,"[ii] by strengthening trade relations with the region.

ENHANCED MARKET ACCESS TO OMAN

The Agreement will provide new market access for U.S. consumer, industrial, and agricultural products. All bilateral trade in industrial and consumer products will become duty-free immediately upon the FTA's entry into force. Oman will provide immediate duty-free access on virtually all other products as well, and will phase out tariffs on the remaining products within 10 years.

Best Prospects for Increased Market Growth for Non-Textile Industrial Goods

Industrial goods represented approximately 87 percent of total Oman imports from the United States in 2003, and under the Agreement, statistically 100 percent of U.S. industrial trade with Oman will receive duty-free treatment immediately.

Infrastructure and Machinery
Oman is an important market for U.S. exports of infrastructure and machinery. The Omani government and private sector are embarking on multibillion-dollar plans for investment in upstream and downstream oil and gas projects over the next few years. Energy products are an important sub-category of infrastructure and machinery. Since the energy sector accounts for 40 percent of Oman's GDP, and more than 70 percent of the government's revenues, these projects will provide strong export potential for American firms in the near future. Pumps, rock drilling equipment, valves, and air-conditioning equipment, will be exported to Oman duty free under the Agreement, giving U.S. companies an advantage in bidding on large projects.

Construction Equipment and Building Products
The construction equipment and building products sectors together accounted for 30.8 percent of total U.S. non-textile industrial exports to Oman. Construction equipment totaled approximately $104 million in U.S. exports to Oman in 2003, while building products totaled approximately $10.9 million. Drilling and boring equipment, and prefabricated structural components have dominated U.S. exports in the two sectors, and are currently subject to a five percent tariff. Under the FTA, 100 percent of construction equipment and building products from the United State to Oman will receive duty-free treatment upon entry into force of the Agreement. A sizeable market exists in Oman for construction equipment. The government is developing plans to expand airport terminals at the two largest airports as well as proceeding with construction and expansion of industrial ports in the north and south of Oman. Road construction is a major focus of regional development, with multi-million dollar projects underway in various parts of Oman.

Chemicals
U.S. exporters of chemical and related products will benefit from the FTA tariff reductions. Tariffs on all of U.S. chemical exports will be eliminated immediately upon implementation of the Agreement. U.S. exports to Oman of chemical products, which include cosmetics, fertilizers, pharmaceuticals, plastics, additives for lubricating oils, prepared explosives, and calcium chloride, totaled about $28 million in 2003.

Medical Equipment
The Omani population is growing at around 2 percent annually, and the existing health system is overburdened and in need of expansion. The Government's determination to provide its citizens with basic health care means the Omani market offers solid prospects for U.S. health care products. Having completed major regional hospital construction, Oman is currently focusing on upgrading facilities, and the Omani government spends 3 percent of its budget in the health sector. The United States already exports instruments, laboratory equipment, and endoscopes, under an average duty of 4.63 percent. Upon entry into force of the agreement, Oman will grant duty free access for 100 percent of medical equipment imports from the United States.

Civil Aircraft
Oman's national airline, Oman Air, placed an order for a new U.S.-made aircraft in 2004, and is planning to continue expanding its fleet. U.S. exports aircraft and related products, which totaled almost $78 million in 2003, accounted for 21 percent of total non-textile industrial good exports to Oman. U.S. aviation–related manufacturers currently face average duties of 4.21 percent and U.S. companies stand to benefit from tariff elimination on 100 percent of U.S. aircraft and related products.

AGRICULTURAL MARKET ACCESS

Under the Agreement, which covers all agricultural products, Oman will provide immediate duty-free access for U.S. agricultural exports in 87 percent of agricultural tariff lines. Oman will phase out tariffs on remaining agricultural products in ten years. Agricultural commodities that could benefit from increased market access include beef, whole birds and other poultry products. U.S. agricultural exports to Oman in 2005 were $16 million. Key exports include corn, vegetable oil, animal feed, and soft drink mixes. There are very strong rules of origin for sensitive agricultural products to ensure that third-country inputs are not used in production in Oman.

