

November 15, 2005

The Honorable Rob Portman  
United States Trade Representative  
Executive Office of the President  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Portman:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, we are pleased to transmit the report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) on the U.S.-Oman Free Trade Agreement. This report reflects the consensus opinion of ITAC 8 members on the proposed Agreement.

Sincerely,

Steven W. Stewart  
Chair, ITAC 8

# **The U.S.-Oman Free Trade Agreement**

Report of the  
Industry Trade Advisory Committee for Information and  
Communications Technologies, Services and Electronic  
Commerce (ITAC 8)

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**Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8)**

**Report to the President, the Congress and the United States Trade Representative on the U.S.-Oman Free Trade Agreement**

**I. Purpose of the Committee Report**

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) hereby submits the following report.

**II. Executive Summary of the Committee Report**

ITAC 8 views the provisions of the U.S.-Oman Free Trade Agreement that fall under the scope of the Industry Trade Advisory Committee as consistent with the negotiating objectives the committee has established for U.S. trade agreements. ITAC 8 believes the relevant provisions contained in this agreement promote the economic interests of the United States and provide equity and reciprocity for information and communications technology and services firms, and electronic commerce firms.

The U.S.-Oman Free Trade Agreement achieves services liberalization beyond that to which Oman is committed in the WTO General Agreement on Trade in Services (GATS)

by adopting a comprehensive negative list approach where all sectors are covered except where specific exceptions are made.

The telecommunications chapter includes several important commitments that reinforce and build upon Oman's relatively strong WTO commitments for telecommunications. In another sector of interest to ITAC 8 members, computer and related services, Oman had already made full market access and national treatment commitments in its WTO GATS commitments, so no additional liberalization was needed in this FTA negotiation.

In the area of electronic commerce, ITAC 8 applauds the USTR's continued emphasis on the concept of digital products in terms of trade. Our assessment of the e-commerce provisions in the Agreement indicates that it meets our negotiating objectives.

The government procurement chapter reflects strong commitments, and this is especially important since Oman is not yet a member of the WTO Government Procurement Agreement. In many countries, particularly developing countries, government is a key purchaser of IT and communications products and services. Therefore, this Committee views the government procurement chapter as critically important to ensuring access to the government procurement market in Oman.

In an area of growing concern for the U.S. high-tech industry, the Technical Barriers to Trade chapter of the FTA contains important provisions that emphasize the importance of the WTO Agreement on Technical Barriers to Trade (TBT) and consistently reinforces the TBT provisions.

Intellectual property protection is a critical objective, and the U.S.-Oman FTA contains intellectual property language that provides high levels of protection, raising the bar beyond the WTO TRIPs Agreement. We are generally supportive of its contents.

IT tariff elimination remains a top priority for this Committee. Oman joined the Information Technology Agreement (ITA) upon its WTO accession in 2000, so customs duties on many products of interest to the Committee were already set to zero in Oman. However, as part of this Agreement, Oman will eliminate tariffs on many other IT and electronics products on the date on which the Agreement takes effect. In addition, Oman committed to eliminate tariffs on almost all of the products on its tariff schedules, phasing out the remaining tariffs over a period of ten years.

In the important area of investment protections, the U.S.-Oman FTA contains provisions to protect both current and future investments, based on the U.S. model investment language. We view these provisions as very positive.

### **III. Brief Description of the Mandate of the ITAC 8**

The Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) was established as part of a

restructuring of the industry trade advisory committee system by the U.S. Department of Commerce and the United States Trade Representative (USTR). The restructuring was undertaken in order to better reflect today's U.S. economy and to better position industry to provide the private sector and civil society the opportunity to advise the Administration on trade issues and objectives. ITAC 8 combines the former ISAC 5 (Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Matters), IFAC 4 (Industry Functional Advisory Committee on Electronic Commerce), and the Computer and Related Services and Telecommunications Services areas of ISAC 13 (Industry Sector Advisory Committee on Services for Trade Policy Matters).