TEXTILES AND APPAREL

The FTA is an essential element for helping to maintain the competitiveness of the U.S. textile industry in future years. Oman and the United States will eliminate textile and apparel tariffs on the same schedule on a product-by-product basis, with tariffs eliminated either immediately or in five to ten years.

As a result of this FTA, Omani Customs will increase cooperation with U.S. Customs and Border Protection in investigating and verifying any incidents of transshipment or falsification of documents. The Customs Cooperation provisions require Oman to establish and maintain a program to ensure that textile and apparel goods that are imported into, exported from, processed, or manipulated in Oman (or in a free trade zone or export processing zone in Oman) en route to the United States are marked with the correct country of origin. Documents accompanying the goods also must accurately describe the goods. Oman will require each enterprise that produces textile or apparel goods to maintain records relating to its production capabilities in general, the number of persons it employs and any other records and information, for a period of five years. The Agreement will improve transparency by facilitating exchange of documentation and data between Omani Customs and U.S. Customs and Border Protection when there is suspected unlawful activity in the trade of textile and apparel goods. It will also allow U.S. Customs to perform on site inspections.

Under the FTA, textile and apparel exports meeting the rules of origin will qualify for duty-free or reduced tariffs into Oman. This will create an opportunity for U.S. textile manufacturers to export goods to Oman at lesser cost and build partnerships with Omani companies, in a mutually beneficial environment. The 'yarn forward' rule of origin, where 90 percent of apparel must be made of regional yarns and fabrics to qualify for duty-free treatment, provides a new market for U.S. textile industry to explore, opening the door for small and medium sized companies.

LEADING SECTORS FOR U.S. SERVICE PROVIDERS

Overall, the Agreement is highly beneficial to U.S. service providers. As Oman's economy grows, so too will the demand for services in areas such as finance, telecommunications, architecture, construction, computer services, energy, and others. Oman currently has a local hiring requirement for service providers in most sectors. The services sector in Oman accounted for 45 percent of the country's GDP in 2003. The Agreement provides additional market access and national treatment to U.S. firms beyond what is already available in Oman. U.S. service firms and their affiliates in Oman will benefit from improved regulatory transparency, which is particularly important to cross-border trade in services and the establishment of a commercial presence in service industries. Many services influence public health, consumer welfare, and safety, and therefore are heavily regulated. The Agreement will ensure a more transparent regulatory environment that incorporates the principles of public notice and comment, which the current Omani regulatory regime does not require.

> *"The Oman Agreement chapters on services and investment may be considered as close to a "model" for any FTA to be concluded. It contains the fewest non-conforming measures."*
> The Industry Trade Advisory Committee for Services and Finance

Why do services commitments matter?

The service sector accounts for most jobs – and most new jobs – in both the U.S. economy and elsewhere. In the United States, private services industries added almost 17 million new jobs to U.S. payrolls between 1993 and 2003, when they accounted for almost 86.5 million U.S. jobs, or 80 percent of private non-farm employment. U.S. services exports are a vital part of this picture. For example, commercial services exports of $294 billion accounted for 29 percent of total 2003 U.S. exports, generating a 2003 commercial services trade surplus of $66 billion.

U.S. services firms are well positioned relative to their competitors abroad to take advantage of such agreements. The large and dynamic U.S. market provides a very good breeding ground for services firms. The intensity and vigor of the U.S. market give rise to high-quality companies prepared to meet stringent services demands at home and enables them to compete abroad.

United States-Oman FTA Allows Service Providers to Choose Mode of Delivery

The commitments in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to invest and establish a local services presence. Under the Agreement, Omani local governments are prohibited from requiring a U.S. company to incorporate or make any form of local investment when supplying their services on a cross-border basis. In other words, a U.S. company wishing to provide its service in Oman is not required to have any formal presence there. This is a benefit to all U.S. service providers, especially SMEs, who may not have the resources to maintain a presence outside of the United States nor conduct enough business to need that kind of presence.

The freedom for service providers to choose their mode of delivery becomes increasingly important as technology makes distance less of a service barrier. Distance learning, for example, has undergone a dramatic transformation due to technology. Satellites and the Internet are transforming the world into a borderless educational arena, benefiting both previously under-served citizenries and education entrepreneurs. Although many developing countries still have limited access to these new technologies, major new investments in telecommunications and information systems are going to dramatically improve their access, benefiting all "e-service" providers.

Ensuring that the Services Market of the Future is Open Today

Oman will accord substantial market access across its entire services regime, subject to very few exceptions, using the "negative list" approach. Under this approach, access and protection written into the services sections of the FTA would automatically cover all service industries and industry segments that are not specifically exempted in the non-conforming measures. The benefit to U.S. service providers is that the FTA advantages are automatically extended to services that have yet to be created or brought to market. This is especially of interest to the communication services and financial services sectors, where technological advancement and other innovation frequently result in new offerings and means of delivery.

Professional Services

U.S. industry has expressed its approval of Oman's commitment on professional services trade in the FTA, which contains exceptionally few limits on professional services. For example, the Agreement provides full access for legal advisory services. As Oman strives to expand development of its energy resources, Oman's commitments on services and transparency provide U.S. energy service firms an opportunity to improve operating conditions in Oman.

Financial Services

Improving the conditions for financial institutions to provide services is a key component to the U.S. trade liberalization agenda. Open, transparent financial sectors are an important factor in higher economic growth. Countries with fully open financial services sectors grow one percent faster, on average, than other countries—for developing countries, the average increase in GDP growth was even higher[iii]. Liberalization attracts scarce capital in the form of foreign direct investment and introduces foreign competition, improving efficiency in accumulating and allocating funds. The financial sector is a critical component of a nation's economy: it not only contributes directly to output and employment but also provides an essential infrastructure for the functioning of the entire economy.

Under the Agreement, U.S. financial services companies can establish branches, subsidiaries, and joint ventures in Oman and offer the full range of financial services. None of the 15 commercial banks currently operating in Oman is a U.S. firm and Oman has barred new non-Gulf Cooperation Council banks from entering the market. The FTA will open that market for U.S. financial services providers.

Insurance

Providers of insurance services currently face a foreign equity limit of 70 percent when establishing a commercial presence in Oman; this restriction will be removed for U.S. service providers under the FTA, giving them an advantage not accorded to foreign competitors. U.S. insurers supplying services in Oman will benefit greatly from the FTA. New rights for U.S. insurers in Oman include the ability to establish a commercial presence through subsidiaries, branches, or joint ventures, and provide a full range of transportation related insurance products. U.S. providers are also assured a swift approval of new products (30 days for non-life insurance and 60 days for life insurance). The insurance market in Oman is small, but will likely grow, particularly the health insurance market, and this Agreement will position U.S. providers to be more competitive.

INVESTMENT

The FTA establishes a secure, predictable legal framework for U.S. investors in Oman. Foreign direct investment can contribute significantly to the economic

Key Investment Provisions

The agreement will establish a secure, predictable legal framework for U.S. investors operating in Oman.

All forms of investment are covered by the Agreement, including enterprises, debt, concessions, contracts and intellectual property.

U.S. investors enjoy in most circumstances the right to establish, acquire, and operate investments in Oman on an equal footing with local investors, and with investors of other countries.

The agreement draws from U.S. legal principles and practices to provide U.S. investors in Oman a basic set of substantive protections that Omani investors currently enjoy under the U.S. legal system.

Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive the fair market value for property that has been expropriated.

Investor rights are backed by an effective, impartial procedure for dispute settlement that provides for transparent panel hearings and allows interested parties to submit their views.

development and stability of this region. Oman actively seeks private foreign investors, especially in the industrial, information technology, tourism, and higher education fields. Investors transferring technology, providing employment, and training for Omanis are particularly welcome. The FTA provides for high-standard protection, and key market access commitments.