ITAC 8 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to information and communications technologies, services and electronic commerce. ITAC 8 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the U.S. Trade Representative regarding trade barriers and implementation of trade agreements.

#### IV. **Negotiating Objectives and Priorities of the ITAC 8**

ITAC 8 supports an ambitious trade agenda that addresses the following issues through all available trade negotiating forums, including multilateral (WTO), regional (e.g., FTAA), plurilateral (e.g., CAFTA) and bilateral agreements. ITAC 8 also emphasizes the need for prompt implementation and effective enforcement of free trade obligations once agreements are concluded.

##### **A. Goods Issues**

1. Eliminate tariffs on all information technology products (hardware and software) and components, infrastructure equipment, medical equipment and scientific instruments.
  - Within the WTO, seek to gain new signatories to the Information Technology Agreement (ITA), expedite the phaseout of tariffs under the ITA, ensure that as products covered by the ITA evolve technologically they retain zero duty treatment, and seek to expand the product coverage under the ITA.
  - Alternatively, as part of the Doha Round Non-Agricultural Market Access (NAMA) negotiations, countries should agree on sectoral tariff elimination that would apply to IT products, including those products not currently covered by the ITA.
2. Eliminate discriminatory taxes that create barriers to trade.

3. Support global, market-led, voluntary standards developed through an open and transparent process. Ensure that standards do not create unnecessary barriers to trade.
4. Reduce technical barriers to trade. Ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures are fair, transparent and streamlined. Eliminate those procedures that are duplicative, increase costs to users and delay the availability of products to market.
5. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound and widely accepted scientific principles and available technical information, and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

## **B. Services Issues**

1. Increase the number of countries with obligations in telecommunication services, and increase the range of services covered in country schedules. Ensure that telecommunication services are liberalized on a technology-neutral basis. Promote independent regulatory authorities and transparency in the regulatory process. Ensure nondiscriminatory access to, and use of, public telecommunication networks and services.
2. Obtain full market access and national treatment for computer and related services. Ensure that technologically evolving IT services, including those that are delivered electronically, continue to be covered by trade agreements and that barriers to these services do not develop.
3. Maximize the liberalization of all services that can be delivered electronically.

## **C. E-Commerce Issues**

1. Electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form. Trade classification should ensure the most liberal treatment possible. Software and other digital products should be duty free.
2. Make permanent the WTO moratorium on customs duties on electronic transmissions.
3. Support a moratorium on Internet taxes.
4. Monitor other e-commerce issues and take action as required: data privacy, security, consumer protection, spam, and digital signatures.

#### **D. Intellectual Property Issues**

1. Seek full implementation of existing TRIPs commitments and encourage ratification of WIPO Copyright Treaties.
2. Combat global software piracy and technology product counterfeiting.
3. Oppose Digital Rights Management legislation calling for government-mandated technological standards to protect digital content. Promote the development and adoption of market-led best practices to protect intellectual property.
4. Oppose the application of levies on information technology products as a way to compensate copyright holders for copying.

#### **E. Government Procurement Issues**

1. Seek market access and transparency in government procurement.
  - Seek to expand the membership of the WTO Government Procurement Agreement.
  - Seek a WTO Agreement on Transparency in Government Procurement.
2. Promote global use of electronic publication of procurement information, including notices of procurement opportunities.

#### **F. Other Issues**

1. Ensure that all countries comply with their obligations under their free trade agreements.
2. Enable global operations of U.S.-based companies by opening markets abroad and avoiding restrictions in the U.S. on worldwide sourcing.
3. Ensure U.S. trade laws are not weakened to the detriment of U.S. companies.

#### **V. Advisory Committee Opinion on Agreement**

ITAC 8 reviewed the chapters on Market Access, Government Procurement, Technical Barriers to Trade, Telecommunications, Cross Border Trade in Services, and Intellectual Property. For these chapters, ITAC 8 believes the provisions of the agreement meet our objectives, promote the economic interests of the United States and provide equity and reciprocity for our sectors.

## **Telecommunications Chapter**

The telecommunications chapter includes several important commitments that reinforce and build upon Oman's relatively strong WTO commitments for telecommunications. The chapter ensures that U.S. providers will have access to and use of the public telecommunications network, including leased circuits, on reasonable and non-discriminatory terms and conditions. The chapter also includes strong "WTO-plus" obligations for suppliers, including resale, number portability and dialing parity, and appropriately more rigorous commitments for major suppliers, including competitive safeguards, resale, unbundling of network elements, and cost-oriented interconnection. The agreement provides a general unilateral carve-out of the major supplier provisions for commercial mobile services for the U.S., but retains these commitments for Oman, except for resale. This is an appropriate structure to ensure that mobile interconnection rates are linked to cost-oriented levels in Oman.

Importantly, the chapter commits Oman to ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications services and that the regulatory body does not hold a financial interest or operating role in any supplier. The chapter provides for enforcement authority, guarantees recourse to regulatory bodies, and specifies an appellate process for resolution of domestic telecommunications disputes, all of which are important to providing effective market access for U.S. providers.

The chapter includes two annexes that clarify the commitments for commercial mobile services and rural local exchange carriers in both countries.

The agreement also includes one non-conforming measure for telecommunications. Oman reserves the right to require that telecommunications suppliers establish or maintain an office in Oman in order to originate or re-originate calls within the territory of Oman, or to supply transit services on a facilities basis through Oman. Although it would be preferable to have no such non-conforming measure, this should not present a significant barrier to trade for U.S. telecommunications companies.

## **Cross Border Trade in Services Chapter**

The Agreement ensures full market access and national treatment for most services by adopting a "negative list" approach and by including limited reservations. With regard to computer and related services, this approach serves to reinforce Oman's already-strong WTO commitments in this important sector for the U.S. information technology industry. The Agreement covers all modes of delivery for computer and related services, including electronic delivery, such as via the Internet. Importantly, the negative list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The commitments for computer and



related services are complemented by the commitments contained in the electronic commerce chapter.

### **Electronic Commerce Chapter**

The U.S.-Oman Free Trade Agreement contains an electronic commerce chapter, which essentially continues the concept of “digital products” in terms of trade as defined in previous agreements. The chapter affirms the importance of avoiding e-commerce barriers and the applicability of WTO rules. The chapter assures the non-discriminatory treatment of digital products and addresses the valuation of physically delivered digital products.

In the Oman FTA, the parties agreed not to impose customs duties on digital products transmitted electronically. This provision is similar to the WTO Moratorium on Customs Duties on Electronic Transmissions. ITAC 8 seeks to make the Moratorium permanent and values the inclusion of the customs duties provision in the FTA.

The e-commerce chapter reflects digital product development in the last two decades and the need for predictability in how digital products are treated in terms of trade.

Oman agreed to non-discriminatory treatment of “digital products,” providing a broad national treatment and MFN non-discriminatory provision. This is a step forward in securing liberal trade treatment of digital products. ITAC 8 appreciates the importance of this provision and believes it is consistent with our objective to ensure the most liberal treatment possible of electronically delivered goods and services.

With respect to the physical delivery of digital products, Oman agreed to apply customs duties on the basis of the value of the carrier medium alone. Presently countries use different methods to apply customs duties. ITAC 8 prefers valuation on the basis of the physical medium and applauds the inclusion of this provision in the Agreement.

### **Government Procurement Chapter**

The government procurement chapter reflects strong commitments, and this is especially important since Oman is not yet a member of the WTO Government Procurement Agreement. In many countries, particularly developing countries, government is a key purchaser of IT and communications products and services. Therefore, this Committee views the government procurement chapter as critically important to ensuring access to the government procurement market in Oman.

## **Technical Barriers to Trade Chapter**

Technical barriers are a new and evolving issue for the high technology community. Poorly contemplated standards, technology mandates, and pernicious industrial planning through standards mechanisms can prevent access to key markets for the U.S. high-technology sector. Increasingly, the IT sector is experiencing more complicated and difficult technical barriers worldwide, including unique encryption standards, data privacy barriers, software preference mandates, and chemical content requirements for IT products, among others. Strong enforcement of the WTO Agreement on Technical Barriers to Trade (TBT) and reinforcement of its principles through FTAs are important.