Since 1999, Oman's privatization process has led to increased foreign direct investment. U.S. direct investment in Oman has increased significantly in recent years, reflecting both growing investor confidence in the country and sustained economic growth. U.S. investors, however, continue to cite red tape and delays in official decision-making as disincentives to investment. The FTA commitments improve transparency and remove barriers to investment.

The Agreement includes an effective, impartial, and transparent investor-state dispute settlement procedure, which provides investors recourse outside of Omani courts. This is particularly important in a region where the slow pace and uncertainty of legal systems have been an impediment to investment. Under the Agreement, investors will have recourse to binding international arbitration to enforce both their rights under the investment and certain contractual rights.

GOVERNMENT PROCUREMENT

The Agreement contains provisions that guarantee U.S. suppliers non-discriminatory treatment in and transparent, predictable access to the procurements of the largest government purchasing entities in Oman. This coverage includes areas where U.S. goods and service companies are very competitive such as energy, health care, construction, and environmental and information technologies. This provides access for U.S. companies to the procurement of the majority of Oman's central government entities, including many key ministries and significant state-owned enterprises. Total government procurement is estimated to be between 5 and 7 percent of Oman's GDP. Oman's GDP is over $26 billion (est. 2005), making procurement worth an estimated $1.3 to $2 billion per year. The Agreement imposes strong disciplines on tendering procedures, such as

Key Government Procurement Provisions

For procurements conducted by covered entities that are above the chapter thresholds, U.S. suppliers will receive non-discriminatory access to Oman's procurement market equal to that of Omani and other GCC member states suppliers.

The government procurement chapter requires the use of fair, transparent, and predictable procedures in all aspects of the procurement process.

The Agreement provides for impartial oversight of the procurement process, requiring timely and effective domestic review procedures to address complaints concerning any aspect of the tendering process.

As a result of the FTA, Oman may more fully utilize electronic technology to make tendering opportunities and other relevant procurement information available to all potential suppliers.

The United States also secured coverage of important state-owned enterprises such as the Oman Oil Company (the national oil company) and the Oman Gas Company (the national gas company).

requiring transparency of procurement laws and regulations, specifying advance public notice of purchases and mandating provision of relevant information for all phases of covered procurements. It also provides predictable time periods for tendering and limits the use of selective and limited tendering procedures.

U.S. suppliers will immediately benefit as the Omani government brings its laws and practices into compliance with the obligations set forth in the government procurement chapter.

INTELLECTUAL PROPERTY

Those U.S. industries concerned with protection and enforcement of intellectual property rights (IPRs) have expressed a high level of satisfaction with the IPR provisions of the Agreement. Oman has already taken steps to modernize its intellectual property laws, but there is still room for improvement, especially in the area of enforcement. The Oman FTA, once fully implemented, will support the growth of trade and investment. U.S. companies will immediately benefit from a number of actions that the Omani government will take to implement the FTA.

Key Intellectual Property Provisions

Protection for copyrighted works

- Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to $90 billion to the economy through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property.

State of the art protection for U.S. trademarks

- Procedures for registering and maintaining trademarks as well as resolving disputes should become more efficient, transparent, and less subject to abuse. This will make trademark protection more accessible to small businesses interested in the Omani marketplace.

Stronger protections for patents & trade secrets

- Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

Tough penalties for piracy and counterfeiting

- The high level of enforcement required by the FTA will benefit industry and set a precedent throughout the region.

Copyrights: The Agreement ensures that authors, composers, and other copyright owners have the exclusive right to make their works available online through confirming their rights to temporary copies of their works on computers. This right is important in protecting music, videos, software, and text from widespread unauthorized reproduction and distribution via the Internet. Under the Agreement, Oman has committed to using only legitimate computer software within the government, thus setting a positive example for private users. The Agreement includes strong anti-circumvention provisions, requiring Oman to prohibit tampering with encryption technologies (like embedded codes in DVD players) that are designed to enable copyright owners to control reproduction and distribution over the Internet, as well as the manufacture, sale, and importation of devices whose primary purpose is to tamper with encryption technologies. The Agreement also requires protection for encrypted program-carrying satellite signals (including the signal itself and the programming), to prevent piracy of satellite television programming.

The Agreement sets out obligations limiting the liability of internet service providers in certain circumstances, reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the secondary infringement of copyrights.

Trademarks: In the FTA, Oman reaffirms its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property ("TRIPS"), and goes beyond those requirements in several key areas. For example, by agreeing to eliminate a requirement that would force U.S. companies to record their trademark licenses in order to establish the validity of their licenses, to assert any rights in a trademark, or for other purposes, Oman will eliminate administrative hurdles from the enforcement process, thus enhancing protection for U.S. trademark interests and their licensees. In general, stronger trademark protections will aid U.S. companies in Oman for which trademark protection and enforcement are essential, including U.S. franchisors and merchandisers.

Patents: U.S. patent owners will receive increased protection in Oman as a result of the Agreement, including a provision that will require that the term of patented inventions be adjusted on request to compensate patent owners for unreasonable delays that occur in the granting of patents. The Agreement also provides that for patents covering pharmaceutical products, patent terms will be adjusted to compensate patent owners for unreasonable curtailment of patent term as a result of the marketing approval process. In addition, Oman will improve the protection of undisclosed test data. This enhanced protection for commercially valuable and proprietary undisclosed test and other data will provide an incentive for U.S. pharmaceutical manufacturers to register and market their products in Oman.

Enforcement: The Agreement will improve the ability of U.S. businesses to exploit and protect their creative works, brands, and inventions in Oman, including by: (1) requiring Oman to provide its competent law enforcement officials the authority to initiate border measures against pirates and counterfeiters without waiting for complaints from right holders; (2) authorizing the award of pre-established damages to right holders, in amounts sufficient to deter future infringement; (3) enabling authorities and right holders to collect the evidence needed to track counterfeit and pirated products to their ultimate source; (4) permitting the seizure, forfeiture, and destruction of not only seized pirated and counterfeit products, but also the equipment and tools used to produce them; and (5) increasing the transparency of decision-making in both administrative and judicial enforcement activities undertaken by Oman.

CUSTOMS ADMINISTRATION

U.S. exporters to Oman should realize significant gains once the Agreement's custom administration and trade facilitation provisions are fully implemented. Business persons frequently complain that Oman's unclear rules, inconsistent interpretation of Customs regulations and directives, and arbitrary clearance procedures often delay the importation of merchandise for lengthy periods. Furthermore, exporters to Oman must have a "certificate of origin" for their goods, and get related documents "legalized." This involves paying a fee and can result in exporting delays.

The Agreement's provisions on Customs Administration address these and other customs-related exporter concerns.

- Enhanced transparency -The Omani government will publish their Customs laws, regulations and administrative procedures, thereby greatly increasing transparency.

- Facilitate the clearance process – Oman will use information technology, improve risk management and cooperation with the United States, and establish procedures for resolving customs disputes. This will help expedite procedures for the release of goods, thereby saving companies time and money.

- Improved express delivery service -The demand for express delivery services is increasing rapidly as a result of the growth of electronic commerce, the internationalization of business, and rising demand by manufacturers for outsourced logistic services. The United States-Oman FTA responds to that demand by requiring that governments provide a separate, expedited customs procedure for express shipments. Oman will also allow the processing of customs information related to the express shipment before the arrival of the shipment itself. Most importantly, Oman is obligated for the first time to clear express shipments from the port within six hours of submission of all necessary documents.

CONCLUSION

Implementing the United States-Oman Free Trade Agreement is in the best interest of United States commerce. The comprehensive Agreement not only eliminates tariffs, but also reduces barriers for services, protects leading-edge intellectual property, keeps pace with new technologies, ensures regulatory transparency, and serves as a model for all future agreements. With the agreement in place, doing business in Oman will be easier, faster, cheaper, and more transparent for U.S. and Omani companies.

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[i] Members of the GCC Customs Union are Saudi Arabia, Kuwait, Bahrain, Qatar, The United Arab Emirates and Oman.

[ii] *The 9/11 Commission Report*, Pages 378-379, Issued July 22, 2004.