Keeping these concerns in mind and recognizing the genuine need to regulate in some cases, ITAC 8 supports, through the WTO TBT and other trade agreements, development of mechanisms to ensure global, market-led, voluntary standards developed through open and transparent processes. We encourage an overall objective to reduce technical barriers to trade; ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures are fair, transparent and streamlined; and, eliminate those procedures that are duplicative or unnecessarily increase costs to users or delay the availability of products to market. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound, widely accepted scientific principles and available technical information and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

The chapter on Technical Barriers to Trade is consistent with ITAC 8's objectives. The Chapter emphasizes the importance of the WTO TBT Agreement and consistently reinforces the TBT provisions. In addition, the U.S.-Oman FTA is consistent with previously negotiated model TBT chapters. As with previous FTAs, the establishment of a "coordinator" dialogue to help facilitate cooperation in this area in the future is helpful.

## **Intellectual Property Rights Chapter**

ITAC 8 supports the Oman FTA chapter on intellectual property. ITAC 8 believes the Agreement meets most of the negotiating goals and objectives contained in the Trade Act of 2002 and those of the U.S. intellectual property-based industries, creators and innovators. ITAC 8 commends both the U.S. and Oman negotiators, the latter, in particular, for their willingness to adopt high levels of protection, not only for U.S. right holders, but for their own right holders as well.

## **VI. Membership of the Committee**

1. Mr. Steven W. Stewart (Chairman) IBM Corporation
2. Ms. B. Anne Craib (Vice-Chairman) Semiconductor Industry Association
3. Ms. Tatiana I. Lannelongue (Second Vice-Chairman) Saucini, LLC
4. Mr. Arun K. Bhumitra Arjay Telecommunications
5. Mr. Mark F. Bohannon, Esq. Software and Information Industry Association
6. Mr. Robert G. Britain National Electrical Manufacturers Association
7. Mr. Michael A. Brown Quantum Corporation
8. Ms. Melika D. Carroll Intel Corporation
9. Mr. Mark Chandler, Esq. Cisco Systems, Inc.
10. Ms. Susan D. Chapman General Motors Corporation
11. Mr. Calman J. Cohen Emergency Committee for American Trade
12. Mr. Tod H. Cohen, Esq. eBay Inc.
13. Ms. Barbara A. Dooley Barbara A. Dooley & Associates
14. Ms. Holly A. Evans, Esq. Advanced Micro Devices
15. Mr. John P. Goyer Coalition of Service Industries
16. Mr. Christopher G. Hankin Sun Microsystems, Inc.
17. Mr. Christopher J. Hirth Intuit, Inc.
18. Mr. F. Edward Jones Kemet Electronics Corporation
19. Mr. John D. Kania IPC - Association Connecting Electronics Industries
20. Mr. David M. Leifer, Esq. American Council of Life Insurers
21. Mr. Robert J. Mulligan American Electronics Association
22. Ms. Wendy E. Owens AbleMedia, LLC
23. Mr. Daniel J. Peterson Cook Group, Inc.
24. Mr. George Phillips, Ph.D. Union Carbide, Inc.
25. Mr. David K. Rensin Reality Mobile LLC
26. Mr. Edward M. Rozynski Rozynski and Associates
27. Ms. Laura S. Sallstrom Sallstrom Consulting
28. Mr. R. Wayne Sayer R. Wayne Sayer and Associates, Inc.
29. Ms. Loretta Schmitzer The Boeing Company
30. Mr. Douglas W. Schoenberger AT&T
31. Mr. Eric D. Schwerin, Esq. Oldaker, Biden and Belair, LLP
32. Ms. Susan C. Tuttle IBM Corporation
33. Mr. Glenn Zagoren Zagoren-Zozzora Corporation